

Invitation for Bid (IFB) Documents

Contractor – Open Market

IFB# **WA-DC-100120**

Washington District of Columbia

Indefinite Quantity Construction Contract



August 2020

INDEFINITE QUANTITY CONSTRUCTION CONTRACT (IQCC)

IFB# WA-DC-100120

Table of Solicitations for Washington District of Columbia

Solicitation Trade / Solicitation Number	Geographic Area	Bid Due Date and Time	Estimated Annual Value	Maximum Contract Term
General Construction WA-DC-GC01-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
General Construction WA-DC-GC02-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
General Construction WA-DC-GC03-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
General Construction WA-DC-GC04-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
General Construction WA-DC-GC05-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
General Construction WA-DC-GC06-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
Mechanical/HVAC Construction WA-DC-M01-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
Mechanical/HVAC Construction WA-DC-M02-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
Mechanical/HVAC Construction WA-DC-M03-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
Electrical Construction WA-DC-E01-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
Electrical Construction WA-DC-E01-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
Electrical Construction WA-DC-E01-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
Plumbing Construction WA-DC-P01-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
Plumbing Construction WA-DC-P02-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years
Plumbing Construction WA-DC-P03-100120	Washington District of Columbia	4:30 PM CT 10/01/20	\$2,000,000	4 Years

See Section Three for Map and list of geographical areas.

Bids for all contracts covered by this solicitation are due by
4:30 PM CT on October 1, 2020

Sourcewell, issues this Invitation for Bid (IFB), to provide Indefinite Quantity Construction Contracting (IQCC) services to, all Sourcewell Members including all government agencies, education agencies such as colleges and universities, and non-profit agencies in Washington D.C. Each contract will have an initial term of one year and bilateral option provision for three additional one-year terms. The Estimated Annual Value per contract is \$2,000,000.00. A contract extension may be offered based on the best interests of Sourcewell and its members.

This IFB consist of Four 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

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

Interested bidders are encouraged to attend a pre-bid conference that will be conducted for the purpose of discussing the IQCC procurement system, the contract documents, and reviewing the Sourcewell Procurement Portal system for responding to the IFB. The Pre-Bid conference will be conducted via webcast on the below date and time. Information about the webcast will be sent to all entities that registered for this solicitation opportunity through their Sourcewell Procurement Portal Vendor Account.

Pre-Bid conference will be held on September 9, 2020 – 9:00 A.M Central Time

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

Bids are due by 4:30 p.m. Central Time on October 1, 2020

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

BOOK 1
Project Information, and Instructions to Bidders

IFB# **WA-DC-100120**

Washington District of Columbia
Indefinite Quantity Construction Contract



August 2020

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SECTION ONE - PROJECT INFORMATION

1. DEFINITIONS

- 1.1. **Sourcewell:** Sourcewell, is a local government unit and public agency of the State of Minnesota pursuant to the Minnesota Constitution and enabling law [Minnesota Statutes Section 123A.21](#). It has the authority to develop and offer, among other services, cooperative purchasing and joint purchasing services to its membership. Eligible membership and participation 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, territories or district of the United 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, territory or district of the United States. The Minnesota law allows Sourcewell to serve Member agencies located in all other U.S. Jurisdictions. Municipal agencies nationally have the ability to participate in cooperative purchasing activities as a result of specific laws of their own jurisdiction. These laws can be found on the website at www.sourcewell-mn.gov/compliance-legal.
- 1.3. **Sourcewell Members:**
 - 1.3.1. **Potential Sourcewell Members:** A Potential Sourcewell Member is defined as any public or private educational entity, including colleges and universities, school districts or boards, and any governmental unit including a city, county, town, political subdivision of Minnesota or another state, and any agency of the State of Minnesota or the United States, any instrumentality of a governmental unit, and any non-profit (Minnesota Statutes Section 471.59, subdivision 1). Membership in Sourcewell is required to participate in any Sourcewell Contract. Any current or potential Member of Sourcewell that is in compliance with the terms and conditions of membership, has the option and freedom to access any of the procurement contracts of Sourcewell.
 - 1.3.2. **Sourcewell Member:** A Sourcewell Member is defined as an entity that has an executed membership agreement with Sourcewell.
- 1.4. **Purchase Order:** Purchase Orders for construction and services may be executed between Sourcewell or Sourcewell Members and the Contractor pursuant to this IFB and the resulting contracts.
 - 1.4.1. **Governing Law:** Purchase Orders, as identified above, will be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the Sourcewell Member. Each and every provision of law and clause required by law to be included in the Purchase Order will be read and enforced as though it were a part of the contract. In the event a legally required provision is not included, parties may amend the Contract to make such inclusion or correction. The venue for any litigation arising out of disputes related to Purchase Order(s) will be a court of competent jurisdiction to the Sourcewell Member issuing the Purchase Order.

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

2. ABOUT SOURCEWELL

- 2.1.** Sourcewell is a local government unit and public agency pursuant to the Minnesota Constitution and enabling law Minnesota Statutes Section [123A.21](#) with the authority to develop and offer, among other services, cooperative and joint purchasing services to its membership. Eligible membership and participation include states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities, and non-profit organizations.
- 2.2.** Under the authority of Minnesota state laws and enabling legislation, Sourcewell facilitates a competitive solicitation and construction contracting process jointly and on behalf of the needs of itself and the needs of current and potential member agencies. This process results in construction contracts with various vendors of products, equipment, and services which Sourcewell Member agencies desire to procure. These contracts are created in compliance with applicable Minnesota laws. A complete listing of Sourcewell cooperative procurement contracts can be found at www.sourcewell-mn.gov/cooperative-purchasing/contracts-vendor-search.
- 2.3.** Sourcewell is governed by a Board of Directors made up of publicly elected officials and it authorizes all solicitations.
 - 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 Sourcewell Bid Evaluation Committee and ratified by the Board of Directors.
- 2.4.** Sourcewell currently serves over 50,000 members. Both membership and utilization of Sourcewell contracts continue to expand, due in part to the increasing acceptance of cooperative and joint purchasing throughout the government and education communities nationally.

3. DEFINED GOALS OF THE 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 solicited 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. A benefit to the bidder is that one bid package may be prepared to compete on multiple contract opportunities. The resulting awarded contracts will be available to Sourcewell members that are comprised of government, education, and non-profit entities throughout the geographic area. Contracts awarded through Sourcewell ensure fair and open competition to help members in their procurement process; however, Sourcewell members are responsible to ensure that their applicable laws are satisfied. Post contract award, members may issue Purchase Orders to the contractor without the necessity of preparing their own IFB. This saves Sourcewell members time and allows for more economical and efficient purchasing.

4. IQCC OVERVIEW

- 4.1. IQCC is a competitively solicited 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 contract 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 contracts are awarded, Sourcewell Members will order Work from the CTC by issuing a Purchase Order against the contract.
- 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 Proposals to the Contractor. The Contractor will then prepare a Proposal Package for the Project including a Price Proposal, Schedule, list of identified subcontractors, and other requested documentation such as cut sheets for materials. If the Proposal Package is found to be reasonable, the Sourcewell Member will issue a Purchase Order. The Purchase Order will reference the Detailed Scope of Work and set forth the Purchase Order Completion Time, and the Purchase Order Price. The Contractor must perform the Detailed Scope of Work within the Purchase Order Completion Time for the Purchase Order Price. Extra Work, credits, and deletions will be contained in Supplemental Purchase Orders calculated in the same manner.

