



STATE OF NORTH CAROLINA

DIVISION OF EMERGENCY MANAGEMENT

Request for Proposal #: 19-RFP-014320-WAX

CONSTRUCTION MANAGEMENT SERVICES FOR STATE'S HURRICANE MATTHEW HOUSING RECOVERY PROGRAM

(Residential Home Rehabilitation, Reconstruction and Elevation Program)

Date of Issue: June 6, 2018

Proposal Opening Date: June 21, 2018 at 2:00 PM ET

ISSUING AGENCY: State of North Carolina's Division of Emergency Management (NCEM) of the Department of Public Safety

Location:
4105 Reedy Creek Road
Raleigh, NC 27607

Mailing Address:
4218 Mail Service Center
Raleigh, NC 27699-4218

Direct all inquiries concerning this RFP to:

Angela Wainwright
Purchasing Officer
Email: angela.wainwright1@ncdps.gov
Phone: 919-324-6476

Source of Funding: U.S. Housing & Urban Development
Community Development Block Grant-Disaster Recovery

SEND ALL PROPOSALS DIRECTLY TO THE ISSUING AGENCY ADDRESS SHOWN ABOVE.

IMPORTANT NOTE: On the front of the sealed package, indicate Offeror's name, the RFP number, and the date for receipt of proposal specified above.

RFP's submitted via telegraph, facsimile (FAX) machine, telephone, and electronic means, including but not limited to e-mail, in response to this Request for Proposal will not be acceptable. Any changes to the RFP and a summary of all questions submitted and answers (see, *Proposal Questions* on page 7) will be posted on the internet as an Addendum, located under the RFP # listed above.

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

All proposals shall be delivered to the Issuing Agency physical office location listed above on or before the proposal deadline in order to be considered timely, regardless of the method of delivery. **This is an absolute requirement.** All risk of late arrival due to unanticipated delay—whether delivered by hand, U.S. Postal Service, courier or other delivery service is entirely on the Offeror. It is the sole responsibility of the Offeror to have the proposal physically in this Office by the specified time and date of opening. The time of delivery will be marked on each proposal when received, and any proposal received after the proposal submission deadline will be rejected.

Note that the U.S. Postal Service generally does not deliver mail to specified street address but to the State's Mail Service Center. Offerors are cautioned that proposals sent via U.S. Mail, including Express Mail, may not be delivered by the Mail Service Center to the Issuing Agency's office on the due date in time to meet the proposal deadline. All Offerors are urged to take the possibility of delay into account when submitting a proposal.

NOTE: All Offerors are **strongly urged and cautioned** to attend a **PRE-SUBMITTAL CONFERENCE CALL** on **June 13, 2018 at 10:00 a.m.** NCEM requests that Offerors attending this conference pre-register and submit questions by calling Mrs. Angela Wainright, DPS-Purchasing & Logistics, 919-324-6476, to confirm two (2) business days in advance of the conference.

For internal State agency processing, including tabulation of proposals in the Interactive Purchasing System (IPS), please provide your company's Federal Employer Identification 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 proposal.
Failure to do so may subject your proposal to rejection.**

Federal ID Number or Social Security Number

Offeror Name



**STATE OF NORTH CAROLINA
DIVISION OF EMERGENCY MANAGEMENT**

Refer <u>ALL</u> Inquiries regarding this RFP to: Angela Wainright 3030 Hammond Business Place Raleigh, NC 27603	Request for Proposal #
	Proposals will be publicly opened: June 21, 2018 at 2:00 PM
	Contract Type: Construction Management Services
	Commodity No. and Description: 958-77-Project Management Services
	Using Agency: Division of Emergency Management
Requisition No.: 19-RFP-014320-WAX	

EXECUTION

In compliance with this Request for Proposals, and subject to all the conditions herein, the undersigned Offeror 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 proposal, the undersigned Offeror certifies that this proposal 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 that it is not an ineligible Offeror as set forth in G.S. 143-59.1. False certification is a Class I felony. Furthermore, by executing this proposal, the undersigned certifies to the best of Offeror'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 Offeror certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this RFP, 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 RFP, the undersigned certifies, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Failure to execute/sign proposal prior to submittal shall render proposal invalid and it WILL BE REJECTED. Late proposals cannot be accepted.

OFFEROR:		
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 OFFERORS ITEM #10):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF OFFEROR:		FAX NUMBER:
OFFEROR'S AUTHORIZED SIGNATURE:	DATE:	EMAIL:

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

ACCEPTANCE OF PROPOSAL

If any or all parts of this proposal are accepted by the State of North Carolina, an authorized representative of the Division of Emergency Management shall affix his/her signature hereto and this document and all provisions of this Request For Proposal along with the Offeror proposal response and the written results of any negotiations shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Offeror(s).

FOR STATE USE ONLY: Offered accepted and Contract awarded this _____ day of June 2018, as indicated on the attached certification, by _____

(Authorized Representative of Division of Emergency Management)

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1.0 PURPOSE AND BACKGROUND

NCEM invites licensed North Carolina general contractors that are experienced in affordable and disaster recovery housing to submit proposals to provide construction management services with respect to the rehabilitation, reconstruction, elevation and new construction of approximately 1,200 or more single family homes that were damaged or destroyed by federally declared disasters in North Carolina during 2016. The above construction services estimate is based on preliminary information and is subject to change during the term of the contract.

The United States Department of Housing and Urban Development (HUD) granted funds that will be utilized to purchase the management services specified in this RFP. Any contract entered into by NCEM that is to be paid from grant funds shall be limited to payment from the grant funding and the Offeror understands that NCEM has not set aside State funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the sole recourse of the provider shall be to terminate any further services under the contract and the contract shall be null and void.

On October 4, 2016, HUD released \$236,529,000 in Community Development Block Grant Funds for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster in 2016 under the Robert T. Stafford Notice Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121-5207). The federally declared disaster for this Program is under FEMA-4285-DR-NC, declared on October 10, 2016.

The Community Development Block Grant Disaster Recovery (“CDBG-DR”) regulations and the State’s Action Plan, as approved by HUD, shall apply to all contracts or purchase agreements made with the State of North Carolina. The CDBG Disaster Recovery Action Plan and Homeowner Recovery Program can be found at:

<https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-01007.pdf> (hereinafter the “HRP”)

The background information, general requirements and Sections I, IV, V, Appendices A through D of the HRP program set forth in the above-referenced document are incorporated into this RFP and the scopes of work set forth in this RFP should be read in conjunction and/or interpreted by HRP unless the RFP specifically indicates otherwise. If there is a conflict between what is stated in HRP with the RFP, the RFP shall take precedence

2.0 GENERAL INFORMATION

2.1 DEFINITIONS, ACRONYMS AND ABBREVIATIONS

- A. **ADDENDUM / ADDENDA:** When the terms, conditions, specifications, responses to inquiries from Offerors, and/or scope(s) of work are changed, removed and/or added prior to the public opening of the RFPS, an addendum addressing the nature of such change(s) will be issued in writing by DPS Purchasing & Logistics. When required, Offerors must sign and include an addendum and include it in the proposal and the failure to sign and return this type of addendum will, in most cases, result in the rejection of the proposal.
- B. **AUDIT:** The contract(s) awarded pursuant to this RFP are subject to audits by state and federal agencies and/or their authorized independent auditors. The auditors may

conduct of contract performance, financial and/or forensic/fraud audits.

- C. **BAFO:** Best and Final Offer, submitted by an Offeror to alter its initial offer, made in response to a request by the issuing agency.

- D. **BUYER:** The NCEM employee or such other persons NCEM shall delegate that places an order with a Prequalified Contractor to implement an HRP program for a specific home, and that order will also require the Offeror designated by NCEM and/or designated for a geographical area/counties under the contract to provide NCEM with construction management services required by this RFP during the HRP construction of the specified home.

- E. **CDBG-DR:** The Community Development Block Grant – Disaster Recovery for Hurricane Matthew recovery efforts in North Carolina authorized and funded by the U.S. Department of Housing and Urban Development with the N.C. Department of Commerce serving as the administering agency and the N.C. Department of Public Safety’s Division of Emergency Management serving as the implementing agency.

- F. **CONSULTANT:** NCEM will hire one or more consultants pursuant to Request for Proposals 19-RFP-014128-WAX to determine CDBG-DR eligibility of homeowners who have submitted applications under the HRP and, as part of the eligibility process, the consultants will perform damage and environmental assessments for each home. After a home is determined to be eligible for HRP and the program determined (rehabilitation, reconstruction, elevation and/or new construction), NCEM will issue a construction contract to a prequalified Contractor and the Construction Manager will coordinate the work performed under the contract with NCEM, homeowner, Contractor and Consultant to make sure the work performed under the contract complies with CDBG-DR requirements (including reporting and CDBG-DR case management by Consultant) and construction work and any environment radiation/abatement completed in a timely manner with the specified quality and workmanship.

- G. **CONTRACT LEAD:** Representative of the NCEM who corresponds with potential Offerors in order to identify and contract with that Offeror providing the greatest benefit to the State and who will administer this contract for the State.

- H. **CONTRACTOR or CONTRACTORS:** The contractors prequalified under Request for Prequalification No. 18-RFP-014321-WAX to construct HRP homes consisting of rehabilitation, reconstruction, elevation and new construction that the Construction Manager(s) selected by NCEM under this RFP will provide NCEM construction management services. .

- I. **DOC:** North Carolina Department of Commerce, which is the administrating state agency of the CDBG-DR program and funding.

- J. **DPS:** North Carolina Department of Public Safety.

- K. **E-PROCUREMENT SERVICES:** The program, system, and associated services through which the State conducts electronic procurement.
- L. **EVALUATION:** Evaluation shall be used as a determinant as to which proposed services are the most efficient and/or most economical for the State.
- M. **Grant Eligibility Determination:** NCEM’s Consultant will make assist NCEM in making final CDBG-DR (HRP) determinations that will include damage and environmental assessments, which will assist CM and Contractor in determine the scope of work for the a grant eligible home, the corresponding services and goods in the HRP Bid Pricing Book, and the contract between the homeowner and Contractor.
- N. **NCEM:** North Carolina Division of Emergency Management of the Department of Public Safety.
- O. **OFFEROR or CONSTRUCTION MANAGER or CM:** a North Carolina licensed general contractor with construction management experience that is the bidder, proposer, company, firm, corporation, partnership, individual, person or other entity submitting a response to a Request for Proposal. Use of Construction Manager or CM hereinafter shall primarily refer to work, terms and conditions applicable to an Offeror awarded a contract pursuant to this RFP.
- P. **PROPOSAL:** A responsive proposal submitted by a responsible Offeror.
- Q. **RFP:** Request for Proposal.
- R. **BID PRICING BOOK:** DOC and NCEM have prepared an HRP Pricing Book for the Request for Prequalification of Contractors and a blank copy of the Bid Pricing Book is provided as Attachment is F to this RFP. A copy of the priced Bid Pricing Book shall be provided to the CM(s) after the prequalification period for Contractors has ended. CM(s) shall become familiar with the Bid Pricing Book to manage Contractors’ payment applications, change order requests and/or responding to requests for information concerning any items in the Pricing Book. CM(s) will be required to assist NCEM and DOC in modifications to the Pricing Book throughout the term of the Contract.
- S. **STATE:** The State of North Carolina, including any of its sub-units and political subdivisions recognized under North Carolina law.
- T. **STATE AGENCY:** For purposes of this RFP, any sub-unit within the executive branch of the State, State Officials or Council of State Agencies that may have statutory or regulatory duties arising from or related to this RFP, HRP, CDBG-DR, State Disaster Recovery Acts of 2016 and 2017, and/or Hazard Mitigation Grant Program (HMGP) and these sub-units include but are not limited to: Governor’s Office, Department of Commerce, Department of Public Safety (including NCEM and Division of Purchase & Logistics), Department of Administration (including

State Construction Office and Purchase and Contract), State Building Commission, Department of Insurance, Department of Labor, Department of Insurance, Office of State Auditor, Office of the State Controller, State Treasurer, Office of the Attorney General, and State licensing boards.

