

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

191



FROM: Economic Development Agency

SUBMITTAL DATE:
April 10, 2014

SUBJECT: United States Government – United States District Court and United States Bankruptcy Court Heating, Ventilation and Air Conditioning Replacement Project – Approval of Contract through Easy Indefinite Quantity Contract and Project Budget, District 2/District 2, [\$999,286], General Fund–Court Facilities Fund–40% and Lease Payment from GSA–60%

RECOMMENDED MOTION: That the Board of Supervisors:

1. Authorize use of the Easy Indefinite Quantity Contract (EZIQC) sponsored by the National Joint Powers Alliance (NJPA) for a construction agreement with ACCO Engineered Systems to complete the United States (US) Government – United States (US) District Court and United States (US) Bankruptcy Court Heating, Ventilation and Air Conditioning (HVAC) Replacement Project;
2. Approve the plans, specifications and contract documents for the US Government – US District Court and US Bankruptcy Court HVAC Project;

(Continued)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 67,000	\$ 932,286	\$ 999,286	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 26,800	\$ 372,914	\$ 399,714	\$ 0	

SOURCE OF FUNDS: General Fund–Court Facilities Fund–40%; Lease Payment from GSA–60% **Budget Adjustment:** No
For Fiscal Year: 2013/14 – 2014/15

C.E.O. RECOMMENDATION:

APPROVE

BY: Rohini Dasika
4/15/2014

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Benoit, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: April 22, 2014
xc: EDA

Kecia Harper-Ihem
Clerk of the Board

By: Deputy

Prev. Agn. Ref.: 3-19 of 1/07/14; 3.31 of 8/28/12

District: 2/2

Agenda Number:

3 - 15

FISCAL PROCEDURES APPROVED
PAUL ANGLIO, CPA, AUDITOR-CONTROLLER
BY: Esteban Hernandez
Departmental Concurrence

FORM APPROVED COUNTY CLERK
BY: MARSHA VICTOR
DATE: 4/1/14

- A-30
- Positions Added
- 4/5 Vote
- Change Order

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Economic Development Agency

FORM 11: United States Government – United States District Court and United States Bankruptcy Court Heating, Ventilation and Air Conditioning Replacement Project – Approval of Contract through Easy Indefinite Quantity Contract and Project Budget; District 2/District 2, [\$999,286], General Fund-Court Facilities Fund - 40% and Lease Payment from GSA - 60%

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RECOMMENDED MOTION: (Continued)

3. Approve the attached construction agreement between the County of Riverside and ACCO Engineered Systems(ACCO) of Glendale, California, in the amount of \$953,286 and authorize the Chairman of the Board to execute the agreement on behalf of the county;
4. Authorize the Assistant County Executive Officer/EDA to administer the agreement in accordance with applicable Board policies; and
5. Approve the additional cost of \$999,286 to begin construction of the US Government – US District Court and US Bankruptcy Court HVAC Replacement Project and set forth the total project budget of \$1,099,286 overall.

BACKGROUND:

Summary

On October 11, 2011, the Board of Supervisors ratified membership of the County of Riverside in the NJPA evidenced by the attached membership agreement. The county's membership in NJPA allows participation in the EZIQC program. The Gordian Group, the county's consultant for Job Order Contracting (JOC), administers the EZIQC program, which operates in the same manner as JOC in which firms bid competitively against a construction task catalogue (CTC) that has fixed market based prices. EZIQC is a contract procurement method that allows the Economic Development Agency (EDA) to move more quickly to the construction phase and deliver projects sooner.

The United States Federal Government currently holds a leasehold interest in the county owned property also known as the US Bankruptcy Court, located at 3420 12th Street, Riverside, California and US District Court located at 3470 12th Street, Riverside, California. The original lease was executed on December 21, 1994 for the US Bankruptcy Court and April 7, 1998 for the US District Court. As a requirement of both leases, the county is responsible for the total maintenance and repair of the leased premises. The US Bankruptcy Court building was completed in approximately 1997 and the US District Court was completed in approximately 1998. The HVAC units have been regularly maintained, but due to their extended use, are nearing the functional life expectancy and require replacement. In an effort to avoid potential HVAC failures and critical court downtime, the county is proposing to replace all six existing HVAC units for the US Bankruptcy Court and the US District Court prior to summer 2014. The US Bankruptcy Court holds four HVAC units and the US District Court holds two HVAC units. This effort is part of the county's commitment to provide a high level of customer service and satisfaction to the courts which provide an important economic impact to the region by their presence.

(Continued)

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

Economic Development Agency

FORM 11: United States Government – United States District Court and United States Bankruptcy Court Heating, Ventilation and Air Conditioning Replacement Project – Approval of Contract through Easy Indefinite Quantity Contract and Project Budget; District 2/District 2, [\$999,286], General Fund-Court Facilities Fund - 40% and Lease Payment from GSA - 60%

DATE: April 10, 2014

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BACKGROUND:

Summary (Continued)

On January 7, 2014, the Board of Supervisors approved Item 3-19, which approved the US Government – US District Court and US Bankruptcy Court HVAC Replacement Project in-principle and authorized funding for project development costs which consist of design, project management, testing and inspection. On August 28, 2012, the Board of Supervisors approved a pre-qualified list of architectural and engineering firms to be retained on an as-needed basis. EDA selected Shadpour Consulting Engineers, Inc. (Shadpour) from the pre-qualified list to provide mechanical engineering services for the US Government - US District Court and US Bankruptcy Court HVAC Replacement project.

Shadpour has completed the plans and specifications, and EDA has approved the plans and specifications for the project. The plans and specifications were provided to ACCO, an approved EZIQC contractor, for review and a job walk was held at the site on February 10, 2014. Following review of the project site, plans and specifications, ACCO submitted their proposal in accordance with the EZIQC contract in the amount of \$953,286.

Approval of the plans and specifications and construction agreement via the NJPA's EZIQC program will expedite the delivery of the US Government – US District Court and US Bankruptcy Court HVAC Replacement project.

Impact on Residents and Businesses

The replacement of the HVAC units will increase the comfort levels for visitors and employees at the courthouses and increase the likelihood that the courts will continue our long established partnership through their occupancy of these vital facilities in the downtown Riverside region. The State of California Employment Development Department reported that the annual income for legal occupations in Riverside, San Bernardino and Ontario is approximately \$91,060. Both courthouses employ approximately 125 personnel, which include judges, judicial law clerks, legal assistants, court reporters, interpreters and other various legal and business support staff.

The US Government - US District Court and US Bankruptcy Court HVAC Replacement project will allow regional construction companies to bid and provide important temporary construction jobs to our economy. Retaining the design professionals, construction workers and legal occupations in Riverside helps support local businesses which includes restaurants, specialty businesses, and gasoline stations; support local taxes and public services.

Additional Fiscal Information

(Commences on Page 4)

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

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Additional Fiscal Information

The approximate allocation of the overall project budget is as follows:

DESCRIPTION	PREVIOUSLY APPROVED DEVELOPMENT COSTS	ADDITIONAL COSTS TO SET FORTH THE PROJECT BUDGET	TOTAL PROJECT BUDGET
Design	45,000	15,000	60,000
Construction	0	953,286	953,286
Project Management	25,000	0	25,000
Specialty Inspection and Testing	15,000	0	15,000
Facilities Management Services	0	10,000	10,000
Project Contingency	15,000	21,000	36,000
Project Budget Summary	\$ 100,000	\$ 999,286	\$ 1,099,286

On January 7, 2014, the Board of Supervisors approved the development costs of \$100,000 to begin design and identify the project scope for the US Government – US District Court and US Bankruptcy Court HVAC Replacement project. EDA is ready to begin the installation of the HVAC system and is requesting the approval of \$999,286 to complete the project, setting forth the total project budget in the amount of \$1,099,286.

Expenditures for FY 2013/14 are estimated at \$67,000; expenditures for FY 2014/15 are estimated at \$932,286. All costs associated with this project will be reimbursed from the General Fund-Court Facilities Fund in the estimated amount of \$399,714 at 40%, and Lease Payment from GSA Fund in the estimated amount of \$599,572 at 60%, thus no additional net county costs will be incurred and no budget adjustment is required at this time.

Contract History and Price Reasonableness

On August 20, 2013, ACCO was awarded the NJPA EZIQC contract via a public bidding process. ACCO was selected after bidding a competitive cost adjustment factor of 1.41 in accordance to the NJPA bid and contract documents for prevailing wage work performed outside of normal working hours. As a NJPA member, the County of Riverside can utilize EZIQC contracting to expedite delivery of projects based on the fair market prices for construction goods and services in the CTC.

(Continued)

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Contract History and Price Reasonableness (Continued)

In accordance with the EZIQC contract, ACCO provided a responsible and responsive proposal for the US Government – US District Court and US Bankruptcy Court HVAC Replacement project. Cost reasonableness for the project is achieved by the fair market value of the construction goods and services established in the CTC being provided in a lump sum proposal for the costs adjustment factor that reduces the amount to one dollar and forty-one cents.

Each NJPA EZIQC contract has a limit of \$2 million per year, and options for a total of four years. The contractor has a maximum potential for \$8 million of work if the full term of the contract is exercised. County Counsel has reviewed and approved the EZIQC contract documents as to form.

Attachments:

Copy of Membership to National Joint Powers Alliance
Plans and Specifications
Construction Agreement with ACCO Engineered Systems



**EZIQC WORK ORDER
STANDARD FORM OF CONSTRUCTION CONTRACT
BETWEEN COUNTY AND CONTRACTOR**

by and between

ACCO ENGINEERED SYSTEMS, INC.

(the "Contractor")

And

THE COUNTY OF RIVERSIDE

(the "County")

FOR:

**US BANKRUPTCY & DISTRICT COURTS HVAC REPLACEMENT PROJECT
WORK ORDER #EZIQC-ACCO-FM08110005906**

**3420 12TH STREET & 3470 12TH STREET, RESPECTIVELY
RIVERSIDE, CA 92501**

APR 22 2014 315

STANDARD FORM OF CONSTRUCTION CONTRACT FOR EZIQC
BETWEEN COUNTY AND CONTRACTOR

THIS STANDARD FORM OF CONSTRUCTION CONTRACT FOR EZIQC BETWEEN COUNTY AND CONTRACTOR ("Work Order Agreement") is entered into on this _____ day of _____, 2013 by and between **THE COUNTY OF RIVERSIDE**, a political subdivision of the State of California ("County") and **ACCO Engineered Systems, Inc.**, a corporation ("Contractor") whose principal place of business is located at 6265 San Fernando Road, Glendale, CA 91201.

ARTICLE 1
DEFINITIONS

Capitalized terms used in the Contract Documents shall have the meanings assigned to them in the Supplementary General Conditions. If not defined in the Supplementary General Conditions, they shall have the meanings assigned to them elsewhere in the Contract Documents. If not defined in the Supplementary General Conditions or elsewhere, they shall have the meanings reasonably understood to apply to them by the context in which they are used.

ARTICLE 2
PERFORMANCE OF WORK

2.1 SCOPE OF WORK

Contractor shall execute the entire Work called for by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

2.2 STANDARD OF PERFORMANCE

In addition to and without limiting Contractor's other obligations under the Contract Documents, Contractor shall at all times in its performance of its obligations under the Contract Documents conform to the following general standards of performance:

2.2.1 the requirements of the Contract Documents;

2.2.2 the requirements and conditions of Applicable Laws;

2.2.3 the standard of care applicable to those who provide construction of the type called for by this Construction Contract for projects of a scope and complexity comparable to the Project;

2.2.4 Contractor shall furnish efficient business administration of the Work, utilizing sufficient senior level management and other qualified personnel to manage the Work; and

2.2.5 Contractor shall apply its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the expressed best interests of the County and within the limitations of the Contract Price and Contract Time.

**ARTICLE 3
CONTRACT TIME**

3.1 CONTRACT TIME

3.1.1 Substantial Completion. Subject to Contract Adjustments permitted by the Contract Documents, Contractor shall achieve Substantial Completion of the entire Work not later than Seventy-Five (75) Days after the Date of Commencement.

3.1.2 Final Completion. Subject to Contract Adjustments permitted by the Contract Documents, Contractor shall achieve Final Completion of the Work not later than Twenty-Five (25) Days after the actual occurrence of Substantial Completion.

3.1.3 Contract Adjustments. The Contract Time shall be extended or shortened only in accordance with the provisions of the Contract Documents governing Contract Adjustments to the Contract Time.

3.2 LIQUIDATED DAMAGES TO COUNTY

3.2.1 County's Right. County and Contractor acknowledge that if Contractor fails to Substantially Complete the Work within the Contract Time for Substantial Completion, County will suffer substantial Losses, which would be both extremely difficult and impracticable to ascertain. On that basis they agree, as a reasonable estimate of those Losses and not a penalty, to the assessment and recovery by County of liquidated damages under this Section 3.2.

3.2.2 Per Diem Rate. If Contractor fails to actually achieve Substantial Completion of the entire Work within the Contract Time for Substantial Completion, Contractor shall pay to County as liquidated damages the amount of Nine Thousand, Five Hundred, Thirty-Three Dollars (\$9,533 (1% of total agreement amount/day)) per Day for each Day occurring after the expiration of the Contract Time for Substantial Completion until Contractor achieves Substantial Completion of the entire Work.

3.2.3 Adjustment for Extensions of Time. Subject to the provisions of Paragraph 8.2.8 of the Supplementary General Conditions dealing with concurrency of Delays, liquidated damages shall not be charged to Contractor for a period of time for which the Contractor is entitled under the Contract Documents to a Contract Adjustment to the Contract Time for Substantial Completion.

3.2.4 Partial Completion. The liquidated damages provided for under this Section 3.2 shall not be reduced or apportioned: (1) for Substantial Completion of portions of the Work prior to Substantial Completion of the entirety of the Work; or (2) if portions of the Work are deleted pursuant to (a) the County's right to order Deleted Work; or (b) a termination by County of a portion of the Construction Contract or a deletion of portion of Work for the convenience of the County or due to an Event of Contractor Default.

3.2.5 Remedies. County may deduct any liquidated damages payable under this Section 3.2 from money due or to become due to Contractor under the Contract Documents, or pursue any other legal remedy to collect such liquidated damages from Contractor and/or its Surety.

3.2.6 Not a Limitation. County's rights under this Section 3.2 shall not be interpreted as precluding or limiting: (1) any right or remedy of County arising from an Event of Contractor Default other than a failure to achieve Substantial Completion of the Work within the Contract Time for Substantial Completion; or (2) County's right to order an acceleration, at Contractor's Own Expense, of performance of the Work to overcome Delay, including, without limitation, a Delay for which County has the right to assess liquidated damages under this Section 3.2.

3.3. LIQUIDATED DAMAGES TO CONTRACTOR

3.3.1 Contractor's Right. County and Contractor acknowledge and agree that if Contractor is unable due to Compensable Delay to actually achieve Substantial Completion of the Work within the Contract Time for Substantial Completion, Contractor and its affected Subcontractors will suffer Losses that would be both extremely difficult and

impracticable to ascertain. On that basis they agree, as a reasonable estimate of those Losses and not a penalty, to the payment by County to Contractor of liquidated damages under this Section 3.3.

3.3.2 Daily Rate. Subject to the provisions of Paragraph 8.2.8 of the Supplementary General Conditions dealing with concurrency of Delays, the Contract Price shall be increased by Change Order or Unilateral Change Order in the amount of Nine Thousand, Five Hundred, Thirty-Three Dollars (\$9,533 (1% of total agreement amount/day)) per Day as liquidated damages for each Day for which Contractor is entitled under the Contract Documents to a Contract Adjustment extending the Contract Time for Substantial Completion due to Compensable Delay, with no additional amount added thereto or calculated thereon for Allowable Markup or any other markup for overhead or profit to Contractor or any Subcontractor, of any Tier.

3.3.3 Payment by County. A Change Order or Unilateral Change Order setting forth a Contract Adjustment to the Contract Price for liquidated damages permitted by this Section 3.3 shall be executed following, and not before, actual Substantial Completion and prior to or contemporaneously with Final Completion. Notwithstanding any other provision of the Contract Documents to the contrary and without limitation to the County's rights of withholding payment to Contractor as permitted elsewhere in the Contract Documents or under Applicable Laws, any amounts due to the Contractor under this Section 3.3 shall be payable as part of, and not prior to the due date for payment of, Final Payment to Contractor.