- 4.5. Sourcewell, through a formal selection process, awarded a professional service agreement to The Gordian Group (Gordian) for its IQCC program. The system includes Gordian's proprietary ezIQCC, 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 Contract for Sourcewell and Sourcewell Members is strictly prohibited unless otherwise stated in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following Gordian IQCC System License:

IQCC System License

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

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

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

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

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

5. GEOGRAPHIC AREAS

- 5.1. Sourcewell solicits bids for the Geographic Area as shown on Section Three. This solicitation is for the Geographic Area(s) as specified in this IFB. 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

- 6.1. The IFB Documents consist of four 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

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.** Bidders responding to General Construction solicitations must be willing and capable of providing all or a majority of the various types of construction work as specified in Book 3 - Construction Task Catalog. Bidder may provide the Work either through its own forces or by utilizing subcontractors.
- 7.3.** Bidders responding to the Mechanical/HVAC Construction, Electrical Construction, and Plumbing Construction solicitations will perform at least 51% of all contracted Work with its own organization and forces. The percentage calculation does not include field superintendents or office management personnel.
- 7.4.** In determining a Bidder's responsibility and ability to perform the Contract, Sourcewell has the right to investigate and request information concerning the financial condition, experience record, personnel, equipment, facilities, principal business location and organization of the Bidder, the Bidder's record with environmental regulations, and the claims/litigation history of the Bidder.

8. AWARD

- 8.1.** An Award of Contract will be made by the Sourcewell Chief Procurement Officer and ratified by the Board of Directors based on the recommendation of the Sourcewell Bid Evaluation Committee jointly and on behalf of its current and future Sourcewell Members.
- 8.2.** It is the intent of Sourcewell to award each Contract to the lowest, responsive, responsible Bidder(s) based on the Combined Adjustment Factor as shown on the Bid, subject to article 8.3 below. In the event a Bidder submits the lowest bid on more than one Solicitation, Sourcewell will determine which Contract 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 Contracts from this solicitation for a period of 180 Days (or longer, if mutually agreeable to both the Bidder and Sourcewell).
- 8.3.** A Bidder will not be awarded more than one same scope Contract within any Geographic Area.
- 8.4.** The Bidder is required to answer questions concerning their Management Plan and capabilities, see Article 9, Section Two Instructions to Bidders. The answers to these questions will provide Sourcewell information to gauge the responsibility of the Bidder.
- 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 Evaluation 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 Evaluation Committee.

8.7. The Other Than Normal Working Hours Adjustment Factors must be higher or equal to the Normal Working Hours Adjustment Factors.

9. ASSIGNMENT OF WORK

9.1. If separate multiple awarded contracts are made available, then 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.

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

10.1. 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
- Contract
- Addenda, if any
- Book 2 – IQCC Standard Terms and Conditions
- Book 2 – General Terms and Conditions
- Book 3 – Construction Task Catalog
- Book 4 – Technical Specifications
- Book 1 – Instruction to 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.
- 1.4. Bidders should include all relevant information in its submittal. Sourcewell cannot consider information that is not provided in the submittal. Sourcewell reserves the right to verify Bidder's information and may request clarification from a Bidder.

2. SOLICITATION OF IFB

- 2.1. Bids will be received in an electronic format only, through the Sourcewell Procurement Portal at <https://proportal.sourcewell-mn.gov>, until the deadline for receipt stated in this IFB. **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, and non-profit agencies.**
- 2.2. The Award and resulting Contract may be awarded within the timeframe identified in this IFB. Complete IFB Documents will be made available through the Sourcewell Procurement Portal (<https://proportal.sourcewell-mn.gov>). Paper, oral, facsimile, telephone, or other electronic submissions (other than through the Sourcewell Procurement Portal) are invalid and will not receive consideration.

3. ADVERTISING OF SOLICITATION

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

4. QUESTIONS

- 4.1. Questions regarding this IFB must be submitted through the Sourcewell Procurement Portal. The deadline for submission of questions is September 24, 2020 at 4:30 p.m. Central Time. Answers to questions will be issued through an addendum to this IFB. Repetitive questions will be summarized into a single answer and identifying information will be removed from the submitted questions.
- 4.2. All questions, whether specific to a Bidder or generally related to the IFB, must be submitted using this process. Do not contact individual Sourcewell or Gordian staff to ask questions or request information as this may disqualify the Bidder from responding to this IFB. Sourcewell will not respond to questions submitted after the deadline.

5. PRE-BID CONFERENCE

- 5.1. Sourcewell will hold a non-mandatory pre-bid conference via webcast on the date and time noted on page iii. of this IFB and on the Sourcewell Procurement Portal. The purpose of this Pre-Bid conference is to review the Indefinite Quantity Construction requirements, the IFB Documents, and the Sourcewell Procurement Portal system for responding to the IFB. **Attendance at the Pre-Bid Seminar is highly encouraged.**

6. ADDENDA TO THE IFB DOCUMENTS

- 6.1. 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 through the Sourcewell Procurement Portal. Sourcewell accepts no liability in connection with the delivery of said materials. No Addenda will be issued later than five 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.
- 6.2. Bidders must acknowledge receipt of any addenda when submitting their Bid through the Sourcewell Procurement Portal by checking a box for each addendum and any applicable attachment. It is the responsibility of the Bidder to have reviewed all Addenda that are issued. Bidders should check the Sourcewell Procurement Portal prior to submitting their Bid and up until Bid closing time and date in the event additional addenda are issued. If a Bidder submits their bid prior to the Bid closing time and date and an addendum is issued, the Bidding System will **WITHDRAW** the Bid submission and the bid status will change to an **INCOMPLETE STATUS**.

The Bidder can view this status change in the “**MY BIDS**” section of the Bidder’s Sourcewell Procurement Portal Account. The Bidder is solely responsible to:

- 6.2.1.** make any required adjustments to their Bid; and
- 6.2.2.** acknowledge the addenda; and
- 6.2.3.** Ensure the re-submitted Bid is **RECEIVED** by the Bidding System no later than the stated bid closing time and date.

7. BID SUBMISSION PROCESS

7.1. **PREPARATION OF THE BID RESPONSE**

7.1.1. Bids must be submitted as follows:

7.1.1.1. All Bidders must have a Sourcewell Procurement Portal account and register as a Plan Taker for this Bid opportunity. Registering as a Plan Taker will enable the Bidder to download the Bid Documents, receive Addenda email notifications, download all documents and submit the Bid electronically online.

7.1.1.2. ONLY ELECTRONIC BID SUBMISSIONS through the Sourcewell Procurement Portal will be accepted. Bidders are cautioned that the timing of their Bid Submission is based on when the Bid is RECEIVED by the Sourcewell Procurement Portal system, and not when a Bid is submitted by a Bidder. Bid transmission can be delayed due to file transfer size, transmission speed, etc. For those reasons, it is recommended the Bidder allow sufficient time to upload their Bid Submission and attachment(s) (if applicable) and to resolve any issues that may arise.

7.1.1.3. The closing time and date will be determined by the Sourcewell Procurement Portal web clock.

7.1.2. The bid documents must be submitted with all required content as set out in the Sourcewell Procurement Portal. Failure to properly complete or upload the required bid documents may result in rejection of the bid and cause the bid to be deemed non-responsive.

7.1.3. Mistakes may be corrected prior to bid due date through the Sourcewell Procurement Portal. Corrections and/or modifications received after the closing time will not be accepted, except as authorized by applicable rule, regulation or statute and Sourcewell. The Bidder is solely responsible to ensure the corrected or modified bid has been received by the Sourcewell Procurement Portal system no later than the stated closing time and date.

7.1.4. 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.

8. BID TRANSMITTAL

8.1. Sourcewell has contracted with bids&tenders to provide technical support for the Sourcewell Procurement Portal. Bidders should contact bids&tenders support at support@bidsandtenders.ca, at least 24 hours prior to the Bid closing time and date, if problems are encountered in the bid submission process.

- 8.2. Bidders are solely responsible for ensuring all required documentation is submitted through the Sourcewell Procurement Portal no later than the date and time listed in this IFB. Sourcewell is not responsible for late receipt of bids. Late bids will not be considered. The Sourcewell Procurement Portal System will send a confirmation email to the Bidder when the bid has been successfully submitted. If the Bidder does not receive a confirmation email, contact bids&tenders support at support@bidsandtenders.ca.

