

**CONTRACT FOR
ENVIRONMENTAL ENGINEERING/CONSULTING SERVICES BETWEEN
FLORIDA HOUSING FINANCE CORPORATION
AND
TERRACON CONSULTANTS, INC.**

This Contract for Environmental Engineering/Consulting Services, 055SF-2024 (Contract) is entered into by and between the FLORIDA HOUSING FINANCE CORPORATION (Florida Housing), a public corporation and a public body corporate and politic, with headquarters located at 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301, and TERRACON CONSULTANTS, INC. (Contractor), located at 10841 S. Ridgeview Road, Olathe, KS 66061. Upon execution by both parties, this Contract shall become effective on August 12, 2024 or as of the date the last party signs, whichever is later (Effective Date).

RECITALS

- A. The Contractor represents that it is fully qualified and possesses the requisite skills, knowledge, qualifications, and experience to provide Environmental Engineering/Consulting Services identified herein and offers to perform those services described in Exhibit A, Request for Qualifications (RFQ) 2024-05 attached hereto and incorporated herein.
- B. Florida Housing has a need for such services and does hereby accept the offer of the Contractor upon the terms and conditions outlined in this Contract.
- C. Florida Housing has the authority pursuant to Florida law to direct disbursement of funds for compensation to the Contractor under the terms and provisions of this Contract.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

A. **RECITALS**

The Recitals set out above are true and correct and are incorporated into and made a part of this Agreement.

B. **ATTACHMENTS**

This Contract has the following attachments, which are incorporated herein:

Exhibit A, RFQ 2024-05
Exhibit B, Fees/Costs

Exhibit C, 2 CFR Appendix II to Part 200

C. ENGAGEMENT OF THE CONTRACTOR

The Contractor agrees to provide Environmental Engineering/Consulting Services in accordance with the terms and conditions hereinafter set forth. The Contractor agrees to perform the services set forth in Exhibit A, and as otherwise stated in this Contract. The Contractor understands and agrees that all services under this Contract are to be performed solely by the Contractor, and may not be subcontracted or assigned without the prior written approval and consent of Florida Housing.

D. TERM OF CONTRACT

The initial term of this Contract shall be for three years from the Effective Date. If the parties mutually agree in writing, the Contract may be renewed once for an additional three-year period. Renewals are at the discretion of Florida Housing, and shall be contingent upon satisfactory performance evaluations by Florida Housing.

E. MODIFICATION OF CONTRACT

Either party may request a modification of the provisions of this Contract. Modifications that are mutually agreed upon shall be valid only when reduced to writing and signed by the parties.

F. INVOICES

The Contractor shall submit invoices to the program contact person in Section K, Administration of Contract. Each invoice for fees shall be in a format that is clearly itemized so that the invoice states the specific services performed and when and where the services were performed. Payment of an undisputed invoice shall be made within a reasonable period of time not to exceed 30 days after receipt of the invoice. If the Contractor is found to be in non-compliance with Florida laws, federal laws, Florida Housing rules or Florida Housing policies governing its duties hereunder, or fails to perform its duties hereunder, any compensation received in connection with this Contract shall be subject to forfeiture to Florida Housing.

G. FEES/COSTS

The Contractor shall be compensated as described in the Fees/Costs Schedule attached hereto as Exhibit B.

H. LIABILITY: INDEPENDENT CONTRACTOR; COMPLIANCE WITH LAWS

1. Florida Housing shall not be deemed to have assumed any liability for the acts, omissions, or negligence of the Contractor, its agents, its servants, or employees, and the Contractor specifically accepts responsibility for its acts, omissions or

negligence and for the acts, omissions or negligence of its agents, servants or employees, and shall defend and hold Florida Housing harmless from and against the claims of any party arising out of or claimed to arise out of any such acts, omissions, or negligence.

2. This Contract is executed on behalf of Florida Housing by the signatory only in his or her designated capacity as representative and on behalf of Florida Housing. Such individual shall neither have nor incur any individual or personal responsibility or liability under this Contract as a result of such execution.

3. Nothing herein shall be construed as a waiver of sovereign immunity by Florida Housing; it being the intent to reserve all such rights and immunities to the fullest extent of the law.

4. The Contractor, together with its agents, suppliers, subcontractors, officers, and employees, shall have and always retain under this Contract the legal status of an independent contractor, and in no manner shall they be deemed employees of Florida Housing or deemed to be entitled to any benefits associated with such employment. During the term of this Contract, the Contractor shall maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law. The Contractor remains responsible for all applicable federal, state, and local taxes, and all FICA and Medicare contributions.

5. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state and local agencies having jurisdiction and authority. In addition, and by way of non-exhaustive example, the Contractor shall comply with Florida Housing policies while on Florida Housing premises and in the conduct of its business with Florida Housing personnel.

6. The Contractor specifically accepts responsibility for payment of all taxes, assessments, or contributions that may be required to be paid to any unit of government as a result of the payments being paid to or by the Contractor, if any, in conjunction with the services rendered pursuant to this Contract. At no time shall the Contractor make any commitments for or incur any charges or expenses for, or in the name of, Florida Housing.

7. The Contractor shall not be relieved of liability to Florida Housing for damages sustained by Florida Housing by virtue of any termination or breach of this Contract by the Contractor.

I. DEFAULT AND REMEDIES

1. If any of the events listed in subparagraph 2. of this section occur, all obligations on the part of Florida Housing to continue doing business with the Contractor or assign any future transaction to the Contractor shall, if Florida Housing

so elects, terminate and Florida Housing may, at its option, exercise any of its remedies set forth herein, or as otherwise provided by law. However, Florida Housing may continue doing business with the Contractor as a participant after the happening of any event listed in subparagraph 2. of this section without waiving the right to exercise such remedies, without constituting a course of dealing, and without becoming liable to include the Contractor in the transaction or any future transaction.

