

## INVITATION FOR BID (IFB) DOCUMENTS

Contractor – Open Market

SOLICITATION NO.

**See Solicitation Tables**

East Central and Southwest Florida eziQC  
Indefinite Quantity Construction Contract



202 12th Street NE  
Staples, MN 56479

Mr. Corey Jensen  
eziQC Contract Administrator  
[eziqc@sourcewell-mn.gov](mailto:eziqc@sourcewell-mn.gov)

November 2018

**INDEFINITE QUANTITY CONSTRUCTION CONTRACT**  
**(IQCC)**  
**Invitation for Bid (IFB)**  
**East Central Florida Area**

Solicitation Number	Trade	Geographic Area	Bid Due Date and Time	Bid Deposit	Estimated Annual Value	Maximum Term
FL-ECA-GC01-121918	General Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-GC02-121918	General Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-GC03-121918	General Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-GC04-121918	General Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-GC05-121918	General Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-GC06-121918	General Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-GC07-121918	General Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-P01-121918	Paving Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-P02-121918	Paving Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-R01-121918	Roofing Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-R02-121918	Roofing Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-UG1-121918	Underground Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-ECA-UG2-121918	Underground Construction	East Central Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years

See Section Four (3) for Map and list of **Geographical Area**

**INDEFINITE QUANTITY CONSTRUCTION CONTRACT**  
**(IQCC)**  
**Invitation for Bid (IFB)**  
**Southwest Florida Area**

Solicitation Number	Trade	Geographic Area	Bid Due Date and Time	Bid Deposit	Estimated Annual Value	Maximum Term
FL-SWA-GC01-121918	General Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-GC02-121918	General Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-GC03-121918	General Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-GC04-121918	General Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-GC05-121918	General Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-GC06-121918	General Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-GC07-121918	General Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-P01-121918	Paving Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-P02-121918	Paving Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-R01-121918	Roofing Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-R02-121918	Roofing Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-UG1-121918	Underground Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years
FL-SWA-UG2-121918	Underground Construction	Southwest Florida	4:30 PM CT 12/19/2018	\$25,000	\$2,000,000	3 Years

See Section Four (3) for Map and list of **Geographical Area**

**Bids for all contracts covered by this solicitation are due by  
4:30 PM CT on December 19, 2018**

At the offices of  
Sourcewell  
202 12th Street NE, Staples, MN 56479

Sourcewell formerly known as the National Joint Powers Alliance or NJPA, issues this Invitation for Bid (IFB), jointly and on behalf of, and to provide Indefinite Quantity Construction Contracting (IQCC) services to, all current and potential Sourcewell Members including all government agencies, education agencies to include colleges and universities, and non-profit agencies in the State of Florida. Each contract has an initial term of one year and bilateral option provision for two 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 Vendor beyond the original three year term if Sourcewell deems such action to be in the best interests of Sourcewell and its Members.

This IFB consist of five Books:

- Book 1: Project Information, and Instructions to Bidders
- Book 2: IQCC Standard Terms and Conditions; General Terms and Conditions
- Book 3: Construction Task Catalog®
- Book 4: Technical Specifications
- Book 5: Bid Forms

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

**Intending bidders are required to attend a pre-bid seminar which shall be conducted for the purpose of discussing the IQCC procurement system, the contract documents, and bid forms. Attendance at one of the below seminars is a mandatory condition of bidding.**

**11/28/2018 9:00 AM**                      **Hilton Garden Inn Fort Myers  
12600 University Drive  
Fort Myers, FL 33907**

**11/29/2018 9:00 AM**                      **Hilton Garden Inn @ Sea World  
6850 Westwood Boulevard  
Orlando, FL 32821**

Intending bidders can pre-register for the pre-bid seminar by visiting our website at [www.sourcewell-mn.gov/solicitations](http://www.sourcewell-mn.gov/solicitations).

An electronic copy of the IFB Documents which include the instructions for submitting a bid and the bid documents may be obtained by letter of request to Corey Jensen, Sourcewell, 202 12<sup>th</sup> Street Northeast, P.O. Box 219, Staples, MN 56479, or by visiting [www.sourcewell-mn.gov/solicitations](http://www.sourcewell-mn.gov/solicitations) selecting the desired solicitation from the open solicitations list and completing the bid document request form at the bottom of the page. All requests must include; **mailing address, email address, contact name, phone**

**number.** Upon receipt of the request, Sourcewell will send complete instructions on obtaining the bid documents electronically. Bids are due by 4:30 p.m. Central Time on December 19, 2018 and will be opened at 9:00 a.m. Central Time on December 20, 2018. IFB Documents will be available until December 20, 2018.

Direct questions regarding this IFB to: [eziqc@sourcewell-mn.gov](mailto:eziqc@sourcewell-mn.gov)

# BOOK 1

## Project Information, and Instructions to Bidders

SOLICITATION NO.

**See Solicitation Tables**

East Central and Southwest Florida eziQC  
Indefinite Quantity Construction Contract



202 12th Street NE  
Staples, MN 56479

Corey Jensen  
eziQC Contract Administrator  
[eziqc@sourcewell-mn.gov](mailto:eziqc@sourcewell-mn.gov)

November 2018

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# BOOK 1

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The Gordian Group, Inc.

# 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, public corporation 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 purchasing and joint purchasing services to its membership. Eligible membership and participation includes 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. The Minnesota joint exercise of powers law, Minnesota Statutes Section 471.59, states “Two or more governmental units . . . may jointly or cooperatively exercise any power common to the contracting parties . . . .” Similar joint exercise of powers laws may exist within each state of the United States. The 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 Members is defined as any public or private educational agencies including colleges and universities, districts or school 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. Membership in Sourcewell is required to participate in any Sourcewell Contract. Any current or potential Member of Sourcewell who is in compliance with the terms and conditions of membership, shall have 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 Invitation for Bid and the resulting Agreement.
  - 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 Agreement 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 is OPTIONAL to all parties to the Purchase Order. The purpose of these additional terms and conditions is to, among other things, formerly 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 Contractor's competitively bid 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.
- 1.7 **Agreement:** the written Agreement between the Contractor and Sourcewell covering the Work to be performed; and other Contract Documents incorporated in or referenced in the Agreement and made part thereof as if provided therein.

