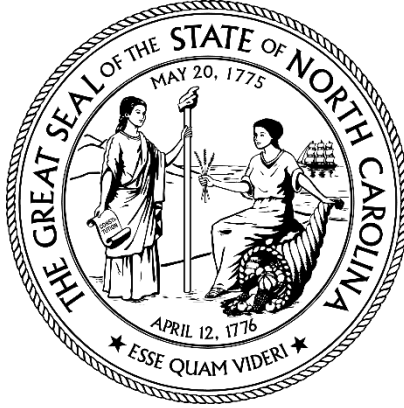




STATE OF NORTH CAROLINA

Department of Public Safety

Invitation for Bid: 19-IFB-2275374677-BJL

4827-0028-F Jackson County Generator Project

Date of Issue: August 3, 2026

Bid Opening Date: September 3, 2026

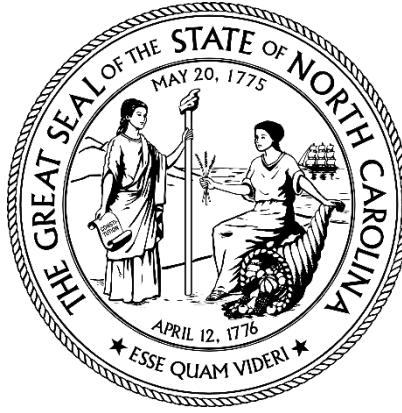
At 2:00 PM ET

Direct all inquiries concerning this IFB to:

Janet Brown

Procurement Specialist

Email: janet.brown45@ncdps.gov



STATE OF NORTH CAROLINA

19-IFB-2275374677-BJL

For internal State agency processing, including tabulation of bids, provide your company's eVP (Electronic Vendor Portal) Number. Pursuant to G.S. 132-1.10(b) this identification number shall not be released to the public. **This page will be removed and shredded, or otherwise kept confidential**, before the procurement file is made available for public inspection.

**This page shall be filled out and returned with your bid.
Failure to do so shall be sufficient cause to reject your bid.**

Vendor Name

Vendor eVP #

Note: For a contract to be awarded to you, your company (you) must be a North Carolina registered vendor in good standing. You must enter the vendor number assigned through eVP (Electronic Vendor Portal). If you do not have a vendor number, register at <https://vendor.ncgov.com/vendor/login>

Electronic responses ONLY will be accepted for this solicitation.

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

Refer <u>ALL</u> Inquiries regarding this IFB to: Janet Brown janet.brown45@ncdps.gov	Invitation for Bids # 19-IFB-2275374677-BJL
	Bids will be publicly opened: September 3, 2026 2:00 PM Microsoft Teams meeting Join: https://teams.microsoft.com/meet/291288506964804?p=LPEGymdMxAEZsY2y8p Meeting ID: 291 288 506 964 804 Passcode: MB6c5fg9
	<u>Need help? System reference</u> Dial in by phone <u>+1 984-204-1487,,840445427#</u> United States, Raleigh <u>Find a local number</u> Phone conference ID: 840 445 427# Join on a video conferencing device Tenant key: ncgov@m.webex.com Video ID: 118 458 567 9 <u>More info</u>
Using Agency: NCDPS- NCEM- Hazard Mitigation	Commodity No. and Description: 261116 Power Generator
Requisition No.: RQ286028	

EXECUTION

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

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

- this bid is submitted competitively and without collusion (G.S. 143-54),
- that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and
- it is not an ineligible Vendor as set forth in G.S. 143-59.1.

Furthermore, by executing this bid, the undersigned certifies to the best of Vendor's knowledge and belief, that:

- it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency.

As required by G.S. 143-48.5, the undersigned Vendor certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this IFB, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

As required by Executive Order 24 (2017), the undersigned vendor certifies will comply with all Federal and State requirements concerning fair employment and that it does not and will not discriminate, harass, or retaliate against any employee in connection with performance of any Contract arising from this solicitation.

G.S. 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of this bid response to the IFB, the undersigned certifies, for Vendor's entire organization and its employees or agents, that Vendor are not aware that any such gift has been offered, accepted, or promised by any employees or agents of Vendor's organization.

By executing this bid, Vendor certifies that it has read and agreed to the **INSTRUCTION TO VENDORS** and the **NORTH CAROLINA GENERAL TERMS AND CONDITIONS incorporated herein**. These documents can be accessed from the ATTACHMENTS page within this document.

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

COMPLETE/FORMAL NAME OF VENDOR:

Bid Number: 19-IFB-2275374677-BJL

Vendor: _____

STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #21):			
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:		FAX NUMBER:	
VENDOR'S AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

Bid Number: 19-IFB-2275374677-BJL

Vendor: _____

VALIDITY PERIOD

Offer shall be valid for at least sixty (60) days from date of bid opening, unless otherwise stated here: ninety (90) days, or if extended by mutual agreement of the parties. Any withdrawal of this offer shall be made in writing, effective upon receipt by the agency issuing this IFB.

BID ACCEPTANCE

If your bid is accepted, all provisions of this IFB, along with the written results of any negotiations, shall constitute the written agreement between the parties ("Contract"). The NORTH CAROLINA GENERAL TERMS AND CONDITIONS are incorporated herein and shall apply. Depending upon the Goods or Services being offered, other terms and conditions may apply, as mutually agreed.

FOR STATE USE ONLY: Offer accepted and Contract awarded this ____ day of _____, 2026, as indicated
on the attached certification, by _____

(Authorized Representative of the Department of Public Safety)

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1.0 PURPOSE AND BACKGROUND

The North Carolina Department of Public Safety (DPS), Division of Emergency Management (NCEM) is seeking bids from qualified highly skilled Vendors to perform, or cause to be performed, the purchase and installation of emergency backup generators for Project 4827-0028 Jackson County Generators. This includes the purchase, design, engineering, unloading, installation, connection, and testing of the generators at critical facilities which are eligible for such units through the NCEM Hazard Mitigation Program.

The State of North Carolina can often be faced with hurricanes, tropical storms, severe storms, tornadoes, and winter weather that pose annual and serious threats to lives and properties of communities throughout the State. During these events, normal power services provided by local utility companies are often impacted and critical services that rely on these power sources for operations can be shut down. One major goal of the NCEM Hazard Mitigation section is to facilitate access to necessary and available Federal funding in order to build resilient communities to lessen the impact these disasters impose on the citizens of North Carolina.

A Federal declaration of disaster allows for the availability of funding through the Federal Emergency Management Agency's (FEMA) Hazard Mitigation Grant Program (HMGP). Through this program, the NCEM Hazard Mitigation section is seeking bids from Vendors interested in purchasing generators and providing construction management, design, construction, and installation services for generators at critical facilities serving various populations at risk from future events.

The State intends to select Vendors that demonstrate the capability and capacity of completing work in counties and jurisdictions approved through the Federal disaster declaration. The Vendor(s) will manage the operations and execution of purchasing, construction, engineering, and installation services related to the project. The Vendor(s) will be expected to participate in regular and frequent correspondence with the State Hazard Mitigation Office and the Project Managers dedicated to the project in reference to timeline, budget, and overall implementation of the project.

The intent of this solicitation is to award an Agency Contract. Bids shall be submitted in accordance with the terms and conditions of this IFB and any addenda issued hereto.

1.1 CONTRACT TERM

The Contract shall have an initial term beginning on the date of final Contract execution (the "Effective Date") and ending twelve (12) months after contract execution.

At the end of the Contract's initial term, the State shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to 6 additional months. In addition, the State reserves the right to extend a contract term after the last active term.

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

2.0 GENERAL INFORMATION

2.1 INVITATION FOR BID DOCUMENT

The IFB is comprised of the base IFB document, any attachments, and any addenda released before Contract award, which are incorporated herein by reference.

2.2 E-PROCUREMENT FEE

ATTENTION: The E-Procurement fee may apply to this solicitation. See paragraph entitled ELECTRONIC PROCUREMENT of the North Carolina General Terms and Conditions.

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

What is the Ariba Network?

The Ariba Network is a web-based platform that serves as a connection point for buyers and Vendors. Vendors can log in to the Ariba Network to view purchase orders, respond to electronic requests for quotes, participate in Sourcing Events, and collaborate with buyers on contract documents.

For training on how to use the Sourcing Tool to view solicitations, submit questions, develop responses, upload documents, and submit offers to the State, Vendors should go to the following site:

<http://eprocurement.nc.gov/training/Vendor-training>.

2.3 NOTICE TO VENDORS REGARDING IFB TERMS AND CONDITIONS

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

If Vendors have questions or issues, or exceptions regarding any component within this IFB, those must be submitted as questions in accordance with the instructions in the BID QUESTIONS Section. If the State determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an IFB addendum. The State may also elect to leave open the possibility for later negotiation of specific provisions of the Contract that have been addressed during the question-and-answer period, prior to contact award.

Other than through this process or negotiation under 01 NCAC 05B.0503, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's bid. This applies to any language appearing in or attached to the document as part of the Vendor's bid that purports to vary any terms and conditions or Vendors' instructions herein or to render the bid non-binding or subject to further negotiation. Vendor's bid shall constitute a firm offer that shall be held open for the period required herein ("Validity Period" above).

The State may exercise its discretion to consider Vendor proposed modifications. By execution and delivery of this IFB Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded unless expressly agreed upon through negotiations and incorporated by way of a Best and Final Offer (BAFO). Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's bid as nonresponsive.

2.4 IFB SCHEDULE

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

Event	Responsibility	Date and Time
Issue IFB	State	August 3, 2026
Mandatory Pre-Bid Site Visit	State	August 18, 2026 - See times below
Submit Written Questions	Vendor	August 21, 2026, 2:00 pm
Provide Responses to Questions	State	August 25, 2026
Submit Bids	Vendor	September 3, 2026, 2:00 pm Microsoft Teams meeting Join: https://teams.microsoft.com/meet/291288506964804?p=LPEGymdMxAEZsY2y8p Meeting ID: 291 288 506 964 804 Passcode: MB6c5fg9
		Need help? System reference Dial in by phone

		+1 984-204-1487,,840445427# United States, Raleigh Find a local number Phone conference ID: 840 445 427# Join on a video conferencing device Tenant key: ncgov@m.webex.com Video ID: 118 458 567 9 More info
Contract Award	State	TBD
Contract Effective Date	State	Upon Award

2.5 MANDATORY SITE VISIT

LOCATION 1:

Date: 08/18/2026
Time: 10:00 AM Eastern Time
Location: 355 Frank Allen Rd Cashiers, NC 28717
Contact : DeWayne Vaughan dewayne.vaughan@ncdps.gov
919-665-1455

LOCATION 2:

Date: 08/18/2026
Time: 11:30 AM Eastern Time
Location: 88 Cullowhee Mountain Rd Cullowhee, NC 28723
Contact : DeWayne Vaughan dewayne.vaughan@ncdps.gov
919-665-1455

Instructions: It shall be MANDATORY that each Vendor representative be present for a pre-bid site visit. Attendees must meet promptly. All attendees must sign in upon arrival and clearly indicate each prospective Vendor represented on the sign in sheet. LATE ARRIVALS WILL NOT BE ALLOWED TO SIGN IN, PARTICIPATE IN THE SITE VISIT NOR SHALL THEIR BID BE CONSIDERED. Once the sign-in process is complete, all other persons wishing to attend may do so to the extent that space and circumstances allow.

The purpose of this visit is for all prospective Vendors to apprise themselves with the conditions and requirements which will affect the performance of the work called for by this IFB. Vendors shall stay for the duration of the site visit. No allowances will be made for unreported conditions that a prudent Vendor would recognize as affecting the work called for or implied by this IFB.

Vendors are cautioned that any information released to attendees during the site visit, other than that involving the physical aspects of the facility referenced above, and which conflicts with, supersedes, or adds to requirements in this IFB, must be confirmed by written addendum before it can be considered to be a part of this IFB and any resulting contract.

2.6 BID QUESTIONS

Upon review of the IFB documents, Vendors may have questions to clarify or interpret the IFB in order to submit the best bid possible. To accommodate the Bid Questions process, Vendors shall submit any such questions by the "Submit Written Questions" date and time provided in the IFB SCHEDULE Section above, unless modified by Addendum.

Questions related to the content of the solicitation, or the procurement process should be directed to the person on the title page of this document via the Sourcing Tool's message board by the date and time specified in the IFB SCHEDULE Section of this IFB. Vendors will enter "**19-IFB-2275374677-BJL – Questions**" as the subject of the message. Question submittals should include a reference to the applicable IFB section. This is the only manner in which questions will be received.

Questions or issues related to using the Sourcing Tool itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM ET to 5:00 PM ET.

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

Questions received prior to the submission deadline date, the State's response, and any additional terms deemed necessary by the State will be posted in the form of an addendum to *the electronic Vendor Portal (eVP)*, <https://evp.nc.gov>, and shall become an Addendum to this IFB. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this IFB, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in an Addendum to this IFB.

2.7 BID SUBMITTAL

IMPORTANT NOTE: This is an absolute requirement. Late bids, regardless of cause, will not be opened or considered, and will be automatically disqualified from further consideration. Vendor shall bear the sole risk of late submission due to unintended or unanticipated delay. It is the Vendor's sole responsibility to ensure its bid has been received as described in this IFB by the specified time and date of opening. Failure to submit a bid in strict accordance with instructions provided shall constitute sufficient cause to reject a Vendor's bids(s). Solicitation responses are subject to Sealed Bidding requirements.

Vendor's bids for this procurement must be submitted through the Sourcing Tool. For training on how to use the Sourcing Tool to view solicitations, submit questions, develop responses, upload documents, and submit offers to the State, Vendors should go to the following site: <https://eprocurement.nc.gov/training/vendor-training>

Questions or issues related to using the Sourcing Tool itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM EST to 5:00 PM EST.

Tips for Using the Sourcing Tool

1. Vendors should review available training and confirm that they are able to access the Sourcing Event, enter responses, and upload files well in advance of the date and time response are due to allow sufficient time to seek assistance from the North Carolina eProcurement Help Desk.
2. Vendors may submit their responses early to make sure there are no issues, and then submit a revised response any time prior to the response due date and time. The State will only review the most recent response.
3. Vendors should respond to all relevant sections of the Sourcing Event. Certain questions or items are required in order to submit a response and are denoted with an asterisk. The Sourcing Tool will not allow a response to be submitted unless all required items are completed. The Sourcing Tool will provide error messages to help identify any required information that is missing when response is submitted.
4. Simply saving your response in the Sourcing Tool is not the same as submitting your response to the State. Vendors should make sure they complete the submission process and receive a message that their response was successfully submitted.
5. **Only Bids submitted through the Content Section of the Ariba Sourcing Event will be considered. Bids submitted through the Message Board will not be accepted or considered for award.**

If confidential and proprietary information is included in the bid, also submit one (1) signed, REDACTED copy of the bid. Such information may include trade secrets defined by N.C. Gen. Stat. § 66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132- 1.2. Vendor may designate information, Products, Services, or appropriate portions of its response as confidential, consistent with and to the extent permitted under the statutes and rules set forth above. By so redacting any page, or portion of a page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions determined to be

confidential and proprietary and redacted as such, meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential.

