

BOOK 2

IQCC STANDARD TERMS AND CONDITIONS
AND
CONTRACT GENERAL CONDITIONS

SOLICITATION NO.

See Solicitation Tables

Western Maryland eziQC
Indefinite Quantity Construction Contract



202 12th Street NE
Staples, MN 56479

Corey Jensen
eziQC Contract Administrator
eziqc@sourcewell-mn.gov

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BOOK 2

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SECTION ONE - IQCC STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 Addendum or Addenda: the additional Bidding Document provisions issued in writing by Sourcewell prior to the receipt of Bids.
- 1.2 Agreement: the written Agreement between the Contractor and Sourcewell covering the Work to be performed; and other Contract Documents incorporated in or referenced in the Agreement and made part thereof as if provided therein.
- 1.3 Adjustment Factors: the Contractor's competitively bid price adjustment to the Unit Prices as published in the Construction Task Catalog, Book 3. Adjustment Factors are expressed as an increase to or decrease from the published prices.
- 1.4 IFB Documents: The Invitation for Bid; Book 1 - Project Information, Instructions to Bidders, and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and Contract General Conditions; Book 3 - The Construction Task Catalog; Book 4 - Technical Specifications; and Book 5 – Bid Forms.
- 1.5 Construction Task Catalog (CTC): A comprehensive listing of specific construction related Tasks, together with a specific unit of measurement and a Unit Price. Construction Task Catalog is a registered trademark of The Gordian Group, Inc.
- 1.6 Contract Documents: This Agreement; the IFB Documents; (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications, Book 5 – Bid Forms) and Addenda thereto, all payment and performance bonds (if any), material and workmanship bonds (if any); wage rate decisions and certified payroll records (if any); Notice of Award; all modifications issued thereto, including Supplemental Purchase Orders/Change Orders and written interpretations and all Purchase Orders and accompanying documents (Requests for Proposals, Detailed Scopes of Work, Proposal Packages, etc.) issued hereunder.
- 1.7 Contractor: The individual, firm, partnership, corporation, joint venture, or other legal entity or combination thereof with whom Sourcewell has contracted and who is responsible for the acceptable performance of the Agreement and for the payment of all legal debts pertaining to the Work. All references in the Contract Documents to third parties under contract or control of Contractor shall be deemed to be a reference to Contractor.
- 1.8 Days: Calendar days, unless otherwise stated.
- 1.9 Detailed Scope of Work: A document prepared following a Joint Scope Meeting which describes in detail the Work the Contractor will perform for a particular Purchase Order.
- 1.10 Holidays: the specific days designated by Sourcewell, Sourcewell Members or the Project Labor Agreement as legal Holidays. Sourcewell designates the following days as Holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the following day, and Christmas Day.
- 1.11 Joint Scope Meeting: a meeting, normally at the Site, to discuss the Work with the Contractor to assist in the development of the Detailed Scope of Work.

- 1.12 Non Pre-priced Task (NPP): a task not included in the Construction Task Catalog but within the general scope and intent of this the Agreement.
- 1.13 Price Proposal: The price proposal prepared by the Contractor using the Construction Task Catalog, Adjustment Factors and appropriate quantities.
- 1.14 Proposal Package: A group of documents and files consisting of the Price Proposal; incidental drawings, sketches, or specification information; quantity take-offs supporting all material quantities; catalog cuts providing information on materials or products, as specifically requested; list of known Subcontractors, construction schedule, back-up for any Non Pre-Priced Tasks, warranty information on special equipment or materials and or other such documentation as the Sourcewell Member may require.
- 1.15 Project: collectively, the Work to be accomplished by the Contractor in satisfaction of a requirement or group of related requirements pursuant to one or more Purchase Orders.
- 1.16 Purchase Order. The document establishing the engagement by Sourcewell or the Sourcewell Member to the Contractor to complete a Detailed Scope of Work for the Purchase Order Price within the Purchase Order Completion Time.
- 1.17 Request for Proposal: The Sourcewell Member's written request for the Contractor to prepare and submit a Proposal Package for a specific Detailed Scope of Work.
- 1.18 Site: The area upon or in which the Contractor performs the Detailed Scope of Work and such other areas adjacent thereto as may be designated by Sourcewell or the Sourcewell Member.
- 1.19 State: The state of Maryland.
- 1.20 Subcontractor: Any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or its Subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.
- 1.21 Supplemental Purchase Order: A purchase order issued to add, delete or change Work from an existing, related Purchase Order.
- 1.22 Technical Specifications: The comprehensive listing of the Sourcewell Members standards for quality of workmanship and materials, and the standard for the required quality of the Work.
- 1.23 Unit Price: The price published in the Construction Task Catalog for a Task.
- 1.24 Work: The labor, material, equipment and services necessary or convenient to the completion of Purchase Orders.
- 1.25 Purchase Order Completion Time: The period of time set forth in the Purchase Order within which the Contractor must complete the Detailed Scope of Work.
- 1.26 Purchase Order Price: The value of the approved Price Proposal and the lump sum price to be paid to the Contractor for completing the Detailed Scope of Work within the Purchase Order Completion Time.