2.2 NOTICE TO OFFERORS REGARDING RFP TERMS AND CONDITIONS

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

If Offerors have questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions pursuant to the instructions set forth in Section 2.5, below. If the State determines that any changes will be made as a result of the points raised, then such decisions will be communicated in the form of an RFP Addendum. The State may also elect to leave open the possibility for later negotiation of specific components 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 Offeror's proposal. This applies to any language appearing in or attached to the document as part of the Offeror's proposal that purports to vary any terms and conditions or Offeror instructions herein or to render the proposal non-binding or subject to further negotiation. **By execution and delivery of this RFP Response, the Firm 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 Offeror's proposal as nonresponsive.**

If an Offeror desires modification of the terms and conditions of this solicitation, it is urged and cautioned to inquire during the question period, in accordance with the instructions in Section 2.5 of this RFP, about whether a specific, proposed language modification is acceptable to or will be considered by the State. Identification of objections or exceptions to the State's terms and conditions in the proposal itself shall not be allowed and shall be disregarded or the proposal rejected.

Contact with anyone working for or with the State regarding this RFP other than the person named on page 3 of this RFP in the manner specified by this RFP shall constitute grounds for rejection of said Offeror's proposal, at the State's election.

2.3 RFP SCHEDULE

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

Event	Responsibility	Date and Time
Issue RFP	State	June 6, 2018
Hold Pre-Submittal Conference Call	State	June 13, 2018 @ 10:00 AM
RFP Questions Submitted	Offeror	June 15, 2018 by 5:00 PM
Provide Response to Questions	State	June 19, 2018
Submit Proposals	Offeror	June 21, 2018 by 2:00 PM
Offeror Presentations & Interviews	State & Offerors	July 9-13, 2018
Contract(s) Award	State	July 16, 2018
Contract Effective Date	State	August 1, 2018

2.4 PRE-PROPOSAL CONFERENCE

There will be a **PRE-PROPOSAL CONFERENCE CALL** on **June 13, 2018, 10:00 a.m. EST**. Attendance is not mandatory, but all Offerors should attend to discuss the requirements of this RFP and answer any questions. Persons with disabilities requiring special accommodations should contact the DPS Purchasing & Logistics at least two (2) days prior to the pre-proposal conference call. A call in number will be provided two (2) business days in advance of the conference call.

Contact Mrs. Angela Wainright, DPS Purchasing & Logistics, 919-324-6476 with any questions regarding the conference call.

2.5 PROPOSAL QUESTIONS

Upon review of the RFP documents, Offerors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Offerors shall submit any such questions by the above due date.

Written questions shall be e-mailed to angela.wainwright1@ncdps.gov by the date and time specified above. Offerors should enter “19-RFP-014320-WAX”: Questions” as the subject for the email. Questions submittals should include a reference to the applicable RFP section and be submitted in a format shown below:

Reference	Offeror’s Question
RFP Section, Page Number	Firm question...?

Questions received prior to the submission deadline date, the State’s response, and any additional terms deemed necessary by the State will be posted in the form of an addendum and shall become an Addendum to this RFP. 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 RFP, shall be considered authoritative or binding. Offerors shall rely *only* on written material contained in an Addendum to this RFP. NCEM will not be bound by any information conveyed verbally.

2.6 PROPOSAL CONTENT

Responses to this Request for Proposal (RFP) shall be formatted and organized in the following order for consistency and easy screening:

- All proposals must be typed, single spaced, and printed single-sided on 8 ½” by 11” paper.
- One (1) original, **clearly marked “ORIGINAL”**, and five (5) copies, **clearly marked “COPY”**, must be submitted in separate three-ring, loose-leaf binders with identification of the Offeror, the RFP number, and the RFP title on the front cover. One (1) flash drive containing the complete response in Word/Excel format must be provided and placed in the ORIGINAL response; a self-adhesive packet may be used to secure the flash drive.
- The complete proposal response must be sealed in an envelope or box for delivery to the DPS Purchaser identified in the above.
- All documents must be labeled with the Offeror’s name and the RFP number.
- Each section of the Offeror’s response should start on a new page. A tabbed divider page marked with the section number should separate each section.
- Prepare a Table of Contents for the proposal being submitted and place it after the RFP cover sheet and before Section I. The Table of Contents must list Sections I-VII and the contents of each section.

Proposals must be submitted in the following order:

RFP Cover Sheet

Table of Contents

Section I: Transmittal Letter, Residence Certification, and Proof of Insurance – The transmittal letter should include:

- Company name and address; name, title, email, telephone and fax number of person(s) to be contacted for clarifications or additional information regarding proposal;
- Name, title, email, telephone and fax number of person authorized to contractually obligate Offeror’s company with proposal and any future negotiations; and
- A brief statement summarizing the Offeror’s understanding of the project and relevant experience.

Section II: Scope of Service/Narrative of Proposed Services

- Describe Offeror’s philosophy, approach(es) and preferred methods for meeting requirements and/or deliverables in the Scope of Work and Specifications.
- Provide the greatest amount of meaningful detail possible to describe the proposed optional products/services. Indicate if Offeror’s can meet the specifications, or if the specifications can be met only under certain conditions or circumstances. If Offeror’s is not able to meet the specification, briefly explain why, noting any concerns or issues NCEM should be aware of.
- Provide a proposed timeline indicating deliverables, Offeror’s responsibilities and resources needed from Emergency Management.

Mere reiterations of specifications are strongly discouraged, as they do not provide insight into the Offeror’s ability to meet the specifications.

Section III: Pricing Information – See PRICING/DELIVERY INFORMATION page for instructions.

Section IV: Organizational Information/Experience/Qualifications

- Offeror’s history, background and principal officers
- Company organization chart
- Description of project team organization; names and resumes of team members
- Audited Financial Statements
- Licenses/accreditations/credentials
- References – refer to Section 3.2, below
- Confirmation that Offeror has at least eight (8) years of experience in residential construction management
- A description of Staff capacity to work with persons with physical and mental disabilities
- A description of your organization’s ability to satisfy all federal, state and local reporting requirements and to maintain that documentation (paper and electronic) relating to the construction management of HUD funded disaster recovery housing programs and your organization’s years of experience doing so.
- A description of your organization’s experience working with other governmental

entities to manage residential construction efforts for disaster recovery housing programs including the number of years your organization has performed such services.

Section V: Legal Documents – Include any standard agreement(s) and/or contracts(s) associated with Offeror’s response.

Section VI: Miscellaneous – Company brochures, marketing materials, or any other information Offeror deems appropriate to the RFP response may be included in this section.

NCEM makes no guarantee that any services will be purchased as a result of this RFP, and reserves the right to reject any and all proposals if the initial responses to the RFP have been evaluated and determined to be unsatisfactory. All proposals and accompanying documentation will become the property of NCEM. All proposals are open to negotiation.

The Offeror is expected to examine all documents, forms, specifications, and all instructions. Failure to do so will be at Offeror’s risk.

3.0 PROPOSAL EVALUATION PROCESS AND METHOD OF AWARD

3.1 CONFIDENTIALITY

At and after opening, proposals will NOT be part of the public record and subject to disclosure, but will be kept confidential until time of award and execution of an agreement. When an award is made and an agreement is executed, proposals are subject to review under Chapter §132, Public Records, of the North Carolina General Statutes. To the extent permitted by law, Offerors may request in writing non-disclosure of confidential data. Such data shall accompany the proposal, be readily separable from the proposal, and shall be CLEARLY MARKED “CONFIDENTIAL”. Those portions identified as confidential by the Offeror must meet the definition of confidential trade secrets under North Carolina law.

3.2 REFERENCES

Offerors must provide a minimum of three (3) references or letters of reference from other agencies, government organizations, or companies for whom Offeror has provided similar services in the past eight (8) years as demonstration of Offeror’s prior experience. Letters must include the following information:

- Organization/client name/address;
- Name of contact person;
- Telephone number for contact;
- Offeror’s services provided to this client;
- Professional relationship with the organization/client;
- Description of Offeror’s ability to staff project as represented contract and retention of that staff during project;
- Description of experience with working with Offeror’s staff on project and the quality of staff provided by Offeror; and
- Whether the organization/client would recommend Offeror

References provided must be current and verifiable. NCEM, DPS Purchasing & Logistics will conduct reference checks to verify and validate each Offeror’s past performance. Reference checks indicating poor or failed performance by Offeror will be cause for rejection of the response submitted. In addition, an Offeror’s failure to provide verifiable references or letters of reference will be cause for rejection of the response submitted.

3.3 PROPOSAL EVALUATION PROCESS

All proposals will be examined by an evaluation committee consisting of various State personnel, State Contract and Purchasing personnel, and/or CBDG-DR consultants hired by DOC (the “Evaluation Committee”). Evaluation shall be based on all factors which have a bearing on price and performance of the items in the user environment. **Pricing is NOT the only criteria for making a recommendation.**

All proposals may be rejected and DPS Purchasing and Logistics may seek best and final offers (BAFO) and may negotiate with one or more Offerors with recommendation NCEM. Compliance with all requirements, delivery and needs of NCEM are considerations in evaluating proposals. Upon completion of the negotiations, NCEM will make an award(s).

All proposals that have been submitted shall be available and open for public inspection after the contract is awarded except for trade secrets or confidential information contained in the proposals and identified as such.

Proposals that do not conform to the instructions or which do not address all the services as specified may be eliminated from consideration by the Evaluation Committee. However, NCEM reserves the right to accept such a proposal if it is determined to be in the best interest of the State and complies with the requirements of State procurement law and CBDG-DR.

While NCEM appreciates a brief, straightforward, concise reply, the proposer must understand that the evaluation is based on the information provided. Accuracy and completeness are essential. Omissions, ambiguous and equivocal statements may be construed against the Offeror. Offerors are cautioned that the contents of the proposal will be incorporated into any contract which results from this RFP.