2. The Events of Default shall include, but not be limited to, the following:
 - a. If any report, information or representation provided by the Contractor in this Contract is inaccurate, false or misleading in any respect;
 - b. If any warranty or representation made by the Contractor in this Contract or any other outstanding agreement with Florida Housing is deemed by Florida Housing to be inaccurate, false or misleading in any respect;
 - c. If the Contractor fails to keep, observe, or perform any of the terms or covenants contained in this Contract, or is unable or unwilling to meet its obligations as defined in this Contract;
 - d. If, in the sole discretion of Florida Housing, the Contractor has failed to perform or complete any of the services identified in the attachments;
 - e. If the Contractor has not complied with all Florida laws, federal laws, Florida Housing rules or Florida Housing policies applicable to the work;
 - f. If the Contractor has discriminated on the grounds of race, color, religion, sex, national origin, disability, or any other legally protected status in performing any service identified in the attachments;
 - g. If the Contractor does not comply with the terms and conditions set forth in Section 420.512(5), Fla. Stat.;
 - h. If the Contractor commits fraud in the performance of its obligations under this Contract; or
 - i. If the Contractor refuses to permit public access to any document, paper, letter, computer files, or other material subject to disclosure under Florida's Public Records Law.

Upon the occurrence of any Event of Default listed in subparagraph 2. above, Florida Housing will provide written notice of the Default detailing the grounds that constitute the Event of Default (Notice of Default), delivered by courier service or electronic mail to the address set forth in Section K, Administration of Contract, herein.

3. Upon the occurrence of any Event of Default listed in subparagraph 2. above, Florida Housing may provide the Contractor a reasonable period of time to cure the Event of Default (Cure Period). If Florida Housing provides a Cure Period, Florida Housing will notify the Contractor of the length of the Cure Period in the Notice of Default.

4. If Florida Housing provides a Cure Period and if the Contractor is unable or unwilling to cure the Event of Default within the Cure Period, Florida Housing may exercise any remedy permitted by law. The pursuit of any one of the following remedies shall not preclude Florida Housing from pursuing any other remedies contained herein or otherwise provided at law or in equity. The remedies include, but are not limited to the following:

a. Florida Housing may terminate the Contract on the tenth (10th) day after the Contractor receives the Notice of Default or upon the conclusion of any applicable Cure Period, whichever is later;

b. Florida Housing may commence an appropriate legal or equitable action to enforce performance of the terms and conditions of this Contract;

c. Florida Housing may exercise any corrective or remedial actions including, but not limited to, requesting additional information from the Contractor to determine the reasons for or the extent of non-compliance or lack of performance, issuing a written warning to advise that more serious measures may be taken if the situation is not corrected, advising the Contractor to suspend, discontinue or refrain from incurring fees or costs for any activities in question or requiring the Contractor to reimburse Florida Housing for the amount of costs incurred; or

d. Florida Housing may exercise any other rights or remedies that may be otherwise available under law.

J. TERMINATION

1. Florida Housing may terminate the contract, without cause, at any time upon 10 days' written notice delivered by courier service or electronic mail to the Contractor at the address set forth in Section K, Administration of Contract, herein.

2. The Contractor may terminate this Contract, without cause, at any time upon 90 days' written notice delivered by courier service or electronic mail to Florida Housing at the physical or electronic address, as applicable, set forth in Section K, Administration of Contract, herein. The Contractor shall be responsible for all costs arising from the resignation of the Contractor and the costs associated with the appointment of and transition to a successor Contractor.

K. ADMINISTRATION OF CONTRACT

1. Florida Housing's contract administrator for this Contract is:

Contract Administrator
Florida Housing Finance Corporation
227 North Bronough St., Suite 5000
Tallahassee, Florida 32301-1329
Phone: 850.488.4197
E-mail: Contract.Admin@floridahousing.org

2. The Florida Housing program contact for this Contract is:

Nicole Gibson
Federal Loan Programs Director
Florida Housing Finance Corporation
227 North Bronough St., Suite 5000
Tallahassee, Florida 32301-1329
Phone: 850.488.4197
E-mail: Nicole.Gibson @floridahousing.org
or the designated successor.

3. The Contractor's contract administrator for this Contract is:

Frank Powell, PMP
Florida Division Project Manager
Terracon Consultants, Inc.
3559 Timberlane School Road
Tallahassee, Florida 32312
Office: 850.692.7741
Cell: 850.443.1139
E-mail: Frank.Powell@terracon.com
or the designated successor.

4. All written approvals referenced in this Contract shall be obtained from the parties' contract administrator or their respective designees.

5. All notices shall be given to the parties' contract administrator.

L. PUBLIC RECORDS; CONFIDENTIALITY; COPYRIGHT, PATENT, TRADEMARK; FILES

1. Public Records

Files Subject to Florida's Public Records Law: Any file, report, record, document, paper, letter, or other material received, generated, maintained or sent by the Contractor

in connection with this Contract is subject to the provisions of Section 119.01-.15, Fla. Stat., as may be amended from time to time (Florida's Public Records Law). The Contractor represents and acknowledges that it has read and understands Florida's Public Records Law and agrees to comply with Florida's Public Records Law.

Pursuant to Section 119.0701(2)(b), Fla. Stat., the Contractor will be required to comply with public records laws, specifically to:

a. Keep and maintain public records required by the public agency to perform the service.

b. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

d. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

Notwithstanding anything contained herein to the contrary, the provisions and requirements of this paragraph shall only apply if and when the Contractor is acting on behalf of Florida Housing.

