

# Request for Qualifications

PART 2 OF 3

Attachments **One (1)**

Articles **Forty-One (41)**

Inquiry Period **Open**

Due Date **Open**

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## PART 2

### TERMS & CONDITIONS

**Innovative Architectural Planners (IAP) Government Services Group** is requesting proposals for prequalified Contractors to work on capital improvement and minor construction projects within selected States.

Offerors must note that all proposals and materials submitted become IAP property and may only be returned at IAP's discretion. Proprietary information should not be included in a proposal or any supporting materials; IAP will have the right to use any and all submitted information without compensation to the offeror.

## Article 1. Statement of Work

**1.1** IAP has entered into a contract with the National Cooperative Purchasing Alliance (NCPA) to serve as an Owner's Advocate/Representative for Capital Improvement, Facility Maintenance, Repair and Minor Construction projects for Cooperative Purchasing Members (CPM). As a result of this RFQ, IAP intends to select prequalified contractors (Offerors) for each service region listed on **Attachment 3**. Minority Business Enterprise (MBE) contractors and Non-MBE contractors will be awarded under this contract. IAP reserves the right to set-aside task orders for other authorized socio-economic programs approved for use during the existence of this program. During the program, participating CPMs may submit task orders to IAP to perform a specific project.

**1.2** When IAP receives details on a project from a CPM, IAP will solicit proposals from the prequalified contractors in the designated region for the various scopes of work on that project (e.g., plumbing, HVAC, electric, etc.). Only the prequalified contractors will be permitted to submit Proposals for the work.

**1.3** Proposals submitted prior to the bid due date will then be placed in order, based on best value, from lowest to highest (1-3) and provided to the CPM. IAP reserves the right to recommend which Offeror should be awarded the project and provide reasoning for its choice. It is then at the discretion of the CPM as to which Proposal best qualifies to conduct the work.

**1.4** The CPMs may utilize the cost details submitted in the Offerors Proposal, as well as any information provided in response to this RFQ, to make their final selection.

**1.5** Any protest for an awarded project must be directed to the CPM who made the final selection; the CPM assumes any and all liability, including but not limited to any liability associated with awarding the project to a contractor that did not submit the lowest Proposal amount.

**1.6** Each project that a prequalified contractor enters will be subject to the terms and conditions contained within this RFQ.

## Article 2. System Administrative & Access Fee

**2.1 The Contractor acknowledges that it will be required to pay IAP a system administrative and access fee based on the value of the total contract amount that IAP enters with the Contractor. The system administrative and access fee shall be calculated as three percent (3%) of the value of the total contract amount, characterized as part of the Contractor's project overhead. Each Contractor will include this system administrative and access fee within its Proposal overhead amount on each project by dividing their costs by 0.97.**

**2.2** Each application for payment that the Contractor submits to IAP shall include the respective administrative and user fee amount. IAP will retain the administrative and access fee from the amount of payment the Contractor receives for each payment application. The system administrative and access fee is paid in consideration of IAP providing the Contractor with accounting, administration, oversight and access to IAP's Online Task Order System (OTOS).

**2.3** Unless this Contract is terminated or suspended, or IAP's contract with the State is terminated or expires without renewal, the Offeror's pre-qualified contractor status will remain in effect from the pre-qualified status date through **July 31, 2021**, subject to renewal if the Offeror, IAP, and the State each agree to such renewal, for any number of times and for any period of time. The cumulative time of all renewals are subject to and contingent upon the discretionary decision of the Ohio General Assembly to appropriate funds for IAP's contract with the State each new biennium as well as the State's right to renew all or part of the contract with IAP.

## Article 3. Ordering Procedures for Competitive Projects

### 3.1 Solicitation Invitation

When IAP receives a task order from a CPM, as appropriate, it will issue a Solicitation Invitation via OTOS. This will be delivered in the form of an email with the subject noting "Invitation to Bid" along with the project number and name. The Solicitation Invitation will include information such as: a statement of work, guide specifications, drawings, attachments, information pertaining to a site visit and any other requirements for submission (e.g. proposal requirements, price schedule, bonding requirements, etc.). Projects varying in size and complexity may include but are not limited to: limited specifications, Design Build requirements (if applicable), and complete plans/specifications for all elements of work. When complete plans and specifications are not provided, the Master Specifications will apply for the elements of work not addressed by a project specific specification.

### 3.2 Response to the Solicitation Invitation

**3.2.1** Upon receipt, prequalified contractors will have access to proposal submission directions. This process may include attending a project on-site conference that can be scheduled as early as two days from issuance of the Solicitation Invitation.

**3.2.2** No other means of communication will normally be used outside of OTOS. Prequalified contractors interested in submitting a proposal are required to subscribe to OTOS; IAP is not responsible for contractors who fail to maintain a presence on IAP's online system, available at: <https://iapotosoh.com/>. To submit bids and an electrical version of the RFQ visit the Contractors Tab at <https://www.iap-gsg.com>.

**3.2.3** IAP will provide the opportunity for contractors to submit pre-proposal questions; instructions on submission and response distribution will be on the Solicitation Invitation.

**3.2.4** The deadline for proposal submissions may be extended for any reason at IAP's discretion, including but not limited to the number of questions asked and time required for response distribution.

**3.2.5** IAP requests that each prequalified contractor invited to submit a proposal notify IAP, through OTOS, whether they plan to submit.

**3.2.6** A notification will be sent by IAP if a contractor's proposal record indicates an unacceptable number of offerings. If they fail to correct the situation, IAP reserves the right to unilaterally suspend or terminate the contractor's prequalified contractor status.

