

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

Invitation for Bid for Services #: 19-IFB-014764-GSX

ASBESTOS SURVEYING AND TESTING SERVICES

Date Issued: July 10, 2019

Bid Opening Date: July 30, 2019

At 2:00PM ET

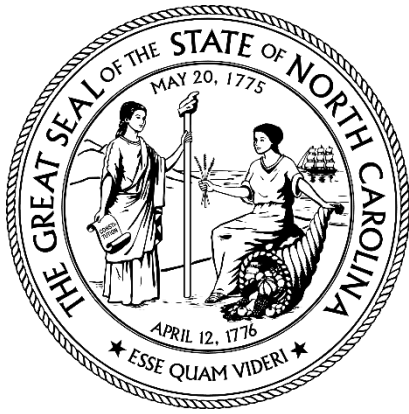
Direct all inquiries concerning this IFBS to:

Sherri Garte

NCORR Procurement Director

Email: sherri.garte@ncdps.gov

Phone: 919-324-6228 or 984-833-5364



STATE OF NORTH CAROLINA
Invitation for Bids for Services (IFBS)
19-IFB-014764-GSX

For internal State agency processing, including tabulation of bids in the Interactive Purchasing System (IPS), 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 shall be filled out and returned with your bid.
Failure to do so shall be sufficient cause to reject your bid.**

ID Number:

Federal ID Number or Social Security Number

Vendor Name

STATE OF NORTH CAROLINA
Department of Public Safety

Refer <u>ALL</u> Inquiries regarding this IFBS to: Sherri Garte	Invitation for Bids for Services # 19-IFB-014764-GSX
	Bids will be publicly opened: July 30, 2019 at 2:00 p.m. ET
Contract Type: Open Market	Using Agency: NCORR
Commodity No.:910-40 Asbestos Testing Services	Requisition No.: RQ22166873

EXECUTION

In compliance with this Invitation for Bids, and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this bid, the undersigned Vendor certifies that this bid is submitted competitively and without collusion (G.S. 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that it is not an ineligible Vendor as set forth in G.S. 143-59.1. False certification is a Class I felony. Furthermore, by executing this bid, the undersigned certifies to the best of Vendor's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by G.S. 143-48.5, the undersigned Vendor certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this IFBS, 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 bid response to the IFBS, the undersigned certifies, for Vendor's entire organization and its employees or agents, that Vendor are not aware that any such gift has been offered, accepted, or promised by any employees or agents of Vendor's organization. *As required by 2 CFR § 200.317, the undersigned vendor certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this IFBS, complies with the requirements of 2 CFR § 200.318-.326. As required by the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended), the undersigned vendor certifies that by applying or bidding for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C § 1352. Each tier shall also disclose any lobbying with non-Federal funds that take place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.*

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

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

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

ACCEPTANCE OF BID

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

FOR STATE USE ONLY: Offer accepted and Contract awarded this ____ day of _____, 2019, as indicated on the attached certification, by _____ (Authorized Representative of the Department of Public Safety).

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1.0 PURPOSE AND BACKGROUND

North Carolina Office of Recovery and Resiliency (NCORR) is seeking bids from qualified Vendors to provide asbestos surveying and testing services for single family and/or multi-family residential homes damaged during declared disaster. Services will be provided on an as needed basis.

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

2.0 GENERAL INFORMATION

2.1 INVITATION FOR BIDS DOCUMENT

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

2.2 NOTICE TO VENDORS REGARDING IFBS TERMS AND CONDITIONS

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

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component within this IFBS (including proposed alternate language), those **must** be submitted as questions in accordance with the instructions in Section 2.4. BID QUESTIONS. If the State determines that any changes will be made resulting from the questions asked, then such decisions will be communicated in the form of an IFBS addendum. The State may also elect to leave open the possibility for post-contract negotiation and amendment of specific provisions of the Contract that have been addressed during the question and answer period. Other than through this process, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's bid. This applies to any language appearing in or attached to the document as part of the Vendor's bid that purports to vary any terms and conditions or Vendors' instructions herein or to render the bid non-binding or subject to further negotiation. *Vendor's bid shall constitute a firm offer.* **By execution and delivery of a bid in response to this IFBS, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposefully or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's bid as nonresponsive. Any bid that contains language that indicates the bid is non-binding or subject to further negotiation before a contractual document may be signed shall be rejected.**

2.3 IFBS SCHEDULE

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

Event	Responsibility	Date and Time
Issue IFBS	State	July 10, 2019
Submit Written Questions	Vendor	July 16, 2019
Provide Responses to Questions	State	July 19, 2019
Submit Bids	Vendor	July 30, 2019 by 2:00 p.m. ET
Contract Award	State	TBD

2.4 BID QUESTIONS

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

Written questions shall be e-mailed to sherri.garte@ncdps.gov by the date and time specified above. Vendors will enter "IFBS #19-IFB-014764-GSX Questions" as the subject for the email. Questions submittals will include a reference to the applicable IFBS section and be submitted in a format shown below:

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

Questions received prior to the submission deadline date, the State's response, and any additional terms deemed necessary by the State will be posted in the form of an addendum to the Interactive Purchasing System (IPS), <http://www.ips.state.nc.us>, and shall become an Addendum to this IFBS. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise concerning this IFBS, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in an Addendum to this IFBS.

2.5 BID SUBMITTAL

IMPORTANT NOTE: This is an absolute requirement. Vendor shall bear the risk for late submission due to unintended or unanticipated delay—whether submitted electronically, delivered by hand, U.S. Postal Service, courier or other delivery service. It is the Vendor's sole responsibility to ensure its bid has been submitted to this Office by the specified time and date of opening. The date and time of submission will be marked on each bid when received, and any bid received after the bid submission deadline will be rejected. Sealed bids, subject to the conditions made a part hereof, will be received at the address indicated in the table in this Section, for furnishing and delivering the commodity or service as described herein.

Vendors shall deliver to the address identified in the table below: three **(3) paper copies** and one **(1) electronic copy** (un-redacted) of its executed bid on a flash drive, and, if required for confidentiality, one (1) redacted copy of your bid (with all marked proprietary and confidential Information redacted) on a separate flash drive. Clearly mark on the electronic media whether it contains a redacted or unredacted copy.