3.3.4 Deleted Work. A Contract Adjustment shall be made pursuant to Subparagraph 8.2.6.2 of the Supplementary General Conditions reducing the Contract Price and Contract Time in the event that the Contract Time is shortened due to (1) Deleted Work; or (2) a termination by County of a portion of the Construction Contract for convenience or due to an Event of Contractor Default.

3.3.5 Termination. County shall have no liability to Contractor to pay any liquidated damages under this Section 3.3, nor shall County have any other liability to Contractor or any Subcontractor for any Loss due to Delay (including, without limitation, Compensable Delay) in the event the Construction Contract is wholly terminated (whether such termination is a termination for cause by County or Contractor or a termination for convenience by County) at any time prior to expiration of the Contract Time for Substantial Completion set forth in Paragraph 3.1.1, above.

3.3.6 Exclusive Remedy. Liquidated damages payable by County under this Section 3.3 constitute the Contractor's sole and exclusive right and remedy for recovery from County of Losses to Contractor and its Subcontractors, of every Tier, that are attributable to Compensable Delay, regardless of the cause, duration or timing of the Compensable Delay and no other Contract Adjustment, or other form of compensation or reimbursement, of any kind, shall be made to Contractor or any Subcontractor, of any Tier, for any Loss resulting, directly or indirectly, from, or attributable to, any of the following: (1) Unexcused Delay or acceleration to overcome Unexcused Delay; (2) Excusable Delay or any acceleration not authorized by County in writing to overcome Excusable Delay; or (3) concurrency of a Compensable Delay with any different type or class of Unexcused Delay or Excusable Delay, whether such concurrency is a concurrency in cause or in effect.

3.3.7 WAIVER BY CONTRACTOR.

CONTRACTOR WAIVES THE RIGHT TO FURTHER RECOURSE OR RECOVERY OF COSTS OR DAMAGES BY REASON OF OR RELATED TO ANY DELAY (INCLUDING, WITHOUT LIMITATION, COMPENSABLE DELAY) THAT IS IN EXCESS OF OR NOT RECOVERED BY CONTRACTOR AS PART OF THE LIQUIDATED DAMAGES PAYABLE TO CONTRACTOR UNDER THIS SECTION 3.3.

ARTICLE 4 CONTRACTOR COMPENSATION

4.1 CONTRACT PRICE

4.1.1 Contract Price. County shall pay the Contractor in current funds for the Contractor's performance of the Work in accordance with the Contract Documents the Contract Price, exclusive of Contract Adjustments, of Nine Hundred Fifty-Three Thousand, Two Hundred Eighty-Five Dollars (\$953,285).

4.1.2 Basis. The Contract Price set forth in Paragraph 4.1.1, above, is based on the Work Order submitted by Contractor and accepted by County as set forth in Section 4.2, below. This Construction Contract is the Purchase Order issued by an NJPA member as referenced in the Indefinite Quantity Construction Agreement between the Contractor and NJPA; and, as that document states, any Purchase Order issued by an NJPA member including terms and conditions and supplemental specs shall govern.

4.1.3 Adjustments. The Contract Price is only subject to adjustment as permitted by the Supplementary General Conditions for Contract Adjustments due to Compensable Changes, Deleted Work or Compensable Delay.

4.1.4 All-Inclusive Price. The Contract Price as adjusted for Contract Adjustment permitted by the Contract Documents is the total amount payable by County to Contractor for performance of the Work under the Contract Documents and is deemed to cover all Losses, foreseeable or unforeseeable, arising out of or related to past, present or future circumstances within or outside the control of the Contractor or its Subcontractors affecting the time or cost of performing the Work, including, without limitation, the effects of natural elements upon the Work, unforeseen difficulties or obstructions affecting the performance of the Work (including, without limitation, unforeseen conditions at the Site that do not constitute Differing Site Conditions) and unforeseen fluctuations in market conditions and price escalations (whether occurring locally, nationally or internationally).

4.2 ALTERNATES

The Contract Price includes the following Alternates, which are described in the Contract Documents and are hereby accepted by County:

Number	Description	Dollar Amount
N/A	N/A	N/A

4.3 UNIT PRICES

Unit prices agreed to by County and Contractor are as follows:

Description	Measurement Unit	Dollar Amount
N/A	N/A	N/A

ARTICLE 5 ENUMERATION OF CONTRACT DOCUMENTS

5.1 LIST OF CONTRACT DOCUMENTS

The Contract Documents include, without limitation, the following:

5.1.1 Construction Contract. The Contract Documents include this executed Standard Form of Construction Contract for EZIQC Between County and Contractor.

5.1.2 General Conditions. The Contract Documents include the NJPA IQCC Standard Terms and Conditions and Contract General Conditions (Book 2), Supplementary General Conditions of the Standard Form of Construction Contract for EZIQC Between County and Contractor (Long Form) or Supplementary General Conditions of the Standard Form of Construction Contract Between County and Contractor (Short Form).

5.1.3 Specifications. The Contract Documents include the following Specifications:

Title	Date	Divisions
Replace Rooftop AC-Units US Bankruptcy Court / US District Court Riverside California Specifications	January 2014	All in set

5.1.4 Drawings. The Contract Documents include the following Drawings dated January 28, 2014, unless a different date is shown below:

Sheet Number	Title	Date	Pages
All sheets included in the referenced drawing set	US Bankruptcy Court AC Unit Replacement & US District Court AC Unit Replacement	January 28, 2014	Seven (7) plan sheets in each set. Fourteen combined plan sheets

5.1.5 Also incorporated herein are:

- 5.1.5.1. NJPA Membership Agreement (executed)
- 5.1.5.2. NJPA Indefinite Quantity Construction Agreement
- 5.1.5.3. NJPA Invitation to bid (IFB) Documents
- 5.1.5.4. NJPA Project Information, Instructions to Bidders and Execution Documents (Book 1)
- 5.1.5.5. EZIQC Work Order & Detailed Scope Documents

**ARTICLE 6
SPECIAL REQUIREMENTS**

6.1 LABOR CODE SECTION 1861 CERTIFICATION

By signing below, Contractor certifies that he/she/it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the California Labor Code, and that he/she/it will comply with such provisions before commencing the performance of the Work.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA, 95826.

IN WITNESS WHEREOF, the parties hereto have made and executed four (4) originals of this Construction Contract, on _____ [to be filled in by Clerk of the Board].

[SIGNATURES ON FOLLOWING PAGE]

"COUNTY"

COUNTY OF RIVERSIDE

By: Jeff Stone
Jeff Stone Chairman
Board of Supervisors

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By: Karla Dwyer
Deputy

(SEAL)

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel

By: Marsha L. Victor 3/27/14
Marsha L. Victor
Principal Deputy County Counsel

"CONTRACTOR"

ACCO ENGINEERED SYSTEMS, INC. AC

Jeffrey R. Marrs
(sign on line above)

By: JR
(type name)
JEFFREY R. MARRS, Chief Operating Officer
Title **Executive Vice President**

The following information must be provided concerning the Contractor:

State whether Contractor is corporation, individual, partnership, joint venture or other:
S-Corporation

If "other", enter legal form of business:

Enter address:
6265 San Fernando Road
Glendale, CA 91201

Telephone: 818-244-6571
Facsimile: 818-548-4402
Email: alufkin@accoservice.com

Employer State
Tax ID #: 055-2772-6

State Contractor License #: 120696

If Contractor is not an individual or corporation, list names of 4 representatives who have authority to contractually bind Contractor:

If Contractor is a corporation, state:
Name of President: Peter H. Narbonne
Name of Secretary: Roberta Kessler
State of Incorporation: California

CONTRACTOR'S CERTIFICATE REGARDING WORKERS'
COMPENSATION

Labor Code Section 3700 states:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employee.

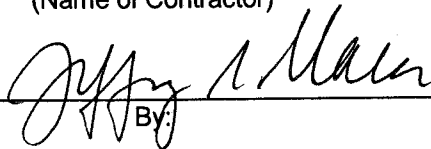
(c) For any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702.

For purposes of this section, 'state' shall include the superior courts of California."

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

ACCO ENGINEERED SYSTEMS, INC.

(Name of Contractor)



By:

JEFFREY R. MARRS, Chief Operating Officer
Executive Vice President

(Name of Signer)

(Signature)

(In accordance with Article 5 (commencing at Section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

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SPECIFICATIONS AND CONTRACT DOCUMENTS
FOR

US BANKRUPTCY & DISTRICT COURTS HVAC REPLACEMENT
PROJECT-EZIQC-FM08110005906



PREPARED BY
COUNTY OF RIVERSIDE
ECONOMIC DEVELOPMENT AGENCY

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Workers' Compensation Certificate	<u>1</u>
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General Conditions	<u>114</u>
Construction Task Catalog & Technical Specifications (Set)	<u>Attached CD</u>

**MEMBERSHIP AGREEMENT
PARTICIPATING MEMBER**



This Agreement, made and entered into this 1 day of September, 2011,
by and between National Joint Powers Alliance®, hereinafter referred to as "NJPA" and
County of Riverside, CA hereinafter referred to as the "Applicant".

Witnesseth:

That for a good and valuable consideration of the premises, mutual terms, covenants, provisions, and conditions hereafter set forth, it is agreed by and between the parties as follows:

Whereas, the NJPA is created by Minnesota Statute §123A.21 (with membership further defined in M.S. §471.59) to serve cities, counties, towns, public or private schools, political subdivisions of Minnesota or another state, another state, any agency of the State of Minnesota or the United States including instrumentalities of a governmental unit and all non-profits; and

Whereas, NJPA's purpose as defined in M.S. §123A.21 is to assist in meeting specific needs of clients which could be better provided by NJPA than by the members themselves; and

Whereas, the NJPA Board of Directors has established the ability for an "Applicant" desiring to participate in NJPA contracts and procurement programs to become a Participating Member; and

Whereas, the NJPA Board of Directors has determined that Participating Members will have no financial or organizational liability to NJPA or to its organizational activities;

Now Therefore, it is hereby stipulated and agreed that the "Applicant" Agency desires to be a Participating Member of NJPA with contract purchasing benefits, in accordance with terms and conditions of the applicable contract(s), and that NJPA hereby grants said Membership to said "Applicant."

Term:

This continuing agreement shall remain in force or until either party elects to dissolve the Agreement by written notice.

THEREFORE, IN WITNESS THEREOF,

the parties hereto have executed this Agreement the day and year written above.

National Joint Powers Alliance®
200 1st Street NE, Suite 1
Staples, MN 56479

Member Name:

By

Bob Buster

AUTHORIZED SIGNATURE

**BOB BUSTER
CHAIRMAN, BOARD OF SUPERVISORS**

TITLE

OCT 18 2011

DATE

[Signature]

AUTHORIZED SIGNATURE

CRENTIS PIRROIA

TITLE

9/1/11

DATE

JE CIA HARPER-IHEM, Clerk
By *[Signature]*
DEPUTY

FORM APPROVED COUNTY COUNSEL

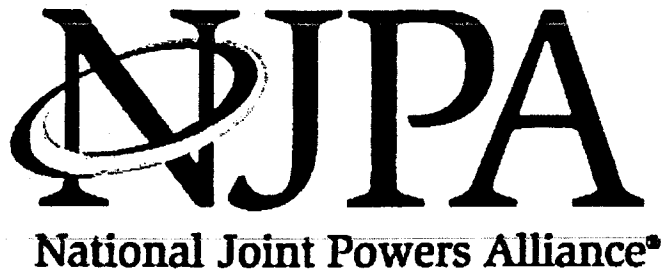
BY:

Neal R. Kipnis
NEAL R. KIPNIS

DATE

09/21/2010

OCT 18 2011 3:13



INDEFINITE QUANTITY CONSTRUCTION AGREEMENT

IFB NUMBER: CA-H07A-082013-AES

GEOGRAPHIC AREA Riverside

This Agreement dated August 20, 2013, by and between the National Joint Powers Alliance, hereinafter referred to as NJPA and ACCO Engineered Systems at the following address 6265 San Fernando Road, Glendale, CA 92101.

hereinafter referred to as the CONTRACTOR.

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

ARTICLE 1. CONTRACT DOCUMENTS

- A. Contract Documents: This Agreement; the IFB Documents; (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications) and Addenda thereto, the Bid Deposit, 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 Work Orders/Change Orders and written interpretations and all Purchase Orders and accompanying documents (Requests for Proposals, Detailed Scopes of Work, Work Order Proposal Packages, etc.) issued hereunder.
- B. The terms and conditions of a Purchase Order issued by an NJPA Member in connection with any Work Order, including supplemental technical specifications referenced therein, shall govern.

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

ARTICLE 2. SCOPE OF WORK

- A. The Contractor shall provide the services required to develop each Work Order in accordance with the procedures for developing Work Orders set forth in the IQCC Standard Terms and Conditions and the Contract Documents.
- B. Each Work Order developed in accordance with this Agreement will be issued in connection with a Purchase Order by an individual NJPA Member. The Purchase Order will reference the Work Order and require the Contractor to perform the Detailed Scope of Work within the Work Order Completion Time for the Work 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 AGREEMENT PRICE

- A. This Agreement is an indefinite-quantity contract for construction/roofing work and services. The Estimated Annual Value of this Agreement is \$ 2,000,000. This is only an estimate and may increase or decrease at the discretion of the NJPA.
- 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:
 - a. 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 NJPA:**
 - a. Normal Working Hours Prevailing Wage: Work performed from 7:00am until 4:00pm Monday to Friday, except holidays. Contractor shall perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

1.2432

(Specify to four (4) decimal places)

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

1.4054

(Specify to four (4) decimal places)

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

1.2432

(Specify to four (4) decimal places)

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

1.4054

(Specify to four (4) 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:

1.2432

(Specify to four (4) decimal places)

ARTICLE 4. TERM OF THE AGREEMENT

- A. The base term shall be one year with three one year options. The total term of the Contract shall not exceed four years. The Contractor may withdraw from the Agreement on each anniversary of the award, provided that the Contractor gives 60 Days written notice of its intent to withdraw. NJPA may, for any reason, terminate this Agreement at any time.
- B. All Purchase Orders issued during a term of this Agreement shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such term has expired. All terms and conditions of the Agreement apply to each Purchase Order.

ARTICLE 5. SOFTWARE LICENSING

- A. NJPA selected The Gordian Group's (Consultant) software, data and services (IQCC System) for their IQCC program. The system includes Consultant's proprietary PROGEN®, eGordian® and/or ezIQCC® 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 NJPA and NJPA Members. The Contractor shall be required to agree to Consultant's IQCC System License to obtain access to Consultant's IQCC Applications. The Contractor's use, in whole or in part, of Consultant's IQCC Applications and Construction Task Catalog and other proprietary materials provided by Consultant for any purpose other than to execute work under this Contract for NJPA and NJPA Members is strictly prohibited unless otherwise stated in writing by Consultant. The Contractor hereby agrees to abide by the terms of the following IQCC System License:

ARTICLE 6. IQCC SYSTEM LICENSE

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

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

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

NATIONAL JOINT POWERS ALLIANCE®
Book 1 – Project Information, Instructions to Bidders and Execution Documents

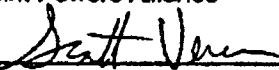
equity. In the event that it becomes necessary for either party to this IQCC System License to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled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

In the event of a conflict in terms and conditions between this IQCC System License and any other terms and conditions of this Agreement or any Job Order purchase order or similar purchasing document issued by NJPA or an NJPA Member, this IQCC System License shall take precedence.