If the Vendor does not provide a redacted version of the bid with its bid submission, the Department may release an unredacted version if a record request is received.

2.8 BID CONTENTS

Vendors shall provide responses to all questions and complete all attachments for this IFB that require the Vendor to provide information and upload them to the Sourcing Event in the Sourcing Tool. Vendor may not be able to submit its response in the Sourcing Tool unless all required items are addressed. Vendors shall provide authorized signatures where requested. Failure to provide all required items, or Vendor's submission of incomplete items, may result in the State rejecting Vendor's bid, in the State's sole discretion.

Vendors shall upload the following items and attachments in the Sourcing Tool:

- a) Completed and signed version of all EXECUTION PAGES, along with the body of the IFB.
- b) Signed receipt pages of any addenda released in conjunction with this IFB, if required to be returned.
- c) Vendor's Response.
- d) Descriptive Literature, per Section 4.2
- e) Demonstration of Vendor's Experience and References, Section 4.6
- f) Provide a draft project plan and timeline with its IFB Response, Section 5.5 h)
- g) Completed version of ATTACHMENT A: PRICING FORM.
- h) Completed and signed version of ATTACHMENT D: CUSTOMER REFERENCE FORM.
- i) Completed and signed version of ATTACHMENT E: LOCATION OF WORKERS UTILIZED BY VENDOR.
- j) Completed and signed version of ATTACHMENT F: CERTIFICATION OF FINANCIAL CONDITION.
- k) Completed and signed version of ATTACHMENT G: CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS and OMB STANDARD FORM LLL.

2.9 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

Relevant definitions for this IFB are provided in 01 NCAC 05A .0112 and in the Instructions to Vendors referenced below which are incorporated herein by this reference.

The following definitions, acronyms, and abbreviations are also relevant to this IFB:

- a) **ADA:** American with Disabilities Act of 1990.
- b) **ADDENDUM:** a document issued to supplement or modify the original Solicitation document. Addenda may be issued following a pre-bid/pre-bid conference or as a result of a specification or work scope changes to the Solicitation.
- c) **AUDIT:** The contract(s) awarded pursuant to this IFB are subject to audits by State and Federal agencies and/or their authorized independent auditors. The auditors may conduct contract performance, financial and/or forensic/fraud audits.
- d) **BAFO:** Best and Final Offer, submitted by a Vendor to alter its initial bid, made in response to a request by the issuing agency.
- e) **BATCH:** A grouping of similar Work Orders/Scopes of Work grouped together.
- f) **BASE FLOOD:** A flood having a 1% chance of being equaled or exceeded in any given year.
- g) **BASE FLOOD ELEVATION (BFE):** The elevation to which flood waters rise during a base flood event.
- h) **BUYER:** The employee of the State or Other Eligible Entity that places an order with the Vendor.
- i) **CHANGE ORDER:** A written alteration to a previously signed Contract for work.
- j) **CONSTRUCTION MANAGER (CM):** A North Carolina licensed GC with construction management experience that will provide NCEM construction management services.
- k) **CONTRACT LEAD:** Representative of the Department of Public Safety identified on the first page of this IFB who will correspond with potential Vendors concerning solicitation issues and will contract with the Vendor providing the best offer to the State and is the individual who will administer The Contract for the State.
- l) **DESIGN FLOOD ELEVATION (DFE):** The regulatory flood elevation adopted by the local community which is equal to the base flood elevation plus freeboard.
- m) **DPS:** Department of Public Safety
- n) **E-PROCUREMENT SERVICES:** The program, system, and associated Services through which the State conducts electronic procurement.

- o) **EFFECTIVE DATE:** Date of Contract award.
- p) **ENGINEER OF RECORD (EOR):** The Professional Engineer responsible for designing the plans and providing engineering insight during the design and construction phases of the project. The EOR is responsible for reviewing any necessary modifications before and during construction.
- q) **ET:** Eastern Time.
- r) **FEMA:** Federal Emergency Management Agency.
- s) **FOB-DESTINATION:** Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns commodity in transit and files any claims, and Vendor pays all freight and any related transportation charges. A solicitation may request a Vendor to separately identify freight charges in its bid, but no amount or charge not included as part of the total bid price will be paid.
- t) **FREEBOARD:** The additional height requirements added above the BFE for additional protection from flood waters. The amount of freeboard required at each property shall be verified with the local jurisdictions.
- u) **GC:** General Contractor, licensed in the State of North Carolina.
- v) **GRANTEE:** The State of North Carolina, who apply to FEMA in response to grant funding opportunities or availability on behalf of the Subgrantee.
- w) **HMGP:** Hazard Mitigation Grant Program. This is a federal grant award issued pursuant to a declaration of disaster, which provides funding through FEMA.
- x) **IFB:** Invitation for Bids.
- y) **MITIGATION:** Taking actions to protect property or persons, or safeguarding resources to protect property or persons from consequences of future disaster events with the intention of resiliency.
- z) **NCDEM:** North Carolina Department of Public Safety, Emergency Management.
- aa) **NOTICE TO PROCEED (NTP):** Notice to Vendor to commence work to be performed under this agreement.
- bb) **OPENING DATE:** Responses will only be accepted up until the specified time and date listed in the bid and then publicly opened. NO responses will be accepted after that time and date.
- cc) **PE:** Professional Engineer, licensed in the State of North Carolina.
- dd) **PRINCIPAL PLACE OF BUSINESS:** The principal location from which the overall trade or business of the Vendor is directed or managed.
- ee) **PROJECT MANAGER (PM):** The person who leads the project, to whom the Vendor and/or Construction Manager reports, ensuring overall project deadlines and project funds are distributed to all essential parties. For projects, the Project Manager is a representative of the State.
- ff) **QUALIFIED BID:** A responsive bid submitted by a responsible Vendor.
- gg) **SCOPE OF WORK (SOW):** The agreed upon duties and responsibilities of the Vendor for each project site. The Scope of Work may only be altered by a Change Order.
- hh) **SERVICES or SERVICE DELIVERABLES:** The tasks and duties undertaken by the Vendor to fulfill the requirements and specifications of this solicitation.
- ii) **SHALL OR MUST:** Denotes that which is a mandatory requirement. Failure to meet a mandatory requirement will result in the rejection of this bid.
- jj) **SHOULD:** Denotes that which is recommended; not mandatory.
- kk) **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.
- ll) **STATE AGENCY:** Any of the more than 400 sub-units within the executive branch of the State, including its departments, boards, commissions, institutions of higher education and other institutions.
- mm) **SUBGRANTEE:** The County, Local Jurisdiction and/or Tribe for whom the Grantee has applied for a HMGP grant on behalf of.
- nn) **THE CONTRACT:** A contract resulting from or arising out of Vendor responses to this solicitation document.
- oo) **VENDOR:** Supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to an Invitation for Bids. Following award of a contract, the term refers to an entity receiving such an award. Also referred to as the Prime Contractor for the purpose of this IFB.

2.10 ALTERNATE BIDS

Unless provided otherwise in this IFB, Vendor may submit alternate bids for comparable Goods, various methods or levels of Service(s), or that propose different options. Alternate bid must specifically identify the IFB requirements and advantages addressed by the alternate bid. Each bid must be for a specific set of Goods and Services and must include specific pricing. If a Vendor chooses to respond with various offerings, Vendor shall follow the specific instructions for uploading Alternate Bids in the Sourcing Tool.

2.11 CONTRACT MONITORING

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

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

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

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

3.0 METHOD OF AWARD AND BID EVALUATION PROCESS

3.1 METHOD OF AWARD

North Carolina G.S. 143-52 provides a general list of criteria the State shall use to award contracts, as supplemented by the additional criteria herein. The Goods or Services being procured shall dictate the application and order of criteria; however, all award decisions shall be in the State's best interest.

All responsive bids will be reviewed, and award or awards will be based on the responsive bid(s) offering the lowest price that meets the specifications to include any required verifications set out herein such as but not limited to past performance, references, and financial documents.

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

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

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

While this IFB is under evaluation, the responding Vendor, including any subcontractors and suppliers, is prohibited from engaging in conversations intended to influence the outcome of the evaluation. See the Paragraph 29 of the Instructions To Vendors entitled COMMUNICATIONS BY VENDORS.

Each Vendor submitting a bid to this IFB, including its employees, agents, subcontractors, suppliers, subsidiaries and affiliates, is prohibited from having any communications with any person inside or outside the using agency; issuing agency; other government agency office or body (including the purchaser named above, any department secretary, agency head, members of the General Assembly and Governor's office); or private entity, if the communication refers to the content of Vendor's bid or qualifications, the content of another Vendor's bid, another Vendor's qualifications or ability to perform a resulting contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of bids, the award of a contract, or both.

Any Vendor not in compliance with this provision shall be disqualified from evaluation and award. A Vendor's bid may be disqualified if its subcontractor and/or supplier engage in any of the foregoing communications during the time that the procurement is active (*i.e.*, the issuance date of the procurement until the date of contract award or cancellation of the procurement). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this IFB or inquiries directed to the purchaser named in this IFB regarding requirements of the IFB (prior to bid submission) or the status of the award (after submission) are excepted from this provision.

3.3 BID EVALUATION PROCESS

Only responsive submissions will be evaluated.

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

Bids will be received according to the method stated in the Bid Submittal section above.

All bids must be received by the issuing agency not later than the date and time specified in the IFB SCHEDULE Section above, unless modified by Addendum. Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the State reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the State.

At the date and time provided in the IFB SCHEDULE Section above, unless modified by Addendum, the bids from each responding Vendor will be opened publicly and all offers (except those that have been previously withdrawn, or voided bids) will be tabulated. The tabulation shall be made public at the time it is created. When negotiations after receipt of bids is authorized pursuant to G.S. 143-49 and 01 NCAC 05B.0503, only the names of offerors and the Goods and Services offered shall be tabulated at the time of opening. If negotiation is anticipated, cost and price shall become available for public inspection at the time of the award. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of a Vendor's pricing position.

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

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

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

The State reserves the right to negotiate with one or more Vendors, or to reject all original offers and negotiate with one or more sources of supply that may be capable of satisfying the requirement, and in either case to require Vendor to submit a Best and Final Offer (BAFO) based on discussions and negotiations with the State.

3.4 PERFORMANCE OUTSIDE THE UNITED STATES

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

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

- i) Contract enforcement jurisdictional issues

3.5 INTERPRETATION OF TERMS AND PHRASES

This IFB serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the State; and (2) to provide (together with other specified documents) the terms of the Contract resulting from this procurement. The use of phrases such as “shall,” “must,” and “requirements” are intended to create enforceable contract conditions. In determining whether bids should be evaluated or rejected, the State will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the State’s needs as described in the IFB. Except as specifically stated in the IFB, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement may result in the State exercising its discretion to reject a bid in its entirety.

4.0 REQUIREMENTS

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

4.1 PRICING

Bid price shall constitute the total cost to the State for complete performance in accordance with the requirements and specifications herein, including all applicable charges for handling, transportation, administrative and other similar fees. Complete ATTACHMENT A: PRICING FORM and upload in the Sourcing Tool. The pricing provided in ATTACHMENT A, or resulting from any negotiations, is incorporated herein and shall become part of any resulting Contract.

4.1.1 Import Tariff Temporary Surcharge

Pricing shall be exclusive of any pending tariffs or temporary tariff surcharge. Vendor may request a temporary tariff surcharge in ATTACHMENT A: PRICING SUBMITTAL WORKBOOK as a charge separate from the contract price. Any temporary tariff surcharge(s) associated with purchases shall be provided by way of a percentage tariff surcharge. All tariff surcharges proposed are intended to be temporary and based on current tariff implications specific to related commodities with evidence of submitted documentation of affected MSRP products. Vendor understands that the agency may request additional justification. Any temporary tariff surcharge percentage will be negotiated and mutually agreed upon. The state is not obligated to accept any proposed import tariff surcharge. Proposed tariff surcharges may be used as a factor for evaluation and award.

4.2 PRODUCT IDENTIFICATION

SUITABILITY FOR INTENDED USE

Vendors are requested to offer only items directly complying with the specifications herein or comparable items which will provide the equivalent capabilities, features and diversity called for herein. The State reserves the right to evaluate all bids for suitability for the required use and to award the one best meeting requirements and considered to be in the State’s best interest.

4.3 DESCRIPTIVE LITERATURE

Each bid shall be accompanied by complete descriptive literature, specifications, certifications, and all other pertinent data necessary for thorough evaluation of the item(s) offered and sufficient to determine compliance of the item(s) with the specifications. Failure to include such information to shall be a sufficient basis for rejection of the bid.

4.4 DELIVERY AND INSTALLATION

The Vendor shall deliver Free-On-Board (FOB) Destination.

Delivery shall not be considered to have occurred until installation has been completed. Upon completion of the installation, the Vendor shall remove and properly dispose of all waste and debris from the installation site. The Vendor shall be responsible for leaving the installation area clean and ready to use.

4.5 WARRANTY

Manufacturer's standard warranty shall apply. Vendors shall include a copy of the manufacturer's standard warranty with the bid response.

Vendor warrants that all equipment furnished under this IFB will be newly manufactured, of good material and workmanship. The warranty will apply from date equipment is put into operation for a minimum period of twelve (12) months or the length of the manufacturer's warranty, whichever is longer. Such warranty shall cover the cost of all defective parts replacement, labor, freight, and technicians' travel at no additional cost to the State, or as specified by the Procurement Entity herein. To the extent not superseded by the terms of this paragraph, manufacturer's warranty terms shall apply. Vendor's warranty shall be at least the level of coverage provided for its comparable customers.

The report of a problem does not presuppose that every call must result in an "on-site" visit for service/repair. The Vendor and/or service subcontractor shall utilize best efforts to resolve problems in a timely fashion by using acceptable servicing methods to include, but not limited to, verbal problem analysis and remote diagnosis. The warranty requirement does not impose any additional duty on the State to make other than normal and good faith problem resolution efforts or expenditures of time. Vendor shall be responsible for compliance with warranty terms by any third-party service provider. Vendor shall provide contact information for warranty service provider, below.