DPS Purchasing & Logistics may initiate discussions with selected Offerors as set forth in the instructions in this RFP. However, discussions may not be initiated by Offerors. Offerors shall not contact any NCEM personnel during the RFP process without the express permission from DPS Purchaser Angela Wainright. DPS Purchasing & Logistics may disqualify any Offeror who has made site visits, contacted NCEM personnel or distributed any literature without authorization from DPS Purchasing & Logistics.

All correspondence relating to this RFP, from advertisement to award shall be sent to the above referenced address. All presentations and/or meetings between NCEM and the Offerors relating to this RFP shall be coordinated by DPS Purchasing & Logistics.

Selected Offerors may be requested to make a presentation to or attend an interview with the Evaluation Committee. The Evaluation Committee may, at its discretion, conduct negotiations with Offerors during presentations or interviews, so it is imperative that Offerors invited to present or interview have present personnel authorized to contractually bind Offeror. If the Offeror is unable to agree to contract terms and conditions, NCEM reserves the right to terminate contract negotiations with that Offeror and initiate negotiations with another Offeror. In addition to presentations and/or interviews, the Evaluation Committee may request site visit(s) of Offeror’s place of business and/or current project site to evaluate Offeror’s proposal in a production environment.

3.4 EVALUATION CRITERIA

Award shall be made to the responsible Offeror(s) whose proposal(s) is/are determined to be the best evaluated offer(s) resulting from negotiations and taking into consideration all aspects of proposal impact items and the following in order of relative importance:

A.	Technical Approach to the Scope of Work (Section 5.1 including presentation)	25%
B.	Demonstrated Ability to Comply with all State and Federal Requirements (Section 4.3)	25%;
C.	Relevant Qualifications and Experience (Sections 3.2, 4.9)	25%;
D.	Vendor’s Cost Proposal (Section 4.4)	25%.
TOTAL		100%

Submission of a proposal implies the Offeror’s acceptance of the evaluation criteria and Offeror’s recognition that subjective judgments must be made by the Evaluation Committee.

3.5 AWARD

NCEM anticipates awarding to one or more contracts depending on what is in the best interest of the State, geographic considerations, environmental considerations and/or construction considerations.

This RFP does not obligate NCEM to the eventual purchase of any product/service described, implied or which may be proposed. Progress toward this end is solely at the discretion of NCEM and may be terminated at any time prior to execution of an agreement.

3.5.1 LEGAL REVIEW OF PROPOSED CONTRACT AWARD(S):

Prior to the award of the contract(s) pursuant to this RFP, a legal review must be conducted by the Contract Management Section of the N.C. Department of Administration’s Division of Purchase and Contract pursuant N.C. Gen. Stat. § 143-50.1, and/or the Office of the North Carolina Attorney General pursuant to N.C. Gen. Stat. § 114-8.3.

3.5.2 LEGAL DOCUMENTS:

Offerors should submit any agreement for products/services which may be required by the Offeror’s organization to enter into a contract with NCEM. The awarded Offeror(s) will be required to execute an agreement with NCEM which finalizes the terms and conditions set forth in Offeror’s proposal, best and final offer (BAFO), and any negotiations between Offeror(s) and NCEM.

3.5.3 PRIORITY OF DOCUMENTS:

In the event of an inconsistency or conflict between or among the provisions of these contract documents, the inconsistency shall be resolved by giving precedence in the following order (highest to lowest):

- (1) Any Amendments to this contract entered into pursuant to N.C. General Contract Terms and Conditions Section 26 in Attachment E below.
- (2) Questions and answers regarding the RFP:
- (3) The RFP;
- (4) North Carolina Contract Terms and Conditions; and
- (5) The Offeror’s proposal in response to the RFP.

3.6 INTERPRETATION OF TERMS AND PHRASES

This Request for Proposal serves two functions: (1) to advise potential Offerors of the parameters of the solution being sought by the NCEM; and (2) to provide (together with other specified documents) the terms

of the Contract resulting from this procurement. As such, all terms in the Request for Proposal shall be enforceable as contract terms in accordance with the General Contract Terms and Conditions. The use of phrases such as “shall,” “must,” and “requirements” are intended to create enforceable contract conditions. In determining whether proposals should be evaluated or rejected, the NCEM will take into consideration the degree to which Offerors have proposed or failed to propose solutions that will satisfy the NCEM’s needs as described in the Request for Proposal. Except as specifically stated in the Request for Proposal, no one requirement shall automatically disqualify an Offeror from consideration. However, failure to comply with any single requirement may result in the NCEM exercising its discretion to reject a proposal in its entirety.

4.0 CONTRACT REQUIREMENTS

4.1 CONTRACT TERM

The Contract shall have an initial term of two (2) years, beginning on the date of contract award (the “Effective Date”). The Offeror(s) shall begin work under the Contract within thirty (30) business days of the Effective Date.

NCEM may consider two (2) one-year renewal options for each Offeror, based upon the same terms, conditions and pricing as the original year, with negotiated adjustments for inflation. Once the renewal option is exhausted, the contract must be rebid. NCEM reserves the right to rebid at any time as is in the best interest and is not automatically bound to renew.

4.2 GENERAL REQUIREMENTS

This Section lists the requirements related to this RFP. By submitting a proposal, the Offeror agrees to meet all stated requirements in this Section as well as any other specifications, requirements and terms and conditions stated in this RFP. If an Offeror is unclear about a requirement or specification or believes a change to a requirement would allow for the State to receive a better proposal, the Offeror is urged and cautioned to submit these items in the form of a question during the question and answer period. The term “contractor” used in this Section may refer to a successful Offeror or a contractor or subcontractor that the Offeror(s) may manage pursuant to the contract resulting from this RFP. The context will determine whether the “Offeror” is also the “contractor” referenced in the federal and state laws and regulations referenced in this Section.

4.3 FEDERAL AND STATE REQUIREMENTS

Each Offeror should demonstrate the ability to satisfy the following requirements:

4.3.1 The work to be performed under a contract awarded pursuant to this RFP that will utilize funds provided by the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents in the project area and contracts for work in connection with this project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the program. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing. The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that

they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

4.3.2 The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4.3.3 The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

4.3.4 The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

4.3.5 Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

4.3.6 With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

4.3.7 Comply with all state and federal laws, regulations, and guidelines including but may not be limited to compliance with Chapter 166A of the North Carolina General Statutes, HUD Community Development Block Grant disaster laws, regulations, and guidelines, e.g. Section 3, Davis Bacon, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), Clean Air Act (42 U.S.C. 7401-7671q.) the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, Debarment and Suspension (Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension.", the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), and except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", and 2 CFR 200.322 "Procurement of recovered materials", if applicable.

4.3.8 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. THE OFFEROR WILL ASSIST NCEM IN FACILITATING AND REPORTING CONTRACTORS’ AND SUBCONTRACTORS’ COMPLIANCE WITH AFOREMENTIONED FEDERAL PREVAILING WAGE LAWS AND REGULATIONS.

4.3.9 The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

4.3.10 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by

4.3.11 Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4.3.12 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

4.3.13 Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or

otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

4.3.14 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must 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 must 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 non- Federal award.

4.3.14 The State and federal False Claims Acts, N.C. Gen. Stat. §§ 1-612 *et seq.*, and 31 U.S.C. 3729 *et seq.*, respectively, apply to the contract resulting from this RFP as well as to the construction contracts and subcontractors the Offeror(s) will be overseeing on behalf of NCEM as part of the construction management services requested by this RFP.

4.3.15 When appropriate and feasible, employ local contractors, employees and minority contractors and/or State Historically Underutilized Business.

4.3.16 Any hardware, software, and communications enhancements/applications to the systems and/or data acquired and developed as part of this RFP shall be the property of the State of North Carolina and must be provided to the State when directed by NCEM. All systems must adhere to the standards documented in the North Carolina Statewide Technical Architecture. This information is available on the web at <http://www.ncsta.gov/>.

4.3.17 Offeror using third-party proprietary software to produce deliverables under any Delivery Order shall determine whether such software may be necessary for the State to use the deliverables, and if so, the Offeror shall determine the costs thereof and specifically identify the software and costs in their proposal. Offeror and subcontractors shall also identify any third-party software that may be sublicensed by Offeror to the State together with any costs necessary to provide NCEM and the United States Government with a royalty-free, paid-up, perpetual, non-exclusive, non-transferable license necessary to access and manipulate deliverables.

4.3.18 NCEM works in close coordination with other federal and state agencies. The selected Offeror(s) shall perform under the direction of NCEM and will also be required to coordinate with Federal and State agencies, local community officials, and the public as directed by NCEM.

4.4 PRICING/DELIVERY INFORMATION

Offeror must provide the unit price for the item(s) specified below. Quantities stated in the RFP are estimates, NCEM may require more or less. Pricing must be all inclusive. NCEM will not allow for any other rates or charges not specified by the Offeror within detailed and itemized list of the proposed services.

Include on a separate page of a detailed and itemized list of proposed services and the associated rates/costs for each. In addition, provide pricing for any proposed optional or value-added products and services that would support the requirements of the RFP. Use additional pages if needed for any other information as required.

Item No.	Description	Unit of Measure	Estimated Quantity	Total Price
1	Construction Management Services for Single Family Homes (Rehabilitations)	EA	*TBD	\$
2	Construction Management Services for Single Family Homes (Reconstructions)	EA	*TBD	\$
3	Construction Management Services for Single Family Homes (New Construction out of flood plain)	EA	*TBD	\$
4	Construction Management Services for Single Family Homes (Lead Paint Abatement, Asbestos Abatement, or Mold Abatement)	EA	*TBD	\$
5	Subcontracting Cost (e.g., if CM does not have North Carolina licensed architects and/or engineers to review a contractor's construction documents, respond to requests for information, and/or respond to changes in work, the CM may qualify design professionals to provide such services on a monthly fee basis or actually hourly and expenses (subject to State rates).	EA	*TBD	\$

*To Be Determined (TBD) - construction management services for NCEM with respect to the rehabilitation, reconstruction, elevation and new construction of approximately 1,100 or more single family homes that were damaged or destroyed by federally declared disasters in North Carolina during 2016 and 2017.

Please note, the pay point milestones for the selected Offeror(s) are 33% of the total unit cost at the completion of the initial assessment and scope-of-work; 33% of the total unit cost at 50% completion of the project and 34% at final.

4.5 OPTIONAL/VALUE-ADDED SERVICES

Offeror may propose optional or value-added products/services related to the scope of work of goods/or services described in the Specifications and/or listed on Pricing/Delivery Information sheet(s) of this RFP by identifying other items and/or brands not identified by NCEM in this RFP. At a minimum, discuss product/services capabilities and reasons why it would be valuable for this project. Include information on these items in Section II of your response and include pricing in Section III.

