

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
SUITE 500, 2100 CLARENDON BOULEVARD
ARLINGTON, VA 22201**

AGREEMENT NO. 21-DMF-ITB-262-GC-3

THIS AGREEMENT is made, on November 10, 2020, between Brown & Root Industrial Services, LLC, 2451 Crystal Drive, Suite 425, Arlington, VA 22202 (“Contractor”) a Delaware corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of:

- Agreement No. 21-DMF-ITB-262-GC-3, and all modifications properly incorporated into the Agreement
- Exhibit A – Arlington County Invitation to Bid No. 21-DMF-ITB-262, including DES General Conditions, incorporated herein by reference
- Exhibit B – Price Bid of Contractor
- Exhibit C – JOC Supplementary Conditions

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties’ agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the “Contract” or the “Agreement”.

2. SCOPE OF WORK

The Contractor will furnish all labor, materials, and equipment for Job Order Contracting (the “Project”) and all other work shown, described, and required by the Contract Documents (hereinafter “the Work”). The Work shall be performed according to the standards established by the Contract Documents read together as a single specification. It shall be the Contractor's responsibility, at solely the Contractor's cost, to provide sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer identified in Section 53, Notices, unless the Contractor is otherwise notified in writing.

4. CONTRACT TERM

The term of this Agreement will commence on November 10, 2020 and shall be completed no later than

November 9, 2021 (“Initial Contract Term”), subject to any written modifications as provided for in the Contract Documents. Upon completion of the Initial Term, County and Contractor may agree, through bilateral execution of a Contract Amendment, continued operations of the Contractor for not more than two additional twelve (12) month periods from November 10, 2021 to November 9, 2023 (each a “Subsequent Contract Term”). The Initial Contract Term and any Subsequent Contract Term(s) are together the “Contract Term”.

5. TIME FOR COMPLETION

The County will assign work under this contract through issuance of Task Orders. Prior to each Task Order being issued, County and Contractor will discuss the scope of the Task Order and determine a mutually agreeable Final Completion date for that Task Order. Project Officer will indicate such date in the Notice to Proceed. Contractor shall complete each Task Order by the Final Completion date. Work will not reach Final Completion until it meets the requirements set forth in the General Conditions. Completion will be determined by the inspection and acceptance of the Work by the Project Officer.

AND

Unless otherwise provided, no claims for early completion are allowed.

6. CONTRACT AMOUNT

The Contract is an indefinite-quantity contract for construction work and services. The Contractor may be issued Job Orders exceeding the Estimated Annual Value during any year. No Job Order shall exceed the annual statutory limit of \$6,000,000 and no more than \$500,000 per project as stipulated in the Virginia Public Procurement Act (VPPA). Order splitting with the intent of keeping a job order under the maximum dollar amounts is prohibited.

The Contractor is not guaranteed to receive this volume of Job Orders. It is merely an estimate.

The Contractor shall perform all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in RSMMeans Construction Cost Data Books and the following Adjustment Factors:

Normal Working Hours Coefficient Multiplier 8:00 am to 5:00 pm Monday to Friday, except for County Holidays:

0.7300

Restricted Working Hours Coefficient Multiplier Monday through Friday, 5:01 PM to 7:59 AM, all day Saturday, Sunday, County holidays, and anytime the County restricts the Contractor’s Work to 6 hours or less a day.

0.7700

Non Pre-priced:

1.1800

7. PROGRESS PAYMENTS AND RETAINAGE

The County will make monthly progress payments to the Contractor upon written application by the Contractor, on the basis of a written estimate of the work performed during the preceding calendar month

as approved by the Project Officer. However, 5% of each progress payment will be retained by the County until Final Completion and acceptance of all Work covered by the Agreement.

All material and work covered by partial payments will become the property solely of the County at the time the partial payment is made. However, the Contractor will have the sole responsibility, care and custody for all materials and work upon which payments have been made until Substantial Completion.

When calculating payment for materials on-site, the County shall not pay for materials which are not scheduled for incorporation into the Work within sixty (60) days from the date of application for payment.

8. PAYMENT TERMS

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. Each invoice must certify that the invoice submitted is a true and accurate accounting of the work performed and goods and/or services provided and must be signed and attested to by the Contractor or authorized designee. The County will pay the Contractor 45 days after approval of an invoice for completed work which is reasonable and allocable to the Contract. The number of the County Purchase Order pursuant to work has been performed must appear on all invoices.

9. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

10. RELEASE AND REQUEST FOR FINAL PAYMENT

In order to receive final payment upon Final Completion of the Project and before Final Acceptance, the Contractor must submit to the Project Officer a signed original notarized copy of the Arlington County Release and Request for Final Payment form per the General Conditions.