Vendor is authorized by manufacturer to repair equipment offered during the warranty period? YES NO

Will the Vendor provide warranty service? YES NO, a manufacturer-authorized third party will perform warranty service.

Contact information for warranty service provider:

Company Name: _____

Company Address: _____

Contact Person (name): _____

Contact Person (phone number): _____

Contact Person (email): _____

4.6 MAINTENANCE OPTION

Following expiration of the above warranty, Vendor, or its third-party service provider, shall maintain the system specifications and performance level in accordance with the manufacturer's published specifications and those of this IFB. Maintenance shall include all parts, remedial maintenance labor, travel and living expenses incurred. Except as specifically provided for elsewhere herein, coverage shall be at least for 8:00 am ET to 5:00 pm ET, Monday through Friday, except State recognized holidays and shall include a minimum of two (2) preventive and safety maintenance inspections per year. The State shall have the option to accept the maintenance coverage in this paragraph at the price offered in ATTACHMENT A: PRICING of this IFB, if applicable.

4.7 REFERENCES

Vendors shall provide at least three (3) references, using ATTACHMENT E: CUSTOMER REFERENCE FORM, for which your company has supplied and installed similar equipment to what is being offered. The State may contact these users to determine quality level of the offered equipment; as well as but not limited to user satisfaction with Vendor performance. Information obtained may be considered in the evaluation of the bid.

4.8 VENDOR'S REPRESENTATIONS

If the bid results in an award, Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the State under the Contract. If any Services, deliverables, functions, or responsibilities not specifically described in this solicitation are required for Vendor's proper performance, provision and delivery of the Service and deliverables under a resulting Contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and/or other Deliverables.

4.9 PERSONNEL

Vendor 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. Vendor will serve as the Vendor under this Contract and shall be responsible for the performance and payment of all subcontractors that may be approved by the State. Names of any third-party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

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

4.10 FINANCIAL STABILITY

As a condition of contract award, the Vendor must certify that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction

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

4.11 AGENCY INSURANCE REQUIREMENTS MODIFICATION

Default Insurance Coverage from the General Terms and Conditions applicable to this Solicitation:

☒ Small Purchases

- ☐ Contract value in excess of the Small Purchase threshold, but up to \$1,000,000.00
- ☐ Contract value in excess of \$1,000,000.00

4.12 LOBBYING ACTIVITY CERTIFICATION FOR FEDERAL GRANTS

Federal law prohibits recipients of federal funds, whether through grants, contracts, or cooperative agreements, from using those funds to influence or attempt to influence (lobby) a federal official in connection with obtaining, extending, or modifying any federal contract, grant, loan, or cooperative agreement. Further, federal law requires that applicants for federal funds certify:

- that they abide by the above restriction;
- that they disclose any permissible (non-federal) paid lobbying on the Federal Awards being applied for; and
- that such certification requirements will also be included in any subawards meeting the applicable thresholds.

Vendors must complete and submit the CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS and the OMB STANDARD FORM LLL when responding to this solicitation.

4.13 SUBCONTRACTORS

No portion of the work shall be subcontracted without prior written consent of the State. In the event that the Vendor desires to subcontract some part of the work specified herein, the Vendor shall furnish with their bid the names, qualifications, and experience of their proposed subcontractors. The Vendor shall, however, remain solely and fully liable and responsible for the work done by its subcontractor(s) and shall assure compliance with all the requirements and specifications of the contract.

4.14 SECRETARY OF STATE REGISTRATION

Prior to entering a contract with the State, the awarded Vendor(s) must complete registration with the NC Secretary of State. Upon notification of award, the selected Vendor(s) must furnish evidence of filing within 10 business days. Failure to provide this documentation may result in the disqualification of the Vendor(s) bid from further consideration for the award.

A contract award under the above-referenced solicitation, and the resulting purchase orders, will produce repeated orders and transactions in North Carolina and will constitute “transacting business” in the State, which requires a certificate of authority from the North Carolina Secretary of State as provided in G.S. §55-15-01 (corporations) or §57D-7-01 (LLCs). Please go to: <https://www.sosnc.gov/> to register.

Vendor has registered with the North Carolina Secretary of State: Yes ☐ No ☐

5.0 SPECIFICATIONS AND SCOPE OF WORK

NCEM is seeking to hire highly skilled Vendor(s) to perform, or cause to perform, the procurement and installation of generator(s), ensuring all work is compliant with local, State, and Federal statutory requirements. It is the responsibility of the selected Vendor(s) to manage the overall construction and installation, obtain approved engineered designs, acquire all necessary permits and inspections from local jurisdictions, and complete any other requirements necessary to deliver a complete and usable project. Upon completion, the site shall be restored to pre-construction condition or better unless otherwise specified and shall meet all conditions of the Scope of Work, as well as any modifications necessary to comply with local, State, and Federal requirements.

The Vendor shall select a Construction Manager for this project who shall be licensed in the State of North Carolina as a General Contractor. Should the Vendor allocate work to subcontractors, those subcontractors shall have the appropriate registrations and/or licenses to work in the State of North Carolina, verified by the Vendor, and shall be provided to the State as requested. As much as possible, laborers and subcontractors should be local to the community in which the work is being

completed, unless locally contracted crews are substantially more expensive or unavailable to complete work within the deadlines. Each subcontractor shall be able to provide a comprehensive list of positions and laborers utilized upon request.

The Vendor must have the financial ability to undertake the work and assume the liability. Each Vendor will be required to furnish proof of sufficient Liability Insurance coverage upon request and must have an accounting system in place to identify costs chargeable to each project.

5.1 SPECIFICATIONS

The appropriate codes and standards shall be utilized for all design and construction throughout the entirety of the project. It is the responsibility of the Vendor to oversee compliance with all FEMA and North Carolina local and/or regional codes and standards. Additionally, site safety must conform to all standard OSHA regulations.

All work shall be performed in strict accordance with the current North Carolina State Building Code and the current North Carolina State Existing Building Code, as enforced by local authority. Additionally, all design work shall be compliant with the current version of ASCE 24 as referenced in the State building code. The design and construction shall follow all relevant FEMA standards and publications. The HMPG program **must comply with 44 C.F.R.** for the duration of the project.

During the Federal grant application submittal process, each project undergoes an environmental and historical preservation review by FEMA. Should the review find an environmental or historical concern, the design and construction of the project must consider the necessary adjustments. The Vendor must have a complete understanding of any environmental and historic issues as well as the necessary construction requirements relative to the project.

Rights of way and access to the structure as well as site management must also be considered prior to beginning construction. The necessary means must be taken to minimize environmental impacts imposed by construction at the site. The Vendor shall be responsible for dust control and all other environmental safeguards and protections as necessary. All such safeguards and protections shall comply with local, State and Federal laws and regulations regarding the same. All debris generated by the construction process shall be removed from the site and disposed of or recycled at an approved facility, following environmental regulations.

The Vendor shall exercise due care in the performance of all activities to minimize any damages to trees, shrubs, and landscaping on public or private property. The Vendor shall be responsible for damages to any property caused by its equipment or workers. NCEM shall be notified immediately of any damages which occur during construction activities conducted by the Vendor or its subcontractors.

The Vendor shall be responsible for any and all corrective action required in response to any notices of violations issues by any local, State, or Federal agency as a result of the Vendor's actions. All corrective actions shall be taken at the Vendor's expense. Additionally, the Vendor shall be solely responsible for the payment of any fines or penalties resulting from any such violations.

All equipment to be utilized by the Vendor shall comply with all applicable Federal, State, and local rules and regulations and shall be inspected by the Vendor and approved prior to use. The Vendor shall provide all labor and materials necessary to fully operate and maintain all equipment to be utilized.

PROJECT: 4827-0028 Jackson County Generators - Vendor(s) shall see table below for the project included in this IFB.

Item	SITE	GENERATOR SIZE	FUEL TYPE	CITY	COUNTY	LATITUDE	LONGITUDE
1.	355 Frank Allen Rd	100 kW	Diesel	Cashiers	Jackson	35.110817	-83.104317
2.	88 Cullowhee Mountain Rd	130 kW	Diesel	Cullowhee	Jackson	35.289995	-83.179943

1. Project Specifications and Background for 355 Frank Allen Rd, Cashiers, NC

This project calls for the purchase and installation of a new 100 kW, 3-phase, 208V/120, diesel generator and a new 1200 amp, 3-phase, 208V/120 Automatic Transfer Switch (ATS) compatible with installed generator's specifications. The new generator will be installed on a concrete slab provided by the Contractor that will be sized to accommodate the generator's specifications. The generator will provide backup power to the Cashiers Recreation Center. The new generator will allow this facility to provide uninterrupted service for the facility as well as an activated emergency shelter during and after severe weather events.

Specifications

100kW generator

Full tank fuel (133% capacity of a 48-hour runtime for the generator)

All Diesel tanks shall be UL-142 or UL-2085 compliant and include secondary containment per State code.

Automatic transfer switch

Certified factory startup & ensure all owner training

Pad shall meet or exceed generator manufacturer's minimum footprint, edge clearance, thickness, and load rating requirements. Utility power main disconnects circuit breaker (Sized to match existing) if required

Electrical equipment rack as needed

All associated feeder & power wiring (Sized to match existing)

All associated control wiring

Three telemetry circuits, from generator to provided remote monitoring device

Three telemetry circuits from ATS-provided remote monitoring device

A remote annunciator panel shall be provided that will include electronic communication capabilities.

Provide all required permits (electrical, building, environmental, floodplain, zoning, etc.) from the local Code Enforcement Office and call for inspections as required unless otherwise explicitly stated in writing by NCEM Engineering Plans/Design if required

2. Project Specifications and Background for 88 Cullowhee Mountain Rd, Cullowhee, NC

This project calls for the purchase and installation of a new 130 kW, 3-phase, 208V/120, diesel generator and a new 1200 amp, 3-phase, 208V/120 Automatic Transfer Switch (ATS) compatible with installed generator's specifications. The new generator will be installed on a concrete pad provided by the Contractor that will be sized to accommodate the generator's specifications. The installation will require new wiring from the generator through conduit stubbed up in concrete pad to the existing building's main electrical panel. The generator will provide backup power to the Cullowhee Recreation Center. The new generator will allow this facility to provide uninterrupted service for the facility as well as an activated emergency shelter during and after severe weather events.

Specifications

130kW generator

Full tank fuel (133% capacity of a 48-hour runtime for the generator)

All Diesel tanks shall be UL-142 or UL-2085 compliant and include secondary containment per State code.

Automatic transfer switch

Certified factory startup & ensure all owner training

Pad shall meet or exceed generator manufacturer's minimum footprint, edge clearance, thickness, and load rating requirements.

Utility power main disconnects circuit breaker (Sized to match existing) if required

Electrical equipment rack as needed

All associated feeder & power wiring (Sized to match existing)

All associated control wiring

Three telemetry circuits, from generator to provide remote monitoring device

Three telemetry circuits from ATS to provide remote monitoring device

Provide all required permits (electrical, building, environmental, floodplain, zoning, etc.) from the local Code Enforcement Office and call for inspections as required unless otherwise explicitly stated in writing by NCEM Engineering Plans/Design if required

SEE ATTACHMENT L FOR PROJECT PICTURES AND ADDITIONAL DETAILS**5.2 TASKS/DELIVERABLES**

The new generator(s) shall be installed in a fashion that will contribute to anti-theft. Security measures shall include (at minimum, as applicable) locked enclosure, tamper-resistant fasteners, and anchoring meeting manufacturer recommendations. Additional fencing shall be installed if required by plans. It shall be located away from common areas, such as parking lots, to avoid visibility and potential damage from vehicle impact. The generator(s) shall be securely attached to a concrete pad or raised platform and located proximally to the building it will service. Fencing and other barrier materials shall be incorporated as specified on any permitted design documents. All fuel storage is expected to be located above ground and anchored as required. Enough fueling to conduct the initial generator test shall be provided by the Vendor and performed prior to closing out the project. Additionally, the Vendor shall supply the operating instructions for the generator installed. Outside the initial testing, the Vendor is not responsible for fueling, regular maintenance, annual testing, or coordinating of such under this IFB. All generators and ATS equipment shall be located outside the Special Flood Hazard Area or elevated above the Regulatory Flood Protection Elevation and shall comply with FEMA 44 CFR, ASCE 24 (current adopted edition), and all local floodplain ordinances.

Generators are to be installed according to local building codes and floodplain ordinances. This will direct the proper installation and further upkeep of the system. Coordination for all projects shall be through the State Historic Preservation Office (SHPO), US ACE, NC DOT, NC Fish and Wildlife, CAMA, and FEMA EHP review. The project will not impact the environment, natural, cultural, or historical resources.

The Vendor shall also maintain photo evidence of the project site condition before, during, and after the project. Minimum required views include: entire site, equipment pad, generator, ATS, fuel system, and all trenching.

- a) Provide professional labor, equipment, and materials adequate to perform the work in accordance with the Scope of Work issued for each project while ensuring that all applicable standards and codes are met;
- b) Comply with all applicable local, State, and Federal laws, regulations, and guidelines;
- c) Provide documentation and tracking of construction progress;
- d) Meet NCEM's timeframes for work completion requirements from the Effective Date;
- e) Provide a one-year warranty and a third-party ten-year structural warranty;
- f) As the State sees fit, Vendor shall complete program approved training certifying its understanding and ability to comply with local and State codes and regulations, ADA requirements, OSHA standards, FEMA standards and regulations, NCEM reporting requirements, and NCEM invoicing requirements;
- g) Construction Manager for this project must be licensed in the State of NC as a General Contractor; and
- h) Vendor shall provide a draft project plan and timeline with its IFB Response.

Vendor(s) shall be required to provide representative(s) of NCEM with weekly informal updates, in writing, for each project site along with formal monthly Progress Management Reports submitted by the 10th of each month (see Section 6.3 PERIODIC MONTHLY STATUS REPORTS).

In addition to project updates, the Vendor shall submit the following items, as required, to NCEM during each project:

- a) Post-Test Operational Feasibility Letter
- b) Permitted Drawings
- c) Inspection Reports
- d) Field Letters
- e) GPS Waypoints
- f) Photos: Before, during, and after
- g) Debris Removal Affidavit
- h) Invoices

5.3 CERTIFICATION AND SAFETY LABELS

Any manufactured items and/or fabricated assemblies provided hereunder that are subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization *acceptable to govern inspection where the item is to be located*, such as the American Society of Mechanical Engineers for pressure vessels;

the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals or listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and Federal requirements relating to clean air and water pollution.

