

# REQUEST FOR PROPOSALS DOCUMENTS

Contractor – Open Market

SOLICITATION NO.

[See Solicitation Table](#)

Panhandle Texas Area  
Indefinite Quantity Construction Contract



September 2019

INDEFINITE QUANTITY CONSTRUCTION CONTRACT (IQCC)  
Request for Proposals (RFP)  
Solicitation Table  
Panhandle Texas Area

Solicitation Number	Trade	Geographic Area	Proposal Due Date and Time	Estimated Annual Value	Maximum Term
TX-PH-GC-101619	General Construction	Panhandle Texas Area	4:30 PM CT 10/16/2019	\$2,000,000	5 Years
TX-PH-RC-101619	Roofing Construction	Panhandle Texas Area	4:30 PM CT 10/16/2019	\$2,000,000	5 Years
TX- PH-APC-101619	Asphalt/Paving/ Concrete Construction	Panhandle Texas Area	4:30 PM CT 10/16/2019	\$2,000,000	5 Years
TX-PH-EC-101619	Electrical Construction	Panhandle Texas Area	4:30 PM CT 10/16/2019	\$2,000,000	5 Years
TX-PH-PC-101619	Plumbing Construction	Panhandle Texas Area	4:30 PM CT 10/16/2019	\$2,000,000	5 Years
TX-PH-MC- 101619	Mechanical Construction	Panhandle Texas Area	4:30 PM CT 10/16/2019	\$2,000,000	5 Years
TX-PH-P-101619	Painting	Panhandle Texas Area	4:30 PM CT 10/16/2019	\$2,000,000	5 Years
TX-PH-F-101619	Flooring	Panhandle Texas Area	4:30 PM CT 10/16/2019	\$2,000,000	5 Years
TX-PH-W-101619	Waterproofing	Panhandle Texas Area	4:30 PM CT 10/16/2019	\$2,000,000	5 Years

See Section Three for map and list of Geographical Area.

**Proposals for all contracts covered by this solicitation are due by  
4:30 PM CT on October 16, 2019**

Sourcewell formerly known as the National Joint Powers Alliance or NJPA, issues this Request for Proposals (RFP) to provide Indefinite Quantity Construction Contracting (IQCC) services to all Sourcewell Members including all government agencies, education agencies such as colleges and universities, and non-profit agencies in the State of Texas. Each contract will have an initial term of two years and bilateral option provision for three additional one-year terms. The Estimated Annual Value per contract is \$2,000,000.00. One additional one-year renewal-extension may be offered by Sourcewell to Contractor beyond the original five-year term if Sourcewell deems such action to be in the best interests of Sourcewell and its Members.

This RFP consists of four Books:

- Book 1: Project Information and Instructions to Proposers
- Book 2: IQCC Standard Terms and Conditions; General Terms and Conditions
- Book 3: Construction Task Catalog®
- Book 4: Technical Specifications

IQCC is a contracting procurement system that provides facility owner's access to contractors to provide immediate construction, repair, and renovation services over an extended period of time.

**Interested Proposers are strongly encouraged to attend a pre-proposal conference that will be conducted for the purpose of discussing the IQCC procurement system, the contract documents, and reviewing the Sourcewell Procurement Portal system for responding to the RFP. Attendance at one of the below seminars is strongly encouraged.**

**Sept 24, 2019 @ 9:00 AM CT**

Hilton Garden Inn  
6027 45<sup>th</sup> Street.  
Lubbock, TX 79407

**Sept 24, 2019 @ 2:00 PM CT**

Hampton Inn  
5011 W. Loop 250 North  
Midland, TX 79707

Intending proposers can pre-register for the pre-proposal conference by following the link below and selecting "bid details" of the desired solicitation on the Sourcewell Procurement Portal (<https://proportal.sourcewell-mn.gov>).

An electronic copy of the RFP Documents, including the instructions for submitting a proposal, may be obtained by visiting the Sourcewell Procurement Portal at <https://proportal.sourcewell-mn.gov> and selecting the desired solicitation from the open solicitations list. All Proposers must have a Sourcewell Procurement Portal account and be registered as a Plan Taker for this proposal opportunity, which will enable the Proposer to download the RFP Documents, to receive email notifications of the issuance of addenda, to download all documents, submit questions and to submit a proposal online.

Proposals are due no later than 4:30 p.m. Central Time on October 16, 2019.

Questions related to this proposal are to be submitted through the Sourcewell Procurement Portal only by clicking on the "Submit a Question" button for this specific proposal opportunity.

# BOOK 1

## Project Information and Instructions to Proposers

SOLICITATION NO.

[See Solicitation Table](#)

## Panhandle Texas Area Indefinite Quantity Construction Contract



September 2019

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BOOK 1  
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# SECTION ONE - PROJECT INFORMATION

## 1. DEFINITIONS

- 1.1 **Sourcewell:** Sourcewell, formerly known as the National Joint Powers Alliance or NJPA, is a local government unit and public agency of the State of Minnesota pursuant to the Minnesota Constitution and enabling law Minnesota Statutes Section 123A.21. It has the authority to develop and offer, among other services, cooperative purchasing and joint purchasing services to its membership. Eligible membership and participation include states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities, and non-profit organizations.
- 1.2 **Joint Exercise of Powers:** Sourcewell cooperatively shares those contracts with its Members nationwide through various joint exercise of powers laws established in Minnesota and applicable laws in other states. For State of Texas agencies, the Texas Interstate Compacts and Cooperative Agreements for Procurement, Texas Government Code Section 2156.181, states “The commission may enter into one or more compacts, interagency agreements, or cooperative purchasing agreements directly with one or more state governments, agencies of other states, or other governmental entities ... for the purchase of goods or services if the commission determines that the agreement would be in the best interest of the state.” For local governments, Texas Government Code Section 271.102 states, “A local government may participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state.” Minnesota law allows Sourcewell to serve Member agencies located in all other states. Municipal agencies nationally have the ability to participate in cooperative purchasing activities as a result of specific laws of their own state. These laws can be found on the website at: [www.sourcewell-mn.gov/compliance-legal](http://www.sourcewell-mn.gov/compliance-legal).
- 1.3 **Sourcewell Members:**
  - 1.3.1 **Potential Sourcewell Members:** A Potential Sourcewell Member is defined as any public or private educational entity, including colleges and universities, school districts or boards, and any governmental unit including a city, county, town, political subdivision of Minnesota or another state, and any agency of the State of Minnesota or the United States, any instrumentality of a governmental unit, and any non-profit (Minnesota Statutes Section 471.59, subdivision 1). Membership in Sourcewell is required to participate in any Sourcewell contract. Any current or potential Member of Sourcewell that is in compliance with the terms and conditions of membership, has the option and freedom to access any of the procurement contracts of Sourcewell.
  - 1.3.2 **Sourcewell Member:** A Sourcewell Member is defined as an entity that has an executed membership agreement with Sourcewell.
- 1.4 **Purchase Order:** Purchase Orders for construction and services may be executed between Sourcewell or Sourcewell Members and the Contractor pursuant to this RFP and the resulting contracts.
  - 1.4.1 **Governing Law:** Purchase Orders, as identified above, will be construed in accordance with, and governed by, the laws of a competent jurisdiction with

respect to the Sourcewell Member. Each and every provision of law and clause required by law to be included in the Purchase Order will be read and enforced as though it were a part of the Contract. In the event a legally required provision is not included, parties may amend the Contract to make such inclusion or correction. The venue for any litigation arising out of disputes related to Purchase Order(s) will be a court of competent jurisdiction to the Sourcewell Member issuing the Purchase Order.

- 1.4.2 **Additional Terms and Conditions:** Additional terms and conditions to a Purchase Order may be proposed by Sourcewell, Sourcewell Members, or Contractors. Acceptance of these additional terms and conditions must be agreed to by the parties to the Purchase Order. The purpose of these additional terms and conditions is to, among other things, formally introduce job or industry specific requirements of law such as prevailing wage legislation. Additional terms and conditions can include specific policy requirements and standard business practices of the issuing Sourcewell Member.
- 1.5 **Adjustment Factors:** Adjustment Factors are the Proposer's competitively proposed price adjustments to the Unit Prices as published in the Construction Task Catalog, Book 3. Adjustment Factors are expressed as an increase or decrease from the published Unit Prices.
- 1.6 **Construction Task Catalog (CTC):** A comprehensive listing of specific construction related Tasks, together with a specific unit of measurement and a Unit Price.