2. SCOPE OF WORK AND PROCEDURE FOR ORDERING WORK

2.1 Scope of Work

- 2.1.1 This is an indefinite quantity contract for the supplies or services specified, and effective for the period stated in the IFB Documents.
- 2.1.2 Job or performance shall be made only as authorized by Purchase Orders issued in accordance with these IQCC Standard Terms and Conditions.
- 2.1.3 The Scope of Work of this Agreement shall be determined by individual Purchase Orders issued hereunder. The Contractor shall provide all pricing, management, incidental drawings, shop drawings, samples, documents, Work, materials, supplies, parts (to include system components), transportation, plant, supervision, labor, and equipment needed to complete each Purchase Order. The Contractor shall also be responsible for Site safety as well as Site preparation and cleanup during and after construction.
- 2.1.4 The Work shall be conducted by the Contractor in strict accordance with the Agreement and all applicable laws, regulations, codes, or directives including Federal, State, County and City.
- 2.1.5 The Contractor shall maintain accurate and complete records, files and libraries of documents to demonstrate compliance with Federal, State, and local regulations, codes, applicable laws listed herein, and manufacturers' instructions and recommendations which are necessary and related to the Work to be performed.
- 2.1.6 The Contractor shall prepare and submit required reports, maintain current record drawings, and submit required information. The Contractor shall provide: materials lists to include trade names and brand names, and model materials lists to include trade names, brand names, model number, and ratings (if appropriate) for all materials necessary to complete the Purchase Order.
- 2.1.7 In addition to the Tasks in the CTC, Book 3, Sourcewell may, from time to time, require Non Pre-priced Tasks.
- 2.1.8 All Work shall comply with any applicable standards, including those specified in the following documents. If the Purchase Order specifies a standard which is different or more stringent, the standard used in the Purchase Order shall control:
 - 2.1.8.1 City Building Codes
 - 2.1.8.2 The specific Detailed Scope of Work
 - 2.1.8.3 Technical Specifications – Book 4
 - 2.1.8.3.1 The Technical Specifications, Book 4, are numbered and organized in the Construction Specification Institute's (CSI) master format. All specifications are filed in divisions per CSI guidelines.
 - 2.1.8.3.2 The intent of these Technical Specifications is to furnish concise industry and commercial standards for construction, maintenance or repair of Sourcewell Member facilities.
 - 2.1.8.3.3 Reference in the Technical Specifications or the CTC to a specific manufacturer, trade name, or catalog is intended to be descriptive

but not restrictive and only to indicate to the prospective Bidder items that will be satisfactory.

3. ARCHITECTURAL AND ENGINEERING SERVICES

- 3.1 Under this Agreement it is expected that the level of Architecture and Engineering (A/E) services and design, if any, will be incidental to the Agreement and therefore any cost associated with this is to be included in the Contractor's Adjustment Factors. If the level of A/E services for a Purchase Order requires that the Contractor provide stamped drawings and plans, the Contractor will be reimbursed according to the appropriate Task in the CTC. The Contractor will be required, as on any construction project, to provide shop drawings, as-built drawings, project layout drawings and sketches as required.
- 3.2 The preparation of incidental drawings/plans, specifications, shop drawings, product data and samples, as-builts and all other documentation required herein by the Contractor as required by individual Purchase Orders is part of the Scope of Work of this Agreement and the cost there of shall be included in the Contractor's Adjustment Factors.

4. TERM OF AGREEMENT

- 4.1 This Agreement is for term shown on the IFB. The Contractor may withdraw from the Agreement on each anniversary of the award, provided that the Contractor provides 60 Days written notice of its intent to withdraw. Sourcewell may, for any reason, terminate this Agreement at any time.
- 4.2 A Sourcewell Member may issue a Purchase Order at any time during the term of this Agreement. All Purchase Orders issued during a term of this Agreement shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such term has expired.

5. GEOGRAPHIC AREA

Contractor will primarily work in the Geographic Area designated. However, if both parties agree, the Contractor may work in another area at the Adjustment Factors bid.

6. ESTIMATED ANNUAL VALUE

The Estimated Annual Value of the Agreement is as specified in the IFB. The Contractor is not guaranteed to receive any Purchase Orders under this Agreement. The Estimated Annual Value is not a limit on the total value of Purchase Orders that could be issued to the Contractor in any one year.

7. OPTION TO BILATERALLY EXTEND CONTRACT

- 7.1 This Agreement has an initial term of one (1) year and three (3) bilateral option provisions for three (3) additional terms. The total term of the Agreement cannot exceed three (4) years. One additional one-year renewal-extension may be offered by Sourcewell to Contractor beyond the total term if Sourcewell deems such action to be in the best interests of Sourcewell and its Members.
- 7.2 The Construction Task Catalog issued with this Solicitation will be in effect for the entire duration of this contract.
- 7.3 Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of

the award date to account for changes in construction costs. If Sourcewell fails to issue the Economic Price Adjustment by the anniversary date, it is the Contractor's responsibility to request the Economic Price Adjustment. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:

- 7.1.1 The Contractor's Adjustment Factors will be adjusted according to the following:
- 7.1.1.1 A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the Solicitation (e.g. April Solicitation, Base Year Index is April of the prior year to March of the Solicitation year).
 - 7.1.1.2 A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities published in the Engineering News Record (ENR) for the 12 months beginning with the month of anniversary of the Solicitation (e.g. April Solicitation, Current Year Index is April of the prior year to March of the current year).
 - 7.1.1.3 The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
 - 7.1.1.4 The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next 12 months.
 - 7.1.1.5 Averages shall be obtained by summing the 12 month indices and dividing by 12.
 - 7.1.1.6 All calculations in this article shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
 - 7.1.1.7 The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
 - 7.1.1.8 The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 7.1.2 ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.
- 7.2 Under all circumstances, should the Contractor submit a Proposal Package with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the Purchase Order Price submitted in the Proposal Package.

- 7.3 The Contractor cannot delay submission of the Proposal Package past the due date to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.

8. PROCEDURE FOR ORDERING WORK

8.1 Initiation of a Purchase Order

8.1.1 As the need exists, Sourcewell (or their designated representative) will, on behalf of a Sourcewell Member, notify the Contractor of a Project and schedule a Joint Scope Meeting.

8.1.2 The Contractor shall attend the Joint Scope Meeting to discuss, at a minimum:

- a. the general scope of the Work,
- b. alternatives for performing the Work and value engineering,
- c. access to the Site and protocol for admission,
- d. hours of operation,
- e. staging area,
- f. requirements for professional services, sketches, drawings, and specifications,
- g. construction schedule,
- h. requirement for bonding
- i. the presence of hazardous materials, and
- j. date on which the Proposal Package is due.

8.1.3 Upon completion of the joint scoping process, Sourcewell (or their designated representative), working with the Sourcewell Member and the Contractor, will prepare a Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. Sourcewell (or their designated representative) will issue a Request for Proposal that will require the Contractor to prepare a Proposal Package. The Detailed Scope of Work, unless modified by both the Contractor and Sourcewell (or their designated representative), will be the basis on which the Contractor will develop its Price Proposal and Sourcewell (or their designated representative) and the Sourcewell Member will evaluate the same. The Contractor does not have the right to refuse to perform any Task or any work in connection with a particular Project.

