

STATE OF NORTH CAROLINA

DIVISION OF EMERGENCY MANAGEMENT

REQUEST TO PREQUALIFY CONTRACTORS FOR RESIDENTIAL CONSTRUCTION SERVICES FOR STATE'S HURRICANE MATTHEW HOUSING RECOVERY PROGRAM

**(Rehabilitation Construction, Home Reconstruction, New Home Construction and
Home Elevation Construction)**

Request for Prequalification Applications # 19-RFP-014364-WAX

Date of Issue: July 17, 2018

Application Opening Date: August 6, 2018 at 2:00 PM ET*

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

Location (Fed Ex and UPS):
3030 Hammond Business Place
Raleigh, NC 27603

Mailing Address:
4227 Mail Service Center
Raleigh, NC 27699-4218

Direct all inquiries concerning this Request for Prequalification to:

Angela Wainwright
Purchasing Officer
Email: angela.wainright1@ncdps.gov
Phone: 919-324-6476

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

***NOTE: Applications received before the Opening Date will be processed.**

SEND ALL CONTRACTOR PREQUALIFICATION APPLICATIONS DIRECTLY TO THE ISSUING AGENCY ADDRESS SHOWN ABOVE.

IMPORTANT NOTE: On the front of the sealed package, indicate Contractor's name, the Request for Prequalification (RFP) number, and the date for receipt of application specified above.

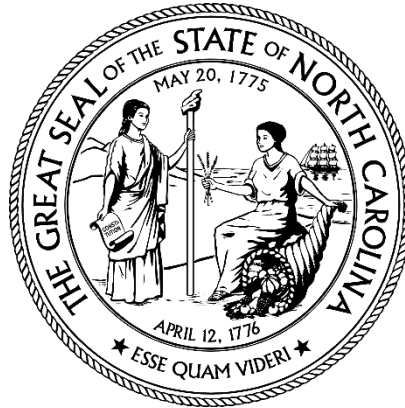
Any changes to the RFP and a summary of all questions submitted and answers will be posted on the internet as an Addendum, located under the RFP # listed above.

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

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

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

NOTE: All Contractors are **strongly urged and cautioned** to attend a **PRE- CONFERENCE MEETING** on **August 1, 2018 at 11:00 a.m. at NCEM, Situation Room, 1636 Gold Star Drive, Raleigh, NC 27607.** NCEM requests that Contractors attending this conference pre-register and submit questions by calling Mrs. Angela Wainright, DPS-Purchasing & Logistics, 919-324-6476, to confirm two (2) business days in advance of the conference.



STATE OF NORTH CAROLINA

Request for Prequalification No. 19-RFP-014364-WAX

For internal State agency processing, please provide your company's Federal Employer Identification Number or alternate identification number (e.g. Social Security Number). Pursuant to North Carolina General Statute §132-1.10(b) this identification number shall not be released to the public. **This page will be removed and shredded, or otherwise kept confidential**, before the procurement file is made available for public inspection.

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

Contractor's ID Number:

Federal ID Number or Social Security Number

Contractor Name



**STATE OF NORTH CAROLINA
DEPARTMENT OF PUBLIC SAFETY**

Refer <u>ALL</u> Inquiries regarding this Request for Prequalification to: Angela Wainright 919-324-6476 Angela.wainright1@ncdps.gov	Request for Prequalification # 19-RFP-014364-WAX
	Applications shall be submitted by: on rolling basis, until December 31, 2018 @ 2:00pm EST
	Contract Type:
	Commodity No. and Description:
	Using Agency: Emergency Management
	Requisition No.:

EXECUTION

In compliance with this Request for Prequalification, and subject to all the conditions and Attachments C, D, E and F herein, the undersigned Contractor offers and agrees to enter into contracts based upon the prices set opposite each item within the Bid Pricing Book attached to this Request for Prequalification. The bid pricing book referenced in this solicitation does not include applicable sales taxes, 12.5 percent contractor profit fees or 15 percent overhead fees which are allowable charges that shall be added to the contract amounts for contracts awarded to prequalified contractors by the State or Eligible Local Government. By executing this form, the undersigned Contractor certifies that its application is submitted competitively and without collusion (G.S. 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. Gen. Stat. §143-59.2), and that it is not an ineligible Contractor as set forth in G.S. 143-59.1. False certification is a Class I felony. Furthermore, by executing this application, the undersigned certifies to the best of Contractor's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by G.S. 143-48.5, the undersigned Contractor certifies that it, and each of its sub-contractors for any Contract awarded as a result of this Request for Prequalification, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system. G.S. Gen. Stat. §133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of any response in this Request for Prequalification, you attest, for your entire organization and its employees or agents that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

IMMEDIATE AND CRITICAL NEED TO PRE-QUALIFY CONTRACTORS: There is a critical need to retain construction contractors as soon as possible to perform disaster recovery services. The initial solicitation end date is October 31, 2018 and may be extended for three 30 day intervals ending December 31, 2018. The state however will review and provide decisions within 5 business days after receipt of fully signed, executed and complete applications that are received any time during this solicitation period. As a result, any fully completed application received by the state within or after 1 business day after the solicitation opening period begins will be review reviewed and decisions will be provided within 5 business days after receipt of fully signed and executed applications. The overall intent of this timing and review process is to secure qualified vendors as soon as possible and ensure there is adequate contractor capacity to address up to 1,200 construction work orders spread over 50 counties in eastern North Carolina

Failure to execute/sign application prior to submittal shall render this application invalid and it WILL BE REJECTED.

CONTRACTOR		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO CONTRACTORS ITEM #11):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF CONTRACTOR:	FAX NUMBER:	
CONTRACTOR'S AUTHORIZED SIGNATURE:	DATE:	EMAIL:

A contractor prequalified to receive contracts shall remain eligible to receive contracts based on the terms and conditions of this solicitation until all State disaster recovery efforts have been completed, the contractor's requests to be removed from the list of prequalified contractors, or contractor is removed from the list of prequalified contractors because of performance issues.

ACCEPTANCE OF APPLICATION

If any or all parts of this application are accepted by the State of North Carolina, an authorized representative of Department of Public Safety shall affix his/her signature hereto and this document and all provisions of this Request for Prequalification along with the Contractor 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 Contractor(s).

FOR STATE USE ONLY: Proposal accepted this ____ day of _____, 2018, as indicated on the attached certification, by _____ (Authorized Representative of Department of Public Safety), and Contractor is prequalified to enter into contracts authorized under CDBG-DR Program.

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ATTACHMENT F: PREQUALIFICATION FORM & POLICY (12 Pages)
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EXHIBIT 2: BLANK BID PRICING BOOK (see: <https://www.ncdps.gov/documents/rfp-19-rfp-014364-wax>)

1.0 PURPOSE

NCEM is seeking to qualify highly skilled prime construction contractors to perform, or cause to be performed, rehabilitation, reconstruction, mitigation, elevation and new construction of single-family residential structures that have been damaged by 2016 North Carolina Flood events, or future disasters that may occur while they remain qualified under this engagement, and remain in good standing with their performance with NCEM. Funding supporting these construction services are supported by grants to the State of North Carolina from the HUD Community Development Block Grant Disaster Recovery (“CDBG-DR”) program or other State, Federal and local funding sources.

2.0 GENERAL INFORMATION

2.1 REQUEST FOR PREQUALIFICATION APPLICATION

The Request for Prequalification is comprised of this RFP document, any attachments, and any addenda released before Contractors have been prequalified. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference. Contractor may attach its application to this RFP for submission; however, any and all additional, modified or conflicting terms and conditions submitted on or with Contractor’s Application shall be disregarded and shall not be considered a part of any contract arising from this RFP. Any attempt to delete or avoid the force of the previous sentence shall render Contractor’s Application invalid, and it shall not be considered.