## 2. ABOUT SOURCEWELL

- 2.1 Sourcewell is a local government unit, public corporation, 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 includes 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 procurement and construction 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 publicly elected officials that serve as the Sourcewell Board of Directors. Sourcewell's Board of Directors call for all proposals, awards all contracts, and hosts those resulting contracts for the benefit of its own and its Members' use.
  - 2.3.1 **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 Bid Review Committee and ratified by the Board of Directors.

- 2.4 Sourcewell currently serves over 50,000 member agencies nationally. Both membership and utilization of Sourcewell contracts continue to expand, due in part to the increasing acceptance of Cooperative Purchasing throughout the government and education communities nationally.

### 3. DEFINED GOALS OF THE IFB

- 3.1 The goal of this IFB is to establish a group of indefinite quantity construction contracts (IQCC) that Sourcewell and Sourcewell Members may access to complete repair, maintenance and minor new construction Projects at competitively bid prices. The Contractors will perform an ongoing series of individual Projects for Sourcewell Members at different locations primarily within the designated Geographic Area.
- 3.2 One of the major benefits to a Proposer is that one response may be prepared to receive a single award that is potentially available to and accessible by many potential buyers from government agencies, education, and non-profit agencies throughout the Geographic Area. The procurement activities of the Sourcewell Proposal Evaluation Committee is limited to document preparation, answering Proposer questions, advertising the solicitation, distribution of this IFB upon request, conducting an evaluation and making recommendation for possible approval to Sourcewell Chief Procurement Officer which is later ratified by the Sourcewell Board of Directors. Contracts awarded through Sourcewell are intended to comply with members' procurement laws to the best extent possible. Sourcewell Members are responsible to ensure that their applicable laws are satisfied. After the award and contract phase, Sourcewell Members can issue Purchase Orders for any amount without the necessity of preparing their own IFB, or gathering necessary quotations. This saves Sourcewell Members time and allows for more economical and efficient purchasing.

### 4. IQCC OVERVIEW

- 4.1 IQCC is a competitively bid indefinite quantity construction contract awarded to Contractors to accomplish the repair, alteration, modernization, rehabilitation, and minor new construction of infrastructure, buildings, structures, or other real property. The Estimated Annual Value is based on the anticipated estimated annual use and the Agreement term is one year with bilateral option terms. The IFB 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 the Agreement is awarded, Sourcewell Members will order Work from the CTC by issuing a Purchase Order against the Agreement.
- 4.2 Bidders 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 Contractor's Adjustment Factors will be incorporated into the awarded Agreement.

- 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 Proposal 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 shall 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 Sourcewell, through a formal selection process, awarded a professional service agreement to The Gordian Group (Gordian) 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 will 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 Agreement 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 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 Agreement 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 Agreement ("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 Agreement 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.

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.

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 Agreement, 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 Agreement 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 Agreement 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.

In the event of a conflict in terms and conditions between this IQCC System License and any other terms and conditions of this Agreement or any Order, Purchase Order or similar purchasing document (Purchase Order) issued by Sourcewell or a Sourcewell Member, this IQCC System License shall 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 Proposal 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 shall 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 shall, 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@ezlQC.com](mailto:PO@ezlQC.com) or via facsimile to (864) 233-9100.
- 4.8 The Contractor shall, 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@ezlQC.com](mailto:Invoice@ezlQC.com) or via facsimile to (864) 233-9100.

## 5. GEOGRAPHIC AREAS

Sourcewell solicits bids for separate Agreements for each of the various Geographic Areas as shown on Exhibit A. This solicitation is for the Geographic Area(s) as specified in the Invitation for Bid. Sourcewell uses the Geographical Area for bidding purposes. Contractors may perform work for Sourcewell Members located outside the defined Geographical Area upon award.

## 6. THE IFB DOCUMENTS

The IFB Documents consist of five Books:

- Book 1: Project Information, and Instructions to Bidders
- Book 2: IQCC Standard Terms and Conditions; General Terms and Conditions
- Book 3: Construction Task Catalog
- Book 4: Technical Specifications
- Book 5: Bid Forms

## 7. QUALIFICATION OF BIDDERS

- 7.1 Bids shall be considered only from firms normally engaged in performing the type of work specified within the IFB Documents. Bidder 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 Bidder's responsibility and ability to perform the Agreement, 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 Bidder, the Bidder's record with environmental regulations, and the claims/litigation history of the Bidder.
- 7.3 Bidder must possess documentation evidencing compliance with applicable licensing requirements.
- 7.4 Bidder must have a fully functioning office within the State of Florida.

## 8. AWARD

- 8.1 An Award of Contract 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.
- 8.2 It is the intent of Sourcewell to award each Agreement to the lowest, responsive, responsible Bidder(s) based on the Combined Adjustment Factor as shown on Bid Form 1, provided however, no Bidder will be awarded more than one Agreement. In the event a Bidder submits the lowest bid on more than one Solicitation, Sourcewell will determine which Agreement will be awarded to which Bidder based on the combination of bids resulting in the lowest overall cost to the Sourcewell Members. Sourcewell shall have the right to waive any informality or irregularity in any Bidder's Response received and to accept the Bidder'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 Bid Responses and advertise again if, in Sourcewell's opinion, the received bids do not meet or exceed the minimum needs and expectations of the Sourcewell current and qualifying

members. Sourcewell reserves the right to award additional Agreements from this solicitation for a period of 180 Days (or longer, if mutually agreeable to both the Bidder and Sourcewell).