9. CONTRACTOR'S MANAGEMENT PLAN

- 9.1. The Bidder is required to answer questions pertaining to its plan for management of the contract. All Management Plan questions will be found within the specifications tab of the IFB. The Contractor's Management Plan questions **must be** answered in order to submit a bid.
- 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 answers. These answers will become part of the complete submitted bid.
- 9.3. The Bidder may be determined non-responsive for failure to submit the Management Plan questions and/or declared non-responsible for failure to adequately address all points in the questions to the satisfaction of Sourcewell.
- 9.4. Management Team:
9.4.1. The Bidder is required to answer questions pertaining to its management team and work capabilities for the contract within the Sourcewell Procurement Portal under the Specifications tab. The bidder may upload additional information pertaining to these questions under the uploads tab.

10. BID PRICING

- 10.1. Each Bidder must submit five 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.
- 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 and are performed on projects that **do require** prevailing wage rates.
- 10.4. The second Adjustment Factor is to be applied to Work to be accomplished during Other Than Normal Working Hours and are performed on projects that **do require** prevailing wage rates.
- 10.5. The third Adjustment Factor is to be applied to Work to be accomplished during Normal Working Hours and performed on Projects that **do not require** prevailing wage rates.
- 10.6. The fourth Adjustment Factor is to be applied to Work to be accomplished during Other Than Normal Working Hours and performed on Projects that **do not require** prevailing wage rates.

10.7. The fifth 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.

10.8. Adjustment Factors must be specified to the fourth decimal place. For example:

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

Or

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

10.9. 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- PREVAILING WAGE RATE PROJECTS	35%
OTHER THAN NORMAL WORKING HOURS- PREVAILING WAGE RATE PROJECTS	10%
NORMAL WORKING HOURS- NON-PREVAILING WAGE RATE PROJECTS	35%
OTHER THAN NORMAL WORKING HOURS- NON-PREVAILING WAGE RATE PROJECTS	10%
NON-PRE-PRICED	10%

11. MODIFICATION OR WITHDRAWAL OF A SUBMITTED BID

11.1. A submitted bid may not be modified, withdrawn or cancelled by the Bidder for a period of 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 through the Sourcewell Procurement Portal.

12. BIDDERS RESPONSIVENESS AND RESPONSIBILITY

12.1. 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.

13. CERTIFICATION

13.1. By submitting a bid, the Bidder certifies:

- 13.1.1.** The submission of the offer did not involve collusion or any other anti-competitive practices;
- 13.1.2.** The Bidder/Contractor shall not discriminate against any employee or applicant for employment in violation of federal and jurisdiction laws (see Federal Executive Order 11246);
- 13.1.3.** 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 in Book 2, Section 2, Article 37); and
- 13.1.4.** 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 Contract(s) as Sourcewell Contract items or services. This clause shall include any future product or service additions as allowed through contract additions.

14. PROTESTS

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

- 14.1.1.** The name, address and telephone number of the protester;
- 14.1.2.** The original signature of the protester or its representative;
- 14.1.3.** Identification of the solicitation by IFB number;
- 14.1.4.** A precise statement of the relevant facts;
- 14.1.5.** Identification of the issues to be resolved;
- 14.1.6.** Identification of the legal or factual basis;
- 14.1.7.** Any additional supporting documentation; and
- 14.1.8.** Protest bond in the amount of \$20,000.00

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

15. PUBLIC RECORD

15.1. All materials submitted in response to this IFB will become property of Sourcewell and will become public record in accordance with Minnesota Statutes Section 13.591, after negotiations are complete. Sourcewell considers that negotiations are complete upon execution of a resulting contract. It is the Bidder's responsibility to clearly identify any data submitted that it considers to be protected. Bidder must also include a justification for the classification citing the applicable Minnesota law.

16. PREVAILING WAGE RATES AND PARTICIPATION REQUIREMENTS

- 16.1.** This clause is applicable to Jurisdictions 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 relevant jurisdiction authority, at the time the Work is performed. If the relevant jurisdiction authority 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 Contract from the effective date of such revision, however such revision shall not entitle Contractor to any increased compensation under the terms of the Contract.
- 16.2.** If other wage rates are required by law, the Contractor 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.
- 16.3.** 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 detailed scope of work.

17. MARKETING REQUIREMENT

- 17.1.** Bidder must express a willingness and ability to take ownership and promote the services to be provided. Contractor must agree to work in cooperation with Sourcewell to develop a marketing strategy and provide avenues to equally market and drive sales through the Contract and program to all Sourcewell Members and Potential Sourcewell Members. Bidder agrees to actively market in cooperation with Sourcewell all available services to current Sourcewell Members, as well as Potential Sourcewell Members.
- 17.2.** If bidder is awarded a contract based on this solicitation your sales force will be a primary driver of everyone's success. Bidders need to be aware that:
- 17.2.1.** The use of a Sourcewell Contract will save their customer (Sourcewell's Member) the time and effort of soliciting its own individual IFB;
 - 17.2.2.** The use of the Sourcewell Contract will save time and effort of responding to individual Invitations for Bid IFB; and
 - 17.2.3.** The use of the Sourcewell Contract ensures that Sourcewell Members have the ability to choose you.

17.3. An award of a contract resulting from this IFB is an opportunity for the awarded contactor to pursue commerce with and deliver value to Sourcewell and Sourcewell Members, but it is not a guarantee of work. 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 2, Section One, Article 9 of this IFB.

18. MEMBER SIGN-UP PROCEEDURE

18.1. 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 Contract will be defined during the award phase.

19. FEES

19.1. The bidder shall include the Sourcewell Administrative Fee in calculating the Contractor's Adjustment Factors.

19.2. Sourcewell's Administrative Fee will be calculated by dividing the Bidders submitted Adjustment Factors by 0.9250. The administrative fee will be invoiced to the Contractor at rate of 7.5% of the total Purchase Order Price charged to the Sourcewell Member.

19.3. Sourcewell's Administrative Fee shall be remitted by the Contractor to Sourcewell, or its designated contract administrator, within 30 days of the submission of an invoice to a Sourcewell Member by Contractor. The Contractor shall be assessed a 1% per month late fee for any Administrative Fees not paid by the due date set forth herein.

19.4. Sourcewell designates The Gordian Group, Inc., (Gordian) as 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

19.5. Sourcewell or Gordian may request records from the Contractor for all purchases through this Contract and payment of all Administrative Fees. If a discrepancy exists between the purchasing activity and the Administrative Fees paid, Sourcewell or Gordian will provide written notification to the Contractor of the discrepancy and allow the Contractor 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.

19.6. Sourcewell and Contractor hereby acknowledge that The Gordian Group, Inc., as Sourcewell's designated contract administrator, is a third-party beneficiary of Section 19, including all subsections therein. In the event any court action is brought to enforce payment of the Administrative Fees set forth above by any party or third-party beneficiary of this Contract, the prevailing party shall be entitled to an award of reasonable attorneys' fees and collection costs.

20. TAXES

20.1. 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.

21. PHYSICAL PRESENCE

21.1. Intentionally omitted.

22. SELF PERFORMANCE REQUIREMENT

22.1. Contractor(s) for the Mechanical/HVAC Construction, Electrical Construction, and Plumbing Construction Contracts will perform with its own organization and forces not less the 51% of the total amount of labor hours performed at the project site through the working foreperson level. The percentage calculation does not include field superintendents or office management personnel.

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SECTION FOUR – SAMPLE INDEFINITE QUANTITY CONSTRUCTION CONTRACT

IFB NUMBER: _____

GEOGRAPHIC AREA: _____

This Contract dated _____, by and between Sourcewell and
_____. at the following address, _____
_____ hereinafter referred to as the CONTRACTOR.