2.2 E-PROCUREMENT SOLICITATION

ATTENTION: This is NOT an E-Procurement solicitation. Paragraph #14 of Attachment D: North Carolina General Contract Terms and Conditions do not apply to this solicitation.

2.3 E-MAILING/FAX INSTRUCTIONS

Instructions: Applications may be submitted via e-mail or facsimile (FAX) machine, in response to this Request for Prequalification: (Email Angela Wainwright at angela.wainwright1@ncdps.gov, or fax (919) 715-3731). Submission by any means shall include this RFP, as provided in section 2.5.

Applications shall be submitted by: Applications may be submitted on a rolling basis until December 31, 2018 @ 2:00pm. Decisions will be made within five (5) business days of receipt of application.

2.4 REQUEST FOR PREQUALIFICATION SCHEDULE

Event	Responsibility	Date and Time
Issue Request for Prequalification	State	July 17, 2018
Submit Written Questions and every 30 days thereafter	Contractor	July 31, 2018
Pre-Conference Meeting	State	August 1, 2018 11am-1pm

Provide Responses to Questions and every 30 days thereafter	State	August 3, 2018
Submit Applications	Contractor	Open until December 31, 2018
Prequalification Awards	State	Open-Decisions on Applications will be made within five (5) business days
Prequalification Effective Date	State	Date Contractor receives notice that application was approved

2.5 QUESTIONS ABOUT PREQUALIFICATION

Purpose: Upon review of the RFP documents, Contractors may have questions to clarify or interpret the RFP in order to submit the best application possible. To accommodate the Prequalification Questions process, Contractors shall submit any such questions by the above due date. Thereafter, questions may be submitted anytime thereafter, but NCEM, state and local agencies who utilize this contract, will answer them once every 30 days until the prequalification period for this solicitation is closed.

Instructions: Written questions shall be emailed to angela.wainright1@ncdps.gov by the date and time specified above. Contractors should enter “Request for Prequalification # 19-RFP-014364-WAX Questions” as the subject for the email. Questions submittals should include a reference to the applicable RFP section and be submitted in a format shown below:

Reference	Contractor Question
RFP Section, Page Number	Contractor 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, available on the State’s Interactive Purchasing System (IPS), <http://www.ips.state.nc.us>, and shall become an Addendum to this RFP. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Contractors shall be entitled to rely *only* on written material contained in an Addendum to this RFP.

2.6 PREQUALIFICATION APPLICATION CONTENTS

The below items are required to be submitted by the Contractor in order to be prequalified. Contractor shall populate all attachments of this RFP that require the Contractor to provide information and include an authorized signature where requested, as outlined below. Contractor Responses shall include the following items and they should be arranged in the following order (unless specifically excluded):

- a) Completed and signed version of EXECUTION PAGE (page 3 of this RFP), along with the body of the RFP (pages 2-20). Applicants should execute the acknowledge that they have read, understood and will be bound by all provisions and requirements set forth in Attachments C, D, E and F, in lieu of attaching those Attachments to their applications.

- b) ATTACHMENT F: PREQUALIFICATION FORM AND POLICY
- c) SECTION 4.5 (REFERENCES) of this RFP.
- d) Signed receipt pages of any addenda released in conjunction with this RFP.
- e) ATTACHMENT C: INSTRUCTIONS TO CONTRACTORS
- f) ATTACHMENT D: NORTH CAROLINA GENERAL TERMS AND CONDITIONS
- g) ATTACHMENT E: CDBG-DR RULES AND REGULATIONS

2.7 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

- A. **ADDENDUM / ADDENDA:** When the terms, conditions, specifications, responses to inquiries from Contractors, and/or scope(s) of work are changed, removed and/or added prior to the public opening of the Applications, an addendum addressing the nature of such change(s) will be issued in writing by DPS Purchasing & Logistics. When required, Contractors must sign and include an addendum and include it in the proposal and the failure to sign and return this type of addendum will, in most cases, result in the rejection of the proposal.
- B. **APPLICATION:** This Request for Prequalification and Contractor's Application.
- C. **AUDIT:** The contract(s) awarded pursuant to this RFP are subject to audits by state and federal agencies and/or their authorized independent auditors. The auditors may conduct of contract performance, financial and/or forensic/fraud audits.
- D. **BID PRICING BOOK:** The State has prepared and attached an HRP Benchmark Bid Pricing Book that will be used for project execution of the award or assignment of HRP Contracts. A copy of the Bid Pricing Book is listed as Exhibit 1 to this RFP and may be accessed on the DPS website at <https://www.ncdps.gov/documents/rfp-19-rfp-014364-wax>. Contractors may accept the pricing contained in NCEM's Bid Pricing Book, or they may provide alternative pricing of their own in Exhibit 2 (Blank Bid Book, also found at <https://www.ncdps.gov/documents/rfp-19-rfp-014364-wax>), AFTER the Contractor has been prequalified and when directed by NCEM to do so through a work order (see Section 4.1 for more detail).
- E. **BUYER:** The State Agency employee or such other persons the State Agency shall delegate and authorized to: place a work order with a Prequalified Contractor to implement an HRP program for a specific home, and that order will also require the Contractor designated by the State Agency and/or designated for a geographical area/counties under the contract to provide the State Agency with construction management services required by this RFP during the HRP construction of the specified home; requests services during the Prequalification period; or request work on behalf of an eligible local governmental entity.
- F. **CDBG-DR:** The Community Development Block Grant – Disaster Recovery. This is a federal grant award issued to support Hurricane Matthew recovery efforts, and related disaster events in North Carolina authorized and funded by the U.S. Department of Housing and Urban Development and is awarded to the State of North Carolina.

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- G. CONSTRUCTION MANAGER or CM:** A North Carolina licensed general contractor with construction management experience awarded a contract by STATE pursuant to Request for Proposal 19-RFP-014320-WAX (and any future awards for construction management issued by the STATE) that will provide STATE construction management services that will include management of the Contractor's HRP construction of a home.
- H. CONSULTANT:** State agencies or ELGs will hire one or more consultants to assist in the determination of CDBG-DR eligibility of homeowners who have submitted applications under the HRP and, as part of the eligibility process, the consultants will perform damage and environmental assessments for each home. After a home is determined to be eligible for HRP and the program determined (rehabilitation, reconstruction, elevation and/or new construction), the State Agency will issue a construction contract to a prequalified Contractor and the Construction Manager will coordinate the work performed under the contract with the State Agency, homeowner, Contractor and Consultant to make sure the work performed under the contract complies with CDBG-DR requirements (including reporting and CDBG-DR case management by Consultant) and construction work and any environment radiation/abatement completed in a timely manner with the specified quality and workmanship.
- I. CONTRACT LEAD:** Representative of NCEM, the State Agency, or ELG who corresponds with potential Contractors in order to identify and contract with that Contractor providing the greatest benefit to the State and who will administer this contract for the State.
- J. CONTRACTOR or CONTRACTORS:** The contractors prequalified pursuant to this Request for Prequalification to construct HRP homes consisting of rehabilitation, reconstruction, elevation and new construction.
- K. DOC:** North Carolina Department of Commerce, which is the administrating state agency of the CDBG-DR program and funding.
- L. DPS:** North Carolina Department of Public Safety.
- M. Grant Eligibility Determination: State agency** Consultants will assist NCEM in making final CDBG-DR (HRP) determinations that will include damage and environmental assessments, which will assist CM and Contractor in determine the scope of work for the grant eligible home, the corresponding services and goods in the HRP Bid Pricing Book, and the contract between the homeowner and Contractor.
- N. HRP:** State of North Carolina Housing Recovery Program.
- O. NCEM:** North Carolina Division of Emergency Management of the Department of Public Safety. NCEM is assigned a primary role in CDBG-DR contract management for CDBG-DR funded services during the course of multi-year grant awards from the US Department of Housing and Urban Development. When the term "NCEM" is used in this solicitation it may also include other State Agencies who may have responsibility in the deployment of HRP construction service work orders during the term of this contract.