5.4 DELIVERABLES

Vendor(s) shall be required to provide representative(s) of NCEM with weekly informal updates, in writing, for each project site along with formal monthly Progress Management Reports submitted by the 10th of each month (see Section 6.4 PERIODIC MONTHLY STATUS REPORTS).

In addition to project updates, the Vendor shall submit the following items, as required, to NCEM during the course of each project:

- a) Post-Test Operational Feasibility Letter
- b) Permitted Drawings
- c) Inspection Reports
- d) Field Letters
- e) GPS Waypoints
- f) Photos: Before, during and after
- g) Debris Removal Affidavit
- h) Invoices

5.5 ADDITIONAL REQUIREMENTS

In addition to the requirements stated elsewhere in this IFB, the following requirements shall apply:

The new generator(s) shall be installed in a fashion that will contribute to anti-theft. It shall be located away from common areas, such as parking lots, to avoid visibility and potential damage from vehicle impact. The generator(s) shall be securely attached to a concrete pad or raised platform and located proximal to the building it will service. Fencing and other barrier materials shall be incorporated as specified on any permitted design documents. All fuel storage is expected to be located above ground and anchored as required. Enough fueling to conduct the initial generator test shall be provided by the Vendor and performed prior to closing out the project. Additionally, the Vendor shall supply the operating instructions for the generator installed. Outside the initial testing, the Vendor is not responsible for fueling, regular maintenance, annual testing, or coordinating of such under this IFB.

Any generator installed shall be located outside of the flood zone or elevated above the based flood elevation and local freeboard requirements for each site. Generator is to be installed according to local building codes and flood plain ordinances. This will direct the proper installation and further upkeep of the system. Coordination for all projects shall be through the State Historic Preservation Office (SHPO), US ACE, NC DOT, NC Fish and Wildlife, CAMA, and FEMA EHP review. The project will not impact the environment, natural, cultural or historical resources.

The Vendor shall also maintain photo evidence of the project site condition before, during, and after the project.

- a) Provide professional labor, equipment, and materials adequate to perform the work in accordance with the Scope of Work issued for each project while ensuring that all applicable standards and codes are met;
- b) Comply with all applicable local, State, and Federal laws, regulations, and guidelines;
- c) Provide documentation and tracking of construction progress.
- d) Meet NCEM's timeframes for work completion requirements from the Effective Date;
- e) Provide a one-year warranty, and a third-party ten-year structural warranty;
- f) As the State sees fit, Vendor shall complete program approved training certifying its understanding and ability to comply with local and State codes and regulations, ADA requirements, OSHA standards, FEMA standards and regulations, NCEM reporting requirements, NCEM invoicing requirements;
- g) Construction Manager for this project must be licensed in the State of NC as a General Contractor; and
- h) **Vendor shall provide a draft project plan and timeline with its IFB Response.**

5.6 ACCEPTANCE OF WORK

In the event acceptance criteria for any Services, work or other deliverables is not described herein or in contract documents

or work orders hereunder, the State shall have the obligation to notify Vendor, in writing ten (10) calendar days following completion of such Services, work or other deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review, evaluation, installation, or testing, as applicable of the Services, work or other deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures.

Should the work or deliverables fail to meet any requirements, acceptance criteria or otherwise fail to conform to the contract, the State may exercise any and all rights hereunder, including, for deliverables, such rights provided by the Uniform Commercial Code as adopted in North Carolina.

6.0 CONTRACT ADMINISTRATION

All Contract Administration requirements are conditioned on an award resulting from this solicitation. This information is provided for the Vendor's planning purposes

6.1 CONTRACT MANAGER AND POINT OF CONTACT

NCDPS Point of Contact	
Name:	DeWayne Vaughan
Office Phone #:	919-665-1455
Email:	dewayne.vaughan@ncdps.gov

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

Contract Manager Point of Contact	
Name:	
Office Phone #:	
Mobile Phone #:	
Email:	

6.2 POST AWARD PROJECT REVIEW MEETINGS

Shortly after award, the Vendor will be required to meet with the State for a pre-construction meeting. At this meeting, the Vendor will be given the Notice to Proceed for the projects.

After this initial pre-construction meeting, The Vendor, at the request of the State, shall be required to meet periodically with the State for Project Review meetings. The purpose of these meetings will be to review project progress reports, discuss Vendor and State performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

6.3 CONTINUOUS IMPROVEMENT

The State encourages the Vendor to identify opportunities to reduce the total cost the State. A continuous improvement effort consisting of various ideas to enhance business efficiencies as performance progresses.

6.4 PERIODIC MONTHLY STATUS REPORTS

The Vendor shall provide Management Reports to the designated Contract Lead on a monthly basis. This report shall include, at a minimum, information concerning deliverables and work accomplished during the reporting period; deliverables and work to be accomplished during the subsequent reporting period; problems, real or anticipated, and notification of any significant deviation from previously agreed upon work plans and schedules. These reports shall be well organized and easy to read. The Vendor shall submit these reports electronically, by the 10th of each month, using Microsoft Excel and as needed, either Microsoft PowerPoint or Microsoft Word. The Vendor shall submit the reports in a timely manner and on a regular schedule as agreed by the Parties.

6.5 ACCEPTANCE OF WORK

Performance of the work and delivery of Goods shall be conducted and completed at least in accordance with the Contract requirements and recognized and customarily accepted industry practices. Performance shall be considered complete when the Services or Goods are approved as acceptable by the Contract Administrator

Acceptance of work products shall be based on the following criteria:

The State shall have the obligation to notify Vendor, in writing ten (10) calendar days following completion of such work or delivery of a deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review, evaluation, installation, or testing, as applicable to the work or deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures.

Should the work or deliverables fail to meet any specifications, acceptance criteria or otherwise fail to conform to the Contract, the State may exercise any and all rights hereunder, including, for Goods deliverables, such rights provided by the Uniform Commercial Code, as adopted in North Carolina.

6.6 INVOICES

Vendor shall invoice the Purchasing Agency. The standard format for invoicing shall be Single Invoices meaning that the Vendor shall provide the Purchasing Agency with an invoice for each order. Invoices shall include detailed line item information to allow Purchasing Agency to verify pricing at point of receipt matches the correct price from the original date of order. At a minimum, the following fields shall be included on all invoices:

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

INVOICES MAY NOT BE PAID UNTIL AN INSPECTION HAS OCCURRED AND THE GOODS AND SERVICES ACCEPTED.

6.7 DISPUTE RESOLUTION

During the performance of the Contract, the Parties agree that it is in their mutual interest to resolve disputes informally. Any claims by the Vendor shall be submitted in writing to the State's Contract Manager for resolution. Any claims by the State shall be submitted in writing to the Vendor's Project Manager for resolution. The Parties shall agree to negotiate in good faith and use all reasonable efforts to resolve such dispute(s).

During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. The Parties will agree on a reasonable amount of time to resolve a dispute. If a dispute cannot be resolved between the Parties within the agreed upon period, either Party may elect to exercise any other remedies available under the Contract, or at law. This provision, when agreed in the Contract, shall not constitute an agreement by either party to mediate or arbitrate any dispute.

6.8 PRODUCT RECALL

Vendor expressly assumes full responsibility for prompt notification to the Buyer listed on the face of this IFB of any product recall in accordance with the applicable state or federal regulations. The Vendor shall support the State, as necessary, to promptly replace any such products, at no cost to the State.

6.9 CONTRACT CHANGES

Contract changes, if any, over the life of the Contract shall be implemented by contract amendments agreed to in writing by the State and Vendor. Amendments to the contract can only be made through the contract administrator.

6.10 DPS ADDITIONAL TERMS

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

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

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

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

6.11 ATTACHMENTS

All attachments to this IFB are incorporated herein and shall be submitted by responding in the Sourcing Tool. These attachments can be found at the following Vendor Forms link for reference purposes only:

<https://ncadmin.nc.gov/documents/vendor-forms>

****IMPORTANT NOTICE******RETURN THE REQUIRED ATTACHMENTS WITH YOUR RESPONSE**

FOLLOW THE LINKS TO ACCESS EACH ATTACHMENT

ATTACHMENT A: PRICING

PROJECT TIME FRAME: Vendor shall provide the Project Time Frame (i.e., time to reach Substantial Completion for all properties from the Notice to Proceed). This Project Time Frame, in calendar days, shall begin with the Notice to Proceed and shall run until Substantial Completion for all contracted work. Vendor shall meet this Project Time Frame, as well as other time frames put forth by NCEM, barring any unexpected acts of nature or as a result of events beyond its reasonable control requiring a change in the Scope of Work and/or Change Order(s) (i.e., the total time to complete work listed in Section 5.0).

It is the responsibility of the Vendor to create a time schedule, including any phasing or work overlap, in order to complete all projects in the specified Project Time Frame provided below. Additionally, the Vendor shall be responsible for coordinating the procurement, delivery, site preparation, installation, connection, and testing of the generator(s) based on the specifications identified in Section 5.0.

Note that in bids containing more than one project site, each individual project must be completed in the Project Time Frame provided for that project. If there are multiple project sites in one bid, the project time frames will run concurrently and not consecutively. The Project Time Frame submitted by each Vendor shall be used by the State when evaluating bids to meet HMGP goals and deadlines.

Per Section 5.0:

NC General Contractor License Number# _____

Name of Licensee _____

FURNISH AND DELIVER: Vendor shall offer a turn-key firm fixed price, all inclusive of equipment, labor, materials, transportation, general and administrative overhead, and profit in accordance with the IFB. All bids shall use the provided pricing form. No Change Orders will be approved on the claim that site conditions of the structure and/or property have changed.

Item	SITE	GENERATOR SIZE	FUEL TYPE	GENERATOR COST	ATS COST	MISC. MATERIAL COSTS	PROJECT MGMT AND LABOR	TOTAL	TIME TO COMPLETE
1.	355 Frank Allen Rd	100 kW	Diesel						
2.	88 Cullowhee Mountain Rd	130 kW	Diesel						

ATTACHMENT B: INSTRUCTIONS TO VENDOR

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document; review all enclosures, attachments, and any Addenda; and comply with all requirements specified, whether appearing in these Instructions to Vendors or elsewhere in the Solicitation document. Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.
2. **REQUESTS FOR OFFERS:** Vendors are cautioned that this is a request for Offers, not an offer or request to contract, and the State reserves the unqualified right to reject any and all bids at any time if such rejection is deemed to be in the best interest of the State. By submitting Your Bid, You are offering to enter into a contract with the State. The Contract is a separate document that represents the Vendor's and the State's entire agreement. If Your bid is accepted and results in a Contract, You will be expected to accept the North Carolina General Terms And Conditions included in the Solicitation document as part of the Contract. Depending upon the goods or service being offered, other terms and conditions may apply.
3. **DUTY TO INQUIRE:** Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation for any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require better quality or greater quantity of work and/or materials, unless otherwise directed by Addendum. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention.
4. **DEFINITIONS, ACRONYMS AND ABBREVIATIONS:** The following definitions, acronyms, and abbreviations may be used within the Solicitation document.
 - a) AGENCY SPECIFIC TERM CONTRACT: A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities for a single entity.
 - b) ADDENDUM: a document issued to supplement or modify the original Solicitation document. Addenda may be issued following a pre-bid conference or as a result of a specification or work scope changes to the Solicitation.
 - c) Best and Final Offer, submitted by a Vendor to alter its initial bid, made in response to a request by the issuing agency.
 - d) BUYER: The employee of the State or Other Eligible Entity that places an order with the Vendor.
 - e) CONTRACT: A contract resulting from or arising out of Vendor responses to this Solicitation.
 - f) CONTRACT LEAD: Representative of the agency identified on the first page of the Solicitation document who will correspond with potential Vendors concerning Solicitation issues, will contract with the Vendor providing the best offer to the State, and is the individual who will administer the Contract for the State.
 - g) E-PROCUREMENT SERVICES: The program, system, and associated services through which the State conducts electronic procurement.
 - h) IPS: Interactive Purchasing Service.
 - i) LOT: A grouping of similar products within this Solicitation document.
 - j) OFFER: the bid submitted in response this Solicitation.
 - k) OFFEROR: the single legal entity submitting the Offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid As Offer To Contract.
 - l) ON-TIME DELIVERY: The delivery of all items within a single order to the receiving point designated by the ordering entity within the delivery time required.
 - m) QUALIFIED BID: A responsive bid submitted by a responsible Vendor.
 - n) RESPONSIBLE: Refers to a Vendor who demonstrates in its Offer that it has the capability to fulfil the requirements of the Solicitation.
 - o) RESPONSIVE: Refers to an Offer that conforms to the Requirements of Solicitation in all respects to be considered by the State for award.
 - p) RFPQ: Request for Pre-Qualifications (a type of Solicitation document).