## 2. ABOUT SOURCEWELL

- 2.1 Sourcewell is a local government unit and public agency pursuant to the Minnesota Constitution and enabling law Minnesota Statutes Section 123A.21 with the authority to develop and offer, among other services, cooperative and joint purchasing services to its membership. Eligible membership and participation include states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities, and non-profit organizations.
- 2.2 Under the authority of Minnesota state laws and enabling legislation, Sourcewell facilitates a competitive solicitation and construction contracting process jointly and on behalf of the needs of itself and the needs of current and potential member agencies. This process results in construction contracts with various vendors of products, equipment, and services which Sourcewell Member agencies desire to procure. These contracts are created in compliance with applicable Minnesota laws. A complete listing of Sourcewell cooperative procurement contracts can be found at [www.sourcewell-mn.gov/cooperative-purchasing/contracts-vendor-search](http://www.sourcewell-mn.gov/cooperative-purchasing/contracts-vendor-search).
- 2.3 Sourcewell is governed by a Board of Directors made up of publicly elected officials and it authorizes all solicitations.
- 2.4
  - 2.4.1 **Subject to Approval of the Sourcewell Chief Procurement Officer as Ratified by the Board of Directors: Sourcewell contracts are awarded by the action of the Sourcewell Chief Procurement Officer and ratified by the Board of Directors. This action is based on the open and competitive solicitation process facilitated by**

**Sourcewell. The evaluation and resulting recommendation is presented to the Chief Procurement Officer by the Sourcewell Proposal Evaluation Committee and ratified by the Board of Directors.**

- 2.5 Sourcewell currently serves over 50,000 members. Both membership and utilization of Sourcewell contracts continue to expand, due in part to the increasing acceptance of cooperative and joint purchasing throughout the government and education communities nationally.

### 3. DEFINED GOALS OF THE RFP

- 3.1 The goal of this RFP is to establish a group of indefinite quantity construction contracts (IQCC) that Sourcewell and Sourcewell Members may access to complete the repair, alteration, modernization, rehabilitation, and construction of infrastructure, buildings, structures, or other real property at competitively solicited prices. The contractors will perform an ongoing series of individual Projects for Sourcewell Members at different locations primarily within the designated Geographic Area.

### 4. IQCC OVERVIEW

- 4.1 IQCC is a competitively solicited indefinite quantity construction contract awarded to proposers to accomplish the repair, alteration, modernization, rehabilitation, and construction of infrastructure, buildings, structures, or other real property. The Estimated Annual Value is based on the anticipated estimated annual use and the contract term is two years with bilateral option terms. The RFP Documents include a Construction Task Catalog (CTC) containing repair and construction Tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices for the direct cost of construction. Once contracts are awarded, Sourcewell Members will order Work from the CTC by issuing a Purchase Order against the contract.
- 4.2 Proposers will offer price adjustments (Adjustment Factors) to be applied to the CTC Unit Prices. The Adjustment Factors represent either an increase to (such as 1.1000) or a decrease from (such as 0.9800) the preset Unit Prices. The amount to be paid for the Work ordered will be determined by: multiplying the preset Unit Prices by the appropriate quantities and by the appropriate Adjustment Factor. The CTC and the Proposer's Adjustment Factors will be incorporated into the awarded contract.
- 4.3 Under IQCC, the Contractor furnishes management, labor, materials, equipment, and incidental design support needed to perform the Work.
- 4.4 As Projects are identified, the Contractor will jointly scope the Work with the Sourcewell Member. The Sourcewell Member will prepare a Detailed Scope of Work and issue a Request for Proposals to the Contractor. The Contractor will then prepare a Proposal Package for the Project including a Price Proposal, Schedule, list of identified subcontractors, and other requested documentation such as cut sheets for materials. If the Proposal Package is found to be reasonable, the Sourcewell Member will issue a Purchase Order. The Purchase Order will reference the Detailed Scope of Work and set forth the Purchase Order Completion Time, and the Purchase Order Price. The Contractor must perform the Detailed Scope of Work within the Purchase Order Completion Time for the Purchase Order Price. Extra Work, credits, and deletions will be contained in Supplemental Purchase Orders calculated in the same manner.

- 4.5 Sourcwell, through a formal selection process, awarded a professional service agreement to The Gordian Group (Gordian) for its IQCC program. The system includes Gordian’s proprietary eziQC, eGordian and Bid Safe IQCC applications (IQCC Applications) and construction cost data (Construction Task Catalog), which will be used by the Contractor to prepare and submit Price Proposals, subcontractor lists, and other requirements specified by Sourcwell and Sourcwell Members. The Contractor’s use, in whole or in part, of Gordian’s IQCC Applications and Construction Task Catalog and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for Sourcwell and Sourcwell Members is strictly prohibited unless otherwise stated in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following Gordian IQCC System License:

#### **IQCC System License**

Gordian hereby grants to the Contractor, and the Contractor hereby accepts from Gordian for the term of this Contract or Gordian’s contract with Sourcwell, whichever is shorter, a non-exclusive right, privilege, and license to Gordian’s proprietary IQCC System and related proprietary materials (collectively referred to as “Proprietary Information”) to be used for the sole purpose of executing Contractor’s responsibilities to Sourcwell and Sourcwell Members under this Contract (“Limited Purpose”). The Contractor hereby agrees that Proprietary Information will include, but is not limited to Gordian’s IQCC Applications and support documentation, Construction Task Catalog, training materials, marketing materials and any other proprietary materials provided to Contractor by Gordian. In the event this Contract expires or terminates as provided herein, or the Gordian’s contract with Sourcwell expires or terminates, this IQCC System License will terminate and the Contractor will return all Proprietary Information in its possession to Gordian.

Contractor acknowledges that Gordian will retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Contractor will have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor must not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract, and must at all times maintain complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state and local laws related to public disclosure. Contractor further acknowledges that a breach of any of the terms of this Contract by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian will be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to this IQCC System License to enforce the provisions of this Contract or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the

prevailing party will be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

In the event of a conflict in terms and conditions between this IQCC System License and any other terms and conditions of this Contract or any Order, Purchase Order or similar purchasing document (Purchase Order) issued by Sourcewell or a Sourcewell Member, this IQCC System License will take precedence.

- 4.6 The Sourcewell Member (or the Sourcewell Member Designated Representative), with the assistance of Gordian, will identify Projects and develop a draft scope of the work. The Contractor and Gordian will then assist the Sourcewell Member in developing a final scope of work. The Sourcewell Member will then issue a Detailed Scope of Work and a Request for Proposals to the Contractor. The Contractor will then utilize Gordian's IQCC System to prepare a Price Proposal for the Purchase Order including a Schedule, list of identified subcontractors, and other requested documentation such as cut sheets for materials. Gordian will assist the Sourcewell Member with Price Proposal review, and if the Price Proposal is found to be reasonable, the Sourcewell Member will issue a Purchase Order to Contractor. The Purchase Order will reference the Detailed Scope of Work and set forth the Purchase Order Completion Time, and the Purchase Order Price. The Contractor will perform the Detailed Scope of Work within the Purchase Order Completion Time for the Purchase Order Price. Extra Work, credits, and deletions will be contained in Supplemental Purchase Orders calculated in the same manner.
- 4.7 The Contractor must, within two (2) business days of receipt of a Purchase Order from a Sourcewell Member, provide notification to Sourcewell of each Purchase Order by forwarding a copy of the Purchase Order via email to [PO@ezIQCC.com](mailto:PO@ezIQCC.com) or via facsimile to (864) 233-9100.
- 4.8 The Contractor must, within two (2) business days of sending an Invoice to a Sourcewell Member, provide notification to Sourcewell of each Invoice by forwarding a copy of the Invoice via email to [Invoice@ezIQCC.com](mailto:Invoice@ezIQCC.com) or via facsimile to (864) 233-9100.

## 5. GEOGRAPHIC AREA

Sourcewell solicits proposals for the Geographic Area as shown on Section Three. This solicitation is for the Geographic Area(s) as specified in this RFP. Sourcewell uses the Geographical Area for proposal purposes. Proposers may perform work for Sourcewell Members located outside the defined Geographical Area upon award.

## 6. THE RFP DOCUMENTS

The RFP Documents consist of four Books:

- Book 1: Project Information, and Instructions to Proposers
- Book 2: IQCC Standard Terms and Conditions; General Terms and Conditions
- Book 3: Construction Task Catalog
- Book 4: Technical Specifications

## 7. EVALUATION OF PROPOSERS

- 7.1 Only proposals from firms normally engaged in performing the type of work specified

within the RFP Documents will be evaluated. Proposer must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to a Sourcewell Member (as solely determined by Sourcewell).

7.2 In determining a Proposer's responsibility and ability to perform the Contract, Sourcewell has the right to investigate and request information concerning the financial condition, experience record, personnel, equipment, facilities, principal business location and organization of the Proposer, the Proposer's record with environmental regulations, and the claims/litigation history of the Proposer.

7.3 The Sourcewell Evaluation Committee will evaluate for acceptability the factors and sub-factors described below:

**Factor 1 – Responsiveness (pass/fail)**

**Factor 2 – Technical Qualifications (acceptable/unacceptable)**

Sub-factor 1: Individual qualifications of the Proposer's key personnel

Sub-factor 2: The Proposer's demonstrated ability to prepare the scope of work as described in Section 4.6 above

Sub-factor 3: Marketing Plan

**Factor 3 – Past Performance (acceptable/unacceptable)**

The Proposer's past Public Project Experience (6 Projects)

**Factor 4 - Price (to be reviewed after Technical qualifications and Past Performance)**

7.4 Proposer must possess documentation evidencing compliance with applicable licensing requirements.

7.5 Proposer must have a fully functioning office within the State of Texas.

## 8. EVALUATION METHODOLOGY

8.1 **Factor 1 – Responsiveness:** To qualify for evaluation, a proposal must be responsive which means it will have been submitted on time and materially satisfy all mandatory requirements identified in this solicitation. A proposal must reasonably and substantially conform to all the terms and conditions in the solicitation to be considered responsive. Deviations or exceptions stipulated in proposer's response, while possibly necessary in the view of the Contractor, may result in disqualification. Language to the effect that the Contractor does not consider this solicitation to be part of a contractual obligation will result in that proposal being disqualified by Sourcewell. Proposal submission is defined in Book 1, Section 2, part 7 – Proposal Submission Processes.