8.2 **Preparation of the Price Proposal:** The Contractor will prepare Price Proposals in accordance with the following:

8.2.1 **Pre-priced Tasks:** A Pre-priced Task is a Task described and for which a Unit Price is set forth in the Construction Task Catalog. For Pre-priced Tasks the Contractor shall identify the Task from the Construction Task Catalog and the quantities required.

8.2.2 **Non Pre-priced Tasks:** A Non Pre-priced Task is a Task which is not in the Construction Task Catalog.

8.2.2.1 If the Contractor will perform the Non Pre-priced Task with its own forces, it shall submit three independent quotes for all materials to be installed and shall provide a breakdown of the labor and equipment costs.

8.2.2.2 If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent bids from Subcontractors. The Contractor shall

not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. Sourcewell may require additional quotes and bids if the suppliers or Subcontractors are not acceptable or if the prices are not deemed reasonable by Sourcewell or its designated representative.

- 8.2.2.3 **Pricing Non Pre-priced Tasks:** The final price submitted for Non Pre-priced Tasks shall be according to the following formula. Each Non Pre-priced Task must be supported with the necessary back-up documents including the calculation below:

For Work Performed with the Contractor's Own Forces:

1. The hourly rate for each trade classification not in the Construction Task Catalog multiplied by the quantity;
2. The rate for each piece of Equipment not in the Construction Task Catalog multiplied by the quantity;
3. Lowest of three independent quotes for all materials

Total Cost for self-perform work = (A+B+C) x NPP Adjustment Factor

For Work Performed by Sub-contractors: If the Work is to be subcontracted, the Contractor must submit three independent quotes from Subcontractors for the Work. If three quotes or bids can not be obtained, the Contractor will provide the reason in writing for Sourcewell Member's approval why three quotes cannot be submitted.

D = Lowest of three Subcontractor quotes

Total Cost of Subcontracted Non Pre-priced Task = D x NPP Adjustment Factor

- 8.2.2.4 At the discretion of Sourcewell (or their designated representative), Non Pre-priced Tasks, as well as other Tasks, may be added to the CTC during the course of the Agreement. Unit prices will be established based on actual quotes from material suppliers and installers and fixed as a permanent Pre-priced Task in the CTC.
- 8.2.2.5 Sourcewell (or their designated representative) determination as to whether an item is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.
- 8.2.2.6 The means and methods of construction shall be such as the Contractor may choose; subject however, to Sourcewell's right to reject means and methods proposed by the Contractor that:
- 8.2.2.6.1 Will not produce finished Work in accordance with the terms of the Contract; or
 - 8.2.2.6.2 Unnecessarily increases the price of the Purchase Order when alternative means and methods are available.
- 8.2.3 In the event the Contractor is required to work within a secured facility where labor, material, and equipment must be inspected to pass through a secured perimeter, and all work must be constantly monitored by facility personnel, such as a Department of

Corrections prison, the Contractor will be paid for the labor time lost as a result of such perimeter inspection, as well as any loss of time resulting from a temporary shut down of the work site required by the facility, such as a temporary shut down to move prisoners.

- 8.2.4 The value of the Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 8.2.5 The Contractor shall submit a complete Proposal Package, which includes:
- a. any incidental drawings or sketches, calculations and or specification information,
 - b. the Price Proposal, and a quantity take-off summary supporting all material quantities contained in the Price Proposal
 - c. catalog cuts providing information on materials or products, as specifically requested,
 - d. back-up for any Non Pre-priced Tasks,
 - e. identification of known Subcontractors and material suppliers,
 - f. a construction schedule,
 - g. for special equipment or materials, warranty information,
- 8.2.6 By submitting a Price Proposal to Sourcewell, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to Sourcewell.
- 8.2.7 Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Price Proposal is less than the cost of the actual labor and material to perform such task, the Sourcewell Member may permit the Contractor to be paid for such task as a Non-Prepriced Task, or use Prepriced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$5,000.
- 8.3 Time for Submittal of the Proposal Package**
- 8.3.1 The Proposal Package shall be submitted by the date indicated on the Request for Proposal. All incomplete Proposal Packages shall be rejected. The time allowed for preparation of the Proposal Package will depend on the complexity and urgency of the Project but should average between seven and fourteen days. On complex Projects, such as those requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
- 8.3.2 In emergency situations and for Projects requiring immediate completion, the Proposal Package may be required quickly and the due date will be so indicated on the Request for Proposal or, the Contractor may begin work immediately, with the paperwork to follow.
- 8.3.3 If the Contractor fails to meet the deadline for submittal of the Proposal Package, this may be reason to suspend issuance of this particluar Purchase Order.

- 8.3.4 If the Contractor requires clarifications or additional information regarding the Detailed Scope of Work in order to prepare the Proposal Package, the request must be submitted so that the submittal of the Proposal Package is not delayed.