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

ARTICLE 1. CONTRACT DOCUMENTS

- A. Contract Documents: This Contract; the IFB Documents; (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC); Book 4 - Technical Specifications) and Addenda thereto; all payment and performance bonds (if any), material and workmanship bonds (if any); wage rate decisions and certified payroll records (if any); Notice of Award; all modifications issued thereto, including Supplemental Purchase Orders/Change Orders and written interpretations and all Purchase Orders and accompanying documents (Requests for Proposals, Detailed Scopes of Work, Purchase Order Proposals, etc.) issued hereunder.
- B. The terms and conditions of a Purchase Order issued by a Sourcewell Member in connection with any Project, including supplemental technical specifications referenced therein, shall govern.
- C. The Contractor shall, within two business days of receipt of a Purchase Order from a Sourcewell Member, provide notification to Sourcewell or their designated representative of each Purchase Order by forwarding a copy of the Purchase Order via email to PO@EZIQ.com or via facsimile to (864) 233-9100.
- D. The Contractor shall, within two business days of sending an Invoice to a Sourcewell Member, provide notification to Sourcewell or their designated representative of each Invoice by forwarding a copy of the Invoice via email to Invoice@EZIQ.com or via facsimile to (864) 233-9100.

ARTICLE 2. SCOPE OF WORK

- A. The Contractor shall provide the services required to develop each Purchase Order in accordance with the procedures for developing Purchase Orders set forth in the IQCC Standard Terms and Conditions and the Contract Documents.
- B. Each Purchase Order developed in accordance with this Contract will be issued by an individual

Sourcewell Member. The Purchase Order will require the Contractor to perform the Detailed Scope of Work within the Purchase Order Completion Time for the Purchase Order Price.

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

ARTICLE 3. THE CONTRACT PRICE

- A. This Contract is an indefinite-quantity contract for construction work and services. The Estimated Annual Value of this Contract is \$2,000,000. This is only an estimate and may increase or decrease at the discretion of Sourcewell.
- B. The Contractor shall perform any or all Tasks in the Construction Task Catalog for the Unit Price appearing therein multiplied by the following Adjustment Factors:

TO BE ENTERED BY SOURCEWELL:

- a. **NORMAL WORKING HOURS- PREVAILING WAGE RATE PROJECTS:** Work performed from 7:00am until 4:00pm Monday to Friday, except holidays. Contractor shall perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

_____.
(Specify to four decimal places)

- b. **OTHER THAN NORMAL WORKING HOURS- PREVAILING WAGE RATE PROJECTS:** Work performed from 4:00pm to 7:00am Monday to Friday, and any time Saturday, Sunday and Holidays. Contractor shall perform Tasks during Other Than Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

_____.
(Specify to four decimal places)

- c. **NORMAL WORKING HOURS - NON-PREVAILING WAGE RATE PROJECTS:** Work performed from 7:00am until 4:00pm Monday to Friday, except holidays. Contractor shall perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

_____.
(Specify to four decimal places)

- d. **OTHER THAN NORMAL WORKING HOURS - NON-PREVAILING WAGE RATE PROJECTS:** Work performed from 4:00pm to 7:00am Monday to Friday, and any time Saturday, Sunday and Holidays. Contractor shall perform Tasks during Other Than Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

_____.
(Specify to four decimal places)

- e. **NON PRE-PRICED ADJUSTMENT FACTOR:** To be applied to Work deemed not to be included in the CTC but within the general scope of the work:

_____.
(Specify to four decimal places)

ARTICLE 4. TERM OF THE CONTRACT

- A. This Contract has an initial term of one year and a bilateral option provision for three additional terms. The total term of the Contract cannot exceed four years. An extension may be offered beyond the original four-year term if Sourcewell deems such action to be in the best interests of Sourcewell and its Members. The Contractor may withdraw from the Contract on each anniversary of the award, provided that the Contractor gives 60 Days written notice of its intent to withdraw. Sourcewell may, for any reason, terminate this Contract at any time.
- B. All Purchase Orders issued during a term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such term has expired. All terms and conditions of the Contract apply to each Purchase Order.

ARTICLE 5. SOFTWARE LICENSING

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

ARTICLE 6. IQCC SYSTEM LICENSE

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

- B. Contractor acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Contractor shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.
- C. Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state and local laws related to public disclosure. Contractor further acknowledges that a breach of any of the terms of this Contract by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to this IQCC System License to enforce the provisions of this Contract or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.
- D. In the event of a conflict in terms and conditions between this IQCC System License and any other terms and conditions of this Contract or any Purchase Order, Order or similar purchasing document (Purchase Order) issued by Sourcewell or a Sourcewell Member, this IQCC System License shall take precedence.

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

By:

Sourcewell

Authorized Signature

Print Name

Contractor

Authorized Signature

Print Name

Contract Number: _____ (assigned by Sourcewell)

BOOK 2

IQCC STANDARD TERMS AND CONDITIONS
AND
CONTRACT GENERAL CONDITIONS
TO

IFB# **WA-DC-100120**

Washington District of Columbia

Indefinite Quantity Construction Contract



August 2020

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SECTION ONE - IQCC STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. **Addendum or Addenda:** the additional or modified provisions of the IFB issued in writing by Sourcewell prior to the receipt of Bids.
- 1.2. **Contract:** the written Agreement between the Contractor and Sourcewell covering the Work to be performed; and other Contract Documents incorporated in or referenced in the contract and made part thereof as if provided therein.
- 1.3. **Adjustment Factors:** The Contractor's 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; and Book 4 - Technical Specifications.
- 1.5. **Construction Task Catalog (CTC):** A comprehensive listing of specific construction related Tasks, together with a specific unit of measurement and a Unit Price. Construction Task Catalog is a registered trademark of The Gordian Group, Inc.
- 1.6. **Contract Documents:** This Contract; the IFB Documents (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications and Addenda thereto); all payment and performance bonds (if any), material and workmanship bonds (if any); wage rate decisions and certified payroll records (if any); Notice of Award; all modifications issued thereto, including Supplemental Purchase Orders/Change Orders and written interpretations and all Purchase Orders and accompanying documents (Requests for Proposals, Detailed Scopes of Work, Proposal Packages, etc.) issued hereunder.
- 1.7. **Contractor:** The legal entity named in the award letter with which Sourcewell has contracted and is responsible for the acceptable performance of the Contract and for the payment of all legal debts pertaining to the Work. All references in the Contract Documents to third parties under contract or control of Contractor will be deemed to be a reference to Contractor.
- 1.8. **Days:** Calendar days, unless otherwise stated.
- 1.9. **Detailed Scope of Work:** A document prepared following a Joint Scope Meeting which describes in detail the Work the Contractor will perform for a particular 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. **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.
- 1.12. **Non Pre-priced Task (NPP):** a task not included in the Construction Task Catalog but within the general scope and intent of this the Contract.
- 1.13. **Price Proposal:** The price proposal prepared by the Contractor using the Construction Task Catalog, Adjustment Factors and appropriate quantities.

- 1.14. Proposal Package:** A group of documents and files consisting of the Price Proposal; incidental drawings, sketches, or specification information; quantity take-offs supporting all material quantities; catalog cuts providing information on materials or products, as specifically requested; list of known Subcontractors, construction schedule, back-up for any Non Pre-Priced Tasks, warranty information on special equipment or materials and or other such documentation as the Sourcewell Member may require.
- 1.15. Project:** collectively, the Work to be accomplished by the Contractor in satisfaction of a requirement or group of related requirements pursuant to one or more Purchase Orders.
- 1.16. Purchase Order.** The document establishing the engagement by Sourcewell or the Sourcewell Member to the Contractor to complete a Detailed Scope of Work for the Purchase Order Price within the Purchase Order Completion Time.
- 1.17. Request for Proposal:** The Sourcewell Member's written request for the Contractor to prepare and submit a Proposal Package for a specific Detailed Scope of Work.
- 1.18. Site:** The area upon or in which the Contractor performs the Detailed Scope of Work and such other areas adjacent thereto as may be designated by Sourcewell or the Sourcewell Member.
- 1.19. District:** Washington District of Columbia (D.C.).
- 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 will be made only as authorized by Purchase Orders issued in accordance with these IQCC Standard Terms and Conditions.
- 2.1.3.** The Scope of Work of this Contract will be determined by individual Purchase Orders issued hereunder. The Contractor will provide all pricing, management, incidental drawings, shop drawings, samples, documents, Work, materials, supplies, parts (to include system components), transportation, plant, supervision, labor, and equipment

needed to complete each Purchase Order. The Contractor will also be responsible for Site safety as well as Site preparation and cleanup during and after construction.

