INVITATION TO BID (ITB) DOCUMENTS

Contractor – Open Market

SOLICITATION NO.

OH01GCOMA-102814
OH01GCOMB-102814
OH02GCOMA-102814
OH02GCOMB-102814
OH02GCOMC-102814
OH03GCOMA-102814
OH03GCOMB-102814
OH03GCOMC-102814
OH04GCOMA-102814
OH04GCOMB-102814
OH05GCOMA-102814
OH05GCOMB-102814
OH01HOMA-102814
OH02HOMA-102814
OH02EOMA-102814
OH03HOMA-102814
OH03EOMA-102814
OH03COMA-102814
OH03AOMA-102814
OH04EOMA-102814
OH05HOMA-102814

INDEFINITE QUANTITY CONSTRUCTION CONTRACT

National Joint Powers Alliance®

202 12th Street NE
Staples, MN 56479

Mr. Matthew Peterson
ezIQC Contract Manager
EZIQC@NJPACOOP.org

September 2014

INDEFINITE QUANTITY CONSTRUCTION CONTRACT

(IQCC)

Invitation To Bid (ITB)

Solicitation #	*Zone*	*Trade*	*Estimated Annual Value Per Solicitation Number*	*Bid Due Date and Time*	*Maximum Total Term*
OH01GCOMA-102814	*1 Northwest Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH01GCOMB-102814	*1 Northwest Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH02GCOMA-102814	*2 Northeast Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH02GCOMB-102814	*2 Northeast Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH02GCOMC-102814	*2 Northeast Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH03GCOMA-102814	*3 Central Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH03GCOMB-102814	*3 Central Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH03GCOMC-102814	*3 Central Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH04GCOMA-102814	*4 Southwest Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH04GCOMB-102814	*4 Southwest Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH05GCOMA-102814	*5 Southeast Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH05GCOMB-102814	*5 Southeast Ohio*	*General Contractor*	*$2,000,000*	*4:30 PM CT 07/29/14*	*3 Years*

Solicitation #	*Zone*	*Trade*	*Estimated Annual Value Per Solicitation Number*	*Bid Due Date and Time*	*Maximum Total Term*
OH01HOMA-102814	*1 Northwest Ohio*	*HVAC Contractor*	*$500,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH02HOMA-102814	*2 Northeast Ohio*	*HVAC Contractor*	*$500,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH02EOMA-102814	*2 Northeast Ohio*	*Electrical Contractor*	*$500,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH03HOMA-102814	*3 Central Ohio*	*HVAC Contractor*	*$500,000*	*4:30 PM CT 07/01/14*	*3 Years*
OH03EOMA-102814	*3 Central Ohio*	*Electrical Contractor*	*$500,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH03COMA-102814	*3 Central Ohio*	*Concrete Contractor*	*$500,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH03AOMA-102814	*3 Central Ohio*	*Asphalt Contractor*	*$1,000,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH04EOMA-102814	*4 Southwest Ohio*	*Electrical Contractor*	*$500,000*	*4:30 PM CT 07/29/14*	*3 Years*
OH05HOMA-102814	*5 Southeast Ohio*	*HVAC Contractor*	*$500,000*	*4:30 PM CT 07/29/14*	*3 Years*

See Section Four (4) for Map and list of Zones

Bids for all contracts covered by this solicitation are due by
4:30 PM CT on October 28, 2014

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 To Bid (ITB) 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 State of Ohio It is the intention of NJPA to award contracts for light construction services and minor repairs to firms in each of these Zones. Each contract has an initial term of one (1) year and bilateral option provisions for two (2) additional terms. The estimated annual value varies by contract. The total term of the contract cannot exceed three (3) years.

This ITB consist of four (4) 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 Zone)
Book 4: Technical Specifications

IQCC also known as Job Order Contracting (JOC) 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 for projects not typically covered under

Ohio Revised Code (ORC) Chapter 153 and/or repair and maintenance projects. New construction projects that fall under ORC 153 and in excess of $200,000 for agencies without administrative authority are pre-approved on a case by case basis by the Ohio Facilities Construction Commission; Attn: Lane Beougher at (614) 644-8331. .

Intending bidders are requested 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 the Pre-bid seminar is highly recommended and failure to attend and understand the scope of this Bid will not excuse a Contractor from performing under this Contract.

10/14/14 1:30 PM ET Ohio Department of Transportation Central Office,
1980 W. Broad St. (U.S. 40) Columbus, OH 43223

An electronic (CD) copy of the ITB 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 visiting our website at www.njpacoop.org/eziqc-bid-document-request select desired bid documents from drop down list and complete the requested information. All requests must include; **mailing address, email address, contact name, phone number**. Bids are due by 4:30 pm CT on October 28, 2014 and will be opened at 9:00 am CT on October 29, 2014. ITB Documents will be available until October 26, 2014.

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

BOOK 1

Project Information, Instructions to Bidders, and Execution Documents

SOLICITATION NO.

OH01GCOMA-102814
OH01GCOMB-102814
OH02GCOMA-102814
OH02GCOMB-102814
OH02GCOMC-102814
OH03GCOMA-102814
OH03GCOMB-102814
OH03GCOMC-102814
OH04GCOMA-102814
OH04GCOMB-102814
OH05GCOMA-102814
OH05GCOMB-102814
OH01HOMA-102814
OH02HOMA-102814
OH02EOMA-102814
OH03HOMA-102814
OH03EOMA-102814
OH03COMA-102814
OH03AOMA-102814
OH04EOMA-102814
OH05HOMA-102814

INDEFINITE QUANTITY CONSTRUCTION CONTRACT

National Joint Powers Alliance®

202 12th Street NE
Staples, MN 56479

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

September 2014

BOOK 1

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NJPA is a trademark of the National Joint Powers Alliance®. ezIQC®, eGordian®, and Construction Task Catalog® 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/national-cooperative-contract-solutions/legal-authority.

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/national-cooperative-contract-solutions

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 ITB

3.1 The goal of this ITB is to establish a group of indefinite quantity light construction and repair contracts (IQCC) that NJPA and NJPA Members may access to complete small to medium sized repair, maintenance and minor new construction 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 Zone.

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 Zone. The procurement activities of the NJPA Bid Review Committee is limited to document preparation, answering Bidder questions, advertising the solicitation, distribution of this ITB 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. 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 average reported use since the inception of the contract in 2011. The ITB 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's (Consultant) software, data and services (IQCC System) for their IQCC program. The system includes Consultant's proprietary eGordian® and/or ezIQC® 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:

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. New construction projects that fall under ORC 153 and in excess of $200,000 for agencies without administrative authority are pre-approved on a case by case basis by the Ohio Facilities Construction Commission; Attn: Lane Beougher at (614) 644-8331

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@ezIQC.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@ezIQC.com or via facsimile to (864) 233-9100.

5. ZONES

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

6. THE ITB DOCUMENTS

The ITB 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 Zone)
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 ITB 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 compliance with applicable licensing requirements.

7.4 Bidder must have offices within the Zone for which a bid is submitted. Bids may be submitted for one or more Zones.

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 Zone 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 Zone.

8.5 Competitive Range Determination - if a wide margin is found in the Adjustment Factors submitted on the solicitation; being too high or too low, then the NJPA Bid Review Committee may establish a Competitive Range for the solicitation. If it is determined that a Contractors Composite Adjustment Factor is too far outside the Competitive Range then the contractor can be removed from consideration. The contractor shall be notified that they were determined to be outside the Competitive Range after award of the contracts.

8.6 Unbalancing of Bids – A Contractors Bid may be removed from consideration if it is determined that the contractor has mathematically unbalanced their bid to gain a competitive advantage. The bid will be considered to be unbalanced if any

Adjustment Factor is found to not cover the contractors reasonable actual cost. Those costs would include a reasonable prorated share of their anticipated profit, overhead cost, and other indirect costs that the bidder anticipates for the performance of the work as determined by the NJPA Bid Review Committee.