- 8.3 Additionally, the Bidder is required to submit a Management Plan, see Article 9, Section Two Instructions to Bidders. The Bidder's Management Plan will provide Sourcewell information to gauge the responsibility of the Bidder.
- 8.4 A Bidder will not be awarded more than one same scope Agreement within any Geographic Area.
- 8.5 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 Bid Review Committee may establish a Competitive Range for the solicitation. If it is determined that a Bidder's Combined Adjustment Factor is too far outside the Competitive Range then the Bidder can be removed from consideration. The Bidder shall be notified that they were determined to be outside the Competitive Range after award of the contracts.
- 8.6 Unbalancing of Bids – A Bid may be removed from consideration if it is determined that the Bidder has mathematically unbalanced their Bid to gain a competitive advantage. The Bid 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 their anticipated profit, overhead cost, and other indirect costs that the bidder anticipates for the performance of the work as determined by the Sourcewell Bid Review Committee.
- 8.7 **The Other Than Normal Working Hours Adjustment Factors must be higher than the Normal Working Hours Adjustment Factors.**
- 8.8 **The Non Pre-priced adjustment Factor without Administrative Fees must be between 1.0500 and 1.2000.**

## 9. ASSIGNMENT OF WORK

- 9.1 If multiple awards are made, the assignment of the Work is at the sole discretion of the Sourcewell Member. The Contractor's Adjustment Factors, performance history, and ability to perform the Work will be considered in determining the distribution of the Work.
- 9.2 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.
- 9.3 Sourcewell reserves the right to utilize Bid Safe on a Work Order by Work Order basis.
- 9.4 Sourcewell will consider several factors when determining the applicability of Bid Safe to a Work Order including, but not limited to, the following:
  - 9.4.1 Estimated Work Order Amount;
  - 9.4.2 Scope documentation, including but not limited A/E design;
  - 9.4.3 Nature and complexity of the Work;



- 9.4.4 Contractors' abilities to self-perform the Work;
  - 9.4.5 Contractors' proven capabilities on similar Work;
  - 9.4.6 Schedule; and;
  - 9.4.7 Other appropriate criteria as deemed in the best interest of the Sourcewell Member.
- 9.5 The Detailed Scope of Work will be developed by the Sourcewell Member personnel and included with the RFQ.
  - 9.6 Sourcewell may conduct one or more site visits with all contractors designated to Receive the RFQ.
  - 9.7 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.
  - 9.8 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.
  - 9.9 Sourcewell will issue a Request for Proposal 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.
  - 9.10 The NTE Offer is valid for 120 Days from the date of opening unless stated otherwise in the Detailed Scope of Work.
  - 9.11 The Contractor that receives a Request for Proposal 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.
  - 9.12 The Work Order Amount shall be equal to the lessor of the NTE Offer and the Price Proposal amount.
  - 9.13 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:  

$$\text{Percent Discount} = (\text{Price Proposal Amount} - \text{NTE Offer}) \div \text{Price Proposal Amount}$$
 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.
  - 9.14 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 Contract and grounds for termination for cause.

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

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

- Purchase Order which may include Plans, Drawings and supplemental Technical Specifications
- Standard Specifications of the Sourcewell Member, the City, State or Federal Government, if any
- Agreement
- 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 5 – Bid Forms
- Book 1 – Instruction to bidders

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## SECTION TWO - INSTRUCTIONS TO BIDDERS

### 1. GENERAL INFORMATION

- 1.1 The following instructions are given for the purpose of guiding Bidders in properly preparing their bids. Such instructions are part of the IFB Documents, and strict compliance is required with all the provisions contained in the instructions.
- 1.2 Examination of IFB Documents
  - 1.2.1 It is the responsibility of each Bidder before submitting a Bid, to:
    - 1.2.1.1 Examine the IFB 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 Bidder's observations with the IFB Documents, and
    - 1.2.1.4 Carefully review the IFB Documents and notify Sourcewell of all conflicts, errors or discrepancies in the IFB Documents of which Bidder knows or reasonably should have known.
- 1.3 The submission of a Bid shall constitute an incontrovertible representation by Bidder that Bidder has complied with the above requirements and that without exception, the Bid is premised upon performing and furnishing the Work required by the IFB Documents and that the IFB 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 IFB

Sealed and properly identified bids entitled **"INDEFINITE QUANTITY CONSTRUCTION CONTRACT"** will be received by Corey Jensen, ezIQC Contract Administrator, at Sourcewell Offices, 202 12<sup>th</sup> Street Northeast, P.O. Box 219, Staples, MN 56479 until the deadline for receipt of, and opening of bids as specified in the Invitation for Bid. **Bids 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 Representative from the Sourcewell Bid Review Committee will then read the Bidder's names aloud. A summary of the responses to this IFB will be made available for public inspection in the Sourcewell office in Staples, MN. The Award and resulting Agreement may be awarded within the timeframe identified in this IFB. To receive a complete copy of these IFB Documents, send or communicate all requests to the attention of Corey Jensen 202 12<sup>th</sup> Street Northeast, P.O. Box 219, Staples, MN 56479 or by visiting our website at [www.sourcewell-mn.gov/solicitations](http://www.sourcewell-mn.gov/solicitations) selecting the desired solicitation from the open solicitations list and completing the bid document request form at the bottom of the page. All requests must include mailing address, email address, contact name, and phone number. Following your submitted request an email will be sent directly to the registrant with complete instructions on how to obtain the bid documents. Complete IFB Documents will be made available electronically. Oral, facsimile, telephone or telegraphic Bid Submissions or requests for IFB Documents are invalid and will not receive consideration. Direct questions regarding this IFB to Corey Jensen at [eziqc@sourcewell-mn.gov](mailto:eziqc@sourcewell-mn.gov).

### 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. Sourcewell will not maintain or communicate to a Proposer's list. All interested Proposers must respond to the solicitation as a result of an internet web notice or hard copy research of said publication.
- 3.2 In addition, **sourcewell shall 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 invitation for bid.

### 4. QUESTIONS

- 4.1 Submit all Questions about this IFB, in writing, to Corey Jensen, Sourcewell, 202 12th Street NE, Staples, MN 56479, or by email at [eziqc@sourcewell-mn.gov](mailto:eziqc@sourcewell-mn.gov) prior to **December 12, 2018 at 12:00 PM CT**. Sourcewell urges potential bidders to communicate all concerns during the response period to avoid misunderstandings.
- 4.2 If question is deemed by Sourcewell to have a material impact on the IFB, the response to the RFI will become an Addendum to these IFB Documents.