4.6 INVOICES

Subject to the State's Terms and Conditions (Attachment E), the Offeror(s) shall submit an invoice upon completion of each deliverable. Deliverables will be considered complete only upon written acceptance by NCEM. Each invoice shall include deliverable(s) completed and the price for each with supporting documentation required by the CDBG-DR rules, guidelines and standards.

4.7 TAXES

Any applicable taxes shall be invoiced as a separate item. G.S. §143-59.1 bars the Secretary of Administration from entering into Contracts with Offeror if the Offeror or its affiliates meet one of the conditions of G. S. §10 164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina and the conditions 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 Offeror; and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Offeror certifies that it and all of its affiliates (if it has affiliates) will collect(s) the appropriate taxes.

- a) All agencies participating in this Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Offeror will be executed and returned by the using agency.
- b) 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.

4.8 FINANCIAL STABILITY

Each Offeror shall submit the following financial documentation with its Proposal: most recent annual balance sheet, income statement/statement of retained earnings and cash flow statement, or most recent statement of financial condition by an independent auditor. Financial information, statements and/or documents submitted with a proposal shall be evaluated to determine: whether the Offeror has sufficient ability to perform the contract; whether the Offeror is able to meet its short term obligations, debts, liabilities, payroll, and expenses; whether Offeror has provided complete, reliable and accurate financial information regarding its business operation; whether the Offeror is financially solvent; and whether Offeror has sufficient cash flow and/or available financing from a financial institution to perform the proposed contract for 60 days without receiving payment from the State. Financial information of non-public entities may be marked as confidential in accordance with paragraph 11 of ATTACHMENT A: INSTRUCTIONS TO VENDORS.

4.9 OFFEROR EXPERIENCE

In its Proposal, Offeror shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to the State of North Carolina. Offeror shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.

4.10 BACKGROUND CHECKS

NCEM or CDBG-DR administrating agency (NCDOC) may require the Offeror, its executive officers, its senior management personnel, and/or subcontractors to be assigned to this contract to provide or undergo background checks at Offeror's expense prior to beginning work with the State or at any time during the performance of the project. When requested, as part of a requested background check, the Offeror must NCEM and/or NCDOC:

- a) Any **criminal felony conviction**, or conviction of any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception, of Offeror, its officers or

- directors, or any of its employees or other personnel to provide services on this project, of which Offeror 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 Offeror of which it has knowledge or a statement it is aware of none;
 - c) Any **regulatory sanctions** levied against Offeror 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 Offeror 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 Offeror has knowledge or a statement that there are none.
 - e) Any **civil litigation**, arbitration, proceeding, or judgments pending against Offeror during the three (3) years preceding submission of its proposal herein or a statement that there are none.

Offeror’s responses to these requests shall be considered to be continuing representations, and Offeror’s failure to notify the NCEM within thirty (30) days of any criminal litigation, investigation or proceeding involving Offeror 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 Offeror to perform services under this contract.

4.11 PERSONNEL

Offeror shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Contract Lead. Offeror shall notify the Contract Lead of any desired substitution, including the name(s) and references of Offeror’s recommended substitute personnel. NCEM will approve or disapprove the requested substitution in a timely manner. NCEM may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, NCEM may request acceptable substitute personnel or terminate the contract services provided by such personnel.

4.12 OFFEROR’S REPRESENTATIONS

- a) Offeror warrants that qualified personnel shall provide services under this Contract in a professional manner. “Professional manner” means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the industry. Offeror agrees that it will not enter any agreement with a third party that may abridge any rights of the State under this Contract. Offeror 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, suppliers or subcontractors of Offeror may appear for purposes of convenience in Contract documents; and shall not limit Offeror’s obligations hereunder. Offeror will retain executive representation for

functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

- b) If any services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Offeror's proper performance, provision and delivery of the service and deliverables under this 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, Offeror will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Offeror to provide and deliver the Services and Deliverables.
- c) Offeror warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that Offeror has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Offeror 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.

5.0 SCOPES OF WORK & PROJECT SPECIFICATIONS

5.1 SCOPE OF WORK:

NCEM invites licensed North Carolina general contractors that are experienced in affordable and disaster recovery housing to submit proposals to provide construction management services with respect to the rehabilitation, reconstruction, elevation and new construction of approximately 1,200 or more single family homes that were damaged or destroyed by federally declared disasters in North Carolina during 2016.

HRP defines "Housing Rehabilitation" as the repair of home suffering damage at or below 50% of pre-disaster and includes, but is not limited to: accessibility, safety issues, lead-based paint removal, and/or elevation as needed. HRP defines "Housing Reconstruction" as the complete reconstruction or new construction of a home that was substantially damaged (damage above 50% of pre-disaster home value) and it is not feasible to repair. Offeror are directed to the HRP identified in Section 1.0 above for more details as to Housing Rehabilitation and Reconstruction. Approximately 550 of these homes will require elevation as defined in HRP and CDBG-DR rules and guidelines. NCEM is in the process of hiring a consultant to determine grant eligibility of these homes, which will include damage and environmental assessments that will be used in classifying these 1,200 homes under HRP and determining the types of construction contracts that the CM will manage pursuant to this RFP.

Required services shall include turnkey construction management beginning prior to construction start through final inspection and completion of all supporting documentation. Services to be provided shall be all encompassing from start to finish on each jobsite through the full construction process up to and including final inspection. Some homes may be converted from rehabilitation to reconstruction at the discretion of NCEM. For reconstruction, the selected Offeror shall assist homeowners in choosing plans from a pre-selected set of house plans, and coordinating efforts between NCEM, homeowners, builders, subcontractors and appropriate third parties.

Services expected from the successful Offeror(s) for the management of all aspects of the construction process include but are not limited to:

- a. CMs will be given licenses to use NCEM's Salesforce Information System to upload all CM and contractor documents for each home that will be managed by CM. CM will work with CM and Salesforce for training on the Salesforce modules relating to construction and construction management. NCEM will export relevant home and homeowner information into the modules to be used by CM. NCEM is working with Salesforce to determine if a portal can be set up for contractors to upload documents, reports and data for the CM's use and reporting requirements. If Salesforce cannot create such limited access for the Contractors, then CM will be required gather documents from its contractors to upload into Salesforce. For purposes of bidding, CM shall assume that its administrative staff will process contractor documents and information into Salesforce. If after contract award, Salesforce can establish direct uploading of documents from contractors for each home, then NCEM will negotiation a deductive change order or a reallocation of this administrative costs to other CM work.
- b. Assist any homeowner in selecting a house plan and/or option for reconstruction or new construction under HRP. Assist any homeowner in understanding any environmental remediation required for his or her home. Assist any homeowner in understanding the rehabilitation construction to be performed on his or her home.
- c. CM shall prepare contracts for all HRP eligible homes that will be between a prequalified contractor and homeowner with CM administering the contract on behalf of NCEM as the CDBG-DR implementing agency. The CM shall work with NCEM in developing a standard contract for to be used for all HRP projects that complies with CDBG-DR rules, guidelines and standards. The standard form contract should include provisions addressing the following matters:
 - i. The payment cycle will be two to four weeks depending on the financial stability (i.e., small contractors may request weekly payments (with NCEM releasing payment within a week after CM's certification of payment application)). CM, NCEM and DOC will have to confirm the payment cycle prior to contract execution to ensure prompt payment of Contractor's payment applications. The payment cycle shall include: cutoff dates that contractors must submit draft payment applications; a reasonable period time period for the CM to inspect the work reflected in the payment applications; date CM must certify the payment application to NCEM; and NCEM will make payment within five (5) business day from receipt of a certified payment application. CM and Contractors must comply with stated June payment cutoff date to obtain payment before the end of the State's fiscal year and must be capable of financing work until billing may be processed at the beginning of the fiscal year in July.
 - ii. The contract will include the scopes of work determined by the damage and environmental assessments performed by the NCEM's grant eligibility consultant(s) and that are determined to be eligible for funds under the CDBG-DR. All contracts prepared by CM(s) shall delegate to the Contractor the responsibility of preparing CDBG-DR, HRP and Bid Book compliant construction documents (plans and specifications) based on the grant eligibility determination to be approved by the local authority having jurisdiction (AHJ) to enforce the North Carolina Building Code.

- iii. CM must verify that the contract amount is calculated using prequalified contractor's prices in the HRP Bid Book attached to its prequalification proposal. Any apparent silence in the HRP Bid Pricing Book as to any detail, construction, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice or industry standard is to prevail and that only material and workmanship of the finest quality are to be used and, when applicable, compliant with federal and/or state resiliency housing construction requirements. In response to Contractor questions concerning the HRP Pricing Bid Book, the CM shall make all interpretations on the basis of this foregoing statement as well as in responses to request for information, processing change orders and/or inspecting work of contractors. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item proposed.
- iv. The contract must include language that homeowner shall be responsible to pay for all work the homeowner request's the prequalified contractor to perform prior or during performance of the contract that is not expressly stated in grant eligibility determination (inclusive of damages and environmental assessments) and/or as authorized by NCEM (i.e., "unapproved work"), and that the prequalified contractor's payment and performance bonds will not cover any unapproved work.
- d. CM(s) shall require all prequalified contractors to prepare a schedule of values (SOV) and a complete baseline construction schedule for all HRP work on the home. CM must receive and approve of the SOV and baseline schedule prior to making any progress payment to prequalified contractor and CM shall remind prequalified contractor of these requirements a the preconstruction meeting.
- e. CM shall review the contractor's construction documents to verify that they were prepared by licensed North Carolina design and/or engineering professionals and comply with the CDBG-DR rules, HRP, grant eligibility determination, and HRP Bid Book. Contractor shall, at a minimum, provide all construction documents electronically to the CM. CM may request a hard copies and pay contractor and/or its designer for any copying costs. CM must verify that the contractor's construction documents have been submitted and approved by the local authority having jurisdiction (AHJ) and obtain a copy of the building permit from AHJ and a copy of the permit uploaded into Salesforce.
- f. CM will ensure contractor has obtained: all necessary consents from homeowners access property and structures; authorization to perform only the work authorized under the CDBG-DR HRP and the specific work order approved by NCEM; consent to digital photography of the construction area prior to, during and after construction; contractors and subcontractor have provided proof of insurance in effect at the time work commences on any home and that the insurance coverage (including Builders' Risk coverage, commercial liability coverage and workers' compensation coverage) and that said coverages remain in effect during the entire rehabilitation, reconstruction or new construction project; contractor has payment and performance bonds in effect during construction and/or such other appropriate documentation to prevent mechanics' liens from being recorded in the land records against the homeowner limited to HRP construction, and to avoid nonpayments to subcontractors/suppliers; etc.).