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- P. PE:** Professional Engineer.
- Q. RA:** Registered Architect.
- R. STATE:** The State of North Carolina, including any of its sub-units and political subdivisions recognized under North Carolina law.
- S. STATE AGENCY:** For purposes of this RFP, any sub-unit within the executive branch of the State, State Officials or Council of State Agencies that may have statutory, managerial or regulatory duties arising from or related to this RFP, HRP, CDBG-DR, State Disaster Recovery Acts of 2016, 2017 and 2018, and subsequent acts, and/or Hazard Mitigation Grant Program (HMGP) and these sub-units include but are not limited to: Governor's Office, Department of Commerce, Department of Public Safety (including NCEM and Division of Purchase & Logistics), Department of Administration (including State Construction Office and Purchase and Contract), State Building Commission, Department of Insurance, Department of Labor, Department of Insurance, Office of State Auditor, Office of the State Controller, Office of State Budget and Management, State Treasurer, Office of the Attorney General, and State licensing boards.
- T. WORK ORDER:** Specific, written authorization to perform the task(s) listed therein.
- U. ZONES:** Contractor must be able to perform services in one or more of the zones described in Attachment A.

2.8 NOTICE TO CONTRACTORS REGARDING TERMS AND CONDITIONS

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

If Contractors have questions, issues, or exceptions regarding any term, condition, instruction or other component within this RFP, those *shall* be submitted as questions to the Agency prior to submission of an Application and before the stated deadline. If the State determines that any changes will be made as a result of the points raised, then such decisions will be communicated in the form of an addendum. Other than through this process, and subject to the provisions of section 2.1, the State rejects and shall not be required to evaluate or consider any additional or modified terms and conditions or Instructions to Contractor submitted with Contractor's application. This applies to any language appearing in or attached to the application as part of the Contractor's application that purports to vary any terms and conditions or CDBG-DR rules, requirements, standards, HRP requirements and/or the State's instructions herein or to render the prequalification designation as non-binding or subject to further negotiation. Contractor's application to this RFP shall constitute a firm offer to perform HRP contracts assigned to Contractor or awarded to Contractor after competitive bidding. **By execution and delivery of a response to this RFP, Contractor agrees that any additional or modified terms and conditions, including Instructions to Contractors, whether submitted purposely or**

inadvertently, or any purported condition to the offer shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Contractor's Application.

3.0 METHOD OF AWARD AND APPLICATION EVALUATION PROCESS

In light of the estimated 1,200 HRP construction projects, the State will seek prequalify multiple contracts and there is no limit on the number of Contractors to be prequalified. Pursuant to CBDG-DR rules, the State Agency's prequalification will be open, in that, it will be re-advertised every six months to allow additional Contractors to become prequalified to perform HRP work. the State Agency may re-advertise prequalification within a shorter time period as the State Agency may have need.

The State shall review the applications to this RFP to confirm that they meet the specifications and requirements. The State reserves the right to waive any minor informality or technicality in any application.

The State may request additional formal responses or submissions from any or all Contractors for the purpose of clarification or to amplify the materials presented in any part of the Application. Contractors are cautioned, however, that the State is not required to request clarification, and often does not. Therefore, all Applications should be complete and reflect the most favorable terms available from the Contractor. Prices quoted cannot be altered or modified as part of a clarification.

In addition to the requirements below, Contractors shall complete the Prequalification Form in Attachment F. Contractors' qualifications to perform HRP contracts will be scored and evaluated as reflected in the Prequalification Form, the policy attached thereto, and the scoring matrix (Attachment G). The minimum scoring for prequalification as to a Contractor's ability to perform HRP contracts shall be 70 out of 130.

All Contractors that receive a total combined score of 70 shall be prequalified for bidding on and/or being assigned HRP contracts. Contractors not qualified will be informed of the reasons and scores that resulted in the decision to prequalify. Contractors shall follow the policy in Attachment F if they desire further review of the prequalification decision or want to protest the decision. Contractors denied prequalification shall be permitted to seek prequalification when the State re-advertises the request for prequalification.

3.1 CONFIDENTIALITY DURING PROCESS

During the evaluation period and prior to granting prequalification, all information concerning the Application and evaluation is confidential, and possession of the Application and accompanying information is limited to personnel of the issuing agency and any third parties involved in this procurement process, and to the committee responsible for participating in the evaluation. Any attempt on behalf of a Contractor to gain such confidential information, or to influence the evaluation process (e.g., contact anyone involved in the evaluation, criticize another Contractor, offer any benefit or information not contained in the Application) in any way is a violation of North Carolina purchasing law and regulations and shall constitute sufficient grounds for disqualification of Contractor's application from further evaluation or consideration in the discretion of the State.

3.2 INTERPRETATION OF TERMS AND PHRASES

This Request for Prequalification serves two functions: (1) to advise potential Contractors of the parameters of the solution being sought by NCEM; and (2) to provide (together with other specified documents) the terms of the contract(s) that may result from subsequent bidding or assignment as a result of this procurement. As such, all terms in the Request for Prequalification shall be enforceable as contract terms in accordance with the General Contract Terms and Conditions when a Prequalified Contractor is awarded or assigned an HRP contract. The use of phrases such as “shall,” “must,” and “requirements” are intended to create enforceable contract terms and conditions. In determining whether Applications should be evaluated or rejected, NCEM will take into consideration the degree to which Contractors have proposed or failed to propose experience and/or qualification that will satisfy NCEM’s needs as described in the Request for Prequalification. Except as specifically stated herein, no one requirement shall automatically disqualify a Contractor from consideration. However, failure to comply with any material requirement pertaining to scope of work and/or qualifications may result in NCEM exercising its discretion to reject an Application in its entirety.

4.0 REQUIREMENTS

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

4.1 APPROVED PRICING CHARGES AND COSTS

Construction Costs: Contractors that have been Prequalified will have to: (1) complete the Bid Book when directed by NCEM through a work order; or contractors may (2) accept the pricing contained in NCEM’s Benchmark Bid Book that will incorporate, at a minimum, publicly available construction pricing information in the three construction zones, which may be further modified based on the Bid Books NCEM receives from Prequalified Contractors; or (3) accept the pricing contained in NCEM’s Benchmark Bid Book with Prequalified Contractor’s proposed pricing for specific items and/or scopes of work (Sections 5.3, 5.4 and 5.5 below). It is NCEM’s intent that the Benchmark Bid Book, in conjunction with a Prequalified Contractor’s Bid Book or price adjustments to NCEM Benchmark Bid Book which shall establish the total construction cost of Prequalified Contractor’s work on any HRP home project and will be used to establish the total amount of the contract between the Homeowner and Prequalified Contractor for the HRP authorized scope of work, other scope stated in the work order, and will be used to calculating change orders.

Profit and Overhead Costs: The bid book unit prices attached to this Request, do not include allowable 12.5 percent contractor profit fees or 15.0% overhead fees. These fees are allowable charges, separate from construction costs, that may be added to the approved Contractor invoices which are submitted to the State or Eligible Local Government.

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

Contractor Mobilization, Storage and Travel Charges: In addition to the above noted construction costs, overhead, profit and taxes, prequalified contractors may submit to NCEM recommended travel, lodging and storage costs that can support work crew members who must stay overnight to complete work orders. In order to pay proposed mobilization and travel charges, estimated charges must be provided in advance and approved by NCEM, as part of the work order acceptance. Secure storage costs for construction goods and material that are within market rates can be reimbursed with copies of receipts or paid storage unit contracts. Generally, travel related charges must comply with travel that are paid at rates that are paid to state employees. Complete information on state employee travel rates and payment policies is found at:

<https://www.osbm.nc.gov/budman5-travel-policies>

Contractor shall not invoice for any amounts not specifically allowed for in this RFP, that is, Contractor's may not bill NCEM or any other State agency for any costs in putting together the requested application.