### 5. PRE-BID SEMINAR

A Pre-bid seminar will be held at the places and times listed in the Invitation for Bid for the purpose of discussing the IQCC procurement system, the IFB Documents and bid forms. **Attendance at one of the Pre-Bid Seminar(s) is mandatory to be deemed responsive.**

### 6. ADDENDA TO THE IFB DOCUMENTS

Addenda are written instruments issued by Sourcewell that modify or interpret these IFB Documents. All Addenda issued by Sourcewell shall become a part of the IFB Documents. Addenda will be delivered to all potential bidders using the same method of delivery of the original IFB material or by email if appropriate. Sourcewell accepts no liability in connection with the delivery of said materials. Copies of Addenda will also be made available on the eziQC website at <https://bc.gordiancloud.com> or the Sourcewell website from [www.sourcewell-mn.gov/solicitations](http://www.sourcewell-mn.gov/solicitations), and from the Sourcewell offices. No Addenda will be issued later than five (5) Days prior to the deadline for receipt of bids, except an Addendum withdrawing the request for bids or one that includes postponement of the date of receipt of bids. Each potential bidder shall ascertain prior to submitting a bid that it has received all Addenda issued, and the bidder shall acknowledge its receipt in its bid response.

### 7. BID DEPOSIT

- 7.1 Bid deposit shall be a bond provided by a surety company or the equivalent in a cashier's check, money order or certified check. All certified checks must be drawn on a bank doing business in the United States, and shall be made payable to the order of Sourcewell. **CASH IS NOT AN ACCEPTABLE FORM OF BID DEPOSIT.**
- 7.2 Bid deposits shall be in the amount shown in the IFB. After bids are opened, deposits shall

be irrevocable for the period of one hundred and twenty (120) days. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid deposit.

- 7.3 The bid bonds, certified checks, or cashier's checks of unsuccessful bidders will be returned as soon as practicable after the opening of the bids; however, the deposits of the three lowest bidders shall be retained until Sourcewell awards the Agreement or for any reason rejects all bids

## 8. BID SUBMISSION PROCESS

### 8.1. PREPARATION OF THE BID RESPONSE

8.1.1 Bid package will be submitted as follows:

8.1.1.1 **One (1) original copy of Bid Forms 1, and 2 MUST** be submitted for **each Contract Opportunity** that you are bidding. These bid forms **MUST** be in separate **SEALED Envelopes**. On the outside of each envelope you will include Company Name, Solicitation Number and Geographic Area.

8.1.1.2 **Bid forms 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12**— only need to be submitted once for the **entire package**. As stated below you will provide One (1) Original copy of Bid Forms 3, 4, 5, 6, 7, 8, 9, 10,11, and 12, in a Tabbed Notebook. On the outside of the Notebook you will include Company Name, Solicitation Number(s) and Geographic Area.

8.1.2 Additionally, submit one (1) electronic copy (CD-ROM's or USB Flash Drives) of the bid documents (Bid Forms 1-12) and scanned copies of signature pages with original signatures The CD's or USB Flash Drive must be labeled with; Solicitation No., Date, and Company Name.

8.1.3 All bids shall be on the forms provided. Telegraphic, electronic mail or fax machine bids cannot be considered.

8.1.4 The bid documents must be submitted with original ink signatures by the person authorized to sign the bid. The person signing the bid must initial erasures, interlineations or other modifications in the bid document. Failure to properly sign the bid documents or to make other notations as indicated may result in rejection of the bid and cause the bid to be deemed non-responsive.

8.1.5 Mistakes may be corrected prior to bid opening, but shall be initialed by the person signing the bid documents. Corrections and/or modifications received after the opening time will not be accepted, except as authorized by applicable rule, regulation or statute and Sourcewell.

8.1.6 It is the responsibility of all Bidders to examine the entire IFB package, to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after the deadline for submission of bids.

## 9. CONTRACTOR'S MANAGEMENT PLAN

9.1 The Bidder is required to submit its plan for management of the contract. The title of the

submittal shall be "**MANAGEMENT PLAN FOR EXECUTION OF IQCC.**" The Contractor's Management Plan **must be** submitted as part of the Bidder's bid documents.

- 9.2 In addition to the bid documents and other required submittals, the Contractor's Management Plan will be used by Sourcewell to determine the responsibility of the Bidder to perform the contract. Therefore, the Bidder should take great care in the preparation of the Management Plan.
- 9.3 The Bidder may be determined non-responsive for failure to submit the Management Plan and/or declared non-responsive for failure to adequately address the issues below to the satisfaction of Sourcewell.
- 9.4 The Management Plan shall include as a minimum the following information and organized specifically as shown below:
  1. State the number of years your company has been in the construction industry, the type of work your company self-performs, and the type of work your company typically subcontracts.
  2. The awarded Contractor must have the capacity and capability to perform multiple projects at multiple locations simultaneously. Demonstrate this capacity and capability by providing ten (10) projects that meet the following information for each project between \$25,000 to \$500,000 completed in the last three (3) years: **Submit Bid Form 5 for each Project.**
    - a. Project title.
    - b. Geographic location.
    - c. Owner name and contact (title, address, email and phone number).
    - d. Project amount.
    - e. Project duration, start and finish dates.
    - f. Actual Project duration, start and finish dates.
    - g. Project size in dollars.
    - h. Provide a brief description of the Scope of Work.
  3. Provide a narrative description of how you propose to execute the Work assigned under this contract, including but not limited to:
    - a. The Contractor is expected to participate in the development and documentation of the Detail Scope of Work for each Purchase Order. Explain in detail your proposed participation and the specific qualities of your personnel that will add benefit to this process.
    - b. Provide your approach to the expeditious close out of Projects, correction of unacceptable Work, and punch list procedures.
    - c. The Contractor is expected to assist Sourcewell in the marketing of the IQCC services under the ezIQC brand. Please provide a specific sales and marketing plan including your strategy for sales and marketing, the personnel and their qualifications for sales and marketing, and the frequency and duration of the efforts. Additionally, the Contractor is expected to market to potential Sourcewell members. Please describe your plan to accomplish this.
    - d. For contractors that held a previous ezIQC contract, describe how it was marketed

and sold the contract and provide a list of accomplishments.