8.2 **Factor 2 – Technical Acceptability of Management Plan:** The proposals must demonstrate a thorough understanding of the requirements as detailed in this RFP and offer complete technical solutions to the requirements found in Book 1 – Project Information and Instructions to Proposers. The proposals will be evaluated for acceptability in accordance with the criteria set forth in this section. The Management Plan must convey to Sourcewell that the proposer possesses adequate technical expertise and experience, sufficient resources, and is able to plan, organize, and use those resources in a coordinated and

timely fashion to meet the needs of Sourcewell members. Sourcewell may make a final determination as to the Proposer’s capability to perform based on the proposal as submitted without requesting further information from the Proposer.

Technical Acceptability - The Sourcewell Evaluation Committee will evaluate the Management Plans by assigning ratings of “Acceptable” or “Unacceptable.” The technical factor (as a whole) will be rated “Unacceptable” if any single sub-factor is rated “Unacceptable.” Information on the complete contents of the management plan can be found in Book 1, Section 2, Part 9 - Management plan.

Only those proposals determined to be technically acceptable will be considered for award. The Proposer is reminded that Sourcewell intends to award this solicitation based on the initial proposal, as received, without discussions. However, Sourcewell may hold discussions if necessary.

Rating	Description
Acceptable	Proposal clearly meets the minimum requirements of the solicitation.
Unacceptable	Proposal does not clearly meet the minimum requirements of the solicitation.

*Sub-factor One: Individual qualifications of the Proposer’s key personnel:*

The proposal requirements listed in Book 1, Section 2 part 9.4 will be evaluated as follows:

- The qualifications of the Proposer’s key personal will be evaluated to determine whether the proposal demonstrates that they possess adequate technical expertise and experience, to plan, organize, and complete the work in a coordinated and timely fashion to meet the needs of Sourcewell members.

*Sub-factor Two: The Proposer’s demonstrated ability to prepare the scope of work as described in Section 4.6 above:*

- Proposer’s demonstrated ability to complete projects on time and with minimal Change Orders.
- Proposer’s demonstrated ability to assist the member in scope of work development. This can be accomplished by explaining in detail your proposed participation in scope development and identifying the personnel who will be responsible for scope of work development.

*Sub-factor Three: Marketing Plan:*

- Proposers must agree to work in cooperation with Sourcewell to develop a marketing strategy and provide avenues to equally market and drive sales through the Contract and program to all Sourcewell Members and Potential Sourcewell Members.

Sub-factor three acceptability is met when the submittal clearly demonstrates:

- A Proposer’s willingness and ability to take ownership in and promote the services proposed to be provided.
- A Proposer’s marketing strategy to promote the contract opportunity.

8.3 **Factor 3 - Past Performance:** Past performance information will only be gathered from Proposer submissions. Only recent and relevant past performance information will be considered to assess how well the Proposer performed on past public projects (municipal, county, state, educational institution, or similar).

Recency is defined as performance less than three years old from the issue date of the RFP. Sourcewell will not consider performance on projects where performance was concluded more than three years prior to the issuance of this RFP.

Relevancy is defined as performance of efforts involving projects that are similar or greater in scope and magnitude that involves similar types and complexities of construction described in this RFP.

Past performance will be rated on an “Acceptable” or “Unacceptable” basis using the following ratings.

Rating	Description
Acceptable	Based on the Proposer’s performance record, Sourcewell has a reasonable expectation that the Proposer will successfully perform the required effort.
Unacceptable	Based on the Proposer’s performance record, Sourcewell has no reasonable expectation that the Proposer will be able to successfully perform the required effort.

*Past Public Project Experience (6 Projects)*

- An “acceptable” rating is attained when the proposal clearly demonstrates recent and relevant past public project experience in the manner specified within the Procurement Portal tables.

8.4 **Factor 4: Price:** A price evaluation will be performed for all proposers in accordance with this section. The Proposer will submit a single set of three (3) adjustment factors for each Trade in which Proposer seeks a contract award. Proposals will be ranked from lowest to highest price based on the Combined Adjustment Factor as described in Book One, Section One, Article 9. Technical and past performance evaluations will be performed **before** any price analysis is conducted.

If a response is determined by Sourcewell to not be technically acceptable or to not have

acceptable past performance, then the Sourcewell Evaluation Committee will continue to the next lowest price technically acceptable Proposer with acceptable past performance.

Under the scenarios described above, it is possible that higher priced offers may receive an award if lower priced offers are not technically acceptable or do not have acceptable past performance.

If a wide margin is found in the Adjustment Factors submitted in response to the solicitation; being too high or too low, then the Sourcewell Evaluation Committee may establish a Competitive Range for the solicitation. If it is determined that a Proposer's Combined Adjustment Factor is too far outside the competitive range, then the Proposer may be removed from consideration. The proposer will be notified that they were determined to be outside the Competitive Range after award of the contracts. Technical and past performance evaluation of a proposer does not ensure inclusion in a competitive range, if one is set.

**Price Considerations:** The pricing criteria used for evaluation are (1) Reasonableness, (2) Balance, and (3) Total Combined Adjustment Factor.

**Reasonableness** – The existence of adequate price competition is expected to support a determination of reasonableness. If adequate price competition is not obtained, or if price reasonableness cannot be determined using analysis of the proposed combined adjustment factors, the Sourcewell Evaluation Committee will determine price reasonableness by one of the following methods

- Comparison of proposed combined adjustment factors to historical combined adjustment factors paid on similar ezIQC contracts.
- Comparison of combined adjustment factors with independent Sourcewell estimates.

**Balance** – Sourcewell may remove a proposal from consideration if it is determined that the Proposer has mathematically unbalanced its proposal to gain a competitive advantage. The proposal will be considered unbalanced if any Adjustment Factor is found to not cover the Proposer's reasonable actual cost. Those costs would include a reasonable prorated share of its anticipated profit, overhead cost, and other indirect costs that the proposer anticipates for the performance of the Work as determined by the Sourcewell Evaluation Committee. Proposers that are determined to be unbalanced may be rejected if the lack of balance within the adjustment factors poses an unacceptable risk to Sourcewell Members.

**Combined Adjustment Factor** - The combined adjustment factor is prepared by the Proposer using the Construction Task Catalog, and tables within the Sourcewell Procurement Portal. This is the Proposer's competitively proposed price adjustment to include the Sourcewell Administrative Fee, and 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.

## 9. AWARD

### 9.1 Contract Awards will be made by the Sourcewell Chief Procurement Officer and ratified

by the Board of Director based on the recommendation of the Sourcewell Proposal Evaluation Committee jointly and on behalf of its current and future Sourcewell Members. The Evaluation Committee will use criteria as permitted by the Texas Government Code and Texas Local Government Code, which allows for the awards to be made to the proposer offering the best value, taking into account estimated member needs within a geographic region, attainment of an acceptable or passing evaluations on Factors 1 – 3, and the Combined Adjustment Factor as shown within the Sourcewell Procurement Portal.

- 9.2 It is the intent of Sourcewell to award contracts to responsive proposers offering the best value, including the Combined Adjustment Factor as shown within the Sourcewell Procurement Portal. Sourcewell will have the right to waive any informality or irregularity in any Proposer's Response received and to accept the Proposer's Response(s), which in its judgment, is (are) in the best interests of Sourcewell and Sourcewell Members. Sourcewell reserves the right to reject all Proposals and advertise again if, in Sourcewell's opinion, the received proposals do not meet the minimum needs and expectations of the Sourcewell current and qualifying members. Sourcewell reserves the right to award additional contracts from this solicitation for a period of 180 Days (or longer, if mutually agreeable to both the Proposer and Sourcewell).
- 9.3 Additionally, the Proposer is required to submit a Management Plan, see Book 1, Article 9, Section Two Instructions to Proposers. The Proposer's Management Plan will provide Sourcewell information to gauge the acceptability of the technical capabilities of the Proposer.
- 9.4 Competitive Range Determination - if a wide margin is found in the Adjustment Factors submitted in response to the solicitation; being too high or too low, then the Sourcewell Proposal Evaluation Committee may establish a Competitive Range for the solicitation. If it is determined that a Proposer's Combined Adjustment Factor is too far outside the Competitive Range, then the Proposer can be removed from consideration. The Proposer will be notified that they were determined to be outside the Competitive Range after award of the contracts. Technical and past performance evaluation of a Proposer does not ensure inclusion in a competitive range, if one is set.
- 9.5 Unbalancing of Price Proposals – A proposal may be removed from consideration if it is determined that the Proposer has mathematically unbalanced its price proposal to gain a competitive advantage. The proposal will be considered to be unbalanced if any Adjustment Factor is found to not cover the contractor's reasonable actual cost. Those costs would include a reasonable prorated share of its anticipated profit, overhead cost, and other indirect costs that the Proposer anticipates for the performance of the work as determined by the Sourcewell Proposal Evaluation Committee. Proposers that are determined to be unbalanced may be rejected if the lack of balance within the adjustment factors poses an unacceptable risk to Sourcewell Members.
- 9.6 **The Other Than Normal Working Hours Adjustment Factors must be higher than the Normal Working Hours Adjustment Factors.**
- 9.7 **The Non Pre-priced adjustment Factor without Administrative Fees must be between 1.0500 and 1.2000**