All bids shall be submitted in a sealed envelope. Clearly mark each package with: (1) Vendor name; (2) the IFBS number; and (3) the due date. Address the package(s) for delivery as shown in the table, above. File contents **shall NOT** be password-protected but, shall be in .PDF or .XLS format, and shall be capable of being copied to other sources.

If Vendor is submitting more than one bid, each bid shall be submitted in separate sealed envelope and marked accordingly. For delivery purposes, separate sealed bids from a single Vendor may be included in the same outer package. Do not include bids for more than one solicitation in the same package.

Failure to submit a bid in strict accordance with these instructions shall constitute sufficient cause to reject a vendor's bid(s). **Attempts to submit a bid via facsimile (FAX) machine, telephone or e-mail, in response to this IFBS shall NOT be accepted.**

<p>MAILING ADDRESS FOR DELIVERY OF BID VIA U.S. POSTAL SERVICE AND BY ANY OTHER MEANS, SPECIAL DELIVERY, HAND DELIVERY, OVERNIGHT DELIVERY OR BY ANY OTHER CARRIER</p>
<p><i>BID NUMBER: 19-IFB-014764-GSX</i> <i>Attn: Sherri Garte</i> <i>NC DEPARTMENT of Public Safety</i> <i>Purchasing and Logistics</i> <i>3030 Hammond Business Place</i> <i>Raleigh, NC 27603</i></p>

2.6 BID CONTENTS

Vendors shall populate all attachments of this IFBS that require the Vendor to provide information and shall include an authorized signature where requested. Vendor response to this IFBS shall include each of the following items and these items should be arranged in the following order:

- a) Completed and signed version of EXECUTION PAGE, along with the body of the IFBS and signed receipt pages of any addenda released in conjunction with this IFBS (if required to be returned).
- b) Demonstration of Vendor's Experience and References, Section 4.4 and 4.5
- c) Demonstration of how Vendor plans to meet Scope of Work Section 5
- d) Copy of NC Asbestos Accreditation per Section 5.1
- e) Completed version of ATTACHMENT A: PRICING
- f) ATTACHMENT B: INSTRUCTIONS TO VENDORS
- g) ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS
- h) Completed version of ATTACHMENT D: LOCATION OF WORKERS UTILIZED BY VENDOR
- i) Completed and signed version of ATTACHMENT E: HISTORICALLY UNDERUTILIZED BUSINESS INFO
- j) Completed and signed version of ATTACHMENT F: CERTIFICATION OF FINANCIAL CONDITION
- k) ATTACHMENT G: NCORR RULES AND REGULATIONS
- l) ATTACHMENT H: CDBG-DR RULES AND REGULATIONS

2.7 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

- a) **ACM:** Asbestos Containing Material
- b) **BAFO:** Best and Final Offer, submitted by a Vendor to alter its initial bid, made in response to a request by the issuing agency.
- c) **CONTRACT LEAD:** Representative of the NCORR identified on the first page of this IFBS who will correspond with potential Vendors concerning solicitation issues and will contract with the Vendor providing the best offer to the State, and is the individual who will administer The Contract for the State.
- d) **EPA:** US Environmental Protection Agency.
- e) **E-PROCUREMENT SERVICES:** The program, system, and associated Services through which the State conducts electronic procurement.
- f) **IFBS:** Invitation for Bids for Services.
- g) **NCORR:** North Carolina Office of Recovery and Resiliency.
- h) **NVLAP:** National Voluntary Lab Accreditation Program.
- i) **PLM:** Polarized Light Microscopy.
- j) **PRINCIPLE PLACE OF BUSINESS:** That principle place from which the overall trade or business of the Vendor is directed or managed.
- k) **QUALIFIED BID:** A responsive bid submitted by a responsible Vendor.
- l) **SERVICES or SERVICE DELIVERABLES:** The tasks and duties undertaken by the Vendor to fulfill the requirements and specifications of this solicitation.
- m) **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.
- n) **STATE AGENCY:** Any of the more than 400 sub-units within the executive branch of the State, including its departments, boards, commissions, institutions of higher education and other institutions.
- o) **THE CONTRACT:** A contract resulting from or arising out of Vendor responses to this solicitation document.
- p) **VENDOR:** Supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to an Invitation for Bids. Following award of a contract, the term refers to an entity receiving such an award.

3.0 METHOD OF AWARD AND BID EVALUATION PROCESS

3.1 METHOD OF AWARD

Contracts will be awarded in accordance with G.S. 143-52 and the evaluation criteria set out in this solicitation. Prospective Vendors shall not be discriminated against on the basis of any prohibited grounds as defined by Federal and State law.

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

While the intent of this IFBS is to award a Contract(s) to a single Vendor for all line, the State reserves the right to make separate awards to different Vendors for one or more line items, to not award any portion of the goods or Services or to cancel this IFBS in its entirety without awarding a contract, if it is considered to be most advantageous to the State to do so.

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

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

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

During the evaluation period—from the date bids are opened through the date the contract is awarded—each Vendor submitting a bid (including its representatives, sub-contractors and/or suppliers) is prohibited from having any communications with any person inside or outside the using agency, issuing agency, other government agency office, or body (including the purchaser named above, department secretary, agency head, members of the general assembly and/or governor's office), or private entity, if the communication refers or relates to the content of Vendor's bid or qualifications, the contents of another Vendor's bid, another Vendor's qualifications or ability to perform the contract, or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of bids or the award of the contract. A Vendor not in compliance with this provision shall be disqualified from contract award, unless the State makes a written determination, in its discretion that the communication was harmless, that it was made without intent to influence and that the best interest of the State would not be served by the disqualification. If a Vendor, its sub-contractor or supplier engage in any of the foregoing communications during the time that the solicitation is open (i.e., the issuance date of the procurement to the date of bid opening), such conduct shall constitute sufficient cause to disqualify the Vendor's bid. Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this IFBS or general inquiries directed to the Contract Lead named in the IFBS and regarding requirements of the IFBS (prior to bid submission) or the status of the contract award (after submission) are excepted from this provision.

3.3 BID EVALUATION PROCESS

The State shall review all Vendor responses to this IFBS to confirm that each one complies with the specifications and requirements of the IFBS.