**3.2.7** The Contractor will not be reimbursed for any of the following: proposal preparation, conference or meetings attended, site visits, walk-throughs or any other pre-proposal costs.

### **3.3 Project Competition**

**3.3.1** IAP and the registered CPM may consider such factors, in the exercise of sound business judgment, that are relevant to the placement of orders.

**3.3.2** Timely performance by a prequalified contractor is very important. Failure to diligently prosecute the work on a currently awarded project may constitute grounds for IAP to suspend or terminate the contractor's prequalified contractor status.

### **3.4 Site Visits**

In order to prepare competitive and cost-effective proposals, IAP requires an Offeror's attendance at the walk-through (site visits) to understand the desired results and expectations. In some cases, a walk-through may be determined mandatory for a contractor to submit a proposal and will be stated in the Solicitation Invitation. Failure to attend a walk-through may not be used as an excuse for omission or miscalculation in proposals.

### **3.5 Proposal Contents**

**3.5.1** The basis of award for each project will be stated in the Solicitation Invitation. In response to the Solicitation Invitation, depending upon the requirements of each project, the Contractor will typically provide a price proposal within the number of calendar days stated.

**3.5.2** IAP's payment toward the line items listed in the Contractor's Proposal will constitute full compensation for the following: (1) Furnishing of all plant, labor, equipment, services, appliances and materials; and (2) Performing all operations required to complete the work in conformity with the drawings, specifications, and other task order requirements. All costs for work in the specifications, whether specifically listed, shall be included in the Contractor Proposal.

**3.5.3** IAP Administration Fee. As described in **Article 2.1** of this RFQ, the contractor must pay IAP a System Administrative and Access Fee.

**3.5.4** Deviations and Alternate Proposals. Contractor's shall not deviate from the Solicitation Invitation requirements or make alternate proposals; IAP reserves the right to reject any Contractor proposal that deviates from the Solicitation Invitation or offers an alternate proposal.

**3.5.5** A contractor may be required to furnish payment and performance bonds on any project of any amount, specified in the Solicitation Invitation. Upon receipt of acceptable performance and payment bonds, a Notice to Proceed (NTP) will be issued.

### **3.6 Award Decision**

The basis of award for each project will be provided to the contractor. That in the discretion of the CPM, selection was based on the best interest of the CPM as described in **Article 1** of this RFQ.

### **3.7 Project Issuance**

Plans and Specifications. Project documents, including but not limited to plans and specifications, will be made available on IAP's OTOS.

## **Article 4. General Wage Decisions**

**4.1** Prevailing wage rates differ per state. The CPM will determine whether prevailing wage rates shall be required on a project by project basis; if required the CPM will provide the applicable website to obtain current prevailing wage rates. The contractor will be responsible for complying with any prevailing wage requirements.

**4.2** Contractor is responsible for using the E-Verify program for all employees used in this contract.

## **Article 5. Evaluation of Contractor Performance**

**5.1** IAP reserves the right to review the Contractor's performance upon completion of each project. Interim evaluations may be prepared at any time during Contract performance when determined to be in the best interest of IAP or the registered CPM.

**5.2** If necessary, Contractors will be notified via IAP's OTOS to review and comment on any performance evaluations.

## **Article 6. Payment & Performance Bonds**

**6.1** A bid guarantee instrument payable to IAP may be required in a Contractor's submitted proposal in any of the following forms:

**6.1.1** A Bond for the full amount of the Bid, including alternatives, with a corporate warranty approved by IAP. All bonds provided shall be underwritten by a warranty that is licensed in the state where the work is being performed.

**6.1.2** A certified check equal to 20 percent of the Proposal amount.

**6.1.3** A cashier's check equal to 20 percent of the Proposal amount.

**6.1.4** An irrevocable letter of credit equal to 20 percent of the Proposal amount.

**6.2.** Within ten (10) days after award of a Proposal, the non-awarded contractor's warranties will be returned and bid bonds will be destroyed (if applicable).

## **Article 7. Extenuating Conditions**

**7.1 Weather Conditions.** Contractor should account for normal adverse weather conditions when scheduling the work. Each contractor shall be satisfied before submitting his offer as to the hazards likely to arise from weather conditions. Complete weather records and reports may be obtained from any National Weather Service Office.

**7.2 Transportation Facilities.** Before submitting an offer, each contractor shall investigate the conditions of existing public and private roads near the job site for clearances, restrictions, bridge load limits and other limitations affecting transportation ingress/egress. The unavailability of transportation facilities, or limitations thereon, shall not become a basis for damage claims or extension of time for completion of the work.

**7.3** Offeror must be aware of limitations on work that occurs in secured facilities. Offeror should confirm work hour limitations, lock-down possibilities and ingress/egress limitations during certain work hours. Offeror is responsible for ensuring that these additional conditions are accounted for in their proposals as change orders will not be accepted for these circumstances.

## **Article 8. The Contract Documents**

**8.1** The Contract represents the entire and integrated agreement, written or oral, between the parties hereto and supersedes prior negotiations, representations or agreements. The following documents form the Contract and are considered attachments to this Contract or as repeated herein:

- (1)** this Contract;
- (2)** the Contract between IAP and the NCPA;
- (3)** the RFQ;
- (4)** the Contractor's response to the RFQ;
- (5)** Modifications issued subsequent to the execution of the Contract between IAP and the NCPA, whether before or after the execution of this Contract;
- (6)** Modifications to this Contract issued after execution of this Contract; and
- (7)** any project executed between the Contractor and IAP.