4.2 INVOICES

In general, Prequalified Contractors may only submit payment applications to NCEM through the CM after an award or assignment of a HRP Contract and only in accordance with the terms of that Contract and the North Carolina Contract Terms and Conditions (Attachment D).

However, NCEM may request certain Prequalified Contractors to provide cost estimating, copies of proposed home plans and specifications, pre-mobilization (e.g., provide architectural, engineering, land surveying, retention of subcontractors, and/or consultation on environmental remediation, etc.) or such other services beneficial to NCEM's implementation of HRP that Prequalified Contractors may submit invoices to NCEM for payment whether or not the fees, expenses and/or costs are allowable CDBG-DR. NCEM shall request pre-contract services from Prequalified Contractors through Work Orders. The standard format for invoicing shall be Single Invoices meaning that the Contractor shall provide the Buyer with an invoice for each Work Order. Invoices shall include detailed information, supporting documentation and/or deliverables requested in a Work Order to allow NCEM or their designee to verify fees, costs and/or expenses. At a minimum, the following fields shall be included on all invoices:

Contractor's Billing Address, Customer Account Number, NC Contract Number, Work Order Date, Buyers Order Number, Manufacturer Part Numbers, Contractor Part Numbers, Item Descriptions, Price, Quantity, and Unit of Measure.

4.3 FINANCIAL STABILITY

Each Contractor shall submit the following financial documentation with its Proposal: most recent annual balance sheet, income statement/statement of retained earnings and cash flow statement, or most recent

statement of financial condition by an independent auditor. Financial information, statements and/or documents submitted with a proposal shall be evaluated to determine: whether the Contractor has sufficient ability to perform the contract; whether the Contractor is able to meet its short term obligations, debts, liabilities, payroll, and expenses; whether Contractor has provided complete, reliable and accurate financial information regarding its business operation; whether the Contractor is financially solvent; and whether Contractor has sufficient cash flow and/or available financing from a financial institution to perform the proposed contract for 60 days without receiving payment from the State. Financial information of non-public entities may be marked as confidential in accordance with paragraph 14 (CONFIDENTIAL INFORMATION) of ATTACHMENT C: INSTRUCTIONS TO CONTRACTORS.

4.4 CONTRACTOR EXPERIENCE

In its Application, Contractors shall demonstrate experience with residential rehabilitation, reconstruction, environmental mitigation (e.g., abatement of lead, asbestos, mold, soil contamination, well-water contamination), elevation and new construction. Also, state Contractor's experience with local, Federal, and State statutory requirements for grants especially U.S. Housing and Urban Development CDBG-DR, Federal Emergency Management Administration grants programs, State or local government disaster recovery programs and/or experience with HUD public housing programs. Lack of disaster recovery experience, experience with certain types of environmental mitigation, or certain types of construction (elevating homes) will not, by themselves or in combination, preclude Contractors from being prequalified. However, lack of experience will be used by NCEM and/or its CM(s) in assigning HRP contracts and/or allowing contractors to competitively bid on certain types of HRP Contracts. Contractors should state their experience (e.g., a Contractor that has only repaired and renovated homes should not represent experience in new home construction or reconstruction; a Contractor that has not elevated a home or has not abated asbestos should not represent experience in performing such work because of the safety health risks involved in not properly performing that work, etc.) Contractors are further warned that misrepresenting experience may result in violations state and federal False Claim Act violation. Contractor shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.

4.5 REFERENCES

Contractor shall provide at least three (3) references for which your company has provided Services of similar size and scope to that proposed herein (these may be the same projects reported in the Prequalification Form). The State may contact these references users to determine the Services provided are substantially similar in scope to those proposed herein and Contractor's performance has been satisfactory as part of the evaluation of the Application and/or prior to the award or assignment of an HRP contract to a Prequalified Contractor. **Note:** positive written references from owners, designers and/or construction managers for the projects listed below will be scored if provided with a Contractor's Application.

COMPANY NAME	CONTACT NAME	TELEPHONE NUMBER & EMAIL ADDRESS

4.6 BACKGROUND CHECKS

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

- a) Any **criminal felony conviction**, or conviction of any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception, of Contractor, its officers or directors, or any of its employees or other personnel to provide services on this project, of which Contractor 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 Contractor of which it has knowledge or a statement it is aware of none;
- c) Any **regulatory sanctions** levied against Contractor 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 Contractor 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 Contractor has knowledge or a statement that there are none.
- e) Any **civil litigation**, arbitration, proceeding, or judgments pending against Contractor during the three (3) years preceding submission of its proposal herein or a statement that there are none.

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

4.7 CONTRACTOR'S REPRESENTATIONS

- a) Contractor warrants that qualified personnel shall provide Services under this Contract in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the industry. Contractor agrees that it will not enter any agreement with a third party that may abridge any rights of the State under this Contract. Contractor will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the State. Names of any third-party vendors or subcontractors of Contractor may appear for purposes of convenience in Contract documents; and shall not limit Contractor's obligations hereunder. Contractor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
- b) If any Services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Contractor's proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract. Unless otherwise expressly provided herein, Contractor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Contractor to provide and deliver the Services and Deliverables.
- c) Contractor warrants that it has the financial capacity to perform and to continue perform its obligations under the contract; that Contractor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Contractor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

5.0 SCOPE OF PREQUALIFICATION

5.1 SCOPE OF SERVICES

NCEM is seeking to qualify skilled prime construction contractors to perform, or cause to be performed, rehabilitation, reconstruction, mitigation, elevation and new construction of single-family residential structures in compliance with local, Federal, and State statutory requirements for grants under HUD CDBG-DR program for 2016 North Carolina flood events, related to Hurricane Matthew, other applicable disaster events, and future CDBG-DR allocations within HUD's contract period. Prequalified contractors may also be selected for: (1) other state or eligible counties/local government units (ELG) funded, federal grant funded programs such as buyouts/acquisitions (i.e., demolition work and decommissioning wells and septic systems); repairs, reconstruction or new construction of modular homes/manufactured homes; small rental unit repairs; and/or multi-family rental homes (1 to 4 units); (2) contracts with ELGs participating in the State's CDBG-HRP projects to perform disaster recovery related housing repairs and construction services; (3) contract with NCEM and/or counties for Federal Emergency Management Administration's Hazard Mitigation Grant Program Projects (reconstruction, elevation and/or acquisition projects); and (4) State funded projects or work orders involving residential construction. Based on the foregoing, contractors are encouraged to list all construction experience relevant to the single-family and multi-family construction projects (e.g., condominiums, townhomes, apartment building, public housing construction experience, dormitory

construction, barracks construction, etc.) NCEM, other applicable state agencies, or the county selecting a prequalified contractor will work with the prequalified contractor to satisfy all contracting requirements for these other disaster recovery programs. NCEM or other applicable state agencies will assist and coordinate with the ELGs regarding the use prequalified contractors approved through this solicitation but priority of assignment/deployment will be given to the implementation of the State's CDBG-DR Program when HRP projects become available after grant eligibility determinations have been made with completed damage and environment assessments.

NCEM's prequalification of Contractors is intended to create an "on-call" Contractor list to assign HRP projects based on the work areas requested by the Contractors, work/project capacity, experience with certain types of construction, experience with certain type of environmental abatements, Bid Book Pricing and such other considerations that may be identified in grant eligibility determinations and CDBG-DR rules/standards and/or NCEM/DOC best practices and/or financial controls. The prequalification and subsequent contracting process may be compared to a multiple Indefinite Delivery/Indefinite Quantity (IDIQ) contracting process. Notwithstanding the above comparisons, Contractor(s) shall be prequalified to be assigned HRP construction projects (all types) based upon capacity, capability, and performance directly, through a local unit of government, or through a third-party grant administrator. Assignment of HRP projects will be the preferred method but NCEM reserves the right to use competitive bidding if doing so is in the best interest of the HRP and/or specific areas or communities. NCEM will develop a policy/procedure to fairly assign HRP construction projects to prequalified contractors based on the construction zones/counties that the prequalified contractors have identified in the applications where they are willing perform work and work/project capacities indicated in their proposals. Prequalified contractors' performance will also be considered in assigning projects as HRP projects are completed.