8.7 Ohio Preference – Bidders are required to complete Section B of Bid Form 15 to determine if the Contractor is one of the following; an Ohio based Company, a Border State Bidder, an Out of State / Non Border State Bidder or, a Foreign Owned Company.

8.8 Contract Award will be based on the Contractors Combined Adjustment Factor from Line 7 of Bid Form 2 adjusted by the following Ohio Preferences:

8.8.1 Ohio Based Company – Combined Adjustment Factor x 1.00

8.8.2 Border State Bidder – Combined Adjustment Factor x 1.00

8.8.3 Out of State / Non Border Bidder - Combined Adjustment Factor x 1.05

9. ASSIGNMENT OF WORK

Selection of the Contractor and award of the Job Order will be in compliance with established Owner procedures and based on one or more of the following criteria:

- Rotational selection among all Contractors, unless otherwise determined by the Owner.
- Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
- Balancing of work load (Work Order pricing and construction backlog) among Contractors.
- Management of Work Order dollar volume within bonding limitations of the Contractor.
- Price, as it relates to the Owner's independent cost estimate.
- Contractor's responsiveness to the Owner on Work Orders.
- Other appropriate criteria as deemed in the best interest of the Owner.

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

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

- Work Order which may include Plans, Drawings and supplemental Technical Specifications
- State of Ohio Special Contract Terms and Conditions
- State of Ohio Standard Contract Terms and Conditions
- State of Ohio Supplemental Contract Terms and Conditions
- Book 2 – IQCC Standard Terms and Conditions
- Book 2 – General Terms and Conditions
- Addenda, if any, 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 ITB Documents, and strict compliance is required with all the provisions contained in the instructions.

1.2 Examination of ITB Documents

1.2.1 It is the responsibility of each Bidder before submitting a Bid, to:

1.2.1.1 Examine the ITB 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 ITB Documents, and

1.2.1.4 Carefully review the ITB Documents and notify NJPA of all conflicts, errors or discrepancies in the ITB 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 ITB Documents and that the ITB 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 ITB

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 To Bid**. 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.** A Representative from the NJPA Bid Review Committee will then read the Bidder's names aloud. A summary of the responses to this ITB 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 ITB. To receive a complete copy of these ITB Documents, send or communicate all requests to the attention of Matthew Peterson 202 12th Street NE Staples, MN 56479 or visit our website at http://www.njpacoop.org/national-cooperative-contract-solutions/eziqc-construction/eziqc-bid-document-request/, select the disired bid docments from the drop down list and complete the requested information. All requests must include mailing address, email address, contact name, and phone number. ITB CD's will be EXPRESS mailed to the address provided. Oral, facsimile, telephone or telegraphic Bid Submissions or requests for ITB Documents are invalid and will not receive consideration. Direct questions regarding this ITB to Matthew Peterson at EZIQC@njpacoop.org or 218-894-5493.

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 TO BIDS.

4. REQUEST FOR INFORMATION (RFI)

4.1 Submit all RFIs about this ITB, in writing, to Matthew Peterson, NJPA, 202 12th Street NE, Staples, MN 56479, or email at EZIQC@NJPACOOP.org or by fax at (218) 894-3045 prior to **October 21, 2014 at 4:30 PM CT**. NJPA urges potential bidders to communicate all concerns during the response period to avoid misunderstandings.

4.2 The response to the RFI will become an Addendum to these ITB Documents.

5. PRE-BID SEMINAR

A Pre-bid seminar will be held at the place and time listed in the Invitation To Bid for the purpose of discussing the IQCC procurement system, the ITB Documents and bid forms. **Attendance at the Pre-bid seminar is highly recommended and failure to attend and understand the scope of this Bid will not excuse a Contractor from performing under this Contract.**

6. ADDENDA TO THE ITB DOCUMENTS

Addenda are written instruments issued by the NJPA that modify or interpret these ITB Documents. All Addenda issued by NJPA shall become a part of the ITB Documents. Addenda will be delivered to all potential bidders using the same method of delivery of the original ITB 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 EZIQC website at www.EZIQC.com/Prebid or the NJPA website from www.NJPACOOP.org/national-cooperative-contract-solutions/eziqc-construction/eziqc-pending solicitations 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. REQUIREMENT NOT USED

8. BID SUBMISSION PROCESS

8.1 Preparation of the Bid Response

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

Two (2) original copies of Bid Forms 1, 2, 10 and 14 MUST be submitted for each Zone 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 ZONE number.

8.1.1.2. **Bid forms 4, 5, 6, 7, 8, 9, 11 12, 13, 15 and 16** – only need to be submitted once for the **entire package**. As stated below you will provide One (1) Original copy of Bid Forms 4, 5, 6, 7, 8, 9, 11, 12, 13, 15 and 16 in a Tabbed Notebook. On the outside of the Notebook you will include Company Name, SOLICITATION NO. and ZONE number.

NOTE: Only one Management Plan is required for this submission. See Section 9: Contractor's Management Plan.

8.1.2 Additionally, submit one (1) electronic copy (CD-ROM's or USB Flash Drives) of the bid documents (Bid Forms 1-16) including the Management Plan and scanned copies of signature pages with original signatures The CD's or USB Flash Drive must be labeled with; ITB No., Date, and Company Name.

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

8.1.4 The bid documents must be submitted with original ink signatures by the person authorized to sign the bid. The person signing the bid must initial erasures, interlineations or other modifications in the bid document. Failure to properly sign the bid documents or to make other notations as indicated may result in rejection of 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 ITB 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-responsible 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, the type of work your company self-performs, and the type of work your company typically subcontracts.

2. List the five (5) largest construction Contracts your firm has been awarded since 11/01/2008 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.*
h. *Provide a general description of the Scope of Work.*
i. *Identify the approximate dollar amount of Work completed.*

The awarded Contractor must have the capacity and capability to perform multiple projects at multiple locations simultaneously. Demonstrate this capacity and capability by providing ten (10) projects that meet the following criteria for each project, between $25,000 to $500,000, completed in the last three (3) years: **Submit Bid Form 13 for each Project.**

a. *Project title.*
b. *Project number.*
c. *Geographic location.*
d. *Owner name and contact (title, address, email and phone number).*
e. *Project amount.*
f. *Project duration, start and finish dates.*
g. *Actual Project duration, start and finish dates.*
h. *Project size in $.*
i. *Provide a brief description of the Scope of Work.*

3. Provide a narrative description of how you propose to execute the Work assigned under this contract, including but not limited to:

a. 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 Detail Scope of Work for each Work Order. Explain in detail your proposed participation and the specific qualities 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. The Contractor is expected to assist NJPA in the marketing of the IQCC services under the EZIQC brand**. Please provide a specific marketing plan including your strategy for marketing, the personnel and their qualifications for marketing, and the frequency and duration of marketing efforts. Additionally, the Contractor is expected to market to potential NJPA members. Please describe your plan to accomplish this**.

e. All Work has a minimum warranty period of one year. Please describe your process for tracking and performing warranty work.

f. If within the past five (5) years, the Bidder has been lawfully precluded from participating in any public procurement activity with a federal, state or local government, then the Bidder must provide a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment and the relevant circumstances relating to the suspension or debarment. Failure to provide this information may be grounds for Disqualification.

g. 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.

4. Management Team

a. Provide an organizational chart.

b. Describe the responsibilities and duties of each position by indicating who will manage the overall contract, attend Joint Scope Meetings, prepare 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. 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 non-pre-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) shall be completed before Contract Award and included in the Adjustment Factor bid by the Contractor – 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: Requirement Not Used
- ☐ Bid Form 4: Bidder Assurance of Compliance
- ☐ Bid Form 5: Management Plan
- ☐ Bid Form 6: Certificate of Good Standing[1]
- ☐ Bid Form 7: Certificate of Secretary[2]
- ☐ Bid Form 8: Bonding Company Statement of Bond Capacity and Availability[3]
- ☐ Bid Form 9: Financial Statement[4]

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 Zones 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
- ☐ Bid Form 15: Ohio Preference Form
- ☐ Bid Form 16: Standard Affirmation and Disclosure Form

Criteria for doing business with the State of Ohio:

1. Contractor must be registered as a business with the **Ohio Secretary of State.**
2. Contractor must have an **Affirmative Action Program Verification** through the Equal Opportunity Division.