**8.2** The Contract may only be amended or modified by a written modification signed by both parties. The Contract Documents shall not be construed to create a contractual relationship of any kind between: (1) the NCPA and the Contractor, (2) the CPM involved in any potential project and the Contractor, or (3) any persons or entities other than IAP and Contractor.

## Article 9. Mutual Rights & Responsibilities

IAP and Contractor shall be mutually bound by the terms of this Agreement; IAP shall assume toward the Contractor all obligations and responsibilities that the NCPA, under the Contract between IAP and the NCPA, assumes toward IAP, and the Contractor shall assume toward IAP all obligations and responsibilities which IAP, under such documents, assumes toward the NCPA. IAP shall have the benefit of all rights, remedies and redress against the Contractor that the NCPA, under such documents, has against IAP, and the Contractor shall have the benefit of all rights, remedies and redress against IAP that IAP, under such documents, has against the NCPA, insofar as applicable to this Contract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

## Article 10. Independent Status of the Contractor

It is fully understood and agreed that said Contractor is an independent contractor and is not an agent, servant or employee of IAP or the NCPA. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities.

## Article 11. Claims by IAP

**11.1** Liquidated damages for delay, if provided for in the Solicitation Invitation, shall be assessed against the Contractor only to the extent caused by the Contractor or any person/entity for whose acts the Contractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

**11.2** IAP's claims for the costs of services or materials provided due to the Contractor's failure to execute the Work shall require:

1. **24 hours** written notice prior to IAP's providing services or materials, except in an emergency; and
2. Written compilations to the Contractor of services and materials provided by IAP and charges for such services and materials no later than the fifteenth (15<sup>th</sup>) day of the following month of IAP providing such services or materials.

**11.3** If the Contractor defaults or neglects to carry out the Work in accordance with this Agreement, IAP may, by appropriate Modification and without prejudice to any other remedy IAP may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Contractor; this negligence includes failing to begin within five (5) working days after receipt of written notice to

proceed from IAP and continue correction of such default or neglect with diligence and promptness.

## Article 12. Remedies for Nonpayment

**12.1** IAP shall pay to the Contractor any amount due under this Contract, following the guidelines set forth by each state, to IAP from the CPM for that portion of Contractor's work; Contractor acknowledges that IAP's obligation to pay Contractor does not arise unless and until IAP is paid for that portion of Contractor's work.

**12.2 RECEIPT OF PAYMENT BY IAP FROM THE COOPERATIVE PURCHASING MEMBER FOR WORK PERFORMED BY CONTRACTOR IS AN EXPRESS CONDITION PRECEDENT TO PAYMENT BY IAP TO CONTRACTOR FOR THAT WORK.**

## Article 13. Warranty

**13.1** The Contractor and its subcontractors warrant to the CPM and IAP that materials and equipment furnished under this Contract will be of good quality or new, unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials or equipment not conforming to these requirements may be considered defective. The Contractor and its Subcontractor's warranty's exclude remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. If required by the CPM and IAP, the Contractor and Subcontractor's shall furnish satisfactory evidence as to the quality of materials and equipment.

**13.2** All warranties shall include labor, materials and be issued by the applicable manufacturer or subcontractor, as specified. All written warranties shall be addressed and delivered to IAP as a condition precedent to the Contractor's entitlement to its Final Payment; the "Contractor Warranty" must represent that labor, materials, services and all other components of the work will be free of defect for one (1) year, from the date of Substantial Completion for the Work, and include any other warranties or guarantees required by the Contract Documents.

**13.3** Nothing in this Contract shall operate to waive, release or compromise the statutory implied warranties, if any, of the Contractor, its subcontractors and/or suppliers to IAP for the Project. Notwithstanding the foregoing assignment, prior to final acceptance of the Project by IAP and/or the CPM, the Contractor shall deliver to IAP a bound volume of all guarantees and warranties on Materials furnished by all manufacturers and Material Suppliers to Contractor and all his Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to IAP. Contractor shall obtain

guarantees and warranties, upon the best terms and longest periods obtainable, from all manufacturers and Material Suppliers.

**13.4** The Contractor will indemnify and hold IAP harmless against any loss, damage or expense incurred as a result of a breach of any warranties. All warranties referenced in the Contract Documents shall ensure the making of Final Payment to the Contractor. These warranties shall not operate to extinguish or compromise any claim for latent defects or other defective work items that could not be discovered by IAP upon reasonable inspection; in such case, the limitations period for latent defects shall run from the date of discovery in accordance with the State's law.

**13.5** Contractor warrants that it shall, within forty-eight (48) hours of notice (verbal or written), diligently pursue any necessary warranty repairs or replacements of the defect(s) until corrected to restore the Working condition required by the Contract Documents. Contractor shall restore both the surface and subsurface, in addition to collateral and primary conditions, disturbed by performance of the Contractor during warranty work to their prior pre-warranty work condition.

**13.6** The guarantees and warranties contained herein shall not be construed to modify or limit, in any way, any rights or actions which IAP may otherwise have against the Contractor by law or statute or in equity.

## Article 14. Indemnity

**14.1** To the fullest extent of the law, the Contractor and its Subcontractors are subject to indemnity and hold the State, CPM, IAP, Officers, agents, employees and successors harmless against claims, damages and losses/expenses – including but not limited to attorney's fees occurred as a result in performance of the Contractor's Work under this Contract – provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease/death or destruction of tangible property (other than the Work itself) only to the extent caused by the negligent acts or omissions of the Contractor, the Contractor's subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable for, regardless if 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 otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this **Section 3.6**.

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

## Article 15. Limitation of Liability

IAP and Contractor waive claims against each other for consequential damages arising out of or relating to this Contract, including without limitation to any consequential damages due to either party's termination in accordance with **Article 19**.