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

Bids will be received from each responsive Vendor in a sealed envelope package.

All bids shall be received by the issuing agency not later than the date and time specified on the cover sheet of this IFBS, or as modified by a bid addendum.

At the date and time specified as the bid opening, the bids from each responding Vendor will be opened publicly and the name of the Vendor and bid's total cost will be announced. Interested parties are cautioned that these

costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of a Vendor's pricing position.

At its option, the State may request clarifications, oral presentations or discussions with any or all Vendors in order to clarify or to amplify the materials presented in any part of the bid or requested in the IFBS. Vendors are cautioned, however, that the State is not required to request presentations or other clarification—and often does not. Therefore, all bids should be complete and reflect the most favorable terms available from the Vendor. Prices bid cannot be altered or modified as part of a clarification.

Bids will generally be evaluated, based on completeness, content, cost and responsibility of the Vendor to supply the requested goods and Services. Specific evaluation criteria are listed in Section 3.1 METHOD OF AWARD.

The State reserves the right to reject all original offers and request one or more of the Vendors submitting bids within a competitive range to submit a best and final offer (BAFO), based on discussions and negotiations with the State, if the initial responses to the IFBS have been evaluated and determined to be unsatisfactory.

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

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

3.4 PERFORMANCE OUTSIDE THE UNITED STATES

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

- a) Total cost to the State
- b) Level of quality provided by the Vendor
- c) Process and performance capability across multiple jurisdictions
- d) Protection of the State's information and intellectual property
- e) Availability of pertinent skills
- f) Ability to understand the State's business requirements and internal operational culture
- g) Particular risk factors such as the security of the State's information technology
- h) Relations with citizens and employees
- i) Contract enforcement jurisdictional issues

3.5 INTERPRETATION OF TERMS AND PHRASES

This Invitation for Bids serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the Department; and (2) to provide (together with other specified documents) the terms of the Contract that results from this procurement. As such, all terms in the Invitation for Bids 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 bids should be evaluated or rejected, the Department will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the Department's needs as described in the Invitation for Bids. Except as specifically stated in the Invitation for Bids, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement, if determined to be essential under the circumstances then existing, may result in the Department exercising its discretion to reject a bid in its entirety.

4.0 REQUIREMENTS

This Section lists the requirements related to this IFBS. By submitting a bid, the Vendor agrees to meet all stated requirements in this Section as well as any other specifications, requirements and terms and conditions stated in this IFBS. If a Vendor is unclear about a requirement or specification or believes a change to a requirement would allow for the State to receive a better bid, the Vendor is urged and cautioned to submit these items in the form of a question during the question and answer period in accordance with Section 2.4.

4.1 CONTRACT TERM

The Contract shall have an initial term of one (1) year, beginning on the date of contract award (the “Effective Date”).

At the end of the Contract’s current term, the State shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to a total of two additional one-year terms. The State will give the Vendor written notice of its intent whether to exercise each option no later than 30 days before the end of the Contract’s then-current term. In addition, the State reserves the right to extend a contract term for a period of up to 180 days in 90-day-or-less increments.

4.2 PRICING

Bid price shall constitute the total cost to the State for services, including all administrative and other fees. Vendor shall not invoice for any amounts not specifically allowed for in this IFBS. Complete ATTACHMENT A: PRICING and include with Bid Response.

4.3 INVOICES

Invoices shall be submitted monthly to the NCORR Contract Administrator, no later than the 15th of the month following the invoiced work. Initially, all work shall be billed based on the agreed-upon pricing. Invoices shall include detailed line item information to allow NCORR to verify pricing including any supporting documentation required. Payment will be issued upon completion of full batch requests, including all final reports for all sites within the batch. At a minimum, the following fields shall be included on all invoices:

Vendor’s Billing Address, Customer Account Number, NC Contract Number, Service Date, Item Descriptions, Price.

4.4 VENDOR EXPERIENCE

In its Bid, Vendor shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to the State of North Carolina as describe in this IFBS. Vendor should have at least five (5) years of experience in asbestos testing services. Vendor shall include in its submission three (3) examples of previous experience with projects located in the North Carolina area within the last five (5) years. *Vendor must also have current Asbestos Accreditation from the State of North Carolina.*

4.5 REFERENCES

Vendor must provide three (3) references for clients where Services were performed in the past three (3) years. The State may contact one or more these clients to determine the Services provided were substantially similar in size and scope to those proposed herein and the Vendor’s performance was satisfactory.

Information obtained may be considered in evaluation of the bids.

COMPANY NAME	CONTACT NAME	TELEPHONE NUMBER	EMAIL ADDRESS

4.6 FINANCIAL STABILITY

Each Vendor shall certify it is financially stable by completing the ATTACHMENT F: CERTIFICATION OF FINANCIAL CONDITION. The State is requiring this certification to minimize potential performance issues from Contracting with a Vendor that is financially unstable. This Certification shall be deemed continuing, and from the date of the Certification to the expiration of the Contract, the Vendor shall notify the State within thirty (30) days of any occurrence or condition that materially alters the truth of any statement made in this Certification.

4.7 BACKGROUND CHECKS

Vendor and its personnel are required to provide or undergo background checks at Vendor's expense prior to beginning work with the State. As part of Vendor background the details below must be provided to the State:

- a) Any **criminal felony conviction**, or conviction of any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception, of Vendor, its officers or directors, or any of its employees or other personnel to provide Services on this project, of which Vendor has knowledge or a statement that it is aware of none;
- b) Any **criminal investigation** for any offense involving moral turpitude, including, but not limited to fraud, misappropriation, falsification or deception pending against Vendor of which it has knowledge or a statement it is aware of none;
- c) Any **regulatory sanctions** levied against Vendor or any of its officers, directors or its professional employees expected to provide Services on this project by any state or federal regulatory agencies within the past three years or a statement that there are none. As used herein, the term "regulatory sanctions" includes the revocation or suspension of any license or certification, the levying of any monetary penalties or fines, and the issuance of any written warnings;
- d) Any **regulatory investigations** pending against Vendor or any of its officers, directors or its professional employees expected to provide Services on this project by any state or federal regulatory agencies of which Vendor has knowledge or a statement that there are none.
- e) Any **civil litigation**, arbitration, proceeding, or judgments pending against Vendor during the three (3) years preceding submission of its bid herein or a statement that there are none.