- g. CM Ensure that the contractors and subcontractors have provided homeowners with the CM's contact information, written notice of the dispute resolution and appeal processes.
- h. Manage all construction meetings to include but not limited to Pre-Construction (which should include or be immediately followed by a Notice to Proceed (NTP)), Cease and Desist/Stop Work Order, Punch list and Final Walk Through.
- i. Confirm that contractors and/or subcontractors have project safety plans in place and all field personnel have received the appropriate safety training prior to start rehabilitation or reconstruction work (including but not limited to: temporary toilet facilities (if needed); make sure all notices have been provided to contractor and subcontractors state and federal OSHA requirements, prohibitions of possessing firearms at project sites, prohibition against use of drugs and alcohol at project sites/performing construction; contractors and subcontractors should acknowledge in writing that their employees will, when working in or around a home, conduct themselves in a professional manner and interact with occupants of the home in a respectful manner and their employees must avoid using or displaying profanity, obscene, sexual, sexist, racial, or any other inappropriate language, music or images in the presence of any occupant of the home, and that the contractors and subcontractors have a progressive discipline policies in place prior to the start of any rehabilitation, reconstruction or new construction project,.
- j. Confirm builder/contractor surveys, site plans and elevations prior to construction. If an elevation project, verify that contractor has employed a licensed North Carolina land surveyor and required certified surveys of the home prior to construction and a final as-built survey that the home was elevated to the height required by CDGB-DR, HRP and grant eligibility determination.
- k. CM to ensure that CM and its subcontractors are following environmental and lead safe handling practices.
- l. CM to ensure Contractor's contract documents and construction comply with state and local windstorm requirements, if applicable.
- m. Manage all construction phases to include but not limited to site prep/grading, foundation (including all underground plumbing, electrical & gas line), dry-in (framing, exterior doors, windows, roofing, weatherization and exterior siding/masonry), Rough-in (plumbing, mechanical, electrical and gas), insulation, drywall, interior trim/doors, painting, carpet and flooring, cabinets and countertop, finish (electrical, plumbing, mechanical & gas), hookup and punch list.
- n. Periodic monitoring of home construction during all construction phases at a minimum of twice per week. Smaller homes or minor scopes may require less visits. CM shall issue weekly progress inspection reports to include: "pass or fail" of all scheduled progress inspections; percent construction complete per site; and weekly summary.
- o. Inspections of construction/site including inspections of finished systems for code compliance (includes all finished components and systems installation, testing, and functioning according to manufacturer specifications).
- p. CM will assist the homeowner with questions regarding the work being performed and assist

NCEM in any necessary mediation between the homeowner and the contractor/subcontractor.

- q. CM shall issue notices of non-conformance or a stop work order to the contractor when there are issues that are safety related, when work will be covered before the corrections or AHJ inspection, or work will be performed that is outside the scope of the work order for the home/not reimbursable by the CDBG-DR/HRP without an approved change order.
- r. CM shall conduct progress payment inspections to ensure compliance with construction requirements, construction timelines and deadlines, required permits, applicable building codes, zoning requirements, house plan specifications and minimum structural elevation per the Federal Emergency Management Agency's (FEMA) Elevation Certificate. CM should expect to process Contractor's payment applications bi-weekly, but payments to the Contractor will be on a two to three week payment cycle, which is dependent on NCEM approving the amount of payment and requesting DOC to release the corresponding grant funds. The progress payment inspections should coincide a CM's weekly visit. CM shall require Contractor and its subcontractors to provide copies of all bills, invoices, delivery tickets and prevailing wage certifications with all progress payment applications. CM shall verify all payment applications and their supporting documentation as well as making sure the applications and supporting documentation is uploaded into Salesforce. The CM shall maintain all original and copies of supporting documentation to include but not limited to construction applications, lien releases from contractors, subcontractors and/or suppliers. The CM shall make sure that the Contractor and its subcontractors retain all original records, maintain back-up electronic copies, and retain those records for a minimum of seven (7) years are issuance of a certificate of occupancy for the home by the AHJ. CM and NCEM will have to establish the payment cycle for the Contractors and have contractors set up accounts with the NCEM to set electronic payments Contractor's approved payment applications.
- s. Manage and approve/disapprove requests for information (RFI) and change orders with proper supporting documentation and cost estimate as allowed by program policies and procedures. CM may have to retain licensed N.C. design professionals to process change orders if CM does not have such licensed personal on staff if the change involves architecture details/specifications and engineering details/specifications. Although the Contractor is providing the construction documents and requests for information will be transmitted to Contractor's designer, CM shall require copies of all subcontractor requests for information regarding the construction documents and/or HRP Bid Book to be sent to the CM and/or CM's design team for review and comment to make sure the answer is in compliance with and/or consistent with CDBG-DR, HRP and/or grant eligibility determination (inclusive of the damage and environmental assessments). If an answer to an RFI results in a request for a change order, then CM and/or CM's design team must approve of the change in scope prior to the Contractor or subcontractor performs the work. A modified version of the N.C. State Construction Office General Condition for changes (Article 19) and requests for time extensions (Article 23) in the terms and conditions of this RFP (included in Attachment H).
- t. CM shall review all proposed warranties that Contractor and subcontractors will provide the homeowner upon completion of HRP Project to make sure the warranties are in compliance with and/or consistent with CDBG-DR, HRP and/or grant eligibility determination. CM shall work with Contractor to ensure that all warranties and guarantees of workmanship are furnished homeowners upon completion of a HRP Contract. Contractor and subcontractors may not limit or exclude required warranties or warranties implied by law. CM shall assist NCEM in enforcing the following obligations of the Contractor: Contractor warrants that

product sold to NCEM shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970; in the event product does not conform to OSHA Standards, where applicable, NCEM may return the product for correction or replacement at the Contractor's expense; and if Contractor fails to make the appropriate correction within a reasonable time, NCEM may correct at the Contractor's expense.

- u. Perform final inspections (all work complete, including change orders, tender of all warranties/guarantees to homeowner, and for final payment).
- v. Ensure compliance by contractors with the Authority Having Jurisdiction (and/or architect/engineer involved any elevation work, reconstruction or new home) with the North Carolina State Building Code, county/municipal building code and zoning codes, ordinances and/or requirements, industry standards, and minimum property standards, during the construction process including verification of materials used comply with program specifications in order for the AHJ to issue a certificate of occupancy.
- w. CM will complete all NCEM and other required forms related to the above mention construction management and services for closing out a contract for each home managed. CM shall complete and submit all the applicable NCEM documents to include but not limit to the following forms:
 - 1. Progress Inspection Report;
 - 2. Final Housing Inspection (include copies of any certificate of occupancy by the AHJ and/or final acceptance by an architect (if applicable) and CM signing the required NCEM/CDBG-DR form that HRP project was completed (approve/disapprove/sign and date);
 - 3. Photos of Completed Work to match payment application request items;
 - 4. Contractor's Final Application for Payment that bills 100% and requests release of retainage, final release of liens from Contractor and subcontractors, consent of surety of final payment and any required as-built drawings/surveys (especially for elevation scopes of work); and
 - 5. Such other contract closeout documentation that may be required in the Contractor's construction documents and/or the Construction General Conditions in Attachment 10.

5.2 TRANSITION ASSISTANCE:

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, Offeror shall provide, at the option of NCEM, up to 2 months after such end date all such reasonable transition assistance requested by NCEM, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to NCEM or its designees. If NCEM exercises this option, the Parties agree that such transition assistance shall be deemed to be governed by the terms and conditions of this Contract (notwithstanding this expiration or cancellation), except for those Contract terms or conditions that do not reasonably apply to such transition assistance. NCEM shall pay Offeror for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for performance of the services or other resources utilized.

6.0 CONTRACT ADMINISTRATION

6.1 PROJECT MANAGER AND CUSTOMER SERVICE

The Offeror(s) shall designate and make available to NCEM and NCDOC a project manager. The project manager shall be the NCEM's point of contact for contract related issues and issues concerning performance, progress review, scheduling and service.

6.2 POST AWARD MANAGEMENT REVIEW MEETINGS

The CM, at the request of the NCEM, shall meet periodically with the NCEM for Project Review meetings, which may be weekly, bi-weekly and/or monthly as requested by NCEM. The purpose of these meetings will be to review project progress reports, discuss Offeror and NCEM performance, contractors'/subcontractors' performance, contractors' schedules, homeowner issues and complaints, address outstanding issues, review problem resolution, provide direction, status and issues regarding payments to contractors or subcontractors, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

6.3 DISPUTE RESOLUTION

The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Offeror shall be submitted in writing to the NCEM's Contract Lead for resolution. A claim by the NCEM shall be submitted in writing to the Offeror's Project Manager for resolution. The Parties shall 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. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

6.4 CONTRACT CHANGES

Contract changes, if any, over the life of the contract shall be implemented by contract amendments agreed to in writing by the NCEM and CM(s).

ATTACHMENT A

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federally funded contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form SF-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) who receive federal funds of \$100,000.00 or more and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Authorized Signature

Title

Firm

Date

ATTACHMENT B**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS**

Note: The phrase "prospective lower tier participant" means providers under contract with the NCEM.

1. By signing and submitting this document, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originate may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 45 CFR Part 76, 44 CFR Part 67. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this document that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency of which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge

and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- 9. Except for transactions authorized in paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.
- 10. The prospective lower tier participant certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any federal or state department or agency.
- 11. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Authorized Signature

Title

Firm

Date

Attachment C IRAN DIVESTMENT ACT CERTIFICATION

**CERTIFICATION OF ELIGIBILITY
Under the Iran Divestment Act**

As provided in G.S. 147-86.59, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, G.S. 147-86.55 et seq.* requires that each Firm/Offeror, prior to contracting with the State certify, and the undersigned on behalf of the Firm/Offeror does hereby certify, to the following:

1. that the Firm/Offeror is not identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran;
2. that the Firm/Offeror shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and
3. that the undersigned is authorized by the Firm/Offeror to make this Certification.

Firm/Offeror: _____

By: _____
 Signature Date

 Printed Name Title

The State Treasurer’s Final Divestment List can be found on the State Treasurer’s website at the address <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>, which will be updated every 180 days. For questions about the Department of State Treasurer’s Iran Divestment Policy, please contact Meryl Murtagh at Meryl.Murtagh@nctreasurer.com or (919) 814-3852.

* Note: Enacted by Session Law 2015-118 as G.S. 143C-55 et seq., but renumbered for codification at the direction of the Revisor of Statutes.