## Article 16. Insurance

**16.1** Unless otherwise provided in any specific Solicitation Invitation at IAP's discretion, the Contractor shall provide the following insurance coverage at its own expense throughout the term of this Contract:

1. Workers' Compensation insurance, as required by the law of the appropriate state(s) where work on the Project will be done. The Contractor shall also maintain employer's liability insurance with at least a \$1,000,000 limit.
2. Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death and property damage; the defense cost shall be outside of the policy limits. Such policy shall designate IAP and the CPM as additional insureds, as their interests may appear, and endorsed to include a blanket waiver of subrogation. At a minimum, the limits of the insurance shall be:  
  
\$2,000,000 General Aggregate  
  
\$2,000,000 Products/Completed Operations Aggregate  
  
\$1,000,000 Per Occurrence Limit  
  
\$1,000,000 Personal and Advertising Injury Limit  
  
\$100,000 Fire Legal Liability  
  
\$10,000 Medical Payments
3. Commercial Automobile Liability insurance with a combined single limit of \$500,000.

**16.2** The policy shall also be endorsed to provide IAP and the CPM with a 30-day prior written notice of cancellation or material change to the policy. It is agreed upon that the Contractor's Commercial General Liability shall be primary over any other insurance coverage.

**16.3** The Contractor shall provide IAP with copies of all policies, endorsements and certificates of insurance with any proposal prior to commencing any work on a project. Certificates for Worker's Compensation and proof of insurance must be provided. The certificate(s) must be in a form that is reasonably satisfactory to the State as to the

contents of the policies and the quality of the insurance carriers. All carriers must have at least an "A VII" rating by A.M. Best.

## Article 17. Contractor

### 17.1 Execution and Progress of the Work

**17.1.1** The Contractor shall enter into written agreements with all subcontractors performing portions of the Work of this Contract by which the Contractor and the subcontractor are mutually bound, to the extent of the Work to be performed by the subcontractor, assuming toward each other all obligations and responsibilities that IAP and Contractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that IAP and Contractor have by virtue of the provisions of this Agreement.

**17.1.2** The Contractor shall supervise the subcontractor's Work and coordinate with IAP the schedule of the subcontractor's Work to avoid conflict, delay in or interference with the Work of IAP, the Contractor, other subcontractors, the CPM or separate contractors.

**17.1.3** The Contractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of IAP or other subcontractors.

**17.1.4** The Contractor shall furnish to IAP weekly progress reports on the Work of this Contract, as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture or transit.

**17.1.5** The Contractor agrees that IAP and the CPM each have the authority to reject Work of the Contractor that does not conform to the Contract between IAP and the NCPA. The CPM's decisions on matters relating to aesthetic effect shall be final and binding on the Contractor if consistent with the intent expressed in the Contract between IAP and the NCPA.

**17.1.6** The Contractor shall pay for all materials, equipment and labor used in connection with the performance of this Contract through the period covered by previous payments received from IAP; satisfactory evidence (lien waivers, payment receipts, etc.) when payment is requested by IAP is required to verify compliance.

**17.1.7** The Contractor shall take necessary precautions to properly protect the Work of other subcontractors from damage caused by operations under this Subcontract.

**17.1.8** The Contractor shall cooperate with IAP, other subcontractors, the NCPA and separate contractors whose work might interfere with the Contractor's Work. The Contractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Contract between IAP and the NCPA, specifically noting and advising IAP of potential conflicts between the Work of the Contractor and that of IAP, other subcontractors, the CPM or separate contractors.

**17.1.9** Normal work days and hours, unless otherwise provided in a Task Order, shall be Monday through Friday from 7 a.m. to 4 p.m., with State holidays exempted.

## **17.2 Permits, Fees, Notices & Compliance with Laws**

**17.2.1** The Contractor shall give notices and comply with applicable laws, statutes, ordinances, codes, lawful orders, as well as rules and regulations of public authorities bearing on performance of the Work of this Contract. Within the Contract Price, the Contractor shall secure and pay for permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Contractor's Work; the furnishing of which is required of IAP by the Contract between IAP and the NCPA.

**17.2.2** The Contractor shall comply with Federal, state and local laws, social security acts, unemployment compensation acts and workers' compensation act's insofar as applicable to the performance of this Subcontract.

## **17.3 Safety Precautions & Procedures**

**17.3.1** The Contractor shall take all necessary safety precautions in accordance with OSHA standards and general construction principles with respect to performance of this Contract. Compliance with safety measures initiated by IAP and applicable laws, statutes, ordinances, codes, lawful orders, as well as rules and regulations of public authorities for the safety of persons and property in accordance with the requirements of the Contract between IAP and the NCPA. The Contractor shall report to IAP within 24 hours of any injury to an employee or agent of the Contractor that occurred on-site. If the injury is severe or life threatening, the Contractor shall report the incident immediately to IAP.

**17.3.2** Prior to any employee being exposed to harmful hazardous substances, an employer is required by law to notify its employees (Contractor, subcontractors or anyone directly or indirectly employed by them) that such materials are being used on-site; the Contractor must give a written notice of the chemical composition thereof to IAP in sufficient detail and time to permit compliance with such laws by IAP, other subcontractors and other employers on the site. No hazardous materials will be used on site without prior written approval by IAP.

**17.3.3** If reasonable precautions are inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, upon recognition of the condition, the Contractor must immediately stop Work in the affected area and promptly report the condition to IAP in writing. When the material or substance has been rendered harmless, the Contractor's Work in the affected area shall resume upon written agreement of IAP and Contractor. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of demobilization, delay and remobilization; adjustments shall be accomplished as provided in **Article 5** of this Agreement.