- e. All Work has a minimum warranty period of one (1) year. Please describe your process for tracking and performing warranty work.
- f. If within the past five (5) years, the Bidder has been lawfully precluded from participating in any public procurement activity with a federal, state or local government, then the Bidder must provide a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment and the relevant circumstances relating to the suspension or debarment. If applicable the Bidder should describe steps taken to improve and ensure these issues do not continue to be a burden. If the Bidder has held a Sourcewell eIQCC Contract and has requested that the contract be terminated, then the Bidder must provide the reason for the request. Please describe on a separate document and if applicable describe steps taken to improve and ensure these issues do not continue to be a burden. Failure to provide this information may be grounds for disqualification.

#### 4. Management Team

- a. Provide an organizational chart.
- b. 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.
- c. Provide resumes for your **key** personnel you intend to assign to this contract.
- d. Provide a current list of the number and classification of your full time employees.

## 10. BID PRICING

- 10.1 Each Bidder must submit Three (3) Adjustment Factors to be applied to every task in the CTC. The bid shall be an adjustment “decrease from” (e.g. 0.9800) or “increase to” (e.g. 1.1000 the Unit Prices listed in the CTC. **Bidders who submit separate Adjustment Factors for separate line items will be considered non-responsive and their bids will be rejected.**
- 10.2 The Bidder's Adjustment Factors shall include all of the Bidder'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.
- 10.4 The second Adjustment Factor is to be applied to Work to be accomplished during Other Than Normal Working Hours.
- 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 bidders will offer an Adjustment Factor to be applied to the actual material, equipment, and labor cost for NPP work Tasks. **The NPP Adjustment Factor shall 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 bid evaluation purposes only, the following weighting of the Adjustment factors shall be used to determine the Combined Adjustment Factor:

Adjustment Factors	Weight
Normal Working Hours	60%
Other Than Normal Working Hours	30%
Non Pre-Priced	10%

## 11. BID TRANSMITTAL

11.1 It is the responsibility of the Bidder to be certain that the bid is in the physical possession of Sourcewell on or prior to the deadline for submission of bids.

11.2 Bids must be submitted in a sealed envelope or box properly addressed to Sourcewell and with the following information clearly marked on the outside of the envelope or box:

- Solicitation number
- Name of Solicitation
- Geographic Area
- Deadline for bid submission
- Bidder's name and address.

11.3 Bidders are solely responsible for ensuring all required documentation arrives at the designated address no later than the date and time listed in this IFB. Sourcewell is not responsible for late receipt of bids. Late proposals will not be considered. Bids received by the correct deadline for bid submission will be opened and the name of each Bidder and other appropriate information will be publicly read.



## 12. MODIFICATION OR WITHDRAWAL OF A SUBMITTED BID

A submitted bid may not be modified, withdrawn or cancelled by the Bidder for a period of one hundred and eight (180) Days following the time and date designated for the receipt of bids. Prior to the deadline for submission of bids, any bid submitted may be modified or withdrawn by notice to the Sourcewell Procurement Manager. Such notice shall be submitted in writing and include the signature of the Bidder and shall be delivered to Sourcewell prior to the deadline for submission of bids and it shall be so worded as not to reveal the content of the original bid. However, the original bid shall not be physically returned to the Bidder until after the official bid opening. Withdrawn bids may be resubmitted up to the time designated for the receipt of the bids if they are then fully in conformance with the Instructions to Bidders.

## 13. BIDDER RESPONSIVENESS AND RESPONSIBILITY

In accordance with accepted standards of competitive sealed bid awards as set forth in the State's Procurement Code, competitive sealed bids/awards will be made to responsive and responsible Bidders whose bids are determined in writing to be the most advantageous to Sourcewell and its current or future Sourcewell Members. To qualify for evaluation, a bid must be responsive which means it shall have been submitted on time and materially satisfy all mandatory requirements identified in this document. A bid must reasonably and substantially conform to all the terms and conditions in the solicitation to be considered responsive. Deviations or exceptions stipulated in Bidder's response, while possibly necessary in the view of the Bidder, may result in disqualification. Language to the effect that the Bidder does not consider this solicitation to be part of a contractual obligation will result in that bid being disqualified by Sourcewell.

## 14. CERTIFICATION

By signing this bid, the Bidder certifies:

- 14.1 The submission of the offer did not involve collusion or any other anti-competitive practices;
- 14.2 The Bidder/Contractor shall not discriminate against any employee or applicant for employment in violation of Federal and State Laws (see Federal Executive Order 11246);
- 14.3 The Bidder 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
- 14.4 The Bidder agrees to promote and offer to Sourcewell Members only those products and/or services as previously stated, allowed and deemed a resultant of the Agreement(s) as Sourcewell Contract items or services. This clause shall include any future product or service additions as allowed through contract additions.

## 15. PROTESTS

15.1 Protests shall be filed with Sourcewell's Executive Director and shall be resolved in accordance with appropriate state statutes of Minnesota. Protests will only be accepted from Bidders. A protest must be in writing and filed with Sourcewell. A protest of an award or proposed award must be filed within ten (10) calendar days after the public notice or announcement of the award. No protest shall lie for a claim that the selected

Bidder is not a responsible Bidder. A protest must include:

- The name, address and telephone number of the protester,
- The original signature of the protester or its representative (you must document the authority of the Representative),
- Identification of the Solicitation by solicitation number,
- Identification of the statute or procedure that is alleged to have been violated,
- A precise statement of the relevant facts,
- Identification of the issues to be resolved,
- The protesting party's argument and supporting documentation,
- The aggrieved party's statement of potential financial damages, and
- A protest bond in the name of Sourcewell and in the amount of 10% of the aggrieved party's statement of potential financial damages.

## 16. PUBLIC RECORD

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

## 17. PREVAILING WAGE RATES AND PARTICIPATION REQUIREMENTS

- 17.1 This clause is applicable to States in which prevailing wage rates are established by law. The Contractor shall 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 IFB Documents were issued. In the performance of the Work, however, Contractor shall be fully responsible for paying the generally prevailing hourly rate of wages in effect, as determined by the State Department of Labor and/or Commerce, at the time the Work is performed. If the State Department of Labor and/or Commerce revises the prevailing rate of hourly wages to be paid for the Work prior to completion of the Project, the revised rate shall apply to this Agreement from the effective date of such revision, however such revision shall not entitle Contractor to any increased compensation under the terms of the Agreement.
- 17.2 If other wage rates are required by law, the Contractor shall 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.
- 17.3 Contractors shall 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 Request for Proposal or Detailed Scope of Work.

