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Sourcewell
Formerly NJPA

INDEFINITE QUANTITY CONSTRUCTION CONTRACT

IFB NUMBER: KS-W-GC01-111319

GEOGRAPHIC AREA: State of Kansas, Western Area

This Contract dated November 20, 2019, by and between Sourcewell (Formerly NJPA) and BKM Construction LLC, at the following address, 501 South 5th Street, Leavenworth, Kansas 66227 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 IFB Documents; (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC); Book 4 - Technical Specifications) 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 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 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

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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.

A. 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:

TO BE ENTERED BY SOURCEWELL:

a. **NORMAL WORKING HOURS:** 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:

1.3405.
(Specify to four (4) decimal places)

b. **OTHER THAN NORMAL WORKING HOURS:** 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:

1.3622.
(Specify to four (4) decimal places)

c. **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:

1.2973.
(Specify to four (4) decimal places)

ARTICLE 4. TERM OF THE CONTRACT

A. This Contract has an initial term of one (1) year and a bilateral option provision for three (3) additional terms. The total term of the Contract cannot exceed four (4) years. One additional one-year renewal-extension may be offered by Sourcewell to Contractor beyond the original four-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 on each anniversary of the award, 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.

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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 ezIQC, 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

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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.

By:

Sourcewell

DocuSigned by:
Jeremy Schwartz
C0FD2A139D06489...

Authorized Signature

Jeremy Schwartz-Director of Operations & Procurement/CPO

Print Name

Contractor

DocuSigned by:
Brent L. Motley
FB17A5E98E4A420...

Authorized Signature

Brent L. Motley - President

Print Name

Contract Number: **KS-W-GC01-111319-BKM** (assigned by Sourcewell)