**17.3.4** To the fullest extent permitted by law, IAP shall indemnify and hold harmless the Contractor, the Contractor's subcontractors and agents or employees of any of them from and against claims, damages, losses/expenses – including but not limited to attorney's fees occurred as a result of the Contractor's performance on the Work under this Contract – in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in **Section 3.3.3** and has not been rendered harmless, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease/death or destruction of tangible property (other than the Work itself) except to the extent that such condition is due to the fault or negligence of the party seeking indemnity.

**17.3.5** The Contractor shall indemnify IAP for the cost and expense IAP incurs (1) for remediation of a material or substance brought to the site and negligently handled by the Contractor or (2) where the Contractor fails to perform its obligations under **Section 3.3.3**; except to the extent that the cost and expense are due to IAP's fault or negligence.

#### **17.4** Cleaning Up

**17.4.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Contract. **The Contractor shall be held responsible for conditions caused by their agents, employees, affiliates or subcontractors.**

**17.4.2** As provided under **Section 17.4.1**, if the Contractor fails to clean up as provided in the Contract Documents, IAP may charge the Contractor its appropriate share of cleanup costs.

### **Article 18. Changes in the Work**

**18.1** The CPM may make changes in the Work by issuing Modifications to the Contract between IAP and the NCPA. Upon receipt of such a Modification issued subsequent to the

execution of the Contract Agreement, IAP shall promptly notify the Contractor of the Modification. Unless otherwise directed by IAP, the Contractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Contract between IAP and the NCPA.

**18.2** The Contractor may be ordered in writing by IAP, without invalidating this Contract, to make changes in the Work within the general scope of this Contract consisting of additions, deletions or other revisions; this includes those required by Modifications to the Contract between IAP and the NCPA, issued subsequent to the execution of this Agreement, the Contract Sum and the Contract Time being adjusted accordingly. The Contractor, prior to commencement of such changed or revised Work, shall submit written copies of a claim for adjustment to the Contract Sum and Contract Time for such revised Work promptly to IAP and in a manner consistent with requirements of the Contract Documents.

**18.3** The Contractor shall promptly notify IAP of all claims for additional cost, extensions of time and damages for delays or other causes in accordance with the Contract Documents. A claim which will affect or become part of a claim that IAP is required to make, under the Contract between IAP and the NCPA, within a specified time period or manner shall be made in enough time to permit IAP to satisfy the requirements of said Contract. Such claims shall be received by IAP no later than two (2) working days preceding the time by which IAP's claim must be made. Failure of the Contractor to make such a timely claim shall bind the Contractor to the same consequences as those to which IAP is bound. Course of conduct shall not constitute a waiver of this provision or otherwise affect the requirements of this Contract.

**18.4** The Contractor shall give IAP written notice of any claim within seven (7) days after the occurrence giving rise to the claim or within seven (7) days after the Contractor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Any change in the Project Price or the Project Time resulting from such claim shall be authorized by a Change Order. The failure of Contractor to give the required notice shall constitute a waiver of any claim for additional time or compensation associated with that change.

## **Article 19. Dispute Resolution Procedure**

**19.1** If either IAP or the contractor seeks to assert a claim against the other for an equitable adjustment to a project, the claiming party must complete the steps listed below in order as express conditions precedent to asserting any claim under this Article.

**19.1.1** On-site Project Manager Negotiation. If a dispute arises, the claiming party shall serve a written notice upon the other party of an intent to bring a claim and a request for a meeting on-site, or any other mutually agreeable location, between the designated project manager for the contractor and IAP's designated project

manager. Those parties shall conduct such a meeting and attempt to resolve the dispute within 30 days of the notice. If the meeting between the designated project managers does not take place within 30 days of the written notice, the party seeking to assert the claim may proceed to the next step of the dispute resolution procedure as set forth in **Article 19.1.2**.

**19.1.2 Company Manager Negotiation.** If the designated project managers are unable to resolve the dispute, the claiming party shall serve a written request for a meeting on-site, or any other mutually agreeable location, between the designated company executive for the Contractor and IAP's designated company executive. If the meeting between the designated company executives does not take place within 30 days of the written request, the party seeking to assert the claim may proceed to the next step of the dispute resolution procedure as set forth in **Article 19.1.3**.

**19.1.3 Mediation.** If the processes under **Article 19.1.1** and **19.1.2** do not successfully resolve the dispute, the parties shall endeavor to resolve their claims by mediation; unless the parties mutually agree otherwise, the American Arbitration Association will administer such mediation in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Contract and filed with the person or entity administering the mediation. The parties shall equally share the mediator's fee and any filing fees. The mediation location is dependent upon State and must be mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**19.2 Litigation.** If mediation does not successfully resolve the dispute, or the parties are not able to schedule the mediation within 90 days of the request for mediation, the claiming party shall be entitled, upon the unsuccessful completion of such mediation, to initiate claims against the other party in any court of competent jurisdiction in Franklin County, Ohio.

## **Article 20. Suspension & Termination**

### **20.1 Termination by the Contractor**

The Contractor may terminate the Contract for the same reasons, under the same circumstances and procedures, with respect to IAP as IAP may terminate with respect to the State under the Contract between IAP and the NCPA, or for nonpayment of amounts due under this Contract for sixty (60) days or longer. In the event of such termination by the Contractor for any reason which is not the fault of the Contractor, subcontractors and/or their agents, employees or other persons performing portions of the Work under contract with the Contractor, the Contractor is entitled to recover the payment for Work from IAP executed and for

proven loss with respect to materials, equipment, tools and construction equipment/machinery, including reasonable overhead, profit and damages.