## 18. MARKETING REQUIREMENT

Bidder must express a willingness and ability to take ownership and promote the services to be provided. Your sales force must agree to work in cooperation with Sourcewell to develop a marketing strategy and provide avenues to equally market and drive sales through the Agreement and program to all Sourcewell Members and Potential Sourcewell Members.

Bidder agrees to actively market in cooperation with Sourcewell all available services to current Sourcewell Members, as well as Potential Sourcewell Members.

If you are awarded a contract based on this solicitation your sales force will be a primary driver of everyone's success. Your sales force needs to be aware that:

- The use of a Sourcewell Contract will save their customer (Sourcewell's Member) the time and effort of bringing a new individual IFB;
- The use of the Sourcewell Contract will save your sales force the time and effort of responding to individual Invitations for Bid IFB;
- The use of the Sourcewell Contract will guaranty that Sourcewell Members have the ability to choose you.

An award of Contract resulting from this IFB is an opportunity for the awarded contractor to pursue commerce with, and deliver value to Sourcewell and Sourcewell Members. An award of Contract is not an opportunity to see how much business Sourcewell can drive to an awarded contractor's door. As such the Bidder 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 Bidder non-responsive or to waive an award based on a Bidder'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 of this IFB.

## 19. MEMBER SIGN-UP PROCEDURE

Bidder 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 Agreement will be defined during the award phase.

## 20. FEES

- 20.1 The Contractor shall include the Sourcewell Administrative Fee in calculating the Contractor's Adjustment Factors.
- 20.2 Sourcewell's Administrative Fee will be calculated at the rate of 7.5% of the total Purchase Order Price charged to the Sourcewell Member.
- 20.3 Sourcewell's Administrative Fee shall 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 shall be assessed a one percent (1%) per month late fee for any Administrative Fees not paid by the due date set forth herein.
- 20.4 Sourcewell designates The Gordian Group, Inc., (Gordian) as their contract administrator. The Sourcewell Administrative Fee payments shall be made payable to The Gordian Group and sent to the following address:  
The Gordian Group, Inc.  
PO Box 79341  
Baltimore, MD 21279-0341
- 20.5 Sourcewell or Gordian may request records from the Contractor for all purchases through this Agreement 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 shall, in addition to any Administrative Fees due, reimburse the appropriate party for the cost and expense related to such audit.

- 20.6 Sourcewell and Contractor hereby acknowledge that The Gordian Group, Inc., as the 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 Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and collection costs.

## 21. TAXES

The Contractor shall 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.

## 22. PHYSICAL PRESENCE

The Bidder must have a fully staffed and functioning office located within the State of Florida and must have been in business performing construction work for at least **three (3) years**. Contractor to complete Bid Form 12: Existing Full-Service Office Location Affidavit for each area they are bidding.

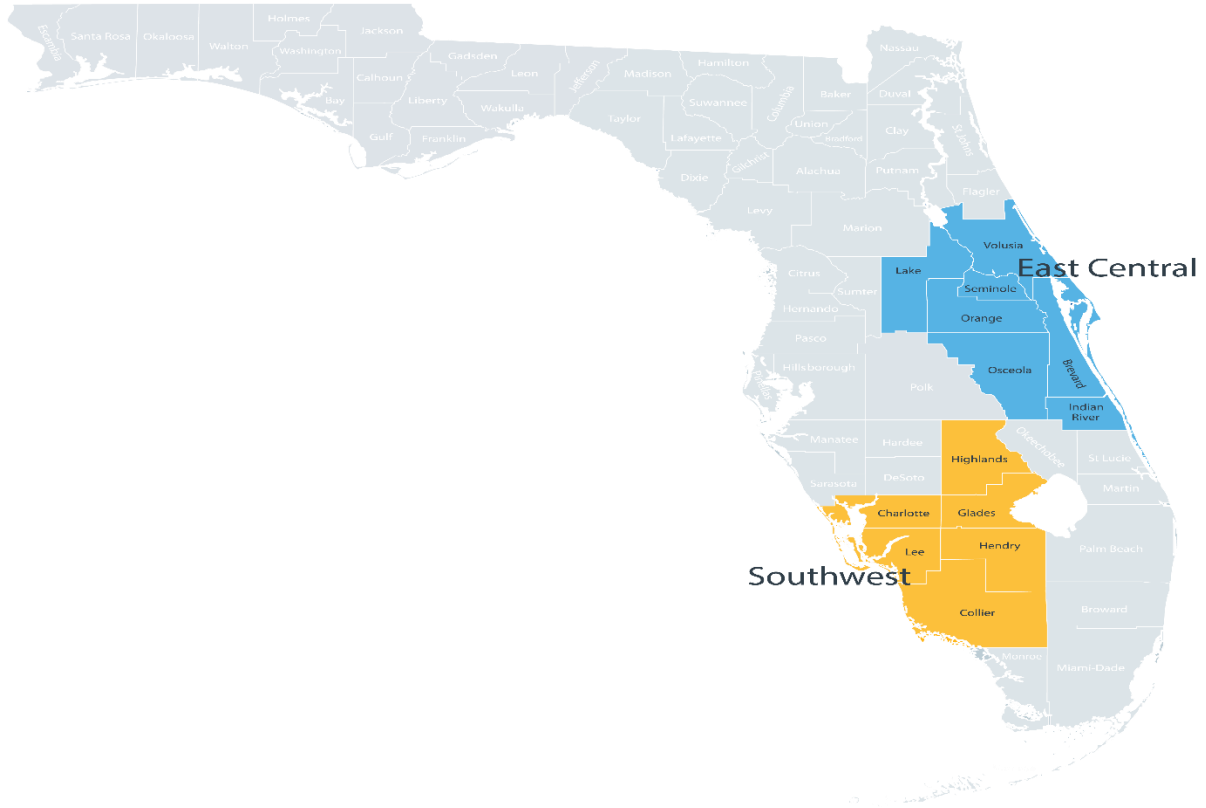
## 23. SELF PERFORMANCE REQUIREMENT

Contractor(s) for the Paving, Roofing and Underground Construction Contracts shall 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.