Contractor(s) must demonstrate the ability to provide services in some or all of the work zones listed in Attachment A or the Contractor must identify the counties it will build HRP projects in.

Additionally, Contractor(s) must demonstrate the ability to mobilize within 30 days of award (which shall include obtaining homeowner approval of construction documents and consent to perform the work, design, permitting, surveying, temporary utilities, etc.) and complete assigned construction projects within the contracted time (subject to environmental remediation, construction in most cases should not to exceed 90 days for rehabilitation, 120 days for rehabilitation and reconstruction projects and 150 days for elevation projects) to reduce potential hazards to public welfare and safety.

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

5.2 DESCRIPTION OF SERVICES AND REQUIREMENTS

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

<https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-01007.pdf> and are subject to change after the public comment period.

Prequalified contractors that have new home construction plans that comply with HUD CDBG-DR resilient construction standards and North Carolina State Building Code, or have new home plans that they are willing to make compliant to HUD's resilient construction standards and North Carolina State Building Code may be used in the award/assignment of HRP home projects. Prequalified contractors and/or their design teams can negotiate reasonable cost and fees for the aforementioned design services. Contractor prequalification applicants shall not submit Contractor-developed plans with the Application. Contractor-developed plans may be submitted to NCEM after receipt of notice that the contractor's application for prequalification has been approved along with any requests for fees and costs associated with any prequalified contractor's development of the aforementioned single-family home plans.

Separately, NCEM will also retain a design firm to develop sample floor plans for 2-bedroom, 3-bedroom, 4-bedroom and such other home floor plans and elevations that homeowners may select for new construction or reconstruction, which will comply with HUD CDBG-DR resilient construction standards and North Carolina State Building Code. Once NCEM's home floor plans have been developed and approved for construction, any prequalified contractor may use these plans.

5.3 REHABILITATION SCOPE OF WORK

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

- a) Development of a thorough scope of necessary repairs using an NCEM prescribed form;
- b) Obtaining all necessary state and local permits and approvals prior to the commencement of the work for each structure;
- c) Providing architectural and house plan renderings;
- d) Demolition of damaged interior and exterior materials;
- e) Foundation leveling, repair, and/or elevation;
- f) Structural damage repair;
- g) Building envelope repair, including:
 - Roof repair or replacement and attendant damage
 - Door and window replacement
 - Siding /veneer repair or replacement
 - Mechanical (HVAC), electrical, and plumbing systems repair or replacement
 - Drywall repair or replacement
 - Rough and trim carpentry;
- h) Surface preparation and painting;
- i) Flooring repair or replacement;
- j) Cabinet and appliance replacement;
- k) Lead-based paint mitigation;

- l) Specialty construction elements associated with historic properties, including coordination with the North Carolina Historical Commission or State Historic Preservation Office (SHPO), as well as other local historic districts and stakeholders in other jurisdictions;
- m) Wind mitigation and retrofitting measures;
- n) Specialty construction elements associated with Green Building Construction techniques as required by HUD);
- o) Addressing special needs accessibility requirements; and
- p) Conducting close-outs for each project, which may include obtaining certificate(s) of occupancy from applicable state and local authorities.

5.4 RECONSTRUCTION AND NEW CONSTRUCTION SCOPE OF WORK

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

- a) Coordination with the property owner and his/her family from assignment to obtaining a certificate of occupancy for closing;
- b) Utility disconnection and deactivation;
- c) Demolition of existing structure;
- d) Debris removal in accordance with all federal, state, and local requirements, including the disposal of potential asbestos containing materials;
- e) Providing architectural and house plan renderings;
- f) Site preparation;
- g) Construction of new residential structures including 2, 3, and 4-bedroom floor plans in accordance with all applicable local and state codes and standards; and
- i) Accessibility and design of projects to comply with the American with Disabilities Act of 1990 (if applicable) known as ADA requirements with HUD exceptions.

5.5 ELEVATION/MITIGATION SCOPE OF WORK

Elevation Process

Each home elevation will consist of steps to produce the construction documents for the local authority having jurisdiction approval. These steps will require multiple site visits by various professionals to develop the necessary documents needed for complete construction documents.

Contractor and Contractor's PE/RA will schedule or provide services as follows:

1. Site Survey

All homes that are deemed to need elevations by Contractor (or another service provider) will require a land survey and elevation certificate. The site survey will be scheduled by Contractor to visit the home to conduct a survey. The survey should include property lines, existing setback measurements, the footprint of existing home, elevation heights, and grade heights. When the survey has completed a copy of the land survey will be submitted to the PE/RA for review then submitted to the Contractor.

2. Geotechnical Soil Borings

Geotechnical soil borings will be needed for clarification on soil types at properties where home elevation is required. The Contractor will schedule land survey visit with geotechnical soil boring visit. Two soil borings are required per property and test results will be submitted to the PE/RA office for review. The PE/RA could deem the soil test is not required if testing results are already supplied for adjacent homes, this will be the decision of the PE/RA who will then notify to the Contractor.

3. Architectural Consultation Process

Homeowner will review pre-developed design concepts of the PE/RA and, at the time homeowner agrees to the elevation process, the PE/RA will conduct a survey of pre-existing conditions. When the consultation is completed the PE/RA can proceed with completing the construction documents for the Contractor.

4. Homeowner Construction Document Presentation

Once the construction documents are completed by the Contractors' PE/RA, and approved and signed by the homeowner, a new construction or alterations permit will be secured by the Contractor and construction may begin.

5.6 ADDITIONAL REQUIREMENTS

- a) Provide professional labor, equipment, and materials adequate to perform the work in accordance with the scope of work issued for each eligible applicant's residential structure while ensuring that all applicable housing standards and codes are met;
- b) Comply with all applicable local, state, and federal laws, regulations, and guidelines, which may include: HUD Community Development Block Grant disaster laws, regulations, and guidelines; the Davis Bacon Act (for repairs to properties containing more than eight (8) units); and Section 3 of the Housing and Urban Development Act of 1968;
- c) Mobilize in the awarded Zone(s) within 30 days from the execution of a Work Order;
- d) Provide documentation and tracking of construction progress;
- e) Meet with individual property owners to review the scope of work to be performed, including establishing a work schedule acceptable to property owners and reviewing work upon final inspection;
- f) Meet NCEM's 90-day, 120-day or 150-day work completion requirement for the HRP Project from the Notice to Proceed, homeowner consent/contract execution and/or permitting, whichever is later, and subject to environmental abatements that may impact a Contractor's schedule;
- g) Meet all federal, state, and local requirements for the transport and disposal of municipal solid, industrial, hazardous, and other wastes from demolished structures; and
- j) Provide a one-year warranty, and a third-party ten-year structural warranty.
- k) Assist homeowners in vacating their damaged home, if necessary. Moving services will primarily be authorized to support the elderly and disabled homeowners, and NCEM will coordinate with the approved contractors to minimize risk in the administration of these services.

5.7 PREQUALIFICATION TERM

Prequalification shall remain open until all HRP homes are under contract for construction. Any contract resulting from this RFP shall be effective from contract execution until June 30, 2021. NCEM, at its own discretion, may extend any contract awarded pursuant to this RFP for up to two additional one-year terms, subject to terms and conditions mutually agreeable to NCEM and the Contractor. A Contractor's prequalification may be rescinded because of poor performance on HRP project, material breaches of contract, substantiated nonpayments to subcontractors/valid payment bond claims, substantiated complaints from homeowners that are serious (e.g., violations of policies concerning alcohol, illegal drugs, possession of firearms, disrespectful behavior, theft of personal property, Contractor damage to real property not subject to rehabilitation, etc.), False Claim Act violations, and misrepresentation of experience and/or references, violations of permits, illegal disposal of hazardous materials, any major OSHA or several minor OSHA violations, significant injuries to any person during construction caused by failure to follow required safety practices, and/or negative Contractor evaluations.