3. Contractor cannot have any **Unresolved Findings for Recovery** (https://ohioauditor.gov/findings.html).
4. Contractor cannot be on the **Federal Debarment List**.
5. Contractor cannot be on the **Ohio Department of Transportation Debarment List**.
6. Contractor must have a Current Insurance Certificate which includes the Department of Administrative Services Standard Terms and Conditions Section S-13.

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
- Zone
- 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 hundered and eight (180) Days following the time and date designated for the receipt of bids. Prior to the deadline for submission of bids, any bid submitted may be modified or withdrawn by notice to the 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 be responsive which means it shall have been submitted on time and materially satisfy all mandatory requirements identified in this document. A bid must reasonably and substantially conform to all the terms and conditions in the solicitation to be considered responsive. Deviations or exceptions stipulated in Bidder's response, while possibly necessary in the view of the Bidder, may result in disqualification.

14.2 Any Contractor wishing to submit a bid in response to this ITB 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 three (3) 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 Bidders. A protest must be in writing and filed with NJPA. A protest of an award or proposed award must be filed within ten (10) calendar days after the public notice or announcement of the award. No protest shall lie for a claim that the selected Bidder is not a responsible Bidder. A protest must include:

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 ITB 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. CT.

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 ITB 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.

19. MARKETING REQUIREMENT

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

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

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

An award of Contract resulting from this ITB is an opportunity for the awarded contactor to pursue commerce with, and deliver value to NJPA and NJPA Members. An award of Contract is not an opportunity to see how much business NJPA can drive to an awarded Contractor's door. **As such, the Bidder will demonstrate in the Management Plan specific marketing strategies, personnel and the qualifications of those personnel to market IQCC and the frequency and duration of marketing efforts.** NJPA reserves the right to deem a Bidder non-responsive or to waive an award based on a Bidder's unwillingness to participate in such a marketing effort or by submitting an unsatisfactory marketing strategy as part of the overall management plan. Further marketing requirements will be found in Book Two Section 9 of this ITB.

20. MEMBER SIGN-UP PROCEDURE

Bidder agrees to cooperate and participate in the NJPA Membership process as part of connecting NJPA Members to NJPA contracts. The process to sign up new NJPA

Members to purchase under this Agreement will be defined during the award phase.

21. FEES

21.1 The Contractor shall include two types of Administrative Fees in calculating the Contractor's Adjustment Factor.

21.1.1 The NJPA Administrative Fee will be calculated at the rate of 7.5% of the total job order value charged to the NJPA Member.

21.1.2 The DAS Revenue Fee will be calculated at the rate of 0.75% of the total job order value charged to the NJPA Member.

21.2 The Administrative Fees shall be collected by the Awarded Contractor and paid to NJPA and the State of Ohio as described herein within five (5) business days of Contractor's receipt of payment for each Job Order.

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

21.4 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:

EZIQC, LLC
Attn: Accounts Receivable
30 Patewood Drive, Suite 350
Greenville, SC 29615

21.5 The Contractor agrees to pay to the State of Ohio the 0.75% administrative fee according to the instructions at:

http://procure.ohio.gov/proc/viewContractsAwards.asp?contractID=14247.

21.6 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.

21.7 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.

22. 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.

23. PHYSICAL PRESENCE

The Bidder must have a fully staffed and functioning office located within the Zone they are applying for and must have been in business performing construction work for at least **three (3) years**. Contractor to complete Bid Form 14: Existing Full-Service Office Location Affidavit for each zone that you are bidding.

24. OHIO SPECIFIC INSTRUCTION TO BIDDERS

24.1 I-23. Preference for Ohio Products. The bid award may be subject to the domestic preference provisions of the Buy America Act, 41 U.S.C.A., 10a-10d, as amended, and to the preference for Ohio products under O.R.C. Sections 125.09 and 125.11 and Ohio Administrative Code Rule 123:5-1-06.

24.2 I-27. Suspension and Debarments. DAS will not award a contract for supplies or services, funded in whole or in part with Federal funds, to a person who has been suspended or debarred from doing business with the State of Ohio or who appears on the Federal List of Excluded Parties Listing System https://www.sam.gov/portal/public/SAM/

24.3 I-29. Registration with the Secretary of State. By the signature affixed to Bid Form 10, the bidder attests that the Bidder is:

(A) an Ohio corporation that is properly registered with the Ohio Secretary of State; or

(B) a foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

Any foreign corporation required to be licensed under O.R.C. Sections 1703.01 to 1703.31, which transacts business in the state of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than $250 nor more than ten thousand dollars. No officer of a foreign corporation shall transact business in the state of Ohio, if such corporation is required by O.R.C. Sections 1703.01 to 1703.31 to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree.

24.4 I-30. Certification Regarding Contract Eligibility With Other Governmental Entities: By the signature affixed Bid Form 10, Bidder hereby certifies that Bidder has not, within the last seven (7) years been the subject of any government action to limit the Bidder's right to do business with the government. If the Bidder cannot so certify, the Bidder must provide a written explanation with the bid response.

24.5 I-31. Non-Collusion Certification: By the signature affixed Bid Form 10 of the Bid, the Bidder certifies that he/she is (sole owner, partner, president, secretary, etc.) of the party making the forgoing bid; that such bid is genuine and not

collusive or sham; that bidder has not colluded, conspired or agreed, directly or indirectly, with any bidder or person, to put in a sham bid; or colluded or conspired to have another not bid and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person to fix the bid price of its bid or any other bidder, or to fix any overhead, profit or cost element of the bid price, or of that of any other bidder, or to secure any advantage against any bidder or any person or persons interested in the proposed contract and that all statements contained in the bid are true; and further, that the Bidder has not, directly or indirectly, submitted this bid, or the contents thereof, or divulged any related information or data to any association or to any member or agent of any association.

24.6 **I-33. FDA Registration.** In accordance with the Public Health Security and Bioterrorism Preparedness Response Act of 2002, all domestic and foreign facilities that manufacture, process, pack or hold food for human or animal consumption in the United States are required to be registered with the Food and Drug Administration (FDA). This registration includes owners, operators, or agents in charge of domestic or foreign facilities that manufacture/process, pack, or hold food for human or animal consumption in the United States. All domestic facilities, whether or not food enters interstate commerce, are required to register. Facilities may complete their registration with the FDA online at: http://www.cfsan.fda.gov/~furls/ovffreg.html. By the signature affixed to Bid Form 10 of this ITB, Bidder certifies that Bidder, or his supplier(s) are properly registered with the FDA, unless otherwise exempted from such registration by the FDA.

