

# **IFB DOCUMENTS**

## **CONTRACT NO.**

**FL01-022912, FL02-022912, FL03-022912 , FL04-022912,  
FL05-022912, FL06-022912 & FL07-022912**

## **INDEFINITE QUANTITY CONSTRUCTION CONTRACT**



202 12th Street NE  
Staples, MN 56479

Mr. Gregg Meierhofer  
Coordinator of Bids and Contracts  
[ezIQC@NJPACOOOP.org](mailto:ezIQC@NJPACOOOP.org)

January 2012

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## **INDEFINITE QUANTITY CONSTRUCTION CONTRACT** (IQCC)

### **Invitation For Bid**

<i>Contract #</i>	<i>Region</i>	<i>Bid Due Date and Time</i>	<i>Bid Deposit</i>	<i>Estimated Annual Value</i>	<i>Term</i>
FL01-022912	Northern FL Contract 1	4:00 PM CDT 02/28/12	\$25,000	\$2,000,000	4 Years
FL02-022912	Northern FL Contract 2	4:00 PM CDT 02/28/12	\$25,000	\$2,000,000	4 Years
FL03-022912	Central FL Contract 1	4:00 PM CDT 02/28/12	\$25,000	\$2,000,000	4 Years
FL04-022912	Central FL Contract 2	4:00 PM CDT 02/28/12	\$25,000	\$2,000,000	4 Years
FL05-022912	Southern FL Contract 1	4:00 PM CDT 02/28/12	\$25,000	\$2,000,000	4 Years
FL06-022912	Southern FL Contract 2	4:00 PM CDT 02/28/12	\$25,000	\$2,000,000	4 Years
FL07-022912	Southern FL Contract 3	4:00 PM CDT 02/28/12	\$25,000	\$2,000,000	4 Years

Bids for all contracts covered by this solicitation are **due by 4:00 PM CDT on February 28, 2012**

At the offices of the  
National Joint Powers Alliance  
202 12<sup>th</sup> Street NE, Staples, MN 56479

The National Joint Powers Alliance (NJPA) issues this Invitation For Bid (IFB) on behalf of, and to provide Indefinite Quantity Construction Contracting (IQCC) services to NJPA, current and potential NJPA government, education, and non-profit Members in Florida. It is the intention of NJPA to award individual contracts for General Construction services in each Region. Each contract has an initial term of one (1) year and bilateral option provisions for three (3) additional one year periods, and the total term of the contract cannot exceed four (4) years. The estimated annual value is \$2,000,000.

IQCC, also known as Job Order Contracting (JOC), is a construction contracting procurement system that provides facility owners with access to "on-call" contractors to provide immediate construction services over an extended period of time.

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

2/7/2012	10:00 AM EDT	Broward Community College, A. Hugh Adams Central Campus, 3501 S.W. David Road, Building 19 Room 126, Ft. Lauderdale, FL 33314
2/8/2012	1:30 PM EDT	Seminole State College of Florida, 100 Weldon Blvd. Public Safety Building, Room 0110, Sanford, FL 32773-6199
2/9/2012	10:00 AM EDT	Florida State College at Jacksonville, 101 West State Street, Downtown – Conference Room A1170, Jacksonville, FL 32202

An electronic (CD) copy of the IFB Documents which include the instructions for submitting a bid and the bid documents may be obtained by letter of request to Gregg Meierhofer, NJPA, 202 12th Street NE, Staples, MN 56479, or by email request to [ezIQC@NJPACOOOP.org](mailto:ezIQC@NJPACOOOP.org). **All requests must include mailing address, email address, contact name, and phone number.** Bids are due by 4:00 p.m. CDT on February 28, 2012 and will be opened at 9:00 a.m. on February 29, 2012 IFB Documents will be available until the bid opening date of February 29, 2011.

Direct questions regarding this IFB to: Gregg Meierhofer [ezIQC@NJPACOOOP.org](mailto:ezIQC@NJPACOOOP.org) or (218) 894-5473.

# **BOOK 1**

## **Project Information, Instructions to Bidders, and Execution Documents**

**CONTRACT NO.**  
**FL01-022912, FL02-022912, FL03-022912 , FL04-022912,**  
**FL05-022912, FL06-022912 & FL07-022912**

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202 12th Street NE  
Staples, MN 56479

Mr. Gregg Meierhofer  
Coordinator of Bids and Contracts  
gregg.meierhofer@NJPACOOB.org

January 2012

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# BOOK 1

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## SECTION ONE - PROJECT INFORMATION

### 1. DEFINITIONS

- 1.1. **National Joint Powers Alliance (NJPA):** NJPA is a Minnesota Service Cooperative created by Minnesota Legislative Statue 123A.21 with the directive and commitment to offer, among other things, procurement services to its membership. Eligible membership includes cities, counties, governmental agencies, both public and private educational agencies, colleges, universities and non-profit organizations. This Minnesota Statute also allows for service to NJPA Member agencies in Minnesota and all other states. To this end NJPA has, through Minnesota Statute 123A.21, established a series of contracts with various Contractors for products and services that NJPA Members desire to procure. NJPA and its designated representatives are referred to throughout this Contract as “NJPA”.
- 1.2. **Joint Exercise of Powers:** Minnesota Statute 471.59 provides for the joint exercise of powers which are common to any two units of government by action of their governing bodies. Many other states have enacted the same, or similar, legislation. NJPA Members relying on this legislation must execute a “Joint Powers” or membership agreement with NJPA. NJPA has developed such an agreement in compliance with Minnesota Law and will review and consider appropriate alterations to this document to facilitate compliance with the laws of another state.
- 1.3. **NJPA Members:**
  - 1.3.1. **Potential NJPA Members:** A Potential NJPA Member is defined as any public or private educational agencies, 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 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).

## **2. ABOUT THE NATIONAL JOINT POWERS ALLIANCE (NJPA)**

NJPA is a Joint Powers organization operating under Minnesota Statue 123A.21 and procures contracts under the authority and guidance of the Minnesota Municipal Contracting Law Minnesota Statute 471.345 Subd.15 defining cooperative purchasing. NJPA also serves its national members under MN Statute 471.59 Subd.1 which defines the ability of two governmental agencies to enter into an agreement to share a Contract through the action of their governing boards. This action is based on their local legal ability to recognize and participate in NJPA contracts. The legal ability to forgo the bid process rests on the reference and authority of each individual agency and local policy as well as “Joint Exercise of Powers Authority” and municipal contracting laws within that state. Participation is also authorized by membership and recognizing NJPA's authority to procure on behalf of NJPA Members competitively bid contracts facilitated by NJPA under statutory authority, enabling legislation, and directive. NJPA operates as a national contracting agency offering Contract services and benefits to all qualifying agencies to include all Cities, Counties, Public and private education agencies, and non-profits. A publicly elected Board of Directors calls for bids and awards and holds all contracts and governs NJPA under the guidance of state law. All bids are competitively solicited and awarded by the NJPA publicly elected Board of Directors.

## **3. DEFINED GOALS OF THE IFB**

- 3.1. The goal of this IFB is to establish a group of indefinite quantity construction contracts (IQCC) that NJPA and NJPA Members may access to complete small to medium sized repair, maintenance and 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 Region.
- 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 Region. NJPA Board of Directors will make awards to the selected Bidder(s). The procurement activities of the NJPA Bid Review Committee is limited to document preparation, answering Bidder questions, advertising the solicitation, distribution of this IFB upon request, conducting an evaluation and making recommendation for possible approval to NJPA Board of Directors. Contracts awarded through NJPA are intended to meet the procurement laws of all states and NJPA will exhaust all avenues to comply with as many state laws as possible. It is the responsibility of each participating NJPA Member to ensure to their satisfaction that these laws are satisfied. An individual NJPA Member using these contracts is deemed by its own accord to be in compliance with bidding regulations. NJPA encourages the awarded Contractor to assist NJPA and the NJPA Member in this research to the benefit of all involved. After the award and contract phase, NJPA Members can issue Purchase Orders for any amount without the necessity to prepare their own IFB, RFP or gathering of necessary quotations. This saves the NJPA Members countless hours of time and allows for more economical and efficient purchasing. State laws permit or encourage cooperative purchasing contracts with the belief that better prices and value will result.