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

4.8 PERSONNEL

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

4.9 VENDOR'S REPRESENTATIONS

- a) Vendor warrants that qualified personnel shall provide Services under this Contract in a professional manner. "Professional manner" means that the personnel performing the Services shall possess the skill and competence consistent with the prevailing business standards in the industry. Vendor agrees that it shall not enter any agreement with a third party that may abridge any rights of the State under this Contract. Vendor shall serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all

subcontractor(s) that may be approved by the State. Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Vendor shall 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 Vendor's proper performance, provision and delivery of the Services and other 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, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables.
- c) Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.
- d) Unless otherwise expressly provided herein, vendor shall be responsible for ensuring the Vendor and all sub-contractors providing any work that is subject to the provisions of the Davis-Bacon Act (40 U.S.C. 3141-44 and 3146-47) and associated rules and regulations promulgated pursuant thereto by the Department of Labor (collectively, "Davis-Bacon Act"), governing minimum rates for wages for laborers and mechanics employed directly in the work, comply with the provisions of the Davis-Bacon Act.
- e) Compliance with the Copeland "Anti-Kickback" Act
 - i. Vendor. The Vendor shall comply with 18 U.S.C § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
 - ii. Subcontracts. The Vendor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for a debarment as a Vendor and subcontractor as provided in 29 C.F.R. § 5.12.
- f) Vendor agrees 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), and will report violations to FEMA (if FEMA funds are used to reimburse vendor) and the Regional Office of the Environmental Protection Agency (EPA).
- g) Vendor warrants, pursuant to 40 U.S.C. 3702 of the Contract Work Hours and Safety Standards Act, when the contract exceeds \$100,000 and involves the employment of mechanics or laborers, it is in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). The vendor warrants it computes 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.

5.0 SCOPE OF WORK

The following requirements are for qualified Vendors to provide asbestos surveying and testing to determine the locations and quantities of asbestos-containing materials as defined by the US Environmental Protection Agency (EPA)-that is material containing greater than 1% by weight of asbestos. The sampling must be sufficient to accurately project the quantity of asbestos to be abated. Testing of suspect samples shall be provided by a NVLAP accredited laboratory, utilizing Polarized Light Microscopy (PLM) with dispersion staining, in accordance with current regulatory requirements.

The scope of services identified below is intended to ensure that Asbestos Review, Surveys & Assessments, and Testing Services are available to aid NCORR programs and departments in the analysis of potential environmental impacts presented by various projects, consult with regulators to implement the regulations set forth in 24 CFR Part 58 HUD Environmental Reviews, and to assist in the preparation of various reports, forms and studies as identified in the tasks outlined below. The scope of Testing Services to be provided by the Vendor(s) are summarized in Task 1-2. Vendor must identify all suspect materials in the designated area to be abated only.

5.1 TASK 1 – ASBESTOS TESTING

The required services of the Vendor under this task shall include the performance of inspections and risk assessments for asbestos in accordance with AHERA, federal and state regulatory standards.

Asbestos Testing: Vendor shall be given the location of houses to be tested by batches. Asbestos testing services shall consist of the survey, identification and assessment of the condition of asbestos and asbestos-containing material (“ACM”) in designated areas, the recording and reporting thereof, and the collection of bulk samples of asbestos or suspected ACM for laboratory analysis. In providing these services, the Vendor shall adhere to the regulations promulgated by the State of North Carolina and local county regulations. The Vendor shall be fully familiar with these regulations, as well as related federal regulations such as 40 CFR Part 763 (Asbestos Containing Material in Schools), 40 CFR Part 1926.1101 (Construction) and 40 CFR Part 61 (Subpart M) (Hazardous Air Emissions), as may be applicable.

Testing for ACM requires the Vendor to deploy a North Carolina accredited asbestos inspector. **Vendor shall provide a copy of the NC Asbestos Accreditation with its response.** The inspector shall perform asbestos surveys consisting of both visual and written inspection of the location, quantity, friability, condition of suspected ACM and the collection of samples from suspected ACM utilizing sampling methods found in North Carolina State Law. The Vendor shall take photographs deemed necessary by the inspector to document the location and condition of suspect ACM.

- a) The Vendor will not be responsible for repair or finishing activities resulting from survey and testing activities. Suspected ACM that cannot be sampled due to site conditions will be presumed to contain asbestos. Presumed ACM shall be sampled prior to construction activities once the hazard has been abated. If testing results indicate suspected material is ACM, the material shall be treated accordingly. If ACM is to be disturbed in connection with NCORR-funded activities, it must be conducted under the supervision of a North Carolina accredited contractor pursuant to applicable AHERA, Federal, State and local regulations. Asbestos Vendors disturbing asbestos and paint or coated systems in pre-1978 housing, during testing, are required to be a NC certified lead renovation firm and have at least 1 NC certified lead renovator.
- b) NC accredited asbestos inspectors collecting samples of suspect materials to determine the presence of asbestos shall follow the sampling requirements in 40 CFR 763 Asbestos-Containing Materials in Schools. In the AHERA regulations the requirements for taking surface materials includes taking 3/5/7 samples depending on the square footage.
 - i. If a NC accredited asbestos inspector takes 3 samples of suspect surfacing material and the lab results are 3% or greater no more samples are required.
 - ii. If the 1st sample is negative for asbestos then the lab will analyze the 2nd sample and either do a positive stop or analyze the 3rd sample. If the 3rd sample is negative then the surfacing material is considered not to contain asbestos.
 - iii. Any samples identified as containing asbestos at 2% or less must be point counted.

Call Back: There may instances when Vendor must be able to respond to emergency call back homes with in twenty-four (24) hours. Vendor may be required to return to test sites for which work has been performed if, during construction, additional areas are identified beyond the original scope.

5.2 TASK 2 – KEY DELIVERABLES

Key deliverables for Task 2 – Environmental Testing include:

- a) Visual assessment and collection (subsequent analysis) of environmental samples for settled dust.
- b) Generating all final deliverable(s) within 30 (thirty) business days of “on-site” completion.
- c) Provision of a hardcopy of the final report to the applicant / property owner and NCORR using a commercially available delivery service with delivery confirmation within 15 days of Final Deliverable(s) report.