NCEM reserves the right to utilize the contractors qualified under this RFP for any disaster recovery projects within the 50 affected counties of State of North Carolina for which NCEM becomes the contracting authority.

5.8 NO GUARANTEE OF VOLUME OR USAGE

NCEM makes no guarantee of volume or usage under any contract resulting from this RFP.

5.9 WORK ORDER AUTHORIZATION AND COMPENSATION

During the term of any contract awarded under this RFP, NCEM may request Contractors to perform certain projects as described above, subject to specific work authorization in the form of a General Work Order (Work Order). Work Orders will be assigned to Contractors based on demonstrated capacity in accordance with each Zone's rebuilding needs and demands at program implementation. All Work Orders shall be in writing, signed by both the Contractor and NCEM (or its designee), and shall include a scope of services, a list of tasks to be performed by Contractor, a time schedule, a list of deliverables if any, and such other information or special conditions as may be necessary for the work requested. A Work Order for an HRP project will request the Prequalified Contractor assigned the project to prepare a detailed cost proposal for construction.

A contractor assignment procedure will be developed once a pool of eligible applicants has been determined and shall be provided to Contractors prior to work being assigned.

NCEM shall consider the Cost Proposal provided by Contractor along with site-specific and area-specific construction cost data to establish the cost benchmarks for each Project.

Contractor may submit alternative pricing to those listed in the State issued Bid Book for each of the Zones which it proposes to provide services under this RFP. See Section 4.1 on Pricing for more information on pricing options and allowable costs that are available to interested and approved contractors.

Application Number: 19-RFP-014364-WAX

Contractor Name: _____

Attachments to this RFP begin on the next page.

Application Number: 19-RFP-014364-WAX

Contractor Name: _____

ATTACHMENT A:

CONSTRUCTION ZONES MAPS

ATTACHMENT B: LOCATION OF WORKERS UTILIZED BY CONTRACTOR

In accordance with N. C. Gen. Stat. § 143-59.4, the Contractor shall detail the location(s) at which performance will occur, as well as the manner in which it intends to utilize resources or workers outside of the United States in the performance of this Contract. The State will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award. Please complete items a, b, and c below.

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

If the Contractor answered “YES” above, Contractor shall complete items 1 and 2 below:

1. List the location(s) outside the United States where work under this Contract will be performed by the Contractor, any sub-Contractors, employees, or other persons performing work under the Contract:

2. Describe the corporate structure and location of corporate employees and activities of the Contractor, its affiliates or any other sub-Contractors that will perform work outside the U.S.:

- b) **The Contractor agrees to provide notice, in writing to the State, of the relocation of the Contractor, employees of the Contractor, sub-Contractors of the Contractor, or other persons performing services under the Contract outside of the United States** YES NO

NOTE: All Contractor or sub-Contractor personnel providing call or contact center services to the State of North Carolina under the Contract **shall** disclose to inbound callers the location from which the call or contact center services are being provided.

- c) **Identify all U.S. locations, outside of North Carolina, if any, at which performance will occur:**

ATTACHMENT C: INSTRUCTIONS TO CONTRACTORS

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

award, each out-of-State Vendor that is a corporation, limited-liability company or limited-liability partnership shall have received, and shall maintain throughout the term of The Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law. A State contract requiring only an isolated transaction completed within a period of six months, and not in the course of a number of repeated transactions of like nature, shall not be considered as transacting business in North Carolina and shall not require a Certificate of Authority to Transact Business.

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

- All copies of the RFP are printed double sided.
- All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
- Unless absolutely necessary, all applications and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and 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: Pursuant to N. C. Gen. Stat. §143-48 and Executive Order 150 (1999), the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.

12. RECIPROCAL PREFERENCE: N. C. Gen. Stat. §143-59 establishes a reciprocal preference requirement to discourage other states from favoring their own resident Vendors by applying a percentage increase to the price of any bid from a North Carolina resident Vendor. To the extent another state does so, North Carolina applies the same percentage increase to the bid of a vendor resident in that state. Residency is determined by a Vendor's "Principal Place of Business," defined as that principal place from which the overall trade or business of the Vendor is directed or managed.

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

14. CONFIDENTIAL INFORMATION: To the extent permitted by applicable statutes and rules, the State will maintain confidential trade secrets that the Contractor does not wish disclosed. As a condition to

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

15. **PROTEST PROCEDURES**: Contractor shall follow appeal procedures stated in the Section D of Attachment F (Prequalification Form for Prime Contractor).
16. **MISCELLANEOUS**: Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.
17. **COMMUNICATIONS BY CONTRACTORS**: Not applicable.
18. **WITHDRAWAL OF APPLICATION**: an application may be withdrawn only in writing and actually received by the office issuing the RFP prior to the time for the opening of applications identified on the cover page of this RFP (or such later date included in an Addendum to the RFP). A withdrawal request shall be submitted on Contractor’s letterhead and signed by an official of the Contractor authorized to make such request. Any withdrawal request made after the opening of bids shall be allowed only for good cause shown and in the sole discretion of the Division of Purchase and Contract.
19. **INFORMAL COMMENTS**: The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the application process. The State is bound only by information provided in this RFP and in formal Addenda issued.
20. **COST FOR APPLICATION PREPARATION**: Any costs incurred by Contractor in preparing or submitting applications are the Contractor’s sole responsibility; the State of North Carolina will not reimburse any Contractor for any costs incurred prior to award.
21. **CONTRACTOR’S REPRESENTATIVE**: Each Contractor shall submit with its application the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's application.
22. **INSPECTION AT CONTRACTOR’S SITE**: The State reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective Contractor prior to Contract award, and during the period a Contractor has been prequalified to perform work.

ATTACHMENT D: NORTH CAROLINA GENERAL TERMS & CONDITIONS

PREQUALIFICATION APPROVAL

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

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

A default termination of any HRP contract will automatically cause Contractor's prequalification to be revoked. If Contractor is satisfactorily performing other HRP contracts, the Contractor WILL NOT be cross defaulted on the other HRP Projects.

2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Contractor to notify, in writing, NCEM and its construction manager assigned to the HRP project at once, indicating the specific regulation which required such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
3. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this Contract.
4. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
- a. G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Contractors if the Contractor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Contractor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the RFP document the Contractor certifies that it and all of its affiliates, (if it has

affiliates), collect(s) the appropriate taxes.

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

c. Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

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

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

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

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

12. **INSURANCE:**

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

- a. **Worker's Compensation** - The Contractor 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 Contractor's employees who are engaged in any work under the Contract. If any work is sublet, the Contractor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract.
- 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 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.

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

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

13. **GENERAL INDEMNITY:** The Contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in

connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or intentionally tortious acts of the Contractor provided that the Contractor is notified in writing within 30 days that the State has knowledge of such claims. The Contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.

14. **ELECTRONIC PROCUREMENT:** DELETED.
15. **COMPLIANCE WITH LAWS:** Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and performance in accordance with this contract, including those of federal, state, and local agencies having jurisdiction and/or authority.
16. **ENTIRE AGREEMENT:** This 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 Contractor's application are incorporated herein by reference as though set forth verbatim. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
17. **AMENDMENTS:** This Prequalification may be amended only by written amendments duly executed by the State (NCEM and/or DOC) and the Contractor.
18. **NO WAIVER:** Notwithstanding any other language or provision in RFP, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
19. **FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
20. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in this RFP, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to the State under applicable law.
21. **ACCOUNTABILITY:** Employees of other public and private organizations providing a service to the agency are accountable to the North Carolina Department of Public Safety (DPS) Departmental Purchasing Contract Administrator and the facility head or designee of the program in which they work. The facility head or designee shall report all non-compliance issues in writing to the North Carolina DPS Departmental Purchasing Contract Administrator. The North Carolina DPS Departmental Purchasing Contract

Administrator shall work with the employee of the public or private organization providing the service in order to bring performance up to expectations or terminate services if the conditions justify.