ATTACHMENT D**INSTRUCTIONS TO OFFERORS**

1. **READ, REVIEW AND COMPLY**: It shall be the Offeror's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Offerors or elsewhere in this RFP document.
2. **LATE PROPOSALS**: Late proposals, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Offeror's sole responsibility to ensure delivery at the designated office by the designated time.
3. **ACCEPTANCE AND REJECTION**: The State reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Offeror, to accept any item in the proposal. 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.
4. **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.
5. **EXECUTION**: Failure to sign EXECUTION PAGE in the indicated space will render proposal non-responsive, and it shall be rejected.
6. **ORDER OF PRECEDENCE**: In cases of conflict between specific provisions in this solicitation or those in any resulting contract, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this RFP, including any negotiated terms; (2) requirements and specifications in Sections 4, 5 and 6 of this RFP; (3) North Carolina General Contract Terms and Conditions in ATTACHMENT B: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS; (4) Instructions in ATTACHMENT A: INSTRUCTIONS TO VENDORS; and (5) Offeror's Proposal.
7. **INFORMATION AND DESCRIPTIVE LITERATURE**: Offeror shall furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this proposal, each Offeror must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Proposals that do not comply with these requirements shall be subject to rejection without further consideration.
8. **SUSTAINABILITY**: To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all responses meet

the following:

- All copies of the proposal 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 proposals 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.
9. **HISTORICALLY UNDERUTILIZED BUSINESSES**: Pursuant to General Statute 143-48 and Executive Order #150 (1999), the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.
10. **RECIPROCAL PREFERENCE**: G.S. 143-59 establishes a reciprocal preference requirement to discourage other states from favoring their own resident Offerors by applying a percentage increase to the price of any proposal from a North Carolina resident Offeror. The “Principal Place of Business” is defined as that principal place from which the trade or business of the Offeror is directed or managed.
11. **CONFIDENTIAL INFORMATION**: To the extent permitted by applicable statutes and rules, the State will maintain confidential trade secrets that the Offeror 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 Offeror, with specific trade secret information enclosed in boxes or similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Offeror 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 Offeror 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. Offerors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.
12. **PROTEST PROCEDURES**: When a Offeror wishes to protest a Contract resulting from this solicitation that is awarded by the Division of Purchase and Contract, or awarded by an agency in an awarded amount of at least \$25,000, a Offeror shall submit a written request addressed to the State Purchasing Officer at Purchase and Contract, 1305 Mail Service Center, Raleigh, NC 27699-1305. A protest request related to an award amount of less than \$25,000 shall be sent to the purchasing officer of the agency that issued the award. 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 Offeror actually awarded the Contract, and not to every person or firm responding to a solicitation. Proposal 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.
13. **MISCELLANEOUS**: Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.

- 14. COMMUNICATIONS BY VENDORS:** In submitting its proposal, the Offeror agrees not to discuss or otherwise reveal the contents of its proposal to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this RFP. All Offerors 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 proposals (i.e., after the public opening of the proposals and before the award of the Contract), unless the State directly contacts the Offeror(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Offeror shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Offeror to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Offeror's proposal 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 and/or award of the Contract that is the subject of this RFP. Offerors not in compliance with this provision may be disqualified, at the option of the State, from the Contract award. Only those communications with the using agency or issuing agency authorized by this RFP are permitted.

DISQUALIFICATION OF OFFEROR: Any or all proposals may be rejected if NCEM believes that collusion exists among the Offerors. Proposals in which the prices are obviously unbalanced may be rejected. If multiple proposals are submitted by an Offeror and after the proposals are opened, one of the proposals is withdrawn, the result will be that all of the proposals submitted by that Offeror will be withdrawn; however, nothing herein prohibits an Offeror from submitting multiple proposals - for different products or services.

- 15. POTENTIAL CONFLICTS OF INTEREST:** An outside Consultant or contractor of NCEM, DPS or DOC is prohibited from submitting a proposal for services on the scope of work in this NCEM RFP if that consultant or contractor assisted NCEM, directly or indirectly, in creating the scope of work in this RFP (consultant or contractor including any drafter, designer or other previous contributor to NCEM or DPS including any affiliate, subsidiary, joint venturer or was in any other manner associated by ownership to any party who assisted NCEM and/or DPS in developing this RFP). If such a consultant or contractor submits a prohibited proposal, that proposal shall be disqualified on the basis of conflict of interest, no matter when the conflict is discovered by NCEM. **Note: It is permissible for an Offeror to submit a proposal in response to this RFP to service as a construction manager in a specific geographical area/counties and seek prequalification as a contractor in a geographical area/counties that it does not seek to serve as a construction manager for NCEM. An Offeror may submit a proposal pursuant to this RFP for all services as well as a proposal to be prequalified for all work in all counties and, if selected as a CM and prequalified for all counties, NCEM may enter into negotiations with Offeror for Best and Final Offers for one or both contract awards so that the resulting contract and/or prequalification does not have the Offeror serving as CM and contractor for the same HRP projects.**
- 16. TABULATIONS:** Proposal 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 proposal number, and then search. Tabulations will normally be available at this website not later than one working day after the proposal 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.
- 17. VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The North Carolina electronic Offeror Portal (eVP) allows Offerors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services of potential

interests to them available 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 <https://www.ips.state.nc.us/>.

- 18. WITHDRAWAL OF PROPOSAL:** a Proposal may be withdrawn only in writing and actually received by the office issuing the RFP prior to the time for the opening of Proposals identified on the cover page of this RFP (or such later date included in an Addendum to the RFP). A withdrawal request must be on Offeror's letterhead and signed by an official of the Offeror 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 Division of Purchase and Contract.
- 19. 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 this RFP and in formal Addenda issued through IPS.
- 20. COST FOR PROPOSAL PREPARATION:** Any costs incurred by Offeror in preparing or submitting offers are the Offeror's sole responsibility; the State of North Carolina will not reimburse any Offeror for any costs incurred prior to award.
- 21. VENDOR'S REPRESENTATIVE:** Each Offeror shall submit with its proposal 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 proposal.
- 22. SUBCONTRACTING:** Unless expressly prohibited, a Offeror may propose to subcontract portions of the work to identified subcontractor(s), provided that its proposal clearly describe what work it plans to subcontract and that Offeror includes in its proposal all information regarding employees, business experience, and other information for each proposed subcontractor that is required to be provided for Offeror itself.
- 23. 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 Offeror prior to Contract award, and during the Contract term as necessary for the State 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.

ATTACHMENT E**NORTH CAROLINA GENERAL CONTRACT TERMS & CONDITIONS**

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

In case of default by the CM, the State may procure the goods and services necessary to complete performance hereunder from other sources and hold the CM responsible for any excess cost occasioned thereby. In addition, in the event of default by the CM under this contract, or upon the CM filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the CM, the State may immediately cease doing business with the CM, immediately terminate this contract for cause, and may act to debar the CM from doing future business with the State.

2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the goods or services offered prior to their delivery, it shall be the responsibility of the CM to notify, in writing, the Contract Lead at once, indicating the specific regulation which required such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
3. **AVAILABILITY OF FUNDS:** Any and all payments to the CM shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in this contract.
4. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
- a. G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with CMs if the CM 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 CM and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the CM certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
 - b. All agencies participating in this Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the CM will be executed and returned by the using agency.

- c. Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
5. **SITUS:** The place of this Contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in Contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
6. **GOVERNING LAWS:** The validity of this contract and any of its terms, conditions, provisions, or requirements, as well as the rights and duties of the Parties to this contract, shall be governed by the laws of the State of North Carolina. The CM agrees and submits, solely for matters relating to this contract, to the jurisdiction of the courts of the State of North Carolina and further agrees, solely for such purpose(s), that the venue for any legal proceedings shall be Wake County, North Carolina. The place of all contracts, transactions, agreements, their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement of this contract shall be determined.
7. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the CM under the Contract. Payment by some agencies may be made by procurement card, if the CM accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the CM for payment under the same terms and conditions as any other method of payment accepted by the CM. If payment is made by procurement card, then payment may be processed immediately by the CM.
8. **AFFIRMATIVE ACTION:** The CM will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
9. **INTELLECTUAL PROPERTY INDEMNITY:** CM 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 copyrighted material, patented or unpatented invention, articles, device or appliance delivered in connection with this contract.
10. **ADVERTISING:** CM agrees not to use the existence of this Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or services. A CM may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.
11. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records related to this Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9).
12. **ASSIGNMENT:** No assignment of the CM's obligations nor the CM's right to receive payment hereunder shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the CM, the State may:

- a. Forward the CM's payment check directly to any person or entity designated by the CM, and
- b. Include any person or entity designated by CM as a joint payee on the CM's payment check.

In no event shall such approval and action obligate the State to anyone other than the CM and the CM shall remain responsible for fulfillment of all Contract obligations. Upon advance written request, the State may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the CM's assets. Any purported assignment made in violation of this provision shall be void and a material breach of this Contract.

13. INSURANCE & PERFORMANCE BOND:

COVERAGE - During the term of the Contract, the CM at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the CM shall provide and maintain the following coverage and limits and obtain the required performance bond:

- A. Worker's Compensation** - The CM's shall provide and maintain Worker's Compensation, as required by the laws of North Carolina, as well as employer's liability coverage with Insurance minimum limits of \$500,000.00, covering all of CM's employees who are engaged in any work under this contract.
- B. Commercial General Liability** – The CM's shall maintain General Liability Coverage on a Comprehensive Broad Form on a cost occurrence basis in the minimum amount of \$5,000,000.00, Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
- C. Automobile** – The CM's shall maintain automobile liability insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with this contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$10,000.00 medical payment.
- D. Performance Bond**– The CM shall furnish a performance bond executed by a surety company authorized to do business in North Carolina. The bond shall be in the full contract amount. Bond shall be executed in the form in Attachment 10.

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

NOTE: After contract award and prior to performance of the contract, the CM(s) shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with this contract and a performance bond. At a minimum, the CM shall provide and maintain the following insurance with the coverage and limits set forth below and performance bond in the amount of the contract.

Providing and maintaining adequate insurance coverage is a material obligation of the CM and is the essence of this contract. All such insurance shall meet all requirements of North Carolina General Statutes and laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide the required coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The CM(s) 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 General Statutes or this contract. The limits of coverage under each insurance policy maintained by the CM(s) shall not be interpreted as limiting the CM's liability and obligations under the contract. Within ten (10) days after the acceptance of the CM's proposal, the CM's shall provide the NCEM Contract Administrator with copies of all insurance policies (including all endorsements and exclusions) and recent certificate of insurance (issued after contract award but before the August 1, 2018 start date referenced in the RFP schedule in Section 2.3 above). Failure to provide such copies shall be grounds to terminate this contract.

WAIVER OF SUBROGATION: CM and CM's insurance carrier waive any and all rights whatsoever with regard to subrogation against NCEM and the State as an indirect party to any suit arising out of personal or property damages resulting from any CM's performance under this agreement.

- 14. GENERAL INDEMNITY:** The CM shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the CM in the performance of this Contract and that are attributable to the negligence or intentionally tortious acts of the CM provided that the CM is notified in writing within 30 days that the State has knowledge of such claims. The CM 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 CM goods or services to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.
- 15. INDEPENDENT CONTRACTOR:** CM shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. CM represents that it has, or will secure at its own expense, all personnel required in performing the services under this contract. Such employees shall not be employees of, or have any individual contractual relationship with the State.
- 16. KEY PERSONNEL:** CM shall not substitute key personnel assigned to the performance of this contract without prior written approval by the State's assigned Contract Lead. The individuals designated as key personnel for purposes of this contract are those specified in the RFP and persons identified in CM's proposal.
- 17. SUBCONTRACTING:** Work proposed to be performed under this contract by the CM or its employees shall not be subcontracted without prior written approval of the State's assigned Contract Administrator.