#### **4. IQCC OVERVIEW**

- 4.1. IQCC is a competitively bid indefinite quantity construction contract awarded to Contractors to accomplish the repair, alteration, modernization, rehabilitation, and minor new construction of infrastructure, buildings, structures, or other real property. The Contract value is based on the anticipated estimated annual use and the Contract term is generally multiple years. The IFB Documents include a Construction Task Catalog (CTC) containing repair and construction Tasks with preset unit prices. All unit prices are based on local labor, material and equipment prices for the direct cost of construction. Once the Agreement is awarded, NJPA Members will order Work from the CTC by issuing a Purchase Order against the Agreement.
- 4.2. Bidders will offer price adjustments (Adjustment Factors) to be applied to the CTC unit prices. The Adjustment Factors represent either an increase to (such as 1.1000) or a decrease from (such as 0.9800) the preset Unit Prices. The amount to be paid for the Work ordered will be determined by: multiplying the preset unit prices by the appropriate quantities and by the appropriate Adjustment Factor. The CTC and the Contractor's Adjustment Factors will be incorporated into the awarded Agreement.
- 4.3. Under IQCC, the Contractor furnishes management, labor, materials, equipment and incidental design support needed to perform the Work.
- 4.4. As Projects are identified, the Contractor will jointly scope the Work with the NJPA Member. The NJPA Member will prepare a Detailed Scope of Work and issue a Request for Proposal to the Contractor. The Contractor will then prepare a Work Order Proposal for the Project including a Price Proposal, Schedule, list of identified subcontractors, and other requested documentation such as cut sheets for materials. If the Work Order Proposal is found to be reasonable, the NJPA Member will issue a Purchase Order. The Purchase Order will reference the Detailed Scope of Work and set forth the Work Order Completion Time, and the Work Order Price. The Contractor shall perform the Detailed Scope of Work within the Work Order Completion Time for the Work Order Price. A separate Purchase Order will be issued for each project. Extra Work, credits, and deletions will be contained in Supplemental Purchase Orders calculated in the same manner.
- 4.5. The Contractor shall be provided access to an Indefinite Quantity Construction Contracting (IQCC) information management system licensed to NJPA by ezIQ, LLC. The system includes PROGEN, an IQCC management tool that expedites the ordering and execution of work. The Contractor shall use PROGEN to prepare and submit Price Proposals, subcontractor lists, and other requirements as determined by NJPA or an NJPA Member. The system also contains an electronic version of the Construction Task Catalog for the Contractor's use in preparing Price Proposals. Use, in whole or in part, of PROGEN, the Construction Task Catalog, or any other Proprietary Information provided under the IQCC System License specified below for any purpose other than to order and execute work under this Contract for NJPA or an NJPA Member is strictly prohibited unless otherwise stated in writing by ezIQ, LLC. The Contractor hereby agrees to abide by the terms of the following IQCC System License:

#### **IQCC System License**

ezIQ, LLC through its agreement with NJPA, grants to Contractor, and Contractor hereby accepts from ezIQ, LLC for the term of this Contract, a non-exclusive right, privilege, and license to utilize ezIQ, LLC's Indefinite Quantity Construction Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing its responsibilities to NJPA or an NJPA Member under this Contract. The Contractor hereby agrees that ezIQ, LLC's Proprietary Information shall include, but is not limited to, the PROGEN software and support documentation, Construction Task Catalog,

training materials, and other proprietary materials provided to the Contractor by ezIQC, LLC or NJPA. Upon the expiration or termination of this Contract, this IQCC System License shall terminate and the Contractor shall return all Proprietary Information in its possession to ezIQC, LLC.

The Contractor acknowledges that disclosure of Proprietary Information will result in irreparable harm to ezIQC, LLC for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of ezIQC, LLC. The Contractor further acknowledges and agrees to respect the copyrights, registrations, trade secrets, and other proprietary rights of ezIQC, LLC in the Proprietary Information during and after the term of this Contract and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the Contractor, subject to federal, state, and local laws related to public records disclosure.

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

- 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](mailto: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](mailto:INVOICE@ezIQC.com) or via facsimile to (864) 233-9100.

## **5. REGIONS**

NJPA solicits bids for separate contracts for each of the various Regions as shown on Exhibit A. The Contractor can be awarded one contract for a Region as defined below in Article 8.4. The Contractor may be required to perform work in any Region that it is awarded. This Agreement is for the Regions as specified in the Invitation for Bid.

## **6. THE IFB DOCUMENTS**

The IFB Documents consist of four Books:

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

## **7. QUALIFICATION OF BIDDERS**

- 7.1. Bids shall be considered only from firms normally engaged in performing the type of work specified within the IFB Documents. Bidder must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to an NJPA Member (as solely determined by NJPA).
- 7.2. In determining a Bidder's responsibility and ability to perform the Agreement, NJPA has the right to investigate and request information concerning the financial condition, experience record, personnel, equipment, facilities, principal business location and organization of the Bidder, the Bidder's record with environmental regulations, and the claims/litigation history of the Bidder.
- 7.3. Bidder must possess documentation evidencing compliance with applicable licensing

requirements.

## **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) to the lowest, responsive, responsible Bidder(s) based on the Combined Adjustment Factor as shown on Bid Form 1 and other 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 of the NJPA current and qualifying members. NJPA reserves the right to award additional Agreements from this solicitation for a period of 120 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 NJPA information to gauge the responsibility of the Bidder.
- 8.4. A Bidder will not be awarded more than one Contract within Region as define in Exhibit A. Contractor may hold one IQCC contract in each of the Region (provided they meet the established office location requirements).

## **9. ASSIGNMENT OF WORK**

If multiple awards are made, the assignment of the Work is at the discretion of NJPA and the Contractor's Adjustment Factors and their track record of performance will influence distribution of the Work. NJPA intends to distribute the Work to the Contractor assigned to a specific Region, but reserves the right to assign Work to another Contractor if in the best interest of NJPA and/or the NJPA Member. The Contractor may be required to perform Work in any Region that it is awarded. The Contractor may perform Work in other Regions if all parties (NJPA, NJPA Member and Contractor) agree.

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

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

- Book 2 – Standard Terms and Conditions
- Book 2 – Contract General Conditions
- Addenda, if any
- Work Order which may include Plans, Drawings and supplemental Technical Specifications
- 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

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## SECTION TWO - INSTRUCTIONS TO BIDDERS

### 1. GENERAL INFORMATION

- 1.1. The following instructions are given for the purpose of guiding Bidders in properly preparing their bids. Such instructions are part of the IFB Documents, and strict compliance is required with all the provisions contained in the instructions.
- 1.2. Examination of IFB Documents
  - 1.2.1. It is the responsibility of each Bidder before submitting a Bid, to:
    - 1.2.1.1. Examine the IFB Documents thoroughly,
    - 1.2.1.2. Take into account federal, State and local laws, regulations, ordinances, and applicable procurement codes that may affect costs, progress, performance, and furnishing of the Work, or award,
    - 1.2.1.3. Study and carefully correlate Bidder's observations with the IFB Documents, and
    - 1.2.1.4. Carefully review the IFB Documents and notify NJPA of all conflicts, errors or discrepancies in the IFB Documents of which Bidder knows or reasonably should have known.
- 1.3. The submission of a Bid shall constitute an incontrovertible representation by Bidder that Bidder has complied with the above requirements and that without exception, the Bid is premised upon performing and furnishing the Work required by the IFB Documents and that the IFB Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