- 2.1.4.** The Work will be conducted by the Contractor in strict accordance with the Contract and all applicable laws, regulations, codes, or directives including Federal, State, District, County and City.
- 2.1.5.** The Contractor will maintain accurate and complete records, files and libraries of documents to demonstrate compliance with federal, state, and local regulations, codes, applicable laws listed herein, and manufacturers' instructions and recommendations which are necessary and related to the Work to be performed.
- 2.1.6.** The Contractor will prepare and submit required reports, maintain current record drawings, and submit required information. The Contractor will provide: materials lists to include trade names and brand names, and model materials lists to include trade names, brand names, model number, and ratings (if appropriate) for all materials necessary to complete the Purchase Order.
- 2.1.7.** In addition to the Tasks in the CTC, Book 3, Sourcewell may, from time to time, require Non Pre-priced Tasks.
- 2.1.8.** All Work will comply with any applicable standards, including those specified in the following documents. If the Purchase Order specifies a standard which is different or more stringent, the standard used in the Purchase Order will control:
 - 2.1.8.1.** City Building Codes
 - 2.1.8.2.** The specific Detailed Scope of Work
 - 2.1.8.3.** Technical Specifications – Book 4
 - 2.1.8.3.1.** The Technical Specifications, Book 4, are numbered and organized in the Construction Specification Institute's (CSI) master format. All specifications are filed in divisions per CSI guidelines.
 - 2.1.8.3.2.** The intent of these Technical Specifications is to furnish concise industry and commercial standards for construction, maintenance or repair of Sourcewell Member facilities.
 - 2.1.8.3.3.** Reference in the Technical Specifications or the CTC to a specific manufacturer, trade name, or catalog is intended to be descriptive but not restrictive and only to indicate to the prospective Bidder items that will be satisfactory.

2.2. Procedure for ordering work

2.2.1. Initiation of a Purchase Order

- 2.2.1.1.** 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.
 - 2.2.1.1.1.** The Contractor will attend the Joint Scope Meeting to discuss, at a minimum:
 - 2.2.1.1.2.** the general scope of the Work,
 - 2.2.1.1.3.** alternatives for performing the Work and value engineering,
 - 2.2.1.1.4.** access to the Site and protocol for admission,
 - 2.2.1.1.5.** hours of operation,
 - 2.2.1.1.6.** staging area,

- 2.2.1.1.7. requirements for professional services, sketches, drawings, and specifications,
 - 2.2.1.1.8. construction schedule,
 - 2.2.1.1.9. requirement for bonding
 - 2.2.1.1.10. the presence of hazardous materials, and
 - 2.2.1.1.11. date on which the Proposal Package is due.
- 2.2.1.2. 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.
- 2.2.1.3. **Preparation of the Price Proposal:** The Contractor will prepare Price Proposals in accordance with the following:
- 2.2.1.4. **Pre-priced Tasks:** A Pre-priced Task is a Task described and for which a Unit Price is set forth in the Construction Task Catalog. For Pre-priced Tasks the Contractor will identify the Task from the Construction Task Catalog and the quantities required.
- 2.2.1.5. **Non Pre-priced Tasks:** A Non Pre-priced Task is a Task which is not in the Construction Task Catalog.
- 2.2.1.5.1. If the Contractor will perform the Non Pre-priced Task with its own forces, it will submit three independent quotes for all materials to be installed and will provide a breakdown of the labor and equipment costs.
 - 2.2.1.5.2. If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent bids from Subcontractors. The Contractor will not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. Sourcewell may require additional quotes and bids if the suppliers or Subcontractors are not acceptable or if the prices are not deemed reasonable by Sourcewell or its designated representative.
- 2.2.1.6. **Pricing Non Pre-priced Tasks:** The final price submitted for Non Pre-priced Tasks will be according to the following formula. Each Non Pre-priced Task must be supported with the necessary back-up documents including the calculation below:
- 2.2.1.7. **For Work Performed with the Contractor's Own Forces:**
- 2.2.1.7.1. The hourly rate for each trade classification not in the Construction Task Catalog multiplied by the quantity;
 - 2.2.1.7.2. The rate for each piece of Equipment not in the Construction Task Catalog multiplied by the quantity;
 - 2.2.1.7.3. Lowest of three independent quotes for all materials

- 2.2.1.7.4.** Total Cost for self-perform work = (A+B+C) x NPP Adjustment Factor
- 2.2.1.8. 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
- 2.2.1.9.** At the discretion of Sourcewell (or its designated representative), Non Pre-priced Tasks, as well as other Tasks, may be added to the CTC during the course of the Contract. Unit prices will be established based on actual quotes from material suppliers and installers and fixed as a permanent Pre-priced Task in the CTC.
- 2.2.1.10.** Sourcewell (or their designated representative) determination as to whether an item is a Pre-priced Task or a Non Pre-priced Task will be final, binding and conclusive as to the Contractor.
- 2.2.1.11.** The means and methods of construction will be such as the Contractor may choose; subject however, to Sourcewell's right to reject means and methods proposed by the Contractor that:
- 2.2.1.11.1.** Will not produce finished Work in accordance with the terms of the Contract; or
- 2.2.1.11.2.** Unnecessarily increases the price of the Purchase Order when alternative means and methods are available.
- 2.2.1.12.** 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.
- 2.2.1.13.** The value of the Price Proposal will be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 2.2.1.14.** The Contractor must submit a complete Proposal Package, which includes:
- 2.2.1.14.1.** any incidental drawings or sketches, calculations and or specification information,
- 2.2.1.14.2.** the Price Proposal, and a quantity take-off summary supporting all material quantities contained in the Price Proposal
- 2.2.1.14.3.** catalog cuts providing information on materials or products, as specifically requested,
- 2.2.1.14.4.** back-up for any Non Pre-priced Tasks,
- 2.2.1.14.5.** identification of known Subcontractors and material suppliers,
- 2.2.1.14.6.** a construction schedule,
- 2.2.1.14.7.** for special equipment or materials, warranty information,
- 2.2.1.15.** 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.

- 2.2.1.16. 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.

2.2.2. Time for Submittal of the Proposal Package

- 2.2.2.1. The Proposal Package will be submitted by the date indicated on the Request for Proposal. All incomplete Proposal Packages will be rejected. The time allowed for preparation of the Proposal Package will depend on the complexity and urgency of the Project but should average between seven and fourteen days. On complex Projects, such as those requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

- 2.2.2.2. 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.

- 2.2.2.3. 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.

- 2.2.2.4. 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.

2.2.3. Review of the Proposal Package

- 2.2.3.1. Sourcewell (or its designated representative) and/or the Sourcewell Member (or its designated representative) will evaluate the Price Proposal by evaluating the nature and number of Tasks proposed against the agreed upon Detail Scope of Work and will determine the reasonableness of approach. Furthermore Sourcewell (or its designated representative) or the Sourcewell Member (or its designated representative) may compare the Price Proposal to the Sourcewell Member cost estimate for the Detailed Scope of Work. Sourcewell (or its designated representative) or the Sourcewell Member (or its designated representative) reserves the right to reject a Price Proposal based on unjustifiable/unsupported (with take off details) quantities and/or Tasks, schedule, inadequate documentation, or for any other reason.

- 2.2.3.2. If Sourcewell (or its designated representative) and/or the Sourcewell Member (or its designated representative) finds any part of the Price Proposal unacceptable, Sourcewell (or its designated representative) or the Sourcewell Member (or its designated representative) may request the Contractor to re-submit its Price

Proposal or cancel the Project. The Contractor is expected to submit correct Price Proposals the first time. However Sourcewell recognizes that some adjustments might have to be made to the Price Proposal after review by Sourcewell (or its designated representative) and the Sourcewell Member (or its designated representative). Therefore, Sourcewell (or its designated representative) will allow the Contractor to submit the first Price Proposal and a second Price Proposal for each Purchase Order.