## **20.2 Termination by IAP**

**20.2.1** IAP may, by written notice to the Contractor and without prejudice to any other remedy IAP may have, terminate the Contract and finish the Contractor's Work by whatever method IAP may deem expedient if the Contractor fails or neglects to: carry out or perform the Work in accordance with the Contract and its Documents, maintain the qualifications that supported IAP's issuance of prequalified contractor status to contractor, begin work within the 72-hour period after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Contractor's Work and other damages incurred by IAP that was not expressly waived, such excess shall be paid to the Contractor. If such expense and damages exceed such unpaid balance, the Contractor shall pay the difference to IAP.

**20.2.2** If the NCPA terminates the Contract between IAP and the NCPA for its convenience, IAP shall promptly deliver written notice to the Contractor.

**20.2.3** Upon receipt of written notice of termination, the Contractor shall:

1. Cease operations as directed by IAP in the notice;
2. take actions necessary, or that IAP may direct, for the protection and preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub subcontracts and purchase orders and no longer enter further Sub-subcontracts and purchase orders.

**20.2.4** In case of such termination for the NCPA's convenience, the Contractor shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, in addition to reasonable overhead and profit on the Work not executed.

**20.2.5** IAP may terminate this Contractor's prequalified contractor status if the Contractor defaults in meeting its obligations under this Contract and fails to cure its default within the time allowed by this Contract, or if a petition in bankruptcy (or similar proceeding) has been filed by or against the Contractor. IAP may also terminate this Contractor's prequalified contractor status if the Contractor violates any law or regulation in soliciting on or performing any project, or if it appears to IAP that the Contractor's performance is substantially endangered through no fault of IAP's. In any such case, the termination will be for cause, and IAP's rights and remedies will be those identified herein for termination cause.

## **20.3 Suspension or Termination by IAP for Convenience**

**20.3.1** IAP may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work of this Contract in whole or in part for such period determined by IAP. In the event of suspension ordered by IAP, the Contractor shall be entitled to an equitable adjustment of the Contract Time and Contract Sum.

**20.3.2** IAP may terminate this contract or any project at any time for any reason by giving at least a five (5) day notice in writing to the Contractor. If the contract is terminated by IAP as provided herein, the Contractor will be paid a fair payment as negotiated with the IAP for the work completed on any project as of the date of termination.

**20.3.3** An adjustment shall be made for increases in the Contract Time and Contract Sum, this includes profit on the increased cost of performance caused by suspension, termination, delay or interruption. No adjustment shall be made to the extent that:

1. Performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
2. an equitable adjustment is made or denied under another provision of this Subcontract.

## **Article 21. The Work of this Contract**

The Contractor shall execute the portion of the Work described in the Task Order, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

## **Article 22. Date of Commencement & Substantial Completion**

**22.1** Contract Time is the period, including authorized adjustments, allotted for Substantial Completion of the Work described in the Contract Documents. The Contractor's date of commencement is the date from which the Contract Time is measured. The date of this Agreement stands as first written above, unless a different date is stated below, or a provision is made for the date to be fixed in a notice to proceed issued by IAP.

**22.2** Unless the date of commencement is established by a notice to proceed issued by IAP, the Contractor shall notify IAP in writing not less than five days before commencing the Contractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**22.3** The Work of this Contract shall be substantially completed no later than the date included in the project as the Date of Substantial Completion, subject to adjustments of this Contract Time as provided in the Contract Documents. IAP reserves the right to include liquidated damages provisions within each individual project as it determines necessary.

**22.4** With respect to the obligations of both IAP and the Contractor, time is of the essence of this Contract.

**22.5** No extension of time will be valid without IAP's written consent after claim made by the Contractor in accordance with this Contract.

## **Article 23. Project Sum**

IAP shall pay the Contractor in current funds for performance of each project the Project Sum shown on that Project and subject to the terms of this Contract. IAP will deduct the 6% System Administration and Access Fee from the Contractors payment amount prior to issuing a check to the Contractor in accordance with this Contract.

## **Article 24. Progress Payments**

**24.1** Prior to Project issuance, the Contractor shall work with IAP and any other Contractor on the project to develop a mutually agreed upon project schedule. The project schedule shall include monthly milestones for each contractor that shall serve as the basis for monthly progress payments. If the Contractors and IAP are unable to develop a mutually agreed upon schedule, IAP reserves the right to prepare a project schedule and furnish it to all contractors on the project.

**24.2** Based upon applications for payment submitted to IAP by the Contractor, corresponding to applications for payment submitted by IAP to the CPM, and payment made to IAP by the CPM, IAP shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. IAP will deduct the 6% System Administration and Access Fee from the Contractors payment amount prior to issuing a check to the Contractor in accordance with this Contract.

**24.3** The applications for payment shall be based upon Contractor's completion of the monthly milestones on the project schedule. Contractor shall only be entitled to make application for payment for milestones completed.

**24.4** Provided an application for payment is received by IAP no later than the 20<sup>th</sup> day of a month, IAP shall include the Contractor's Work covered by that application in the next application for payment which IAP is entitled to submit to CPM. IAP shall pay the Contractor each progress payment within 30 days of payment to IAP from the CPM for that portion of Contractor's work; Contractor acknowledges that IAP's obligation to pay Contractor does not arise unless and until IAP is paid for that portion of Contractor's work.