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

By:

National Joint Powers Alliance



Authorized Signature

Contractor



Authorized Signature

Thomas E. Reynolds / Sales Manager.
Print Name

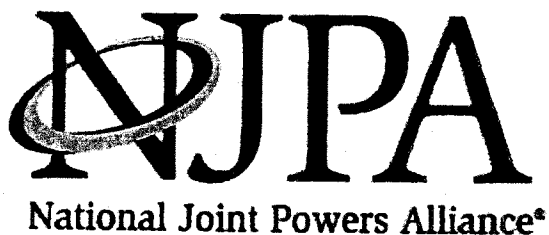
Contract Number: CA-N07A-NB2013-AES (assigned by NJPA)

INVITATION FOR BID (IFB) DOCUMENTS

SOLICITATION NO.

SEE INVITATION FOR BID – NEXT PAGE

HVAC ENERGY EFFICIENCY SERVICES (C-20)



202 12th Street NE
Staples, MN 56479

Mr. Matthew Peterson
eziQC Contract Manager
EZIQC@NJPACOOB.org

July 2013

INDEFINITE QUANTITY CONSTRUCTION CONTRACT

(IQCC)

Invitation For Bid (IFB)

HVAC ENERGY EFFICIENCY (C-20)

Solicitation #	Geographic Area	LIC	Bid Due Date and Time	Bid Deposit	Estimated Annual Value	Term
CA-H01A-080613	San Luis Obispo	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H01B-080613	San Luis Obispo	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H01C-080613	San Luis Obispo	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H02A-080613	Santa Barbara	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H02B-080613	Santa Barbara	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H02C-080613	Santa Barbara	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H03A-080613	Kern	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H03B-080613	Kern	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H03C-080613	Kern	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H04A-080613	Ventura	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H04B-080613	Ventura	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H04C-080613	Ventura	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H05A-080613	Los Angeles	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H05B-080613	Los Angeles	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H05C-080613	Los Angeles	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H05D-080613	Los Angeles	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H05E-080613	Los Angeles	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H06A-080613	San Bernardino	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H06B-080613	San Bernardino	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H06C-080613	San Bernardino	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H06D-080613	San Bernardino	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H07A-080613	Riverside	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H07B-080613	Riverside	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H07C-080613	Riverside	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H07D-080613	Riverside	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H08A-080613	Fresno	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H08B-080613	Fresno	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H08C-080613	Fresno	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H09A-080613	Imperial	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H09B-080613	Imperial	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H09C-080613	Imperial	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H010A-080613	Orange	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H010B-080613	Orange	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H010C-080613	Orange	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H010D-080613	Orange	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H011A-080613	Tulare	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H011B-080613	Tulare	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H011C-080613	Tulare	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H012A-080613	Kings	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years

CA-H012B-080613	Kings	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H012C-080613	Kings	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H013A-080613	Inyo	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H013B-080613	Inyo	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H013C-080613	Inyo	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H014A-080613	Mono	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H014B-080613	Mono	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H014C-080613	Mono	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H015A-080613	San Diego	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H015B-080613	San Diego	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years
CA-H015C-080613	San Diego	C-20	4:30 PM CST 08/06/13	\$25,000	\$2,000,000	4 Years

**Bids for all contracts covered by this solicitation are due by
4:30 PM CST on August 6, 2013**

At the offices of the
National Joint Powers Alliance®
202 12th Street NE, P.O. Box 219, Staples, MN 56479

The National Joint Powers Alliance® (NJPA) issues this Invitation For Bid (IFB) on behalf of, and to provide Indefinite Quantity Construction Contracting (IQCC) services to all current and potential NJPA Members including all government agencies, education agencies to include colleges and universities, and non-profit agencies in the counties of; San Luis Obispo, Santa Barbara, Kern, Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego, Imperial, Fresno, Tulare, Kings, Inyo, and Mono California. See Section 4, Exhibit A, for the Geographic Map of NJPA Contract Areas.

NJPA is issuing this IFB in support of the Southern California Regional Energy Network (The Energy Network) and all other NJPA Members in the State of California. The California Public Utilities Commission (CPUC) created The Energy Network in 2012 and funded the program to serve those local governments, public agencies and their constituencies that are serviced by the Southern California Edison (SCE) and / or Southern California Gas Company (SCG). The services of The Energy Network are available to all public agencies served by both SCE and SCG as well as to all public agencies served by either SCE or SCG and a Municipal Utility. Please note that the NJPA contract area encompasses a larger area than The Energy Network's service area and, more specifically, San Diego County, San Luis Obispo County and Fresno County are not covered by The Energy Network. See Section 4, Exhibit B, for The Energy Network Service Area.

The Energy Network will engage and provide services to SCE and SCG customers that will help increase their participation in utility energy efficiency programs. The Energy Network services will address common barriers that prevent many public agencies from implementing energy efficiency projects and will complement and supplement services provided by existing utility local government partnerships (LGP's) and other programs. Together with these contracts, The Energy Network program will be a turnkey resource for public agencies and allow for expedited and cost-effective upgrades to facilities and infrastructure.

The Energy Network services will be available during the pilot phase (2013/2014), with a target to achieve the following energy savings from public buildings and infrastructure: 29,675,000 kWhs and 400,409 Therms. For participating public agencies, the Program's engineering consultants will provide auditing services, develop performance specifications and be part of the Program's construction management support team. Within its goal to reduce the energy consumption and lower the utility bills of public agencies, the Program plans to optimize facilities' lighting and mechanical systems through whole building retrofits, retrofit 35,000 to 40,000 streetlights with LED technology and implement efficiency measures at pump stations, well sites, water and wastewater treatment plants and other facilities at water agencies and other public agencies.

It is the intention of NJPA to award multiple contracts for construction services in each of these areas. Each contract has an initial term of one (1) year and bilateral option provisions for three (3) additional terms. The estimated annual value is \$2,000,000. The total term of the contract cannot exceed four (4) years.

This IFB consist of four Books:

- Book 1: Project Information, Instructions to Bidders and Execution Documents
- Book 2: IQCC Standard Terms and Conditions; General Terms and Conditions
- Book 3: Construction Task Catalog® (Separate for Each Geographical Area)
- Book 4: Technical Specifications

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

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

- | | |
|-----------------------------------|---|
| July 22, 2013 10:00 AM PDT | Santiago Oaks Regional Park, 2145 N. Windes Dr.,
Orange, CA 92869 |
| July 23, 2013 10:00 AM PDT | Los Angeles County Community Development
Commission, 700 W. Main Street, Alhambra, CA 91801 |
| July 24, 2013 10:00 AM PDT | County of Ventura, General Services Department
Facilities and Materials, 800 S. Victoria Ave. L#3080
Ventura, CA 93009 |
| July 25, 2013 10:00 AM PDT | Fresno Residence Inn, 5322 N. Diana Ave., Fresno, CA
93710 |

A Pre-Bid Webinar will be hosted by NJPA on July 31, 1:00 P.M. CDT. The Webinar will require the Contractor to pre-register at: <http://www.nipacoop.org/eziqc-registration>. Go to the Website, select the appropriate Webinar and fill-in all the information.

An electronic (CD) copy of the IFB Documents which include the instructions for submitting a bid and the bid documents may be obtained by letter of request to Matthew Peterson, NJPA, 202

12th Street NE, Staples, MN 56479, or by email request to EZIQC@NJPACCOOP.org. All requests must include; **mailing address, email address, contact name, phone number**. Bids are due by 4:30 pm CST on August 6, 2013 and will be opened at 9:00 am on August 7, 2013. IFB Documents will be available until August 6, 2013.

Direct questions regarding this IFB to: Matthew Peterson EZIQC@NJPACCOOP.org or (218) 894-5493.

BOOK 1

Project Information, Instructions to Bidders, and Execution Documents

SOLICITATION NO. SEE INVITATION FOR BID

HVAC ENERGY EFFICIENCY (C-20)



National Joint Powers Alliance*

202 12th Street NE
Staples, MN 56479

Mr. Matthew Peterson
ezIQC Contract Manager
matthew.peterson@njpacoop.org

July 2013

BOOK 1

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NATIONAL JOINT POWERS ALLIANCE®
Book 1 – Project Information, Instructions to Bidders and Execution Documents

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NJPA is a trademark of the National Joint Powers Alliance®. eziQC®, eGordian®, Construction Task Catalog® and PROGEN® are trademarks of their respective owners.

SECTION ONE - PROJECT INFORMATION

1. DEFINITIONS

- 1.1 National Joint Powers Alliance® (NJPA):** NJPA is a public agency serving as a national municipal contracting agency established under the Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative 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:** NJPA cooperatively shares those contracts with its Members nationwide through various "Joint Exercise of Powers Laws" established in Minnesota and applicable laws in other states. The Minnesota "Joint Exercise of Powers Law" is Minnesota Statute §471.59 which states "Two or more governmental units...may jointly or cooperatively exercise any power common to the contracting parties..." Similar Joint Exercise of Powers Laws exists within the laws of each State of the United States. This Minnesota Statute allows NJPA to serve Member agencies located in all other states. Municipal agencies nationally have the ability to participate in cooperative purchasing activities as a result of specific laws of their own state. These laws can be found on our website at <http://www.njpacoop.org/contract-purchasing-solutions/legal-authority/state-procurement-resources>. The California "Joint Exercise of Powers Act" is found in California Government Code 6500-6536.
- 1.3 NJPA Members:**
- 1.3.1 Potential NJPA Members:** A Potential NJPA Member is defined as any public or private educational agencies including colleges and universities, districts or school boards, and any governmental unit including a city, county, town, political subdivision of Minnesota or another state, and any agency of the State of Minnesota or the United States, any instrumentality of a governmental unit, and any non-profit. Membership in NJPA is required to participate in any NJPA Contract. Any current or potential Member of NJPA who is in compliance with the terms and conditions of membership, shall have the option and freedom to access any of the procurement contracts of NJPA.
- 1.3.2 NJPA Member:** An NJPA Member is defined as any "Potential NJPA Member" who has completed and submitted a membership form or acknowledgement.
- 1.4 Purchase Order:** Purchase Orders for construction and services may be executed between NJPA or NJPA Members and the Contractor pursuant to this Invitation to Bid/Invitation for Bid and the resulting Agreement.
- 1.4.1 Governing Law:** Purchase Orders, as identified above, shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the NJPA Member. Each and every provision of law and clause required by law to be included in the Purchase Order shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either part the Contract shall be physically amended to make such inclusion or correction. The venue for any litigation arising out of disputes related to Purchase Order(s) shall be a court of competent jurisdiction to the Purchaser.
- 1.4.2 Additional Terms and Conditions:** Additional terms and conditions to a Purchase Order may be proposed by NJPA, NJPA Members, or Contractors. Acceptance of these additional terms and conditions is OPTIONAL to all parties

to the Purchase Order. The purpose of these additional terms and conditions is to, among other things, formerly introduce job or industry specific requirements of law such as prevailing wage legislation. Additional terms and conditions can include specific policy requirements and standard business practices of the issuing NJPA Member.

- 1.5 Adjustment Factors:** Adjustment Factors are the Contractor's competitively bid price adjustments to the Unit Prices as published in the Construction Task Catalog, Book 3. Adjustment Factors are expressed as an increase or decrease from the published prices.
- 1.6 Construction Task Catalog:** A comprehensive listing of specific construction related Tasks, together with a specific unit of measurement and a Unit Price (also referred to as the CTC). Construction Task Catalog is a registered trademark of The Gordian Group, Inc.
- 1.7 Agreement:** the written Agreement between the Contractor and NJPA covering the Work to be performed; and other Contract Documents incorporated in or referenced in the Agreement and made part thereof as if provided therein.

2. ABOUT THE NATIONAL JOINT POWERS ALLIANCE® (NJPA)

- 2.1** The National Joint Powers Alliance®- (NJPA)- is a public agency serving as a national municipal contracting agency established under the Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative purchasing services to its membership. Eligible membership and participation includes states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities and non-profit organizations
- 2.2** Under the authority of Minnesota state laws and enabling legislation, NJPA facilitates a competitive bidding and contracting process on behalf of the needs of itself and the needs of current and potential member agencies locally and nationally. This process results in national procurement contracts with various Vendors of products/equipment and services which NJPA Member agencies desire to procure. These procurement contracts are created in compliance with applicable Minnesota Municipal Contracting Laws. A complete listing of NJPA cooperative procurement contracts can be found at <http://www.njpacoop.org/contract-purchasing-solutions/contracts>
- 2.3** NJPA is a public agency governed by publicly elected officials that serve as the NJPA Board of Directors. NJPA's Board of Directors call for all proposals, awards all Contracts, and hosts those resulting Contracts for the benefit of its own and its Members use.
 - 2.3.1 Subject to Approval of the NJPA Board:** NJPA contracts are awarded by the action of NJPA Board of Directors. This action is based on the open and competitive bidding process facilitated by NJPA. The evaluation and resulting recommendation is presented to the Board of Directors by the NJPA Proposal Evaluation Committee.
- 2.4** NJPA currently serves over 50,000 member agencies nationally. Both membership and utilization of NJPA contracts continue to expand, due in part to the increasing acceptance of Cooperative Purchasing throughout the government and education communities nationally.

3. DEFINED GOALS OF THE IFB

- 3.1** The goal of this IFB is to establish a group of indefinite quantity construction contract (IQCC) for Heating, Ventilating, and Air Conditioning (HVAC) that NJPA and NJPA Members may access to complete small to medium sized repair, maintenance, new construction, and energy efficiency Projects at competitively bid prices. The Contractors will perform an ongoing series of individual Projects for NJPA Members at different locations primarily within the designated Geographic Area(s).

Additionally, the goal of this IFB is to support the Southern California Regional Energy Network (The Energy Network) and all other NJPA Members in the State of California. The California Public Utilities Commission (CPUC) created The Energy Network in 2012 and funded the program to serve those local governments, public agencies and their constituencies that are serviced by the Southern California Edison (SCE) and / or Southern California Gas Company (SCG). The services of The Energy Network are available to all public agencies served by both SCE and SCG as well as to all public agencies served by either SCE or SCG and a Municipal Utility. Please note that the NJPA contract area encompasses a larger area than The Energy Network's service area and, more specifically, San Diego County, San Luis Obispo County and Fresno County are not covered by The Energy Network.

The Energy Network will engage and provide services to SCE and SCG customers that will help increase their participation in utility energy efficiency programs. The Energy Network services will address common barriers that prevent many public agencies from implementing energy efficiency projects and will complement and supplement services provided by existing utility local government partnerships (LGP's) and other programs. Together with these contracts, The Energy Network program will be a turnkey resource for public agencies and allow for expedited and cost-effective upgrades to facilities and infrastructure.

The Energy Network services will be available during the pilot phase (2013/2014), with a target to achieve the following energy savings from public buildings and infrastructure: 29,675,000 kWhs and 400,409 Therms. For participating public agencies, the Program's engineering consultants will provide auditing services, develop performance specifications and be part of the Program's construction management support team. Within its goal to reduce the energy consumption and lower the utility bills of public agencies, the Program plans to optimize facilities' lighting and mechanical systems through whole building retrofits, retrofit 35,000 to 40,000 streetlights with LED technology and implement efficiency measures at pump stations, well sites, water and wastewater treatment plants and other facilities at water agencies and other public agencies.

- 3.2** One of the major benefits to a Bidder is that one response may be prepared to receive a single award that is potentially available to and accessible by many potential buyers from government agencies, education, and non-profit agencies throughout the Geographic Area. NJPA Board of Directors will make awards to the selected Bidder(s). The procurement activities of the NJPA Bid Review Committee is limited to document preparation, answering Bidder questions, advertising the solicitation, distribution of this IFB upon request, conducting an evaluation and making recommendation for possible approval to NJPA Board of Directors. Contracts awarded through NJPA are intended to meet the procurement laws of all

states and NJPA will exhaust all avenues to comply with as many state laws as possible. It is the responsibility of each participating NJPA Member to ensure to their satisfaction that these laws are satisfied. An individual NJPA Member using these contracts is deemed by its own accord to be in compliance with bidding regulations. NJPA encourages the awarded Contractor to assist NJPA and the NJPA Member in this research to the benefit of all involved. After the award and contract phase, NJPA Members can issue Purchase Orders for any amount without the necessity to prepare their own IFB, or gathering of necessary quotations. This saves the NJPA Members countless hours of time and allows for more economical and efficient purchasing. State laws permit or encourage cooperative purchasing contracts with the belief that better prices and value will result.