- 2.2.3.3. Additionally, Sourcewell (or its designated representative) and/or the Sourcewell Member (or its designated representative) will evaluate all other components of the Proposal Package and may request revisions thereto.
- 2.2.3.4. Requested revisions to any and all of the Proposal Package components should be made by the Contractor and resubmitted in three working days or less. If after the second review by Sourcewell (or its designated representative) and/or the Sourcewell Member (or its designated representative), Sourcewell (or its designated representative) and/or the Sourcewell Member (or its designated representative) finds requested revisions to the Proposal Package that were not made, this may be reason to suspend that particular Purchase Order.
- 2.2.3.5. 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.
- 2.2.3.6. Sourcewell reserves the right to obtain Price Proposals from any or all of the contractors awarded an IQCC contract.
- 2.2.3.7. If the Contractor continues to submit Price Proposals which are rejected by Sourcewell (or its designated representative), Sourcewell may declare the Contractor in default and initiate termination of the Contract, according to the Contract General Conditions.

2.2.4. Delivery of the Proposal Package

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

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

- 2.2.5.1. The Sourcewell Member will evaluate the entire Proposal Package.
- 2.2.5.2. The Sourcewell Member may reject a Proposal Package for any reason.
- 2.2.5.3. The Sourcewell Member may request changes to or clarifications of any part of the Proposal Package, may require certificates of insurance, and may require a Labor and Material Payment Bond and Performance Bond. The Contractor and Sourcewell (or its designated representative) will work together to make any requested revisions in a timely manner and resubmit a revised Proposal Package.
- 2.2.5.4. Upon approval of the Proposal Package by Sourcewell (or its designated representative) and the Sourcewell Member, the Sourcewell Member may issue a signed Purchase Order, Notice of Award, or similar document accepting the Contractor's offer. The document will include:

- 2.2.5.4.1.** Reference to the Detail Scope of Work
- 2.2.5.4.2.** The Purchase Order Price
- 2.2.5.4.3.** Start date, Purchase Order Completion Time (duration) and completion date
- 2.2.5.4.4.** Whether liquidated damages will apply
- 2.2.5.5.** 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.
- 2.2.5.6.** 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.
- 2.2.5.7.** 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 10 days of notification of the requirement.

3. ARCHITECTURAL AND ENGINEERING SERVICES

- 3.1.** Under this Contract it is expected that the level of Architecture and Engineering (A/E) services and design, if any, will be incidental to the Contract 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 Contract and the cost there of will be included in the Contractor's Adjustment Factors.

4. TERM OF CONTRACT

- 4.1.** This Contract is for term shown on the IFB. The Contractor may withdraw from the Contract 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 Contract at any time.
- 4.2.** A Sourcewell Member may issue a Purchase Order at any time during the term of this Contract. All Purchase Orders issued during a term of this Contract will be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such term has expired.

5. GEOGRAPHIC AREAS

- 5.1.** Contractor will primarily work in the Geographic Area designated. However, if both parties agree, the Contractor may work in another area using their awarded Adjustment Factors and appropriate Construction Task Catalog. If a contractor does not have a contract for the area

work is to be conducted and has multiple contracts they will use the contract that results in the lowest price for the Sourcewell Member.

6. ESTIMATED ANNUAL VALUE

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

7. OPTION TO BILATERALLY EXTEND CONTRACT

- 7.1.** This Contract has an initial term of one year and three bilateral option provisions for three additional terms. The total term of the Agreement cannot exceed four 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 shall be adjusted according to the following:
- 7.3.1.** The Contractor's Adjustment Factors shall be adjusted according to the following:
- 7.3.1.1.** A Base Year Index will 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).
- 7.3.1.2.** 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).
- 7.3.1.3.** The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
- 7.3.1.4.** 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.
- 7.3.1.5.** Averages shall be obtained by summing the 12 month indices and dividing by 12.
- 7.3.1.6.** 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:
- 7.3.1.6.1.** The fourth decimal place shall be rounded up when the fifth decimal place is five or greater.

- 7.3.1.6.2.** The fourth decimal place shall remain unchanged when the fifth decimal place is less than five.
- 7.3.2.** 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.
- 7.4.** 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.
- 7.5.** 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. CHANGES

- 8.1.** The Sourcewell Member reserves the right to make, in writing, at any time during the Work, changes in the Detailed Scope of Work as are necessary to satisfactorily complete the Project, and to delete in whole or in part, or to add to, the Detailed Scope of Work. Such changes, deletions, or additions will not invalidate the Contract or the Purchase Order nor release the surety, if any, and the Contractor agrees to perform the Work as altered.
- 8.2.** 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.

9. MARKETING REQUIREMENTS

- 9.1.** The Contractor will be proactive about selling and marketing this Contract to public agencies and non-profit organizations. Failure to do so may be grounds for termination of this Contract or other disciplinary action at the option of Sourcewell.
- 9.2.** Sourcewell selected its Indefinite Quantity Construction Contracting system based on its research of what provides their Members with the best value and most cost effective results. The Contractor must avoid all conflicts of interest with the promotion of other IQCC systems to any agency eligible to purchase under this Contract. The promotion of other IQCC systems to any agency eligible to purchase under this Agreement may be grounds for termination of this Contract.
- 9.3.** The Contractor must adhere to the following when preparing marketing materials and web sites, and in the use of trademarks and service marks:
- 9.3.1.** The Contractor will 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.
- 9.3.2.** The Contractor will include the ezIQC logo, website address (www.ezIQC.com), and ezIQC® telephone number (888-993-9472) on all marketing materials and web sites that mention this Contract or have anything to do with this Contract.
- 9.3.3.** The Contractor will 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 Contract by Sourcewell Members and Potential Sourcewell Members, and agrees that all uses of the trademarks and service marks belonging to Sourcewell and Gordian must include the appropriate trademark and service mark symbols (® or ™) at all times.

- 9.3.4.** The Contractor must not collect information from a Sourcewell Member or Potential Sourcewell Member on Contractor provided forms or web sites. The Contractor will advise the Sourcewell Members or Potential Sourcewell Members to enter all information at the ezIQCC® website or the Contractor may input project information on the ezIQCC web site on behalf of a Sourcewell Member or Potential Sourcewell Member.
- 9.3.5.** Under no circumstance may Contractor indicate Sourcewell endorses Contractor, or that copy or branding images of Sourcewell or Gordian be altered in any way without the express written approval of Sourcewell or Gordian.
- 9.3.6.** All marketing materials must be coordinated with and approved by Sourcewell and Gordian.

10. PUNCH LIST COMPLETION

- 10.1.** 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.
- 10.2.** Failure of the Contractor or its Subcontractors to begin the Punch List Work within three business days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.
- 10.3.** Punch List Work will be continuously prosecuted once begun and completed within 30 Days from the receipt of the Punch List. Should the Contractor fail to complete the Punch List within this period of time, the liquidated damages as identified in Article 26 of the Contract General Conditions will apply.

11. PAYMENT AND PERFORMANCE BONDS AND MATERIAL AND WORKMANSHIP BONDS

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

12. COMPUTER SOFTWARE

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

13. PREPAYMENT OPTION

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

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SECTION TWO – CONTRACT GENERAL CONDITIONS

1. PROJECT MANAGER

1.1. 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

2.1. 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

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

4. REVIEW OF FIELD CONDITIONS

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

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

5. SUPERVISION

5.1. The Contractor will supervise and direct the performance of the Detailed Scope of Work, using the Contractor’s best skill and attention. The Contractor will be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. If the Detailed Scope of Work gives specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor will evaluate the Site safety thereof and, except as stated below, will be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor will give timely written notice to the Project

Manager and will not proceed with that portion of the Work without further written instructions from the Project Manager.

- 5.2. The Contractor will be responsible to the Sourcewell Member for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its Subcontractors.
- 5.3. The Contractor will be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- 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 must enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor will not permit employment of unfit persons or persons not skilled in the portions of the Work assigned to them.