SECTION THREE - BID FORMS

BID FORM 1: THE ADJUSTMENT FACTORS

SOLICITATION NO: OH_____

CONTRACTOR NAME:_____

ZONE:_____

The Contractor shall perform the Tasks and pay all Administrative Fees 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:

   1.A. Adjustment Factor Without Administrative Fees | | . | | | | |

   (Specify to four decimal places)

   1.B. Adjustment Factor With Administrative Fees (1.A. / 0.9175) | | . | | | | |

   (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:

   2.A. Adjustment Factor Without Administrative Fees | | . | | | | |

   (Specify to four decimal places)

   2.B. Adjustment Factor With Administrative Fees (2.A. / 0.9175) | | . | | | | |

   (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:

   3.A. Adjustment Factor Without Administrative Fees | | . | | | | |

   (Specify to four decimal places)

   3.B. Adjustment Factor With Administrative Fees (3.A. / 0.9175) | | . | | | | |

   (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:

   4.A. Adjustment Factor Without Administrative Fees [ ][ ].[ ][ ][ ][ ]
   (Specify to four decimal places)

   4.B. Adjustment Factor With Administrative Fees (4.A. / 0.9175) [ ][ ].[ ][ ][ ][ ]
   (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:

   5.A. Adjustment Factor Without Administrative Fees [ ][ ].[ ][ ][ ][ ]
   (Specify to four decimal places)

   5.B. Adjustment Factor With Administrative Fees (5.A. / 0.9175) [ ][ ].[ ][ ][ ][ ]
   (Specify to four decimal places)

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

   Adjustment Factor With Administrative Fees [ ][ ].[ ][ ][ ][ ]
   (Specify to four decimal places)
   (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 may be considered non-responsive and may 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 Factors must be higher than the Normal Working Hours Adjustment Factors.**
- **The Non Pre-priced Adjustment Factor Without Administrative Fees on Bid Form 1 must be between 1.0500 and 1.2000**

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

BID FORM 2: CALCULATION OF THE COMBINED ADJUSTMENT FACTOR

SOLICITATION NO: OH_____

CONTRACTOR NAME:_____

Zone:_____

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 (1.B)	_____
Line 2.	Multiply Line 1 by 0.60	_____
Line 3.	Other Than Normal Working Hours Prevailing Wage (2.B)	_____
Line 4.	Multiply Line 3 by 0.10	_____
Line 5.	Normal Working Hours Non-Prevailing Wage (3.B)	_____
Line 6.	Multiply Line 5 by 0.10	_____
Line 7.	Other Than Normal Working Hours Non-Prevailing Wage (4.B)	_____
Line 8.	Multiply Line 7 by 0.10	_____
Line 9:	Adjustment Factor for Non Pre-priced Tasks (5.B)	_____
Line 10:	Multiply Line 9 by 0.10	_____
Line 11:	Summation of lines 2, 4, 6, 8 and 10. (Combined Adjustment Factor)	_____

Transfer the number on line 11 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: REQUIREMENT NOT USED

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 ITB which tends to, or does, lessen or destroy free competition in the letting of the Agreement sought for by this ITB, 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 ITB 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 ITB, 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:

    Addendum Number 1: _____
    Addendum Number 2: _____
    Addendum Number 3: _____

    _____
    Signature

Company Name: _____

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

Mailing 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: OHIO SECRETARY OF STATE

Provide a Ohio Secretary of State form 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 QUANITY CONSTRUCTION AGREEMENT

IMMEDIATELY FOLLOWS

INDEFINITE QUANTITY CONSTRUCTION AGREEMENT

ITB NUMBER: _____

ZONE: _____

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 ITB Documents; (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications) and Addenda thereto, all payment and performance bonds (if any), material and workmanship bonds (if any); wage rate decisions and certified payroll records (if any); Notice of Award; all modifications issued thereto, including Supplemental 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 Zone set forth above. However, the parties may agree that the Contractor can perform Work in a different Zone at its current Adjustment Factors.

ARTICLE 3. THE AGREEMENT PRICE

A. This Agreement is an indefinite-quantity contract for construction work and services. The Estimated Annual Value of this Agreement is $ _____. 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:

C. 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:

_____.
(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:

_____.
(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:

_____.
(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:

_____.
(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 (unless extended by NJPA per the Terms of this Contract). 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 eGordian® and/or ezIQC® 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 ZONES OF THE STATE(S)

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

No **We are NOT interested in working outside our Zone.**

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:_____

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 ITB Documents, Instructions to Bidders Article 21, regarding the requirement for an existing full-service office location within the Zone 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 the Zone 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 ITB 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 _____

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

BID FORM 15: OHIO PREFERENCE FORM

IMMEDIATELY FOLLOWS

Attach if applicable

BID FORM 16: STANDARD AFFIRMATION AND DISCLOSURE FORM

DEPARTMENT OF ADMINISTRATIVE SERVICES STANDARD AFFIRMATION AND DISCLOSURE FORM EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

By the signature affixed hereto, the Contractor affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Contractor to sanctions. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

_____ _____
(Address) (City, State, Zip)

Name/Principal location of business of subcontractor(s):

_____ _____
(Name) (Address, City, State, Zip)

_____ _____
(Name) (Address, City, State, Zip)

2. Location where services will be performed by Contractor:

_____ _____
(Address) (City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

_____ _____
(Name) (Address, City, State, Zip)

(Name)	(Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

(Address)	(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)
(Name)	(Address, City, State, Zip)

Contract also affirms, understands and agrees that Contractor and its subcontracts are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The state has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure form and have read and understand that this form is part of any Contract that Contract may enter into with the State and is incorporated therein.