8.4 Review of the Proposal Package

- 8.4.1 Sourcewell (or their designated representative) and/or the Sourcewell Member (or their designated representative) will evaluate the Price Proposal by evaluating the nature and number of Tasks proposed against the agreed upon Detail Scope of Work and will determine the reasonableness of approach. Furthermore Sourcewell (or their designated representative) or the Sourcewell Member (or their designated representative) may compare the Price Proposal to the Sourcewell Member cost estimate for the Detailed Scope of Work. Sourcewell (or their designated representative) or the Sourcewell Member(or their designated representative) reserves the right to reject a Price Proposal based on unjustifiable/unsupported (with take off details) quantities and/or Tasks, schedule, inadequate documentation, or for any other reason.
- 8.4.2 If Sourcewell (or their designated representative) and/or the Sourcewell Member (or their designated representative) finds any part of the Price Proposal unacceptable, Sourcewell (or their designated representative) or the Sourcewell Member (or their designated representative) may request the Contractor to re-submit its Price Proposal or cancel the Project. The Contractor is expected to submit correct Price Proposals the first time. However Sourcewell recognizes that some adjustments might have to be made to the Price Proposal after review by Sourcewell (or their designated representative) and the Sourcewell Member (or their designated representative). Therefore, Sourcewell (or their designated representative) will allow the Contractor to submit the first Price Proposal and a second Price Proposal for each Purchase Order.
- 8.4.3 Additionally, Sourcewell (or their designated representative) and/or the Sourcewell Member (or their designated representative) will evaluate all other components of the Proposal Package and may request revisions thereto.
- 8.4.4 **Requested revisions to any and all of the Proposal Package components should be made by the Contractor and resubmitted in three (3) working days or less.** If after the second review by Sourcewell (or their designated representative) and/or the Sourcewell Member (or their designated representative), Sourcewell (or their designated representative) and/or the Sourcewell Member (or their designated representative) finds requested revisions to the Proposal Package that were not made, this may be reason to suspend that particular Purchase Order.
- 8.4.5 Failure by the Contractor to submit Proposal Packages, and revisions thereto, in a timely manner (within time frames described above) is grounds for suspension of all future Purchase Orders.
- 8.4.6 Sourcewell reserves the right to obtain Price Proposals from any or all of the Contractors awarded an IQCC Contract.
- 8.4.7 If the Contractor continues to submit Price Proposals which are rejected by Sourcewell (or their designated representative), Sourcewell may declare the Contractor in default and initiate termination of the Agreement, according to Article

34 of the Agreement General Conditions.

8.5 Delivery of the Proposal Package

8.5.1 After Sourcewell (or their designated representative) reaches an agreement with the Contractor on the Proposal Package and any requested revision thereto, if applicable, Sourcewell (or their designated representative) will assemble and deliver the Proposal Package for the Sourcewell Member's consideration.

8.6 Review of the Proposal Package by the Sourcewell Member and Issuance of Purchase Order

8.6.1 The Sourcewell Member will evaluate the entire Proposal Package.

8.6.2 The Sourcewell Member may reject a Proposal Package for any reason

8.6.3 The Sourcewell Member may request changes to or clarifications of any part of the Proposal Package, may require certificates of insurance, and may require a Labor and Material Payment Bond and Performance Bond. The Contractor and Sourcewell (or their designated representative) will work together to make any requested revisions in a timely manner and resubmit a revised Proposal Package.

8.6.4 Upon approval of the Proposal Package by Sourcewell (or their designated representative) and the Sourcewell Member, the Sourcewell Member may issue a signed Purchase Order, Notice of Award, or similar document accepting the Contractor's offer. The document will include:

- a. Reference to the Detail Scope of Work
- b. The Purchase Order Price
- c. Start date, Purchase Order Completion Time (duration) and completion date
- d. Whether liquidated damages will apply

8.6.5 When the Work Order Package is accepted, the Sourcewell Member may send to the Contractor a Purchase Order, or a notice of intent to award a Purchase Order (sometimes used if bonding is required) or a similar document.

8.6.6 Once a Contractor has accepted the Purchase Order then the Contractor may not refuse to perform the work. Such actions may be grounds for termination of this Contract or other disciplinary action at the option of Sourcewell

8.6.7 If performance and payment bonding is required, or if a separate and /or special insurance certificate is required, the Contractor will deliver such requirement to the Sourcewell member within ten (10) days of notification of the requirement.

9. CHANGES

9.1 The Sourcewell Member reserves the right to make, in writing, at any time during the Work, changes in the Detailed Scope of Work as are necessary to satisfactorily complete the Project, and to delete in whole or in part, or to add to, the Detailed Scope of Work. Such changes, deletions, or additions will not invalidate the Agreement or the Purchase Order nor release the surety, if any, and the Contractor agrees to perform the Work as altered.

9.2 All changes, deletions, and additions to the Detailed Scope of Work will be reflected in a Supplemental Purchase Order developed and priced in accordance with the procedure for developing and approving all Price Proposals.

10. MARKETING REQUIREMENTS

- 10.1 The Contractor shall be proactive about selling and marketing this Agreement to public agencies and non-profit organizations. Failure to do so may be grounds for termination of this Agreement or other disciplinary action at the option of Sourcewell.
- 10.2 Sourcewell selected its Indefinite Quantity Construction Contracting system based on their research of what provides their Members with the best value and most cost effective results. The Contractor shall avoid all conflicts of interest with the promotion of other IQCC systems to any agency eligible to purchase under this Contract. The promotion of other IQCC systems to any agency eligible to purchase under this Agreement may be grounds for termination of this Contract.
- 10.3 The Contractor must adhere to the following when preparing marketing materials and web sites, and in the use of trademarks and service marks:
- 10.3.1 The Contractor shall include the Sourcewell logo and website address on all marketing materials and web sites that mention this Agreement or have anything to do with this Contract.
- 10.3.2 The Contractor shall include the ezIQC logo, website address (www.ezIQC.com), and ezIQC® telephone number (888-993-9472) on all marketing materials and web sites that mention this Agreement or have anything to do with this Contract.
- 10.3.3 The Contractor shall be authorized to use Sourcewell's and Gordian's names, logos, trademarks, service marks and Sourcewell and Gordian provided materials solely for the presentation and promotion of the availability and use of this Agreement by Sourcewell Members and Potential Sourcewell Members, and agrees that all uses of the trademarks and service marks belonging to Sourcewell and Gordian shall include the appropriate trademark and service mark symbols (® or ™) at all times
- 10.3.4 The Contractor shall not collect information from a Sourcewell Member or Potential Sourcewell Member on Contractor provided forms or web sites. The Contractor shall advise the Sourcewell Members or Potential Sourcewell Members to enter all information at the ezIQC® website or the Contractor may input project information on the ezIQC web site on behalf of a Sourcewell Member or Potential Sourcewell Member.
- 10.3.4 Under no circumstance may copy or branding images of Sourcewell or Gordian be altered in any way without the express written approval of Sourcewell or Gordian.
- 10.3.5 All marketing materials shall be coordinated with and approved by Sourcewell and Gordian.