## 10. ASSIGNMENT OF WORK

- 10.1 The assignment of the Work is at the sole discretion of the Sourcewell Member. The Proposer's Adjustment Factors, performance history, and ability to perform the Work will be considered in determining the distribution of the Work.
- 10.2 BidSafe: Sourcewell may issue a Request for Quotation (RFQ) to two or more Contractors for a Work Order. Selection of the Contractor and award of the Work Order will be in compliance with established Sourcewell procedures.
- 10.3 Sourcewell reserves the right to utilize Bid Safe on a Work Order by Work Order basis.
- 10.4 Sourcewell will consider several factors when determining the applicability of Bid Safe to a Work Order including, but not limited to, the following:
  - 10.4.1 Estimated Work Order Amount;
  - 10.4.2 Scope documentation, including but not limited to A/E design;
  - 10.4.3 Nature and complexity of the Work;
  - 10.4.4 Contractors' abilities to self-perform the Work;
  - 10.4.5 Contractors' proven capabilities on similar Work;
  - 10.4.6 Schedule; and;
  - 10.4.7 Other appropriate criteria as deemed in the best interest of the Sourcewell Member.
- 10.5 The Detailed Scope of Work will be developed by the Sourcewell Member personnel and included with the RFQ.
- 10.6 Sourcewell may conduct one or more site visits with all contractors designated to Receive the RFQ.
- 10.7 All contractors that receive the RFQ will have the opportunity to submit requests for information. Should Sourcewell choose to respond to any or all of the requests for information, the responses, and any changes to the RFQ, will be provided in an addendum to all contractors designated to receive the RFQ.
- 10.8 The Contractor will utilize the Bid Safe application in the eGordian software to provide a Not to Exceed Offer (NTE Offer), along with any additional requested documentation, in response to the RFQ.
- 10.9 Sourcewell will issue a Request for Proposals to the Contractor submitting the NTE Offer that provides the best value to the Sourcewell Member based on, but not limited to, price and any technical factors considered.
- 10.10 The NTE Offer is valid for 120 Days from the date of opening unless stated otherwise in the Detailed Scope of Work.
- 10.11 The Contractor that receives a Request for Proposals will submit a Price Proposal to Sourcewell. Provided that any necessary Price Proposal modifications are completed in a timely and thorough manner, Sourcewell will deliver a Work Order Proposal Package for the Sourcewell Member's consideration.

- 10.12 The Work Order Amount shall be equal to the lesser of the NTE Offer and the Price Proposal amount.
- 10.13 Where the NTE Offer is less than the Price Proposal, the difference between the NTE Offer and Price Proposal shall be deemed a discount offered by the Contractor. The discount amount shall be a percent-based discount that will be calculated by the following equation:  
Percent Discount = (Price Proposal Amount – NTE Offer) ÷ Price Proposal Amount  
The discount shall be applied to subsequent Work Orders (additions or deletions) required to complete the Work, provided the Work Order contains materials, equipment and tasks that are similar in nature to the original Detailed Scope of Work.
- 10.14 If Sourcewell exercises its right to award a Work Order utilizing Bid Safe, collaboration between Contractors is specifically prohibited. Contractor collaboration undermines competition, and evidence of such will be considered a material breach of this

## 11. ORDER OF PRECEDENCE OF THE COMPONENTS OF THE CONTRACT DOCUMENTS

The order of precedence of the Contract Documents will be as follows:

- Purchase Order which may include Plans, Drawings, and supplemental Technical Specifications
- Standard Specifications of the Sourcewell Member, city, state, or federal government, if any
- Contract
- Addenda, if any
- Book 2 – IQCC Standard Terms and Conditions
- Book 2 – General Terms and Conditions
- Book 3 – Construction Task Catalog
- Book 4 – Technical Specifications
- Book 1 – Instruction to Proposers

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## SECTION TWO - INSTRUCTIONS TO PROPOSERS

### 1. GENERAL INFORMATION

- 1.1 The following instructions are given for the purpose of guiding a Proposer in properly preparing its proposal. Such instructions are part of the RFP Documents, and strict compliance is required with all the provisions contained in the instructions.
- 1.2 Examination of RFP Documents
  - 1.2.1 It is the responsibility of each Proposer before submitting a Proposal, to:
    - 1.2.1.1 Examine the RFP Documents thoroughly,
    - 1.2.1.2 Take into account federal, State and local laws, regulations, ordinances, and applicable procurement codes that may affect costs, progress, performance, and furnishing of the Work, or award,
    - 1.2.1.3 Study and carefully correlate Proposer's observations with the RFP Documents, and
    - 1.2.1.4 Carefully review the RFP Documents and notify Sourcewell of all conflicts, errors or discrepancies in the RFP Documents of which Proposer knows or reasonably should have known.
- 1.3 The submission of a Proposal will constitute an incontrovertible representation by Proposer that it has complied with the above requirements and that without exception, the Proposal is premised upon performing and furnishing the Work required by the RFP Documents and that the RFP Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

### 2. SOLICITATION OF PROPOSALS

- 2.1 Electronic Submission of Proposals: Proposals must be received in an electronic format through the Sourcewell Procurement Portal at <https://proportal.sourcewell-mn.gov>, until the deadline for receipt stated in this RFP.
- 2.2 Physical Delivery of Proposals: Proposals may also be submitted in hard-copy format. Sealed and properly identified proposals entitled "INDEFINITE QUANTITY CONSTRUCTION CONTRACT" will be received and time stamped at Sourcewell Offices, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 by the deadline for receipt of proposals as specified in the Request for Proposals.
- 2.3 Scope: Proposals will be for the provision of Indefinite Quantity Construction Contract services for both Sourcewell and Sourcewell Members, and all government and education agencies to include colleges and universities. A Sourcewell employee will open the proposals submitted electronically or physically at the Sourcewell offices after the submission deadline. Awards and resulting Contracts may be awarded within the timeframe identified in this RFP. Complete RFP Documents will be made available through the Sourcewell Procurement Portal (<https://proportal.sourcewell-mn.gov>). Paper, oral, facsimile, telephone, or other electronic submissions (other than through the Sourcewell Procurement Portal) are invalid and will not receive consideration.

### 3. ADVERTISING OF SOLICITATION

- 3.1 As required by law, **Sourcewell must advertise this solicitation**. It will be posted on Sourcewell's website and posted to other third-party websites deemed appropriate by Sourcewell. This advertisement is also submitted for posting at individual state levels.
- 3.2 In addition, **Sourcewell must advertise in one or more publications distributed in the geographic area**, including, but not limited to, newspapers and other publications consistent with state law regarding notice of this request for proposals.

### 4. QUESTIONS

- 4.1 Questions related to this RFP must be submitted through the Sourcewell Procurement Portal only by clicking on the "Submit a Question" button for this specific opportunity. All questions must be submitted prior to **October 9, 2019 at 12:00 P.M. Central Time**. Sourcewell urges potential Proposers to communicate all concerns during the response period to avoid misunderstandings.
- 4.2 If a question is deemed by Sourcewell to have a material impact on the RFP, the response to the question will become an Addendum to these RFP Documents.

### 5. PRE-PROPOSAL CONFERENCE

A pre-proposal conference and/or webinar will be held at the places and times listed in this RFP for the purpose of discussing the IQCC procurement system, the RFP Documents, and reviewing the Sourcewell Procurement Portal system for responding to the RFP. Attendance to a pre-proposal conference is strongly encouraged.

### 6. ADDENDA TO THE RFP DOCUMENTS

Addenda are written instruments issued by Sourcewell that modify or interpret these RFP Documents. All Addenda issued by Sourcewell will become a part of the RFP Documents. Addenda will be delivered to all potential proposers through the Sourcewell Procurement Portal. Sourcewell accepts no liability in connection with the delivery of said materials. No Addenda will be issued later than five (5) Days prior to the deadline for receipt of proposals, except an Addendum withdrawing the request for proposals or one that includes postponement of the date of receipt of proposals.

Proposers must acknowledge receipt of any addenda when submitting their proposal through the Sourcewell Procurement Portal by checking a box for each addenda and any applicable attachment. It is the responsibility of the Proposer to have received all Addenda that are issued. Proposers should check the Sourcewell Procurement Portal prior to submitting their proposal and up until RFP closing time and date in the event additional addenda are issued. If a Proposer submits its proposals prior to the RFP closing time and date and an addenda is issued, the Procurement System automatically **WITHDRAWS** the Proposals submission and the status will change to an **INCOMPLETE STATUS**. The Proposer can view this status change in the **"MY BIDS"** section of the Proposer's Sourcewell Procurement Portal Account. The Proposer is solely responsible to:

- i) Make any required adjustments to its Proposal; and
- ii) Acknowledge addenda; and
- iii) Ensure the re-submitted Proposal is **RECEIVED** by the Procurement System no later than the stated RFP closing time and date.