### 2. SOLICITATION OF IFB

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

### 3. ADVERTISING OF SOLICITATION

- 3.1. **AS A POLICY, NJPA SHALL ADVERTISE THIS SOLICITATION 1) FOR THREE CONSECUTIVE WEEKS IN THE MINNEAPOLIS STAR TRIBUNE, 2) IT SHALL BE FED INTO A NATIONAL WIRE SERVICE BY THE MINNEAPOLIS STAR TRIBUNE, AND 3) 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. 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 IFB REQUESTS.**

- 3.2. **IN ADDITION, NJPA SHALL ADVERTISE IN ONE OR MORE PUBLICATIONS DISTRIBUTED IN THE STATE, INCLUDING, BUT NOT LIMITED TO, NEWSPAPERS AND OTHER PUBLICATIONS CONSISTENT WITH STATE LAW REGARDING NOTICE OF THIS INVITATION FOR BIDS.**

**4. REQUEST FOR INFORMATION (RFI)**

- 4.1. Submit all RFIs about this IFB, in writing, to Gregg Meierhofer, NJPA, 202 12th Street NE, Staples, MN 56479, or email at [ezIQC@NJPACOOOP.org](mailto:ezIQC@NJPACOOOP.org) or by fax at (218) 894-3045 prior to February 14, 2012 at 4:00 PM CDT. NJPA urges potential bidders to communicate all concerns during the response period to avoid misunderstandings.
- 4.2. If an RFI is deemed by NJPA to have a material impact on the IFB, the response to the RFI will become an Addendum to these IFB Documents.
- 4.3. If the RFI and response is deemed by NJPA to be a clarification of existing terms and conditions and does not have a material impact on the IFB, no further documentation of that RFI is required.

**5. PRE-BID SEMINAR**

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

**6. ADDENDA TO THE IFB DOCUMENTS**

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

**7. BID DEPOSIT**

- 7.1. Bid deposit shall be a bond provided by a surety company or the equivalent in a cashier's check, money order or certified check. All certified checks must be drawn on a bank doing business in the United States, and shall be made payable to the order of NJPA. CASH IS NOT AN ACCEPTABLE FORM OF BID DEPOSIT.
- 7.2. Bid deposits shall be in the amount shown in the IFB. After bids are opened, deposits shall be irrevocable for the period of one hundred and twenty (120) Days. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid deposit.
- 7.3. The bid bonds, certified checks, or cashier's checks of unsuccessful bidders will be returned as soon as practicable after the opening of the bids; however, the deposits of the three (3) lowest Bidders shall be retained until NJPA awards the Agreement to one or more of them, or for any reason rejects all bids.

## 8. BID SUBMISSION PROCESS

### 8.1. Preparation of the Bid Response

8.1.1 One bid package will be submitted for ALL Regions as follows:

8.1.1.1. **Two (2) original copies of Bid Forms 1, 2, and 10 MUST** be submitted for each Region that you are bidding. These **MUST** be in separate **SEALED Envelopes**. On the outside of each envelope you will include Company Name, Contract No. and Region number.

8.1.1.2. **Bid forms 3,4,5,6,7,8, 9, 11, 12, 13 and 14** – only need to be submitted for the **entire package**. As stated below you will provide Two (2) Original copies of Bid Forms 3,4,5,6,7,8, 9, 11, 12 13, and 14 in a Sealed Envelope. On the outside of the envelope you will include Company Name, Contract No. and Region number.

**NOTE: Only one Bid Bond and one Management Plan is required for this submission.**

8.1.2 **Additionally, submit two (2) electronic copies (CD-ROM's or USB Flash Drive) of the bid documents (Bid Forms 1-14) including the Management Plan and scanned copies of signature pages with original signatures. The CD's or USB Flash Drive must be labeled with; IFB No., Date, Company Name and Copy 1 or 2.**

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

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

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

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

## 9. CONTRACTOR'S MANAGEMENT PLAN

9.1 The Bidder is required to submit its plan for management of the Contract. The title of the submittal shall be **"MANAGEMENT PLAN FOR EXECUTION OF IQCC."** The Contractor's Management Plan **must be** submitted as part of the Bidder's bid documents.

9.2 In addition to the bid documents and other required submittals, the Contractor's Management Plan will be used by the NJPA to determine the responsibility of the Bidder to perform the Agreement. Therefore the Bidder should take great care in the preparation of the Management Plan.

9.3 The Bidder may be determined non-responsive for failure to submit the Management Plan and/or declared non-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.

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

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

2. 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. If you held a Previous ezIQC Contract please describe how you Marketed the Contract and list your accomplishments. Failure to provide this information maybe grounds for Disqualification.**
- f. All Work has a minimum warranty period of one year. Please describe your process for tracking and performing warranty work.
- g. 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. Please describe on a separate document. **Failure to provide this information maybe grounds for Disqualification.**

3. 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.

Provide a current list of the number and classification of your full time employees.

## 10. BID PRICING

10.1. Each Bidder must submit three (3) Adjustment Factors.

10.2 The first Adjustment Factor is to be applied to Work to be accomplished during Normal Working Hours and the second Adjustment Factor is to be applied to Work to be accomplished during Other Than Normal Working Hours. These Adjustment Factors apply to every Task in the CTC. The CTC is priced at a net value of 1.0000. The bid shall be an adjustment "decrease from" (e.g., 0.9800) or "increase to" (e.g., 1.1000) to 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.

The Other Than Normal Working Hours- Adjustment Factor must be higher than the Normal Working Hours Adjustment Factor.

10.3 The third Adjustment Factor is for 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. 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.

10.4 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, 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.

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

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

Or

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

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

NORMAL WORKING HOURS	60%
OTHER THAN NORMAL WORKING HOURS	30%
NON PRE-PRICED	10%

**Note: The NJPA Fee will be added to the contractors Adjustment Factors after bids are received – see 21.1 below.**

**11. BID DOCUMENT CHECKLIST**

The following documents must be submitted with the bid:

- ☐ Bid Form 1: The Adjustment Factors
- ☐ Bid Form 2: Calculation of the Combined Adjustment Factor
- ☐ Bid Form 3: Bid Deposit
- ☐ Bid Form 4: Bidder Assurance of Compliance
- ☐ Bid Form 5: Management Plan
- ☐ Bid Form 6: Certificate of Good Standing<sup>1</sup>
- ☐ Bid Form 7: Certificate of Secretary<sup>2</sup>
- ☐ Bid Form 8: Bonding Company Statement of Bond Capacity and Availability<sup>3</sup>
- ☐ Bid Form 9: Financial Statement<sup>4</sup>
  - 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 Region in the State (signed)
- ☐ Bid Form 12: IQC/JOC Contract Experience (5 Contracts)
- ☐ Bid Form 13: IQC/JOC Project Experience (10 Projects)
- ☐ Bid Form 14: Existing Full-Service Office Location Affidavit

**12. BID TRANSMITTAL**

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

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

Solicitation number

Name of Solicitation

Geographic Region

Deadline for bid submission

Bidder's name and address.

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

**13. MODIFICATION OR WITHDRAWAL OF A SUBMITTED BID**

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

**14. BIDDER RESPONSIVENESS AND RESPONSIBILITY**

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

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

14.2.1 Experience: Bidder has been in business for a minimum of three (3) years prior to the bid due date performing similar work to that anticipated to be performed under the contract he is bidding.

14.2.2 Maintain an existing full-service office (staff based out of that office capable of providing all the professional services required to be delivered under this Contract) within 150 miles of the Geographic Area as it relates to each specific contract shown in Exhibit C. Submit Bid Form 14 as evidence of an existing full-service office location within 150 miles of the Geographic Area as it relates to each specific contract shown in Exhibit C.