By: _____
Contractor

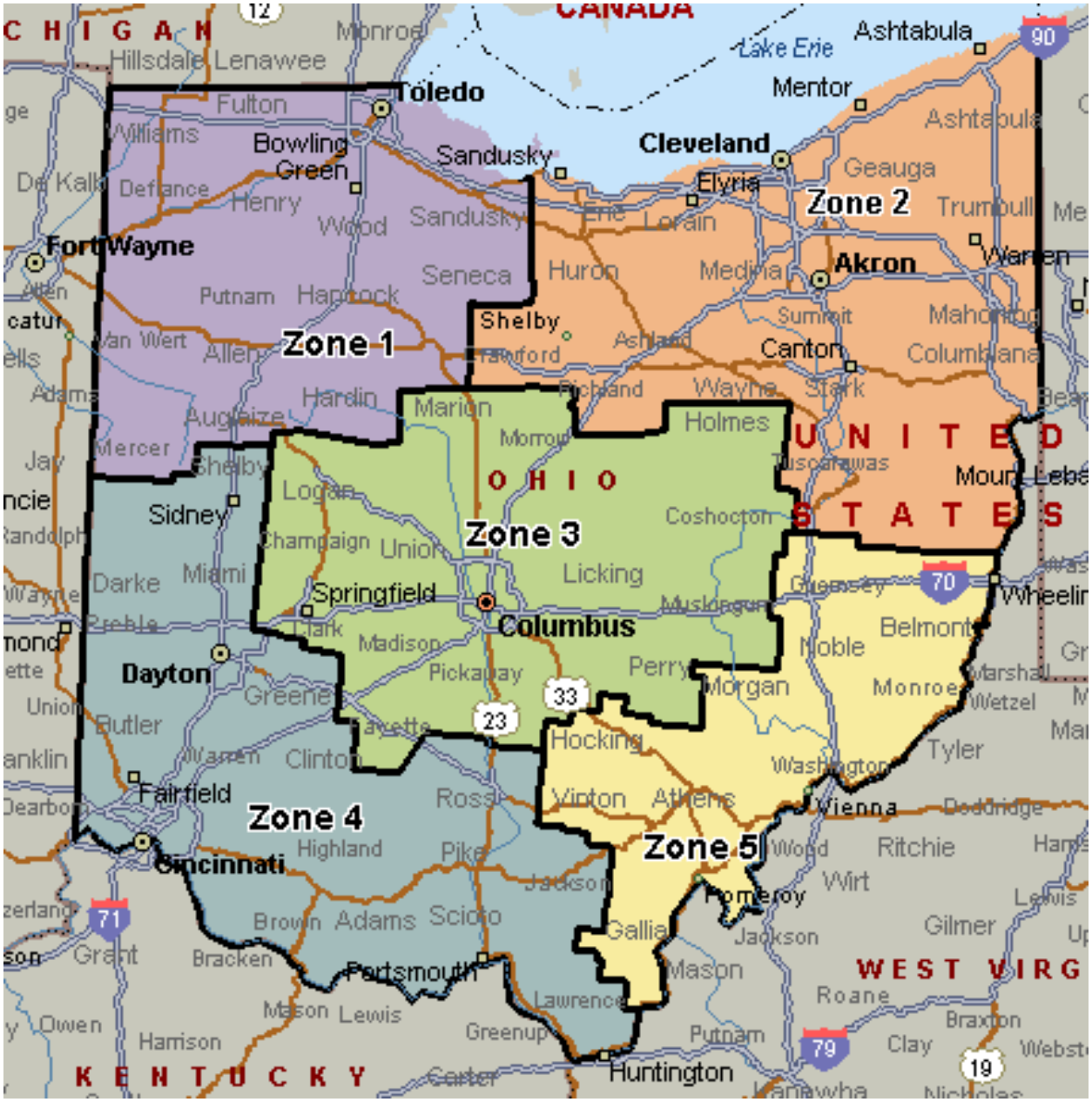
Print Name: _____

Title: _____

Date: _____

SECTION FOUR - EXHIBITS

EXHIBIT A: GEOGRAPHIC MAP OF NJPA CONTRACT ZONES



County	Territory
Allen	Zone 1
Auglaize	Zone 1
Defiance	Zone 1
Fulton	Zone 1
Hancock	Zone 1
Hardin	Zone 1
Henry	Zone 1
Lucas	Zone 1
Mercer	Zone 1
Ottawa	Zone 1
Paulding	Zone 1
Putnam	Zone 1
Sandusky	Zone 1
Seneca	Zone 1
Van Wert	Zone 1
Williams	Zone 1
Wood	Zone 1
Wyandot	Zone 1
Ashland	Zone 2
Ashtabula	Zone 2
Carroll	Zone 2
Columbiana	Zone 2
Crawford	Zone 2
Cuyahoga	Zone 2
Erie	Zone 2
Geauga	Zone 2
Harrison	Zone 2
Huron	Zone 2
Jefferson	Zone 2
Lake	Zone 2
Lorain	Zone 2
Mahoning	Zone 2
Medina	Zone 2
Portage	Zone 2
Richland	Zone 2
Stark	Zone 2
Summit	Zone 2
Trumbull	Zone 2
Tuscarawas	Zone 2
Wayne	Zone 2
Champaign	Zone 3
Clark	Zone 3
Coshocton	Zone 3
Delaware	Zone 3
Fairfield	Zone 3
Fayette	Zone 3
Franklin	Zone 3
Holmes	Zone 3
Knox	Zone 3
Licking	Zone 3
Logan	Zone 3
Madison	Zone 3
Marion	Zone 3
Morrow	Zone 3
Muskingum	Zone 3
Perry	Zone 3
Pickaway	Zone 3
Union	Zone 3

Adams	Zone 4
Brown	Zone 4
Butler	Zone 4
Clermont	Zone 4
Clinton	Zone 4
Darke	Zone 4
Greene	Zone 4
Hamilton	Zone 4
Highland	Zone 4
Jackson	Zone 4
Lawrence	Zone 4
Miami	Zone 4
Montgomery	Zone 4
Pike	Zone 4
Preble	Zone 4
Ross	Zone 4
Scioto	Zone 4
Shelby	Zone 4
Warren	Zone 4
Athens	Zone 5
Belmont	Zone 5
Gallia	Zone 5
Guernsey	Zone 5
Hocking	Zone 5
Meigs	Zone 5
Monroe	Zone 5
Morgan	Zone 5
Noble	Zone 5
Vinton	Zone 5
Washington	Zone 5

BOOK 2

IQCC STANDARD TERMS AND CONDITIONS AND CONTRACT GENERAL CONDITIONS

SOLICITATION NO.

OH01GCOMA-102814
OH01GCOMB-102814
OH02GCOMA-102814
OH02GCOMB-102814
OH02GCOMC-102814
OH03GCOMA-102814
OH03GCOMB-102814
OH03GCOMC-102814
OH04GCOMA-102814
OH04GCOMB-102814
OH05GCOMA-102814
OH05GCOMB-102814
OH01HOMA-102814
OH02HOMA-102814
OH02EOMA-102814
OH03HOMA-102814
OH03EOMA-102814
OH03COMA-102814
OH03AOMA-102814
OH04EOMA-102814
OH05HOMA-102814

INDEFINITE QUANTITY CONSTRUCTION CONTRACT

National Joint Powers Alliance®

202 12th Street NE
Staples, MN 56479

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

September 2014

BOOK 2

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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 ITB 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 ITB Documents; (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications) and Addenda thereto, all payment and performance bonds (if any), material and workmanship bonds (if any); wage rate decisions and certified payroll records (if any); Notice of Award; State of Ohio Standard Contract Terms and Conditions, State of Ohio Supplemental Contract Terms and Conditions, and State of Ohio Special Terms and Conditions; 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 Ohio.

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 ITB 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 complinace 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 State Department of Transportation Standard Specifications for Road and Bridge Construction

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.

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 Typically design services fall under construction and should not be a part of this contract. 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 ITB. 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. ZONE

Contractor will primarily work in the Zone designated. However, if both parties agree, the Contractor may work in another Zone 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 Zone.

6. ESTIMATED ANNUAL VALUE

The Estimated Annual Value of the Agreement is as specified in the ITB. 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.

8.1.4. On a project by project basis, additional State of Ohio Standard Requirements for Public Facility Construction Definitions and General

Conditions for Job Order Contracts may be incorporated into a Detailed Scope of Work. For example of the General Terms and Conditions and Definitions: See http://www.njpacoop.org/index.php?cID=3852.

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 particluar 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 revisons 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 other Contractors awarded an IQCC Contract if the initial Contractor fails to submit Price Proposal Packages, and revisions thereto, in a timely manner.

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 revison 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 revisons 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. Changes

9.1 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 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 The Contractor shall be proactive about selling and marketing this contract to public agencies and non-profit organizations. Failure to do so may be grounds for termination of this Contract or other disciplinary action at the option of NJPA.

10.2 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.

10.3 The Contractor must adhere to the following when preparing marketing materials and web sites, and in the use of trademarks and service marks:

10.3.1 The Contractor shall include the NJPA logo and website address on all marketing materials and web sites that mention this Contract or have anything to do with this Contract.

10.3.2 The Contractor shall include the ezIQC logo, website address (www.ezIQC.com), and ezIQC® telephone number (888-993-9472) on all marketing materials and web sites that mention this Contract or have anything to do with this Contract.

10.3.3 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

10.3.4 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 ezIQC® website or the Contractor may input project information on the ezIQC web site on behalf of an NJPA Member or Potential NJPA Member.

10.3.4 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.

10.3.5 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 1.1000 to the Reimbursable Fee work task rather than applying the Contractor's competitively bid Adjustment Factor.

13. COMPUTER SOFTWARE

The Contractor shall maintain at its office for its use a computer with an internet connection. The Contractor will be furnished with a copy of the internet based eGordian® software which will allow the Contractor to generate 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.

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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 warrantees and guarantees of all equipment and materials required by this Agreement in the name of the NJPA Member.

8. PERMITS AND 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 1.1000. Additional 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 preperation of the Price Proposal and the execution of the Work. During the performance of the Work, the superintendent assigend 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.

21. PARTIAL OCCUPANCY OR USE

21.1 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.

21.2 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.

21.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

22. IDENTIFICATION AND SECURITY REQUIREMENTS

The Contractor shall comply with all identification and security requirements that the 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 substance presents the risk of bodily injury or death as described herein and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

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

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

25. INSURANCE REQUIREMENTS

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

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

25.1.2 General Liability and Property Damage Insurance. A standard general comprehensive liability insurance policy or a commercial general liability

insurance policy issued to and covering the liability of the Contractor for all Work and operations under this Agreement, including, but not limited to, contractual and completed operations coverage. The coverage under such policy shall not be less than the following limits: Bodily Injury and Property Damage Liability, $ 2,000,000 Each Occurrence, 2,000,000 Aggregate.

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

25.1.4 All Risk Builders Risk Insurance. Where specifically required in the Detailed Scope of Work, the Contractor shall provide, before the Work Order is issued, Builders' Risk Insurance in an amount at least equal to the Work Order Price in a form and by a carrier acceptable to the NJPA Member.

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

25.2 The Contractor shall provide certificates of insurance. Such certificates shall be on a form prescribed by NJPA, shall list the various coverage and shall contain, in addition to any provisions hereinbefore required, a provision that the policy shall not be changed or cancelled and that it will be automatically renewed upon expiration and continued in force until final acceptance by NJPA, or NJPA Member, of all the work covered by the Agreement, unless NJPA is given fifteen (15) days' written notice to the contrary. Upon request, the Contractor shall furnish NJPA or any NJPA Member with a certified copy of each policy.