11. PUNCH LIST COMPLETION

- 11.1 The Contractor understands and agrees that time is of the essence in closing out the Work of this Contract. Upon Substantial Completion of the Work, the Punch List will be transmitted to the Contractor from the Sourcewell Member. The Contractor agrees to begin performance of Punch List Work immediately after receipt of the Punch List.
- 11.2 Failure of the Contractor or its Subcontractors to begin the Punch List Work within three (3) business days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.

11.3 Punch List Work will be continuously prosecuted once begun and completed within thirty (30) Days from the receipt of the Punch List. Should the Contractor fail to complete the Punch List within this period of time, the liquidated damages as identified in Article 26 of the Contract General Conditions will apply.

12. PAYMENT AND PERFORMANCE BONDS AND MATERIAL AND WORKMANSHIP BONDS

If required by the Sourcewell Member for a particular Work Order, the Contractor shall deliver a Labor and Material Payment Bond and a Performance Bond in the amount of such Work Order. If required by the Sourcewell Member for a particular Work Order, the Contractor shall deliver Material and Workmanship Bonds in the amount required by the Sourcewell Member. The bonds must be in a form, and executed by a surety, acceptable to the Sourcewell Member. The bonds must be received before the Notice to Proceed will be issued. The Contractor shall be compensated for the cost of the bonds up to 2% of the Work Order Price through the Reimbursable Fee work task in the Construction Task Catalog. The Contractor shall apply a 1.1000 Adjustment Factor to the Reimbursable Fee work task rather than applying the Contractor's competitively bid Adjustment Factor.

13. COMPUTER SOFTWARE

The Contractor shall maintain at its office for its use a computer with an internet connection. The Contractor will be furnished with a copy of the internet based eGordian® software which will allow the Contractor to generate Price Proposals. This software program contains an electronic copy of the Construction Task Catalog and allows the Contractor to select items and quantities for use in a particular Price Proposal. The software generates a Price Proposal in a preset format acceptable to the Sourcewell Member. There is no separate charge to the Contractor for the software and the related software training.

14. PREPAYMENT OPTION

A Sourcewell Member may elect to deposit the funds for any Project or Purchase Order in a special account established by Sourcewell for the purpose of paying the Contractors for work to be performed. Funds shall be transferred into and out of such account in strict accordance with the rules and procedures established therefor.

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SECTION TWO – CONTRACT GENERAL CONDITIONS

1. PROJECT MANAGER

Project Manager: the person or firm designated by a Sourcewell Member and authorized to represent the Sourcewell Member in connection with a signed Purchase Order.

2. SOURCEWELL MEMBER'S RIGHT TO STOP WORK

The Sourcewell Member may order the Contractor to stop the Work on any Purchase Order, or any portion thereof, at any time for any reason.

3. SOURCEWELL MEMBER'S RIGHT TO COMPLETE WORK

If the Contractor has been ordered to stop the Work, the Sourcewell Member may, without prejudice to other remedies, have the Work completed by any available means.

4. REVIEW OF FIELD CONDITIONS

4.1 Before submitting a Price Proposal, the Contractor shall carefully study the Detailed Scope of Work, as well as the information furnished by the Sourcewell Member, shall take field measurements of any existing conditions related to the Work and shall observe any conditions at the Site affecting it. Any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Project Manager.

4.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Project Manager, but it is recognized that the Contractor's review is made in the Contractor's capacity as a Contractor and not as a licensed design professional. The Contractor is not required to ascertain that the Detailed Scope of Work is in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Project Manager.

5. SUPERVISION

5.1 The Contractor shall supervise and direct the performance of the Detailed Scope of Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. If the Detailed Scope of Work gives specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the Site safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Project Manager and shall not proceed with that portion of the Work without further written instructions from the Project Manager.

5.2 The Contractor shall be responsible to the Sourcewell Member for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its Subcontractors.

- 5.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- 5.4 Effective July 18, 2008, in addition to the existing prevailing wage rate law, Labor Law §220, section 220-h, all laborers, workers, and mechanics working on the site of public work projects of at least \$250,000 are required to be certified as having successfully completed the OSHA 10-hour Construction Safety and Health Course S1537-A.

6. WORKMANSHIP AND QUALITY

- 6.1 The Contractor may make substitutions only with the consent of the Project Manager.
- 6.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in the portions of the Work assigned to them.

7. WARRANTY

- 7.1 All Work furnished under this Agreement shall be guaranteed against defective materials and workmanship, improper performance and non-compliance with the Contract Documents for a period of one year after final acceptance of the Work, except as otherwise specified in other parts of the Contract Documents, or within such longer period of time as may be prescribed by law or provided by the manufacturer.
- 7.2 During the guarantee period, the Contractor shall repair and replace at Contractor's own expense, all Work that may develop defects whether such defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or in the functioning and operation of pieces of equipment operating together as a functional unit. Any equipment or material which is repaired or replaced shall have the guarantee period extended for a period of one year from the date of the last repair or replacement.
- 7.3 If the Contractor fails to repair, replace, rebuild or restore such defective or damaged Work promptly after receiving such notice, the Sourcewell Member shall have the right to have the Work done by others and to deduct the cost thereof from the monies owed to the Contractor. If the amount owed is insufficient to cover such costs, the Contractor shall be liable to pay such deficiency on demand.
- 7.4 The Project Manager's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective Work when performed by one other than the Contractor shall be binding and conclusive as the amount thereof upon the Contractor.
- 7.5 The Contractor shall obtain all manufacturer's warranties and guarantees of all equipment and materials required by this Agreement in the name of the Sourcewell Member.

8. PERMITS, FILING

- 8.1 Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as

- a Reimbursable Task to be paid a mark-up of 10% on the fees paid to a governmental entity to obtain filings and permits. Contractor shall submit written documentation of such fees. The 10% mark-up shall cover all costs over and above the filing and permit fees, including expeditor fees.
- 8.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.
- 8.3 It is not the Contractor's responsibility to ascertain that the Detailed Scope of Work is in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that any portion of the Detailed Scope of Work is at variance therewith, the Contractor shall promptly notify the Project Manager in writing.