If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the Corporation Clerk at:

Corporation Clerk
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Phone: 850.488.4197
E-mail: Corporation.Clerk@floridahousing.org

2. Confidentiality

a. If the Contractor asserts that any information or materials intended to be delivered or provided under this Contract constitute a trade secret, or are otherwise confidential or exempt from the public records disclosure requirements of Florida's Public Records Law, such assertion must be made in writing to Florida Housing's Contracts Administrator upon submitting them to Florida Housing.

b. It is the Contractor's obligation and responsibility to maintain the secrecy of trade secrets and the confidentiality of other confidential information by adequately marking such materials as confidential or exempt before forwarding such information or materials to Florida Housing. It shall be the responsibility of the Contractor to defend the confidentiality of such materials, if necessary.

c. In the case of work product furnished to Florida Housing pursuant to this Contract that is confidential, the Contractor will treat such materials as confidential and will not reveal or discuss such materials or any other information learned as a result of this Contract with any other person or entity, except as authorized or directed by Florida Housing.

d. Working papers, copies, internal documents, procedures, methods and related materials considered confidential and/or proprietary shall be treated as confidential and/or proprietary and shall not be revealed or discussed with any other person or entity, except as authorized or directed by Florida Housing. All such records and materials will remain the property of Florida Housing.

e. If the Contractor is required to disclose or publish the existence or terms of transactions under this Contract pursuant to Florida's Public Records Law, then the Contractor shall notify Florida Housing in writing of such disclosure within two (2) days after receipt of the Public Records request.

3. Copyright, Patent and Trademark

a. If the Contractor brings to the performance of this Contract a pre-existing copyright, patent or trademark, the Contractor shall retain all rights and entitlements to that pre-existing copyright, patent or trademark unless the Contract provides otherwise.

b. If any discovery or invention arises or is developed in the course of or as a direct result of work or services performed under this Contract, the Contractor shall

refer the discovery or invention to Florida Housing for a determination whether patent protection will be sought in the name of Florida Housing. Any and all patent rights accruing under or in connection with the performance of this Contract are hereby reserved to Florida Housing. In the event that any books, manuals, films, or other copyrightable material are produced, the Contractor shall notify Florida Housing in writing. Any and all copyrights or trademarks created by or in direct connection with the performance under this Contract are hereby reserved to Florida Housing.

c. All subcontracts or other arrangements entered into by the Contractor, with prior written approval and consent of Florida Housing, for the purpose of developing or procuring copyrightable materials (e.g. audiovisuals, computer programs, software, publications, curricula, research materials or training materials, etc.) shall specifically reference and reserve Florida Housing's exclusive rights to use and exploit copyrights and licenses to the extent permitted by copyright law and Florida Statutes.

4. Files

a. Contents of the Files: The Contractor shall maintain files containing documentation to verify all compensation to the Contractor in connection with this Contract, as well as reports, records, documents, papers, letters, computer files, or other material received, generated, maintained or filed by the Contractor in connection with this Contract. The Contractor shall also keep files, records, computer files, and reports that reflect any compensation it receives or will receive in connection with this Contract.

b. Retaining the Files: The Contractor shall maintain these files for five years after the fiscal year in which the files become inactive, except that, if any litigation, claim or audit is commenced with respect to the transactions documented by such files before the end of the aforementioned five-year period and extends beyond the expiration of the five-year period, these files will be retained until all litigation, claims, or audit findings involving the files have been resolved.

c. Access to the Files: Upon reasonable notice, the Contractor and its employees shall allow Florida Housing or its agent(s) access to its files during normal business hours, 9:00 a.m. to 5:00 p.m., Monday through Friday, provided such day is not a holiday.

d. Return of the Files: In the event this Contract is terminated, all finished or unfinished documents, data, studies, computer files, correspondence, and other products prepared by or for the Contractor under this Contract shall be submitted to Florida Housing within 15 days of such termination at the expense of the Contractor.

M. PERSONALLY IDENTIFIABLE INFORMATION (PII); SECURITY

1. If the Contractor or any of its subcontractors may or will create, receive, store or transmit PII under the terms of this Contract, the Contractor shall provide for the security of such PII, in a form acceptable to Florida Housing, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections and audits. The Contractor shall take full responsibility for the security of all data in its possession or in the possession of its subcontractors, and shall hold Florida Housing harmless for any damages or liabilities resulting from the unauthorized disclosure of loss thereof.

2. If the Contractor or any of its subcontractors may or will create, receive, store or transmit PII under the terms of this Contract, the Contractor shall provide Florida Housing with insurance information for stand-alone cyber liability coverage, including the limits available and retention levels. If the Contractor does not carry stand-alone cyber liability coverage, the Contractor agrees to indemnify costs related to notification, legal fees, judgments, settlements, forensic experts, public relations efforts, and loss of any business income related to this Contract.

3. The Contractor agrees to maintain written policies and procedures for PII and/or data classification. This plan must include disciplinary processes for employees that violate these guidelines.

4. The Contractor agrees to maintain reasonable network security at all times that, at a minimum, includes a network firewall.

5. The Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up-to-date with all appropriate security updates as designated by a relevant authority (e.g. Microsoft notifications, Common Vulnerabilities and Exposures (CVE) database, etc.) The Contractor agrees that PII shall be appropriately destroyed based on the format stored upon the expiration of any applicable retention schedules.

6. The Contractor agrees that any and all transmission or exchange of system application data with Florida Housing and/or any other parties shall take place via secure Advanced Encryption Standards (AES), e.g., HTTPS, FTPS, SFTP or equivalent means. All data stored as a part of backup and recovery processes shall be encrypted, using AES.

7. If the Contractor reasonably suspects that a cybersecurity event or breach of security has occurred, they must notify Florida Housing's Contract Administrator within 48 hours.

8. In the event of a breach of PII or other sensitive data, the Contractor must abide by provisions set forth in section 501.171, Fla. Stat. Additionally, the Contractor

must immediately notify Florida Housing in writing of the breach and any actions taken in response to such a breach. As the information becomes available the statement must include, at a minimum, the date(s) and number of records affected by unauthorized access, distribution, use, modification, or disclosure of PII; the Contractor's corrective action plan; and the timelines associated with the corrective action plan.