**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 Coordinator of Bids and Contracts and Director of Business Development and shall be resolved in accordance with appropriate state statutes of Minnesota. A protest must be in writing and filed with NJPA. A protest of an award or proposed award must be filed within ten (10) Days after the public notice or announcement of the award. No protest shall lie for a claim that the selected Bidder is not a responsible Bidder. A protest must include:
  - 16.1.1 The name, address and telephone number of the protester;
  - 16.1.2. The original signature of the protester or its representative;
  - 16.1.3. Identification of the solicitation by contract number;
  - 16.1.4. A detailed statement of the legal and factual grounds of protest including copies of any relevant documents; and, the form of relief sought.
  - 16.1.5. A good faith fee of \$1,000 payable to NJPA will accompany the formal protest. If the protest is found to be groundless by the NJPA the fee will be forfeited to NJPA. Any protest review and action will be considered final with no further formalities being considered.

**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. CDT.

**18. PREVAILING WAGE RATES AND PARTICIPATION REQUIREMENTS**

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

using federal funding, then the Davis Bacon Wages for that area will apply.

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

## 19. MARKETING REQUIREMENT

Bidder must express a willingness and ability to take ownership and promote the services to be provided. Bidder 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. **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 submits a marketing strategy in the Management Plan that is deemed unsatisfactory, in the sole discretion of NJPA.

## 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 Administrative fees will be added to the "Contractors Bid Multiplier", collected by the Awarded Contractor and paid to NJPA as described herein within five (5) business days of receipt or as specified by Other Administrative Recipients.

- 21.2 Two types of administrative fees may be used in calculating a final contract factor

21.1.1 The NJPA Administrative fee will be calculated at the rate of 6% of the total project cost to the NJPA Member.

21.1.2 Additional Administrative Fees may be assessed by local or jurisdictional organizations. These additional administrative fees will be calculated as a specific percentage of the total project cost to the NJPA Member.

- 21.2 Calculation of the "Total Administrative Fee Factor"

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

NJPA Administrative Fee	6.0%
Total Administrative Fee Factor	6.00%

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

1. Contract Factor = Contractor Bid Multiplier X (1+ Total Administrative Fee Factor)
2. The result shall be carried to five decimal places and rounded to four decimal places.

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

21.3 NJPA designates ezIQC, LLC as their contract administrator. The NJPA Administrative Fee payments of 6% shall be made payable to ezIQC, LLC and sent to the following address:

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

21.4 NJPA or their designated contract administrator may request records from the Contractor for all cooperative purchases through this Contract and payment of all Administrative Fees. If discrepancies exist between cooperative purchasing activity and Administrative Fees paid, NJPA or their designated contract administrator will provide written notification to the Contractor of the discrepancies 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 the NJPA or their designated contract administrator, NJPA or their designated contract administrator 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 reimburse the appropriate party for the cost and expense related to such audit.

## **22. PHYSICAL PRESENCE**

The Bidder agrees to establish, maintain and conduct operations from offices within one hundred and fifty (150) miles of the Geographic Area which the Contractor has been awarded.

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### SECTION THREE - BID FORMS

#### BID FORM 1: THE ADJUSTMENT FACTORS

**CONTRACT NO:**     FL

**CONTRACTOR NAME:** \_\_\_\_\_

**GEOGRAPHIC AREA:** \_\_\_\_\_

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

1. Normal Working Hours: 7:00am to 4:00pm Monday to Friday, except holidays. Contractor shall perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

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

(Specify to four decimal places)

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

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

(Specify to four decimal places)

3. 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 (must be between 1.0500 and 1.2000) :

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

(Specify to four decimal places)

4. Combined Adjustment Factor: (From Line 7 Bid Form 2)

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

(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 will be considered non-responsive and will be rejected. The Bidder must fill in all boxes and blanks.

Before submitting this bid, the Bidder is directed to the Construction Task Catalog to review the explanation of the costs included in the Unit Prices and the Adjustment Factors. Except for a Non

Pre-priced Task, the only compensation to be paid to a Contractor will be the total of the Unit Prices multiplied by the quantities multiplied by the Adjustment Factor. No additional payments of any kind whatsoever will be made. All costs not included in the Unit Prices must be part of the Adjustment Factors.

**Note: The NJPA will be added to the contractors Adjustment Factors after bids are received – see 21.1 below.**

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

**BID FORM 2:     CALCULATION OF THE COMBINED ADJUSTMENT FACTOR**

**CONTRACT NO:**     FL\_\_\_\_\_

**CONTRACTOR NAME:** \_\_\_\_\_

**GEOGRAPHICAL AREA:** \_\_\_\_\_

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

Each Bidder must complete the following calculation.

Line 1.    Normal Working Hours	_____
Line 2.    Multiply Line 1 by .60	_____
Line 3.    Other Than Normal Working Hours	_____
Line 4.    Multiply Line 3 by .30	_____
Line 5:    Adjustment Factor for Non Pre-priced Tasks	_____
Line 6:    Multiply Line 9 by .10	_____
Line 7:    Summation of lines 2, 4 and 6	_____
	(Combined Adjustment Factor)

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

Instructions To Bidder: Specify lines 1 through 7 to four (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5<sup>th</sup> decimal place is 0-4, the number in the 4<sup>th</sup> decimal remains unchanged; if the number in the 5<sup>th</sup> decimal place is 5-7, the number in the 4<sup>th</sup> decimal is rounded upward).

*Note To Bidder: The weights in lines 2, 4 and 6 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 or 5 as applicable, on the Bid Form 2 above.*

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**BID FORM 3: BID DEPOSIT**

(insert bid deposit here)

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**BID FORM 4: BIDDER ASSURANCE OF COMPLIANCE**

**AFFIDAVIT**

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

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

Addendum Number 1: \_\_\_\_\_

Addendum Number 2: \_\_\_\_\_

Addendum Number 3: \_\_\_\_\_

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Company Name: \_\_\_\_\_

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

Address: \_\_\_\_\_  
\_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax: Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Notarized**

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public in and for the County of \_\_\_\_\_

State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Signature: \_\_\_\_\_

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**BID FORM 5: MANAGEMENT PLAN**

(insert management plan here)

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**BID FORM 6: CERTIFICATE OF GOOD STANDING**

(insert certificate of good standing here)

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**BID FORM 7: CERTIFICATE OF SECRETARY**

(insert certificate of secretary here)

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**BID FORM 8: BONDING COMPANY STATEMENT**

(insert bonding company statement here)

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**BID FORM 9: FINANCIAL STATEMENT**

(insert financial statement here)

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



## INDEFINITE QUANTITY CONSTRUCTION AGREEMENT

IFB NUMBER: \_\_\_\_\_

GEOGRAPHIC REGION \_\_\_\_\_

This Agreement dated \_\_\_\_\_, by and between the National Joint Powers Alliance,  
hereinafter referred to as NJPA and \_\_\_\_\_ at the  
following address \_\_\_\_\_

hereinafter referred to as the CONTRACTOR.