9. PERSONNEL

The Contractor shall employ competent personnel for the development of the Project's Detailed Scope of Work, the preparation of the Price Proposal and the execution of the Work. During the performance of the Work, the superintendent assigned to the Project shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

10. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 10.1 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Detailed Scope of Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Detailed Scope of Work. Submittals which are not required by the Contract Documents may be returned by the Project Manager without action.
- 10.2 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Project Manager Shop Drawings, Product Data, Samples and similar submittals required with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Sourcewell Member or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Project Manager without action.
- 10.3 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Detailed Scope of Work and of the Contract Documents.
- 10.4 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Project Manager.
- 10.5 The Work shall be performed in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project Manager's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Project

Manager in writing of such deviation at the time of submittal and (1) the Project Manager has given written approval to the specific deviation as a minor change in the Work, or (2) a Supplemental Purchase Order or written notice has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Project Manager's approval thereof.

- 10.6 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Project Manager on previous submittals. In the absence of such written notice the Project Manager's approval of a resubmission shall not apply to such revisions.
- 10.7 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Detailed Scope of Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Detailed Scope of Work, the Sourcewell Member will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Project Manager. The Sourcewell Member shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Sourcewell Member has specified to the Contractor all performance and design criteria that such services must satisfy. The Project Manager will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Detailed Scope of Work. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Detailed Scope of Work.

11. CUTTING AND PATCHING

- 11.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Detailed Scope of Work or to make its parts fit together properly.
- 11.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Sourcewell Member or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Sourcewell Member or a separate contractor except with written consent of the Sourcewell Member and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Sourcewell Member or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

12. CLEANING UP

- 12.1 The Contractor shall keep the Site and surrounding areas free from accumulation of waste

materials or rubbish caused by operations under the Purchase Order. At completion of the Work, the Contractor shall remove from and about the Site all waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

- 12.2 If the Contractor fails to clean up, the Sourcewell Member may do so and the cost thereof shall be charged to the Contractor.

13. ACCESS TO THE WORK

The Contractor shall provide the Project Manager access to the Work at all times.

14. ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Sourcewell Member and Project Manager harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Sourcewell Member or Project Manager. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Project Manager.

15. INDEMNIFICATION

- 15.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by insurance purchased by the Contractor, the Contractor shall indemnify and hold harmless Sourcewell, the Sourcewell Member, Project Manager, consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph.
- 15.2 In claims against any person or entity indemnified under this Paragraph by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

16. SUBCONTRACTORS

- 16.1 The Contractor, as soon as practicable after award of the Purchase Order, shall furnish in writing to the Project Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the Work. The Project Manager will promptly reply to the Contractor in writing stating

whether or not, after due investigation, Contractor has reasonable objection to any such proposed person or entity. Failure of the Project Manager to reply promptly shall constitute notice of no reasonable objection.

- 16.2 The Contractor shall not contract with a proposed person or entity to whom the Sourcewell Member or Project Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
- 16.3 If the Sourcewell Member or Project Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Sourcewell Member or Project Manager has no reasonable objection.

17. COORDINATION WITH OTHER CONTRACTORS

- 17.1 The Sourcewell Member reserves the right to perform construction or operations related to the Purchase Order with the Sourcewell Member's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site.
- 17.2 The Sourcewell Member shall provide for coordination of the activities of the Sourcewell Member's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Sourcewell Member in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Sourcewell Member until subsequently revised.

18. REQUEST FOR EXTENSION OF TIME

- 18.1 If the Contractor is delayed at any time in the commencement or progress of the Detailed Scope of Work by an act or neglect of the Sourcewell Member or Project Manager, or of an employee of either, or of a separate contractor employed by the Sourcewell Member, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by other causes which the Project Manager determines may justify delay, then the Purchase Order Completion Time shall be extended for such reasonable time as the Project Manager may determine.
- 18.2 The Contractor agrees to make no claim for damages for the delay in the performance of any Purchase Order occasioned by any act or omission to act of the Sourcewell Member, Project Manager or any of their representatives, and agrees that any such claim shall be fully compensated for by an extension of time as provided herein.

19. PARTIAL PAYMENTS

- 19.1 The Contractor may submit a monthly Application for Payment for Work completed to date. The Contractor shall submit Certified Payroll Records, and such other supporting documentation as may be required by the Project Manager. The Contractor may be required to submit Certified Payroll Records online. The Project Manager will inspect the work within a reasonable time and the Sourcewell Member shall make partial payments to the Contractor

based on the approved value of completed Work.

- 19.2 The Sourcewell Member may withhold up to 5% of each payment until final completion of the Purchase Order.
- 19.3 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Sourcewell Member, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-Subcontractors in a similar manner.

20. FINAL PAYMENTS

- 20.1 The Contractor shall notify the Project Manager when the Detailed Scope of Work is complete and ready for final inspection. The Project Manager will promptly make such inspection. If the Project Manager finds the Detailed Scope of Work complete and all final documentation submitted, the Project Manager will notify the Contractor that a final Application for Payment may be submitted.
- 20.2 The Contractor may then submit a final Application for Payment. The Contractor shall submit Certified Payroll Records and such supporting documentation as may be required by the Project Manager. The Sourcewell Member shall make final payment to the Contractor.
- 20.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

21. PARTIAL OCCUPANCY OR USE

- 21.1 The Sourcewell Member may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Sourcewell Member and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Project Manager. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Sourcewell Member and Contractor.
- 21.2 Immediately prior to such partial occupancy or use, the Sourcewell Member, Contractor and Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- 21.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

22. IDENTIFICATION AND SECURITY REQUIREMENTS

The Contractor shall comply with all identification and security requirements that the Sourcewell Member may establish.

23. PROTECTION OF PERSONS AND PROPERTY

23.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- 23.1.1 employees on the Work and other persons who may be affected thereby;
- 23.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- 23.1.3 other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

23.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

23.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Detailed Scope of Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Sourcewell Member and users of adjacent sites and utilities.

23.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

23.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Sourcewell Member or Project Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's other obligations included herein.