5.3 ACCEPTANCE OF WORK

In the event acceptance criteria for any Services, work or other deliverables is not described herein or in contract documents or work orders hereunder, the State shall have the obligation to notify Vendor, in writing ten (10) calendar days following completion of such Services, work or other deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review, evaluation, installation or testing, as applicable of the Services, work or other deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any requirements, acceptance criteria or otherwise fail to conform to the contract, the State may exercise any and all rights hereunder, including, for deliverables, such rights provided by the Uniform Commercial Code as adopted in North Carolina.

5.4 LIQUIDATED DAMAGES

The parties agree that calculation of actual damages resulting from failure to meet the following performance standards is extremely difficult, if not impossible, to calculate accurately, and the parties also agree that the compensation identified for such failures are a reasonable estimate of damages resulting from a failure to meet the performance standard described. Therefore, the parties agree that the Vendor shall be subject to amounts due as liquidated damages but not as a penalty, for each such failure, as follows:

Should the Vendor fail to complete the work under this contract within the stipulated time as set forth in this IFBS, the Vendor agrees that NCORR may retain the sum of \$200.00 per day for each calendar day that the project is incomplete.

Notwithstanding any other provision herein, liquidated damages shall not be subject to a limitation or limit of liability for damages that otherwise may be applicable to recoverable damages.

6.0 CONTRACT ADMINISTRATION

6.1 PROJECT MANAGER AND CUSTOMER SERVICE

The Vendor shall designate and make available to the State a single point of contact for contract related issues and issues concerning performance, progress review, scheduling and any service required.

6.2 PERIODIC WEEKLY STATUS REPORTS

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

Within 7 business days of the award of the Contract the Vendor shall submit a final work plan and a sample report, to the designated NCORR Contract Administrator for approval. Sample report should include, at a minimum: specific sites abated, home owner contacted, nonresponsive, no access, inspected, waiting on samples (how long), report complete under review, report submitted.

6.3 DISPUTE RESOLUTION

The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the State's Contract Lead for resolution. A claim by the State shall be submitted in writing to the Vendor'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 The 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 The 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 State and the Vendor

Attachments to this IFBS begin on the next page.

ATTACHMENT A: PRICING

FURNISH AND DELIVER:

Vendor shall provide cost per homes tested to include up to 30 samples. For evaluation purposes an estimate of 2,000 homes will be used. This is an estimate only and the state does not guarantee any minimum or maximum number of homes to be tested. The cost per home must be all inclusive (including labor and all associated travel expenses, etc.) no additional fee will be paid.

Item	Description	Each	Number of Homes	Total
1	Testing of homes for asbestos	\$	2,000	\$

Note: if additional samples are required Vendor may provide the additional samples so as long as the additional cost does not exceed \$750.00. If the cost due to the level of samples needed is anticipated to exceed the \$750.00 prior approval must be given by the NCORR Contract Administrator.

Vendor shall provide pricing for any additional testing required that exceeds the base 30 samples plus the \$750 below:

COST per SAMPLE \$ _____ (Over the Initial maximum of 30 samples)

ATTACHMENT B: INSTRUCTIONS TO VENDORS

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor'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 Vendors or elsewhere in this IFBS document.
2. **LATE BIDS:** Late bids, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure the timely delivery of bids at the designated office by the designated time.
3. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the Vendor, to accept any item in the bid. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded. Regardless of error or omission, a Vendor shall not be permitted to increase its pricing after the deadline for submitting bids.
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 execute page 1 of the IFBS (Execution Page) in the designated space shall render bid non-responsive, and it will be rejected.
6. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this solicitation or those in any resulting contract documents, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this RFPQ, including any negotiated terms; (2) requirements and specifications and administration provisions in Sections 4, 5 and 6 of this RFPQ; (3) ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS; (4) ATTACHMENT H: CDBG-DR RULES AND REGULATIONS; (5) ATTACHMENT G: NCORR RULES AND REGULATIONS; (6) ATTACHMENT B: INSTRUCTIONS TO VENDORS; (7) Vendor's Response.
7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each Vendor shall submit with its bid any sketches, descriptive literature and/or complete specifications covering the products and Services offered. Reference to literature submitted with a previous bid or available elsewhere will not satisfy this provision. Failure to comply with these requirements shall constitute sufficient cause to reject a bid without further consideration.
8. **RECYCLING AND SOURCE REDUCTION:** It is the policy of the State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will adequately protect the commodity and contain it for its intended use. Companies Vendors are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable. As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)) the Vendor certifies, by signing this offer that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.
9. **CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA:** As a condition of contract award, each out-of-State Vendor that is a corporation, limited-liability company or limited-liability partnership shall have received, and shall maintain throughout the term of The Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law. A State contract requiring

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

- 10. SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all responses meet the following:
- All copies of the bid are printed double sided.
 - All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
 - Unless absolutely necessary, all bids and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
 - Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.
- 11. HISTORICALLY UNDERUTILIZED BUSINESSES:** The State is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the State encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on State contracts.
- 12. INELIGIBLE VENDORS:** As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the State or any of its political subdivisions by any company identified in a) or b) above shall be void *ab initio*.
- 13. CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain as confidential trade secrets in its bid that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.
- 14. PROTEST PROCEDURES:** When a Vendor wishes to protest the award of The Contract awarded by the Division of Purchase and Contract, or awarded by an agency in an awarded amount of at least \$25,000, a Vendor shall submit a written request addressed to the State Purchasing Officer at: Division of 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 Vendor actually awarded the Contract, and not to every person or firm responding to a solicitation. Bid status and Award notices are posted on the Internet at <https://www.ips.state.nc.us/ips/>. All protests will be handled pursuant to the North Carolina Administrative Code, 01 NCAC 05B .1519.
- 15. MISCELLANEOUS:** Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.