## 7. PROPOSAL SUBMISSION PROCESS

### 7.1. PREPARATION OF THE PROPOSAL RESPONSE

- 7.1.1 Proposals must be submitted as follows:
  - 7.1.1.1 All Proposers must have a Sourcewell Procurement Portal account and register as a Plan Taker for this solicitation opportunity. Registering as a Plan Taker will enable the Proposer to download the RFP Documents, receive Addenda email notifications, download all documents, and submit the Proposal electronically online.
  - 7.1.1.2 Electronic proposal submissions through the Sourcewell Procurement Portal are encouraged. Proposers are cautioned that the timing of their Proposal submission is based on when the Proposal is **RECEIVED** by the Sourcewell Procurement Portal system, and not when a Proposal is submitted by a Proposer. Proposal transmission can be delayed due to file transfer size, transmission speed, etc. For those reasons, it is recommended the Proposer allow sufficient time to upload their Proposal Submission and attachment(s) (if applicable) and to resolve any issues that may arise.
  - 7.1.1.3 The closing time and date will be determined by the Sourcewell Procurement Portal web clock.
  - 7.1.1.4 A Proposer that submits a proposal by physical delivery is solely responsible for delivery of the sealed proposal to the specified address with all Sourcewell Procurement Portal tables and all documents required to be uploaded in a proposal submitted through the Sourcewell Procurement Portal before the deadline for submissions stated in this RFP.
- 7.1.2 The proposal documents must be submitted with all required content as set out in the Sourcewell Procurement Portal. Failure to properly complete or upload the required proposal documents may result in rejection of the proposal and cause the proposal to be deemed non-responsive.
- 7.1.3 Mistakes may be corrected prior to proposal due date through the Sourcewell Procurement Portal. Corrections and/or modifications received after the closing time and date will not be accepted. The Proposer is solely responsible to ensure the corrected or modified proposal has been received by the Sourcewell Procurement Portal system no later than the stated RFP closing time and date.
- 7.1.4 It is the responsibility of all Proposers to examine the entire RFP package, to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing a

proposal confers no right of withdrawal after the deadline for submission of proposals.

## 8. PROPOSAL TRANSMITTAL

- 8.1 Sourcewell has contracted with bids&tenders to provide technical support for the Sourcewell Procurement Portal. Proposers should contact bids&tenders support at [support@bidsandtenders.ca](mailto:support@bidsandtenders.ca), at least 24 hours prior to the RFP closing time and date, if problems are encountered in the proposal submission process.
- 8.2 Proposers are solely responsible for ensuring all required documentation is submitted through the Sourcewell Procurement Portal, or received at the Sourcewell office, no later than the date and time listed in this RFP. Sourcewell is not responsible for late receipt of proposals. Late proposals will not be considered. The Sourcewell Procurement Portal System will send a confirmation email to the Proposer when the proposal has been successfully submitted. If the Proposer does not receive a confirmation email, contact bids&tenders support at [support@bidsandtenders.ca](mailto:support@bidsandtenders.ca).

## 9. PROPOSER'S MANAGEMENT PLAN

- 9.1 The Proposer is required to answer questions pertaining to its plan for management of the contract. All Management Plan questions will be found within the specifications tab of the RFP. The Proposer's Management Plan questions **must be** answered in order to submit a proposal.
- 9.2 In addition to the proposal documents and other required submittals, the Proposer's Management Plan will be used by Sourcewell to determine the capability of the Proposer to perform the contract. Therefore, the Proposer should take great care in the preparation of the Management Plan.
- 9.3 The Proposer may be determined non-responsive for failure to submit the Proposer's Management Plan and/or failure to adequately address the issues below to the satisfaction of Sourcewell may result in an evaluation finding of unacceptable.
- 9.4 Management Team
  - a. The Proposer is required to submit its Management Team for the contract as an uploaded document. The document should be titled "**MANAGEMENT TEAM FOR EXECUTION OF IQCC.**" The Proposer's Management Team **must be** submitted as part of the Proposer's response documents in the document upload section and must provide the following elements.
    - i. Provide an organizational chart.
    - ii. Describe the responsibilities and duties of each position by indicating who will manage the overall contract, attend Joint Scope Meetings, prepare Proposal Packages, negotiate with Subcontractors, supervise construction, and perform administration tasks.
    - iii. Provide resumes for your **key** personnel you intend to assign to this contract.
    - iv. Provide a current list of the number and classification of your full-time employees.

## 10. PROPOSAL PRICING

- 10.1 Each Proposer must submit three (3) Adjustment Factors to be applied to every task in the CTC. The proposal will be an adjustment “decrease from” (e.g., 0.9800) or “increase to” (e.g., 1.1000) the Unit Prices listed in the CTC. The three (3) Adjustment Factors submitted by Proposer will be considered applicable to each opportunity identified in the Solicitation Table within the stated Trade. **Proposers that submit separate Adjustment Factors for separate line items will be considered non-responsive and its proposals will be rejected.**
- 10.2 The Proposer's Adjustment Factors must include all of the Proposer's direct and indirect costs including, but not limited to, its costs for overhead, profit, bond premiums above the reimbursable amount, insurance, mobilization, Purchase Order Proposal development, and all contingencies in connection therewith. See pages 00-1 – 00-6 of Book 3 – the CTC for a complete explanation of what is included in the Unit Prices and what is not.
- 10.3 The first Adjustment Factor is to be applied to Work to be accomplished during Normal Working Hours and performed on Projects that require prevailing wage rates.
- 10.4 The second Adjustment Factor is to be applied to Work to be accomplished during Other Than Normal Working Hours on Projects that require prevailing wage rates.
- 10.5 The third Adjustment Factor is for work tasks not identified in the Construction Task Catalog. IQCC includes a provision for establishing of prices for Work requirements which are within the general scope of IQCC but were not included in the CTC at the time of Contract award, see Book 2 Section One, Article 8. These Tasks are referred to as "Non Pre-priced Tasks (NPP)." NPP Tasks may require new specifications and drawings and may subsequently be incorporated into the CTC. The Proposers will offer an Adjustment Factor to be applied to the actual material, equipment, and labor cost for NPP work Tasks. **The NPP Adjustment Factor must not be less than 1.0500 and not higher than 1.2000, excluding Administrative Fees.**
- 10.6 Adjustment Factors must be specified to the fourth decimal place. For example:

1	.	1	0	0	0
---	---	---	---	---	---

Or

0	.	9	8	0	0
---	---	---	---	---	---

- 10.7 For proposal evaluation purposes only, the following weighting of the Adjustment factors will be used to determine the Combined Adjustment Factor:

NORMAL WORKING HOURS- PREVAILING WAGE RATE PROJECTS	70%
OTHER THAN NORMAL WORKING HOURS- PREVAILING WAGE RATE PROJECTS	20%
NON PRE-PRICED	10%

### 11. MODIFICATION OR WITHDRAWAL OF A SUBMITTED PROPOSAL

A submitted proposal may not be modified, withdrawn or cancelled by the Proposer for a period of one hundred and eight (180) Days following the time and date designated for the receipt of proposals. Prior to the deadline for submission of proposals, any proposal submitted may be modified or withdrawn through the Sourcewell Procurement Portal.

### 12. PROPOSER RESPONSIVENESS AND RESPONSIBILITY

In accordance with accepted standards of competitive sealed proposal awards, competitive sealed proposals/awards will be made to responsive and responsible Proposers whose proposals are determined in writing to be the most advantageous to Sourcewell and its Members. To qualify for evaluation, a proposal must be responsive which means it was submitted on time and materially satisfies all mandatory requirements identified in this document. A proposal must reasonably and substantially conform to all the terms and conditions in the solicitation to be considered responsive. Deviations or exceptions stipulated in Proposer's response, while possibly necessary in the view of the Proposer, may result in disqualification. Language to the effect that the Proposer does not consider this solicitation to be part of a contractual obligation will result in that proposal being disqualified by Sourcewell.

### 13. CERTIFICATION

By signing this proposal, the Proposer certifies:

- 13.1 The submission of the offer did not involve collusion or any other anti-competitive practices;
- 13.2 The Proposer/Contractor will not discriminate against any employee or applicant for employment in violation of federal and state laws (see Federal Executive Order 11246);
- 13.3 The Proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted offer (see Gratuities); and
- 13.4 The Proposer agrees to promote and offer to Sourcewell Members only those products and/or services as previously stated, allowed and deemed a resultant of the Contract (s) as Sourcewell Contract items or services. This clause will include any future product or service additions as allowed through contract additions.

## 14. PROTESTS

- 14.1 Any protest made under this RFP by a Proposer must be in writing, addressed to Sourcewell's Executive Director, and delivered to the Sourcewell office located at 202 12th Street NE, P.O. Box 219, Staples, MN 56479. The protest must be received no later than ten (10) calendar days' following Sourcewell's notice of contract award(s) or non-award and must be time stamped by Sourcewell no later than 4:30 p.m., Central Time.

A protest must include the following items:

- The name, address, and telephone number of the protester;
- The original signature of the protester or its representative;
- Identification of the solicitation by RFP number;
- A precise statement of the relevant facts;
- Identification of the issues to be resolved;
- Identification of the legal or factual basis;
- Any additional supporting documentation; and
- Protest bond in the amount of \$20,000.

Protests that do not address these elements will not be reviewed.

## 15. PUBLIC RECORD

All proposals submitted to this RFP shall become the property of the Sourcewell and will become a matter of public record, available for review subsequent to the award notification. Proposals may be viewed by appointment at the Sourcewell offices Monday through Friday from 8:30 a.m. to 3:30 p.m. Central Time.