**24.5 RECEIPT OF PAYMENT BY IAP FROM THE COOPERATIVE PURCHASING MEMBER FOR WORK PERFORMED BY CONTRACTOR IS AN EXPRESS CONDITION PRECEDENT TO PAYMENT BY IAP TO CONTRACTOR FOR THAT WORK.**

**24.6** If the Contractor's application for payment is received by IAP after the application date fixed above, the Contractor's Work covered by it shall be included by IAP in the next application for payment submitted to the CPM.

**24.7** Applications for payment submitted by the Contractor shall indicate the monthly milestones completed as of the end of the period covered by the application for payment.

**24.8** Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as set forth in the sections below.

**24.8.1** Take the amount allocated to each completed milestone, less the percentage retained, if any, from payments to IAP on account of the Work of the Contractor. Pending final determination of cost to IAP of changes in the Work that have been properly authorized by IAP, amounts not in dispute shall be included to the same extent provided in the Contract between IAP and the CPM even though the Contract Sum has not yet been adjusted;

**24.8.2** Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored on-site by the Contractor for subsequent incorporation in the Contractor's Work or, if approved by IAP, suitably stored off-site at a location agreed upon in writing, less the same percentage retainage required by the Contract between IAP and the CPM to be applied to such materials and equipment in IAP's application for payment;

**24.8.3** Subtract the aggregate of previous payments made by IAP; and

**24.8.4** Subtract amounts, if any, related to Work of the Contractor for which the CPM or IAP has withheld or nullified, in whole or in part, payment for a cause that is the fault of the Contractor.

**24.9** Upon the partial or entire disapproval by IAP of the Contractor's application for payment, IAP shall provide written notice to the Contractor. When the basis for the disapproval has been remedied, the Contractor shall be paid the amounts withheld.

## **Article 25. Substantial Completion**

**25.1** When the Contractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Contract between IAP and the NCPA, IAP shall make prompt application for payment for such Work upon application by the Contractor. Within 30 days following payment by the NCPA covering such

substantially completed Work, IAP shall, to the full extent allowed in the Contract between IAP and the NCPA, make payment to the Contractor deducting any portion of the funds for the Contractor's Work withheld in accordance with the State's payment to cover costs of items to be completed or corrected by the Contractor.

**25.2** Such payment to the Contractor shall be the entire unpaid balance of the Contract Sum, less amounts due IAP for the System Administration and Access Fee as described above, if a full release of retainage is allowed under the Contract between IAP and the Agency and registered CPM for the Contractor's Work prior to the completion of the entire Project. If the Contract between IAP and the Agency does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Contractor, will reduce the retainage on the Contractor's substantially completed Work to the same percentage of retainage as that on IAP's Work covered by the payment.

## **Article 26. Time Extensions for Unusually Severe Weather**

**26.1** Unless otherwise specified in a project, this paragraph specifies the procedure for the determination of time extensions for unusually severe weather. For IAP to award a time extension under this clause, the following conditions must be satisfied:

**26.1.1** The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.

**26.1.2** The unusually severe weather must cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the contractor.

**26.1.3** Weather delays will be based on National Oceanic and Atmospheric Administration (NOAA), or similar data for the project location, and will constitute the base line for monthly weather time evaluations. The contractor's progress schedule must reflect consideration of these anticipated adverse weather delays in all weather-dependent activities.

**26.1.4** Upon acknowledgment of the notice to proceed (NTP) and continuing throughout the contract, the contractor will record on the daily report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delays must prevent work on critical activities for 50 percent or more of the contractor's scheduled workday.

**26.2** The number of days delayed shall include those impacted by adverse weather (even if adverse weather occurred in previous month), calculated chronologically from the first to the last day of each month and recorded as full days. If the number of adverse weather delay days exceeds the number of days anticipated in accordance with the criteria

previously described above, IAP will convert any qualifying delays into calendar days and consider equivalent and fair weather work days when issuing a bilateral modification.

## Article 27. Excusable Delay

Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date as soon as practicable after notice of delay. In the event of any such excusable delay, the date of performance or of delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party must also describe the cause of the delay and steps being taken to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's subcontractors will be considered controllable by the Contractor.

## Article 28. Final Payment

**28.1** Final payment, constituting the entire unpaid balance of the Contract Sum, less amounts due IAP for the System Administrative and Access Fee as described above, shall be made by IAP to the Contractor when the following are completed: the Contractor's Work is fully performed in accordance with the requirements of the Contract Documents, the CPM has issued payment covering the Contractor's completed Work and IAP has received payment from the CPM. If payment is not issued for any reason which is not the fault of the Contractor or IAP does not receive timely payment or fails to pay the Contractor within seven (7) days after receipt of payment from the CPM, final payment to the Contractor shall be made upon demand.

**28.2** If required, the Contractor shall submit evidence satisfactory to IAP that all payrolls, bills for materials/equipment and all known indebtedness connected with the Contractor's Work have been satisfied before issuance of the final payment. Acceptance of final payment by the Contractor shall constitute a waiver of claims by the Contractor, except those previously made in writing and identified by the Contractor as unsettled at the time of final application for payment.

## Article 29. Employment Taxes

Each party will be solely responsible paying all employment related taxes, payments and withholdings for its own personnel, including but not limited to Federal, State and Local income taxes, social security, unemployment or disability deductions, withholdings, and payments (altogether with any interest and penalties not disputed with the appropriate taxing authority).

## Article 30. Sales, Use, Excise & Property Taxes

The CPMs are exempt from any sales, use, excise and property tax. To the extent in which sales, use, excise or any similar tax is imposed on the Contractor in connection with the Project, such will be the sole and exclusive responsibility of the Contractor. The Contractor will pay such taxes together with any interest and penalties not disputed with the appropriate taxing authority, whether they are imposed at the time of services rendered or later.