7. WARRANTY

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

8. PERMITS AND FILINGS

- 8.1. Contractor will make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the jurisdiction or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained will be treated as a Reimbursable Task to be paid a mark-up of 10% on the fees paid to a governmental entity to obtain filings and permits. Contractor will submit written documentation of such fees. The 10% mark-up will cover all costs over and above the filing and permit fees, including expeditor fees.
- 8.2. The Contractor will comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.
- 8.3. It is not the Contractor's responsibility to ascertain that the Detailed Scope of Work is in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that any portion of the Detailed Scope of Work is at variance therewith, the Contractor will promptly notify the Project Manager in writing.

9. PERSONNEL

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

10. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 10.1. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Detailed Scope of Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Detailed Scope of Work. Submittals which are not required by the Contract Documents may be returned by the Project Manager without action.
- 10.2. The Contractor must review for compliance with the Contract Documents, approve and submit to the Project Manager Shop Drawings, Product Data, Samples and similar submittals required with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Sourcewell Member or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Project Manager without action.
- 10.3. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and

coordinated the information contained within such submittals with the requirements of the Detailed Scope of Work and of the Contract Documents.

- 10.4.** The Contractor must perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Project Manager.
- 10.5.** The Work will be performed in accordance with approved submittals except that the Contractor will not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project Manager's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Project Manager in writing of such deviation at the time of submittal and (1) the Project Manager has given written approval to the specific deviation as a minor change in the Work, or (2) a Supplemental Purchase Order or written notice has been issued authorizing the deviation. The Contractor will not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Project Manager's approval thereof.
- 10.6.** The Contractor will direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Project Manager on previous submittals. In the absence of such written notice the Project Manager's approval of a resubmission will not apply to such revisions.
- 10.7.** The Contractor will not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Detailed Scope of Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor will not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Detailed Scope of Work, the Sourcewell Member will specify all performance and design criteria that such services must satisfy. The Contractor will cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, will bear such professional's written approval when submitted to the Project Manager. The Sourcewell Member will be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Sourcewell Member has specified to the Contractor all performance and design criteria that such services must satisfy. The Project Manager will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Detailed Scope of Work. The Contractor will not be responsible for the adequacy of the performance or design criteria required by the Detailed Scope of Work.

11. CUTTING AND PATCHING

- 11.1.** The Contractor will be responsible for cutting, fitting or patching required to complete the Detailed Scope of Work or to make its parts fit together properly.

11.2. The Contractor will not damage or endanger a portion of the Work or fully or partially completed construction of the Sourcewell Member or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor will not cut or otherwise alter such construction by the Sourcewell Member or a separate contractor except with written consent of the Sourcewell Member and of such separate contractor; such consent will not be unreasonably withheld. The Contractor will not unreasonably withhold from the Sourcewell Member or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

12. CLEAN UP

12.1. The Contractor will keep the Site and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Purchase Order. At completion of the Work, the Contractor will remove from and about the Site all waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

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

13. ACCESS TO THE WORK

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

14. ROYALTIES, PATENTS AND COPYRIGHTS

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

15. INDEMNIFICATION

15.1. To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by insurance purchased by the Contractor, the Contractor will indemnify and hold harmless Sourcewell, the Sourcewell Member, Project Manager, consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party

indemnified hereunder. Such obligation will not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph.

- 15.2. In claims against any person or entity indemnified under this Paragraph by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation will not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

16. SUBCONTRACTORS

- 16.1. The Contractor, as soon as practicable after award of the Purchase Order, will furnish in writing to the Project Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the Work. The Project Manager will promptly reply to the Contractor in writing stating whether or not, after due investigation, Contractor has reasonable objection to any such proposed person or entity. Failure of the Project Manager to reply promptly will constitute notice of no reasonable objection.
- 16.2. The Contractor will not contract with a proposed person or entity to whom the Sourcewell Member or Project Manager has made reasonable and timely objection. The Contractor will not be required to contract with anyone to whom the Contractor has made reasonable objection.
- 16.3. If the Sourcewell Member or Project Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor will propose another to whom the Sourcewell Member or Project Manager has no reasonable objection.

17. COORDINATION WITH OTHER CONTRACTORS

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

18. REQUEST OF EXTENSION OF TIME

- 18.1. If the Contractor is delayed at any time in the commencement or progress of the Detailed Scope of Work by an act or neglect of the Sourcewell Member or Project Manager, or of an employee of either, or of a separate contractor employed by the Sourcewell Member, or by changes

ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by other causes which the Project Manager determines may justify delay, then the Purchase Order Completion Time will be extended for such reasonable time as the Project Manager may determine.

- 18.2.** The Contractor agrees to make no claim for damages for the delay in the performance of any Purchase Order occasioned by any act or omission to act of the Sourcewell Member, Project Manager or any of their representatives, and agrees that any such claim will be fully compensated for by an extension of time as provided herein.

19. PARTIAL PAYMENTS

- 19.1.** The Contractor may submit a monthly Application for Payment for Work completed to date. The Contractor will submit Certified Payroll Records, and such other supporting documentation as may be required by the Project Manager. The Contractor may be required to submit Certified Payroll Records online. The Project Manager will inspect the work within a reasonable time and the Sourcewell Member will make partial payments to the Contractor based on the approved value of completed Work.
- 19.2.** The Sourcewell Member may withhold up to 5% of each payment until final completion of the Purchase Order.
- 19.3.** The Contractor must promptly pay each Subcontractor, upon receipt of payment from the Sourcewell Member, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor will, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-Subcontractors in a similar manner.

20. FINAL PAYMENTS

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

21. PARTIAL OCCUPANCY FOR USE

- 21.1.** The Sourcewell Member may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor,

provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Sourcewell Member and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor will prepare and submit a list to the Project Manager. Consent of the Contractor to partial occupancy or use will not be unreasonably withheld. The stage of the progress of the Work will be determined by written agreement between the Sourcewell Member and Contractor.

- 21.2.** Immediately prior to such partial occupancy or use, the Sourcewell Member, Contractor and Project Manager will jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- 21.3.** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work will not constitute acceptance of Work not complying with the requirements of the Contract Documents.

22. IDENTIFICATION AND SECURITY REQUIREMENTS

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

23. PROTECTION OF PERSONS AND PROPERTY

- 23.1.** The Contractor must take reasonable precautions for safety of, and will provide reasonable protection to prevent damage, injury or loss to:
 - 23.1.1.** employees on the Work and other persons who may be affected thereby;
 - 23.1.2.** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 - 23.1.3.** other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 23.2.** The Contractor will give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 23.3.** The Contractor will erect and maintain, as required by existing conditions and performance of the Detailed Scope of Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Sourcewell Member and users of adjacent sites and utilities.
- 23.4.** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor will exercise utmost care and carry on such activities under supervision of properly qualified personnel.

- 23.5.** The Contractor will promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Sourcewell Member or Project Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's other obligations included herein.
- 23.6.** The Contractor will designate a responsible member of the Contractor's organization at the Site whose duty will be the prevention of accidents. This person will be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Project Manager.
- 23.7.** The Contractor will not load or permit any part of the construction or Site to be loaded so as to endanger its safety.

24. HAZARDOUS MATERIALS

- 24.1.** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to lead based paint, asbestos or polychlorinated biphenyl (PCB), encountered on the Site by the Contractor, the Contractor will, upon recognizing the condition, immediately stop the Work in the affected area and report the condition to the Project Manager in writing.
- 24.2.** The Sourcewell Member will obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Sourcewell Member will furnish in writing to the Contractor and Project Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the Task of removal or safe containment of such material or substance. The Contractor and the Project Manager will promptly reply to the Sourcewell Member in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Sourcewell Member. If either the Contractor or Project Manager has an objection to a person or entity proposed by the Sourcewell Member, the Sourcewell Member will propose another to whom the Contractor and the Project Manager have no reasonable objection. When the material or substance has been rendered harmless, the Work in the affected area will resume upon written agreement of the Sourcewell Member and Contractor. The Purchase Order Completion Time will be extended appropriately.
- 24.3.** To the fullest extent permitted by law, the Sourcewell Member will indemnify and hold harmless the Contractor, Subcontractors, Project Manager, Project Manager's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described herein and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or

destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

24.4. The Sourcewell Member will not be responsible for materials and substances brought to the Site by the Contractor unless such materials or substances were required by the Detailed Scope of Work.