4. IQCC OVERVIEW

- 4.1 IQCC is a competitively bid indefinite quantity construction contract awarded to Contractors to accomplish the repair, alteration, modernization, rehabilitation, and minor new construction of infrastructure, buildings, structures, or other real property. The Contract value is based on the anticipated estimated annual use and the Contract term is generally multiple years. The IFB Documents include a Construction Task Catalog (CTC) containing repair and construction tasks with preset unit prices. All unit prices are based on local labor, material and equipment prices for the direct cost of construction. Once the Agreement is awarded, NJPA Members will order Work from the CTC by issuing a Purchase Order against the Agreement.
- 4.2 Bidders will offer price adjustments (Adjustment Factors) to be applied to the CTC unit prices. The Adjustment Factors represent either an increase to (such as 1.1000) or a decrease from (such as 0.9800) the preset Unit Prices. The amount to be paid for the Work ordered will be determined by: multiplying the preset unit prices by the appropriate quantities and by the appropriate Adjustment Factor. The CTC and the Contractor's Adjustment Factors will be incorporated into the awarded Agreement.
- 4.3 Under IQCC, the Contractor furnishes management, labor, materials, equipment and incidental design support needed to perform the Work.
- 4.4 NJPA through a formal selection process awarded a professional service agreement to The Gordian Group, Inc. (Consultant) for the provision of software, data and services (IQCC System) for their IQCC program. The system includes Consultant's proprietary PROGEN®, eGordian® and/or ezIQCC® 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 NJPA and NJPA Members. The Contractor shall be required to agree to Consultant's IQCC System License set forth below to obtain access to Consultant's IQCC Applications. The Contractor's use, in whole or in part, of Consultant's IQCC Applications and Construction Task Catalog® and other proprietary materials provided by Consultant for any purpose other than to execute work under this Contract for NJPA and NJPA Members is strictly prohibited unless otherwise stated in writing by Consultant. The Contractor hereby agrees to abide by the terms of the following IQCC System License:

IQCC System License

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

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

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

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

- 4.5 The NJPA member (or the NJPA Member Designated Representative), with the assistance of Consultant, will identify Projects and develop a draft scope of the

work. The Contractor and Consultant will then assist the NJPA Member in developing a final scope of work. The NJPA Member will then issue a Detailed Scope of Work and a Request for Proposal to the Contractor. The Contractor will then utilize Consultant's IQCC System to prepare a Price Proposal for the Project including a Schedule, list of identified subcontractors, and other requested documentation such as cut sheets for materials. Consultant will assist the NJPA Member with Price Proposal review, and if the Price Proposal is found to be reasonable, the NJPA Member will issue a Purchase Order to Contractor. The Purchase Order will reference the Detailed Scope of Work and set forth the Work Order Completion Time, and the Purchase Order Price. The Contractor shall perform the Detailed Scope of Work within the Work Order Completion Time for the Purchase Order Price. A separate Purchase Order will be issued for each project. Extra Work, credits, and deletions will be contained in Supplemental Purchase Orders calculated in the same manner.

- 4.6 The Contractor shall, within two (2) business days of receipt of a Purchase Order from an NJPA Member, provide notification to NJPA of each Purchase Order by forwarding a copy of the Purchase Order via email to PO@ezlQC.com or via facsimile to (864) 233-9100.
- 4.7 The Contractor shall, within two (2) business days of sending an Invoice to an NJPA Member, provide notification to NJPA of each Invoice by forwarding a copy of the Invoice via email to Invoice@ezlQC.com or via facsimile to (864) 233-9100.

5. GEOGRAPHIC REGIONS

NJPA solicits bids for separate contracts for each of the various Geographic Areas as shown on Exhibit A. This solicitation is for the Geographic Areas as specified in the Invitation To Bid.

6. THE IFB DOCUMENTS

The IFB Documents consist of four Books:

- Book 1: Project Information, Instructions to Bidders and Execution Documents
- Book 2: IQCC Standard Terms and Conditions; General Terms and Conditions
- Book 3: Construction Task Catalog (Separate for Each Geographical Area)
- 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 an NJPA Member (as solely determined by NJPA).
- 7.2 In determining a Bidder's responsibility and ability to perform the Agreement, NJPA has the right to investigate and request information concerning the financial condition, experience record, personnel, equipment, facilities, principal business location and organization of the Bidder, the Bidder's record with environmental regulations, and the claims/litigation history of the Bidder.
- 7.3 Bidder must possess documentation evidencing that the Bidder has a Class "C-20" California Contractors License for the past (5) five years, attach copies of your C-20 license in Bid Form 5.

- 7.4 Bidder must have a minimum of \$3,000,000 annual revenue for each of the past (5) five years, attach a copy of your Financials Summary with Bid Form 9.
- 7.5 Bidder must be experienced in energy efficiency projects, technologies, controls, implementation of performance specifications, installation, commissioning, operations, and Bidder must be experienced with various commercial control systems and in managing controls subcontractors in hardware installations and energy efficiency logic programming and system end-to-end commissioning.
- 7.6 Bidder must have in-house capabilities to develop construction drawings, plans and specifications.
- 7.7 Bidder must have offices within **60** miles of the Geographic Area for which a bid is submitted. Bids may be submitted for one or more Geographic Area but it is not a requirement to submit for multiple Geographic Areas.

8. AWARD

- 8.1 An Award of Contract will be made by the NJPA Board of Directors based on the recommendation of the NJPA Bid Review Committee on behalf of its current and future NJPA Members.
- 8.2 It is the intent of NJPA to award one or more Agreement(s) per Geographic Area to the lowest, responsive, responsible Bidder(s) based on the Combined Adjustment Factor as shown on Bid Form 1 and other qualifying factors. NJPA 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 NJPA and NJPA Members. NJPA reserves the right to reject all Bid Responses and advertise again if, in NJPA's opinion, the received bids do not meet or exceed the minimum needs and expectations of the NJPA current and qualifying members. NJPA reserves the right to award additional Agreements from this solicitation for a period of 180 Days (or longer, if mutually agreeable to both the Bidder and NJPA).
- 8.3 Additionally, the Contractor is required to submit a Management Plan, see Article 9, Section Two Instructions to Bidders. The Contractor's Management Plan will provide the NJPA information to gauge the responsibility of the Bidder.
- 8.4 A Bidder will not be awarded more than one same scope Contract within any Geographic Area.

9. ASSIGNMENT OF WORK

If multiple awards are made, the assignment of the Work is at the discretion of the NJPA Member. The Contractor's Adjustment Factors and their track record of performance will influence distribution of the Work.

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

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

Book 2 – IQCC Standard Terms and Conditions

Book 2 – General Terms and Conditions

Addenda, if any

Work Order which may include Plans, Drawings and supplemental Technical Specifications

NATIONAL JOINT POWERS ALLIANCE®
Book 1 – Project Information, Instructions to Bidders and Execution Documents

Standard Specifications of the NJPA Member, the City, State or
Federal Government, if any

Book 3 – Construction Task Catalog

Book 4 – Technical Specifications

Book 1 – Project Information, Instructions, and Execution
Documents

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 NJPA of all conflicts, errors or discrepancies in the IFB Documents of which Bidder knows or reasonably should have known.
- 1.3 The submission of a Bid shall constitute an incontrovertible representation by Bidder that Bidder has complied with the above requirements and that without exception, the Bid is premised upon performing and furnishing the Work required by the IFB Documents and that the IFB Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

2. SOLICITATION OF IFB

Sealed and properly identified bids entitled "**INDEFINITE QUANTITY CONSTRUCTION CONTRACT**" will be received by Matthew Peterson, eziQC Contract Manager, at NJPA Offices, 202 12th Street NE, Staples, MN 56479 until the deadline for receipt of, and opening of bids as specified in the Invitation For Bids. **Bids will be for the provision of Indefinite Quantity Construction Contract services for both NJPA and NJPA Members, and all government and education agencies to include colleges and universities.** The NJPA Director of Business Development, or a Representative from the NJPA Bid Review Committee, will then read the Bidder's names aloud. A summary of the responses to this IFB will be made available for public inspection in the NJPA office in Staples, MN. The Bid Award and resulting Agreement may be awarded within the timeframe identified in this IFB. A letter or e-mail request is required to receive the complete IFB Documents. Send or communicate all requests to the attention of Matthew Peterson 202 12th Street NE Staples, MN 56479 or EZIQC@NJPACOOOP.org to receive a complete copy of these IFB Documents. All request must include mailing address, email address, contact name, and phone number. IFB CD's will be EXPRESS mailed to the address provided. Oral, facsimile, telephone or telegraphic Bid Submissions or requests for IFB Documents are invalid and will not receive consideration.

3. ADVERTISING OF SOLICITATION

- 3.1 AS A POLICY, NJPA SHALL ADVERTISE THIS SOLICITATION IT SHALL BE POSTED ON NJPA'S WEBSITE, POSTED TO THE WEBSITE OF NOTICETOBIDDERS.COM, AND POSTED TO OTHER THIRD PARTY WEBSITES DEEMED APPROPRIATE BY NJPA. THIS ADVERTISEMENT IS ALSO SUBMITTED FOR POSTING AT INDIVIDUAL STATE LEVELS. NJPA WILL NOT MAINTAIN OR COMMUNICATE TO A BIDDER'S LIST. ALL INTERESTED BIDDERS MUST RESPOND TO THE SOLICITATION AS A RESULT OF AN INTERNET WEB NOTICE OR HARD COPY RESEARCH OF SAID PUBLICATION. BECAUSE OF THE SCOPE OF THE POTENTIAL MEMBERS AND NATIONAL VENDORS, NJPA HAS DETERMINED THAT THIS IS THE BEST WAY TO FAIRLY SOLICIT OUR ITB/IFB REQUESTS.
- 3.2 IN ADDITION, NJPA SHALL ADVERTISE IN ONE OR MORE PUBLICATIONS DISTRIBUTED IN THE STATE, INCLUDING, BUT NOT LIMITED TO, NEWSPAPERS AND OTHER PUBLICATIONS CONSISTENT WITH STATE LAW REGARDING NOTICE OF THIS INVITATION FOR BIDS.

4. REQUEST FOR INFORMATION (RFI)

- 4.1 Submit all RFIs about this IFB, in writing, to Matthew Peterson, NJPA, 202 12th Street NE, Staples, MN 56479, or email at EZIQC@NJPACOOOP.org or by fax at (218) 894-3045 prior to August 2, 2013 at 4:00 PM CST. NJPA urges potential bidders to communicate all concerns during the response period to avoid misunderstandings.
- 4.2 If an RFI is deemed by NJPA to have a material impact on the IFB, the response to the RFI will become an Addendum to these IFB Documents.
- 4.3 If the RFI and response is deemed by NJPA to be a clarification of existing terms and conditions and does not have a material impact on the IFB, no further documentation of that RFI is required.

5. PRE-BID SEMINAR

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

6. ADDENDA TO THE IFB DOCUMENTS

Addenda are written instruments issued by the NJPA that modify or interpret these IFB Documents. All Addenda issued by NJPA shall become a part of the IFB Documents. Addenda will be delivered to all potential bidders using the same method of delivery of the original IFB material or by email if appropriate. NJPA accepts no liability in connection with the delivery of said materials. Copies of Addenda will also be made available on the EZIQZ website at www.EZIQC.com/Prebid or the NJPA website from www.NJPACOOOP.org by clicking on "Current Bids" and from the NJPA offices. No Addenda will be issued later than five (5) Days prior to the deadline for receipt of bids, except an Addendum withdrawing the request for bids or one that includes postponement of the date of receipt of bids. Each potential bidder shall ascertain prior to submitting a bid that it has received all Addenda issued, and the bidder shall acknowledge its receipt in its bid response.

7. BID DEPOSIT

- 7.1 Bid deposit shall be a bond provided by a surety company or the equivalent in a cashier's check, money order or certified check. All certified checks must be drawn on a bank doing business in the United States, and shall be made payable to the order of NJPA. **CASH IS NOT AN ACCEPTABLE FORM OF BID DEPOSIT.**
- 7.2 Bid deposits shall be in the amount shown in the IFB. After bids are opened, deposits shall be irrevocable for the period of one hundred and twenty (120) Days. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid deposit.
- 7.3 The bid bonds, certified checks, or cashier's checks of unsuccessful bidders will be returned as soon as practicable after the opening of the bids; however, the deposits of lowest Bidders shall be retained until NJPA awards the Agreement to one or more of them, or for any reason rejects all bids.

8. BID SUBMISSION PROCESS

8.1 Preparation of the Bid Response

8.1.1 Bid package will be submitted for ALL Areas as follows:

- 1.1.1.1. **Two (2) original copies of Bid Forms 1, 2, 10 and 14 MUST** be submitted for each Geographic Area that you are bidding. These **MUST** be in separate **SEALED Envelopes**. On the outside of each envelope you will include Company Name, SOLICITATION NO. and Area number.
- 1.1.1.2. **Bid forms 3, 4, 5, 6, 7, 8, 9, 11 12, and 13** – only need to be submitted once for the **entire package**. As stated below you will provide One (1) Original copy of Bid Forms 3, 4, 5, 6, 7, 8, 9, 11, 12, and 13 in a Tabbed Notebook. On the outside of the Notebook you will include Company Name, SOLICITATION NO. and Area number.

NOTE: Only one Management Plan is required for this submission.

- 8.1.2 Additionally, submit two (2) electronic copies (CD-ROM's or USB Flash Drives) of the bid documents (Bid Forms 1-14) including the Management Plan and scanned copies of signature pages with original signatures. The CD's or USB Flash Drive must be labeled with; IFB No., Date, Company Name and Copy 1 or 2.
- 8.1.3 All bids shall be on the forms provided. Telegraphic, electronic mail or fax machine bids cannot be considered.
- 8.1.4 The bid documents must be submitted with original ink signatures by the person authorized to sign the bid. The person signing the bid must initial erasures, interlineations or other modifications in the bid document. Failure to properly sign the bid documents or to make other notations as indicated may result in rejection of bid and cause the bid to be deemed non-responsive.

- 8.1.5 Mistakes may be corrected prior to bid opening, but shall be initialed by the person signing the bid documents. Corrections and/or modifications received after the opening time will not be accepted, except as authorized by applicable rule, regulation or statute and NJPA.
- 8.1.6 It is the responsibility of all Bidders to examine the entire IFB package, to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after the deadline for submission of bids.