Unless otherwise indicated, acceptance of a CM's proposal shall include approval to use the subcontractor(s) that have been specified therein in accordance with paragraph 20 of Attachment A: Instructions to CM.

18. **TERMINATION FOR CONVENIENCE:** The State may terminate this contract at any time by providing 10 days' notice in writing from the State to the CM. In that event, all finished or unfinished deliverable items prepared by the CM under this contract shall, at the option of the State, become its property. If the contract is terminated by the State as provided in this section, the State shall pay for services satisfactorily completed by the CM, less any payment or compensation previously made.
19. **CONFIDENTIALITY:** Any State information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the CM under this contract shall be kept as confidential, used only for the purpose(s) required to perform this contract and not divulged or made available to any individual or organization without the prior written approval of the State.
20. **CARE OF PROPERTY:** The CM agrees that it shall be responsible for the proper custody and care of any property furnished it by the State for use in connection with the performance of this contract or purchased by or for the State for this contract, and CM will reimburse the State for loss or damage of such property while in CM's custody.
21. **PROPERTY RIGHTS:** All deliverable items and materials produced for or as a result of this contract shall become the property of the State, and CM hereby assigns all ownership rights in such deliverables, including all intellectual property rights, to the State; provided, however, that as to any preexisting works imbedded in such deliverables, CM hereby grants the State a fully-paid, perpetual license to copy, distribute and adapt the preexisting works.
22. **OUTSOURCING:** Any CM or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to relocate or outsource any portion of the work to a location outside the United States, or to contract with a subcontractor for the performance of any work, 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 agency responsible for the contract.

CM shall give notice to the using agency of any relocation of the CM, employees of the CM, subcontractors of the CM, or other persons performing services under a State contract to a location outside of the United States.

23. **COMPLIANCE WITH LAWS:** CM 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 this contract, including those of federal, state, and local agencies having jurisdiction and/or authority.
24. **ENTIRE AGREEMENT:** This RFP and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFP, any addenda thereto, and the CM's proposal are incorporated herein by reference

as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

- 25. **SEVERABILITY**: If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

- 26. **AMENDMENTS**: This contract may be amended only by a written amendment duly executed by the State and the CM. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.

- 27. **WAIVER**: The failure to enforce or the waiver by the State of any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

- 28. **FORCE MAJEURE**: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

- 29. **SOVEREIGN IMMUNITY**: Notwithstanding any other term or provision in this contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to the State under applicable law.

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ATTACHMENT F (HRP BID PRICING BOOK)

SEPARATE ATTACHMENT BECAUSE OF ITS SIZE

ATTACHMENT G

FORM OF PERFORMANCE BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal
(Contractor) _____

Name of Surety: _____

Name of Contracting
Body: _____

Amount of Bond: _____

Project

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _____ counterparts.

Witness:

Contractor: (Trade or Corporate Name)

By: _____

Offeror: _____

(Proprietorship or Partnership)

Attest: (Corporation)

Title: _____
(Owner, Partner, or Corp. Pres. or Vice Pres. only)

By: _____

Title: _____
(Corp. Sec. or Asst. Sec. only)

(Corporate Seal)

Witness:

(Surety Company)

By: _____

Title: _____
(Attorney in Fact)

Countersigned:

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

Surety Company Name and N.C.
Regional or Branch Office Address

ATTACHMENT H

CONSTRUCTION MANAGEMENT & CONSTRUCTION TERMS & CONDITIONS

ARTICLE 6 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

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

ARTICLE 7 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

All drawings and specifications are instruments of service and remain the property of the Contractor and/or its designer, but owner had have a license to use drawings and specifications for future renovation or work at home. Homeowner's use of these instruments on work other than this contract without permission of the Contractor is prohibited.

ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES

- a. The contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of 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, the contractor shall furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed. However, the contractor shall be aware that the cited examples are used only to denote the quality standard of product desired

and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Request for substitution of materials, items, or equipment shall be submitted to the designer for approval or disapproval; such approval or disapproval shall be made by the designer prior to the opening of bids. Alternate materials may be requested after the award if it can clearly be demonstrated that it is an added benefit to the owner and the designer and owner approves.

- e. The CM, NCEM and/or DOC's consultant shall be the judge of equality for proposed substitution of products, materials or equipment and whether it complies with CDBG-DR, HRP and/or grant eligibility rules, requirements and/or standards.

ARTICLE 9 - 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. The contractor shall protect and save harmless the homeowner, CM, NCEM, DOC, State of North Carolina and/or U.S. Department of Housing and Urban Development against suit on account of alleged or actual infringement. The contractor shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

ARTICLE 10 - PERMITS, INSPECTIONS, FEES, REGULATIONS

- a. The contractor shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the designer in writing. See Instructions to Bidders, Paragraph 3, Bulletins and Addenda. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer, 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 the contractor and included within the bid proposal. All water taps, meter barrels, vaults and impact fees shall be paid by the contractor unless otherwise noted.

ARTICLE 11 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC

- a. The contractors shall be jointly responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the owner or designer, and by laws or ordinances governing such conditions. They shall be responsible for any damage to the owner's property, or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. They shall be responsible for and pay for any damages caused to the owner. All contractors shall have access to the project at all times.
- b. The contractor shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building, whether set by him, or any of the subcontractors. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the owner.

- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the designer and owner.
- d. The contractor shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around same. He shall barricade all walks, roads, etc., as directed by the designer 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. The contractor shall provide all necessary safety measures for the protection of all persons on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. He 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. The contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by General Statutes of North Carolina 95-126 through 155.
- g. The contractor shall designate a responsible person of his organization as safety officer/inspector to inspect the project site for unsafe health and safety hazards, to report these hazards to the contractor for correction, and whose duties also include accident prevention on the project, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. The name of the safety inspector shall be made known to the designer and owner at the time of the preconstruction conference and in all cases prior to any work starting on the project.
- ~~g.~~ In the event of emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the contractor is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the contractor on account of such action shall be determined as provided for under Article 19(b).
- ~~h.~~ Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by the contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

ARTICLE 12 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973

- a. Any land-disturbing activity performed by the contractor(s) 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, the contractor(s) shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.
- c. The contractor(s) shall be responsible for defending any legal actions instituted pursuant to

N.C.G.S. 113A-64 against any party or persons described in this article.

- d. To the fullest extent permitted by law, the contractor(s) shall indemnify and hold harmless the owner, the designer and the agents, consultants and employees of the owner 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 reduced any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

ARTICLE 13 - 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 the Contractor's designer, designated official representatives of the CM, AHJ, NCEM, homeowner and those persons required by state law to test special work for official approval. The contractor shall therefore provide safe access to the work at all times for such inspections. Homeowner must give advance notice to Contractor and/or CM to ensure homeowner safety pursuant to OSHA requirements.
- b. Where special inspection or testing is required by virtue of any state laws, instructions of the designer, specifications or codes, the contractor shall give adequate notice to the designer and CM of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the designer. Such special tests or inspections will be made in the presence of the designer, or his authorized representative, CM (if necessary) and it shall be the contractor's responsibility to serve ample notice of such tests.
- e. All laboratory tests shall be paid by the Contractor unless provided otherwise in the contract documents including laboratory tests to establish design mix for concrete, and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures.
- f. 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 the contractor. All cost involved in uncovering, repairing, replacing, recovering and restoring to design condition, the work that has been covered or concealed will be paid by the contractor involved.

ARTICLE 14 - CONSTRUCTION SUPERVISION

- a. The contractor shall, employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a bench mark in a location where same will not be disturbed and where direct instruments sights may be taken.

ARTICLE 17 - CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

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

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

ARTICLE 19 - CHANGES IN THE WORK

- a. The NCEM through CM may make changes made in the work covered by the contract. These changes will not invalidate and will not relieve or release the contractor from any guarantee given by it pertinent to the contract provisions. These changes will not affect the validity of the guarantee bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original contract.
- b. Except in an emergency endangering life or property, no change shall be made by the contractor except upon receipt of approved change order or written field order from the 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 emergency endangering life or property, the contractor may be directed to proceed on a time and material basis whereupon the contractor shall proceed and keep accurately on such form as specified by the CM and/or NCEM, 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, contractors are restricted to the use of the following methods:

1. Where the extra work involved is covered by unit prices quoted in the proposal, or subsequently agreed to by the Contractor, CM and NCEM the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.
 2. The contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.
- d. Under Paragraph "b" and Methods "c(2)" above, the allowances for overhead and profit combined shall be as follows: all contractors, its subcontractors (1st tier subs), or their sub-subcontractors (2nd tier subs, 3rd tier subs, etc)) shall be allowed a maximum of 10% on work they each self-perform; the contractor shall be allowed a maximum of 5% on contracted work of his 1st tier sub; 1st tier, 2nd tier, 3rd tier, etc, Contractor shall be allowed a maximum of 2.5% on the contracted work of their subs. Under Method "c(1)", no additional allowances shall be made for overhead and profit. In the case of deductible change orders, under Method "c(2)" and Paragraph (b) above, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.
- e. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:
1. The actual costs of materials and supplies incorporated or consumed as part of the work;
 2. The actual costs of labor expended on the project site; labor expended in coordination, change order negotiation, record document maintenance, shop drawing revision or other tasks necessary to the administration of the project are considered overhead whether they take place in an office or on the project site.
 3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed thirty percent (30%) of the actual costs of labor;
 4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the work;
 5. All labor costs must comply with federal prevailing wage laws;
 6. The actual costs of premiums for bonds, insurance, permit fees, and sales or use taxes related to the work.
- Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the owner.
- f. Should concealed conditions be encountered in the performance of the work below grade, 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. The cost of such change shall be arrived at by one of the foregoing methods. All change orders shall be supported by a unit cost breakdown showing method of arriving at net cost as defined above.

- g. In all change orders, the procedure will be for the CM to request proposals for the change order work in writing. The contractor will provide such proposal and supporting data in suitable format. The CM shall verify correctness. Delay in the processing of the change order due to lack of proper submittal by the contractor of all required supporting data shall not constitute grounds for a time extension or basis of a claim. Within fourteen (14) days after receipt of the contractor's accepted proposal including all supporting documentation required by the CM, the CM shall prepare the change order and forward to the contractor for his signature or otherwise respond, in writing, to the contractor's proposal. Within seven (7) days after receipt of the change order executed by the contractor, the CM's representative shall certify the change order by his or her signature, and forward the change order and all supporting data to the NCEM for its review for CDBG-DR, HRP and/or grant eligibility compliance and, if compliant, NCEM will sign the change order and the revised scope of work may proceed. If the change order is denied, then Contractor shall not proceed with the work or may request the homeowner to approve of and pay for the proposed change in work. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.
- h. At the time of signing a change order, the contractor shall be required to certify as follows:

"I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety."
- i. A change order, when issued, shall be 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.