## 16. PREVAILING WAGE RATES AND PARTICIPATION REQUIREMENTS

- 16.1 This clause is applicable to states in which prevailing wage rates are established by law. The Contractor must pay prevailing wages to all workers in accordance with the applicable laws. The wage rates used for the CTC were the prevailing wage rates, if any; in effect at the time these RFP Documents were issued. In the performance of the Work, however, Contractor will be fully responsible for paying the generally prevailing hourly rate of wages in effect, as determined by a state's regulatory agency with jurisdiction over such matters, at the time the Work is performed. If a revision is made to the prevailing rate of hourly wages to be paid for the Work prior to completion of the Project, the revised rate will apply to this Contract from the effective date of such revision, however such revision will not entitle Contractor to any increased compensation under the terms of the Contract.
- 16.2 If other wage rates are required by law, the Contractor will pay such wages to all workers in accordance with the applicable laws. If the Purchase Order is performed in whole or in part using federal funding, then the Davis Bacon Wages for that area will apply.
- 16.3 Contractors must meet any goals or requirements established by the Sourcewell Member ordering the Work, and/or satisfy the intent of said goals or requirements, with regard to small, local, minority, women, veteran or disadvantaged business enterprises. Additional participation goals may be incorporated into the detailed scope of the Work.

## 17. MARKETING REQUIREMENT

Proposer must express a willingness and ability to take ownership and promote the services to be provided. Proposer must agree to work in cooperation with Sourcewell to develop a marketing strategy and provide avenues to equally market and drive sales through the Contract and program to all Sourcewell Members and Potential Sourcewell Members. Proposer agrees to actively market in cooperation with Sourcewell all available services to current Sourcewell Members, as well as Potential Sourcewell Members.

If Proposer is awarded a contract based on this solicitation it will be a primary driver of everyone's success. Proposer's sales force needs to be aware that:

- The use of a Sourcewell Contract will save its customer (Sourcewell's Member) the time and effort of soliciting its own individual RFP;
- The use of the Sourcewell Contract will save the Proposer time and effort of responding to individual RFP; and
- The use of the Sourcewell Contract will guaranty that Sourcewell Members have the ability to choose you.

An award of a contract resulting from this RFP is an opportunity for the awarded proposer to pursue, commerce with, and deliver value to Sourcewell and Sourcewell Members, but it is not a guarantee of work. **As such the Proposer will demonstrate in the Management Plan specific marketing strategies, personnel and the qualifications of those personnel to market IQCC and the frequency and duration of marketing efforts.** Sourcewell reserves the right to deem a proposer non-responsive or to waive an award based on a Proposer's unwillingness to participate in such a marketing effort or by submitting an unsatisfactory marketing strategy as part of the overall management plan. Further marketing requirements will be found in Book Two, Section One, Article 10 this RFP.

## 18. MEMBER SIGN-UP PROCEDURE

Proposer agrees to cooperate and participate in the Sourcewell Membership process as part of connecting Sourcewell Members to Sourcewell contracts. The process to sign up new Sourcewell Members to purchase under this Contract will be defined during the award phase.

## 19. FEES

- 19.1 The Proposer must include the Sourcewell Administrative Fee in calculating the Proposer's Adjustment Factors.
- 19.2 Sourcewell's Administrative Fee will be calculated at the rate of 7.5% of the total Purchase Order Price charged to the Sourcewell Member.
- 19.3 Sourcewell's Administrative Fee will be remitted by the Contractor to Sourcewell, or its designated contract administrator, within thirty (30) days of the submission of an invoice to a Sourcewell Member by Contractor. The Contractor will be assessed a one percent (1%) per month late fee for any Administrative Fees not paid by the due date set forth herein.
- 19.4 Sourcewell designates The Gordian Group, Inc., (Gordian) as its contract administrator. The Sourcewell Administrative Fee payments must be made payable to The Gordian Group and sent to the following address:

The Gordian Group, Inc.  
PO Box 79341  
Baltimore, MD 21279-0341

- 19.5 Sourcewell or Gordian may request records from the Contractor for all purchases through this Contract and payment of all Administrative Fees. If a discrepancy exists between the purchasing activity and the Administrative Fees paid, Sourcewell or Gordian will provide written notification to the Contractor of the discrepancy and allow the Contractor ten (10) days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of Sourcewell or Gordian, Sourcewell or Gordian reserve the right to engage a third party to conduct an independent audit of the Contractor's records and, in the event Contractor is not in compliance with this Contract, Contractor will, in addition to any Administrative Fees due, reimburse the appropriate party for the cost and expense related to such audit.
- 19.6 Sourcewell and Contractor hereby acknowledge that The Gordian Group, Inc., as Sourcewell's designated contract administrator, is a third-party beneficiary of Section 20, including all subsections therein. In the event any court action is brought to enforce payment of the Administrative Fees set forth above by any party or third-party beneficiary of this Contract, the prevailing party will be entitled to an award of reasonable attorneys' fees and collection costs.

## 20. TAXES

The Contractor will pay all sales, consumer, use and other similar taxes required by law for which an exemption does not exist. If the Contractor is required to pay sales tax on non-exempt material, equipment, services or other items purchased in connection with a Purchase Order, the Member will reimburse the Contractor for such tax, without mark-up, provided the Contractor submits the appropriate documentation therefor.

## 21. PHYSICAL PRESENCE

The Proposer must have a fully staffed and functioning office located within the State of Texas. Proposer must have been in business performing construction work for at least **three (3) years**.

## 22. SELF PERFORMANCE REQUIREMENT

Contractor(s) for all Non-General Contractor Construction Contracts will perform with its own organization and forces not less the 51% of the total amount of labor hours performed at the project site through the working foreperson level. The percentage calculation does not include field superintendents or office management personnel. Note: Sourcewell has determined that the percentage of self-performance is a critical performance criteria. As such, failure to achieve or exceed the self-performance requirements will constitute a reason to terminate the Contract.



Panhandle Texas Area Indefinite Quantity  
 Construction Contract Counties include the  
 following:

**PANHANDLE TEXAS AREA**

Andrews	Crosby	Garza	Howard	Midland	Runnels
Armstrong	Dawson	Glasscock	Hutchinson	Mitchell	Scurry
Bailey	Dallam	Gray	Jones	Moore	Sherman
Borden	Deaf Smith	Hale	Kent	Motley	Sterling
Briscoe	Dickens	Hall	King	Nolan	Stonewall
Carson	Donley	Hansford	Knox	Ochiltree	Swisher
Castro	Ector	Hardeman	Lamb	Oldham	Taylor
Childress	Fisher	Hartley	Lipscomb	Parmer	Terry
Cochran	Floyd	Haskell	Lubbock	Potter	Wheeler
Coke	Foard	Hemphill	Lynn	Randall	Winkler
Collingsworth	Gaines	Hockley	Martin	Roberts	Yoakum
Cottle					

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# SECTION FOUR- SAMPLE INDEFINITE QUANTITY CONSTRUCTION CONTRACT

RFP NUMBER: \_\_\_\_\_

GEOGRAPHIC AREA: \_\_\_\_\_

This Contract dated \_\_\_\_\_, by and between Sourcewell (formerly NJPA) and  
\_\_\_\_\_ at the following address,  
\_\_\_\_\_ hereinafter referred to  
as the CONTRACTOR.

WITNESSETH: Sourcewell and CONTRACTOR for the consideration hereafter agree as follows:

## ARTICLE 1. CONTRACT DOCUMENTS

A. Contract Documents: This Contract; the RFP 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) 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, Purchase Order Proposals, etc.) issued hereunder.

B. The terms and conditions of a Purchase Order issued by a Sourcewell Member in connection with any Project, including supplemental technical specifications referenced therein, shall govern.

C. The Contractor shall, within two (2) business days of receipt of a Purchase Order from a Sourcewell Member, provide notification to Sourcewell or their designated representative of each Purchase Order by forwarding a copy of the Purchase Order via email to [PO@EZIQC.com](mailto:PO@EZIQC.com) or via facsimile to (864) 233- 9100.

D. The Contractor shall, within two (2) business days of sending an Invoice to a Sourcewell Member, provide notification to Sourcewell or their designated representative of each Invoice by forwarding a copy of the Invoice via email to [Invoice@EZIQC.com](mailto:Invoice@EZIQC.com) or via facsimile to (864) 233-9100.

## ARTICLE 2. SCOPE OF WORK

A. The Contractor shall provide the services required to develop each Purchase Order in accordance with the procedures for developing Purchase Orders set forth in the IQCC Standard Terms and Conditions and the Contract Documents.

B. Each Purchase Order developed in accordance with this Contract will be issued by an individual Sourcewell Member. The Purchase Order will require the Contractor to perform the Detailed Scope of Work within the Purchase Order Completion Time for the Purchase

Order Price.

C. It is anticipated that the Contractor will perform Work primarily in the Geographic Area set forth above. However, the parties may agree that the Contractor can perform Work in a different Geographic Area at its current Adjustment Factors.

### ARTICLE 3. THE CONTRACT PRICE

A. This Contract is an indefinite-quantity contract for construction work and services. The Estimated Annual Value of this Contract is \$2,000,000. This is only an estimate and may increase or decrease at the discretion of Sourcewell.