- q) STATE: The State of North Carolina, including any of its sub-units recognized under North Carolina law.
 - r) STATE AGENCY: Any of the more than 400 sub-units within the executive branch of the State, including its departments, institutions, boards, commissions, universities, and units of the State.
 - s) VENDOR: The supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Solicitation document. Following award of a contract, the term refers to an entity receiving such an award.
 - t) WORK: All labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.
 - u) YOU and YOUR: Offeror.
5. **INTERPRETATION OF TERMS AND PHRASES:** The Solicitation document serves to advise potential Vendors of the parameters of the solution being sought by the State. The use of phrases such as “shall,” “must,” and “requirements” are intended to create enforceable contract conditions. In determining whether bids should be evaluated or rejected, the State will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the State’s needs as described in the Solicitation. Except as specifically stated in the Solicitation, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement, if determined to be essential under the circumstances then existing, may result in the State exercising its discretion to reject a bid in its entirety.
6. **BID SUBMISSION:**
- a) **VENDOR’S REPRESENTATIVE:** Each Vendor shall submit with its bid the name, address, and telephone number of the person(s) with authority to bind the Vendor and answer questions or provide clarification concerning the Vendor’s bid.
 - b) **SIGNING YOUR OFFER:** Every Offer must be signed by an individual with actual authority to bind the Offeror.
 - i. If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm.
 - ii. If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner.
 - iii. If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign.
 - iv. An Offer may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant.
 - v. If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.
 - c) **EXECUTION:** Failure to sign the Execution Page (numbered page 1 of the Solicitation document) in the indicated space may render a non-responsive Offer, and it may be rejected.
 - d) **STATE OFFICE CLOSINGS:** If an emergency or unanticipated event interrupts normal government processes so that Offers cannot be received at the State office designated for receipt of bids by the exact time specified in the Solicitation, the time specified for receipt of Offers will be deemed to be extended to the same time of day specified in the Solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Addendum may be issued to reschedule the bid opening. If State offices are closed at the time a pre-bid conference is scheduled, an Addendum will be issued to reschedule the conference.
 - e) **BID IN ENGLISH and DOLLARS:** Offers submitted in response to this Solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

7. **LATE BIDS:** Late bids, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure delivery at the designated office by the designated time.
 - a) Vendor shall bear the risk for late submission due to unintended or unanticipated delay— whether submitted electronically, delivered by hand, U.S. Postal Service, courier or other delivery service. It is the Vendor's sole responsibility to ensure that its bid has been received by this Office by the specified time and date of opening. The date and time of submission will be marked on each bid when received, and any bid received after the submission deadline will be rejected.
 - b) For bids submitted via U.S. mail, please note that the U.S. Postal Service generally does not deliver mail to a specified street address but to the State's Mail Service Center. Vendors are cautioned that bids sent via U.S. Mail, including Express Mail, may not be delivered by the Mail Service Center to the agency's purchasing office on the due date in time to meet the bid deadline. All Vendors are urged to take the possibility of delay into account when submitting a bid by U.S. Postal Service, courier, or other delivery service.
8. **DETERMINATION OF RESPONSIVENESS:** Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer.
9. **CONTENTS OF OFFER:**
 - a) Offers should be complete and carefully worded and should convey all of the information requested.
 - b) Offers should be prepared simply and economically, providing a straightforward, concise description of the Offeror's capabilities to satisfy the requirements of the Solicitation. Emphasis should be on completeness and clarity of content.
 - c) If Your Offer includes any comment over and above the specific information requested in the Solicitation, You are to include this information as a separate appendix to Your Offer. Offers which include either modifications to any of the Solicitation's contractual requirements or an Offeror's standard terms and conditions may be deemed non-responsive and not considered for award at the State's discretion.
10. **MULTIPLE OFFERS:** If specifically stated in the Solicitation document, Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements.
11. **CLARIFICATION:** The State may elect to communicate with You after bid opening for the purpose of clarifying either Your Offer or the requirements of the Solicitation. Such communications may be conducted only with Offerors who have submitted an Offer which obviously conforms in all material aspects to the Solicitation. Clarification of an Offer must be documented in writing and included with the Offer. Clarifications may not be used to revise an Offer or the Solicitation.
12. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the Vendor, to accept any item in the bid. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded. Regardless of error or omission, a Vendor shall not be permitted to increase its pricing after the deadline for submitting bids.
13. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain confidential trade secrets in its bid that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. § 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. § 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential as is possible. If a legal action is brought to require the disclosure of any material so marked as

confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.

14. **BASIS FOR REJECTION:** Pursuant to 01 NCAC 05B .0501, the State reserves the right to reject any and all Offers, in whole or in part, by deeming the Offer unsatisfactory as to quality or quantity, delivery, price or service offered, non-compliance with the requirements or intent of this Solicitation, lack of competitiveness, error(s) in specifications or indications that revision would be advantageous to the State, cancellation or other changes in the intended project or any other determination that the proposed requirement is no longer needed, limitation or lack of available funds, circumstances that prevent determination of the best offer, or any other determination that rejection would be in the best interest of the State.
15. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested in the Solicitation document. Further, if required elsewhere in this bid, each Vendor shall submit with its bid any sketches, descriptive literature, and/or complete specifications covering the goods and services offered. Reference to literature submitted with a previous bid or available elsewhere will not satisfy this provision. Do not submit bid samples or descriptive literature unless expressly requested. Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the Solicitation. Failure to comply with these requirements shall constitute sufficient cause to reject a bid without further consideration.
16. **WITHDRAWAL OF BID:** Bids submitted electronically may be withdrawn at any time prior to the date for bid opening identified on the cover page of this Solicitation document (or such later date included in an Addendum). Bids that have been delivered by hand, U.S. Postal Service, courier, or other delivery service may be withdrawn only in writing and if receipt is acknowledged by the office issuing the Solicitation document prior to the time for opening identified on the cover page of the Solicitation document (or such later date included in an Addendum). Written withdrawal requests shall be submitted on the Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after bid opening shall be allowed only for good cause shown and in the sole discretion of the Department of Public Safety, Division Emergency Management, Hazard Mitigation.
17. **COST FOR BID PREPARATION:** Any costs incurred by Vendor in preparing or submitting Offers are the Vendor's sole responsibility.
18. **INSPECTION AT VENDOR'S SITE:** The State reserves the right to inspect, at a reasonable time, the equipment, item, plant, or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary for the State's determination that such equipment, item, plant, or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.
19. **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.
20. **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 transacting business in North Carolina and shall not require a Certificate of Authority to Transact Business.
21. **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:

- a) If paper copies are requested, all copies of the bid are printed double sided. All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
 - b) Unless absolutely necessary, all bids and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
 - c) 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.
22. **INELIGIBLE VENDORS:** As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State. A contract with the State or any of its political subdivisions by any company identified in a) or b) below shall be void ab initio
- a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and
 - b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81.
23. **VALID TAXPAYER INFORMATION:** All persons or entities desiring to do business with the State must provide correct taxpayer information on North Carolina specified forms. The Substitute W-9 and Instructions are here:
<https://www.ncosc.gov/sites/default/files/2024-11/Substitute%20W-9%20Form.pdf>
24. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The North Carolina electronic Vendor Portal (eVP) allows Vendors to electronically register free with the State to receive electronic notifications of current procurement opportunities available on the Interactive Purchasing System (IPS), as well as notifications of status changes to those Solicitations. Online registration and other purchasing information are available at the following website: <http://ncadmin.nc.gov/about-doa/divisions/purchase-contract>.
25. The status of a Vendor's E-Procurement Services account(s) shall be considered a relevant factor in determining whether to approve the award of a Contract resulting from this Solicitation document. Any Vendor with an E-Procurement Services account that is in arrears by 91 days or more at the time of bid opening may be suspended or deactivated, at the State's discretion, and may be disqualified from further evaluation or consideration.
26. **TABULATIONS:** Bid tabulations can be electronically retrieved at the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/BidNumberSearch.aspx> Click on the IPS BIDS icon, click on Search for Bid, enter the bid number, and then search. Tabulations will normally be available at this web site not later than one working day after the bid opening. If negotiation is anticipated under 01 NCAC 05B.0503, pricing may not be public until award. Lengthy or complex tabulations may be summarized, with other details not made available on IPS. Requests for additional details or information concerning such tabulations cannot be honored.
27. **NC BIDS:** NC BIDS is an electronic bidding application that allows an agency to receive Vendor responses electronically for specified Solicitations, saving time and money by eliminating the need to print and ship paper bid packages. Each individual Solicitation document will indicate whether responses must be submitted electronically through NC BIDS or whether paper responses are required. Submissions that do not comply with the stated submission method will be deemed non-responsive. For more information and online training on NC Bids, visit <https://ncadmin.nc.gov/about-doa/divisions/purchase-and-contract/nc-bids/nc-bids-vendors>.
28. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain as confidential trade secrets in bids that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged to limit the marking of information as a trade secret or as confidential as is possible. If a legal action is brought to require the disclosure of any material so marked

confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.

29. **COMMUNICATION BY VENDORS:** In submitting its bid, the Vendor agrees not to discuss or otherwise reveal the contents of its bid to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this Solicitation. All Vendors are forbidden from having any communications with the using or issuing agency, or any other representative of the State concerning the Solicitation, during the evaluation of the bids (i.e., after the public opening of the bids and before the award of the Contract), unless the State directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the Solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's bid and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation or award of a Contract related to this Solicitation. Failure to comply with this requirement shall constitute sufficient justification to disqualify a Vendor from a Contract award. Only communications with the using agency or issuing agency authorized by this Solicitation are permitted.
 30. **INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in writing in this Solicitation document and in formal Addenda.
- PROTEST PROCEDURES:** When a Vendor wishes to protest a contract awarded by an agency when the award amount is less than an agency's general delegation or when the contract is subject to a special delegation or exemption, the Vendor shall submit a written request to protest to the purchasing officer of the agency that issued the award. The protest request must be received in the proper office within thirty (30) consecutive calendar days from the date of the Contract award. Protest letters shall contain specific grounds and reasons for the protest, how the protesting party was harmed by the award made and any documentation providing support for the protesting party's claims.
31. **Note:** Contract award notices are sent only to the Vendor awarded the contract, and not to every person or firm responding to a Solicitation. Award notices are posted on eVP at <https://evp.nc.gov>. All protests will be handled pursuant to the North Carolina Administrative Code, 01 NCAC 05B .1519.
 32. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this Solicitation or those in any resulting Contract documents, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this Solicitation document, including any negotiated terms, (2) requirements and specifications and administration, (3) North Carolina General Terms and Conditions in North Carolina General Terms And Conditions, (4) Instructions To Vendors, (5) Pricing, and (6) Vendor's Bid.
 33. **ADDENDA:** Critical updated information may be included in Addenda to the Solicitation. It is important that all Vendors bidding on the Solicitation periodically check for any Addenda that may be issued prior to the bid opening date. All Vendors shall be deemed to have read and understood all information in the Solicitation document and all Addenda thereto. Vendors are also responsible for obtaining and complying with all Addenda and other changes that may be issued concerning the Solicitation.
 34. **ORAL EXPLANATIONS NON-BINDING:** Oral explanations or instructions will not be binding. Any information given by a prospective Offeror concerning a Solicitation will be furnished promptly to all other prospective Offerors as an Addendum to the Solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. See clause herein entitled "Duty to Inquire." The State will not identify You in its answer to Your question.
 35. **MAXIMUM COMPETITION:** The State seeks to permit the maximum practicable competition. Offerors are urged to advise the State, as soon as possible, regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. If the State determines that any changes will be made resulting from the questions asked, then such decisions will be communicated in the form of an Addendum.
 36. **FIRM OFFER:** Vendor's bid shall constitute a firm offer. By execution and delivery of a bid in response to a Solicitation, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposefully or inadvertently, shall have no force or effect, and will be disregarded. Any bid that contains language

Bid Number: **19-IFB-2275374677-BJL**

Vendor: _____

that indicates the bid is non-binding or subject to further negotiation before a contractual document may be signed shall be rejected.

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ATTACHMENT C: N.C. GENERAL TERMS AND CONDITIONS

1. **PERFORMANCE**

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

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

- a) In the event of default by the Vendor, the State may, as provided by NC law, procure goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. See, G.S. 25-2-712. In addition, and in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, terminate the Contract for cause, and take action to recover relevant damages, and if permitted by applicable law, debar the Vendor from doing future business with the State. 01 NCAC 05B.1520.
- b) If, through any cause, Vendor fails to fulfill in a timely and proper manner the obligations under the Contract, including, without limitation, in these North Carolina General Terms and Conditions, the State shall have the right to terminate the Contract by giving thirty days' written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables that are prepared by the Vendor under the Contract shall, at the option of the State, become the property of the State (and under any applicable Vendor license to the extent necessary for the State to use such property), and the Vendor shall be entitled to receive just and equitable compensation for any acceptable deliverable completed (or partially completed at the State's option) as to which such option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damage sustained by the State by virtue of any breach of the Contract, and the State may withhold any payment due the Vendor for the

purpose of setoff until such time as the exact amount of damage due the State from such breach can be determined. The State, if insecure as to receiving proper performance or provision of goods deliverables, or if documented Vendor Services performance issues exist, under this Contract, may require at any time a performance bond or other alternative performance guarantees from a Vendor without expense to the State as provided by applicable law. G.S. 143-52(a); 01 NCAC 05B.1521; G.S. 25-2-609.

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

3. **INTERPRETATION, CONFLICT OF TERMS:**

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

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

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

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

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

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

7. **SITUS AND GOVERNING LAW:**

- a) This Contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina, including, without limitation, the relevant provisions of G.S. Chapter 143, Article 3, and the Rules in 01 NCAC Chapter 05, and any applicable successor provisions, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract, tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined. G.S. 22B-3.
- b) Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority, and including, without limitation, the applicable requirements in the Federal Funds Provisions, below.
- c) Non-resident Vendor corporations not formed under NC law must be domesticated in the Office of the NC Secretary of State in order to contract with the State of North Carolina. G.S. 55A-15- 01.

8. **NON-DISCRIMINATION COMPLIANCE:**

Wholly State Funded Contracts.

- a) The Vendor will take affirmative action in complying with all State requirements and laws 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 or rights, such as preserved by Governor Roy Cooper Order E.O. 24 or 25, and will take necessary action to ensure that its internal employee policies and procedures are consistent with Executive Order #82 (Roy Cooper, December 6, 2018), which extends workplace protections and accommodations to pregnant employees.
- b) Federal Law, such as the following, applies as provided for therein: Titles VI and VII of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (prohibiting discrimination on the basis race, color, national origin and ensuring that individuals are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age); Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.) (prohibiting discrimination on the basis of sex); Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 (prohibiting discrimination on the basis of disability); Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) (prohibiting discrimination on the basis of handicap); the Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.) (prohibiting age discrimination); Executive Order 11063 as amended by Executive Order 2259; and Section 109 of the Housing and Community Development Act of 1974, as amended.

Contracts Partially or Wholly Federally Funded.

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

- c) The Vendor shall comply with all Federal Funds Provisions requirements (below) and not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- d) The Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin:

- e) The Vendor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Vendor's legal duty to furnish information. The Vendor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f) The Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Vendor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- g) In the event of the Vendor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts or federally assisted construction Contracts.
- h) The Vendor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Vendor (or herein "applicant," as applicable in context within these Federal Funds Provisions) becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.
- i) The Vendor further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Vendor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.
- j) The Vendor agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

9. **PAYMENT TERMS:** Payment terms are net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The Procuring Agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card. If the Vendor accepts Visa, MasterCard, etc., from other customers, it shall accept procurement card payment by the State under the terms provided for the procurement card. 01 NCAC 05B.1523. If payment is made by procurement card, then payment for amounts then due may be processed immediately by the Vendor. The State does not agree in advance, in contract, pursuant to Constitutional limitations, to pay costs such as interest, late fees, penalties or attorney's fees. This Contract will not be construed as an agreement by the State to pay such costs and will be paid only as ordered by a court of competent jurisdiction.