N. OTHER PROVISIONS

1. This Contract shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Contract shall lie in Leon County.

2. No waiver by Florida Housing of any right or remedy granted hereunder or failure to insist on strict performance by the Contractor shall affect or extend or act as a waiver of any other right or remedy of Florida Housing hereunder, or affect the subsequent exercise of the same right or remedy by Florida Housing for any further or subsequent default by the Contractor. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a course of dealing.

3. Any power of approval or disapproval granted to Florida Housing under the terms of this Contract shall survive the terms and life of this Contract as a whole.

4. The Contract may be executed in any number of counterparts, any one of which may be taken as an original.

5. The Contractor understands and agrees to cooperate with any audits conducted in accordance with the provisions set forth in Section 20.055(5), Fla. Stat.

6. The Contractor understands and agrees to comply with the provisions of Section 448.095, Fla. Stat.

7. The Contractor attests, under penalty of perjury, that it does not meet any of the criteria in Section 287.138(2)(a) – (c), Fla. Stat.

8. The Contractor shall comply with the requirements of 2 CFR Appendix II to Part 200 – Contract Provision for Non-Federal Entity Contract Under Federal Awards.

O. LOBBYING PROHIBITION

No funds, compensation or other resources received in connection with this Contract may be used directly or indirectly to influence legislation or any other official action by the Florida or Federal Legislature or any state or Federal agency. The Contractor further acknowledges that it has not retained the services of any lobbyist or consultant to assist in the procurement and negotiation of this Contract.

P. LEGAL AUTHORIZATION

The Contractor certifies with respect to this Contract that it possesses the legal authority to enter into this Contract and that, if applicable, its governing body has authorized, by resolution or otherwise, the execution and acceptance of this Contract with all covenants and assurances contained herein. The Contractor also certifies that the undersigned possesses the authority to legally execute and bind the Contractor to the terms of this Contract.

Q. PUBLIC ENTITY CRIME

Pursuant to Section 287.133(2)(a), Fla. Stat.: “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.”

Any contract in violation of this provision shall be null and void.

R. CONFLICTS OF INTEREST

1. Section 420.503(34), Fla. Stat., states:

“Prohibited business solicitation communication” means a private written or verbal communication between a member, officer, or covered employee of the corporation and a service provider regarding the merits of the service provider and whether the corporation should retain the services of the service provider. The term does not include:

(a) A verbal communication made on the record during a public meeting;

(b) A written communication provided to each member and officer of the corporation and made part of the record at a public meeting;

(c) A written proposal or statement of qualifications submitted to the corporation in response to a corporation advertisement seeking proposals or statements of qualifications as part of a competitive selection process.

(d) A verbal or written communication related to the contractual responsibilities of a service provider who was selected to provide services or who was included in a pool of service providers eligible to provide services as a result of a

competitive selection process, so long as the communication does not relate to solicitation of business.

(e) A verbal or written communication related to a proposed method of financing or proposed projects, so long as the communication does not relate to solicitation of business.

2. By executing this contract, the Contractor certifies that it shall comply with, and is currently in compliance with, Section 420.512(5), Fla. Stat., as amended.

3. In addition to the conflict of interest rules imposed by the Florida Statutes, should the Contractor become aware of any actual, apparent, or potential conflict of interest or should any such actual, apparent, or potential conflict of interest come into being subsequent to the effective date of this Contract and prior to the conclusion of the Contract, the Contractor will provide an e-mail notification to Florida Housing's Contract Administrator within 10 working days. If Florida Housing, in its sole discretion, finds the Contractor to be in non-compliance with this provision, without prior written consent from Florida Housing's Executive Director, any compensation received in connection with this Contract shall be subject to forfeiture to Florida Housing and all obligations on the part of Florida Housing to continue doing business with the Contractor or assign any future transaction to the Contractor shall, if Florida Housing so elects, terminate.

S. ELECTRONIC SIGNATURES

The parties agree that this Contract (and any attachments, exhibits, and amendments) may be executed and delivered by electronic signatures and that the signatures appearing on this Contract are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. Each executed counterpart shall be deemed an original, and all such counterparts shall constitute one and the same document. As used herein, the term "electronic signatures" shall have the meaning in Section 668.50, Fla. Stat.

T. ENTIRE AGREEMENT

This Contract, including any and all attachments, embodies the entire agreement of the parties. There are no other provisions, terms, conditions, or obligations between the parties. This Contract supersedes all previous oral or written communications, representations, or agreements on this subject not incorporated herein.

U. SEVERABILITY

If any provision of this Contract is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict or unenforceability, and shall be deemed severable, but shall not invalidate any other provision of this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract Number 055SF-2024, each through a duly authorized representative, effective on the Effective Date.

TERRACON CONSULTANTS, INC.


By: John B Kimberly 2024.07.12 12:21:54 -04'00'

Name/Title: John B. Kimberly, PE / Regional Manager

Date: 7-12-24

FEIN: 42-1249917

FLORIDA HOUSING FINANCE CORPORATION

By: 

Name/Title: Angeliki G. Sellers, CFO

Date: Jul 15, 2024

EXHIBIT A

REQUEST FOR QUALIFICATIONS (RFQ) 2024-05

ENVIRONMENTAL ENGINEERING/CONSULTING SERVICES

for

FLORIDA HOUSING FINANCE CORPORATION

April 22, 2024

SECTION ONE INTRODUCTION

Florida Housing Finance Corporation (“Florida Housing”) is soliciting competitive, sealed responses from qualified firms to provide environmental engineering/consulting services in accordance with the terms and conditions set forth in this Request for Qualifications (RFQ), and any other term and condition in any contract subsequently awarded. Respondents will be selected and determined through Florida Housing’s review of each response, considering the factors identified in this RFQ. Florida Housing expects to select one or more Respondents that propose to provide all of the services specified in this RFQ.