25.3 All insurance required to be procured and maintained as aforesaid must be procured from insurance companies approved by NJPA.

25.4 If at any time any of the above-required insurance policies should be cancelled, terminated or modified so that insurance is not in effect as above required, then, if NJPA shall so direct, the Contractor shall suspend performance of the work. If the said work is so suspended, no extension of time shall be due on account thereof. If said work is not suspended, then NJPA may, at its option, obtain insurance affording coverage equal to that above required, the cost of such insurance to be payable by the Contractor.

25.5 Should the awarded Contractor retain a Subcontractor to perform any of the services mentioned herein, it is the Contractor's responsibility to insure that the Subcontractor(s) maintains the same types of insurance coverage in accordance with the requirements and amounts indicated herein.

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

25.7 For additional insurance requirements please refer to S-13 and S-14 of the STATE OF OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES, GENERAL SERVICES DIVISION, OFFICE OF PROCUREMENT SERVICES SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS.

26. LIQUIDATED DAMAGES

26.1 If provided for in the Request for Proposal, NJPA may assess liquidated damages for each day after the Work Order Completion Time that the Detailed Scope of Work is not complete. It is understood and agreed by and between CONTRACTOR, NJPA and the MEMBER, that time is of the essence in all matters relating to Liquidated Damages.

26.2 The liquidated damages shall be equal to 1% of the total Work Order Amount for each calendar day of delay.

27. TESTS AND INSPECTIONS

27.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the NJPA Member, or with the appropriate public authority. The Contractor shall give the Project Manager timely notice of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures.

27.2 If the Project Manager, NJPA Member or public authorities having jurisdiction determine that portions of the Work require, through no fault of the Contractor, additional testing, inspection or approval, the Project Manager will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the NJPA Member, and the Contractor shall give timely notice to the Project Manager of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures. Such costs shall be at the NJPA Member's expense.

27.3 If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Project Manager's services and expenses shall be at the Contractor's expense.

27.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Project Manager.

27.5 If the Project Manager is to observe tests, inspections or approvals required by the Contract Documents, the Project Manager will do so promptly and, where practicable, at the normal place of testing.

27.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

28 GOVERNING LAW

28.1 The Agreement shall be governed by the law of the place where the Project is located.

28.2 NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law.

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

29. COMPLIANCE WITH LAWS

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

30. SEVERANCE

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

31. LICENSE

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

32. ASSIGNMENT

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

33. CLAIMS AND DISPUTES

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

34. TERMINATION BY THE NJPA FOR CAUSE

34.1 NJPA may terminate the Contract if the Contractor:

34.1.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

34.1.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

34.1.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

34.1.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

34.3 The NJPA Member may not terminate this Contract between the NJPA and the Contractor.

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

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

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

36. AUDITS

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

37. GRATUITIES

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

hardware provided to NJPA for demonstration, evaluation or loan purposes are not considered gratuities.

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES

I. GROUP PURCHASING STANDARD CONTRACT TERMS AND CONDITIONCONTRACT TERM PROVISIONS:

A. APPROPRIATION OF FUNDS. The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails at any time to continue funding for the payments or obligations due hereunder, the Work under this Contract that is affected by the lack of funding will terminate and the State will have no further obligation to make any payments and will be released from its obligations on the date funding expires.

B. OBM CERTIFICATION. None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all of the following conditions have been met:

1. All statutory provisions under the O.R.C., including Section 126.07, have been met.
2. All necessary funds are made available by the appropriate state agencies.
3. If required, approval of this Contract is given by the Controlling Board of Ohio; and
4. If the State is relying on Federal or third-party funds for this Contract the State gives the Contractor written notice that such funds have been made available.

C. TERMINATION / SUSPENSION.

1. **Contract Termination.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the State.

   a. **Termination for Default.** If Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor.

   b. **Termination for Unremedied Default.** If Contractor's default may be cured within a reasonable time, the State will provide written notice to Contractor specifying the default and the time within which Contractor must correct the default. If Contractor fails to cure the specified default within the time required, the State may terminate the Contract. If DAS does not give timely notice of default to Contractor, the State has not waived any of the State's rights or remedies concerning the default.

   c. **Termination for Persistent Default.** The State may terminate this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified Contractor of its third default, the State may terminate this Contract without providing Contractor with an opportunity to cure, if Contractor defaults for a fourth time. The four defaults are not required to be related to each other in any way.

   d. **Termination for Endangered Performance.** The State may terminate this Contract by written notice to the Contractor if the State determines that the performance of the Contract is endangered through no fault of the State.

   e. **Termination for Financial Instability.** The State may terminate this Contract by written notice to the Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.

   f. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract by written notice, if it determines that Contractor is delinquent in its payment of federal, state or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a state agency or political subdivision. The State also may cancel this Contract, if it determines that Contractor has violated any law during the performance of this Contract. However, the State may not terminate this Contract if the Contractor has entered into a repayment Contract with which the Contractor is current.

   g. **Termination for Subcontractor Default.** The State may terminate this Contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.

h. **Termination for Failure to Retain Certification.** Pursuant to O.R.C. Section 125.081, the State may set aside a bid for supplies or services for participation only by minority business enterprises (MBE's) certified by the State of Ohio, Equal Opportunity Coordinator. After award of the Contract, it is the responsibility of the MBE Contractor to maintain certification as a MBE. If the Contractor fails to renew its certification and/or is de-certified by the State of Ohio, Equal Opportunity Coordinator, the State may immediately cancel the Contract.

i. **Termination for Convenience.** The State may terminate this Contract for its convenience after issuing written notice to the Contractor. If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any supplies or products that the Contractor has delivered or services rendered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only after the Contractor has submitted a proper invoice for the services, products or supplies, with the invoice reflecting the amount determined by the State to be owing to the Contractor.

j. **Termination, Effectiveness, Contractor Responsibilities.** The notice of termination whether for cause or without cause will be effective as soon as Contractor receives it. Upon receipt of the notice of termination, Contractor will immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor will immediately prepare a report and deliver it to the State. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any services completed or partially completed but not delivered to the State at the time of termination. Any and all work, whether completed or not, will be delivered to the State along with the specified report. However, if delivery in that manner would not be in the State's interest, then the Contractor will propose a suitable alternate form of delivery.

2. **Contract Suspension.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may suspend rather than terminate this Contract where the State believes that doing so would better serve its interest.

In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault.

The notice of suspension, whether with or without cause will be effective immediately on the Contractor's receipts of the notice. The Contractor will immediately prepare a report and deliver it to the State as is required in the case of termination.

II. CONTRACT REMEDIES:

A. **ACTUAL DAMAGES.** Contractor is liable to the State of Ohio for all actual and direct damages caused by Contractor's default. The State may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. The State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.

B. **LIQUIDATED DAMAGES**. If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the services, products or supplies that is the subject of the default, for every day that the default is not cured by the Contractor.

C. **DEDUCTION OF DAMAGES FROM CONTRACT PRICE**. The State may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice to being issued to the Contractor by the State.

III. PAYMENT PROVISIONS:

A. **INVOICE REQUIREMENTS.** The Contractor must submit an original invoice to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

1. The purchase order number authorizing the delivery of products or services.
2. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36). If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.

B. **PAYMENT DUE DATE.** Payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract. The date of the warrant issued in payment will be considered the date payment is made. Interest on late payments will be paid in accordance with O.R.C. Section 126.30.

IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:

A. **CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** Contractor warrants that it is not subject to an unresolved finding for recovery under O.R.C. Section 9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void *ab initio*.