10. **CONDITION AND PACKAGING:** Unless otherwise expressly provided by special terms and conditions or specifications in the Contract or by express, specific federal law or rule, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose, is newly manufactured, and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
11. **INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any Services or copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.
 - a) Vendor warrants to the best of its knowledge that:
 - i. Performance under the Contract does not infringe upon any intellectual property rights of any third party; and
 - ii. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
 - b) Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and refund any sums the State has paid Vendor for such deliverables and makes every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or other deliverables.
 - c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the deliverables supplied by the Vendor, their use or operation, infringe on a patent, copyright, trademark or violate a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and
 - ii. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
 - d) Vendor will not be required to defend or indemnify the State to the extent any claim by a third party against the State for infringement or misappropriation results solely from the State's material alteration of any Vendor-branded deliverables or Services, or from the continued use of the Services or other deliverables after receiving written notice from the Vendor of the claimed infringement.
12. **ADVERTISING:** Vendor agrees not to use the existence of the Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services except as provided in 01 NCAC 05B.1516. A Vendor may inquire whether the State is willing to be included on a listing of its existing customers.
13. **ACCESS TO PERSONS AND RECORDS:**
 - a) During, and after the term hereof during the relevant period required for retention of records by State law (G.S. 121-5, 132-1 et seq., typically five years), the State Auditor and any Purchasing Agency's internal auditors shall have access to persons and records related to the Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9). However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of such retention of records period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the record retentions period, whichever is later.
 - b) The following entities may audit the records of this contract during and after the term of the contract to verify accounts and data affecting fees or performance:

1. The State Auditor.
2. The internal auditors of the affected department, agency or institution.
3. The Joint Legislative Commission on Governmental Operations and legislative employees whose primary responsibility is to provide professional or administrative services to the Commission.
- c) The Joint Legislative Commission on Governmental Operations has the authority to:
 1. Study the efficiency, economy and effectiveness of any non-State entity receiving public funds.
 2. Evaluate the implementation of public policies, as articulated by enacted law, administrative rule, executive order, policy, or local ordinance, by any non-State entity receiving public funds.
 3. Investigate possible instances of misfeasance, malfeasance, nonfeasance, mismanagement, waste, abuse, or illegal conduct by officers and employees of a non-State entity receiving, directly or indirectly, public funds, as it relates to the officer's or employee's responsibilities regarding the receipt of public funds.
 4. Receive reports as required by law or as requested by the Commission.
 5. Access and review
 - a. Any documents or records related to any contract awarded by a State agency, including the documents and records of the contractor, that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance; and
 - b. Any records related to any subcontract of a contract awarded by a State agency that is utilized to fulfill the contract, including, but not limited to (i) records related to the drafting and approval of the subcontract, and (ii) documents and records of the contractor or subcontractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.
- d) The Joint Legislative Commission on Governmental Operations has the power to:
 1. Compel access to any document or system of records held by a non-State entity receiving, directly or indirectly, public funds, to the extent the documents relate to the receipt, purpose or implementation of a program or service paid for with public funds.
 2. Compel attendance of any officer or employee of any non-State entity receiving public funds, provided the officer or employee is responsible for implementing a program or providing a service paid for with public funds.
- e) Unless prohibited by federal law, the Commission and Commission staff in the discharge of their duties under this Article shall be provided access to any building or facility owned or leased by a non-State entity receiving public funds provided (i) the building or facility is used to implement a program or provide a service paid for with public funds and (ii) the access is reasonably related to the receipt, purpose, or implementation of a program or service paid for with public funds.
- f) Any confidential information obtained by the Commission shall remain confidential and is not a public record as defined in G.S. 132-1.
- g) Any document or information obtained or produced by Commission staff in furtherance of staff's duties to the Commission is confidential and is not a public record as defined in G.S. 132-1.
- h) A person who conceals, falsifies, or refuses to provide to the Commission any document, information, or access to any building or facility as required by this Article with the intent to mislead, impede, or interfere with the Commission's discharge of its duties under this Article shall be guilty of a Class 2 misdemeanor.

14. **ASSIGNMENT OR DELEGATION OF DUTIES:**

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

15. **INSURANCE:** This section provides minimum insurance coverage rates that are applicable to most moderate risk solicitations. Agency Risk Analysis will determine if higher insurance coverage amounts are needed based on the likelihood and severity of exposure to the State. The analysis is documented in writing in the official file and considers the following non-exclusive factors: (1) Potential for damage to State property or property of a third party,

(2) Potential for bodily injury to State employees or third parties, (3) Whether Vendor will transport State property, clients, or employees, (4) Use of a vehicle to accomplish the work or to travel to or from State locations, (5) Anticipated physical contacts of the Vendor with the State, (6) Anticipated number and activity of Vendor personnel within the State, and (7) Any other unique considerations that could result in harm, bodily injury, or property damage. The Purchasing Agency has specified elsewhere in this Contract any increase in the minimum insurance coverage requirements below if the risk from the above factors is high.

- a) **REQUIREMENTS** - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the NC Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations or the indemnification requirements under the Contract. As provided above, a State agency is authorized, upon written evaluation and substantiation in the official file of the significant risk of bodily injury and/or property or other damage in the contract, to require and enforce higher coverage limits to mitigate the potential risk of liability to the State.
- b) **COVERAGE** - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Vendor shall provide and maintain the following coverage and limits, subject to higher requirements by an agency after the risk analysis indicated above:
 - i. For Small Purchases as defined under North Carolina Administrative Code 01 NCAC 05A.0112 (35) and 05B.0301 (1), the minimum applicable insurance requirements for Worker's Compensation and Automobile Liability will apply as required by North Carolina law. The Purchasing Agency may require Commercial General Liability coverage consistent with the assessed risks involved in the procurement.
 - ii. For Contracts valued in excess of the Small Purchase threshold, but up to \$1,000,000.00 the following limits shall apply:
 1. Worker's Compensation - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$250,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
 2. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
 3. Automobile - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage.
 - iii. For Contracts valued in excess of \$1,000,000.00 the following limits shall apply:
 1. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.

2. **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 costs shall be in excess of the limit of liability.
3. **Automobile** - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.

16. **GENERAL INDEMNITY:**

- a) The Vendor shall indemnify, defend and hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of the Contract, and also from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of the Contract that are attributable to the negligence or intentionally tortious acts of the Vendor, provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge of such claims.
- b) The Vendor, at its own expense shall defend any action brought against the State, under this section. The Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.
- c) The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor deliverables or Services as part of this Contract with the State.
- d) As part of this provision for General indemnity, if federal funds are involved in this procurement, the Vendor warrants that it will comply with all relevant and applicable federal requirements and laws, and will indemnify, defend and hold and save the State harmless from any claims or losses resulting to the State from the Vendor's noncompliance with such federal requirements or law in the performance of this Contract. The representations and warranties in the preceding two sentences shall survive the termination or expiration of the Contract.
- e) The State does not participate in indemnification due to Constitutional restrictions, or arbitration, which effectively and unacceptably waives jury trial. See, G.S. 22B-3, -10.

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

GENERALLY APPLICABLE TO GOODS AND SERVICES PURCHASES:

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

18. **SUBCONTRACTING**: Performance under the Contract by the Vendor shall not be subcontracted without prior written approval of the State's assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor's bid shall include approval to use the subcontractor(s) that have been specified therein.
19. **CONFIDENTIALITY**: Vendor information that cannot be shown to be, e.g., a trade secret, may be subject to public disclosure under the terms of the State Public Records Act (SPRA), beginning at G.S. 132.1. Blanket assertions of confidentiality are not favored, but confidentiality of specific material meeting one or more exceptions in the SPRA will be honored. Vendors are notified that if the confidentiality of material is challenged by other parties, the Vendor has the responsibility of defending the assertion of confidentiality. G.S. 143-52(a).
20. **CARE OF STATE DATA AND PROPERTY**: Any State property, information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under the Contract shall be kept as confidential, used only for the purpose(s) required to perform the Contract and not divulged or made available to any individual or organization without the prior written approval of the State.
The State's data and property in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or another eventuality. The Vendor agrees to reimburse the State for loss or damage of State property while in Vendor's custody. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement.
The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B1379. For further information, see, G.S. 75-60 et seq. Notice is given to the Vendor that the NC Department of Information Technology (DIT) has requirements relating to the security of the State network, and rules relating to the use of the State network, IT software and equipment, that the Vendor must comply with, as applicable. See, e.g., G.S. 143B-1376.
21. **OUTSOURCING**: Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided. If, after award of a Contract, and consistent with any applicable NC DIT security provisions, the Contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such performance, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State Purchasing Agency. Vendor shall give notice to the Purchasing Agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State Contract to a location outside of the United States. See, G.S. 143- 59.4.
22. **ENTIRE AGREEMENT**: The Contract (including any documents mutually incorporated specifically therein) resulting from a relevant solicitation represents the entire agreement between the parties and supersedes all prior oral or written statements or agreements. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
23. **ELECTRONIC RECORDS**: The State will digitize all Vendor responses to the relevant solicitation, if not received electronically, as well as any awarded Contract together with associated procurement related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any official electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."
24. **AMENDMENTS**: This Contract may be amended only by a written amendment duly executed by the State and the Vendor.
25. **NO WAIVER**: Notwithstanding any other language or provision in the Contract or in any Vendor supplied material, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
26. **FORCE MAJURE**: 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, other catastrophic epidemic or pandemic, natural event or Act of God.

27. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.
28. **FEDERAL FUNDS PROVISIONS:** *Where federal funds are utilized in connection with this procurement, and to the extent applicable and absent stricter or controlling State provisions, the following federal provisions (in addition to the North Carolina General Terms and Conditions above) may apply consistent with Uniform Guidance in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, and its Appendix II. Relevant federal authorities may require additional provisions depending on the scope and context of the Contract.* Failure or unwillingness of the Vendor to continually meet any of these requirements, as applicable, may result in Contract termination. Any links to websites not maintained by the State are provided as a courtesy. **Some of these same provisions are contained later in the document under Attachment H: FEMA Rules and Regulations.** The State does not warrant or guarantee the accuracy of the hyperlink or the information contained therein.
- a) **No Governmental Non-Competes.** Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor's bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this Contract, the Vendor affirms this condition. This affirmation is a material condition for the State's award of any work under this Contract.
 - b) **Program Monitoring.** Vendor agrees to assist and cooperate with the Federal grantor or funding agency and the relevant Purchasing Agency or their duly designated representatives in the monitoring of the project or projects to which this Contract relates, and to provide in form and manner approved by the Purchasing Agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
 - c) **Remedies and Termination.** For purposes of this section the State Remedies and Termination provisions above apply as written.
 - d) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Compliance with the Contract Work Hours and Safety Standards Act.
 - i. *Overtime requirements.* No Vendor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - ii. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in 29 C.F.R. §5.5(b)(1) the Vendor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Vendor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 C.F.R. §5.5(b)(1), in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 C.F.R. §5.5(b)(1).
 - iii. *Withholding for unpaid wages and liquidated damages.* The Purchasing Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Vendor or subcontractor under any such contract or any other Federal contract with the same prime Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 C.F.R. §5.5(b)(2).

- iv. *Subcontracts.* The Vendor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of 29 C.F.R. §5.5 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 C.F.R. §5.5(b)(2) through (4).
- e) **Clean Air Act and The Federal Water Pollution Control Act.**
 - i. Clean Air Act
 - 1. The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - 2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - 3. The Vendor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.
 - ii. Federal Water Pollution Control Act
 - 1. The Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - 2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the federal agency providing funds hereunder, and the appropriate Environmental Protection Agency Regional Office.
 - 3. The Vendor agrees that these requirements will be included in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.
- f) **Debarment and Suspension.**
 - i. This Contract, if federal funding is used, is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Vendor is required to verify that none of the Vendor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - ii. The Vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - iii. This certification is a material representation of fact relied upon by a federal agency providing federal funds herein and the Purchasing Agency. If it is later determined that the Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to federal agency providing federal funds herein and the Purchasing Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - iv. The Vendor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of the Contract resulting from a relevant solicitation herein. The Vendor further agrees to include a provision requiring such compliance in its lower-tier covered transactions.
- g) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (as Amended).**
 - i. To the extent applicable, Vendors that apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are

forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

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

h) Procurement of Recovered Materials.

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

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

- i. The Vendor agrees to provide the Purchasing Agency, the Administrator of the federal agency providing funds hereunder, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- ii. The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- iii. The Vendor agrees to provide the Administrator of the federal agency providing funds hereunder or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.
- iv. In compliance with the Disaster Recovery Act of 2018, the Purchasing Agency and the Vendor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the Administrator of the federal agency providing funds hereunder or the Comptroller General of the United States.

j) Modifications to Contract. Modifications to the Contract are governed by the North Carolina General Contract Terms & Conditions section above entitled "AMENDMENTS," except as approval and signature by any federal official may also be required.

k) Records Retention. All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation, or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.

l) Energy Efficiency. All participants in the projects funded hereby shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

m) Program Fraud and False or Fraudulent Statements or Related Acts. Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.

- n) **No Obligation by Federal Government.** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Vendor, or any other party pertaining to any matter resulting from the Contract.
 - o) **Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the Contract. The Vendor will comply with all applicable Federal law, regulations, executive orders, and the policies of the federal agency(ies) providing funding, procedures, and directives.
 - p) **Federal Seals, Logos, and Flags.** In addition to the prohibitions of the North Carolina General Contract Terms & Conditions section above entitled "ADVERTISING," the Vendor shall not use the seal(s), logos, crests, or reproductions of flags of a federal agency providing funding herein, or likenesses of federal agency officials without specific pre-approval of the relevant federal agency.
 - q) **System for Awards Management.** Vendor shall be responsible to ensure that it has checked the federal System for Awards Management (SAM) <https://www.sam.gov/SAM/> and the State Debarred Vendors Listing, <https://ncadmin.nc.gov/documents/nc-debarred-vendors> to verify that Contractors or sub-Recipients have not been suspended or debarred from doing business with federal or State government.
29. **PREA:** NCDPS is committed to a standard of zero-tolerance pertaining to unduly familiar or sexually abusive behavior either by another juvenile or by staff, volunteer, vendor, contractor, or party. Staff, volunteers, vendors, contractors, or parties are strictly prohibited from engaging in personal dealings or conduct of a sexual nature with an inmate or juvenile. Conversation and conduct with any inmate or juvenile must be professional at all times. Sexual acts between a juvenile or inmate and staff member will contradict the standards of the Federal Prison Rape Elimination Act of 2003 (PREA). Such acts also may be punishable, at a minimum, as a Class E felony in North Carolina. Under State law, consent of the inmate or juvenile may not be available as a defense for an individual who is charged criminally based on sexual conduct with the inmate or juvenile. Also, no juvenile or inmate can consent to engage in sexual activity with staff, volunteers, vendors, contractors, or parties. Any contractual facility will comply with national standards to prevent, detect, and respond to PREA (115.12, 212, 312) and permit the Department to monitor this aspect of the contract to ensure compliance with the PREA standards. As a valued partner with NCDPS, it is important to remember that if you become aware of a report of any incidents of unduly familiar or sexually abusive behavior or sexual harassment, you have a duty to report this information immediately to your contact person with the Agency, by email to prea@ncdps.gov, or the DPS Communications office at (800) 368-1985. Also, it may violate State law to sell or give an inmate or juvenile and alcoholic beverages, barbiturates or stimulant drug, or any narcotic, poison, or poisonous substance, except upon the prescription of a physician; and it may violate State law to give an inmate or juvenile any tobacco or tobacco products, alcohol, or cell phones. It may also violate NCDPS policy to convey to or take from any juvenile or inmate any letters, or verbal messages; to convey any weapon or instrument by which to effect an escape, or that will aid in an assault or insurrection; to trade with any inmate for clothing or stolen goods or to sell any inmate any article forbidden by NCDPS policy. By signing this document, you acknowledge that you understand and will abide by this policy as outlined above.