24.5. If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing the Work as required by the Contract Documents, the Sourcewell Member will indemnify the Contractor for all cost and expense thereby incurred.

25. INSURANCE REQUIREMENTS

25.1. The Contractor must procure and maintain, at its own cost and expense, until final acceptance of all the Work covered by this Contract, the following kinds of insurance:

25.1.1. Workers' Compensation Insurance. A policy complying with the requirements of the laws of the Jurisdiction in which the Project is located.

25.1.2. General Liability and Property Damage Insurance. A standard general comprehensive liability insurance policy or a commercial general liability insurance policy issued to and covering the liability of the Contractor for all Work and operations under this Contract, including, but not limited to, contractual and completed operations coverage. The coverage under such policy will not be less than the following limits: Bodily Injury and Property Damage Liability, \$2,000,000 Each Occurrence, \$2,000,000 Aggregate.

25.1.3. Automobile Liability and Property Damage Insurance. A policy covering the use in connection with the Work covered by the Contract Documents of all owned, non-owned and hired vehicles bearing, or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the Jurisdiction in which the Project is located. The coverage under such policy will not be less than the following limit: Bodily Injury and Property Damage Liability, \$2,000,000 Each Occurrence.

25.1.4. All Risk Builders Risk Insurance. Where specifically required in the Detailed Scope of Work, the Contractor will provide, before the Purchase Order is issued, Builders' Risk Insurance in an amount at least equal to the Purchase Order Price in a form and by a carrier acceptable to the Sourcewell Member. The cost of such Builders Risk Policy will be reimbursed to the Contractor as a reimbursable task.

25.1.5. Pollution Liability Insurance. If a Project involves asbestos abatement encapsulation or other activities involving hazardous materials, the Contractor, Subcontractor or other party responsible for such Work will procure and maintain a liability insurance policy issued to and covering the liability, of the Contractor, Subcontractor or other party engaged in the removal, or handling of hazardous materials, for bodily injury, illness, sickness or property damage caused by exposure in an amount not less than \$2,000,000 per occurrence and \$2,000,000 aggregate. The cost of Pollution Liability Insurance is included in the Unit Prices and will not be reimbursed separately.

25.2. The Contractor will provide certificates of insurance. Such certificates will be on a form prescribed by Sourcewell, will list the various coverages and will contain, in addition to any provisions hereinbefore required, a provision that the policy will not be changed or cancelled and that it will be automatically renewed upon expiration and continued in force until final

acceptance by Sourcewell, or Sourcewell Member, of all the work covered by the Contract, unless Sourcewell is given 15 days' written notice to the contrary. Upon request, the Contractor will furnish Sourcewell or any Sourcewell Member with a certified copy of each policy.

- 25.3. Contractor must obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the Washington D.C. and Minnesota.
- 25.4. If at any time any of the above-required insurance policies should be cancelled, terminated or modified so that insurance is not in effect as above required, then, if Sourcewell will so direct, the Contractor will suspend performance of the work. If the said work is so suspended, no extension of time will be due on account thereof. If said work is not suspended, then Sourcewell may, at its option, obtain insurance affording coverage equal to that above required, the cost of such insurance to be payable by the Contractor.
- 25.5. Should the awarded Contractor retain a Subcontractor to perform any of the services mentioned herein, it is the Contractor's responsibility to ensure that the Subcontractor(s) maintains the same types of insurance coverage in accordance with the requirements and amounts indicated herein.
- 25.6. Sourcewell, its officers, and employees must be included as an additional insured. Any Sourcewell Member, its officials, officers, and employees must be included as an additional insured when so requested by the Sourcewell Member.

26. LIQUIDATED DAMAGES

- 26.1. If provided for in the 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 will be determined on a Purchase Order by Purchase Order basis.

27. TESTS AND INSPECTIONS

- 27.1. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction will be made at an appropriate time. Unless otherwise provided, the Contractor will make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Sourcewell Member, or with the appropriate public authority. The Contractor will give the Project Manager timely notice of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures.
- 27.2. If the Project Manager, Sourcewell Member or public authorities having jurisdiction determine that portions of the Work require, through no fault of the Contractor, additional testing, inspection or approval, the Project Manager will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Sourcewell Member, and the Contractor will give timely notice to the Project Manager of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures. Such costs will be at the Sourcewell Member's expense.

- 27.3.** If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Project Manager’s services and expenses will be at the Contractor’s expense.
- 27.4.** Required certificates of testing, inspection or approval will, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Project Manager.
- 27.5.** If the Project Manager is to observe tests, inspections or approvals required by the Contract Documents, the Project Manager will do so promptly and, where practicable, at the normal place of testing.
- 27.6.** Tests or inspections conducted pursuant to the Contract Documents will be made promptly to avoid unreasonable delay in the Work.

28. GOVERNING LAW

- 28.1.** The Terms of this Contract will be governed by the laws of the State of Minnesota and all Work will be governed by the place where the Project is located.
- 28.2.** Sourcewell’s liability will be governed by the State of Minnesota’s Tort Liability act (Minnesota Statutes Chapter 466) and other applicable law.
- 28.3.** All claims and controversies between Sourcewell and Contractor shall be subject to the laws of the State of Minnesota and are to be resolved in Todd County Minnesota.

29. COMPLIANCE WITH LAWS

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

30. SEVERANCE

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

31. LICENSE

- 31.1.** Contractor must obtain and maintain all licenses required from all public agencies with jurisdiction over the Work and will keep these documents properly posted at the Site at all times during the performance of the Work.

32. ASSIGNMENT

- 32.1.** No right or interest in this Contract will be assigned or transferred by the Contractor without prior written consent of Sourcewell. No delegation of any duty of the Contractor will be made without prior written consent of Sourcewell.

33. CLAIMS AND DISPUTES

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

34. TERMINATION BY SOURCEWELL FOR CAUSE

- 34.1.** Sourcewell may, in Sourcewell's discretion: a) suspend Contractor's participation in the Procedure for Ordering Work under Book 2, Section One, Article 2.2 (and the sub-articles thereof), and prohibit the Contractor during such suspension from submitting Price Proposals with respect to the Projects of Sourcewell and the Projects of any one or more Sourcewell member; or, b) may terminate the Contract, if the Contractor:
- 34.1.1.** persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - 34.1.2.** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
 - 34.1.3.** persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
 - 34.1.4.** otherwise is guilty of substantial breach of a provision of the Contract Documents.
- 34.2.** In the event of Contract termination, if an unpaid balance of one or more Purchase Orders exceeds the costs of finishing the Work, such excess will be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor will pay the difference to Sourcewell.
- 34.3.** The Sourcewell Member may not terminate this Contract between Sourcewell and the Contractor.

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

- 35.1.** The Contractor will not unlawfully discriminate against any employee or applicant for employment because of race, religion, age, color, sex or National origin, sexual orientation, marital status, political affiliation, or physical or mental disability if qualified. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex or National origin, sexual orientation, marital status, political affiliation, or physical or mental disability. Such actions will include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

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

36. AUDITS

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

37. GRATUITIES

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

38. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENT UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

38.1. Members that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Members may also require additional requirements based on specific funding specifications. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Member accesses Vendor’s Equipment, Products, or Services with United States federal funds.

A. EQUAL EMPLOYMENT OPPORTUNITY. Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319,

12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

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

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. § 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.

If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387).

Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Vendor certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689).

A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352).

Vendors must file any required certifications. Vendors must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendors must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. §1352).

H. RECORD RETENTION REQUIREMENTS.

To the extent applicable, Vendor must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Vendor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of three (3) years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE.

To the extent applicable, Vendor must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE.

To the extent applicable, Vendor must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322).

A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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