- 16. COMMUNICATIONS BY VENDORS:** In submitting its bid, the Vendor agrees not to discuss or otherwise reveal the contents of its bid to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this IFBS. All Vendors are forbidden from having any communications with the using or issuing agency, or any other representative of the State concerning the solicitation, during the evaluation of the bids (i.e., after the public opening of the bids and before the award of the Contract), unless the State directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's bid and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation or award of a Contract related to this IFBS. Failure to comply with this requirement shall constitute sufficient justification to disqualify a Vendor from a Contract award. Only those communications with the using agency or issuing agency authorized by this IFBS are permitted.
- 17. TABULATIONS:** Bid tabulations can be electronically retrieved at the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/BidNumberSearch.aspx>. Click on the IPS BIDS icon, click on Search for Bid, enter the bid number, and then search. Tabulations will normally be available at this web site not later than one working day after the bid opening. Lengthy or complex tabulations may be summarized, with other details not made available on IPS, and requests for additional details or information concerning such tabulations cannot be honored.
- 18. VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The North Carolina electronic Vendor Portal (eVP) allows Vendors to electronically register free with the State to receive electronic notification of current 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: <http://ncadmin.nc.gov/about-doa/divisions/purchase-contract>.
- 19. WITHDRAWAL OF PROPOSAL:** Bids that have been delivered by hand, U.S. Postal Service, courier or other delivery service may be withdrawn **only** in writing and if receipt is acknowledged by the office issuing the IFBS prior to the time for opening bids identified on the cover page of this IFBS (or such later date included in an Addendum to the IFBS). Written withdrawal requests shall be submitted on the Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after the opening of bids shall be allowed only for good cause shown and in the sole discretion of the Division of Purchase and Contract.
- 20. INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in writing in this IFBS and in formal Addenda issued through IPS.
- 21. COST FOR BID PREPARATION:** Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; the State of North Carolina will not reimburse any Vendor for any costs incurred or associated with the preparation of bids.
- 22. VENDOR'S REPRESENTATIVE:** Each Vendor shall submit with its bid the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's bid.
- 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 Vendor prior to Contract award, and during the Contract term as necessary for the State's determination that such equipment, item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS & CONDITIONS

1. PERFORMANCE AND DEFAULT:

- a) It is anticipated that the tasks and duties undertaken by the Vendor shall include services or the manufacturing, furnishing, or development of goods and other tangible features or components as deliverables that are directly correlated and/or ancillary to the services performed. Except as provided immediately below, and unless otherwise mutually agreed in writing prior to award, any service deliverables or ancillary services provided by Vendor in performance of the contract shall remain property of the State. During performance, Vendor may provide proprietary components as part of the service deliverables that are identified in the solicitation response. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the service deliverables and other functionalities, as provided under this Agreement. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform its services under the contract in the same or similar manner provided to comparable users. The State shall notify the Vendor of any defects or deficiencies in performance of its services or failure of service deliverables to conform to the standards and specifications provided in this solicitation. Vendor agrees to remedy defective performance or any nonconforming deliverables upon timely notice provided by the State.
- b) Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as may be further provided herein. Vendor or its suppliers shall at a minimum, and except as otherwise specified and agreed herein, provide assistance to the State related to all services performed or deliverables procured hereunder during the State's normal business hours. Vendor warrants that its support, customer service, and assistance will be performed in accordance with generally accepted and applicable industry standards.
- c) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under The Contract, the State shall have the right to terminate The Contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables under The Contract prepared by the Vendor shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of The Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State may require at any time a performance bond or other acceptable alternative performance guarantees from a Vendor without expense to the State.
- d) In the event of default by the Vendor, the State may procure the goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Vendor under The Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, immediately terminate The Contract for cause, and may take action to debar the Vendor from doing future business with the State.

2. GOVERNMENTAL RESTRICTIONS: In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship or performance of the Services offered prior to acceptance, it shall be the responsibility of the Vendor to notify the Contract Lead at once, in writing, 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 Vendor shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in The 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 Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on

sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

- b) The agency(ies) participating in The Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
- c) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

5. **SITUS AND GOVERNING LAWS**: This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.

6. **PAYMENT TERMS**: Payment terms are Net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.

7. **AFFIRMATIVE ACTION**: The Vendor 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 on the basis of any prohibited grounds as defined by Federal (including but not limited to 41 CFR § 60-1.4) and State law.

8. **CONDITION AND PACKAGING**: Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

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

- a) Vendor warrants to the best of its knowledge that:
 - i. Performance under The Contract does not infringe upon any intellectual property rights of any third party; and
 - ii. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- b) Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and refund any sums the State has paid Vendor and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or Deliverables.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the deliverables supplied by the Vendor, their use or operation, infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay

those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:

- i. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and
 - ii. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's material alteration of any Vendor-branded deliverables or services, or from the continued use of the deliverable(s) or Services after receiving notice of infringement on a trade secret of a third party.

10. TERMINATION FOR CONVENIENCE: If this contract contemplates deliveries or performance over a period of time, the State may terminate this contract at any time by providing 15 days' notice in writing from the State to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this contract shall, at the option of the State, become its property. If the contract is terminated by the State as provided in this section, the State shall pay for those items for which such option is exercised, less any payment or compensation previously made.

11. ADVERTISING: Vendor agrees not to use the existence of The Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services. A Vendor may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.

12. 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 The Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9).

13. ASSIGNMENT: No assignment of the Vendor's obligations nor the Vendor'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 Vendor, the State may:

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

In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor 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 Vendor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of The Contract.

14. INSURANCE:

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

a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of his employees engaged in any work under the Contract within the State.

b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense cost shall be in excess of the limit of liability.

c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single

limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.

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

15. GENERAL INDEMNITY: The Vendor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of The Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of The Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor deliverables or Services to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of The Contract.

16. ELECTRONIC PROCUREMENT:

a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

b) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State-approved user, not the Supplier Manager, shall be responsible for the solicitation, proposals received, evaluation of proposals received, award of contract, and the payment for goods delivered.

c) Vendor shall at all times maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges by such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

17. SUBCONTRACTING: Performance under The Contract by the Vendor shall not be subcontracted without prior written approval of the State's assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) that have been specified therein.

18. CONFIDENTIALITY: Any State information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under The Contract shall be kept as confidential, used only for the purpose(s) required to perform The Contract and not divulged or made available to any individual or organization without the prior written approval of the State.

19. CARE OF STATE DATA AND PROPERTY: The Vendor agrees that it shall be responsible for the proper custody and care of any data owned and furnished to the Vendor by the State (State Data), or other State property in the hands of the Vendor, for use in connection with the performance of The Contract or purchased by or for the State for The Contract. Vendor will reimburse the State for loss or damage of such property while in Vendor's custody.