B. The Contractor shall perform any or all Tasks in the Construction Task Catalog for the Unit Price appearing therein multiplied by the following Adjustment Factors:

1. Normal Working Hours Prevailing Wage: Work performed from 7:00am until 4:00pm Monday to Friday, except holidays. Contractor shall perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

\_\_\_\_\_.  
(Specify to four (4) decimal places)

2. Other Than Normal Working Hours Prevailing Wage: Work performed from 4:00pm to 7:00am Monday to Friday, and any time Saturday, Sunday and Holidays. Contractor shall perform Tasks during Other Than Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

\_\_\_\_\_.  
(Specify to four (4) decimal places)

3. Non Pre-priced Adjustment Factor: To be applied to Work deemed not to be included in the CTC but within the general scope of the work:

\_\_\_\_\_.  
(Specify to four (4) decimal places)

### ARTICLE 4. TERM OF THE CONTRACT

A. This Contract has an initial term of two (2) years and a bilateral option provision for three (3) additional terms. The total term of the Contract cannot exceed five (5) years. One additional one-year renewal-extension may be offered by Sourcewell to Contractor beyond the original five-year term if Sourcewell deems such action to be in the best interests of Sourcewell and its Members. The Contractor may withdraw from the Contract after the initial two (2) year term or upon each option to extend, provided that the Contractor gives 60 Days' written notice of its intent to withdraw. Sourcewell may, for any reason, terminate this Contract at any time.

B. All Purchase Orders issued during a term of this Contract 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. All terms and conditions of the Contract apply to each Purchase Order.

## ARTICLE 5. SOFTWARE LICENSING

A. Sourcewell selected The Gordian Group's (Gordian) software, data and services (IQCC System) for their IQCC program. The system includes Gordian's proprietary eIQCC, eGordian and Bid Safe IQCC applications (IQCC Applications) and construction cost data (Construction Task Catalog), which shall be used by the Contractor to prepare and submit Price Proposals, subcontractor lists, and other requirements specified by Sourcewell and Sourcewell Members. The Contractor's use, in whole or in part, of Gordian's IQCC Applications and Construction Task Catalog and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for Sourcewell and Sourcewell Members is strictly prohibited unless otherwise stated in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following IQCC System License:

## ARTICLE 6. IQCC SYSTEM LICENSE

A. Gordian hereby grants to the Contractor, and the Contractor hereby accepts from Gordian for the term of this Contract or Gordian's contract with Sourcewell, whichever is shorter, a non-exclusive right, privilege, and license to Gordian's proprietary IQCC System and related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing Contractor's responsibilities to Sourcewell and Sourcewell Members under this Contract ("Limited Purpose"). The Contractor hereby agrees that Proprietary Information shall include, but is not limited to, Gordian's IQCC Applications and support documentation, Construction Task Catalog, training materials, marketing materials and any other proprietary materials provided to Contractor by Gordian. In the event this Contract expires or terminates as provided herein, or the Gordian's contract with Sourcewell expires or terminates, this IQCC System License shall terminate and the Contractor shall return all Proprietary Information in its possession to Gordian.

B. Contractor acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Contractor shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

C. Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state and local laws related to public disclosure. Contractor further acknowledges that a breach of any of the terms of this Contract by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity.

In the event that it becomes necessary for either party to this IQCC System License to enforce the provisions of this Contract or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

D. In the event of a conflict in terms and conditions between this IQCC System License and any other terms and conditions of this Contract or any Purchase Order, Order or similar purchasing document (Purchase Order) issued by Sourcewell or a Sourcewell Member, this IQCC System License shall take precedence.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

Sourcewell

By:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name

Contractor

By:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name

Contract Number: \_\_\_\_\_ (assigned by Sourcewell)

BOOK 2

IQCC STANDARD TERMS AND CONDITIONS  
AND  
CONTRACT GENERAL CONDITIONS

SOLICITATION NO.  
[See Solicitation Tables](#)

Panhandle Texas Area  
Indefinite Quantity Construction Contract



September 2019

# BOOK 2

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## SECTION ONE - IQCC STANDARD TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1 Addendum or Addenda: The additional or modified provisions of the RFP Documents issued in writing by Sourcewell prior to the receipt of Proposals.
- 1.2 Contract: The written agreement between the Contractor and Sourcewell covering the Work to be performed; and other Contract Documents incorporated in or referenced in the Contract and made part thereof as if provided therein.
- 1.3 Adjustment Factors: The Contractor's proposed 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 RFP Documents: The Request for Proposal; Book 1 - Project Information, Instructions to Proposers, and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and Contract General Conditions; Book 3 - The Construction Task Catalog; and Book 4 - Technical Specifications.
- 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 Contract; the RFP Documents (Book 1 - Project Information, Instructions to Proposers and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications 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 legal entity named in the award letter with which Sourcewell has contracted and is responsible for the acceptable performance of the Contract, 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 will 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 PurchaseOrder.
- 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 ChristmasDay.
- 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 Contract.
- 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 Texas.
- 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 RFP Documents.
- 2.1.2 Job or performance will 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 Contract will be determined by individual Purchase Orders issued hereunder. The Contractor will 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 will also be responsible for Site safety as well as Site preparation and cleanup during and after construction.
- 2.1.4 The Work will be conducted by the Contractor in strict accordance with the Contract and all applicable laws, regulations, codes, or directives including federal, state, county and city.
- 2.1.5 The Contractor will 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 will prepare and submit required reports, maintain current record drawings, and submit required information. The Contractor will 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 will 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 will 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 Proposer items that will be satisfactory.

### 3. ARCHITECTURAL AND ENGINEERING SERVICES

This Contract is not intended to include architectural, engineering and other professional and consulting services required to be procured pursuant to Chapter 2254 of the Texas Government Code.

### 4. TERM OF CONTRACT

- 4.1 This Contract is for term shown on the RFP. The Contractor may withdraw from the Contract after the initial two (2) year term or upon each option to extend, provided that the Contractor gives 60 Days' written notice of its intent to withdraw. Sourcewell may, for any reason, terminate this Contract at any time.
- 4.2 A Sourcewell Member may issue a Purchase Order at any time during the term of this Contract. All Purchase Orders issued during a term of this Contract will 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 all areas of the state or other states at the Adjustment Factors proposed.

### 6. ESTIMATED ANNUAL VALUE

The Estimated Annual Value of the Contract is as specified in the RFP. The Contractor is not guaranteed to receive any Purchase Orders under this Contract. 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 Contract has an initial term of two (2) years from the date on contract and three (3) bilateral option provisions for three (3) additional one-year terms. 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 first year of this Contract.
- 7.3 On the anniversary of the solicitation, a new Construction Task Catalog will be furnished. The new Construction Task Catalog will be effective for the 12 month period after the anniversary of the award date. The Construction Task Catalogs that accompany each anniversary shall only apply to Work Orders issued after the effective date of that specific renewal option and shall have no impact on Work Orders issued prior to the effective date of that specific renewal option.
- 7.4 The Adjustment Factors submitted with the Contractor's Proposal shall be used for the full term of the Contract. On the annual anniversary of the Contract, Sourcewell shall issue the

Contractor a new Construction Task Catalog. The Contractor will be issued the new Construction Task Catalog for review and acceptance prior to accepting new work. The Contractor shall use the Construction Task Catalog in effect on the date that the Work Order is issued. However, the Contractor cannot delay the issuance of a Work Order to take advantage of a scheduled update of the Construction Task Catalog. In that event, the Contractor shall use the Construction Task Catalog 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 will 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 will 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 will submit three independent quotes for all materials to be installed

and will 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 will 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 will 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:**

- A. The hourly rate for each trade classification not in the Construction Task Catalog multiplied by the quantity;
- B. The rate for each piece of Equipment not in the Construction Task Catalog multiplied by the quantity;
- C. 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 cannot 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 Contract. 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 will be final, binding and conclusive as to the Contractor.
- 8.2.2.6 The means and methods of construction will 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 shutdown of the work site required by the facility, such as a temporary shutdown to move prisoners.
- 8.2.4 The value of the Price Proposal will 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 must submit a complete Proposal Package, which includes:
- any incidental drawings or sketches, calculations and or specification information,
  - the Price Proposal, and a quantity take-off summary supporting all material quantities contained in the Price Proposal
  - catalog cuts providing information on materials or products, as specifically requested,
  - back-up for any Non Pre-priced Tasks,
  - identification of known Subcontractors and materials suppliers,
  - a construction schedule,
  - 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 will be submitted by the date indicated on the Request for Proposal. All incomplete Proposal Packages will 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 particular 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 its designated representative) and/or the Sourcewell Member (or its 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 its designated representative) or the Sourcewell Member (or its designated representative) may compare the Price Proposal to the Sourcewell Member cost estimate for the Detailed Scope of Work. Sourcewell (or its designated representative) or the Sourcewell Member (or its 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 its designated representative) and/or the Sourcewell Member (or its designated representative) finds any part of the Price Proposal unacceptable, Sourcewell (or its designated representative) or the Sourcewell Member (or its 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 its designated representative) and the Sourcewell Member (or its designated representative). Therefore, Sourcewell (or its 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 its designated representative) and/or the Sourcewell Member (or its 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 its designated representative) and/or the Sourcewell Member (or its designated representative), Sourcewell (or its designated representative) and/or the Sourcewell Member (or its 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 its designated representative), Sourcewell may declare the Contractor in default and initiate termination of the Contract, according the Contract General Conditions.