9. CONTRACTOR'S MANAGEMENT PLAN

- 9.1 The Bidder is required to submit its plan for management of the Contract. The title of the submittal shall be **"MANAGEMENT PLAN FOR EXECUTION OF IQCC."** The Contractor's Management Plan **must be** submitted as part of the Bidder's bid documents.
- 9.2 In addition to the bid documents and other required submittals, the Contractor's Management Plan **will be used** by the NJPA to determine the responsibility of the Bidder to perform the Agreement. Therefore the Bidder should take great care in the preparation of the Management Plan.
- 9.3 The Bidder may be determined non-responsive for failure to submit the Management Plan and/or declared non-responsive for failure to adequately address the issues below to the satisfaction of the NJPA.
- 9.4 The Management Plan shall include as a minimum the following information and organized specifically as shown below:
 - 1. State the number of years your company has been in the construction industry and attach a copy of your California Contractors Class "C-20" License for the past (5) five years.
 - 2. List the five (5) largest construction Contracts your firm has been awarded since 01/01/2009 that were/are similar to the Work on which you are bidding. **Submit Bid Form 12 for each Contract.**
 - a. *Contract title.*
 - b. *Contract number.*
 - c. *Geographic location.*
 - d. *Owner name and contact (title, address, email and phone number).*
 - e. *Contract amount.*
 - f. *Contract duration, start and finish dates.*
 - g. *Actual Contract duration, start and finish dates.*
 - i. *Identify the approximate dollar amount of Work completed.*
 - h. *Provide a general description of the Scope of Work.*

3. The Bidder must demonstrate satisfactory performance for each of the mechanical systems listed below (categories a. through f.) Bidder must list at least five (5) projects with a minimum contract value of \$100,000 and corresponding project references. Each project may identify multiple categories (from a. through f.), as appropriate. At a minimum, Bidder must have performed each category of work (i.e., a. through f., listed below) on at least 2 of the listed projects. **Submit Bid Form 13 for each Project.**
 - a. HVAC Controls and Energy Management Systems/Building Management Systems
 - b. Central Plants: Boilers, Chillers and Cooling Towers
 - c. Air Handlers and Air-Side Distribution Systems
 - d. Hot and Chilled Water Distribution Systems
 - e. Domestic Hot Water Systems
 - f. Testing, Adjusting, Balancing and Commissioning

4. Provide a narrative description of how you propose to execute the Work assigned under this contract, including but not limited to:
 - a. Your general understanding of the IQCC procurement system including your assessment of any of the articles of the General Conditions you deem critical to the operations and management of the contract.
 - b. The Contractor is expected to participate in the development and documentation of the Detailed Scope of Work for each Work Order. Explain in detail your proposed participation and the specific qualifications and experience of your personnel that will add benefit to this process.
 - c. Provide your approach to the expeditious close out of Projects, correction of unacceptable Work, and punch list procedures.
 - d. All Work has a minimum warranty period of one year. Please describe your process for tracking and performing warranty work.
 - e. If within the past five (5) years, the Bidder has been lawfully precluded from participating in any public procurement activity with a federal, state or local government, then the Bidder must provide a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment and the relevant circumstances relating to the suspension or debarment. If Applicable the Bidder should describe steps taken to improve and ensure these issues do not continue to be a burden. If the Bidder has held an NJPA eziQC Contract and has requested that the contract be terminated, then the Bidder must provide the reason for the request. Please describe on a separate document and if applicable describe steps taken to improve and ensure these issues do not continue to be a burden. Failure to provide this information may be grounds for Disqualification.

5. Management Team

- a. Provide an organizational chart.
- b. Describe the responsibilities and duties of each position by indicating who will manage the overall contract, attend Joint Scope Meetings, prepare Work Order Proposal Packages, negotiate with Subcontractors, supervise construction, and perform administration tasks.
- c. Provide resumes for your **key** personnel you intend to assign to this Agreement.
- d. Bidder shall have kept at least two (2) foreman on staff for the last five (5) years with management and supervisory experience in mechanical systems installation or repair – include in resumes.
- e. Provide a current list of the number and classification of your full time employees.

10. BID PRICING

- 10.1 Each Bidder must submit four Adjustment Factors to be applied to every task in the CTC. The bid shall be an adjustment "decrease from" (e.g. 0.9800) or "increase to" (e.g. 1.1000 the Unit Prices listed in the CTC. **Bidders who submit separate Adjustment Factors for separate line items will be considered non-responsive and their bids will be rejected.** In addition each Bidder must submit a nonpre-priced Adjustment Factor to be applied to work tasks not identified 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, insurance, mobilization, proposal development, and all contingencies in connection therewith. See pages 00-1 – 00-8 of Book 3 – the CTC for a complete explanation of what is included in the Unit Prices and what is not.
- 10.3 The first Adjustment Factor is to be applied to Work to be accomplished during Normal Working Hours and performed on projects that require prevailing wage rates.
- 10.4 The second Adjustment Factor is to be applied to Work to be accomplished during Other Than Normal Working Hours on projects that require prevailing wage rates.
- 10.5 The third Adjustment Factor is 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 10. These Tasks are referred to as "Non Pre-priced Tasks (NPP)". NPP Tasks may

require new specifications and drawings and may subsequently be incorporated into the CTC. The bidders will offer an Adjustment Factor to be applied to the actual material, equipment, and labor cost for NPP work Tasks. The NPP Adjustment Factor shall not be less than 1.0500 and not higher than 1.2000.

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

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

Or

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

10.8 For bid evaluation purposes only, the following weighting of the Adjustment factors shall be used to determine the Combined Adjustment Factor:

NORMAL WORKING HOURS- PREVAILING WAGE RATE PROJECTS	60%
OTHER THAN NORMAL WORKING HOURS- PREVAILING WAGE RATE PROJECTS	10%
NORMAL WORKING HOURS- NON- PREVAILING WAGE RATE PROJECTS	10%
OTHER THAN NORMAL WORKING HOURS- NON- PREVAILING WAGE RATE PROJECTS	10%
NON PRE-PRICED	10%

Note: The NJPA and Other Administrative Fee(s) will be added to the contractors Adjustment Factors after bids are received – see 21.1 below.

11. BID DOCUMENT CHECKLIST

The following documents must be submitted with the bid:

- Bid Form 1: The Adjustment Factors
- Bid Form 2: Calculation of the Combined Adjustment Factor
- Bid Form 3: Bid Deposit
- Bid Form 4: Bidder Assurance of Compliance
- Bid Form 5: Management Plan
- Bid Form 6: Certificate of Good Standing¹
- Bid Form 7: Certificate of Secretary²
- Bid Form 8: Bonding Company Statement of Bond Capacity and Availability³
- Bid Form 9: Financial Statement⁴
 1. Provide a Certificate of Good Standing for your business from the state in which you are organized.
 2. Provide a certificate of Secretary for your business identifying an authorized signer for the Agreement.
 3. Provide a letter from your bonding company setting forth your company's available bonding capacity and availability and confirming that, if required, your company could provide labor and material payment bonds and performance bonds for certain projects up to the bonding capacity.
 4. Provide the most current financial statement for your company as prepared by a CPA.
- Bid Form 10: Form of Agreement (signed)
- Bid Form 11: Agreement to work in all Areas in the State (signed)
- Bid Form 12: IQC/JOC Contract Experience (5 Contracts)
- Bid Form 13: IQC/JOC Project Experience (10 Projects)
- Bid Form 14: Existing Full-Service Office Location Affidavit

12. BID TRANSMITTAL

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

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

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

12.3 NJPA is not responsible for late receipt of bids. Bids received by the correct deadline for bid submission will be opened and the name of each Bidder and other appropriate information will be publicly read.

13. MODIFICATION OR WITHDRAWAL OF A SUBMITTED BID

A submitted bid may not be modified, withdrawn or cancelled by the Bidder for a period of one hundred and twenty (120) Days following the time and date designated for the receipt of bids. Prior to the deadline for submission of bids, any bid submitted may be modified or withdrawn by notice to the NJPA Coordinator of Bids and Contracts. Such notice shall be submitted in writing and include the signature of the Bidder and shall be delivered to NJPA prior to the deadline for submission of bids and it shall be so worded as not to reveal the content of the original bid. However, the original bid shall not be physically returned to the Bidder until after the official bid opening. Withdrawn bids may be resubmitted up to the time designated for the receipt of the bids if they are then fully in conformance with the Instructions to Bidders.

14. BIDDER RESPONSIVENESS AND RESPONSIBILITY

14.1 In accordance with accepted standards of competitive sealed bid awards as set forth in the State's Procurement Code, competitive sealed bids/awards will be made to responsive and responsible Bidders whose bids are determined in writing to be the most advantageous to NJPA and its current or future NJPA Members. To qualify for evaluation, a bid must 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 NJPA.

14.2 Any Contractor wishing to submit a bid in response to this IFB must also comply with the following minimum responsibility requirements to ensure they are qualified to perform the requirements of the contract:

14.2.1 Experience: Bidder has been in business for a minimum of five (5) years prior to the bid due date performing similar work to that anticipated to be performed under the contract he is bidding.

15. CERTIFICATION

By signing this bid, the Bidder certifies:

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

16. PROTESTS

16.1 Protests shall be filed with the NJPA's Executive Director and shall be resolved in accordance with appropriate state statutes of Minnesota. Protests will only be accepted from Proposers. A protest must be in writing and filed with NJPA. A protest of an award or proposed award must be filed within ten (10) days after the public notice or announcement of the award. No protest shall lie for a claim that the selected Proposer is not a responsible Proposer. A protest must include:

1. The name, address and telephone number of the protester;
2. The original signature of the protester or its representative (you must document the authority of the Representative);
3. Identification of the solicitation by RFP number;
4. Identification of the statute or procedure that is alleged to have been violated;
5. A precise statement of the relevant facts;
6. Identification of the issues to be resolved;
7. The aggrieved party's argument and supporting documentation;
8. The aggrieved party's statement of potential financial damages;
9. A protest bond in the name of NJPA and in the amount of 10% of the aggrieved party's statement of potential financial damages.

17. PUBLIC RECORD

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

18. PREVAILING WAGE RATES AND PARTICIPATION REQUIREMENTS

18.1 This clause is applicable to States in which prevailing wage rates are established by law. The Contractor shall pay prevailing wages to all workers in accordance with the applicable laws. The wage rates used for the CTC were the prevailing wage rates, if any; in effect at the time these IFB Documents were issued. In the performance of the Work, however, Contractor shall be fully responsible for paying the generally prevailing hourly rate of wages in effect, as determined by the State Department of Labor, at the time the Work is performed. If the State Department of Labor revises the prevailing rate of hourly wages to be paid for the Work prior to completion of the Project, the revised rate shall apply to this Agreement from the effective date of such revision, however such revision shall not entitle Contractor to any increased compensation under the terms of the Agreement.

18.2 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 Work Order is performed in whole or in part using federal funding, then the Davis Bacon Wages for that area will apply.

18.3 Contractors shall meet any goals or requirements established by the NJPA Member ordering the Work, and/or satisfy the intent of said goals or requirements, with regard to Small, Local, Minority, Women, Veteran or Disadvantaged Business Enterprises. Additional participation goals may be incorporated into the Request for Proposal or Detailed Scope of Work.

20. FEES

20.1 An administrative fee (Administrative Fee) will be added to the "Contractors Adjustment Factor", collected by the Awarded Contractor and paid to NJPA as described herein within five (5) business days of receipt of payment or as specified by Other Administrative Recipients.

20.2 Two types of Administrative Fees may be used in calculating a final contract factor

20.2.1 The NJPA Administrative Fee will be calculated at the rate of 7.5% of the total project cost to the NJPA Member.

20.2.2 An additional Administrative Fee may be assessed by local or jurisdictional organizations. The additional Administrative Fee will be calculated as a specific percentage of the total project cost to the NJPA Member.

20.3 Calculation of the “Total Administrative Fee Factor”

20.3.1 The Administrative Fee Factor will be the sum of the percentage rates for all applicable Administrative Fee Factors

NJPA Administrative Fee	7.50%
Other Revenue Fee	x.xx%
Total Contract Factor	7.50% + x.xx%

20.4 Calculation of Contract Factor (This calculation shall be completed after Contract Award)

1. The Contract Factor shall be determined by increasing the Adjustment Factor by the Total Contract Factor shown above in 20.3.1.
2. The result shall be carried to five decimal places and rounded to four decimal places.

20.5 The Contractor shall be assessed a one percent (1%) per month late fee for any Administrative Fees not paid by the due date.

20.6 NJPA designates The Gordian Group, Inc., (Consultant) through its subsidiary eziQC, LLC, as their contract administrator. The NJPA Administrative Fee payments shall be made payable to eziQC, LLC and sent to the following address:

EZIQ, LLC
Attn: Accounts Receivable
140 Bridges Road, Suite E
Mauldin, SC 29662

20.7 NJPA or Consultant 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, NJPA or Consultant will provide written notification to the Contractor of the discrepancy and allow the Contractor ten (10) days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of NJPA or Consultant, NJPA or Consultant reserve the right to engage a third party to conduct an independent audit of the Contractor's records and, in the event Contractor is not in compliance with this Contract, Contractor shall, in addition to any Administrative Fees due, reimburse the appropriate party for the cost and expense related to such audit.

20.8 NJPA and Contractor hereby acknowledge that The Gordian Group, Inc., as the designated contract administrator, is a third-party beneficiary of Section 20, including all subsections therein. In the event any court action is brought to enforce payment of the Administrative Fees set forth above by any party or third-party beneficiary of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and collection costs.

21. TAXES

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

22. PHYSICAL PRESENCE

The Bidder must have a fully staffed and functioning office located within 60 miles of the Geographic Area(s) they are applying for. Contractor to **complete Bid Form 14: Existing Full-Service Office Location Affidavit** for each Geographic Area that you are bidding.

SECTION THREE - BID FORMS

BID FORM 1: THE ADJUSTMENT FACTORS

CONTRACT NO: CA

CONTRACTOR NAME: _____

GEOGRAPHICAL AREA: _____

The Contractor shall perform the Tasks required by each individual Work Order issued pursuant to this Agreement using the following Adjustment Factors:

1. Normal Working Hours Prevailing Wage: 7:00am to 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)

2. Other Than Normal Working Hours Prevailing Wage: 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)

3. Normal Working Hours Non-Prevailing Wage: 7:00am to 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)

4. Other Than Normal Working Hours Non-Prevailing Wage: 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)

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

1	.				
---	---	--	--	--	--

(Specify to four decimal places)

6. Combined Adjustment Factor: (From Line 11 Bid Form 2)

	.				
--	---	--	--	--	--

(See Bid Form 2 for calculation procedure)

NOTICE - The attention of Bidders is particularly called to the fact that, unless the Bid is made in strict conformity with the directions given, it will be considered non-responsive and will be rejected. The Bidder must fill in all boxes and blanks.

Before submitting this bid, the Bidder is directed to the Construction Task Catalog to review the explanation of the costs included in the Unit Prices and the Adjustment Factors. Except for a Non Pre-priced Task, the only compensation to be paid to a Contractor will be the total of the Unit Prices multiplied by the quantities multiplied by the Adjustment Factor. No additional payments of any kind whatsoever will be made. All costs not included in the Unit Prices must be part of the Adjustment Factors.

- The Other Than Normal Working Hours Adjustment Factor **must** be higher than the Normal Working Hours Adjustment Factor.
- **The Non Pre-priced Adjustment Factor must be between 1.0500 and 1.2000**
- Note: The NJPA and Other Administrative Fee(s) will be added to the contractors Adjustment Factors after bids are received.

NJPA RESERVES THE RIGHT TO REVISE ALL ARITHMETIC ERRORS IN CALCULATIONS FOR CORRECTNESS.

BID FORM 2: CALCULATION OF THE COMBINED ADJUSTMENT FACTOR

CONTRACT NO: CA

CONTRACTOR NAME: _____

GEOGRAPHICAL AREA: _____

The following formula has been developed for the sole purpose of evaluating bids and awarding the Agreement.

Each Bidder must complete the following calculation.

- Line 1. Normal Working Hours Prevailing Wage _____
- Line 2. Multiply Line 1 by .60 _____
- Line 3. Other Than Normal Working Hours Prevailing Wage _____
- Line 4. Multiply Line 3 by .10 _____
- Line 5. Normal Working Hours Non-Prevailing Wage _____
- Line 6. Multiply Line 5 by .10 _____
- Line 7. Other Than Normal Working Hours Non-Prevailing Wage _____
- Line 8. Multiply Line 7 by .10 _____
- Line 9. Adjustment Factor for Non Pre-priced Tasks _____
- Line 10: Multiply Line 9 by .10 _____
- Line 11: Summation of lines 2, 4, 6, 8 and 10 _____

(Combined

Adjustment Factor)

Transfer the number on line 7 to the space provided for the Combined Adjustment Factor on Bid Form 1.

Instructions To Bidder: Specify lines 1 through 11 to four (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5th decimal place is 0-4, the number in the 4th decimal remains unchanged; if the number in the 5th decimal place is 5-9, the number in the 4th decimal is rounded upward).

Note To Bidder: The weights in lines 2, 4, 6, 8, and 10 above are for the purpose of calculating a Combined Adjustment Factor only. No assurances are made by NJPA that Work will be ordered under the Contract in a distribution consistent with the weighted percentages above. The Combined Adjustment Factor is only used for the purpose of determining the lowest Bidder.

When submitting Price Proposals related to specific Work Orders, the Bidder shall utilize one or more of the Adjustment Factors applicable to the Work being performed provided in lines 1, 3, 5, 7, or 9 as applicable, on the Bid Form 2 above.