The State's Data in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or other eventuality. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement. The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B-1379. See G.S. 75-60 *et seq.*

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

If, after award of a contract, the Vendor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such performance, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State agency responsible for the contract.

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

- 21. COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with The Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

- 22. 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 hereto, and the Vendor'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.

- 23. ELECTRONIC RECORDS:** The State will digitize all Vendor responses to this solicitation, if not received electronically, as well as any awarded contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."

- 24. AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the State and the Vendor.

- 25. NO WAIVER:** Notwithstanding any other language or provision in The Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.

- 26. FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of 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.

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

ATTACHMENT E: HISTORICALLY UNDERUTILIZED BUSINESSES INFORMATION

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

Pursuant to G.S. 143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this IFBS. Any questions concerning NC HUB certification, contact the [North Carolina Office of Historically Underutilized Businesses](#) at (919) 807-2330. The Vendor shall respond to question a) and b) below.

- a) Is Vendor a Historically Underutilized Business? **Yes** **No**
- b) Is Vendor Certified with North Carolina as a Historically Underutilized Business? **Yes** **No**

If so, state HUB classification: _____

ATTACHMENT F: CERTIFICATION OF FINANCIAL CONDITION

Name of Vendor: _____

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

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

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

The Vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.

The Vendor is current on all amounts due for payments of federal and state taxes and required employment-related contributions and withholdings.

The Vendor is not the subject of any current litigation or findings of noncompliance under federal or state law.

The Vendor has not been the subject of any past or current litigation, findings in any past litigation, or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of The Contract.

He or she is authorized to make the foregoing statements on behalf of the Vendor.

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

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



Signature Date

Printed Name Title

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

ATTACHMENT G: NCORR RULES AND REGULATIONS

The following are the requirements that Vendor must agree to in order to be awarded any contract under this RFP. If Vendor is unwilling to meet any of these requirements, Proposer should not submit a bid.

1. **No governmental non-competes.** Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor's bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this RFP the Vendor affirms this condition, as directed in the VENDOR EXPERIENCE SECTION 4.5 section of this RFP. This affirmation is a material condition for the State's award of any work under this RFP.
2. **Background Checks.** All proposed or replaced staff must have national criminal background checks available for review by NCORR. Upon selection, respondents will provide copies of current national criminal background checks on any proposed employees for NCORR review and approval.
3. **Availability of Personnel.** It is expected that the proposed personnel will remain committed, as long as those individuals continue to be available to the firm. Please be advised that the awarded Vendor may not change proposed project team members or their fulltime/part-time status during the term of the Contract without the prior written consent of NCORR.
4. **Reporting.** The awarded Vendor will be required to submit reports to NCORR including performance metrics for the Vendor-provided staff. The awarded Vendor will be responsible for developing the template for these monthly reports subject to the approval of NCORR. See Section 6.3
5. **Program Monitoring.** Vendor agrees to assist and cooperate with the Federal grantor agency and NCORR or their duly designated representatives in the monitoring of the project or projects to which this contract relates, and to provide in form and manner approved by NCORR such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
6. **Termination for Cause.** If through any cause, Vendor shall fail to fulfill in a timely or proper manner any obligations under this Contract, or if Vendor shall violate any of the covenants, agreements, or stipulations of the Contract, NCORR shall thereupon have the right to terminate this Contract by giving written notice to Vendor of such termination and specifying the effective date of such termination. Unless a shorter time is determined by NCORR to be necessary, NCORR shall effect termination according to the following procedure:
 - a. **Notice to Cure.** NCORR shall give written notice of the conditions of default, setting for the ground or grounds upon which such default is declared ("Notice to Cure"). The Vendor shall have ten (10) days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default.
 - b. **Notice of Termination.** If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, NCORR may terminate the Contract, in whole or in part. NCORR shall give the Vendor written notice of such termination ("Notice of Termination"), specifying the applicable provision(s) under which the Contract is terminated and the effective date of the termination.
 - c. In such event, all finished or unfinished documents, data, studies, and reports prepared by Vendor entitle Vendor's receipt of just and equitable compensation for any satisfactory work completed on such documents. Notwithstanding the above, Vendor shall not be relieved of liability to NCORR for damage sustained to NCORR by virtue of any breach of this Contract by Vendor. NCORR may withhold any payments to Vendor for the purpose of set off until such time as the exact amount of damages due NCORR from Vendor is determined.

7. **Funding Contingency.** The awarded Contract may be suspended and/or terminated without liability to the State if the CDBG-DR grant is suspended or terminated, and unless and until the State or NCORR receives Community Development funds in an amount that is deemed sufficient to enable it to fund the Contract awarded, the State or NCORR is under no obligation to make any payments to the Vendor.
8. **Civil Rights Requirements.** Vendor shall comply with all civil-rights related requirements, pursuant to 24 CFR § 570.503(b)(5).
9. **Equal Employment Opportunity.** During the performance of this Contract, Vendor agrees to comply with 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."
10. **Anti-Discrimination.** Vendor will comply with the following clauses: Titles VI and VII of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (prohibiting discrimination on the basis race, color, national origin and ensuring that individuals are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age); Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.) (prohibiting discrimination on the basis of sex); Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 (prohibiting discrimination on the basis of disability); Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) (prohibiting discrimination on the basis of handicap); the Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.) (prohibiting age discrimination); Executive Order 11063 as amended by Executive Order 2259; and Section 109 of the Housing and Community Development Act of 1974, as amended.
11. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) is required. 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.
12. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
13. **Environmental Compliance.** If the Contract awarded hereby amounts to more than \$100,000.00, Vendor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7401-7671q.), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11 738, Environmental Protection Agency (EPA) regulations (40

CFR, 15) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the EPA.