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## SECTION THREE

### EXHIBIT A: GEOGRAPHIC MAP OF SOURCEWELL CONTRACT AREAS



**East Central Florida**  
**Counties include the following:**

Lake
Seminole
Volusia
Osceola
Brevard
Indian River
Orange

**Southwest Florida**  
**Counties include the following:**

Highland
Glades
Charlotte
Lee
Hendry
Collier

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BOOK 2

IQCC STANDARD TERMS AND CONDITIONS  
AND  
CONTRACT GENERAL CONDITIONS

SOLICITATION NO.

**See Solicitation Tables**

East Central and Southwest Florida eziQC  
Indefinite Quantity Construction Contract



202 12th Street NE  
Staples, MN 56479

Corey Jensen  
eziQC Contract Administrator  
[eziqc@sourcewell-mn.gov](mailto:eziqc@sourcewell-mn.gov)

November 2018

# BOOK 2

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## SECTION ONE - IQCC STANDARD TERMS AND CONDITIONS

### 1. DEFINITIONS

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

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

## 2. SCOPE OF WORK AND PROCEDURE FOR ORDERING WORK

### 2.1 Scope of Work

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

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

### 3. ARCHITECTURAL AND ENGINEERING SERVICES

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

### 4. TERM OF AGREEMENT

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

### 5. GEOGRAPHIC AREA

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

### 6. ESTIMATED ANNUAL VALUE

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

### 7. OPTION TO BILATERALLY EXTEND CONTRACT

- 7.1 This Agreement has an initial term of one (1) year and two (2) bilateral option provisions for two (2) additional terms. The total term of the Agreement cannot exceed three (3) years. One additional one-year renewal-extension may be offered by Sourcewell to Contractor beyond the total term if Sourcewell deems such action to be in the best interests of Sourcewell and its Members.
- 7.2 The Construction Task Catalog issued with this Solicitation will be in effect for the entire duration of this contract.
- 7.3 Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of

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

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

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

## 8. PROCEDURE FOR ORDERING WORK

### 8.1 Initiation of a Purchase Order

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

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

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

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

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

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

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

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

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

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

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

**For Work Performed with the Contractor's Own Forces:**

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

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

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

D = Lowest of three Subcontractor quotes

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

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



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

- 8.2.4 The value of the Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 8.2.5 The Contractor shall submit a complete Proposal Package, which includes:
- a. any incidental drawings or sketches, calculations and or specification information,
  - b. the Price Proposal, and a quantity take-off summary supporting all material quantities contained in the Price Proposal
  - c. catalog cuts providing information on materials or products, as specifically requested,
  - d. back-up for any Non Pre-priced Tasks,
  - e. identification of known Subcontractors and material suppliers,
  - f. a construction schedule,
  - g. for special equipment or materials, warranty information,
- 8.2.6 By submitting a Price Proposal to Sourcewell, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to Sourcewell.
- 8.2.7 Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Price Proposal is less than the cost of the actual labor and material to perform such task, the Sourcewell Member may permit the Contractor to be paid for such task as a Non-Prepriced Task, or use Prepriced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$5,000.

### **8.3 Time for Submittal of the Proposal Package**

- 8.3.1 The Proposal Package shall be submitted by the date indicated on the Request for Proposal. All incomplete Proposal Packages shall be rejected. The time allowed for preparation of the Proposal Package will depend on the complexity and urgency of the Project but should average between seven and fourteen days. On complex Projects, such as those requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
- 8.3.2 In emergency situations and for Projects requiring immediate completion, the Proposal Package may be required quickly and the due date will be so indicated on the Request for Proposal or, the Contractor may begin work immediately, with the paperwork to follow.
- 8.3.3 If the Contractor fails to meet the deadline for submittal of the Proposal Package, this may be reason to suspend issuance of this 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 their designated representative) and/or the Sourcewell Member (or their designated representative) will evaluate the Price Proposal by evaluating the nature and number of Tasks proposed against the agreed upon Detail Scope of Work and will determine the reasonableness of approach. Furthermore Sourcewell (or their designated representative) or the Sourcewell Member (or their designated representative) may compare the Price Proposal to the Sourcewell Member cost estimate for the Detailed Scope of Work. Sourcewell (or their designated representative) or the Sourcewell Member(or their designated representative) reserves the right to reject a Price Proposal based on unjustifiable/unsupported (with take off details) quantities and/or Tasks, schedule, inadequate documentation, or for any other reason.
- 8.4.2 If Sourcewell (or their designated representative) and/or the Sourcewell Member (or their designated representative) finds any part of the Price Proposal unacceptable, Sourcewell (or their designated representative) or the Sourcewell Member (or their designated representative) may request the Contractor to re-submit its Price Proposal or cancel the Project. The Contractor is expected to submit correct Price Proposals the first time. However Sourcewell recognizes that some adjustments might have to be made to the Price Proposal after review by Sourcewell (or their designated representative) and the Sourcewell Member (or their designated representative). Therefore, Sourcewell (or their designated representative) will allow the Contractor to submit the first Price Proposal and a second Price Proposal for each Purchase Order.
- 8.4.3 Additionally, Sourcewell (or their designated representative) and/or the Sourcewell Member (or their designated representative) will evaluate all other components of the Proposal Package and may request revisions thereto.
- 8.4.4 **Requested revisions to any and all of the Proposal Package components should be made by the Contractor and resubmitted in three (3) working days or less.** If after the second review by Sourcewell (or their designated representative) and/or the Sourcewell Member (or their designated representative), Sourcewell (or their designated representative) and/or the Sourcewell Member (or their designated representative) finds requested revisions to the Proposal Package that were not made, this may be reason to suspend that particular Purchase Order.
- 8.4.5 Failure by the Contractor to submit Proposal Packages, and revisions thereto, in a timely manner (within time frames described above) is grounds for suspension of all future Purchase Orders.
- 8.4.6 Sourcewell reserves the right to obtain Price Proposals from any or all of the Contractors awarded an IQCC Contract.
- 8.4.7 If the Contractor continues to submit Price Proposals which are rejected by Sourcewell (or their designated representative), Sourcewell may declare the Contractor in default and initiate termination of the Agreement, according to Article

34 of the Agreement General Conditions.