11. LIQUIDATED DAMAGES

Time is of the essence under this Contract. Each Task Order must be completed within the Time for Completion. The County and the Contractor agree that damages for failure to achieve Final Completion of a Task by the date specified under Time for Completion are not susceptible to exact determination but that the following liquidated damages per calendar day is in proportion to the actual loss that the County would suffer from such delay. Therefore, the Contractor will pay the County the following as liquidated damages per day for each and every day beyond the time for Final Completion that the County determines Final Completion of a Task has not achieved.

Value of Job Order	Liquidated Damages
\$0 to \$10,000	\$100/Day
\$10,001 to \$50,000	\$250/Day
Over \$50,000	\$500/Day

The County will be entitled to deduct liquidated damages against any sums owed by the County to the Contractor under this Contract. The Contractor hereby waives any defense as to the validity of any liquidated damages on grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

12. BACKGROUND CHECK

All employees or subcontractors whom the Contractor assigns to work on this Contract must pass a County background check. The background check will include fingerprinting by the County Sheriff's Office and a credit check.

13. NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever occurs first.

14. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

This Contract does not obligate the County to purchase a specific quantity of items or services during Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under

other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

15. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

16. LIEN

It is expressly agreed that after any payment has been made by the County either to the Contractor for work done, or labor or material supplied under the Contract, the County will have a lien upon all material delivered to the site either by the Contractor, or for the Contractor, which is to be used in the performance of the Contract.

17. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

18. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

19. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

20. *SEXUAL HARRASSMENT POLICY

If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.

21. PROJECT STAFF

The County has the right to reasonably reject staff or subcontractors whom the Contractor assigns to the Project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's employees and its subcontractors is the sole responsibility of the Contractor.

22. FAILURE TO DELIVER

If the Contractor fails to deliver goods or services in accordance with the Contract terms and conditions, the County, after notice to the Contractor, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. The County shall be entitled to offset such costs against any sums owed by the County to the Contractor. However, if public necessity requires the use of nonconforming materials or supplies, they may be accepted at a reduction in price to be determined solely by the County.

23. UNSATISFACTORY WORK

If any of the work done, or material, goods, or equipment provided by the Contractor, is unsatisfactory to the County the Contractor must, upon notice from the County, immediately remove at the Contractor's expense such unsatisfactory work, material, goods, or equipment and replace the same with work, material, goods, or equipment satisfactory to the County. If the Contractor fails to do so after fifteen (15) days the County shall have the right to remove or replace the rejected work, material, goods, or equipment at the expense of the Contractor and offset the expense and administrative costs against any sums owed to the Contractor. This provision applies during the Contract term and during any warranty or guarantee period. At the Project Officer's discretion, rather than correction or replacement of the work, an appropriate adjustment to the Contract Amount may be made.

24. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

- 1. Termination for Unsatisfactory Performance.** If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. Upon such termination, the Contractor may apply for compensation for Contract services that the County previously accepted ("Termination Costs"), unless payment is otherwise barred by the Contract. The Contractor must submit any request for Termination Costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for Termination Costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

- 2. Termination for Breach or Default.** If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not

limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to Termination Costs, as defined above, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

25. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees, vendors, delivery drivers and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

The Contractor agrees to defend, indemnify, and hold harmless County from any and all damages, costs, claims, expenses, suits, losses, liabilities, or obligations of any kind including without limitation, environmental assessments, evaluations, remediations, fines, penalties, and clean-up costs which may be asserted against or imposed upon, or incurred by County arising from Contractor's discharge or disposal of any hazardous or toxic materials, trash, debris, refuse, waste or other materials ("Materials") related in any way to contractor's operations herein.

26. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses,

damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

27. COPYRIGHT

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

28. OWNERSHIP AND RETURN OF RECORDS

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written, oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of this Contract (collectively "Records") are the exclusive property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or willingly cause or allow such materials to be used for any purpose other than performance of this Contract without the written consent of the County.

The Records are confidential, and the Contractor will neither release the Records nor share their contents. The Contractor will refer all inquiries regarding the status of any Record to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all Records, including hard copies of electronic records, to the Project Officer and will destroy all electronic Records.

The Contractor agrees to include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

29. CONFIDENTIAL INFORMATION

The Contractor and its employees, agents and subcontractors will hold as confidential all County information obtained under this Contract. Confidential information includes, but is not limited to, nonpublic personal information; personal health information (PHI); social security numbers; addresses;

dates of birth; other contact information or medical information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement.

30. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its bid was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

31. COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

32. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

33. AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

34. RELATION TO THE COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

35. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

36. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, proposals must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

37. AUDIT

The Contractor must provide to the County the complete findings and all components of an independent certified public accountant's audit of its finances and program operation within two months after the close of Contractor's fiscal year. If a management letter was not prepared with the audit, the Contractor must so certify in writing as part of the audit report to the County. The Contractor must allow the County to review its records as the County deems necessary for audit purposes within 15 calendar days of the County's receipt of the findings. All accounts of the Contractor are subject to audit.