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

### ARTICLE 1. CONTRACT DOCUMENTS

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

## ARTICLE 2. SCOPE OF WORK

- A. The Contractor shall provide the services required to develop each Work Order in accordance with the procedures for developing Work Orders set forth in the IQCC Standard Terms and Conditions and the Contract Documents.
- B. Each Work Order developed in accordance with this Agreement will be issued in connection with a Purchase Order by an individual NJPA Member. The Purchase Order will reference the Work Order and require the Contractor to perform the Detailed Scope of Work within the Work Order Completion Time for the Work Order Price.
- C. It is anticipated that the Contractor will perform Work primarily in the Geographic Region set forth above. However, the parties may agree that the Contractor can perform Work in a different Geographic Region 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 \$ **2,000,000**. This is only an estimate and may increase or decrease at the discretion of the State.
- B. The Contractor shall perform any or all Tasks in the Construction Task Catalog® for the unit price appearing therein multiplied by the Adjustment Factors attached at the end of this Agreement:

## ARTICLE 4. TERM OF THE AGREEMENT

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

## ARTICLE 5. SOFTWARE LICENSING

- A. The Contractor shall be provided access to a Indefinite Quantity Construction Contracting management system licensed to NJPA by ezIQCC, LLC. The system includes PROGEN®, an Indefinite Quantity Construction Contracting management tool that expedites the ordering and execution of work. The Contractor shall use PROGEN® to prepare and submit Price Proposals, subcontractor lists, and other requirements as determined by NJPA or an NJPA Member. The system also contains an electronic version of the Construction Task Catalog® for the Contractor's use in preparing Price Proposals. Use, in whole or in part, of PROGEN®, the Construction Task Catalog®, or any other Proprietary Information provided under the ezIQCC System License specified below for any purpose other than to order and execute work under this Agreement for NJPA or an NJPA Member is strictly prohibited unless otherwise stated in writing by ezIQCC, LLC. The Contractor hereby agrees to abide by the terms of the following IQCC System License:

**ARTICLE 6. IQCC SYSTEM LICENSE**

ezIQCC, LLC through its agreement with NJPA, grants to Contractor, and Contractor hereby accepts from ezIQCC, LLC for the term of this Agreement, a non-exclusive right, privilege, and license to utilize ezIQCC, LLC's Indefinite Quantity Construction Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing its responsibilities to NJPA or an NJPA Member under this Agreement. The Contractor hereby agrees that ezIQCC, LLC's Proprietary Information shall include, but is not limited to, the PROGEN® software and support documentation, Construction Task Catalog®, training materials, and other proprietary materials provided to the Contractor by ezIQCC, LLC or NJPA. Upon the expiration or termination of this Agreement, this IQCC System License shall terminate and the Contractor shall return all Proprietary Information in its possession to ezIQCC, LLC.

The Contractor acknowledges that disclosure of Proprietary Information will result in irreparable harm to ezIQCC, LLC for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of ezIQCC, LLC. The Contractor further acknowledges and agrees to respect the copyrights, registrations, trade secrets, and other proprietary rights of ezIQCC, LLC 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 the Contractor, subject to federal, state, and local laws related to public records disclosure.

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 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)

**TO BE COMPLETED BY NJPA AFTER AWARD**

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

\_\_\_\_\_.  
(Specify to four (4) decimal places)

**BID FORM 11: AGREEMENT TO WORK IN ALL REGIONS OF THE STATE**

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

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

**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: IQCC/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: \_\_\_\_\_

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Project Title: \_\_\_\_\_

Project Location: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone No: \_\_\_\_\_

Project Start Date:\_\_\_\_\_

Project Completion Date: \_\_\_\_\_

[illegible]

**BID FORM 14: EXISTING FULL-SERVICE OFFICE LOCATION AFFIDAVIT**

STATE OF FLORIDA

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

As a prospective Bidder, Contractor acknowledges the provisions set forth in the IQCC IFB Documents, Instructions to Bidders Article 14.2, regarding the requirement for an existing full-service office location within 150 miles of the Geographic Area at the time of Bid.

Contractor warrants compliance with such provisions and has established and maintains, at or before the time of Bid, a physical full-service office within 150 miles of the Geographic Area located at the address provided below; and the existing office is fully functioning with an established storefront, office-based staffing capable of providing all the professional services required to be delivered under this Contract, adequate material and equipment, and any and all other necessary operational resources.

Office Physical Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Office Phone Number: \_\_\_\_\_ Office Fax Number: \_\_\_\_\_

Contractor is aware that failure to comply with the requirements set forth in the IQCC IFB Documents, Instructions to Bidders Article 14.2, may cause the Contractor to be considered non-responsive as a Bidder, and may therefore disqualify the Contractor from potential Contract award.

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

\_\_\_\_\_  
(Affiant)

STATE OF FLORIDA

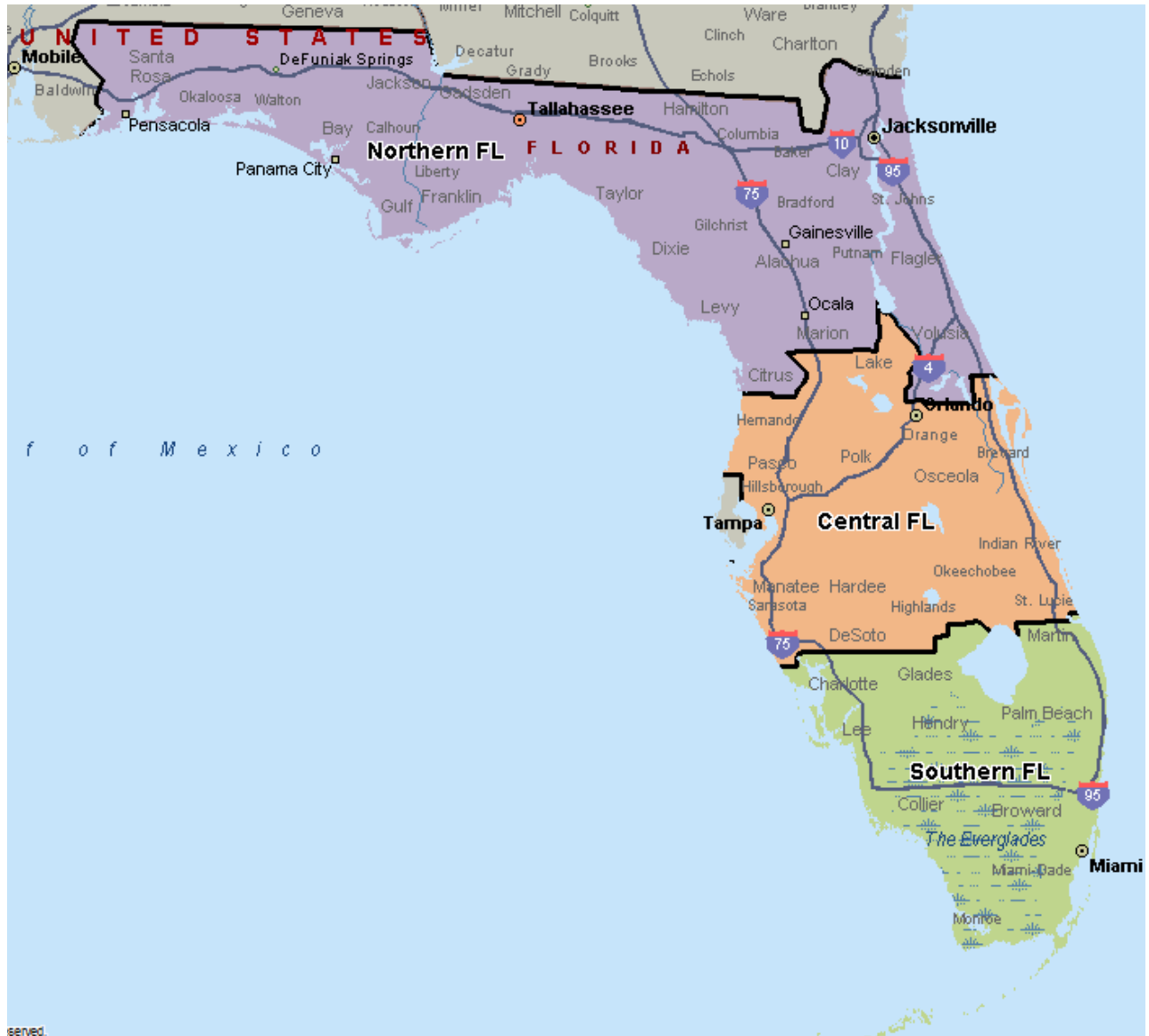
The forgoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_ who is personally known to me and/or has  
produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Person Taking Acknowledgment