ATTACHMENT D: CUSTOMER REFERENCE FORM

Solicitation #: _____

Vendor Name: _____

Instructions: Vendor shall use this template to submit three (3) customer references with its offer.

Name of Customer Organization:	
Customer Reference Name:	
Customer Reference Address:	
Customer Reference Email:	
Start Date:	
End Date:	
Explanation of contract, service agreement, or type of products and quantity provided to the organization:	

Name of Customer Organization:	
Customer Reference Name:	
Customer Reference Address:	
Customer Reference Email:	
Start Date:	
End Date:	
Explanation of contract, service agreement, or type of products and quantity provided to the organization:	

Name of Customer Organization:	
Customer Reference Name:	
Customer Reference Address:	
Customer Reference Email:	
Start Date:	
End Date:	
Explanation of contract, service agreement, or type of products and quantity provided to the organization:	

ATTACHMENT E: LOCATION OF WORKERS UTILIZED BY VENDOR

Solicitation #: _____

Vendor Name: _____

In accordance with NC General Statute G.S. 143-59.4, Vendor shall detail the location(s) at which performance will occur, as well as the manner in which it intends to utilize resources or workers outside of the United States in the performance of The Contract.

Vendor shall complete items 1 and 2 below.

1. Will any work under this Contract be performed outside of the United States? YES ☐ NO ☐

If "YES":

- a) List the location(s) outside of the United States where work under the Contract will be performed by the Vendor, any subcontractors, employees, or any other persons performing work under the Contract.
- b) Specify the manner in which the resources or workers will be utilized:

2. Where within the United States will work be performed?

NOTES:

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

ATTACHMENT F: CERTIFICATION OF FINANCIAL CONDITION

Solicitation #: _____

Name of Vendor: _____

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

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

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

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

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

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

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

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

Note: This shall constitute a continuing certification and Vendor shall notify the Contract Lead within 30 days of any material change to any of the representations made herein.

— If any one or more of the foregoing boxes is NOT checked, Vendor shall explain the reason(s) in the space below. Failure to include an explanation may result in Vendor being deemed non-responsive and its submission rejected in its entirety.

Signature

Date

Printed Name

Title

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

ATTACHMENT G: CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, & COOPERATIVE AGREEMENTS

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LL L, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subContracts, subgrants, and Contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Vendor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Vendor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Vendor's Authorized Official

Name and Title of Vendor's Authorized Official

Date

ATTACHMENT H: ALCOHOL/DRUG-FREE WORKPLACE POLICY

POLICY

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

PURPOSE

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

PROCEDURES/OPERATIONAL GUIDELINES

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

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

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

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

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

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

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

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

ATTACHMENT I: REQUIRED ELEMENTS FOR UTILIZATION OF FEDERAL FUNDS

To the extent applicable, the following are the requirements that Vendor must agree to be awarded any contract under this solicitation. If Vendor is unwilling to meet any of these requirements, Vendor's submittal shall not be considered.

1. **No Governmental Non-Competes.** Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor's bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside the first Term of the Contract. By executing this RFP, the Vendor affirms this condition, as directed in the Vendor Experience Section 4.4 of this RFP. This affirmation is a material condition for the State's award of any work under this RFP.
2. **Program Monitoring.** Vendor agrees to assist and cooperate with the Federal grantor agency and NCEM or their duly designated representatives in the monitoring of the projects to which this contract relates, and to provide in form and manner approved by NCEM such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
3. **Remedies.** Remedies for performance and default are governed under Sections 1 and 2 and related sections of the N.C. General Terms & Conditions included in this solicitation and Section 4 and 5 of the FEMA Rules and Regulations below.
4. **Termination for Cause.** Termination of the Contract for Cause shall be governed by Section 2 of the N.C. General Terms & Conditions included in this solicitation.
5. **Termination for Convenience.** Termination of the Contract for Convenience shall be governed by Section 2 of the N.C. General Terms & Conditions included in this solicitation.
6. **Equal Employment Opportunity.** During the performance of this Contract, the contractor agrees as follows:
 - a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but are not limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b) The Vendor will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - c) The Vendor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
 - d) The Vendor will send each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Vendor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - e) The contractor will comply with all provision of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - f) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - g) In the event of the Vendor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as

provided in Executive Order 11246 of September 25, 1965, or by rule, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

- h) The Vendor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event a Vendor becomes involved in, or is threatened with, litigation with a subcontractor or vendor because of such direction by the administering agency, the Vendor may request the United States to enter such litigation to protect the interests of the United States.

The Vendor further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The Vendor agrees that it shall assist the cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Vendor further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Vendors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the cause to the Department of Justice for appropriate legal proceedings.

7. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

Compliance with the Contract Work Hours and Safety Standards Act.

- a) *Overtime requirements.* No Vendor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in 29 C.F.R. § 5.5(b)(1) the Vendor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 C.F.R. § 5.5(b)(1), in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 C.F.R. § 5.5(b)(1).
- c) *Withholding for unpaid wages and liquidated damages.*
 - a. *Withholding Process.* NCEM may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Vendor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime

contractor (as defined in § 5.2). The necessary funds may be withheld from the Vendor under this contract, any other federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

- b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:
 - i. A contractor's sureties, including without limitation performance bond sureties and payment bond sureties;
 - ii. A contracting agency for its re-procurement costs;
 - iii. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
 - iv. A contractor's assignee(s);
 - v. A contractor's successor(s); or
 - vi. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
- d) *Subcontracts.* The Vendor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor, and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate
- e) *Anti-retaliation.* It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
 - a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
 - b. Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
 - c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
 - d. Informing any other person about their rights under CWHSSA or this part."

Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The Vendor or subcontractor must maintain regular payrolls and other basic records during the work and must preserve them for a period of three years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work performed; hourly rates of wages paid; daily and weekly number of hours worked; deductions made; and actual wages paid.

(2) Records to be maintained under this provision must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.

8. Clean Air Act and The Federal Water Pollution Control Act.

Clean Air Act

- a) The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b) The Vendor agrees to report each violation to NCEM and understands and agrees that NCEM will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- c) The Vendor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- a) The Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- b) The Vendor agrees to report each violation to NCEM and understands and agrees that NCEM will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c) The Vendor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. Debarment and Suspension.

- a) This contract is a covered transaction for purposes of 2 C.F.R. part 180 and 2 C.F.R. part 3000. As such, the Vendor is required to verify that none of the Vendor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b) The Vendor must comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.
- c) The certification is a material representation of the fact relied upon by NCEM. If it is later determined that the Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to NCEM, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- d) The Vendor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions. (See Attachment I below)

10. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) (as amended).

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

11. Procurement of Recovered Materials.

- a) In the performance of this contract, the Vendor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: competitively within a timeframe providing for compliance with the contract performance schedule, meeting contract performance requirements, or at a reasonable price.
- b) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines website <http://www.epa.gov/smm/comprehensive-procurement-guideline-cpq-program>.
- c) The Vendor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

12. Prohibition on Contracting for Covered Telecommunications Equipment or Services.

- a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
- b) *Prohibitions.*
 - 1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

- 2) Unless an exception in paragraph (c) of this clause applies, the Vendor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - ii. Enter, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - iii. Enter, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - iv. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

c) Exceptions.

- 1) This clause does not prohibit Vendors from providing—
 - i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- 2) By necessary implication and regulation, the prohibitions also do not apply to:
 - i. Covered telecommunications equipment or services that:
 - a. Are not used as a substantial or essential component of any system; and
 - b. Are not used as critical technology of any system
 - ii. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

d) Reporting Requirement.

- 1) In the event the Vendor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Vendor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- 2) The Vendor shall report the following information pursuant to paragraph (d)(1) of this clause:
 - i. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - ii. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Vendor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services

- e) *Subcontracts.* The Vendor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

13. Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Vendor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-

ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

14. **Build American, Buy American Act (BABAA).** Vendors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the Build America, Buy America Act shall file the required certification to (insert name of recipient/subrecipient) with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA. Vendors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Vendors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirements. Such disclosures shall be forwarded to the recipient who, in turn, will forward the disclosures to FEMA, the federal agency; subrecipients will forward disclosures to the passthrough entity, who will, in turn, forward the disclosures to FEMA. Note that even if the project does not involve construction and only requires project scoping, this requirement must be kept in mind for those programs that are required to be compliant with BABAA including but not limited to BRIC and FMA projects.
15. **Access to Records.** In addition to Section 13 of the N.C. General Terms & Conditions included in this solicitation, the following access to records requirements apply to this contract:
 - a) The Vendor agrees to provide NCEM, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - b) The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c) The Vendor agrees to provide FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the contract.
 - d) In compliance with the Disaster Recovery Act of 2018, NCEM and the Vendor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator of the Comptroller General of the United States.
16. **Modifications to Contract.** Modifications to the Contract are governed by Section 24 of the N.C. General Terms & Conditions included in this solicitation.
17. **DHS, Seal, Logo, and Flags.** In addition to the prohibitions in Section 28 of the N.C. General Terms & Conditions included in this solicitation, the Vendor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
18. **Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Vendor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
19. **No Obligation by Federal Government.** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Vendor, or any other party pertaining to any matter resulting from the contract.
20. **Program Fraud and False or Fraudulent Statements or Related Acts.** Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.
21. **Socioeconomic Contracting.** The Vendor is encouraged to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered when possible.
22. **Build America, Buy America Act (BABAA) for Architectural and/or Engineering Contracts.** Contractors and subcontractors agree to incorporate the Buy America Preference into planning and design when providing architectural and/or engineering professional services for infrastructure projects. Consistent with the Build America, Buy America Act (BABAA) Pub. L. 117- 58 §§ 70901-52, no federal financial assistance funding for infrastructure projects will be used unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States.
23. **Providing Good, Safe Jobs to Workers.** Pursuant to FEMA Information Bulletin No. 520, the Vendor will comply with all applicable federal labor and employment laws. To maximize cost efficiency and quality of work, the contractor commits to strong labor standards and protections for the project workforce by creating an effective plan for ensuring high-quality jobs and complying with federal labor and employment laws. The contractor acknowledges applicable minimum wage, overtime, prevailing wage, and health and safety requirements, and will incorporate Good Jobs Principles wherever appropriate and to the greatest extent practicable.

24. **Records Retention.** All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation, or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.
25. **Energy Efficiency.** All participants in the projects funded hereby shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).
26. **DHS Standard Terms and Conditions.** In addition to the FEMA Rules and Regulations above, DHS Standard Terms and Conditions apply to the agreement as pertinent to the program as FEMA is a subdivision of DHS. The applicable DHS Standard Terms and Conditions for grants, cooperative agreements, fixed amount awards, and other types of federal financial assistance are based on the fiscal year in which the financial assistance award was funded. For access to the condition please see www.dhs.gov/publication/dhs-standard-terms-and-conditions.
27. **Debarment, Suspension, and Ineligibility (2 C.F.R. 200, Appendix II(I)).** Vendor represents and warrants that it and its Subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 2 C.F.R. 180 and 24 C.F.R. 24.1 (government debarment and suspension regulations).
28. **Subcontracts.** Vendor shall not enter any subcontract with any Subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of North Carolina. Contractor shall be as fully responsible to NCEM for the acts and omissions of Contractor's Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by Contractor. Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind Subcontractor to Contractor by the terms of the Contract Documents insofar as applicable to the work of Subcontractors and to give Contractor the same power regarding terminating any subcontract that NCEM may exercise over Contractor under any provision of the Contract Documents. Nothing contained in this contract shall create any contractual relationship between any Subcontractor and NCEM.
29. **Assignability.** Vendor 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, excepting claims for money due or to become due Vendor 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.
30. **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.
31. **Iran Divestment Act Certification.** Vendor certifies that, as of the date listed above, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 143-6A-4. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Vendor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.
32. **Federal Funding Accountability and Transparency Act (FFATA).** The Vendor shall comply with the requirements of 2 C.F.R. part 25 Universal Identifier and System for Award Management (SAM). The grantee must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Unique Entity Identifier (UEI) number. The Vendor must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.
33. **Client Data and Other Sensitive Information.** The Vendor must comply with 2 C.F.R. §200.303 and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. 200.82, and other information NCEM designates as sensitive or consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.
34. **Funding Contingency.** The awarded Contract may be suspended and/or terminated without liability to the State if any grant is suspended or terminated, and unless and until the State receives funds in an amount that is deemed sufficient to enable it to fund the Contract awarded, the State is under no obligation to make any payments to the Vendor.
35. **Personnel.** Vendor represents that it has, or will secure at its own expense, all personnel required in performing the work under this Contract. Such personnel shall not be employees of or have any contractual relationship with State. All the work required hereunder will be performed by Vendor or under its supervision, and all personnel engaged in the work

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Vendor: _____

shall be fully qualified and shall be authorized or permitted under State and State law to perform such work. No person who is serving a sentence in penal or correctional institution shall be employed to work under this Contract.