14. **Debarment and Suspension (Executive Orders 12549 and 12689).** Vendor is ineligible for an award under this RFP if they are listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with 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.
15. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Vendor and its subcontractors must file the required anti-lobbying certification. Each contracting 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.
16. **Procurement of Recovered Materials.** Vendor must comply with Section 6002 of the Solid Waste Disposal Act, P.L. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶ 7. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
17. **Section 3 Clause.** Vendor will comply with the following clauses from 24 CFR 135.38:
 - a. The work performed under this Contract 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).
 - b. The Parties agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by this Contract, the Parties certify they are under no contractual obligations or other impediment that would prevent them from complying with the part 135 regulations.
 - c. Vendor agrees to send each labor organization or representative or workers with which Vendor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or worker's representative of Vendor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training position, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the expected date the work shall begin.
 - d. Vendor agrees to include this section 3 clause in every subcontract subject to compliance with regulations 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 finding that the subcontractor is in violation of the regulations in 24 CFR part 135. Vendor will not subcontract with any subcontractor where Vendor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
 - e. Vendor will certify that any vacant employment positions, including training positions, that

- are filled (1) after Vendor 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 Vendor's obligations under 24 CFR part 135.
- f. 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.
 - g. 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.
18. **Women and Minority Owned Businesses.** 2 C.F.R. § 200.321 requires that all necessary affirmative steps are taken by the State and Vendor to assure that minority and women's businesses are used when possible, and N.C. Gen. Stat. 143-128.2 establish a ten percent (10%) goal for participation by minority and women owned businesses in total value of work performed for the State.
19. **Access of the State of North Carolina (i.e., its agencies), HUD and Others to CDBG-DR Documents, Papers, and Books.** Vendor agrees to allow the departments and agencies of the State of North Carolina, HUD, the Comptroller General of the United States, and any of their duly authorized representatives access to any books, documents, papers, and records of Vendor which are directly pertinent to the CDBG-DR Program for the purpose of making audits, examinations, excerpts, and transcriptions.
20. **Records.** All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.
21. **Changes.** NCORR may, from time to time, request changes in the scope of the work of Vendor to be performed hereunder. Such changes, including any increase or decrease in the amount of Vendor's compensation which are mutually agreed upon by and between NCORR and Vendor, shall be incorporated in written and executed amendments to this Contract.
22. **Energy Efficiency.** All participants in the projects funded hereby shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).
23. **Personnel.** Vendor represents that it has, or will secure at its own expense, all personnel required in performing the work under this Contract. Such personnel shall not be employees of or have any contractual relationship with NCORR. All of the work required hereunder will be performed by Vendor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and State law to perform such work. No person who is serving a sentence in penal or correctional institution shall be employed to work under this Contract.
24. **Compliance with Office of Management and Budget.** Vendor agrees to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget Circulars A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this contract.
25. **Program Fraud and False or Fraudulent Statements or Related Acts.** Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.

ATTACHMENT H: CDBG-DR RULES AND REGULATIONS***CDBG Compliance Provisions***

The Homeowner/Contractor Agreement will be subject to the following laws, rules and regulations, as the same may be amended from time to time.

- A. Provisions Required by Law Deemed Inserted: Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.
- B. Flood Disaster Protection: This Contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this Contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201 (d) of said Act; and the use of any assistance provided under this Contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

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

- C. Drug Free Workplace: Contractor hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 24 CFR Part 21.
- D. Protection of Lives and Health: Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518) Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 7, 1971, Title 29 – LABOR, shall be observed and Contractor shall take or cause to be taken, such additional safety and health measures as NCORR may determine to be reasonably necessary.
- E. Danger Signals and Safety Devices: Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case Contractor fails or neglects to take such precautions, NCORR may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by NCORR does not relieve the Contractor of any liability incurred under these specifications or contract.
- F. Lead Based Paint Hazards: The reconstruction and rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and its Subcontractors shall comply with the provisions for the elimination and reduction of lead-based paint hazards under Subpart B of said regulations.
- G. Use of Explosives: When the use of explosives is necessary for the prosecution of the work, Contractor shall observe all local, state and federal laws in purchasing and handling explosives. Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

Contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of Contractor or his Surety for damages that may be caused by such use.

- H. Access to Records, Maintenance of Records: NCORR and the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

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

- I. Copyright: No materials, to include but not limited to reports, maps, State provided home plans and specifications, any public record, or documents resulting from this request for prequalification, HRP contractor-homeowner contracts, and related HRP and/or CDBG-DR documents pertaining to procurement, contract administration, contract monitoring, and/or contract auditing, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this Contract that might be subject to copyright shall be the property of NCORR, other agencies of State of North Carolina, and/or agencies of the United States (e.g., HUD and FEMA) and all such rights shall belong to NCORR or such other governmental entities. A prequalified contractor and/or its designer that prepares home plans and specifications for any HRP project shall retain all rights of ownership in any proprietary and/or intellectual property but shall grant limited licenses to NCORR, HUD, FEMA, DOC and homeowners to use these plans and specifications limited to the construction of an HRP project and for any governmental administrative use and/or reporting requirements. The prequalified contractor and/or its design firm may enter into license agreements or otherwise sell their home plans and specifications to other prequalified contractors for use on other NCORR and/or county CDBG-DR HRP projects, HMGP project and/or State DRA projects subject to any State, federal and/or local laws, rules and/or ordinances.
- J. Confidential Findings: Some of the reports, information, data, etc. (e.g., homeowner personally identifying information such as income, tax, social security numbers, birthdates, driver's license numbers), prepared or assembled by NCORR, DOC, HUD, FEMA, counties, other governmental agency, and/or the Contractor under award HRP contracts may be confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the appropriate governmental entity that authored the information, requested the information and/or responsible for the program that the contractor is performing the work that generated the confidential information. Contractor understands that most documents and billing will be public records and contractor will have to have to consult with the governmental entity to determine whether in proposed document may be submitted to the governmental entity with confidential and the method used to maintain confidential if the document contains confidential information.
- K. Conflict of Interest: No member, officer, or employee of NCORR or the local jurisdictions served through this Contract, or agent, consultant, or member of the DPS, or other public official who exercises or has exercised any functions or responsibilities with respect to this Contract during his or her tenure, or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Contract or in any activity or benefit with regard to the Contract.

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

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

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

- L. Interest of Contractor: Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance or services hereunder. Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.
- M. Political Activity: Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.
- N. Personnel: Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with NCORR or other governmental entity involved in other State or federal disaster recovery programs.

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

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

- O. Assignability: Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of NCORR provided that claims for money due or to become due the Contractor from NCORR under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to NCORR.