\_\_\_\_\_  
Name of Acknowledger Typed, Printed, or Stamped

## SECTION FOUR - EXHIBITS

### EXHIBIT A: REGIONS MAPS



County	Territory
Brevard	Central FL
DeSoto	Central FL
Hardee	Central FL
Hernando	Central FL
Highlands	Central FL
Hillsborough	Central FL
Indian River	Central FL
Lake	Central FL

Manatee	Central FL
Okeechobee	Central FL
Orange	Central FL
Osceola	Central FL
Pasco	Central FL
Polk	Central FL
Sarasota	Central FL
St. Lucie	Central FL
Sumter	Central FL
Alachua	Northern FL
Baker	Northern FL
Bay	Northern FL
Bradford	Northern FL
Calhoun	Northern FL
Citrus	Northern FL
Clay	Northern FL
Columbia	Northern FL
Dixie	Northern FL
Duval	Northern FL
Escambia	Northern FL
Flagler	Northern FL
Franklin	Northern FL
Gadsden	Northern FL
Gilchrist	Northern FL
Gulf	Northern FL
Hamilton	Northern FL
Holmes	Northern FL
Jackson	Northern FL
Jefferson	Northern FL
Lafayette	Northern FL
Leon	Northern FL
Levy	Northern FL
Liberty	Northern FL
Madison	Northern FL
Marion	Northern FL
Nassau	Northern FL
Okaloosa	Northern FL
Putnam	Northern FL
Santa Rosa	Northern FL
Seminole	Northern FL
St. Johns	Northern FL
Suwannee	Northern FL
Taylor	Northern FL

Union	Northern FL
Volusia	Northern FL
Wakulla	Northern FL
Walton	Northern FL
Washington	Northern FL
Broward	Southern FL
Charlotte	Southern FL
Collier	Southern FL
Glades	Southern FL
Hendry	Southern FL
Lee	Southern FL
Martin	Southern FL
Miami-Dade	Southern FL
Monroe	Southern FL
Palm Beach	Southern FL

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# **BOOK 2**

## **IQCC STANDARD TERMS AND CONDITIONS AND CONTRACT GENERAL CONDITIONS**

**CONTRACT NO.  
FL01-022912, FL02-022912, FL03-022912 , FL04-022912,  
FL05-022912, FL06-022912 & FL07-022912**

**INDEFINITE QUANTITY CONSTRUCTION CONTRACT**



202 12th Street NE  
Staples, MN 56479

Mr. Gregg Meierhofer  
Coordinator of Bids and Contracts  
[ezlQC@NJPACOOOP.org](mailto:ezlQC@NJPACOOOP.org)

January 2012

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## 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 IFB Documents: The Invitation to Bid; Book 1 - Project Information, Instructions to Bidders, and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and Contract General Conditions; Book 3 - The Construction Task Catalog; and Book 4 - IQCC Technical Specifications.
- 1.5 Construction Task Catalog: A comprehensive listing of specific construction related Tasks, together with a specific unit of measurement and a Unit Price. (also referred to as the CTC).
- 1.6 Contract Documents: This Agreement; the IFB Documents; (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications) and Addenda thereto, the Bid Deposit, all payment and performance bonds (if any), material and workmanship bonds (if any); wage rate decisions and certified payroll records (if any); Notice of Award; all modifications issued thereto, including Supplemental Work Orders/Change Orders and written interpretations and all Purchase Orders and accompanying documents (Requests for Proposals, Detailed Scopes of Work, Work Order Proposal Packages, etc.) issued hereunder.
- 1.7 Contractor: The individual, firm, partnership, corporation, joint venture, or other legal entity or combination thereof with whom NJPA has contracted and who is responsible for the acceptable performance of the Agreement and for the payment of all legal debts pertaining to the Work. All references in the Contract Documents to third parties under contract or control of Contractor shall be deemed to be a reference to Contractor.
- 1.8 Days: Calendar days, unless otherwise stated.
- 1.9 Detailed Scope of Work: A document prepared following a Joint Scope Meeting which describes in detail the Work the Contractor will perform for a particular Work Order.
- 1.10 Holidays: the specific days designated by NJPA or NJPA members as legal Holidays. NJPA designates the following days as Holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the following day, and Christmas Day.
- 1.11 Joint Scope Meeting: a meeting, normally at the Site, to discuss the Work with the Contractor to assist in the development of the Detailed Scope of Work.
- 1.12 Non Pre-priced Task (NPP): a task not included in the Construction Task Catalog but within the general scope and intent of 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 **Florida**.
- 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 Contract Term. Each Unit Price is comprised of the Labor, Equipment, and Material costs to accomplish that specific Task.
- 1.26 Work: The labor, material, equipment and services necessary or convenient to the completion of Work Orders.
- 1.27 Work Order: The written obligation document establishing an engagement by NJPA or NJPA Member to the Contractor to complete a specifically identified Work Order Proposal Package at the Work Order Price and within the Work Order Completion Time. A Work Order will normally be in the form of a Purchase Order issued by an NJPA Member.
- 1.28 Work Order Completion Time: The period of time set forth in the Work Order within which the Contractor must complete the Detailed Scope of Work.
- 1.29 Work Order Price: The lump sum price to be paid to the Contractor for completing the Detailed Scope of Work within the Work Order Completion Time.
- 1.30 Work Order Proposal Package: The final agreed upon Price Proposal, drawings, sketches, list of Subcontractors, final schedule, and, when appropriate, permits, or other such documentation as the NJPA Member may require for a specific Work Order.

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

### **2.1 Scope of Work**

- 2.1.1 This is an indefinite quantity contract for the supplies or services specified, and effective for the period stated in the IFB Documents.
- 2.1.2 Job or performance shall be made only as authorized by Work Orders issued in accordance with these IQCC Standard Terms and Conditions.
- 2.1.3 The Scope of Work of this Agreement shall be determined by individual Work Orders issued hereunder. The Contractor shall provide all pricing, management, incidental drawings, shop drawings, samples, documents, Work, materials, supplies, parts (to include system components), transportation, plant, supervision, labor, and equipment needed to complete each Work Order. The Contractor shall also be responsible for Site safety as well as Site preparation and cleanup during and after construction. All costs associated with the above scope of work and the preparation of proposals shall be the responsibility of the Contractor.
- 2.1.4 The Work shall be conducted by the Contractor in strict accordance with the Agreement and all applicable laws, regulations, codes, or directives including Federal, State, County and City.
- 2.1.5 The Contractor shall maintain accurate and complete records, files and libraries of documents to demonstrate compliance with Federal, State, and local regulations, codes, applicable laws listed herein, and manufacturers' instructions and recommendations which are necessary and related to the Work to be performed.
- 2.1.6 The Contractor shall prepare and submit required reports, maintain current record drawings, and submit required information. The Contractor shall provide: materials lists to include trade names and brand names, and model materials lists to include trade names, brand names, model number, and ratings (if appropriate) for all materials necessary to complete the Work Order.
- 2.1.7 In addition to the Tasks in the CTC, Book 3, NJPA may, from time to time, require Non Pre-priced Tasks. These Non Pre-priced Tasks will be incorporated into individual Work Orders.
- 2.1.8 All Work shall comply with any applicable standards, including those specified in the following documents. If the Work Order specifies a standard which is different or more stringent, the standard used in the Work Order shall control:
  - 2.1.8.1 City Building Codes
  - 2.1.8.2 The 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. All specifications are filed in divisions 2 through 16 per CSI guidelines.
    - 2.1.8.4.2 The intent of these specifications is to furnish concise industry and commercial standards for construction, maintenance or repair of NJPA Member facilities.
    - 2.1.8.4.3 Reference in the Technical Specifications or the CTC to a specific manufacturer, trade name, or catalog is intended to be descriptive but not restrictive and only to indicate to the prospective Bidder items that will be satisfactory.