- 22. ESCALATION CLAUSE:** The following is only applicable if not addressed in a Contractor's Bid Pricing Book and/or HRP contract. Prices offered as a result of the Prequalification shall be firm for a period of one (1) year from the date of initial performance of any HRP contract. If the contract provides for an option year(s) and NCEM exercises that option(s), the contractor may request a price increase for that year but it must not exceed the change in points during the previous twelve (12) month period in the *Consumer Price Index-All Items (All Urban Consumers: (1982-1984) or 5%, whichever is less. If the requested increase is in compliance with these specified limitations, the new price will be effective thirty (30) days from the date the request is received by NCEM. Consumer Price Index: U. S. Department of Labor, Bureau of Labor Statistics; www.bls.gov

CONSTRUCTION MANAGEMENT & CONSTRUCTION TERMS & CONDITIONS

The following terms, conditions, requirements and deadlines shall be incorporated in all contracts awarded to Prequalified Contractors pursuant to the CDBG-DR HRP Program and grant eligibility determinations.

ARTICLE 1 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

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

ARTICLE 2 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

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

ARTICLE 3 - MATERIALS, EQUIPMENT, EMPLOYEES

- a. The contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and shall construct in the best and most workmanlike

manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefrom, all in accordance with the contract documents.

- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice, the contractor shall furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed. However, the contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Request for substitution of materials, items, or equipment shall be submitted to the designer for approval or disapproval; such approval or disapproval shall be made by the designer prior to the opening of bids. Alternate materials may be requested after the award if it can clearly be demonstrated that it is an added benefit to the owner and the designer and owner approves.
- e. The CM, NCEM and/or DOC's consultant shall be the judge of equality for proposed substitution of products, materials or equipment and whether it complies with CDBG-DR, HRP and/or grant eligibility rules, requirements and/or standards.

ARTICLE 4 - ROYALTIES, LICENSES AND PATENTS

It is the intention of the contract documents that the work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. The contractor shall protect and save harmless the homeowner, CM, NCEM, DOC, State of North Carolina and/or U.S. Department of Housing and Urban Development against suit on account of alleged or actual infringement. The contractor shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

ARTICLE 5 - PERMITS, INSPECTIONS, FEES, REGULATIONS

- a. The contractor shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the designer in writing. See Instructions to Bidders, Paragraph 3, Bulletins and Addenda. Any necessary changes required after contract award shall be made by change order in accordance with Article 19. If the contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and

regulations, and without such notice to the designer, he shall bear all cost arising therefrom. Additional requirements implemented after bidding will be subject to equitable negotiations.

- b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the contractor and included within the bid proposal. All water taps, meter barrels, vaults and impact fees shall be paid by the contractor and included within the bid proposal unless otherwise noted.

ARTICLE 6 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC

- a. The contractors shall be jointly responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the owner or designer, and by laws or ordinances governing such conditions. They shall be responsible for any damage to the owner's property, or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. They shall be responsible for and pay for any damages caused to the owner. All contractors shall have access to the project at all times.
- b. The contractor shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building, whether set by him, or any of the subcontractors. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the designer and owner.
- d. The contractor shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around same. He shall barricade all walks, roads, etc., as directed by the designer to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.
- e. The contractor shall provide all necessary safety measures for the protection of all persons on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. He shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.
- f. The contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by General Statutes of North Carolina 95-126 through 155.

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- g. The contractor shall designate a responsible person of his organization as safety officer/inspector to inspect the project site for unsafe health and safety hazards, to report these hazards to the contractor for correction, and whose duties also include accident prevention on the project, and to provide other safety and health measures on the project site as required by the terms and conditions of the contract. The name of the safety inspector shall be made known to the designer and owner at the time of the preconstruction conference and in all cases prior to any work starting on the project.
 - h. In the event of emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the contractor is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the contractor on account of such action shall be determined as provided for under Article 19(b).
 - i. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by the contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

ARTICLE 7 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973

- a. Any land-disturbing activity performed by the contractor(s) in connection with the project shall comply with all erosion control measures set forth in the contract documents and any additional measures which may be required in order to ensure that the project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B and 4C).
- b. Upon receipt of notice that a land-disturbing activity is in violation of said act, the contractor(s) shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.
- c. The contractor(s) shall be responsible for defending any legal actions instituted pursuant to N.C. Gen. Stat. §113A-64 against any party or persons described in this article.
- d. To the fullest extent permitted by law, the contractor(s) shall indemnify and hold harmless the owner, the designer and the agents, consultants and employees of the owner and designer, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act. Such obligation shall not be construed to negate, abridge or otherwise reduced any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

ARTICLE 8 - INSPECTION OF THE WORK

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

ARTICLE 9 - CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

- a. The contractor agrees that the terms of its contract with homeowner documents shall apply equally to each subcontractor as to the contractor, and the contractor agrees to take such action as may be necessary to bind each subcontractor to these terms. The contractor further agrees to conform to the Code of Ethical Conduct as adopted by the Associated General Contractors of America, Inc., with respect to contractor-subcontractor relationships, and that payments to subcontractors shall be made in accordance with the provisions of G.S. 143-134.1 titled Interest on final payments due to prime contractors: payments to subcontractors.
- b. Within seven days of receipt by the contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. Should any periodic or final payment to the subcontractor be delayed by more than seven days after receipt of periodic or final payment by the prime contractor, the contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due. The CM and NCEM shall not be liable for interest resulting from a Contractor's failure to pay any subcontractor.

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

ARTICLE 10 - CHANGES IN THE WORK

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

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

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

- c. In determining the values of changes, either additive or deductive, contractors shall be based on the final Bid Pricing Book except for unknown or unusually circumstances. The mark for overhead and profit for all change orders shall be limited to 15% and 12.5%, respectively.

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

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

- a. The Contractor shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the CM and shall fully complete all work hereunder within the time of completion stated in the Contract. Time is of the essence and the contractor acknowledges the homeowner will likely suffer financial damage for failure to complete the work within the time of completion. For each day in excess of the above number of days, the contractor(s) shall pay the homeowner the sum of \$250.00 per day as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the owner by reason of failure of said contractor(s) to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof. If Contractor disputes the calculation of liquidated damages, then homeowner may recover actual damages.
- b. If the contractor is delayed at any time in the progress of his work solely by any act or negligence of the homeowner, CM or NCEM; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is

performed; by unavoidable casualties; by any causes beyond the contractor's control; or by any other causes which the designer and owner determine may justify the delay, then the contract time may be extended by change order only for the time which the CM and NCEM may determine is reasonable.

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

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

ARTICLE 12 – APPLICATIONS FOR PAYMENT

- a. Not later than the fifth day of the month (or other date set by Contract, CM and NCEM), the contractor shall submit to the CM a request for payment for work done during the previous month. The request shall be in the form agreed upon between the contractor and the CM, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the contract with the following information:
 - 1. Total of contract including change orders.
 - 2. Value of work completed to date.
 - 3. Less five percent (5%) retainage.
 - 4. Less previous payments.
 - 5. Current amount due.