SECTION TWO DEFINITIONS

For purposes of this document, the following terms will be defined as follows:

“Board”	The Board of Directors of Florida Housing Finance Corporation.
“CDBG-DR”	Community Development Block Grant – Disaster Recovery grant funds appropriated by Congress and allocated by HUD to rebuild disaster-impacted areas and provide crucial seed money to start the long-term recovery process.
“Committee”	The review committee composed only of employees of Florida Housing that is established pursuant to Rule 67-49.007, Fla. Admin. Code.
“Contractor”	A person or entity providing the professional services described in Section Four of this RFQ.
“Days”	Calendar days, unless otherwise specified.
“Developer”	Individual or Legal Entity which has proposed the project to be built.
“Effective Date”	The date the last party signs the contract that is awarded as a result of this RFQ.
“Environmental Review”	The process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or

health effect on end users. Not every project is subject to a full environmental review (i.e., every project's environmental impact must be examined, but the extent of this examination varies), but every project must be in compliance with the National Environmental Policy Act (NEPA), and other related Federal and state environmental laws.

“Environmental Review Record”
or “ERR”

This record contains the description and documentation of all activities that are part of the project and an evaluation of the effects of the project on the human environment and vice versa as required by the Environmental Review.

“Florida Housing”

Florida Housing Finance Corporation, a public corporation and public body corporate and politic created by Section 420.504, Fla. Stat.

“HOME”

The HOME Investment Partnerships Program that Florida Housing administers pursuant to United States Department of Housing and Urban Development Regulations, 24 CFR Part 92, and the Homeownership Loan Program and the HOME Rental Program that Florida Housing administers pursuant to Sections 420.507 and 420.5089, Fla. Stat., and Fla. Admin. Code Rule Chapters 67-50 and 67-48.

“HUD”

The United States Department of Housing and Urban Development.

"HUD Risk Sharing Program"

The program authorized by Section 542(c) of the Housing and Community Development Act of 1992, (12 U.S.C. 1707) which is adopted and incorporated herein by reference.

“NHTF”

The National Housing Trust Fund, established under Title I of the Housing and Economic Recovery Act of 2008, Section 1131.

“NEPA”

The National Environmental Policy Act of 1969, as amended.

“Respondent”

Any person or entity who has the capability in all respects to perform fully the requirements contained in this RFQ, and submits a response to this RFQ.

“Response”

The written submission by a Respondent to this RFQ.

“RFQ”	This RFQ, including all exhibits referenced in this document and all other documents incorporated by reference.
“RROF”	Request for Release of Funds: Refers to Florida Housing’s request for HUD to release funds for the purpose intended. Executed through HUD Form 7015.15 (Request for Release of Funds and Certification).
“Website”	The Florida Housing Finance Corporation website, the URL of which is www.floridahousing.org .

**SECTION THREE
PROCEDURES AND PROVISIONS**

A. Respondents will submit their Response to:

*****.floridahousing.org/legal/p
rocurements/RFQ-2024-05-Document-

Florida Housing must receive the entire Response on or before 2:00 p.m., Eastern Time, on May 22, 2024, as Responses will be opened at that time. Any Responses received after the deadline will be considered non-responsive. One complete copy of the response in PDF format is preferred, unless specified otherwise in Section Six below, and the file name ought to contain a reference to both the solicitation number (RFQ 2024-05) and the name of the Respondent. Please note that the site will ask for the Respondent's contact information and the solicitation number prior to being able to upload the Response. Florida Housing will not accept a mailed or faxed Response.

B. This RFQ does not commit Florida Housing to award a contract to any Respondent or to pay any costs incurred in the preparation or mailing of a Response.

C. All services under the contract awarded are to be performed solely by the Contractor, unless subcontracted or assigned with the prior written approval and consent of Florida Housing.

D. Florida Housing reserves the right to:

1. Waive minor deficiencies and informalities;
2. Accept or reject any or all Responses received as a result of this RFQ;
3. Obtain information concerning any or all Respondents from any source;
4. Request an oral interview before the Board from any or all Respondents;

5. Select for contract negotiation or for award a Response other than (or in addition to) that with the highest score in order to serve the best interests of Florida Housing and the public; and

6. Negotiate with the successful Respondent with respect to any additional terms or conditions of the contract.

E. Any interested party may submit any question regarding this RFQ in writing via e-mail to the Contract Administrator at Contract.Admin@floridahousing.org. All questions must be submitted no later than 2:00 p.m., Eastern Time, on May 8, 2024. Phone calls will not be accepted. Florida Housing expects to respond to all questions in writing by 5:00 p.m., Eastern Time, on May 15, 2024. Florida Housing will post a copy of all questions received and the corresponding answers on Florida Housing's website at:

[*****.floridahousing.org/legal/procurements/request-for-qualifications.](https://www.floridahousing.org/legal/procurements/request-for-qualifications)

Only written responses or statements from the Contract Administrator that are posted on our website will bind Florida Housing. No other means of communication, whether oral or written, may be construed as an official response or statement from Florida Housing.

F. Between the release of the solicitation and the end of the 72-hour period following the posting of the notice of intended award, respondents to this solicitation or persons acting on their behalf may not contact any member of Florida Housing's Board of Directors or any Florida Housing employee concerning any aspect of this solicitation, except in writing to the Contract Administrator. Violation of this provision may be grounds for rejecting a response.

G. Any person who wishes to protest the specifications of this RFQ must file a protest in compliance with Section 120.57(3), Fla. Stat., and Rule Chapter 28-110, Fla. Admin. Code. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., will constitute a waiver of proceedings under Chapter 120, Fla. Stat.