#### **8.5 Delivery of the Proposal Package**

8.5.1 After Sourcewell (or its designated representative) reaches an agreement with the Contractor on the Proposal Package and any requested revision thereto, if applicable, Sourcewell (or its 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 its 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 its 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 Contract 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 will be proactive about selling and marketing this Contract to public agencies and non-profit organizations. Failure to do so may be grounds for termination of this Contract or other disciplinary action at the option of Sourcewell.
- 10.2 Sourcewell selected its Indefinite Quantity Construction Contracting system based on its research of what provides their Members with the best value and most cost effective results. The Contractor must 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 Contract 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 will include the Sourcewell logo and website address on all marketing materials and web sites that mention this Contract or have anything to do with this Contract.
- 10.3.2 The Contractor will include the ezIQC logo, website address ([www.ezIQC.com](http://www.ezIQC.com)), and ezIQC® telephone number (888-993-9472) on all marketing materials and web sites that mention this Contract or have anything to do with this Contract.
- 10.3.3 The Contractor is authorized to use Sourcewell's and Gordian's names, logos, trademarks, service marks and/or Sourcewell and Gordian provided materials solely for the presentation and promotion of the availability and use of this Contract by Sourcewell Members, and agrees that all uses of the trademarks and service marks belonging to Gordian must include the appropriate trademark and service mark symbols (® or TM) at all times.
- 10.3.4 The Contractor must not collect information from a Sourcewell Member or Potential Sourcewell Member on Contractor provided forms or web sites. The Contractor will 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 Contractor indicate Sourcewell endorses Contractor, or that 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 must 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 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 will 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 will 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 will 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 will apply a 1.1000 Adjustment Factor to the Reimbursable Fee work task rather than applying the Contractor's proposed Adjustment Factor.

## 13. COMPUTER SOFTWARE

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

4.2 Any design errors or omissions noted by the Contractor during this review must 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 must be reported promptly to the Project Manager.

### 5. SUPERVISION

5.1 The Contractor will supervise and direct the performance of the Detailed Scope of Work, using the Contractor's best skill and attention. The Contractor will 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 will evaluate the Site safety thereof and, except as stated below, will 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 will give timely written notice to the Project Manager and will not proceed with that portion of the Work without further written instructions from the Project Manager.

5.2 The Contractor will 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 will be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

## 6. WORKMANSHIP AND QUALITY

- 6.1 The Contractor may make substitutions only with the consent of the Project Manager.
- 6.2 The Contractor must enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor will 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 Contract will 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 warranty period, the Contractor will 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 will 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 will 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 will 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 will be binding and conclusive as the amount thereof upon the Contractor.
- 7.5 The Contractor will obtain all manufacturer's warranties and guarantees of all equipment and materials required by this Contract in the name of the Sourcewell Member.

## 8. PERMITS, FILING

- 8.1 Contractor will 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 will 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 will submit written documentation of such fees. The 10% mark-up will cover all costs over and above the filing and permit fees, including expeditor fees.

- 8.2 The Contractor will 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 will promptly notify the Project Manager in writing.

## 9. PERSONNEL

The Contractor will 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 will represent the Contractor, and communications given to the superintendent will be as binding as if given to the Contractor. Important communications must be confirmed in writing. Other communications will 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 must 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 must 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 will be performed in accordance with approved submittals except that the Contractor will 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 will 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 will 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 will not apply to such revisions.
- 10.7 The Contractor will 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 will 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 will cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal must 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, will bear such professional's written approval when submitted to the Project Manager. The Sourcewell Member will 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 will 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 will 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 will 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 will 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 will not be unreasonably withheld. The Contractor will 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 will 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 will 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 will be charged to the Contractor.

### 13. ACCESS TO THE WORK

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

### 14. ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor will pay all royalties and license fees. The Contractor will defend suits or claims for infringement of copyrights and patent rights and will hold the Sourcewell Member and Project Manager harmless from loss on account thereof, but will 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 will 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 will 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 will 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 will 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, will 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 will constitute notice of no reasonable objection.

- 16.2 The Contractor will not contract with a proposed person or entity to whom the Sourcewell Member or Project Manager has made reasonable and timely objection. The Contractor will 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 will 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 will 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 will cooperate with them. The Contractor will participate with other separate contractors and the Sourcewell Member in reviewing their construction schedules when directed to do so. The Contractor will make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules will 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 will 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 will 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 will 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 will 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 must 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 will, 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 will 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 will submit Certified Payroll Records and such supporting documentation as may be required by the Project Manager. The Sourcewell Member will make final payment to the Contractor.
- 20.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier will 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 will prepare and submit a list to the Project Manager. Consent of the Contractor to partial occupancy or use will not be unreasonably withheld. The stage of the progress of the Work will 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 will 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 will not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## 22. IDENTIFICATION AND SECURITY REQUIREMENTS

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

## 23. PROTECTION OF PERSONS AND PROPERTY

- 23.1 The Contractor must take reasonable precautions for safety of, and will 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 will 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 will 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 will exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 23.5 The Contractor will 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 will designate a responsible member of the Contractor's organization at the Site whose duty will be the prevention of accidents. This person will be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Project Manager.
- 23.7 The Contractor will 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 will, 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 will 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 will 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 will 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 will resume upon written agreement of the Sourcewell Member and Contractor. The Purchase Order Completion Time will be extended appropriately.
- 24.3 To the extent permitted by law, the Sourcewell Member will 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 will 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 will indemnify the Contractor for all cost and expense thereby incurred.

## 25. INSURANCE REQUIREMENTS

- 25.1 The Contractor must procure and maintain, at its own cost and expense, until final acceptance of all the Work covered by this Contract, 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 Contract, including, but not limited to, contractual and completed operations coverage. The coverage under such policy will 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 will 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 will 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 will 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 will 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 will provide certificates of insurance. Such certificates will be on a form prescribed by Sourcewell, will list the various coverages and will contain, in addition to any provisions hereinbefore required, a provision that the policy will 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 Contract, unless Sourcewell is given 15 days' written notice to the contrary. Upon request, the Contractor will furnish Sourcewell or any Sourcewell Member with a certified copy of each policy.
- 25.3 Contractor must obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the States of Texas and Minnesota.
- 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 will so direct, the Contractor will suspend performance of the work. If the said work is so suspended, no extension of time will 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 an additional insured. Any

Sourcewell Member, its officials, officers, and employees must be included as an additional insured when so requested by the Sourcewell Member.

## 26. LIQUIDATED DAMAGES

26.1 If provided for in the Request for Proposal, 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 will 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 will be made at an appropriate time. Unless otherwise provided, the Contractor will 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 will 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 will 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 will 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 will be at the Contractor's expense.

27.4 Required certificates of testing, inspection or approval will, 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 will be made promptly to avoid unreasonable delay in the Work.

## 28. GOVERNING LAW AND VENUE

28.1 The Terms of this Contract will be governed by the laws of the State of Minnesota and all Work will be governed by the place where the Project is located.

28.2 Sourcewell's liability will be governed by the State of Minnesota's Tort Liability act (Minnesota Statutes Chapter 466) 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 Contract, the Contractor will 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 Contract will 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 will not appear to have been a controlling or material inducement to the making thereof, the same will be deemed of no effect and will, upon notice by either party, be deemed stricken without affecting the binding force of the remainder.

## 31. LICENSE

Contractor must obtain and maintain all licenses required from all public agencies with jurisdiction over the Work and will 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 Contract will be assigned or transferred by the Contractor without prior written consent of Sourcewell. No delegation of any duty of the Contractor will be made without prior written consent of Sourcewell.

## 33. CLAIMS AND DISPUTES

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

## 34. TERMINATION BY SOURCEWELL FOR CAUSE

34.1 Sourcewell may terminate the Contract 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 will be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor will pay the difference to Sourcewell.

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

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

- 35.1 The Contractor will 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 will 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 will 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 will comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further will 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 will take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions will 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 Contract. Contractor agrees to provide verifiable documentation and tracking in a timely manner.

### 37. GRATUITIES

Sourcewell may cancel this Contract 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, will 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 PROPOSER/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 will 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 will 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 Proposers must address the Section 3 employment and contacting goals to be considered a Section 3 responsive Proposer. The Contract will be awarded to a Section 3 responsive Proposer, provided that the proposal is reasonable. The definition of a responsive Proposer will include consideration of a Proposer's responsiveness to Section 3 requirements. A Section 3 responsive Proposer 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 Proposer who is nonresponsive to Section 3 requirements will be considered a nonresponsive Proposer for the purpose of evaluation responses for a Section 3 contract. The Contract will be awarded to a Section 3 responsive Proposer, provided that the Factors 1-3 are acceptable or pass and the Combined Adjustment Factor amount is reasonable. A reasonable Combined Adjustment Factor is one that is not more than ten percent (10%) higher than the lowest Combined Adjustment Factor received from any qualified source. If a Section 3 responsive proposal is not received within the ten percent (10%) zone of consideration for Contract award, the award will be made to the Proposer who submits a proposal in which Factors 1-3 are acceptable or pass and the lowest Combined Adjustment Factor.
- 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 Proposer and Submitted With Proposal
- 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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