BID FORM 3: BID DEPOSIT

(insert bid deposit here)

BID FORM 4: BIDDER ASSURANCE OF COMPLIANCE

AFFIDAVIT

The undersigned, representing the persons, firms and corporations joining in the submission of the foregoing bid (such persons, firms and corporations hereinafter being referred to as the "Bidder"), being duly sworn on his/her oath, states to the best of his/her belief and knowledge:

1. I am authorized to act on behalf of the Bidder, and
2. To the best of my knowledge, no Bidder or Potential Bidder, nor any person duly representing the same, has directly or indirectly entered into any agreement or arrangement with any other Bidders, Potential Bidders, any official or employee of NJPA, or any person, firm or corporation under contract with NJPA in an effort to influence either the offering or non-offering of certain prices, terms, and conditions relating to this IFB which tends to, or does, lessen or destroy free competition in the letting of the Agreement sought for by this IFB, and
3. Bidder, or any person on Bidder's behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the manner of the bidding or award of the referenced Agreement, and
4. Neither I, Bidder, nor, any officer, director, partner, member or associate of Bidder, nor any of its employees directly involved in obtaining contracts with NJPA or any subdivision of NJPA, has been convicted of false pretenses, attempted false pretenses or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985, and
5. Bidder has examined and understands all the terms and conditions contained in the IFB and it has no exceptions to such terms and conditions, and
6. If awarded a contract, Bidder will provide the services to qualifying NJPA Members in accordance with the terms and conditions of this IFB, and
7. Bidder has carefully checked the accuracy of all the information and prices provided in this bid, and
8. Bidder understands that NJPA reserves the right to reject any or all bids and that this bid may not be withdrawn during a period of 120 days from the time of the opening date, and
9. Bidder certifies that in performing this Agreement it will comply with all applicable provisions of the federal, State, and local laws, regulations, rules, and orders.
10. If applicable, Bidder confirms receipt and acknowledgement of the following addendums:

NATIONAL JOINT POWERS ALLIANCE®
Book 1 – Project Information, Instructions to Bidders and Execution Documents

Addendum Number 1: _____

Addendum Number 2: _____

Addendum Number 3: _____

Signature

NATIONAL JOINT POWERS ALLIANCE®
Book 1 – Project Information, Instructions to Bidders and Execution Documents

Company Name: _____

Contact Person for Questions: _____ Phone: _____
(Must be individual who is responsible for filling out this Bidder's Response form)

Address: _____

City/State/Zip: _____

Telephone Number: _____ Fax: Number: _____

E-mail Address: _____

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Notarized

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public in and for the County of _____

State of _____

My commission expires: _____

Signature: _____

BID FORM 5: MANAGEMENT PLAN

(insert management plan here)

BID FORM 6: CERTIFICATE OF GOOD STANDING

Provide a Certificate of Good Standing for your business from the state in which you are organized.

(insert certificate of good standing here)

BID FORM 7: CERTIFICATE OF SECRETARY

Provide a certificate of Secretary for your business identifying an authorized signer for the Agreement.

(insert certificate of secretary here)

BID FORM 8: BONDING COMPANY STATEMENT

Provide a letter from your bonding company setting forth your company's available bonding capacity and availability and confirming that, if required, your company could provide labor and material payment bonds and performance bonds for certain projects up to the bonding capacity.

(insert bonding company statement here)

BID FORM 9: FINANCIAL STATEMENT

(insert financial statement here)

**BID FORM 10: INDEFINITE QUANTITY CONSTRUCTION AGREEMENT
IMMEDIATELY FOLLOWS**

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National Joint Powers Alliance®

INDEFINITE QUANTITY CONSTRUCTION AGREEMENT

IFB NUMBER: _____

GEOGRAPHIC AREA _____

This Agreement dated _____, by and between the National Joint Powers Alliance,

hereinafter referred to as NJPA and _____ at the following address

hereinafter referred to as the CONTRACTOR.

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

ARTICLE 1. CONTRACT DOCUMENTS

- A. Contract Documents: This Agreement; the IFB Documents; (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications) and Addenda thereto, the Bid Deposit, 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 Work Orders/Change Orders and written interpretations and all Purchase Orders and accompanying documents (Requests for Proposals, Detailed Scopes of Work, Work Order Proposal Packages, etc.) issued hereunder.
- B. The terms and conditions of a Purchase Order issued by an NJPA Member in connection with any Work Order, including supplemental technical specifications referenced therein, shall govern.

- C. The Contractor shall, within two (2) business days of receipt of a Purchase Order from an NJPA Member, provide notification to NJPA or their designated representative 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.
- D. The Contractor shall, within two (2) business days of sending an Invoice to an NJPA Member, provide notification to NJPA or their designated representative of each Invoice by forwarding a copy of the Invoice via email to Invoice@EZIQCC.com or via facsimile to (864) 233-9100.

ARTICLE 2. SCOPE OF WORK

- A. The Contractor shall provide the services required to develop each Work Order in accordance with the procedures for developing Work Orders set forth in the IQCC Standard Terms and Conditions and the Contract Documents.
- B. Each Work Order developed in accordance with this Agreement will be issued in connection with a Purchase Order by an individual NJPA Member. The Purchase Order will reference the Work Order and require the Contractor to perform the Detailed Scope of Work within the Work Order Completion Time for the Work 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 AGREEMENT PRICE

- A. This Agreement is an indefinite-quantity contract for construction/roofing work and services. The Estimated Annual Value of this Agreement is \$ 2,000,000. This is only an estimate and may increase or decrease at the discretion of the NJPA.
- 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:
 - a. 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 NJPA:**
 - a. Normal Working Hours Prevailing Wage: Work performed from 7:00am until 4:00pm Monday to Friday, except holidays. Contractor shall perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

1. _____
(Specify to four (4) decimal places)

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

1. _____
(Specify to four (4) decimal places)

2.
c. Normal Working Hours Non Prevailing Wage: Work performed from 7:00am until 4:00pm Monday to Friday, except holidays. Contractor shall perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

1. _____
(Specify to four (4) decimal places)

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

1. _____
(Specify to four (4) 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:

1. _____
(Specify to four (4) decimal places)

ARTICLE 4. TERM OF THE AGREEMENT

- A. The base term shall be one year with three one year options. The total term of the Contract shall not exceed four years. The Contractor may withdraw from the Agreement on each anniversary of the award, provided that the Contractor gives 60 Days written notice of its intent to withdraw. NJPA may, for any reason, terminate this Agreement at any time.
- B. All Purchase Orders issued during a term of this Agreement shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such term has expired. All terms and conditions of the Agreement apply to each Purchase Order.

ARTICLE 5. SOFTWARE LICENSING

- A. NJPA selected The Gordian Group's (Consultant) software, data and services (IQCC System) for their IQCC program. The system includes Consultant's proprietary PROGEN®, eGordian® and/or ezIQCC® 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 NJPA and NJPA Members. The Contractor shall be required to agree to Consultant's IQCC System License to obtain access to Consultant's IQCC Applications. The Contractor's use, in whole or in part, of Consultant's IQCC Applications and Construction Task Catalog and other proprietary materials provided by Consultant for any purpose other than to execute work under this Contract for NJPA and NJPA Members is strictly prohibited unless otherwise stated in writing by Consultant. The Contractor hereby agrees to abide by the terms of the following IQCC System License:

ARTICLE 6. IQCC SYSTEM LICENSE

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

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

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

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

In the event of a conflict in terms and conditions between this IQCC System License and any other terms and conditions of this Agreement or any Job Order purchase order or similar purchasing document issued by NJPA or an NJPA Member, this IQCC System License shall take precedence.

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

By:

National Joint Powers Alliance

Authorized Signature

Contractor

Authorized Signature

Print Name

Contract Number: _____ (assigned by NJPA)

BID FORM 11: AGREEMENT TO WORK IN ALL REGIONS OF THE STATE(S)

There are times that a Contractor may need to perform work for certain NJPA Members that have facilities in Areas throughout the State or other States. By acknowledging your acceptance below you are saying that you will perform work in any Area in the State or Other State. If you decline to perform work in all Areas you might not be assigned work to a particular NJPA Member that has Facilities outside your Area and this work may be assigned to a Contractor that accepts this term.

Please circle your intention below:

Yes We agree to work in all Areas of the State or Other States.

No We are NOT interested in working outside our Area.

Signature

The Bidder shall acknowledge this bid by signing and completing the spaces provided below:

Name of Bidder: _____

City/State/Zip: _____

Telephone No.: _____

If a partnership, names and addresses of partners:

Notarized

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public in and for the County of _____

State of _____

My commission expires: _____

Signature: _____

BID FORM 12: IQC/JOC CONTRACT EXPERIENCE (Fill-out 1 per Contract)

Contract Title: _____

Contract Number: _____

Geographic Location: _____

Owner Contact Information

Name: _____

Title: _____

Address: _____

Email: _____

Phone No: _____

Contract Amount (Value of Contract): _____

Contract Amount To-Date: \$ _____

Contract award date: _____

Contract completion date: _____

Description of Contract Work Performed; Describe project completed (i.e., Plumbing, Electrical, Paving, Site Work and approximate dollar value). Attach an additional sheet if necessary: _____

BID FORM 13: IQC/JOC PROJECT EXPERIENCE (Fill-out 1 per Project)

Project Title: _____

Project Number: _____

Project Location: _____

Owner Contact Information

Name: _____

Title: _____

Address: _____

Email: _____

Phone No: _____

Project Amount: \$ _____

Project Start Date: _____

Project Completion Date: _____

Category (a. through f.) _____

List Key Personnel responsible for the project and respective role (on a separate piece of paper)

Description of Work Performed; Provide a brief description of the Scope of Work. Attach an additional sheet if necessary: _____

BID FORM 14: EXISTING FULL-SERVICE OFFICE LOCATION AFFIDAVIT

STATE OF _____

Before me, the undersigned authority, personally appeared _____, who after being duly sworn, deposes and says:

As a prospective Bidder, Contractor acknowledges the provisions set forth in the IQCC IFB Documents, Instructions to Bidders Article 21, regarding the requirement for an existing full-service office location within 60 miles of the Geographic Area at the time of Bid.

Contractor warrants compliance with such provisions and has established and maintains, at or before the time of Bid, a physical full-service office within 60 miles of the Geographic Area located at the address provided below; and the existing office is fully functioning with an established storefront, office-based staffing capable of providing all the professional services required to be delivered under this Contract, adequate material and equipment, and any and all other necessary operational resources.

Office Physical Address: _____

Office Phone Number: _____ Office Fax Number: _____

Contractor is aware that failure to comply with the requirements set forth in the IQCC IFB Documents, Instructions to Bidders Article 21, may cause the Contractor to be considered non-responsive as a Bidder, and may therefore disqualify the Contractor from potential Contract award. Furthermore, if it is found that the Contractor does not maintain a fully staffed and functioning office during the term of this contract NJPA may declare the Contractor in default and initiate termination of the Agreement, according to Article 34 of the Agreement General Conditions.

This Affidavit is given in connection with the Contractor's Bid for IQCC contract number _____

(Affiant)

STATE OF _____

NATIONAL JOINT POWERS ALLIANCE®
Book 1 – Project Information, Instructions to Bidders and Execution Documents

The forgoing instrument was acknowledged before me this _____ day of _____, 20 _____ by _____ who is personally known to me and/or has produced _____ as identification.

Signature of Person Taking Acknowledgment

NAME OF ACKNOWLEDGER TYPED, PRINTED, OR STAMPED

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SECTION FOUR - EXHIBITS

EXHIBIT A: GEOGRAPHIC MAP OF NJPA CONTRACT AREAS

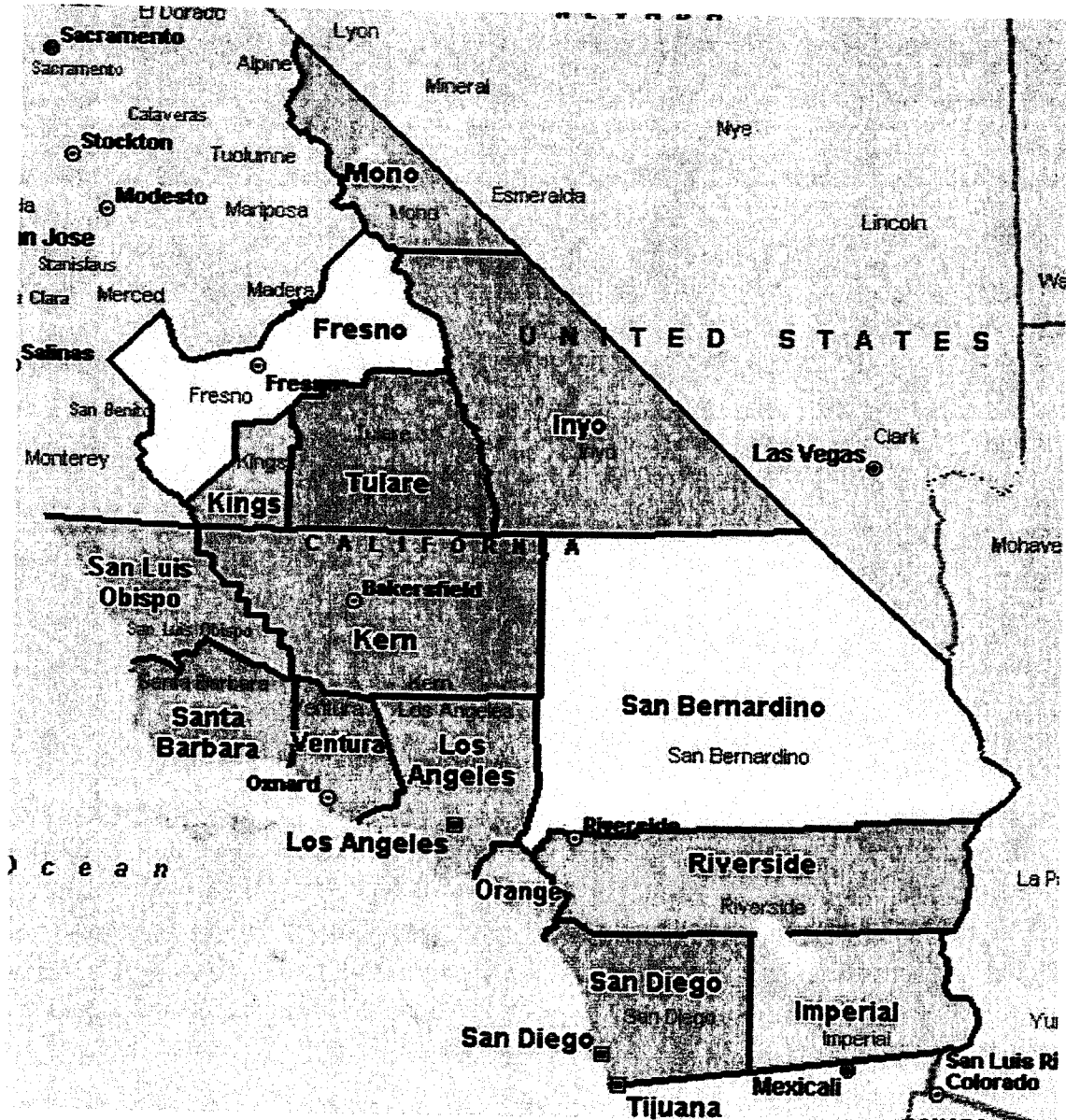
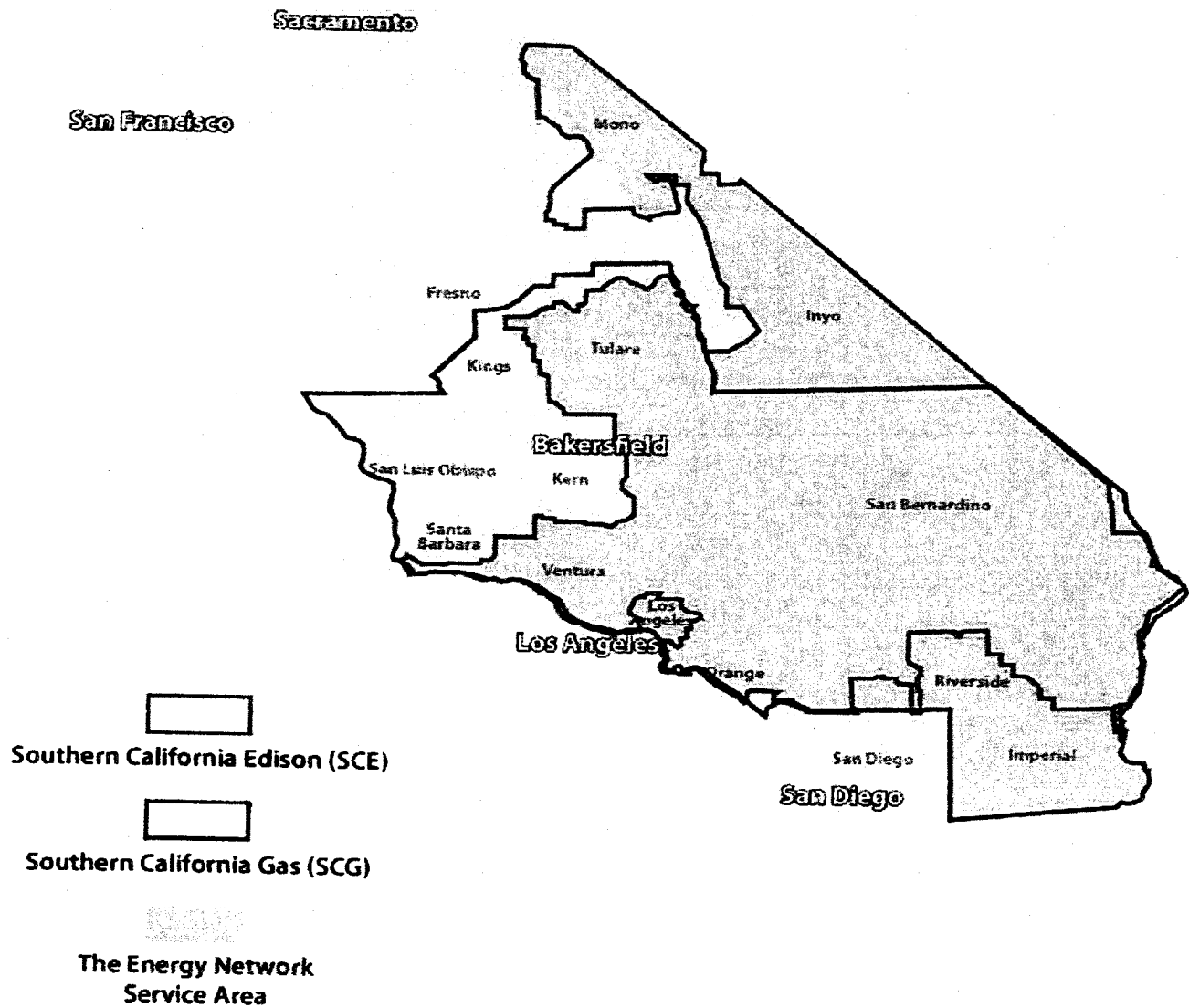