H. The term of the contract will be for three years, subject to satisfactory performance at the sole discretion of Florida Housing. If the parties mutually agree in writing, the contract may be renewed once for an additional three years.

I. Florida Housing is not required to use the services of any selected Contractor or to assign any work to such provider, and may terminate the contract with any selected Contractor without cause and without penalty.

J. Pursuant to Rule 67-49.004, Fla. Admin. Code, Florida Housing may modify the terms of the RFQ at any point prior to the due date for Responses. A notice of such modification will be posted on Florida Housing's Website. Any Respondent will have at least seven days from the date of the posting of the notice of the modification to submit or modify its Response.

K. The terms of this RFQ, and any modifications thereto, will be incorporated into any contract offered as a result of this RFQ. Failure of a successful Respondent to accept these obligations in the final contract may result in cancellation of the award.

L. By submitting a Response to this RFQ, the Respondent agrees that any resulting contracts or agreements (and any attachments, exhibits, and amendments) may be executed and delivered by electronic signatures. As used herein, the term “electronic signatures” shall have the meaning in Section 668.50, Fla. Stat.

SECTION FOUR SCOPE OF SERVICES

The Contractor shall perform an Environmental Review of Developments and applicable activities assigned by Florida Housing and assist Florida Housing’s Program staff in the identification and evaluation of the likely impacts of the Developments on the environment. The Contractor shall also ensure that the requirements of HUD, NEPA, Florida Statutes, and Florida Administrative Code are met for all reviews by performing at least the following functions:

A. Completing a thorough Environmental Review Record on Developments as required by HUD pursuant to 24 CFR Part 58 for the HOME and CDBG-DR programs, and 24 CFR § 93.301(f)(1) for the NHTF program.

B. Review and evaluate new or existing Developments for:

1. Compliance with applicable federal, state, and local land development and environmental regulations, including 2 CFR Appendix II to Part 200 - Contract Provision for Non-Federal Entity Contract Under Federal Awards;

2. Site performance issues related to proximity to potable water, wastewater services, and roads, and compatibility with adjacent site uses;

3. Impact on the environment as documented in letters and responses received through the Florida State Clearinghouse; and

4. Impact on the environment as documented in an Executive Summary required for each Environmental Review Record to include, but not limited to, comments on endangered species, noise analysis, and public safety, police and fire mitigation.

C. Review site and related features, and determine impact on the environment, including but not limited to:

1. Floodplain management;
2. Coastal barrier resources;
3. Coastal zone management;
4. Historic preservation;
5. Noise abatement;
6. Hazardous industrial operations;
7. Airport zones;
8. Protection of wetlands;
9. Management of toxic chemicals and radioactive materials;

10. Endangered species;
11. Sole source aquifers;
12. Wild and scenic rivers;
13. Farmlands protection;
14. Flood insurance;
15. Unique natural features and areas;
16. Site suitability, access and compatibility with surrounding developments;
17. Soil stability, erosion and drainage;
18. Nuisances and hazards;
19. Water supply, sanitary sewers and solid waste disposal;
20. Schools, parks, recreation and social services;
21. Emergency health care, fire and police services;
22. Commercial/retail and transportation; and
23. Mitigation measures required.

D. Prepare all notices or advertisements required for compliance with applicable regulations and submit to appropriate publication(s) after approval by Florida Housing. The awarded Contractor will provide the Affidavit of Publication to Florida Housing as soon as its available.

E. Advise Florida Housing and/or the Developer of the Project of any environmental impacts, special conditions, or development issues that become known to the Contractor during the Environmental Review process.

F. Prepare RROF documents for submission to HUD, if required.

G. Utilize all of HUD's resources for compliance with all environmental provisions including any databases or programs that may be required for submission.

H. Provide support services to Florida Housing as necessary during the submittal, review, design and construction phase of the Development.

I. Implement, coordinate, and/or assist in completing the 8-Step Flood Plain Decision-Making process per 24 CFR § 55.20 and Executive Order 11988.

SECTION FIVE CERTIFICATION

Do not reproduce the language of Section Five in the Response. By inclusion and execution of the statement provided in Section Six of this RFQ, each Respondent certifies that:

A. The Respondent submits this Response without prior understanding, agreement, or connection with any person or entity submitting a separate Response for the same services. However, any agreement with a person or entity with whom the Response is jointly filed and such joint filing is made clear on the face of the Response will be an exception so long as the Response is in all respects fair and without collusion or fraud.

B. Any material submitted in response to this RFQ is a public record pursuant to Chapter 119, Fla. Stat., and subject to examination upon request, but only after Florida Housing provides a notice of decision pursuant to Section 120.57(3), Fla. Stat., or within 30 days after the Response is opened, whichever is earlier.

C. The Respondent, if awarded a contract under this RFQ, will comply with Section 420.512(5), Fla. Stat. For the purpose of Section 420.512(5), Fla. Stat., “Prohibited Business Solicitation Communications” is defined by Section 420.503(34), Fla. Stat.

D. The Respondent further affirms it is in compliance with Section 420.512(5)(c), Fla. Stat.

E. The Respondent is in compliance with Section 287.133(2)(a), Fla. Stat.

F. The Respondent is in compliance with Section 448.095, Fla. Stat.

G. The Respondent understands and agrees to cooperate with any audits conducted in accordance with the provisions set forth in Section 20.055(5), Fla. Stat.

H. The Respondent attests, under penalty of perjury, that it does not meet any of the criteria in Section 287.138(2)(a) – (c), Fla. Stat.