### 3. ARCHITECTURAL AND ENGINEERING SERVICES

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

### 4. TERM OF AGREEMENT

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

### 5. GEOGRAPHIC REGION

Contractor will primarily work in the Geographic Region designated. However, if both parties agree, the Contractor may work in another Geographic Region at the Adjustment Factors bid or as adjusted according to Article 7 below

### 6. ESTIMATED ANNUAL VALUE

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

### 7. UPDATING THE ADJUSTMENT FACTORS

- 7.1 **Economic Price Adjustment:** The Adjustment Factors shall be updated on each anniversary of the award date according to the following:
  - 7.1.1 A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) **20 City Average** published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the solicitation issuance date for this contract.
  - 7.1.2 A Current Year Index shall be calculated by averaging the 12 month CCIs for **20 City Average** Index published in ENR for the 12 months immediately prior to the month of the solicitation issuance date for this contract.
  - 7.1.3 The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
  - 7.1.4 The Adjustment Factors being updated shall be multiplied by the Economic Price Adjustment to obtain the new Adjustment Factors effective for the next 12 months.
  - 7.1.5 Averages shall be obtained by summing the 12 month indices and dividing by 12.
  - 7.1.6 All calculations shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:

- 7.1.6.1 The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
- 7.1.6.2 The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 7.2 ENR occasionally revises CCI's. The CCI's used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI's, if any, shall be used in subsequent calculations.
- 7.3 Unlike the Contractor's Normal Working Hours Adjustment Factor and Other Than Normal Working Hours Adjustment Factor which shall be annually adjusted to account for construction escalation or de-escalation as provided in this Article, the Contractor's Non Pre-priced Task Adjustment Factor shall remain unchanged for the total duration of the Contract.
- 7.3 If NJPA fails to issue the Economic Price Adjustment by the anniversary date, it is the Contractor's responsibility to request the Economic Price Adjustment. Under all circumstances, should the Contractor submit a Price Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the price submitted in the Price Proposal.
- 7.4 By submitting a Proposal to the NJPA Member, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal within the Work Order Completion Time at the price submitted. It is the Contractor's responsibility to include the proper Adjustment Factor(s) and the necessary tasks and quantities in the Price Proposal prior to delivering it to the NJPA Member. The risk associated with incorrect Adjustment Factor(s), missing tasks, and inaccurate quantities from the Price Proposal shall be borne by the Contractor.

## **8. PROCEDURE FOR ORDERING WORK**

### **8.1 Initiation of a Work Order**

- 8.1.1 As the need exists, NJPA (or their designated representative) will, on behalf of an NJPA Member, notify the Contractor of a project and schedule a Joint Scope Meeting.
- 8.1.2 The Contractor shall attend the Joint Scope Meeting to discuss, at a minimum:
- a. the general scope of the Work,
  - b. alternatives for performing the Work and value engineering,
  - c. access to the Site and protocol for admission,
  - d. hours of operation,
  - e. staging area,
  - f. requirements for professional services, sketches, drawings, and specifications,
  - g. construction schedule,
  - h. requirement for bonding
  - i. the presence of hazardous materials, and
  - j. date on which the Price Proposal Package is due.
- 8.1.3 Upon completion of the joint scoping process, NJPA (or their designated representative), working with the NJPA Member and the Contractor, will prepare a Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. NJPA (or their designated representative) will issue a Request for Proposal that will require the Contractor to prepare a Price Proposal. The Detailed Scope of Work, unless modified by both the Contractor and NJPA (or their designated representative), will be the basis

on which the Contractor will develop its Price Proposal and NJPA (or their designated representative) and the NJPA Member will evaluate the same. The Contractor does not have the right to refuse to perform any Task or any work in connection with a particular project.

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

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

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

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

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

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

For Work Performed with the Contractor's Own Forces:

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

B = Equipment costs (other than small tools)

C = Three independent quotes for all materials

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

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

D = Subcontractor Costs (supported by three quotes)

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

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

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

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

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

property; or

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

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

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

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

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

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

- 8.3.1 The Contractor's Price Proposal (and all associated information described in Article 8.2.3 above) shall be submitted by the date set forth in the Request for Proposal. The time allowed for preparation of the Proposal will depend on the complexity and urgency of the Work Order; but in most cases, it shall not exceed **seven (7) working days**.
- 8.3.2 In emergency situations and for Work Orders requiring immediate completion, the Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, the Contractor may begin work immediately, with the paperwork to follow.
- 8.3.3 If the Contractor fails to meet the deadline for submittal of the Price Proposal Package, this may be reason to suspend issuance of this particular Work Order.

### 8.4 Review of the Price Proposal Package

- 8.4.1 NJPA (or their designated representative) and/or the NJPA Member 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 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 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 finds any part of the Contractor's Price Proposal unacceptable, NJPA (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. 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 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, NJPA (or their designated representative) and/or the NJPA Member finds requested revisions to the Price Proposal Package that were not made, this may be reason to suspend that particular Work Order.
- 8.4.5 Failure by the Contractor to submit Price Proposal Packages, and revisions thereto, in a timely manner (within time frames described above) is grounds for suspension of all future Work Orders.
- 8.4.6 NJPA reserves the right to obtain Price Proposals from any or all of the Contractors awarded an IQCC Contract.
- 8.4.7 If the Contractor continues to submit Price Proposals which are rejected by NJPA (or their designated representative), NJPA may declare the Contractor in default and initiate termination of the Agreement, according to Article 34 of the Agreement General Conditions.

#### **8.5 Delivery of The Work Order Proposal Package**

- 8.5.1 After NJPA (or their designated representative) reaches an agreement with the Contractor on the Price Proposal Package and any requested revision thereto, if applicable, NJPA (or their designated representative) will assemble and deliver a Work Order Proposal Package for the NJPA Member's consideration.
- 8.5.2 A Work Order Proposal Package will consist of:
  - a. a Work Order signature document listing: the work Order #, a brief description of the work, the Work Order Amount, and whether liquidated damages apply or not, and other information
  - b. the Detailed Scope of Work Approved by the NJPA member, including the Work Order Completion Time
  - c. the Contractor's Price Proposal,
  - d. a list of known subcontractors,
  - e. and other pertinent information (including part of the contractors Price Proposal Package) that may vary by Work Order.
- 8.5.3 Once the Work Order Package has been submitted to the NJPA member the Contractor is bound by its content.

#### **8.6 Review of the Work Order Proposal Package By the NJPA Member and Issuance of Purchase Order**

- 8.6.1 The NJPA Member will evaluate the entire Work Order Proposal Package.
- 8.6.2 The NJPA Member may reject a Work Order Proposal Package for any reason
- 8.6.3 The NJPA member may request changes to or clarifications of any part of the Work Order Proposal package. The Contractor and NJPA (or their designated representative) will work together to make any requested revisions in a timely manner and resubmit a revised Work Order Proposal Package.

- 8.6.3 Upon approval of the Work Order Proposal Package by NJPA (or their designated representative) and the NJPA Member, NJPA (or their designated representative) or 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.

## **8.7 Changes**

- 8.7.1 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.
- 8.7.2 All changes, deletions, and additions to the Detailed Scope of Work will be reflected in a Supplemental Work Order priced in accordance with the procedure for developing and approving all Price Proposals.

## **9. MARKETING REQUIREMENTS**

- 9.1 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.
- 9.2 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 promote NJPA's IQCC program and 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.
- 9.3 The Contractor must adhere to the following when preparing marketing materials, and in the use of trademarks:
- 9.3.1 The Contractor shall include the NJPA logo and website address on all marketing materials and web sites that mention ezIQC or have anything to do with the ezIQC process.
  - 9.3.2 The Contractor shall include the ezIQC logo, website address, and phone number on all marketing materials and web sites that mention ezIQC or have anything to do with the ezIQC process.