ARTICLE 23 - TIME OF COMPLETION, DELAYS, EXTENSION OF TIME

- a. The Contractor shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the CM and shall fully complete all work hereunder within the time of completion stated in the Contract. Time is of the essence and the contractor acknowledges the homeowner 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 contractor(s) shall pay the homeowner the sum of \$250.00 per day as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the owner by reason of failure of said contractor(s) to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof. If Contractor disputes the calculation of liquidated damages, then homeowner may recover actual damages.
- b. If the contractor is delayed at any time in the progress of his work solely by any act or negligence of the homeowner, CM or NCEM; 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 the contractor's control; or by any other causes which the designer and owner determine may justify the delay, then the

contract time may be extended by change order only for the time which the CM and NCEM 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 purpose 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 the contractor reflecting the effect of the weather on progress of the work and initialed by the designer'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 the Owner do not entitle the Contractor to compensable damages for delays. Any contractor claim for compensable damages for delays is limited to delays caused solely by the owner or its agents. Contractor caused delays shall be accounted for before owner or designer caused delays in the case of concurrent delays.

- b. Request for extension of time shall be made in writing to the CM, copies to NCEM and the homeowner, within twenty (20) days following cause of delay.
- c. The contractor shall notify his surety in writing of extension of time granted.

ARTICLE 31 – APPLICATIONS FOR PAYMENT

- a. Not later than the fifth day of the month (or other date set by Contract, CM and NCEM), the contractor shall submit to the CM a request for payment for work done during the previous month. The request shall be in the form agreed upon between the contractor and the 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 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. The contractor, upon request of the 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, the contractor shall prepare for the CM a schedule of values (SOV) showing a breakdown of the contract price into values of the various parts of the work, so arranged as to facilitate payments to Contractor and subcontractors. The Contractor shall list the value of each subcontractor and supplier, identifying each minority business subcontractor and supplier.
- d. When payment is made on account of stored materials and equipment, such materials must be stored on the homeowner's property, and the requests for payments shall be accompanied by invoices or bills of sale or other evidence to establish the homeowner's title to such materials

and equipment. Such payments will be made only for materials that have been customized or fabricated specifically for this project. Raw materials or commodity products including but not limited to piping, conduit, CMU, metal studs and gypsum board may not be submitted. Responsibility for such stored materials and equipment shall remain with the contractor regardless of ownership title. Such stored materials and equipment shall not be removed from the homeowner's property.

ARTICLE 32 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a. Within five (5) days from receipt of request for payment from the contractor (or other date set by Contractor, CM and NCEM), the Contractor shall issue and forward to the CM a certificate for payment. This certificate shall indicate the amount requested by Contractor. If the certificate is not approved by the CM, the CM shall state in writing to the contractor and the owner 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 the CM and NCEM 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 the Contractor against the homeowner, CM and/or NCEM except:
 1. Claims arising from unsettled liens or claims against the contractor.
 2. Faulty work or materials appearing after final payment.
 3. Failure of the contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
 4. As conditioned in the performance bond and payment bond.
- e. The Contractor shall forward to the CM and NCEM the final application for payment along with the following documents:
 1. List of minority business subcontractors and material suppliers showing breakdown of contract amounts and total actual payments to subs and material suppliers.
 2. Affidavit of Release of Liens.
 3. Affidavit of contractors of payment to material suppliers and subcontractors.
 4. Consent of Surety to Final Payment.
 5. Certificates of state agencies required by state law.

ARTICLE 33 - PAYMENTS WITHHELD

- a. The CM with the approval of State Construction Office and NCEM 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.
 3. To provide for sufficient contract balance to cover liquidated damages that will be assessed.

- b. When grounds for withholding payments have been removed, payment will be released.

ARTICLE 34 - MINIMUM INSURANCE REQUIREMENTS

The CM shall require the Contractor to have the same insurance types, coverages and limits required of the CM with the same terms and conditions regarding proof insurance. In addition the CM shall require the Contractor to provide the following additional insurance:

- c. **Property Insurance (Builder's Risk/Installation Floater)**

The 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 the owner, the contractor, the subcontractors and sub-subcontractors in the work and shall insure against the perils of fire, wind, rain, flood, extended coverage, and vandalism and malicious mischief. If the owner is damaged by failure of the contractor to purchase or maintain such insurance, then the contractor shall bear all reasonable costs properly attributable thereto; the contractor shall effect and maintain similar property insurance on portions of the work stored off the site when request for payment per articles so includes such portions.

- d. **Deductible**

Any deductible, if applicable to loss covered by insurance provided, is to be borne by the contractor.

ARTICLE 35 - PERFORMANCE BOND AND PAYMENT BOND

- a. CM shall require each contractor to furnish a performance bond and payment bond executed by a surety company authorized to do business in North Carolina. The bonds shall be in the full contract amount. Bonds shall be executed in the form bound with these specifications.
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 36 - CONTRACTOR'S AFFIDAVIT

The final payment of retained amount due the contractor on account of the contract shall not become due until the contractor has furnished to the CM, NCEM and homeowner 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 the contractor in connection with this contract. In the event that the contractor cannot obtain similar affidavits from subcontractors to protect the contractor and the owner from possible liens or claims against the subcontractor, the contractor shall state in his affidavit that no claims or liens exist against any subcontractor to the best of his (the contractor's) knowledge, and if any appear afterward, the contractor shall save the owner harmless.

ARTICLE 38 - USE OF PREMISES

- a. The contractor shall confine its equipment, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of the AHJ, CM, NCEM and homeowner and shall not exceed those established limits in his operations.
- b. The contractor(s) shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

- c. The contractor(s) shall enforce the CM's, NCEM's and homeowner'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 39 - CUTTING, PATCHING AND DIGGING

- a. The contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the designer may direct.
- b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefor.
- c. No contractor or subcontractor shall endanger any work of the contractor or subcontractor by cutting, digging or other means. No contractor shall cut or alter the work of any other contractor without the consent of the designer and the affected contractor(s).

ARTICLE 40 - UTILITIES, STRUCTURES, SIGNS

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

ARTICLE 41 - CLEANING UP

- a. The contractor shall keep the building and surrounding area reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the designer or Project Expediter. The Contractor shall provide an onsite refuse container(s) for the use of all contractors. Each Contractor shall remove their rubbish and debris from the building on a daily basis. The Contractor shall broom clean the building as required to minimize dust and dirt accumulation.
- b. The Contractor shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, each contractor shall clean his portion of the work, 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 the homeowner, with no cleaning required by the homeowner.

ARTICLE 42 - GUARANTEE

- a. The contractor shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the work or beneficial occupancy and shall replace such defective materials or workmanship without cost to the owner.
- 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. The contractor shall replace such defective equipment or materials, without cost to the owner, within the manufacturer's warranty period.
- c. Additionally, the homeowner may bring an action for latent defects caused by the negligence of the Contractor which is hidden or not readily apparent to the homeowner or CM at the time of final acceptance, whichever occurred first, in accordance with applicable law.
- c. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

ARTICLE 49 - MINORITY BUSINESS PARTICIPATION

GS 143-128.2 establishes a ten percent (10%) goal for participation by minority businesses in total value of work for each State building project. The document, *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Affidavits and Appendix E are hereby incorporated into and made a part of this contract.

ARTICLE 50 – CONTRACTOR EVALUATION

The Contractor's overall work performance on the project shall be fairly evaluated in accordance with the State Building Commission policy and procedures, for determining qualifications to continue working under the HRP Program. The document, Contractor Evaluation Procedures, is hereby incorporated and made a part of this contract. The owner may request the contractor's comments to evaluate the designer. The CM and NCEM will evaluate the Contractor's performance.

ARTICLE 51 – GIFTS

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

During the construction of the Project, the CM, Contractor and subcontractors are prohibited from making gifts to any employees of NCEM, DOC, 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.

ARTICLE 52 – AUDITING-ACCESS TO PERSONS AND RECORDS

In accordance with N.C. General Statute 147-64.7, the State Auditor shall have access to CM's and Contractor's officers, employees, agents and/or other persons in control of and/or responsible for the Contractor's records that relate to this Contracts for purposes of conducting audits under the

referenced statute. NCEM's and DOC's internal auditors shall also have the right to access and copy the CM's and Contractor's records relating to the Contract and Project during the term of the Contract and within two years following the completion of the Project/close-out of the Contract to verify accounts, accuracy, information, calculations and/or data affecting and/or relating to CM's and Contractor's requests for payment, requests for change orders, change orders, claims for extra work, requests for time extensions and related claims for delay/extended general conditions costs, claims for lost productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, and/or any other type of claim for payment or damages from CM, NCEM, DOC and/or homeowner.-

ARTICLE 53 – NORTH CAROLINA FALSE CLAIMS ACT

The North Carolina False Claims Act (“NCFCA”), N.C Gen. Stat. § 1-605 through 1-618, applies to this Contract. The Contractor should familiarize itself with the entire 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 its 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).) A contractor's liability under the NCFCA may arise from, but is not limited to: requests for payment, invoices, billing, claims for extra work, requests for change orders, requests for time extensions, claims for delay damages/extended general conditions costs, claims for lost productivity, claims for loss efficiency, claims for idle equipment or labor, claims for price/cost escalation, pass-through claims of subcontractors and/or suppliers, 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. The parts of the NCFCA that are most likely to be enforced with respect to this type of contract are as follows:-

- A “claim” is “[a]ny request or demand, whether under a contract or otherwise, for money or property and whether or not the State has title to the money or property that (i) is presented to an officer, employee, or agent of the State or (ii) is made to a contractor ... if the money or property is to be spent or used on the State's behalf or to advance a State program or interest and if the State government: (a) provides or has provided any portion of the money or property that is requested or demanded; or (b) will reimburse such contractor ... for any portion of the money or property which is requested or demanded.” (Section 1-606(2).)
- "Knowing" and "knowingly" – Whenever a person, with respect to information, does any of the following: (a) Has actual knowledge of the information; (b) Acts in deliberate ignorance of the truth or falsity of the information; and/or (c) Acts in reckless disregard of the truth or falsity of the information. (Section 1-606(4).) Proof of specific intent to defraud is not required. (Section 1-606(4).)
- "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property. (Section 1-606(4).)
- Liability. – “Any person who commits any of the following acts shall be liable to the State for three times the amount of damages that the State sustains because of the act of that person[:]. ... (1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval. (2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim. (3) Conspires to commit a violation of subdivision (1), (2) ...” (Section 1-607(a)(1), (2).)

- The NCFCA shall be interpreted and construed so as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act. (Section 1-616(c).)

Finally, the contracting state agency, institution, university or community college may refer any suspected violation of the NCFCA by the Contractor to the Attorney General's Office for investigation. Under Section 1-608(a), the Attorney General is responsible for investigating any violation of NCFCA, and may bring a civil action against the Contractor under the NCFCA. The Attorney General's investigation and any civil action relating thereto are independent and not subject to any dispute resolution provision set forth in this Contract. (See Section 1-608(a).)-