I. Pursuant to Section 119.0701(2)(b), Fla. Stat., the Respondent, if awarded a contract under this RFQ, will be required to comply with public records laws, specifically to:

a. Keep and maintain public records required by Florida Housing to perform the service.

b. Upon request from Florida Housing’s custodian of public records, provide Florida Housing with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to Florida Housing.

d. Upon completion of the contract, transfer, at no cost, to Florida Housing all public records in possession of the contractor or keep and maintain public records required by Florida Housing to perform the service. If the contractor transfers all public records to Florida Housing upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Florida Housing, upon request from Florida Housing’s custodian of public records, in a format that is compatible with Florida Housing’s information technology systems.

If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the Corporation Clerk at:

**Corporation Clerk
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Phone: 850.488.4197
E-mail: Corporation.Clerk@floridahousing.org**

Notwithstanding anything contained herein to the contrary, the provisions and requirements of this paragraph will only apply if and when the Contractor is acting on behalf of Florida Housing.

J. The Respondent acknowledges that if awarded a contract it will be prohibited from engaging in activities in connection with services related to Florida Housing transactions that produce direct or indirect financial gain for the Respondent other than for the compensation agreed upon in the contract that results from this RFQ, unless that Respondent has Florida Housing's written consent after Florida Housing has been fully informed of such activities in writing.

K. The Respondent acknowledges that if awarded a contract it will be prohibited from engaging in any actual, apparent, or potential conflict of interest. Should any such actual, apparent, or potential conflict of interest come into being subsequent to the effective date of the contract and prior to the conclusion of the contract, the Respondent will provide written notification (Notice of Conflict of Interest) to Florida Housing's Contract Administrator within 10 working days for review by Florida Housing's Executive Director in consultation with the Ethics Officer. If the Respondent is found to be in non-compliance with this provision, any compensation received in connection with this contract will be subject to forfeiture to Florida Housing.

L. The Respondent, in submitting this Response, acknowledges and agrees that the terms and conditions of this RFQ, as well as any modifications thereto, will be incorporated into any contract offered as a result of this RFQ.

M. CERTIFICATION STATEMENT:

FAILURE TO INCLUDE THE CERTIFICATION STATEMENT LOCATED IN SECTION SIX OF THIS RFQ BEARING AN ORIGINAL SIGNATURE WILL RESULT IN REJECTION OF THE RESPONSE.

SECTION SIX INFORMATION TO BE PROVIDED IN RESPONSE

In providing the following information, restate each item and sub-item (with its letter and number), and limit your Response to one PDF to be uploaded. Responses to the items must be included immediately after the restated items without any reference to any appendix or exhibits unless such items are explicitly requested within this section. Any information provided in an

appendix or exhibit that has not been explicitly requested separately in that format will not be reviewed or scored.

A. COVER LETTER

Each proposal must be accompanied by a cover letter that contains a general statement of the purpose of submission and includes the following information.

1. The name, job title, address, office and cellular telephone numbers, and e-mail address of a primary contact person, who will be responsible for day-to-day contact with Florida Housing, and any backup personnel who would be accessible if the primary contact cannot be reached.
2. Legal business status (individual, partnership, corporation, etc.), address, and telephone number of the Respondent.

B. GENERAL INFORMATION

1. Provide documentation to show that the Respondent is authorized to do business in the State of Florida.
2. Provide a brief history of the Respondent's firm, including the year organized, ownership, affiliated companies and relationships, and the total number of employees.
3. Describe the Respondent's presence in Florida, and ability to be accessible to Florida Housing staff, availability for meetings, conferences, consultation, etc.
4. Provide proof of comprehensive general liability insurance, including contractual liability and worker's compensation as required by law.
5. State whether the Offeror has ever been debarred or suspended by HUD. If so, provide relevant dates, charges, determinations, settlements and lengths of any debarment or suspension.
6. Provide a statement of any other qualifications or services, which the Respondent considers to be significant, innovative or otherwise relevant to Florida Housing.

C. EXPERIENCE AND RESOURCES

1. Describe the Respondent's experience providing the services or engaging in activities as they relate to the work being requested in Section Four of this RFQ, including the Offeror's experience with the compilation, drafting, and submission of Environmental Review Records as required by HUD to include a description of the following:
 - a. Type of report(s) submitted;
 - b. Length of time to complete a single report;

c. What is done when a Finding of Significant Impact is noted on a particular development;

d. Experience in contacting and compiling responses from the Florida State Clearinghouse;

e. Experience in completing the 8-Step Flood Plain Decision-Making process;

f. Experience in contacting and compiling responses from state and local authorities, i.e., State Historical Preservation Board, local police, fire and ambulance services; and

g. Experience in contacting and compiling responses on endangered species analysis, noise analysis, proximity to airport and military bases, etc.

2. Describe the Respondent's ability to provide the services requested in Section Four of this RFQ immediately upon award of the contract.

3. Provide an organizational chart and an overview of no more than five of the key individuals (team members) proposed to be assigned to Florida Housing's account. The overview shall include the following information for each individual:

a. Name of individual, title and role on this engagement;

b. Office street address, e-mail address, and office and cellular telephone numbers;

c. Total years' experience with this Respondent and other entities, and a list of various roles and/or duties;

d. Specific qualifications and expertise; and

e. A description of the individuals' educational and professional accomplishments.

4. Provide information about staffing levels in the required areas as they relate to the services to be performed and other resources that shall be needed to complete the services requested in Section Four of this RFQ.

D. WORK PLAN FOR SCOPE OF SERVICES

Provide a detailed implementation action plan and include a detailed timeline consistent with the program production needs, reflecting tentative dates for each phase of review required.

E. FEE

1. Provide one proposed flat fee to be charged in connection with the services described in Section Four of this RFQ. The fee proposed must include charges relating to the

services required under the contract and all out-of-pocket expenses, such as telephone, postage and shipping, printing and/or copy costs, and travel, if any. Florida Housing will only reimburse fees for the required advertisements upon submission of approved invoices and supporting documentation.