The Contractor must retain all books, records and other documents related to this Contract for at least five years, or such period of time required by the County's funding partner(s), if any, whichever is greater, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

38. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

39. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

40. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

41. DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

42. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

43. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

44. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

45. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

46. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

47. ATTORNEY'S FEES

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

48. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND CONFIDENTIAL INFORMATION.

49. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

50. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

51. NOTICES

Unless otherwise provided in writing, all legal notices and other formal communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

Brown & Root Industrial Services, LLC
Rick Frarrag, Vice President
2451 Crystal Drive, Suite 425
Arlington, VA 22202

TO THE COUNTY:

Sy Gezachew, Project Officer
2100 Clarendon Boulevard
Suite 500
Arlington, VA 22201

AND

Sharon T. Lewis, LL.M, MPS, VCO, CPPB
Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

TO COUNTY MANAGER'S OFFICE (FOR PROJECT CLAIMS):

Mark Schwartz, County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201

52. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

53. INSURANCE, PAYMENT AND PERFORMANCE BONDS

The Contractor shall maintain the required insurance coverage and payment and performance bonds as set forth in the Invitation to Bid through completion of the Contract, including all warranty and guarantee periods.

54. MATERIAL CHANGES

The Contractor shall notify Purchasing Agent within seven days of any material changes in its operation that relate to any matter attested regarding certifications on its bid form.

60. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

BROWN & ROOT INDUSTRIAL SERVICES, LLC

AUTHORIZED SIGNATURE: DocuSigned by:
Sharon Lewis
89B86B1AD301462...

AUTHORIZED SIGNATURE: DocuSigned by:
Rick Farrag
DE2DE5080994452...

NAME: Sharon Lewis

NAME: Rick Farrag

TITLE: Purchasing Agent

TITLE: Vice President

DATE: 11/17/2020

DATE: 11/17/2020

**EXHIBIT B
PRICE BID OF CONTRACTOR**

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT**

INVITATION TO BID NO. 21-DMF-ITB-262

B I D F O R M

ELECTRONIC BIDS WILL BE RECEIVED BY THE COUNTY VIA VENDOR REGISTRY NOT LATER THAN 2:30 P.M., AUGUST 31, 2020.

FOR PROVIDING JOB ORDER CONTRACTING SERVICES

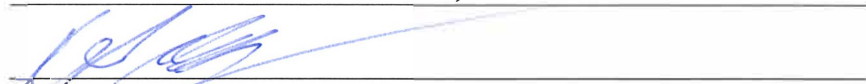
THE FULL LEGAL NAME OF THE ENTITY SUBMITTING THIS BID MUST BE WRITTEN IN THE SPACE BELOW. THIS BID FORM AND ALL OTHER DOCUMENTS THAT REQUIRE A SIGNATURE MUST BE FULLY AND ACCURATELY COMPLETED AND SIGNED BY A PERSON WHO IS AUTHORIZED TO BIND THE BIDDER, OR THE BID MAY BE REJECTED.

SUBMITTED BY:

(legal name of entity)

Brown & Root Industrial Services, LLC

AUTHORIZED SIGNATURE:



PRINT NAME AND TITLE:

Rick Farrag, Vice President

ADDRESS:

2451 Crystal Drive, Suite 425

CITY/STATE/ZIP:

Arlington, VA 22202

TELEPHONE NO.:

703.628.5491

E-MAIL

ADDRESS:

rick.farrag@brownandroot.com

THIS ENTITY IS INCORPORATED

IN:

Delaware

THIS ENTITY IS A:

(check the applicable option)

CORPORATION

LIMITED PARTNERSHIP

GENERAL PARTNERSHIP

UNINCORPORATED ASSOCIATION

LIMITED LIABILITY COMPANY

SOLE PROPRIETORSHIP

IS BIDDER AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF VIRGINIA?

YES

NO

IDENTIFICATION NO. ISSUED TO THE ENTITY BY THE SCC:

T0623871

Any Bidder exempt from Virginia State Corporation Commission (SCC) authorization requirement must include a statement with its bid explaining why it is not required to be so authorized.

BID FORM, PAGE 2 OF 7

ENTITY'S DUN & BRADSTREET D-U-N-S NUMBER: (if available) 079919794

HAS YOUR FIRM OR ANY OF ITS PRINCIPALS BEEN DEBARRED FROM SUBMITTING BIDS TO ARLINGTON COUNTY, VIRGINIA, OR ANY OTHER STATE OR POLITICAL SUBDIVISION WITHIN THE PAST THREE YEARS? YES [] NO [x]

HAS YOUR FIRM DEFAULTED ON ANY PROJECT IN THE LAST THREE YEARS? YES [] NO [x]

HAS YOUR FIRM HAD ANY TYPE OF BUSINESS, CONTRACTING OR TRADE LICENSE, REGISTRATION OR CERTIFICATION REVOKED OR SUSPENDED IN THE PAST THREE YEARS? YES [] NO [x]

HAS YOUR FIRM AND ITS PRINCIPALS/OWNERS BEEN CONVICTED OF ANY CRIME RELATING TO ITS CONTRACTING BUSINESS IN THE PAST TEN YEARS?