23.6 The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Project Manager.

23.7 The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety.

24. HAZARDOUS MATERIALS

24.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to lead based paint,

- asbestos or polychlorinated biphenyl (PCB), encountered on the Site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop the Work in the affected area and report the condition to the Project Manager in writing.
- 24.2 The Sourcewell Member shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Sourcewell Member shall furnish in writing to the Contractor and Project Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the Task of removal or safe containment of such material or substance. The Contractor and the Project Manager will promptly reply to the Sourcewell Member in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Sourcewell Member. If either the Contractor or Project Manager has an objection to a person or entity proposed by the Sourcewell Member, the Sourcewell Member shall propose another to whom the Contractor and the Project Manager have no reasonable objection. When the material or substance has been rendered harmless, the Work in the affected area shall resume upon written agreement of the Sourcewell Member and Contractor. The Purchase Order Completion Time shall be extended appropriately.
- 24.3 To the fullest extent permitted by law, the Sourcewell Member shall indemnify and hold harmless the Contractor, Subcontractors, Project Manager, Project Manager's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described herein and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.
- 24.4 The Sourcewell Member shall not be responsible for materials and substances brought to the Site by the Contractor unless such materials or substances were required by the Detailed Scope of Work.
- 24.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing the Work as required by the Contract Documents, the Sourcewell Member shall indemnify the Contractor for all cost and expense thereby incurred.

25. INSURANCE REQUIREMENTS

- 25.1 The Contractor shall procure and maintain, at its own cost and expense, until final acceptance of all the Work covered by this Agreement, the following kinds of insurance:
- 25.1.1 Workers' Compensation Insurance. A policy complying with the requirements of the laws of the State in which the Project is located.
- 25.1.2 General Liability and Property Damage Insurance. A standard general comprehensive liability insurance policy or a commercial general liability insurance policy issued to and covering the liability of the Contractor for all Work and

- operations under this Agreement, including, but not limited to, contractual and completed operations coverage. The coverage under such policy shall not be less than the following limits: Bodily Injury and Property Damage Liability, \$ 2,000,000 Each Occurrence, 2,000,000 Aggregate.
- 25.1.3 Automobile Liability and Property Damage Insurance. A policy covering the use in connection with the Work covered by the Contract Documents of all owned, non-owned and hired vehicles bearing, or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State in which the Project is located. The coverage under such policy shall not be less than the following limit: Bodily Injury and Property Damage Liability, \$2,000,000 Each Occurrence.
- 25.1.4 All Risk Builders Risk Insurance. Where specifically required in the Detailed Scope of Work, the Contractor shall provide, before the Purchase Order is issued, Builders' Risk Insurance in an amount at least equal to the Purchase Order Price in a form and by a carrier acceptable to the Sourcewell Member. The cost of such Builders Risk Policy shall be reimbursed to the Contractor as a reimbursable task.
- 25.1.5 Pollution Liability Insurance. If a Project involves asbestos abatement encapsulation or other activities involving hazardous materials, the Contractor, Subcontractor or other party responsible for such Work shall procure and maintain a liability insurance policy issued to and covering the liability, of the Contractor, Subcontractor or other party engaged in the removal, or handling of hazardous materials, for bodily injury, illness, sickness or property damage caused by exposure in an amount not less than \$2,000,000 per occurrence and \$2,000,000 aggregate. The cost of Pollution Liability Insurance is included in the Unit Prices and will not be reimbursed separately.
- 25.2 The Contractor shall provide certificates of insurance. Such certificates shall be on a form prescribed by Sourcewell, shall list the various coverages and shall contain, in addition to any provisions hereinbefore required, a provision that the policy shall not be changed or cancelled and that it will be automatically renewed upon expiration and continued in force until final acceptance by Sourcewell, or Sourcewell Member, of all the work covered by the Agreement, unless Sourcewell is given fifteen (15) days' written notice to the contrary. Upon request, the Contractor shall furnish Sourcewell or any Sourcewell Member with a certified copy of each policy.
- 25.3 All insurance required to be procured and maintained as aforesaid must be procured from insurance companies approved by Sourcewell.
- 25.4 If at any time any of the above-required insurance policies should be cancelled, terminated or modified so that insurance is not in effect as above required, then, if Sourcewell shall so direct, the Contractor shall suspend performance of the work. If the said work is so suspended, no extension of time shall be due on account thereof. If said work is not suspended, then Sourcewell may, at its option, obtain insurance affording coverage equal to that above required, the cost of such insurance to be payable by the Contractor.
- 25.5 Should the awarded Contractor retain a Subcontractor to perform any of the services mentioned herein, it is the Contractor's responsibility to ensure that the Subcontractor(s) maintains the same types of insurance coverage in accordance with the requirements and amounts indicated herein.

25.6 Sourcewell, its officers, and employees must be included as a named insured. Any Sourcewell Member, its officials, officers, and employees must be included as a named insured when so requested by the Sourcewell Member.

26. LIQUIDATED DAMAGES

26.1 If provided for in the Invitation for Bid, Sourcewell may assess liquidated damages for each day after the Purchase Order Completion Time that the Detailed Scope of Work is not complete. It is understood and agreed by and between Contractor, Sourcewell and the Sourcewell Member, that time is of the essence in all matters relating to Liquidated Damages.

26.2 The liquidated damages shall be determined on a Purchase Order by Purchase Order basis.

27. TESTS AND INSPECTIONS

27.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Sourcewell Member, or with the appropriate public authority. The Contractor shall give the Project Manager timely notice of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures.

27.2 If the Project Manager, Sourcewell Member or public authorities having jurisdiction determine that portions of the Work require, through no fault of the Contractor, additional testing, inspection or approval, the Project Manager will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Sourcewell Member, and the Contractor shall give timely notice to the Project Manager of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures. Such costs shall be at the Sourcewell Member's expense.

27.3 If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Project Manager's services and expenses shall be at the Contractor's expense.

27.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Project Manager.

27.5 If the Project Manager is to observe tests, inspections or approvals required by the Contract Documents, the Project Manager will do so promptly and, where practicable, at the normal place of testing.

27.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

28. GOVERNING LAW

28.1 The Agreement shall be governed by the law of the place where the Project is located.

28.2 Sourcewell's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law.

28.3 All claims and controversies between Sourcewell and Contractor shall be subject to the laws of the State of Minnesota and are to be resolved in Todd County Minnesota.