- b. The contractor, upon request of the CM, shall substantiate the request with invoices of vouchers or payrolls or other evidence including compliance with federal prevailing wage laws.
- c. Prior to submitting the first request, the contractor shall prepare for the CM a schedule of values (SOV) showing a breakdown of the contract price into values of the various parts of the work, so arranged as to facilitate payments to Contractor and subcontractors. The Contractor shall list the value of each subcontractor and supplier, identifying each minority business subcontractor and supplier.
- d. When payment is made on account of stored materials and equipment, such materials must be stored on the homeowner's property, and the requests for payments shall be accompanied by invoices or bills of sale or other evidence to establish the homeowner's title to such materials and equipment. Such payments will be made only for materials that have been customized or fabricated specifically for this project. Raw materials or commodity products including but not limited to piping, conduit, CMU, metal studs and gypsum board may not be submitted. Responsibility for such stored materials and equipment shall remain with the contractor regardless of ownership title. Such stored materials and equipment shall not be removed from the homeowner's property.
- e. In lieu of performance bonds, NCEM will direct the CM to withhold retainage up to the statutory amount of five percent (5%) to ensure a prequalified contractor's completion of the project and/or to resolve any disputes with homeowner and subcontractors. NCEM will also establish a dispute resolution process to resolve any dispute quickly.

ARTICLE 13 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a. Within five (5) days from receipt of request for payment from the contractor (or other date set by Contractor, CM and NCEM), the Contractor shall issue and forward to the CM a certificate for payment. This certificate shall indicate the amount requested by Contractor. If the certificate is not approved by the CM, the CM shall state in writing to the contractor and the owner his reasons for withholding payment.
- b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof until issuance of a certificate of occupancy issued by AHJ, and the CM and NCEM closeout the contract (warranties and guarantees shall remain in effect after contract closeout). The making and acceptance of final payment shall constitute a waiver of all claims by the Contractor against the homeowner, CM and/or NCEM except:
 - 1. Claims arising from unsettled liens or claims against the contractor.
 - 2. Faulty work or materials appearing after final payment.
 - 3. Failure of the contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
 - 4. As conditioned in any payment bond.

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- e. The Contractor shall forward to the CM and NCEM the final application for payment along with the following documents:
1. List of minority business subcontractors and material suppliers showing breakdown of contract amounts and total actual payments to subs and material suppliers.
 2. Affidavit of Release of Liens.
 3. Affidavit of contractors of payment to material suppliers and subcontractors.
 4. Consent of Surety to Final Payment.
 5. Certificates of state agencies required by state law.

ARTICLE 14 - PAYMENTS WITHHELD

- a. The CM with the approval of State Construction Office and NCEM may withhold payment for the following reasons:
1. Faulty work not corrected.
 2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.
 3. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
- b. When grounds for withholding payments have been removed, payment will be released.

ARTICLE 15 - MINIMUM INSURANCE REQUIREMENTS

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

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

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

d. **Deductible**

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

ARTICLE 16 - PAYMENT BOND

- a. NCEM may require a prequalified contractor to furnish a payment bond executed by a surety company authorized to do business in North Carolina. The bond shall be in the full contract amount. The bond shall be executed in the form as required by NCEM.
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 17 - CONTRACTOR'S AFFIDAVIT

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

ARTICLE 18 - USE OF PREMISES

- a. The contractor shall confine its equipment, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of the AHJ, CM, NCEM and homeowner and shall not exceed those established limits in his operations.
- b. The contractor(s) shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c. The contractor(s) shall enforce the CM's, NCEM's and homeowner's instructions regarding signs, advertisements, fires and smoking.
- d. No firearms, any type of alcoholic beverages, or drugs (other than those prescribed by a physician) will be permitted at the job site.

ARTICLE 19 - CUTTING, PATCHING AND DIGGING

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

ARTICLE 20 - UTILITIES, STRUCTURES, SIGNS

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

ARTICLE 21 - CLEANING UP

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

wax all floors as specified, and completely prepare the building for use by the homeowner, with no cleaning required by the homeowner.

ARTICLE 22 - GUARANTEE

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

ARTICLE 23 - MINORITY BUSINESS PARTICIPATION

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

ARTICLE 24 – CONTRACTOR EVALUATION

The Contractor's overall work performance on each assigned or award HRP project/contract shall be fairly evaluated in accordance with the State Building Commission policy and procedures, for determining continues prequalification for continued work in the HRP. Contractor Evaluation Procedures is hereby incorporated and made a part of the Contractor's approval of its application for prequalification. The CM and NCEM will evaluate the Contractor's performance.

ARTICLE 25 – GIFTS

Pursuant to N.C. Gen. Stat. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, subcontractor, supplier, vendor, etc.), to make gifts or to give favors to any State employee. This prohibition covers those vendors and contractors who: (1) have a contract with a governmental agency; or (2) have performed under such a

contract within the past year; or (3) anticipate bidding on such a contract in the future. For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review G.S. Sec. 133-32.

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

ARTICLE 26 – AUDITING-ACCESS TO PERSONS AND RECORDS

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

ARTICLE 27 – NORTH CAROLINA FALSE CLAIMS ACT

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

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

ATTACHMENT E: CDBG-DR RULES AND REGULATIONS

CDBG Compliance Provisions

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

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

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

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

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

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

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

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by

explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local customs or any other reason.

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

- G. 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.
- H. 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 NCEM may determine to be reasonably necessary.
- I. 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, NCEM may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by NCEM does not relieve the Contractor of any liability incurred under these specifications or contract.
- J. 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.
- K. 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.

- L. Compliance with Air and Water Acts: For each Home Rehabilitation Homeowner/Contractor Agreement over \$100,000, Contractor and all of its Subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

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

1. A stipulation by Contractor or its Subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.
 2. Agreement by Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
 3. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.
 4. Agreement by Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.
- M. Energy Efficiency: Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94- 163).
- N. Access to Records, Maintenance of Records: NCEM 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.

- O. 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 NCEM, 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 NCEM 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 NCEM, 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 NCEM 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.

- P. 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 NCEM, 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.
- Q. Conflict of Interest: No member, officer, or employee of NCEM 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 NCEM 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 NCEM and addressed under applicable law.

- R. 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.
- S. 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.
- T. Lobbying: Contractor certified, to the best of its knowledge and belief that:
1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- U. 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 NCEM 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.
- V. Hiring of Illegal Aliens: The hiring of illegal aliens is prohibited under Federal Labor Laws.
- W. Anti-Kickback Rules: Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 2760). Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Contract to insure

compliance by the Subcontractors with such regulations, and shall be responsible for the submission of affidavits required of Subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

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

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

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

- Y. Debarment, Suspension and Ineligibility: Contractor represents and warrants that it and its Subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

- Z. Subcontracts: Contractor shall not enter into any subcontract with any Subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contacting programs by any agency of the United States Government or the State of North Carolina.

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

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

Nothing contained in this contract shall create any contractual relation between any Subcontractor and NCEM.

- AA. 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 NCEM provided that claims for money due or to become due the Contractor from NCEM 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 NCEM.
- AB. Termination for Unavailable Funding: The continuation of this Contract is contingent upon the appropriation and release of sufficient funds to NCEM to fulfill the requirements of this Contract. Failure of the appropriate authorities to approve and provide an adequate budget to NCEM for fulfillment of the Contract terms shall constitute reason for termination of the Contract by either Party. Contractor shall be paid for all authorized services properly performed prior to termination.
- AC. Breach of Contract Terms: Any violation or breach of any of the terms of this Contract on the part of Contractor or the Contractor's Subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties of this Contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- AD. Davis-Bacon Act: Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. THE OFFEROR WILL ASSIST NCEM IN FACILITATING AND REPORTING CONTRACTORS' AND SUBCONTRACTORS' COMPLIANCE WITH AFOREMENTIONED FEDERAL PREVAILING WAGE LAWS AND REGULATIONS. The DAVIS-BACON Act compliance requirements apply to repairs to properties containing more than eight (8) units, supported by CDBG funding.
- AE. "Section 3" Clause: Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable

rules and orders issued hereunder prior to the execution of any contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Contractor, and any of its subcontractors. Failure to fulfill these requirements shall subject the Contractor and subcontractors, their successors and assigns, to those sanctions specified by the contract through which Federal assistance is provided. The Contractor certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

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

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low-and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low-and very low-income persons residing in the metropolitan area in which the project is located.”