



**Indefinite Delivery-Indefinite Quantity Construction Contract
General Terms and Conditions
for
Solicitation: RFP #UT-060425**

I. DEFINITIONS

The following definitions apply to all articles of the Contract and General Terms and Conditions.

A. ADJUSTMENT FACTORS. The Contractor's competitively bid price adjustment to the Unit Prices that are published in the Construction Task Catalog. Adjustment Factors are expressed as an increase to or decrease from the Construction Task Catalog's published prices and may be modified periodically during the term of this Contract, through written amendment.

B. BID SAFE. A proprietary software product of Gordian that offers a secure, online construction procurement process. This software may not be applicable in a particular region or project.

C. CONSTRUCTION TASK CATALOG (CTC). The CTC is Gordian's proprietary comprehensive listing of specific construction-related tasks created and customized for the solicitation under which this Contract was awarded. Each task has an assigned specific unit of measurement and Unit Price using current local labor, material, and equipment costs. The CTC is incorporated by reference into this Contract.

D. CONTRACT DOCUMENTS. The following documents comprise the Contract Documents in the following order of precedence:

1. Participating Entity's Purchase Order which may include plans, drawings, and supplemental technical specifications
2. Standard specifications of the Participating Entity (if any)
3. This Contract, which also includes the General Terms and Conditions
4. Construction Task Catalog
5. Technical Specifications

E. DAYS. Calendar days, unless specifically stated otherwise.

F. DETAILED SCOPE OF WORK. A document created by the Participating Entity, in conjunction with Gordian and the Contractor, following a Joint Scope Meeting that details the work the Contractor will perform for a particular Purchase Order.

G. THE GORDIAN GROUP, INC. OR GORDIAN. Sourcewell's designated representative and contract administrator for this Contract. Gordian's support includes preparing Construct Task Catalogs and related technical specifications, providing information management systems, training to contractors, administering fee collection, and assisting with proposal or work order development.

H. HOLIDAYS. Specific days designated as legal holidays of Participating Entity, including those designated holidays under its Project Labor Agreement, and those days that Sourcewell designates as Holidays: New Year's Day (January 1), Memorial Day, Independence Day (July 4), Labor Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Eve Day (December 24), and Christmas Day (December 25); when a holiday falls on a Saturday, the preceding Friday will be observed as a holiday and when it falls on a Sunday, the following Monday will be observed as a holiday.

I. JOINT SCOPE MEETING. The Contractor, Participating Entity representative, and Gordian representative assemble at the Site to discuss the Project and Scope of Work. The Participating Entity will present the Project in detail, with a job site visit by the Contractor, prior to preparing and submitting a Detailed Scope of Work.

J. NON-PRE-PRICED TASK (NPP). A task not included in the Construction Task Catalog, but that is within the general scope and intent of this Contract.

K. PARTICIPATING ENTITY. An entity accessing this Contract in order to accomplish the work with the Contractor. Participating entities include state and local government, education, nonprofit, tribal government, and other public agencies located within the Service Region described in the Contract.

L. PRICE PROPOSAL. The proposed pricing document prepared for the Participating Entity by the Contractor using the Construction Task Catalog, Adjustment Factors, and appropriate quantities.

M. PROJECT. 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.

N. PROJECT MANAGER. The person or firm designated by a Participating Entity and authorized to represent the Participating Entity in connection with a signed Purchase Order.

O. 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 Participating Entity may require.

P. PURCHASE ORDER. The document establishing the engagement by the Participating Entity to the Contractor to complete a Detailed Scope of Work for the Purchase Order Price within the Purchase Order Completion Time. The Purchase Order may consist of a notice to proceed, signed work order, or other Participating Entity required documentation.

Q. PURCHASE ORDER COMPLETION TIME. The period of time set forth in the Purchase Order by which the Contractor must complete the Detailed Scope of Work.

R. PURCHASE ORDER PRICE. The value of the approved Price Proposal and not to exceed price to be paid to the Contractor by the Participating Entity for completing the Detailed Scope of Work within the Purchase Order Completion Time.

S. REQUEST FOR PROPOSAL. The Participating Entity's written request for a contractor to prepare and submit a Proposal Package for a specific Detailed Scope of Work. A request for proposal is not a guarantee of work.

T. 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 the Participating Entity.

U. SUBCONTRACTOR. Any person, firm, or corporation, other than employees of the Contractor, that 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.

V. SUPPLEMENTAL PURCHASE ORDER. A purchase order issued to add, delete, or change work from an existing related Purchase Order.

W. TECHNICAL SPECIFICATIONS. The comprehensive listing of standards for quality of workmanship and materials, and the standard for the required quality of the work. The Technical Specifications are numbered and organized in the Construction Specification Institute's (CSI) master format, and are incorporated into this Contract by reference. All specifications are filed in divisions per CSI guidelines. Except when substitutions are clearly impermissible, all references 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 Contractor those items that will be satisfactory.

X. UNIT PRICE. The price published in the Construction Task Catalog for a task.

Y. WORK. The labor, material, equipment, and services necessary or convenient to the completion of Purchase Order(s).

II. PARTICIPATING ENTITY CONTRACT ACCESS

The benefits of this Contract should be available to all Participating Entities that can legally access the Scope of Work of this Contract. Any entity accessing the benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. The Contractor understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and that each Participating Entity reserves the right to obtain construction services from any other source.