B. **GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor under this Contract will:

1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.
2. No services, products or supplies will infringe on the intellectual property rights of any third party.
3. All warranties are in accordance with Contractor's standard business practices attached.
4. That the products or supplies hereunder are merchantable and fit for the particular purpose described in this contract.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

5. The Contractor has the right to enter into this Contract.
6. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
7. The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.
8. The Contractor has good and marketable title to any products or supplies delivered under this Contract and which title passes to the State.
9. The Contractor has the right and ability to grant the license granted in products or supplies in which title does not pass to the State.

If any services of the Contractor or any products or supplies fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for the services, products or supplies. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

C. **INDEMNITY.** The Contractor will indemnify the State for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Contractors performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors.

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any products or supplies under this Contract. This obligation of indemnification will not apply where the State has modified or misused the products or supplies and the claim of infringement, is based on the modification or misuse. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the State Attorney General. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will take one (1) of the following four (4) actions:

1. Modify the products or supplies so that is no longer infringing.
2. Replace products or supplies with an equivalent or better item.
3. Acquire the right for the State to use the infringing products or supplies as it was intended for the State to use under this Contract; or
4. Remove the products or supplies and refund the fee the State paid for the products or supplies and the fee for any other products or supplies that required the availability of the infringing products or supplies for it to be useful to the State.

D. **LIMITATION OF LIABILITY.** Notwithstanding any limitation provisions contained in the documents and materials incorporated by reference into this contract, the parties agree as follows:

1. Neither party will be liable for any indirect, incidental or consequential loss or damage of any kind including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of damages.
2. The contractor further agrees that the contractor shall be liable for all direct damages due to the fault or negligence of the contractor.

V. GENERAL PROVISIONS:

A. **AMENDMENTS.** No amendment or modification of this Contract will be effective unless it is in writing and issued by DAS.

B. **ANTITRUST ASSIGNMENT TO THE STATE.** Contractor assigns to the State of Ohio, through DAS-Procurement Services, all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.

C. **ASSIGNMENT / DELEGATION.** The Contractor will not assign any of its rights nor delegate any of its duties under this Contract without written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

D. **AUDITS.** The Contractor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Contractor must keep separate business records for this Contract, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Contract and until the expiration of three (3) years after final payment under this Contract, the Contractor agrees to provide the State, its duly authorized representatives or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Contract.

The Contractor shall, for each subcontract in excess of two thousand five hundred ($2,500), require its subcontractors to agree to the same provisions of this Article. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision.

The Contractor must provide access to the requested records no later than (5) five business days after the request by the State or any party with audit rights. If an audit reveals any material deviation from the Contract requirements, and misrepresentations or any overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages, as well as the cost of the audit.

E. **CONFIDENTIALITY.** The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any information obtained by it as a result of this Contract, without the written permission of the State. The Contractor must assume that all state information, documents, data, records or other material is confidential.

The Contractor's obligation to maintain the confidentiality of the information will not apply where it: (1) was already in the Contractor's possession before disclosure by the State, and it was received by the Contractor without the obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be serviced by the original order of production. The Contractor will return all originals of any information and destroy any copies it has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State's may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of providing actual damages. This provision shall not, however, diminish or alter any right to claim and recover.

F. **CONTRACT CONSTRUCTION.** This Contract will be constructed in accordance with the plain meaning of its language and neither for nor against the drafting party.

G. **CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** As part of this Contract, Contractor shall disclose the following:

1. The location (s) where all services will be performed; and
2. The location(s) where any state data applicable to the contract will be maintained or made available; and
3. The principal location of business for the contractor and all subcontractors.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

H. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including O.R.C. Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be completed using the Ohio Business Gateway Electronic Filing website http://business.ohio.gov/efiling/. Contractor must verify compliance on an annual basis for the duration of any contract. Approved Affirmative Action Plans can be found by going to the Equal Opportunity Division's web site: http://eodreporting.oit.ohio.gov/searchAffirmativeAction.aspx

J. **FORCE MAJEURE.** If the State or Contractor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; strikes; and other like events; or any cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.

K. **GOVERNING LAW / SEVERABILITY.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.

L. **HEADINGS.** The headings used in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.

M. **NOTICES.** For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract.

N. **ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision incorporated by reference, this document will prevail.

O. **PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without prior, written consent of the State.

P. **STRICT PERFORMANCE**. The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.

Q. **SUBCONTRACTING**. The State, through DAS-Procurement Services, recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State, through DAS-Procurement Services, reserves the right to reject any subcontractor submitted by the Contractor. All subcontracts will be at the sole expense of the Contractor and the Contractor will be solely responsible for payment of its subcontractors. The Contractor assumes responsibility for all sub-contracting and third party manufacturer work performed under the Contract. In addition, Contractor will cause all subcontractors to be bound by the Terms and Conditions and specifications of the contract. The Contrac6tor will be the sole point of contact with regard of all contractual matters.

R. **SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this Contract.

S. **TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.

SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS

S-1. Contract Orders. Participating state agencies will order supplies or services under this Contract from the Contractor directly. The Contractor may receive orders made by participating state agencies by telephone, facsimile, electronically, in person, debit order or by State of Ohio payment card or purchase order from authorized employees of the participating agency. The State will not be responsible for orders placed by unauthorized employees. Contractor is not required to fill an order with a delivery date that is more than 30 days beyond the date of Contract expiration, termination or cancellation, unless the Contract provides for quarterly deliveries. Under a Contract that provides for quarterly deliveries, Contractor is not required to fill an order with a delivery date that is more than 90 days beyond the date of Contract expiration, termination or cancellation.

S-2. Compensation. In consideration for Contractor's performance each participating state agency will pay Contractor directly at the rate specified in the Contract. Payments may be made by the Ohio Payment Card, an Auditor of State warrant or by electronic funds transfer (EFT). For all transactions the Contractor must have a valid W-9 form on file with the Office of Budget and Management. Registration in OBM's database requires the Contractor to complete a Vendor Information Form and IRS W-9 Form. The completed original form should be mailed to Vendor Maintenance, Ohio Shared Services. Information on submitting appropriate documents is available at http://www.ohiosharedservices.ohio.gov/VendorsForms.aspx .

S-3. Ohio Payment Card. Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed $2,500 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the DAS-Procurement Services website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

S-4. Requirements Contract. The quantity of supplies or services to be provided under this Contract is the quantity determined by the actual, good faith, requirements of the participating state agencies. DAS may allow a participating state agency to purchase supplies or services identical to those provided under this Contract from a supplier other than Contractor, if one of the following conditions apply:

(A) The supplies or services to be purchased were not anticipated by DAS at the time this Contract was bid and the supplies or services are required in a large quantity;
(B) The supplies or services to be purchased are unique or unusual from the supplies or services provided under this Contract; or
(C) The agency requires the supplies or services to remedy an emergency and Contractor is not able to provide the supplies or services, as the emergency requires.

S-5. F.O.B. The Place of Destination. Contractor must provide supplies or services under this Contract F.O.B. the place of destination. The place of destination will be specified by the participating state agency on the agency's purchase order or other ordering document. Freight will be prepaid unless otherwise stated.

S-6. Time of Delivery. If Contractor is not able to deliver the supplies or services on the date and time specified by the participating state agency on the agency's ordering document, Contractor must coordinate an acceptable date and time for delivery with the agency. If Contractor is not able to or does not provide the supplies or services to a participating state agency by the date and time provided on the agency's ordering document or by the date and time later agreed upon, the State may obtain any remedy under Section II, "Contract Remedies", as described in the Standard Contract Terms and Conditions or any other remedy at law.

S-7. Minimum Orders-Transportation Charges. For purchase orders placed that are less than the stated minimum order, transportation charges will be prepaid and added to the invoice by the Contractor to the delivery location designated by the ordering agency. Shipment is to be made by private or commercial freight service provider, air, rail, water, parcel post, express or commercial package delivery, whichever is the most economical and expeditious method for proper delivery of the item. Failure of the Contractor to utilize the most economical mode of transportation shall result in the Contractor reimbursing the ordering agency the difference between the most economical mode of transportation and the mode of transportation used by the Contractor. Failure to reimburse the ordering agency shall be considered as a default.