ATTACHMENT J: CONSTRUCTION GENERAL CONDITIONS

ARTICLE 1 – WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

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

ARTICLE 2 – OWNERSHIP OF DRAWING AND SPECIFICATIONS

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

ARTICLE 3 – MATERIALS, EQUIPMENT, EMPLOYEES

- a) Vendor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of this work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of the same, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefrom, all in accordance with the contract documents.
- b) All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c) Upon notice, Vendor shall furnish evidence as to quality of materials.
- d) Products are generally specified by American Society of Testing and Materials (ASTM) or other reference standards and/or by manufacturer’s name and model number or trade name. When specified only by reference standard, Vendor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, Vendor has the option of using any product and manufacturer combination listed. However, Vendor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name.; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Request for substitution of materials, items, or equipment shall be submitted to the EOR and/or GC/CM for approval or disapproval; such approval or disapproval shall be made by the EOR and/or GC/CM prior to the opening of bids. Alternate materials may be requested after the award if it can clearly be demonstrated that it is an added benefit to Owner and the EOR and Owner approves.
- e) EOR and/or GC/CM shall be the judge or equality for proposed substitution of products, materials or equipment and whether they comply with HMGP and/or grant eligibility rules, requirements and/or standards. The State shall be notified of all substitutions of products, materials or equipment.

ARTICLE 4 – ROYALTIES, LICENSES AND PATENTS

It is the intention of the contract documents that the work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. Vendor shall protect and save harmless Owner, GC/CM, PM, NCEM, the State of North Carolina and/or FEMA against suit on account of alleged or actual infringement.

Vendor shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

ARTICLE 5 – PERMITS, INSPECTIONS, FEES, REGULATIONS

- a) Vendor shall give all notices and comply with all laws, ordinances, codes, rules and/or regulations bearing on the conduct of the work under this Contract. If Vendor observes that the drawings and specifications are at variance therewith, he shall promptly notify the EOR, GC/CM and PM in writing. Any necessary changes required after Contract award shall be made by Change Order in accordance with Article 19. If Vendor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the EOR, GC/CM and PM, he shall bear all costs 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 Vendor and be included within the bid. All water taps, meter barrels, vaults and impact fees shall be paid by Vendor and included within the bid unless noted otherwise.

ARTICLE 6 – PROTECTION OF WORK, PROPERTY AND THE PUBLIC

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

ARTICLE 7 – SEDIMENTATION POLLUTION CONTROL ACT OF 1973

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

ARTICLE 8 – INSPECTION OF THE WORK

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

ARTICLE 9 – CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

- a) Vendor agrees that the terms of its Contract shall apply equally to each subcontractor as to Vendor, and Vendor agrees to take such action as may be necessary to bind each subcontractor to these terms. Vendor 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 Vendors: payments to subcontractors.
- b) Within seven (7) days of receipt by Vendor of each periodic or final payment, Vendor 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 (7) days after receipt of periodic or final payment by Vendor, Vendor 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. PM and NCEM shall not be liable for interest resulting from Vendor's failure to pay any subcontractor.
- c) NCEM will retain no more than five (5) percent of the progress payments from Vendor, which will be released upon file acceptance of the HMGP project. Should Vendor fail to perform work under the Contract, substantially delay completion of the work, or fail to correct non-conforming work in a timely manner, NCEM, through PM, may be retainage to correct non-conforming work and/or complete performance of the Contract. The percentage of

retainage on payments made by Vendor to the subcontractor shall not exceed the percentage of retainage on payments made by NCEM to Vendor. Any percentage of retainage on payments made by Vendor to the subcontractor that exceeds the percentage of retainage on payments made by NCEM to Vendor shall be subject to interest to be paid by Vendor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.

- d) Nothing in this section shall prevent Vendor, at the time of application and certification to PM 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 Vendor or another subcontractor; reasonable evidence that subcontractor 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 PM, may make changes to the work covered by the Contract. These changes will not invalidate any portion of the Contract and will not relieve or release Vendor from any guarantee given by it pertinent to the Contract provisions. These changes will not affect the validity of the guaranteed bond and will not relieve the surety or sureties of said bond. All extra work shall be executed under conditions of the original Contract.
- b) Except in an emergency endangering life or property, no change shall be made by Vendor except upon receipt of an approved Change Order or written field order from PM authorizing such change. No claim for adjustments of the Contract price shall be valid unless this procedure is followed.
A field order, transmitted by fax, electronically, or hand delivered, may be used where the change involved impacts the critical path of the work. A formal Change Order shall be issued as expeditiously as possible.
In the event of an emergency endangering life or property, Vendor may be directed to proceed on a time and materials basis, whereupon Vendor shall proceed and keep accurately on such form as specified by PM 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 value of changes, either additive or deductive, Contract shall be based on the discretion of NCEM.
- d) Should below grade concealed conditions be encountered in the performance of the work, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract documents, the Contract sum and time for completion may be equitably adjusted by Change Order upon claim by either party made within thirty (30) days after the condition has been identified. All Change Orders shall be supported by a unit cost breakdown showing method of arriving at net cost as defined above.
- e) In all Change Orders, Vendor will provide such bid and supporting data in suitable written format. PM shall verify correctness. Delay in the processing of the Change Order due to lack of proper submittal by Vendor of all required supporting data shall not constitute grounds for a time extension or basis of a claim. Within fourteen (14) days after receipt of Vendor’s accepted bid, including all supporting documentation required by PM, PM shall prepare the Change Order and forward to Vendor for his signature or otherwise respond, in writing, to Prime Contract’s bid. Within seven (7) days after receipt of the Change Order executed by Vendor, PM’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 of HMGP 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 Vendor shall not proceed with the work. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or via field orders approved by all parties and then shall be substantiated in writing as outlined under normal procedure.
- f) A Change Order, when issued, shall include full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.
- g) Vendor understands and acknowledges that any and all Change Orders made subsequent to this Grant Agreement shall be incorporated herein by reference into this original Grant Agreement. Subsequent Change Orders shall then represent the entire Grant Agreement between the parties for the new construction of their damaged home under the Program.

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

- a) Vendor shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the PM and shall fully complete all work hereunder within the time of completion stated in the Contract. Time is of the essence, and Vendor acknowledges NCEM will likely suffer financial damage for failure to complete the work within the time of completion. For each day in excess of the above number of days, the sum of \$250.00 per day shall be deducted from Vendor’s next draw request as liquidated damages reasonably estimated in advance to cover the losses incurred by NCEM by reason of failure of said Vendor to complete the work within the

time specified, such time being in the essence of this Contract and a material consideration thereof. If Vendor disputes the calculation of liquidated damages, the NCEM may recover actual damages.

- b) If Vendor is delayed at any time in the progress of his work solely by: any act or negligence of Owner, PM or NCEM; by change 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 Vendor's control; or by any other causes which PM and NCEM determine may justify the delay, then the Contract time may be extended by Change Order only for the time which PM 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 the work is performed. For purposes of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the Contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the Nation Oceanic and Atmospheric Administration National Weather Service statistics for the locality where the work is performed and on daily weather logs kept on the job side by the Vendor reflecting the effect of the weather on progress of the work and initialed by the PM'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 NCEM do not entitle Vendor to compensable damages for delays. Any Vendor claim for compensable damages for delays is limited to delays caused solely by Owner or its agents. Vendor caused delays shall be accounted for before Owner or PM caused delays in the case of concurrent delays.
- c) Requests for extensions of time shall be made in writing to PM, with copies provided to NCEM and PM, within fifteen (15) days following cause of delay. The request must contain a brief description of: the event or situation that caused the delay; how the event and situation impacted critical work needed to complete the project on time as such work is reflected in the schedule or reasonably inferred from the progress of construction; a statement of Vendor's inability to perform other work to mitigate the impact of the event or situation causing delay; a statement that Vendor (including employees, subcontractors, or suppliers) were not the cause of the event or situation; and such other additional work and costs incurred by Vendor resulting from the event or situation delaying Vendor's work. **Vendor understands that the failure to provide a timely request with the requested details and cost information shall result in rejection of the request absent a reasonable and substantiated explanation for the lack of timeliness which was caused by events, situations or persons outside Vendor's control. Vendor further understands that the payments made under this Contract are from a Federal grant administered by a State agency and, as a result, Vendor understands that any requests for time extensions are subject to the State and Federal False Claims Acts and auditing requirements.**
- d) If a performance or payment bond has been provided by Vendor for this project, then Vendor shall notify its surety in writing of any extension of time that is granted by NCEM.

ARTICLE 12 – APPLICATIONS FOR PAYMENT

- a) Vendor shall submit to PM a request for payment for work done on a schedule agreed upon by Vendor and PM. The request shall be in the form agreed upon between Vendor and PM, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the Contract with the following information:
 - 1. Total value of Contract including Change Orders.
 - 2. Value of work completed to date.
 - 3. Less five percent (5%) retainage.
 - 4. Less previous payments.
 - 5. Current amount due.
- b) Vendor, upon request of PM, shall substantiate the request with invoices or vouchers or payrolls or other evidence including compliance with Federal prevailing wage laws.
- c) Prior to submitting the first request, Vendor shall prepare for PM a schedule of values (SOV) showing a breakdown of the Contract price into values of the various parts of the work, so arranged as to facilitate payments to Vendor and subcontractors. Vendor shall list the value of each subcontractor and supplier, identifying each minority business subcontractor and supplier.
- d) NCEM will direct PM to withhold retainage up to the statutory amount of five percent (5%) to ensure a Vendor's completion of the project and/or it resolve any disputes with NCEM or subcontractors.

ARTICLE 13 – CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a) Within five (5) days from receipt of request for payment from Vendor (or other date set by Vendor, PM and NCEM), Vendor shall issue and forward to PM a certificate for payment. This certificate shall indicate the amount requested by Vendor. If the certificate is 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 is issued by Authority Having Jurisdiction, and PM 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 Vendor against Owner, PM and/or NCEM except:
 - 1. Claims arising from unsettled liens or claims against Vendor.
 - 2. Faulty work or materials appearing after final payment.
 - 3. Failure of Vendor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
 - 4. As conditioned in any payment bond.
- c) Vendor shall forward to PM 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 supplies.
 - 2. Affidavit of Release of Liens.
 - 3. Affidavit of Vendor of payment to material suppliers and subcontractors.
 - 4. Consent of Surety to Final Payment.
 - 5. Certificates of State agencies required by State law.
 - 6. If applicable, Asbestos Manifest from a permitted disposal facility.
 - 7. Warranty certification by homeowner.
 - 8. Homeowner Acceptance of work.

ARTICLE 14 – PAYMENT WITHHELD

- a) PM, with approval of 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 judgement of the EOR and/or PM.
 - 3. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
 - 4. Payment documentation has not been submitted by the Vendor or is unacceptable.
 - 5. Non-compliance with contractual requirements.
- b) When grounds for withholding payments have been removed, payment will be released.

ARTICLE 15 – RESERVED

ARTICLE 16 – PAYMENT & PERFORMANCE BONDS

- a) NCEM, though PM, will require Vendor to furnish a payment bond executed by a surety company authorized to do business in North Carolina. The bond shall be in the full Contract amount. The bond shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.
- b) Performance Bond – NCEM, through PM, will require Vendor to furnish a performance bond executed by a surety company authorized to do business in North Carolina. The performance bond shall be in the full Contract amount. Vendor shall submit a sample performance bond and sample power of attorney to NCEM and PM for review and approval.

ARTICLE 17 – VENDOR’S AFFIDAVIT

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

ARTICLE 18 – USE OF PREMISES

- a) Vendor shall confine its equipment, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of Authority Having Jurisdiction, PM, and NCEM and shall not exceed those established limits in its operation.

- b) Vendor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c) Vendors shall enforce PM's and NCEM's instructions regarding signs, advertisements, fires and smoking.
- d) No firearms, any type of alcoholic beverages, or drugs (other than those prescribed by a physician) will be permitted at the job site.

ARTICLE 19 – CUTTING, PATCHING AND DIGGING

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

ARTICLE 20 – UTILITIES, STRUCTURES, SIGNS

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

ARTICLE 21 – CLEANING UP

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

ARTICLE 22 – GUARANTEE

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

ARTICLE 23 – WOMEN AND MINORITY BUSINESS PARTICIPATION

2 C.F.R. § 200.321 requires that all necessary affirmative steps are taken to assure that minority and women's businesses are used when possible, and G.S. § 143-128.2 establishes a ten percent (10%) goal for participation by minority and women owned businesses in total value of work for the HMGP. The document, Guidelines for Recruitment and Selection of Minority

Businesses for Participation in State Construction Contracts, including affidavits, is found on the N.C. State Construction Office website.

ARTICLE 24 – PRIME CONTRACTOR EVALUATION

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

ARTICLE 25 – GIFTS

Pursuant to G.S. § 133-32, it is unlawful for any Vendor or Contractor (i.e. architect, bidder, Vendor, 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. § 133-32.

During the construction of the Project, Vendor and subcontractors are prohibited from making gifts to any employee of NCEM and/or any other State employee from any other State agency that may have any involvement, influence, responsibilities, oversight, management and/or duties that pertain to and/or relate to the contract administration, financial administration and/or disposition of claims arising from and/or relating to the Contract and/or Project. In addition, Vendors are prohibited from making gifts to the Owner at any time. Vendors in violation of this provision of the agreement will be removed from participation in the program and reported to FEMA for investigation.

ARTICLE 26 – AUDITING – ACCESS TO PERSONS AND RECORDS

In accordance with 2 C.F.R. § 200.501 and G.S. § 147-64.7, the Office of the Inspector General (OIG), State Auditor, NCEM or other applicable State agency internal auditors, or FEMA shall have access to Vendor's officers, employees, agents and/or other persons in control of and/or responsible for Vendor's records that relate to this Contract for purposes of conducting audits under the referenced statute. FEMA and NCEM's internal auditors shall also have the right to access and copy Vendor's records relating to the Contract and Project during the term of the Contract and within five (5) years following the completion of the Project/closeout of the Contract to verify accounts, accuracy, information, calculations and/or data affecting and/or relating to Vendor'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 PM, NCEM and/or Owner.

ARTICLE 27 – NORTH CAROLINA FALSE CLAIMS ACT

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

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

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ATTACHMENT K: SUPPLEMENTAL PROJECT DETAILS

The following property details are provided to assist Vendor(s) when creating their bid documents.

Property Address	355 Frank Allen Rd	City	Cashiers
County	Jackson	Postal Code	28717
Latitude	35.110817	Longitude	-83.104317



ATTACHMENT K: SUPPLEMENTAL PROJECT DETAILS

The following property details are provided to assist Vendor(s) when creating their bid documents.

Property Address	88 Cullowhee Mountain Rd	City	Cullowhee
County	Jackson	Postal Code	28723
Latitude	35.289995	Longitude	-83.179943