## Article 31. Notice on the use of Social Security Numbers as Federal Tax Identification Numbers

**31.1** The State requires vendors and contractors wishing to do business with the CPM to provide their Federal Taxpayer Identification Number to the Department. The State does this to perform the statutorily required “responsibility” analyses on those vendors and contractors doing business with the State under limited circumstances for tax reporting purposes; IAP will be required to submit such information to the State on behalf of its contractors.

**31.2** If you are a vendor or contractor using your Social Security Number as your Federal Taxpayer Identification Number, please be aware that the information you submit to IAP gets submitted to the State and is a public record; the Department may be compelled by State law to release Federal Taxpayer Identification Numbers as a public record. If you do not want to have your Social Security Number potentially disclosed as a Federal Taxpayer Identification Number, the Department and IAP encourage you to use a separate Employer Identification Number (EIN) obtained from the United States Internal Revenue Service’s to serve as your Federal Taxpayer Identification Number.

## Article 32. Entire Document

This Contract and all documents incorporated herein are the entire agreement between the parties with respect to the subject matter and supersede any previous statements or agreements, whether oral or written.

## Article 33. Binding Effect

This Contract will be binding upon and inure to the benefit of the respective successors and assigns of IAP and the Contractor.

## Article 34. Amendments - Waiver

No change to any provision of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be a waiver

of those terms; waivers must be in writing to be effective. Either party may at any later time demand strict performance.

### **Article 35. Severability**

If any provision of this Contract is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Contract will remain in full force and effect to the extent that such does not create an absurdity.

### **Article 36. Construction**

This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

### **Article 37. Headings**

The headings used herein are for the sole sake of convenience and will not be used to interpret any section.

### **Article 38. Notices**

For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract, unless such party has notified the other of a new mailing address in accordance with the provisions of this section. This notice requirement will not apply to any notices that this Contract expressly authorized to be made orally.

### **Article 39. Continuing Obligations**

The terms of this Contract will survive the termination or expiration of the time for completion of Project and the time for meeting any final payment of compensation, except where such creates an absurdity.

### **Article 40. Governing Law**

This Contract shall be deemed to have been made and is to be interpreted, construed and enforced in accordance with the laws of the State in which the work is to be performed.

## Article 41. Banning the Expenditure of Public Funds on Offshore Services

**41.1** Executive Order Requirements. The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid to IAP and ultimately paid to the Contractor for services the Contractor performs outside of the United States for which it did not receive a waiver.

**41.1.1** The Offeror must complete, sign and include the Standard Affirmation and Disclosure Form (**Attachment 7**) to abide with Executive Order 2011-12K affirming no services of the Offeror or its subcontractors under this Contract will be performed outside the United States. During the performance of this Contract, the Contractor must not change the location(s) of the country where the services are performed, change the location(s) of the country where the data are maintained, or made available unless a duly signed waiver from the State has been attained to perform the services outside the United States.

**41.2** Termination, Sanction, Damages. If the Contractor or any of its subcontractors perform services under this Contract outside of the United States, the performance of such services shall be treated as a material breach of the Contract; IAP is not obligated to pay and shall not pay for such services. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return all funds paid for those services to IAP. As a result of the Contractor performing services outside the United States, IAP may also recover from the Contractor all costs associated with any corrective action the State may undertake, including but not limited to an audit or a risk analysis.

**41.2.1** IAP may terminate the Contract at any time after the breach, upon written notice to the Contractor. IAP may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Contract and costs associated with the acquisition of substitute services from a third party.

**41.2.2** IAP, in its sole discretion, may provide written notice to Contractor of a breach and permit the Contractor to cure the breach. Such cure period shall be no longer than ten (10) business days. During the cure period, IAP may buy substitute services from a third party and recover from the Contractor any costs associated with acquiring those substitute services.

Notwithstanding IAP permitting a cure period or the Contractor's cure of the breach, IAP does not waive any of its rights and remedies provided to IAP in this Contract – including but not limited to recovery of funds paid for services the Contractor performed outside of the United States or costs associated with corrective action.

**ATTACHMENT EIGHT**

**CONTRACT**

This Contract, which results from RFQ \_\_\_\_\_, entitled \_\_\_\_\_, is between IAP Government Services Group ("IAP") and

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(the "Contractor").

If this RFQ results in a Contract award, the Contract will consist of this RFQ including all attachments, written addenda to this RFQ, the Contractor's Qualifications Statement, and written, authorized addenda to the Contractor's Qualifications Statement, and any future project issued by IAP to the Contractor. It will also include any materials incorporated by reference in the above documents and any purchase orders and change orders issued under the Contract.

The form of the Contract is this one (1) page attachment to the RFQ, which incorporates by reference all the documents identified above. The general terms and conditions for the Contract are contained in another attachment to the RFQ. If there are conflicting provisions between the documents that make up the Contract, the order of precedence for the documents is as follows:

1. This RFQ, as amended;
2. The documents and materials incorporated by reference in the RFQ;
3. The Contractor's Qualifications Statement, as amended, clarified, and accepted by the State;
4. The documents and materials incorporated by reference in the Contractor's Qualifications Statement; and
5. The Project.

Notwithstanding the order listed above, change orders and amendments issued after the Contract is executed may expressly change the provisions of the Contract. If they do so expressly, then the most recent of them will take precedence over anything else that is part of the Contract.

***SIGNATURES ON FOLLOWING PAGE ARE INCORPORATED INTO THIS DOCUMENT***

This Contract has an effective date of \_\_\_\_\_.

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the dates below.

\_\_\_\_\_

(Contractor)

IAP Government Services Group

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Printed Name)

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Date)