29. COMPLIANCE WITH LAWS

In connection with the performance of this Agreement, the Contractor shall comply with all applicable laws, rules and regulations. The parties hereto agree that every provision of law required to be inserted herein be deemed a part hereof. It is further agreed that if any such provision is not inserted or is incorrectly inserted, through mistake or otherwise, this Agreement shall be deemed amended so as to comply strictly with the law.

30. SEVERANCE

If the Contract Documents contains any unlawful provision not an essential part of the Contract Documents and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken without affecting the binding force of the remainder.

31. LICENSE

Contractor shall obtain all licenses required from all public agencies with jurisdiction over the Work and shall keep these documents properly posted at the Site at all times during the performance of the Work.

32. ASSIGNMENT

No right or interest in this Agreement shall be assigned or transferred by the Contractor without prior written consent of Sourcewell. No delegation of any duty of the Contractor shall be made without prior written consent of Sourcewell.

33. CLAIMS AND DISPUTES

All claims or disputes between the Sourcewell Member and Contractor shall be resolved by Sourcewell Member's representative.

34. TERMINATION BY SOURCEWELL FOR CAUSE

34.1 Sourcewell may terminate the Agreement if the Contractor:

- 34.1.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 34.1.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- 34.1.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- 34.1.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

34.2 If an unpaid balance of one or more Purchase Orders exceeds the costs of finishing the Work, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to Sourcewell.

34.3 The Sourcewell Member may not terminate this Agreement between Sourcewell and the Contractor.

35. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

35.1 The Contractor shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, age, color, sex or National origin, sexual orientation, marital status, political affiliation, or physical or mental disability if qualified. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex or National origin, sexual orientation, marital status, political affiliation, or physical or mental disability. 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 of training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

35.2 The Contractor shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, the Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

36. AUDITS

Sourcewell may, at any time after reasonable notice, audit Contractor's records to establish total compliance and to verify the prices charged are in accordance with the Agreement. Contractor agrees to provide verifiable documentation and tracking in a timely manner.

37. GRATUITIES

Sourcewell may cancel this Agreement if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any employee of Sourcewell, are deemed to be excessive with a view toward securing a contract or with respect to the performance of this contract. However, paying the expenses of normal business meals or travel to meetings as described and allowed by law, which are generally made available to all eligible school and government employees, shall not be prohibited by this paragraph. Samples of software, equipment, or hardware provided to Sourcewell for demonstration, evaluation or loan purposes are not considered gratuities.

38. FEDERAL FUNDS (APPLIES TO WORK ORDERS DESIGNATED BY AN AGENCY AS FEDERAL ASSISTED)

38.1 This may be a Federal assisted construction contract and Federal Labor standards, including the Davis-Bacon requirements, will be enforced. If Federal and State wage rates are applicable, then the higher of the two will prevail. A copy of the Department of Labor Wage Rate Determination applicable to this contract must be included.

38.2. Particulars of the current Prevailing Wage Scale, which are applicable to the work

- contemplated under these specifications, are filed with the awarding entity and the agency and must be posted at the project site.
- 38.3 Certification of compliance with Executive Order 11246, as amended, "EACH BIDDER/OFFER, CONTRACTOR, OR SUBCONTRACTOR HEREBY CERTIFIES THAT IT WILL FULLY COMPLY WITH EXECUTIVE ORDER 11246, AS AMENDED BY EXECUTIVE ORDER 11375, AND THE EQUAL OPPORTUNITY CLAUSE AND RULES AND REGULATIONS ISSUED THEREUNDER, WHICH ARE HEREBY INCORPORATED BY REFERENCE AS APPROPRIATE. THE CONTRACTOR COMMITS ITSELF TO SUCH COMPLIANCE BY SUBMITTING A PROPERLY SIGNED BID OR OFFER BY SIGNING OR OTHERWISE ACCEPTING A CONTRACTOR SUBCONTRACT."
- 38.4 The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 38.5 The Contractor shall allow the Agency access to Contractor's employment records during regular business hours to verify compliance with these provisions when so requested by the Agency.
- 38.6 If this is a HUD Section 3 contract and bidders must address the Section 3 employment and contacting goals to be considered a Section 3 responsive bidder. The Contract will be awarded to a Section 3 responsive bidder, provided that the bid amount is reasonable. The definition of a responsive bidder shall include consideration of a bidder's responsiveness to Section 3 requirements. A Section 3 responsive bidder who qualifies as a Section 3 Business concern or one who makes a commitment to meet the employment goal for Section 3 resident(s) and/or meets the contracting goals for Section 3 business firm(s). A bidder who is nonresponsive to Section 3 requirements shall be considered a nonresponsive bidder for the purpose of evaluation bids for a Section 3 contract. The Contract will be awarded to a Section 3 responsive bidder, provided that the bid amount is reasonable. A reasonable bid is a bid that is not more than ten percent (10%) higher than the lowest bid received from any qualified source. If a Section 3 responsive bid is not received within the ten percent (10%) zone of consideration for Contract award, the award shall be made to the bidder who submits the lowest bid.
- 38.7 Companies or individuals that are presently debarred, suspended, proposed for debarment, or declared ineligible for award of federally funded contracts or subcontracts are also ineligible for award of this contract, either as the prime Contractor or as a subcontractor.
- 38.8 The following requirements may apply to those Work Orders designated by the agency as Federally Assisted.
- Federal Highway Administration (FHWA) Circular 1273
 - Federal Equal Employment Opportunity/Affirmative Action Requirements
 - Federal Labor Standards Provisions
 - Compliance with Clean Air and Water Acts

- Non-collusion Affidavit to Be Executed By Bidder and Submitted With Bid
- Non-Segregated Facilities Certification
- Certification With Regard to The Performance of Previous Contracts Or Subcontracts Subject to The Equal Opportunity Clause And The Filing Of Required Reports
- Agency Lobbyists Codes
- Contractor List of Proposed Subcontractors
- Certification of Understanding and Authorization
- Equal Employment Opportunity Commitment
- Sample Outreach Efforts for Contractors Seeking Section 3 Resident Employees
- Section 3 Business Certification Form
- Section 3 Economic Opportunity Plan
- Section 3 Clause

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