- 9.3.3 All uses of the trademarks, NJPA and ezIQC, shall include the registered trademark symbol: ®
- 9.3.4 All “calls to action” shall direct users to the ezIQC web site and ezIQC phone number.
- 9.3.5 The Contractor shall not collect information from an owner on forms or web sites. All information collection shall be done at the ezIQC web site or by an ezIQC representative. The Contractor may input project information on the ezIQC web site on behalf of an owner.
- 9.3.6 Under no circumstance may copy or branding images pertaining to Gordian Group’s intellectual property be altered in any way without the express written approval of the Gordian Group. See Attached.
- 9.3.7 All marketing materials shall be coordinated and approved prior to use by ezIQC, LLC.

## **10. PUNCH LIST COMPLETION**

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

## **11. PAYMENT AND PERFORMANCE BONDS AND MATERIAL AND WORKMANSHIP BONDS**

- 11.1 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 1.0600 to the Reimbursable Fee work task rather than applying the Contractor’s competitively bid Adjustment Factor.
- 11.2 In accordance with Florida Statute 255.05, a Project for a NJPA Member that is a county, city, political subdivision, or public authority whose value is greater than \$200,000 requires a performance and payment bond in the full value of the amount of the Project. At the discretion of the NJPA Member that is a county, city, political subdivision, or public authority, if the Project value is \$200,000 or less, the Contractor may be exempted from executing a payment and performance bond. A Project for a NJPA Member that is an agency of the state of Florida whose value is \$100,000 or less shall not require a payment and performance bond. If a Project for a NJPA Member that is an agency of the state of Florida has a value of more than \$100,000 but less than \$200,000, the Secretary of Management Services may delegate to State agencies the authority to exempt the Contractor from executing a payment and performance bond. If a Project for a NJPA Member that is an agency of the state of Florida has a value of more than \$200,000, a payment and performance bond of the full amount of the Project is required. The Contractor shall submit such bonds with the Work Order Proposal Package

**12. COMPUTER SOFTWARE**

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

**13. PREPAYMENT OPTION**

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

## **SECTION TWO – CONTRACT GENERAL CONDITIONS**

### **1. PROJECT MANAGER**

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

### **2. NJPA MEMBER'S RIGHT TO STOP WORK**

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

### **3. NJPA MEMBER'S RIGHT TO COMPLETE WORK**

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

### **4. REVIEW OF FIELD CONDITIONS**

- 4.1 Before submitting a Proposal, the Contractor shall carefully study the Detailed Scope of Work, as well as the information furnished by the NJPA Member, shall take field measurements of any existing conditions related to the Work and shall observe any conditions at the Site affecting it. Any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Project Manager.
- 4.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Project Manager, but it is recognized that the Contractor's review is made in the Contractor's capacity as a Contractor and not as a licensed design professional. The Contractor is not required to ascertain that the Detailed Scope of Work is in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Project Manager.

### **5. SUPERVISION**

- 5.1 The Contractor shall supervise and direct the performance of the Detailed Scope of Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. If the Detailed Scope of Work gives specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the Site safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Project Manager and shall not proceed with that portion of the Work without further written instructions from the Project Manager.
- 5.2 The Contractor shall be responsible to the NJPA Member for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its Subcontractors.
- 5.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **6. WORKMANSHIP AND QUALITY**

- 6.1 The Contractor may make substitutions only with the consent of the Project Manager.
- 6.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees

and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in the portions of the Work assigned to them.

## **7. WARRANTY**

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

## **8. PERMITS, FILING**

- 8.1 The Contractor will be reimbursed the actual cost of a filing or permit as part of its Price Proposal paid with the "Reimbursable Item" Task from the Construction Task Catalog without markup (Factor of 1.0600). However, the cost(s) of expediting services or equipment use fees are not reimbursable.
- 8.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.
- 8.3 It is not the Contractor's responsibility to ascertain that the Detailed Scope of Work is in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that any portion of the Detailed Scope of Work is at variance therewith, the Contractor shall promptly notify the Project Manager in writing.

## **9. PERSONNEL**

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

## **10. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- 10.1 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Detailed Scope of Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Detailed Scope of Work. Submittals which are not required by the Contract Documents may be returned by the Project Manager without action.

- 10.2 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Project Manager Shop Drawings, Product Data, Samples and similar submittals required with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the NJPA Member or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Project Manager without action.
- 10.3 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Detailed Scope of Work and of the Contract Documents.
- 10.4 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Project Manager.
- 10.5 The Work shall be performed in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project Manager's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Project Manager in writing of such deviation at the time of submittal and (1) the Project Manager has given written approval to the specific deviation as a minor change in the Work, or (2) a Supplemental Work Order or written notice has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Project Manager's approval thereof.
- 10.6 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Project Manager on previous submittals. In the absence of such written notice the Project Manager's approval of a resubmission shall not apply to such revisions.
- 10.7 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Detailed Scope of Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Detailed Scope of Work, the NJPA Member will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Project Manager. The NJPA Member shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the NJPA Member has specified to the Contractor all performance and design criteria that such services must satisfy. The Project Manager will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Detailed Scope of Work. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Detailed Scope of Work.

## **11. CUTTING AND PATCHING**

- 11.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Detailed Scope of Work or to make its parts fit together properly.
- 11.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed

construction of the NJPA Member or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the NJPA Member or a separate contractor except with written consent of the NJPA Member and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the NJPA Member or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

## **12. CLEANING UP**

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

## **13. ACCESS TO THE WORK**

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

## **14. ROYALTIES, PATENTS AND COPYRIGHTS**

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

## **15. INDEMNIFICATION**

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

## **16. SUBCONTRACTORS**

- 16.1 The Contractor, as soon as practicable after award of the Work Order, shall furnish in writing to the Project Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the Work. The Project Manager will promptly reply to the Contractor in writing stating whether or not, after due investigation, Contractor has reasonable objection to any such proposed person or entity. Failure

of the Project Manager to reply promptly shall constitute notice of no reasonable objection.

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

## **17. COORDINATION WITH OTHER CONTRACTORS**

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

## **18. REQUEST FOR EXTENSION OF TIME**

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

## **19. PARTIAL PAYMENTS**

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

## **20. FINAL PAYMENTS**

- 20.1 The Contractor shall notify the Project Manager when the Detailed Scope of Work is complete and ready for final inspection. The Project Manager will promptly make such inspection. If the Project

Manager finds the Detailed Scope of Work complete and all final documentation submitted, the Project Manager will notify the Contractor that a final Application for Payment may be submitted.

- 20.2 The Contractor may then submit a final Application for Payment. The Contractor shall submit Certified Payroll Records (as applicable) and such supporting documentation as may be required by the Project Manager. The NJPA Member shall make final payment to the Contractor.
- 20.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **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's superintendent unless otherwise designated by the Contractor in writing to the Project Manager.
- 23.7 The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety.

#### **24. HAZARDOUS MATERIALS**

- 24.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to lead based paint, asbestos or polychlorinated biphenyl (PCB), encountered on the Site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop the Work in the affected area and report the condition to the Project Manager in writing.
- 24.2 The 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.
- 28.4 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, \$ 1,000,000 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, \$ 1,000,000 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 hazardous materials, the Contractor, Subcontractor or other party responsible for such Work shall procure and maintain a liability insurance policy issued to and covering the liability, of the Contractor, Subcontractor or other party engaged in the removal, or handling of hazardous materials, for bodily injury, illness, sickness or property damage caused by exposure in an amount not less than \$1,000,000 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 coverages and shall contain, in addition to any provisions hereinbefore required, a provision that the policy shall not be changed or cancelled and that it will be automatically renewed upon expiration and continued in force until final acceptance by 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.

## **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.
- 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 contract. However, paying the expenses of normal business meals or travel to meetings as described and allowed by law, which are generally made available to all eligible school and government employees, shall not be prohibited by this paragraph. Samples of software, equipment, or hardware provided to NJPA for demonstration, evaluation or loan purposes are not considered gratuities.