S-8. Workers' Compensation. Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a $1,000,000.00 limit.

S-9. Automobile and General Liability Insurance. During the term of the Contract and any renewal thereto, the Contractor, and any agent of the Contractor, at its sole cost and expense shall maintain a policy of Automobile Liability Insurance in accordance with the State and Federal laws, unless otherwise stated. In addition, Contractor shall carry Commercial General Liability Insurance coverage with a $1,000,000 annual aggregate and a $500,000 per occurrence limit for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside the policy limits. Such policy shall designate the State of Ohio as an Additional Insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation and a statement that the Contractor's commercial general liability insurance shall be primary over any other coverage. Umbrella/excess liability insurance may be used to meet the required limits and the coverage must follow form. DAS-Procurement Services reserves the right to approve all policy deductibles and levels of self-insured retention-captive insurance programs and may require the Contractor to have their policy (ies) endorsed to reflect per project / per location general aggregate limits.

If not submitted with the Bidder's response, copies of the respective insurance certificates shall be filed with DAS- Procurement Services within seven (7) calendar days after notification. Failure to submit the insurance certificates within this time period may result in the bidder being deemed not responsive. Said certificates are subject to the approval of DAS and shall contain a clause or endorsement providing thirty (30) days prior written notice of cancellation, non-renewal or decrease in coverage will be given to DAS. Failure of the Contractor to maintain this coverage for the duration of the Contract, and any renewals thereto, may be considered as a default. All insuring companies shall have and maintain at least an A- (Excellent) rating from A.M. Best unless otherwise approved by DAS..

S-10. Quality Assurance. At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of the testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the terms and conditions of the Termination provision of this Contract.

S-11. Electronic Commerce Program. The State of Ohio is an active participant in E-Commerce to include Electronic Data Interchange (EDI). This program will benefit both the State and the Contractor by reducing time delays in receiving invoices and making payments that are associated with the existing manual processes. The Contractor is encouraged to move toward compliance with electronic commerce technologies, as this will be the preferred method of doing business with the State of Ohio. Information regarding E-Commerce is available on the Office of Budget and Management's website at http://obm.ohio.gov/sectionpages/electroniccommerce/.

S-12. Usage Reports. At no cost to the State, the Contractor shall be required to provide quarterly, bi-annual or annual usage reports as requested by the DAS-Procurement Services. The reports will include information as to purchase activity under the Contract by all participating agencies and Co-operative Purchasing Program members. Report topics will include, but will not be limited to: customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such information as requested by the DAS- Procurement Services. Electronic media is the preferred method for these reports. Failure to provide the requested reports will be deemed as an event of default.

S-13. Return Goods Policy. The State will apply the following Return Goods Policy on all purchases made under the Contract. The Bidder acknowledges to have read, understood, and agrees to this Policy.

(A) Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.

(B) For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by the Contractor. Failure of the Contractor to provide a production sample and obtain written approval form the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.

(C) Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

S-14. Product Recall. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify DAS-Procurement Services and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

S-15. Expenditure Of Public Funds For Offshore Services. The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

The Offeror must complete the attached Contractor/Subcontractor Affirmation and Disclosure form 5.2.8 to abide with Executive Order 2011-12K affirming no services of the Contractor or its subcontractors under this Contract will be performed outside the United States. During the performance of this Contract, the Contractor must not change the location(s) of the country where the services are performed, change the location(s) of the country where the data are maintained, or made available unless a duly signed waiver from the State has been attained to perform the services outside the United States.

S-16. Ohio Ethics. Contractor represent that it and its employees engaged in the administration or performance of the Contract are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws. Contractor further represents that neither Contractor nor any of its employees will do any act that is inconsistent with such laws.

S-17. Contract Compliance. The participating state agency will be responsible for the administration of the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications for the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for immediate correction. If the contractor fails to rectify the infraction(s), the agency will notify DAS through a Complaint to Vendor (CTV) to help resolve the infraction(s).

S-18. Independent Contractor Acknowledgement. It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the state of Ohio or the Ohio Department of Administrative Services. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in O.R.C. Section 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have any individual performing services under this contract complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link: https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80).

Contractor's failure to complete and submit the Independent Contractor/Worker Acknowledgement prior to commencement of the work, service or deliverable provided under this contract shall serve as Contractor's certification that contractor is a "Business entity" as the term is defined in O.R.C. Section 145.037.

OHIO SPECIAL CONTRACT TERMS AND CONDITIONS

(REV. 06/2014)

This Contract will become effective upon award on or after 01/01/2015 for the State of Ohio and will follow the expiration dates and renewals as set forth in the Contract. In even of conflict, the order of precedence for the Terms and Conditions shall be State of Ohio, NJPA, and lastly, The Gordian Group. The awarded Contractor shall abide by all Terms and Conditions set forth in this contract and in the case of contradiction between the RFP document and the state of Ohio Terms and Conditions, the state of Ohio shall supersede.

DELIVERY AND ACCEPTANCE: Services will be performed as set forth in the Contract and in accordance with paragraphs S-8, S-9, and S-10 of the SUPPLEMENTAL CONTRACT TERMS AND CONDITIONS. The location of performance will be noted on the purchase order issued by the participating agency. Payment for services rendered will occur upon the inspection and written confirmation by the ordering agency that the services provided conform to the requirements set forth in the Contract. Unless otherwise provided in the Contract, payment shall be conclusive except as regards to latent defects, fraud, or such gross mistakes as amount to fraud.

AMENDMENTS TO CONTRACT TERMS AND CONDITIONS: The following Amendments to the Contract Terms and Conditions do hereby become a part hereof. In the event that an amendment conflicts with the Contract Terms and Conditions, the Amendment will prevail.

MBE/EDGE: Contractor agrees to solicit no less than 15% of all projects annually to MBE/EDGE participants. Contractor shall follow the requirements of Ohio Administrative Code 123:2-3 through 123:2-9.

PREVAILING WAGE: The Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau has determined that work identified in this bid and to be performed under contract is subject to the requirements of Ohio Revised Code Sections 4115.03 to 4115.16, Prevailing Wage. The prevailing wage scale, as published by the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau is herewith attached to and becomes a part of this bid. Upon award of a Contract by DAS, the successful bidder ("Contractor"), and all of his sub-contractors, guarantees that the prevailing wage for the area, to include any adjustments thereto, as published by the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau will apply to any workman assigned by him or all of his sub-contractors to this project. The participating state agency will serve as prevailing wage coordinator and will be responsible for proper application of labor rates as required by the Ohio Department of Commerce. Responsibilities of the Prevailing Wage Coordinator include, but are not limited to; setting up and maintaining payroll reports, monitoring when payments of wages are made, receiving the Contractor's complete payroll records of each employee, establish procedures to monitor compliance, notify Contractor of any adjustment to the prevailing wage scales and report delinquencies on the part of the Contractor. The successful bidder and all of his sub-contractors shall strictly comply with the wage provisions of the contract.

BACKGROUND CHECKS: A complete and thorough background check, at agency's expense, will be performed on all persons employed by the Contractor for this contract.

1. Criteria for personnel record checks: Background checks may be performed to determine if current or potential employees of the Contractor have any type of convictions in the following areas:

a) Any record of violence, domestic or otherwise
b) Drug-related convictions
c) Theft
d) Other

2. Those Contractor employees or potential Contractor employees with felony convictions or other criminal records, unless specifically approved by the agency, will not be permitted to be employed at the contract locations.

OHIO UTILITIES PROTECTION: By law, everyone must contact the Ohio Utilities Protection Service (1-800-362-2764), at least 48 hours but no more than 10 working days (excluding weekends and legal holidays) before beginning any digging project (see Ohio Revised Code sections 3781.25 to 3781.32).

CONSTRUCTION LAW: All work performed under this contract is subject to the applicable limitations set forth in sections 123.01 and 153 of the Ohio Revised Code. It is the contractor's responsibility to ensure that duties are not performed outside of these limitations. Contractors will be responsible for any fines and fees associated with noncompliance.