**8.5 Delivery of the Proposal Package**

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

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

8.6.1 The Sourcewell Member will evaluate the entire Proposal Package.

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

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

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

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

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

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

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

**9. CHANGES**

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

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

## 10. MARKETING REQUIREMENTS

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

## 11. PUNCH LIST COMPLETION

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

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

## 12. PAYMENT AND PERFORMANCE BONDS AND MATERIAL AND WORKMANSHIP BONDS

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

## 13. COMPUTER SOFTWARE

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

## 14. PREPAYMENT OPTION

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

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## SECTION TWO – CONTRACT GENERAL CONDITIONS

### 1. PROJECT MANAGER

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

### 2. SOURCEWELL MEMBER'S RIGHT TO STOP WORK

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

### 3. SOURCEWELL MEMBER'S RIGHT TO COMPLETE WORK

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

### 4. REVIEW OF FIELD CONDITIONS

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

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

### 5. SUPERVISION

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

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

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

5.4 Effective July 18, 2008, in addition to the existing prevailing wage rate law, Labor Law §220, section 220-h, all laborers, workers, and mechanics working on the site of public work projects of at least \$250,000 are required to be certified as having successfully completed the OSHA 10-hour Construction Safety and Health Course S1537-A.

## 6. WORKMANSHIP AND QUALITY

6.1 The Contractor may make substitutions only with the consent of the Project Manager.

6.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in the portions of the Work assigned to them.

## 7. WARRANTY

7.1 All Work furnished under this Agreement shall be guaranteed against defective materials and workmanship, improper performance and non-compliance with the Contract Documents for a period of one year after final acceptance of the Work, except as otherwise specified in other parts of the Contract Documents, or within such longer period of time as may be prescribed by law or provided by the manufacturer.

7.2 During the guarantee period, the Contractor shall repair and replace at Contractor's own expense, all Work that may develop defects whether such defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or in the functioning and operation of pieces of equipment operating together as a functional unit. Any equipment or material which is repaired or replaced shall have the guarantee period extended for a period of one year from the date of the last repair or replacement.

7.3 If the Contractor fails to repair, replace, rebuild or restore such defective or damaged Work promptly after receiving such notice, the Sourcewell Member shall have the right to have the Work done by others and to deduct the cost thereof from the monies owed to the Contractor. If the amount owed is insufficient to cover such costs, the Contractor shall be liable to pay such deficiency on demand.

7.4 The Project Manager's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective Work when performed by one other than the Contractor shall be binding and conclusive as the amount thereof upon the Contractor.

7.5 The Contractor shall obtain all manufacturer's warranties and guarantees of all equipment and materials required by this Agreement in the name of the Sourcewell Member.

## 8. PERMITS, FILING

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

a Reimbursable Task to be paid a mark-up of 10% on the fees paid to a governmental entity to obtain filings and permits. Contractor shall submit written documentation of such fees. The 10% mark-up shall cover all costs over and above the filing and permit fees, including expeditor fees.

- 8.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.
- 8.3 It is not the Contractor's responsibility to ascertain that the Detailed Scope of Work is in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that any portion of the Detailed Scope of Work is at variance therewith, the Contractor shall promptly notify the Project Manager in writing.

## 9. PERSONNEL

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

## 10. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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



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

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

## 11. CUTTING AND PATCHING

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

## 12. CLEANING UP

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

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

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

### 13. ACCESS TO THE WORK

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

### 14. ROYALTIES, PATENTS AND COPYRIGHTS

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

### 15. INDEMNIFICATION

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

### 16. SUBCONTRACTORS

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

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

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

## 17. COORDINATION WITH OTHER CONTRACTORS

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

## 18. REQUEST FOR EXTENSION OF TIME

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

## 19. PARTIAL PAYMENTS

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

based on the approved value of completed Work.

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

## 20. FINAL PAYMENTS

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

## 21. PARTIAL OCCUPANCY OR USE

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

## 22. IDENTIFICATION AND SECURITY REQUIREMENTS

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

## 23. PROTECTION OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

## 24. HAZARDOUS MATERIALS

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

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

## 25. INSURANCE REQUIREMENTS

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

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

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

## 26. LIQUIDATED DAMAGES

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

## 27. TESTS AND INSPECTIONS

- 27.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Sourcewell Member, or with the appropriate public authority. The Contractor shall give the Project Manager timely notice of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures.
- 27.2 If the Project Manager, Sourcewell Member or public authorities having jurisdiction determine that portions of the Work require, through no fault of the Contractor, additional testing, inspection or approval, the Project Manager will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Sourcewell Member, and the Contractor shall give timely notice to the Project Manager of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures. Such costs shall be at the Sourcewell Member's expense.
- 27.3 If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Project Manager's services and expenses shall be at the Contractor's expense.
- 27.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Project Manager.
- 27.5 If the Project Manager is to observe tests, inspections or approvals required by the Contract Documents, the Project Manager will do so promptly and, where practicable, at the normal place of testing.
- 27.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## 28. GOVERNING LAW

- 28.1 The Agreement shall be governed by the law of the place where the Project is located.
- 28.2 Sourcewell's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law.



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

## 29. COMPLIANCE WITH LAWS

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

## 30. SEVERANCE

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

## 31. LICENSE

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

## 32. ASSIGNMENT

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

## 33. CLAIMS AND DISPUTES

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

## 34. TERMINATION BY SOURCEWELL FOR CAUSE

34.1 Sourcewell may terminate the Agreement if the Contractor:

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

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

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

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

- 35.1 The Contractor shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, age, color, sex or National origin, sexual orientation, marital status, political affiliation, or physical or mental disability if qualified. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex or National origin, sexual orientation, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- 35.2 The Contractor shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, the Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

### 36. AUDITS

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

### 37. GRATUITIES

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

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

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

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

contemplated under these specifications, are filed with the awarding entity and the agency and must be posted at the project site.

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

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

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