FINAL FEE SCHEDULE WILL BE SUBJECT TO NEGOTIATION.

F. DRUG-FREE WORKPLACE

If the Respondent has implemented a drug-free workplace program, the Respondent must submit the following certification indicating that it meets all of the requirements of Section 287.087, Fla. Stat.:

I hereby certify on behalf of the Respondent, under the terms of RFQ 2024-05, that the Respondent has implemented a drug-free workplace program pursuant to Section 287.087, Fla. Stat.

Authorized Signature: _____

Print Name: _____

Print Title: _____

G. MINORITY BUSINESS ENTERPRISE

If the Respondent is a minority business enterprise as defined in Section 288.703, Fla. Stat., the Respondent must submit the following certification:

I hereby certify on behalf of the Respondent, under the terms of RFQ 2024-05, that the Respondent is a “minority business enterprise” as defined in Section 288.703(3), Fla. Stat.

Authorized Signature: _____

Print Name: _____

Print Title: _____

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H. CERTIFICATION (Mandatory Item)

THE FOLLOWING WILL BE REPEATED IN THE RESPONDENT’S RESPONSE AND SIGNED BY AN INDIVIDUAL AUTHORIZED TO BIND THE RESPONDENT. THIS IS A MANDATORY ITEM. FAILURE TO INCLUDE THE CERTIFICATION STATEMENT BEARING AN ORIGINAL SIGNATURE, EXACTLY AS STATED AND WITHOUT ANY ADDITIONS, DELETIONS OR CAVEAT LANGUAGE, WILL RESULT IN REJECTION OF THE RESPONSE.

“I agree to abide by all conditions of RFQ 2024-05 and certify that all information provided in this Response is true and correct, that I am authorized to sign this Response as the Respondent and that I am in compliance with all requirements of the RFQ, including but not limited to, the certification requirements stated in Section Five of this RFQ.”

Authorized Signature (Original)

Print Name and Title

**SECTION SEVEN
EVALUATION PROCESS**

The individual Committee members will independently evaluate the Responses by reviewing the answers to each of the items identified in Section Six of this RFQ and assigning points up to the maximum points allowed for each item. The points available for items in Section Six are to be evaluated are as follows:

<u>Item Reference</u>	<u>Maximum Points</u>
B. General Information.....	20
C. Experience and Resources	30
D. Work Plan for Scope of Services	30
E. Fee	20
Total Points Available.....	100

For the Fees, the Respondent with the lowest proposed total cost will receive the maximum allowable points (20 points). The remaining respondents will receive a percentage of the maximum points, rounded to the nearest whole number, based on the following formula:

Lowest Proposed Total Cost	=	%	x	20	=	Total Points Awarded for that “Total Cost” (Rounded to the nearest whole number)
÷ Current Respondent’s Proposed Total Cost						

In the event of a tie, Florida Housing will give preference in the award process to the Response certifying a drug-free workplace has been implemented in accordance with Section 287.087, Fla. Stat. If a tie continues to exist, Florida Housing will give preference to minority business enterprises as defined in Section 288.703, Fla. Stat.

The Committee will conduct one or more public meetings during which members will discuss their evaluations and develop a recommendation or series of recommendations to the Board. The Committee's recommendation will be based on the cumulative scoring and information gathered from the non-scored items. The Board may use the Responses, the Committee's scoring, the non-scored items in the Responses, any other information or recommendation provided by the Committee or staff, and any other information the Board deems relevant in its selection of Respondents to whom to award a contract. ¹

SECTION EIGHT AWARD PROCESS

Florida Housing will provide notice of its decision, or intended decision, for this RFQ on Florida Housing's Website the next business day after the applicable Board vote. After posting, an unsuccessful applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat. or failure to post the bond or other security required by law within the time allowed for filing a bond will constitute a waiver of proceedings under Chapter 120, Fla. Stat.

¹ Pursuant to s. 287.05701 Fla. Stat., Florida Housing may not request documentation of or consider a vendor's social, political, or ideological interest when determining if the vendor is a responsible vendor. Additionally, Florida Housing may not give preference to a vendor based on the vendor's social, political, or ideological interests.

EXHIBIT B FEES/COSTS

It is understood that the compensation to the Contractor shall be paid by Florida Housing for the services rendered by the Contractor hereunder in accordance with the following provisions:

A. Contractor shall submit invoices directly to Florida Housing at the time the Contractor provides the completed Environmental Review for each Development. Upon determination by Florida Housing that each Environmental Review is acceptable, Florida Housing will pay the Contractor in full for each Environmental Review as follows.

1. Florida Housing will pay the Contractor \$9,000 for each Environmental Review (including the 8 Step Flood Plain Decision Making Process) as described in Exhibit A. This amount shall include all costs with the exception of publication of all notices or advertisements required for compliance with HUD/NEPA regulations. In the event that Florida Housing determines that the review is extended outside of the ordinary course of business, Contractor shall be eligible to be compensated up to \$125/hour for any excess hours required to complete the Environmental Review.

2. Developments that require less than a full Environmental Review will be paid a lesser fee, which Florida Housing will negotiate with the Contractor on a case-by-case basis.

3. Developments that have been previously reviewed and only require an update will be paid a lesser fee, which Florida Housing will negotiate with the Contractor on a case-by-case basis.

4. If a Development requires services in addition to the Environmental Review, Florida Housing will negotiate with the Contractor on a case-by-case basis.

5. If this Contract is terminated pursuant to Section H, Default and Remedies, Florida Housing will pay the Contractor on a pro rata basis calculated based on the amount of work completed for the Environmental Review.

B. Florida Housing shall reimburse the Contractor for the costs of publication of all notices or advertisements required for compliance with HUD/NEPA regulations.

EXHIBIT C

2 CFR APPENDIX II TO PART 200 - CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

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

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

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

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

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13, 2020]