III. GENERAL CONDITIONS FOR PERFORMING WORK

A. COMPLIANCE.

1. *Legal and Contractual.* The work will be conducted by the Contractor in strict compliance with this Contract and all applicable federal, state, and local laws, regulations, codes, directives, standards, and specifications; this includes, but is not limited to city building codes, the specific Detailed Scope of Work, and Technical Specifications of a Purchase Order. If the Purchase Order specifies a standard that is different or more stringent than a particular law, code, or regulation, the standard set forth in the Purchase Order will control.
2. *Licenses.* The Contractor must maintain valid and current federal, state, and local licenses, bonds, and permits required for the operation of the business that the Contractor conducts with Sourcewell and Participating Entities. The Contractor will keep these documents properly posted at the Site at all times during the performance of the work.
3. *Permits and Filings.* The Contractor will make the necessary arrangements for and obtain all filings and permits required for the work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the city, state or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor will be treated as a reimbursable task to be paid a mark-up of 10%. The Contractor will submit a copy of the receipt for payment of such fees. The 10% mark-up will cover all costs over and above the filing and permit fees, including expeditor fees.

B. PUBLIC FACILITIES, IDENTIFICATION, AND SECURITY REQUIREMENTS. The Contractor's employees may be required to perform work at government-owned facilities, including schools. The Contractor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with the applicable Participating Entity's policies and procedures, and all applicable laws. The Contractor will comply with all identification and security requirements that the Participating Entity may establish.

In the event the Contractor is required to work within a secured facility where labor, material, and equipment must be inspected to pass through a secured perimeter, and all work must be constantly monitored by facility personnel (such as a department of corrections prison) the Contractor will be paid for the labor time lost as a result of such perimeter inspection, as well as any loss of time resulting from a temporary shutdown of the work site required by the facility (such as a temporary shutdown to move prisoners).

C. CONTRACTOR RECORDS AND REPORTS. 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; including manufacturers' instructions and recommendations which are necessary and related to the work to be performed.

The Contractor will prepare and submit required reports, maintain current record drawings, and submit required information to Gordian and/or the Participating Entity, as applicable. The Contractor will provide: materials lists that include trade names and brand names, and model

materials lists that include trade names, brand names, model number, and ratings (if appropriate) for all materials necessary to complete the Purchase Order. Upon full payment for the Project, the documents created by Contractor for the Participating Entity that are specific to the Project will become the property of the Participating Entity; including all applicable intellectual property rights.

D. **GORDIAN IQCC SYSTEM.** Gordian's proprietary IQCC system includes Gordian's proprietary JOC software applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Price Proposals, subcontractor lists, and other requirements specified by the Owner. Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog® and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the Owner is strictly prohibited unless otherwise approved in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following IQCC System License.

IQCC System License

Gordian hereby grants to the Contractor for the term of this Contract, a non-exclusive right, non-transferable, privilege, and license to Gordian's proprietary IQCC System (comprised of the JOC software applications and support documentation, the CTC, construction cost data, Technical Specifications, training materials, marketing materials and any other proprietary materials provided to Contractor by Gordian (collectively referred to as "Proprietary Information"). The Proprietary Information will be used for the sole purpose of executing Contractor's responsibilities to Sourcewell and the Participating Entities under this Contract ("Limited Purpose"). 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 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.

H. WORKMANSHIP AND QUALITY. The Contractor may make substitutions only with the written consent of the Project Manager. The Contractor will not permit employment of unfit persons or persons not skilled in the portions of the work assigned to them.

I. SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES.

1. Shop drawings, product data, samples, and similar submittals are not considered as 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 that are not required by the Contract Documents may be returned by the Project Manager without action.
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 Participating Entity or of separate contractors. Submittals that 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.
3. By approving and submitting shop drawings, product data, samples and similar submittals, the Contractor represents that it 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.
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.
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 a) the Project Manager has given written approval to the specific deviation as a minor change in the work, or b) 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.
6. The Contractor will direct specific attention, in writing or on resubmitted in 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.

7. All costs for normal submittal information (shop drawings, cut sheets, performance information, installation or erection drawings, etc.) are included in the CTC line item costs.
8. The Contractor will not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically requested by the Participating Entity and 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, and such services are approved by the Participating Entity. 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 Participating Entity will specify all performance and design criteria that such services must satisfy, and the costs associated with such services will be represented by including the appropriate tasks from the CTC. 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 Participating Entity will be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Participating Entity 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. The Participating Entity will have the right to provide, or designate a representative to provide, any architectural or engineering services necessary for completion of the Work.

J. CUTTING AND PATCHING.

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.
2. The Contractor will not damage or endanger a portion of the work, or fully or partially completed construction of the Participating Entity 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 Participating Entity or a separate contractor except with written consent of the Participating Entity and of such separate contractor. The Contractor will not unreasonably withhold from the Participating Entity

or a separate contractor the Contractor's consent to cutting or otherwise altering the work.

K. CLEAN UP.

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, Contractor's tools, construction equipment, machinery, and surplus materials.
2. If the Contractor fails to clean up, the Participating Entity may do so, and the cost thereof will be charged to the Contractor.

L. ACCESS TO THE WORK. The Contractor will provide the Project Manager access to the work at all times.

M. SUBCONTRACTORS.

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, the 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.
2. The Contractor will not subcontract with a proposed person or entity with whom the Participating Entity or Project Manager has made reasonable and timely objection. Similarly, the Contractor will not be required to subcontract with anyone with whom the Contractor has made reasonable objection.
3. If the Participating Entity or Project Manager has reasonable objection to a subcontractor proposed by the Contractor, the Contractor will propose another to whom the Participating Entity or Project Manager has no reasonable objection.

N. COORDINATION WITH OTHER CONTRACTORS.

1. The Participating Entity reserves the right to perform construction or operations related to the Purchase Order with the Participating Entity's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site.
2. The Participating Entity will provide for coordination of the activities of the Participating Entity'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 Participating Entity in reviewing their construction schedules when directed to do so. The Contractor will make any revisions to the construction schedule