EXHIBIT B: The Energy Network Coverage Area

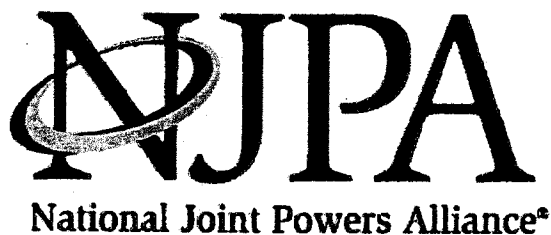


BOOK 2

IQCC STANDARD TERMS AND CONDITIONS AND CONTRACT GENERAL CONDITIONS

SOLICITATION NO. SEE INVITATION FOR BID

HVAC ENERGY EFFICIENCY (C-20)



202 12th Street NE
Staples, MN 56479

Mr. Matthew Peterson
Coordinator of Bids and Contracts
EZIQC@NJPACOOP.org

July 2013

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NATIONAL JOINT POWERS ALLIANCE®
Book 2 – IQCC Standard Terms and Conditions and Contract General Conditions

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BOOK 2:

SECTION ONE - IQCC STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

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

- 1.11 Joint Scope Meeting: a meeting, normally at the Site, to discuss the Work with the Contractor to assist in the development of the Detailed Scope of Work.
- 1.12 Non Pre-priced Task (NPP): a task not included in the Construction Task Catalog but within the general scope and intent of this the Agreement.
- 1.13 Normal Working Hours: the hours of 7:00 a.m. to 4:00 p.m. Monday to Friday, except Holidays.
- 1.14 Other Than Normal Working Hours: 4:00 p.m. to 7:00 a.m. Monday to Friday and any time Saturday, Sunday, and Holidays.
- 1.15 Price Proposal: The price proposal prepared by the Contractor using the Construction Task Catalog, Adjustment Factors and appropriate quantities.
- 1.16 Price Proposal Package: The Contractor's 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 NJPA Member may require in order to evaluate the Price Proposal.
- 1.17 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 Work Orders.
- 1.18 Purchase Order. The document establishing the engagement by NJPA or the NJPA Member to the Contractor to complete a specifically identified Work Order Proposal Package at a specific Work Order Price and in a specific Work Order Completion Time. A Purchase Order will reference the IQCC to which it relates and will identify the schedule on which the Work Order Price will be paid to the Contractor.
- 1.19 Request for Proposal: The NJPA Member's written request for the Contractor to prepare and submit a Work Order Proposal Package for a specific Work Order.
- 1.20 Site: The area upon or in which the Contractor performs the Work and such other areas adjacent thereto as may be designated by NJPA or the NJPA Member.
- 1.21 State: The state of California.
- 1.22 Subcontractor: Any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or his 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.
- 1.23 Supplemental Work Order or Supplemental Purchase Order: A Work Order or Purchase Order issued to add or delete Work from an existing, related Work Order.
- 1.24 Technical Specifications: The comprehensive listing of the NJPA Members standards for quality of workmanship and materials, and the standard for the required quality of the Work.

- 1.25 Unit Price: The price published in the Construction Task Catalog for a Task. The Unit Prices are fixed for the Term of the Agreement. Each Unit Price is comprised of the Labor, Equipment, and Material costs to accomplish that specific Task.
- 1.26 Work: The labor, material, equipment and services necessary or convenient to the completion of Work Orders.
- 1.27 Work Order: The written obligation document establishing an engagement by NJPA or NJPA Member to the Contractor to complete a specifically identified Work Order Proposal Package at the Work Order Price and within the Work Order Completion Time. A Work Order will normally be in the form of a Purchase Order issued by an NJPA Member.
- 1.28 Work Order Completion Time: The period of time set forth in the Work Order within which the Contractor must complete the Detailed Scope of Work.
- 1.29 Work Order Price: The lump sum price to be paid to the Contractor for completing the Detailed Scope of Work within the Work Order Completion Time.
- 1.30 Work Order Proposal Package: The final agreed upon Price Proposal, drawings, sketches, list of Subcontractors, final schedule, and, when appropriate, permits, or other such documentation as the NJPA Member may require for a specific Work Order.

2. SCOPE OF WORK AND PROCEDURE FOR ORDERING WORK

2.1 Scope of Work

- 2.1.1 This is an indefinite quantity contract for the supplies or services specified, and effective for the period stated in the IFB Documents.
- 2.1.2 Job or performance shall be made only as authorized by Work Orders issued in accordance with these IQCC Standard Terms and Conditions.
- 2.1.3 The Scope of Work of this Agreement shall be determined by individual Work Orders issued hereunder. The Contractor shall provide all pricing, management, incidental drawings, shop drawings, samples, documents, Work, materials, supplies, parts (to include system components), transportation, plant, supervision, labor, and equipment needed to complete each Work Order. The Contractor shall also be responsible for Site safety as well as Site preparation and cleanup during and after construction. All costs associated with the above scope of work and the preparation of proposals shall be the responsibility of the Contractor.
- 2.1.4 The Work shall be conducted by the Contractor in strict accordance with the Agreement and all applicable laws, regulations, codes, or directives including Federal, State, County and City.
- 2.1.5 The Contractor shall maintain accurate and complete records, files and libraries of documents to demonstrate compliance with Federal, State, and local regulations, codes, applicable laws listed herein, and manufacturers' instructions and recommendations which are necessary and related to the Work to be performed.
- 2.1.6 The Contractor shall prepare and submit required reports, maintain current record drawings, and submit required information. The Contractor shall provide: materials lists to include trade names and brand names, and model materials lists to include trade names, brand names, model number, and ratings (if appropriate) for all materials necessary to complete the Work Order.

- 2.1.7 In addition to the Tasks in the CTC, Book 3, NJPA may, from time to time, require Non Pre-priced Tasks. These Non Pre-priced Tasks will be incorporated into individual Work Orders.
- 2.1.8 All Work shall comply with any applicable standards, including those specified in the following documents. If the Work Order specifies a standard which is different or more stringent, the standard used in the Work Order shall control:
 - 2.1.8.1 City Building Codes
 - 2.1.8.2 The current California Building Standards Code, also known as "California Title 24"
 - 2.1.8.3 The specific Work Order supplemental specifications
 - 2.1.8.4 Work Order Contract Technical Specifications – Book 4
 - 2.1.8.4.1 The Technical Specifications, Book 4, are numbered and organized in the Construction Specification Institute's (CSI) master format. All specifications are filed in divisions 2 through 16 per CSI guidelines.
 - 2.1.8.4.2 The intent of these specifications is to furnish concise industry and commercial standards for construction, maintenance or repair of NJPA Member facilities.
 - 2.1.8.4.3 Reference in the Technical Specifications or the CTC to a specific manufacturer, trade name, or catalog is intended to be descriptive but not restrictive and only to indicate to the prospective Bidder items that will be satisfactory.

3. ARCHITECTURAL AND ENGINEERING SERVICES

- 3.1 Under this Agreement it is expected that the level of A/E services and design, if any, will be incidental to the Agreement and therefore any cost associated with this is to be included in the Contractor's Adjustment Factors. If the level of A/E services for a Work 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, safety plans, shop drawings, product data and samples, as-builts and all other documentation required herein by the Contractor as required by individual Work Orders is part of the Scope of Work of this Agreement and the cost there of shall be included in the Contractor's Adjustment Factors.

4. TERM OF AGREEMENT

- 4.1 This Agreement is for term shown on the IFB. The Contractor may withdraw from the Agreement on each anniversary of the award, provided that the Contractor provides 60 Days written notice of its intent to withdraw. NJPA may, for any reason, terminate this Agreement at any time.
- 4.2 A Work Order may be issued by an NJPA Member at any time during the term of this Agreement even though the Work and the payments made for such Work occur after the term ends. All the provisions of this Agreement are incorporated into each Work Order issued hereunder.

5. GEOGRAPHIC AREA

Contractor will primarily work in the Geographic Area designated. However, if both parties agree, the Contractor may work in another Geographic Area at the Adjustment Factors bid or as adjusted according to Article 7 below – Bid Form 11 **MUST** indicate that the Contractor agrees to work outside their Area.

6. ESTIMATED ANNUAL VALUE

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

7. UPDATING THE ADJUSTMENT FACTORS

7.1 Economic Price Adjustment: The Adjustment Factors shall be updated on each anniversary of the award date according to the following:

7.1.1 A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) 20 City Average published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the solicitation issuance date for this contract.

7.1.2 A Current Year Index shall be calculated by averaging the 12 month CCIs for 20 City Average Index published in ENR for the 12 months immediately prior to the month of the solicitation issuance date for this contract.

7.1.3 The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.

7.1.4 The Adjustment Factors being updated shall be multiplied by the Economic Price Adjustment to obtain the new Adjustment Factors effective for the next 12 months.

7.1.5 Averages shall be obtained by summing the 12 month indices and dividing by 12.

7.1.6 All calculations shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:

7.1.6.1 The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.

7.1.6.2 The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).

7.2 ENR occasionally revises CCIs. The 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 CCIs, if any, shall be used in subsequent calculations.

7.3 Unlike the Contractor's Normal Working Hours Adjustment Factor and Other Than Normal Working Hours Adjustment Factor which shall be annually adjusted to account for construction escalation or de-escalation as provided in this Article, the Contractor's Non Pre-priced Task Adjustment Factor shall remain unchanged for the total duration of the Contract.

- 7.3 If NJPA fails to issue the Economic Price Adjustment by the anniversary date, it is the Contractor's responsibility to request the Economic Price Adjustment. Under all circumstances, should the Contractor submit a Price Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the price submitted in the Price Proposal.
- 7.4 By submitting a Proposal to the NJPA Member, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal within the Work Order Completion Time at the price submitted. It is the Contractor's responsibility to include the proper Adjustment Factor(s) and the necessary tasks and quantities in the Price Proposal prior to delivering it to the NJPA Member. The risk associated with incorrect Adjustment Factor(s), missing tasks, and inaccurate quantities from the Price Proposal shall be borne by the Contractor.

8. PROCEDURE FOR ORDERING WORK

8.1 Initiation of a Work Order

- 8.1.1 As the need exists, NJPA (or their designated representative) will, on behalf of an NJPA Member, notify the Contractor of a project and schedule a Joint Scope Meeting.
- 8.1.2 The Contractor shall attend the Joint Scope Meeting to discuss, at a minimum:
- a. the general scope of the Work,
 - b. alternatives for performing the Work and value engineering,
 - c. access to the Site and protocol for admission,
 - d. hours of operation,
 - e. staging area,
 - f. requirements for professional services, sketches, drawings, and specifications,
 - g. construction schedule,
 - h. requirement for bonding
 - i. the presence of hazardous materials, and
 - j. date on which the Price Proposal Package is due.
- 8.1.3 Upon completion of the joint scoping process, NJPA (or their designated representative), working with the NJPA 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. NJPA (or their designated representative) will issue a Request for Proposal that will require the Contractor to prepare a Price Proposal. The Detailed Scope of Work, unless modified by both the Contractor and NJPA (or their designated representative), will be the basis on which the Contractor will develop its Price Proposal and NJPA (or their designated representative) and the NJPA Member will evaluate the same. The Contractor does not have the right to refuse to perform any Task or any work in connection with a particular project.

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

- 8.2.1 **Pre-priced Tasks:** A Pre-priced Task is a Task described and for which a Unit Price is set forth in the Construction Task Catalog. For Pre-priced Tasks the Contractor shall identify the Task from the Construction Task Catalog and the quantities required.
- 8.2.2 **Non Pre-priced Tasks:** A Non Pre-priced Task is a Task which is not in the Construction Task Catalog.

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

8.2.2.2 If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent bids from Subcontractors. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. NJPA may require additional quotes and bids if the suppliers or Subcontractors are not acceptable or if the prices are not deemed reasonable by NJPA or its designated representative.

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

For Work Performed with the Contractor's Own Forces:

A = The number of hours for each labor classification and hourly rates

B = Equipment costs (other than small tools)

C = Three independent quotes for all materials

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

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

D = Subcontractor Costs (supported by three quotes)

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

8.2.2.4 At the discretion of the NJPA (or their designated representative), Non Pre-priced Tasks, as well as other Tasks, may be added to the CTC during the course of the Agreement. Unit prices will be established based on actual quotes from material suppliers and installers and fixed as a permanent Pre-priced Task in the CTC.

8.2.2.5 NJPA (or their designated representative) determination as to whether an item is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

8.2.2.6 The means and methods of construction shall be such as the Contractor may choose; subject however, to NJPA's right to reject means and methods proposed by the Contractor that:

8.2.2.6.1 Will constitute or create a hazard to the Work, or to persons or property; or

8.2.2.6.2 Will not produce finished Work in accordance with the terms of the Contract; or

8.2.2.6.3 Unnecessarily increases the price of the Work Order when alternative means and methods are available.

8.2.3 The Contractor shall submit a complete Price Proposal Package, which includes:

- a. any incidental drawings or sketches, calculations and or specification information,
- b. quantity take-off summary supporting all material quantities contained in the Price Proposal
- c. catalog cuts providing information on materials or products, as specifically requested,
- d. back-up for any Non Pre-priced Tasks,
- e. identification of known Subcontractors and material suppliers,
- f. a construction schedule,
- g. for special equipment or materials , warranty information,

8.2.6 By submitting a Price Proposal Package to NJPA (or their designated representative), the Contractor is offering to complete the Detail Scope of Work within the construction schedule for the amount of the Price Proposal. It is the Contractor's responsibility to include all necessary tasks in its Price Proposal prior to delivering it to the NJPA (or their designated representative)

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

8.3.1 The Contractor's Price Proposal (and all associated information described in Article 8.2.3 above) shall be submitted by the date set forth in the Request for Proposal. The time allowed for preparation of the Proposal will depend on the complexity and urgency of the Work Order; but in most cases, it shall not exceed **seven (7) working days**.

8.3.2 In emergency situations and for Work Orders requiring immediate completion, the Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, the Contractor may begin work immediately, with the paperwork to follow.

8.3.3 If the Contractor fails to meet the deadline for submittal of the Price Proposal Package, this may be reason to suspend issuance of this particular Work Order.

8.4 **Review of the Price Proposal Package**

8.4.1 NJPA (or their designated representative) and/or the NJPA Member (or their designated representative) will evaluate the Contractor's 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 NJPA (or their designated representative) or the NJPA Member (or their designated representative) may compare the Contractor's Price Proposal to the NJPA Member cost estimate for the Detailed Scope of Work. NJPA (or their designated representative) or the NJPA Member (or their designated representative) reserves the right to reject a Contractor's Price Proposal based on unjustifiable/unsupported (with take off details) quantities and/or Work items, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part.

- 8.4.2 If NJPA (or their designated representative) and/or the NJPA Member (or their designated representative) finds any part of the Contractor's Price Proposal unacceptable, NJPA (or their designated representative) or the NJPA Member (or their designated representative) may request the Contractor to re-submit its Price Proposal or cancel the Work Order. The Contractor is expected to submit correct Price Proposals the first time. However NJPA recognizes that some adjustments might have to be made to the Price Proposal after review by NJPA (or their designated representative) and the NJPA Member (or their designated representative). Therefore, NJPA (or their designated representative) will allow the Contractor to submit the first Price Proposal and a second Price Proposal for each Work Order.
- 8.4.3 Additionally, NJPA (or their designated representative) and/or the NJPA Member (or their designated representative) will evaluate all other components of the Contractor's Price Proposal Package and may request revisions thereto.
- 8.4.4 **Requested revisions to any and all of the Price Proposal Package components should be made by the Contractor and resubmitted in three (3) working days or less.** If after the second review by NJPA (or their designated representative) and/or the NJPA Member (or their designated representative), NJPA (or their designated representative) and/or the NJPA Member (or their designated representative) finds requested revisions to the Price Proposal Package that were not made, this may be reason to suspend that particular Work Order.
- 8.4.5 Failure by the Contractor to submit Price Proposal Packages, and revisions thereto, in a timely manner (within time frames described above) is grounds for suspension of all future Work Orders.
- 8.4.6 NJPA reserves the right to obtain Price Proposals from any or all of the Contractors awarded an IQCC Contract.
- 8.4.7 If the Contractor continues to submit Price Proposals which are rejected by NJPA (or their designated representative), NJPA may declare the Contractor in default and initiate termination of the Agreement, according to Article 34 of the Agreement General Conditions.
- 8.5 **Delivery of the Work Order Proposal Package**
- 8.5.1 After NJPA (or their designated representative) reaches an agreement with the Contractor on the Price Proposal Package and any requested revision thereto, if applicable, NJPA (or their designated representative) will assemble and deliver a Work Order Proposal Package for the NJPA Member's consideration.

- 8.5.2 A Work Order Proposal Package will consist of:
- a. a Work Order signature document listing: the work Order #, a brief description of the work, the Work Order Amount, and whether liquidated damages apply or not, and other information
 - b. the Detailed Scope of Work Approved by the NJPA member, including the Work Order Completion Time
 - c. the Contractor's Price Proposal,
 - d. a list of known subcontractors,
 - e. and other pertinent information (including part of the contractors Price Proposal Package) that may vary by Work Order.
- 8.5.3 Once the Work Order Package has been submitted to the NJPA member the Contractor is bound by its content.
- 8.6 Review of the Work Order Proposal Package By the NJPA Member and Issuance of Purchase Order**
- 8.6.1 The NJPA Member will evaluate the entire Work Order Proposal Package.
- 8.6.2 The NJPA Member may reject a Work Order Proposal Package for any reason
- 8.6.3 The NJPA member may request changes to or clarifications of any part of the Work Order Proposal package The Contractor and NJPA (or their designated representative) will work together to make any requested revisions in a timely manner and resubmit a revised Work Order Proposal Package.
- 8.6.3 Upon approval of the Work Order Proposal Package by NJPA (or their designated representative) and the NJPA Member, the NJPA Member may issue a Notice to Proceed, a signed Purchase Order, Notice of Award, or similar document accepting the Contractor's offer. The document will include:
- a. Reference to the Detail Scope of Work
 - b. The Work Order Amount
 - c. Start date, Work Order Completion Time (duration) and completion date
 - d. Whether liquidated damages will apply
- 8.6.4 When the Work Order Package is accepted, the NJPA Member may send to the Contractor a Purchase Order, or a notice of intent to award a Purchase Order (sometimes used if bonding is required) or a similar document.
- 8.6.5 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 NJPA
- 8.6.5 If performance and payment bonding is required, or if a separate and /or special insurance certificate is required. the Contractor will deliver such requirements to the NJPA member within ten (10) days of notification of the requirement.

9.1 Changes

- 9.1.1 The NJPA Member reserves the right to make, in writing, at any time during the Work, changes in the Detailed Scope of Work as are necessary to satisfactorily complete the Project, and to delete in whole or in part, or to add to, the Detailed Scope of Work. Such changes, deletions, or additions will not invalidate the Agreement or the Work Order nor release the surety, if any, and the Contractor agrees to perform the Work as altered.
- 9.1.2 All changes, deletions, and additions to the Detailed Scope of Work will be reflected in a Supplemental Work Order priced in accordance with the procedure for developing and approving all Price Proposals.

10. MARKETING REQUIREMENTS

- 10.1 NJPA selected its Indefinite Quantity Construction Contracting system based on their research of what provides their members with the best value and most cost effective results. The Contractor shall avoid all conflicts of interest with the promotion of other IQCC systems to any agency eligible to purchase under this Contract. The promotion of other IQCC systems to any agency eligible to purchase under this Contract may be grounds for termination of this Contract.
- 10.2 The Contractor must adhere to the following when preparing marketing materials and web sites, and in the use of trademarks and service marks:
 - 10.2.1 The Contractor shall include the NJPA logo and website address on all marketing materials and web sites that mention this Contract or have anything to do with this Contract.
 - 10.2.2 The Contractor shall include the ezIQCC logo, website address (www.ezIQCC.com), and ezIQCC® telephone number (888-993-9472) on all marketing materials and web sites that mention this Contract or have anything to do with this Contract.
 - 10.2.3 The Contractor shall be authorized to use NJPA's and Consultant's names, logos, trademarks, service marks and NJPA and Consultant provided materials solely for the presentation and promotion of the availability and use of this Contract by NJPA Members and Potential NJPA Members, and agrees that all uses of the trademarks and service marks belonging to NJPA and Consultant shall include the appropriate trademark and service mark symbols (® or ™) at all times
 - 10.2.4 The Contractor shall not collect information from an NJPA Member or Potential NJPA Member on Contractor provided forms or web sites. The Contractor shall advise the Members or Potential NJPA Members to enter all information at the ezIQCC® website or the Contractor may input project information on the ezIQCC web site on behalf of an NJPA Member or Potential NJPA Member.
 - 10.2.4 Under no circumstance may copy or branding images of NJPA or Consultant be altered in any way without the express written approval of NJPA or Consultant.
 - 10.2.5 All marketing materials shall be coordinated with and approved by NJPA and Consultant.

11. PUNCH LIST COMPLETION

- 11.1 The Contractor understands and agrees that time is of the essence in closing out the Work of this Contract. Upon Substantial Completion of the Work, the Punch List will be transmitted to the Contractor from the NJPA Member. The Contractor agrees to begin performance of Punch List Work immediately after receipt of the Punch List.
- 11.2 Failure of the Contractor or its Subcontractors to begin the Punch List Work within three (3) business days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.
- 11.3 Punch List Work will be continuously prosecuted once begun and completed within thirty (30) Days from the receipt of the Punch List. Should the Contractor fail to complete the Punch List within this period of time, the liquidated damages as identified in Article 30 of the Contract General Conditions will apply.

12. PAYMENT AND PERFORMANCE BONDS AND MATERIAL AND WORKMANSHIP BONDS

If required by the NJPA Member for a particular Work Order, the Contractor shall deliver a Labor and Material Payment Bond and a Performance Bond in the amount of such Work Order. If required by the NJPA Member for a particular Work Order, the Contractor shall deliver Material and Workmanship Bonds in the amount required by the NJPA Member. The bonds must be in a form, and executed by a surety, acceptable to the NJPA Member. The bonds must be received before the Work Order will be issued. The Contractor shall be compensated for the cost of the bonds up to 2% of the Work Order Price through the Reimbursable Fee work task in the Construction Task Catalog. The Contractor shall apply a 1.0000 to the Reimbursable Fee work task rather than applying the Contractor's competitively bid Adjustment Factor.

13. COMPUTER SOFTWARE

The Contractor shall maintain at its office for its use a computer with an internet connection. The Contractor will be furnished with a copy of the internet based PROGEN software which will allow the Contractor to generate 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 Proposal. The software generates a Proposal in a preset format acceptable to the NJPA Member. There is no separate charge to the Contractor for the software and the related software training.

14. PREPAYMENT OPTION

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

SECTION TWO – CONTRACT GENERAL CONDITIONS

1. PROJECT MANAGER

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

2. NJPA MEMBER'S RIGHT TO STOP WORK

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

3. NJPA MEMBER'S RIGHT TO COMPLETE WORK

If the Contractor has been ordered to stop the Work, the NJPA 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 Proposal, the Contractor shall carefully study the Detailed Scope of Work, as well as the information furnished by the NJPA Member, shall take field measurements of any existing conditions related to the Work and shall observe any conditions at the Site affecting it. Any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Project Manager.

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

5. SUPERVISION

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

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

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

6. WORKMANSHIP AND QUALITY

- 6.1 The Contractor may make substitutions only with the consent of the Project Manager.
- 6.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in the portions of the Work assigned to them.

7. WARRANTY

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

8. PERMITS, FILING

- 8.1 The Contractor will be reimbursed the actual cost of a filing or permit as part of its Price Proposal paid with the "Reimbursable Item" Task from the Construction Task Catalog with a markup of 1.0750. However, the cost(s) of expediting services or equipment use fees are not reimbursable.
- 8.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.
- 8.3 It is not the Contractor's responsibility to ascertain that the Detailed Scope of Work is in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that any portion of the Detailed Scope of Work is at variance therewith, the Contractor shall promptly notify the Project Manager in writing.

9. PERSONNEL

The Contractor shall employ competent personnel for the development of the Project's Detailed Scope of Work, the preparation of the Price Proposal and the execution of the

Work. During the performance of the Work, the superintendent assigned to the Project shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

10. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 10.1 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Detailed Scope of Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Detailed Scope of Work. Submittals which are not required by the Contract Documents may be returned by the Project Manager without action.
- 10.2 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Project Manager Shop Drawings, Product Data, Samples and similar submittals required with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the NJPA Member or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Project Manager without action.
- 10.3 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Detailed Scope of Work and of the Contract Documents.
- 10.4 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Project Manager.
- 10.5 The Work shall be performed in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project Manager's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Project Manager in writing of such deviation at the time of submittal and (1) the Project Manager has given written approval to the specific deviation as a minor change in the Work, or (2) a Supplemental Work Order or written notice has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Project Manager's approval thereof.
- 10.6 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Project Manager on previous submittals. In the absence of such written notice the Project Manager's approval of a resubmission shall not apply to such revisions.
- 10.7 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Detailed Scope of Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or

certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Detailed Scope of Work, the NJPA Member will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Project Manager. The NJPA Member shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the NJPA Member has specified to the Contractor all performance and design criteria that such services must satisfy. The Project Manager will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Detailed Scope of Work. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Detailed Scope of Work.

11. CUTTING AND PATCHING

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

12. CLEANING UP

- 12.1 The Contractor shall keep the Site and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Work Order. At completion of the Work, the Contractor shall remove from and about the Site all waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.
- 12.2 If the Contractor fails to clean up, the NJPA Member may do so and the cost thereof shall be charged to the Contractor.

13. ACCESS TO THE WORK

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

14. ROYALTIES, PATENTS AND COPYRIGHTS

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

process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Project Manager.

15. INDEMNIFICATION

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

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

16. SUBCONTRACTORS

16.1 The Contractor, as soon as practicable after award of the Work Order, shall furnish in writing to the Project Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the Work. The Project Manager will promptly reply to the Contractor in writing stating whether or not, after due investigation, Contractor has reasonable objection to any such proposed person or entity. Failure of the Project Manager to reply promptly shall constitute notice of no reasonable objection.

16.2 The Contractor shall not contract with a proposed person or entity to whom the NJPA Member or Project Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

16.3 If the NJPA Member or Project Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the NJPA Member or Project Manager has no reasonable objection.

17. COORDINATION WITH OTHER CONTRACTORS

17.1 The NJPA Member reserves the right to perform construction or operations related to the Work Order with the NJPA 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 NJPA Member shall provide for coordination of the activities of the NJPA Member's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors

and the NJPA Member in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the NJPA Member until subsequently revised.

18. REQUEST FOR EXTENSION OF TIME

- 18.1 If the Contractor is delayed at any time in the commencement or progress of the Detailed Scope of Work by an act or neglect of the NJPA Member or Project Manager, or of an employee of either, or of a separate contractor employed by the NJPA 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 Work Order Completion Time shall be extended for such reasonable time as the Project Manager may determine.
- 18.2 The Contractor agrees to make no claim for damages for the delay in the performance of any Work Order occasioned by any act or omission to act of the NJPA Member, Project Manager or any of their representatives, and agrees that any such claim shall be fully compensated for by an extension of time as provided herein.

19. PARTIAL PAYMENTS

- 19.1 The Contractor may submit a monthly Application for Payment for Work completed to date. The Contractor shall submit Certified Payroll Records, and such other supporting documentation as may be required by the Project Manager. The Project Manager will inspect the work within a reasonable time and the NJPA Member shall make partial payments to the Contractor based on the approved value of completed Work.
- 19.2 The NJPA Member may withhold up to 5% of each payment until final completion of the Work Order.
- 19.3 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the NJPA Member, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-Subcontractors in a similar manner. In addition, Contractor's failure to promptly pay its Subcontractors is subject to the provisions of the Minnesota Prompt Pay Act [O.C.G.A 13-11-1, et.seq].

20. FINAL PAYMENTS

- 20.1 The Contractor shall notify the Project Manager when the Detailed Scope of Work is complete and ready for final inspection. The Project Manager will promptly make such inspection. If the Project Manager finds the Detailed Scope of Work complete and all final documentation submitted, the Project Manager will notify the Contractor that a final Application for Payment may be submitted.
- 20.2 The Contractor may then submit a final Application for Payment. The Contractor shall submit Certified Payroll Records (as applicable) and such supporting documentation as may be required by the Project Manager. The NJPA Member shall make final payment to the Contractor.
- 20.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall

constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

20. PARTIAL OCCUPANCY OR USE

- 20.1 The NJPA 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 NJPA Member and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Project Manager. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the NJPA Member and Contractor.
- 20.2 Immediately prior to such partial occupancy or use, the NJPA Member, Contractor and Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- 20.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

22. IDENTIFICATION AND SECURITY REQUIREMENTS

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

23. PROTECTION OF PERSONS AND PROPERTY

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

- 23.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- 23.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the NJPA Member or Project Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's other obligations included herein.
- 23.6 The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor' superintendent unless otherwise designated by the Contractor in writing to the Project Manager.
- 23.7 The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety.

24. HAZARDOUS MATERIALS

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