HAS YOUR FIRM BEEN FOUND IN VIOLATION OF ANY LAW APPLICABLE TO ITS CONTRACTING BUSINESS (LICENSING LAWS, TAX LAWS, WAGE AND HOUR LAWS, PREVAILING WAGE LAWS, ENVIRONMENTAL) WHERE THE RESULT OF SUCH VIOLATION WAS THE PAYMENT OF A FINE, BACK PAY DAMAGES, OR ANY OTHER PENALTY IN THE AMOUNT OF \$5000 OR MORE? YES [] NO [x]

BIDDER STATUS: MINORITY OWNED: [] WOMAN OWNED: [] NEITHER: [x]

The undersigned certifies that (Bidder Name) Brown & Root Industrial Services, LLC is currently registered with the Virginia State Board of Contractors as required by the Code of Virginia. Certificate Number 2705158189 for a Class A license was issued on the 15th day of December, 2015. The undersigned further certifies that the registration fee and all renewal fees required under law have been paid.

BID FORM, PAGE 3 OF 7

MINIMUM BIDDER QUALIFICATIONS:

In a separate attachment, Bidders shall provide the following documentation:

Please see attachment following this page.

- Proof of three (3) years’ experience as a prime JOC contractor having completed the following types of construction and renovation projects:
 1. Facilities; and
 2. Outdoors Parks and Recreation.

- List of two (2) similar projects for each category Facilities and Outdoors Parks and Recreation recently completed that involved equal size (\$500k) and comparable length (one year).

For each project, Bidders shall list the following information:

- Project
- Project description and Bidder’s scope of work within the project
- Project manager’s name, telephone number and email address
- Work start date, scheduled completion, and actual completion date
- Initial contract cost and final contract cost

- Resume of the proposed Forman with their Bids Foreman/Superintendent/ Project Manager assigned to this work, who shall have at least five (5) years of experience in overseeing structural/buildings and outdoor recreational facilities projects of similar type and size.

GENERAL CONSTRUCTION ADJUSTMENT FACTORS

	Adjustment Factor Name	Adjustment Factor	X Multiplier	= Total
1.	Adjustment Factor for Normal Working Hours	<u>0 . 7 3 0 0</u>	x 0.60	= <u>0 . 4 3 8 0</u>
2.	Adjustment Factor for Restricted Working Hours	<u>0 . 7 7 0 0</u>	x 0.30	= <u>0 . 2 3 1 0</u>
3.	Non Pre-priced:	<u>1 . 1 8 0 0</u>	x 0.10	= <u>0 . 1 1 8 0</u>
4.	Add all the Total amounts in the right column. The Sum of these Total amounts is the Award Criteria Figure.			0.7870

EXHIBIT C
JOC SUPPLEMENTARY SPECIFICATIONS

1. DEFINITIONS

- 1.1. **Adjustment Factor** - A competitively bid adjustment to be applied to the Unit Prices listed in the RSMeans Construction Cost Data Books.
- 1.2. **Award Criteria Figure** - The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
- 1.3. **RS Means Construction Cost Data Books** - Comprehensive listings of construction related tasks together with a specific unit of measure and a published Unit Prices.
- 1.4. **Detailed Scope of Work** - A document setting forth the work the Contractor is obligated to complete for a particular Job Order.
- 1.5. **Estimated Annual Value** - An estimate of the value of Job Orders that could be issued to the Contractor each year.
- 1.6. **Initial Term** - The initial period of the Contract and does not include any Subsequent Terms.
- 1.7. **Job Order** - A written order issued by the County, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A project may consist of one or more Job Orders.
- 1.8. **Job Order Completion Time** - The time within which the Contractor must complete the Detailed Scope of Work.
- 1.9. **Job Order Price** - The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.
- 1.10. **Job Order Price Proposal** - A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- 1.11. **Job Order Proposal** - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors; (d) Construction schedule; and (e) other requested documents.
- 1.12. **Joint Scope Meeting** - A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- 1.13. **Estimated Contract Value** - The maximum/estimated value of Job Orders that the Contractor may receive under this Contract.

- 1.14. **Non Pre-priced Task** - A task that is not set forth in the RS Means Construction Cost Data Books.
- 1.15. **Normal Working Hours** - Includes the hours from 8:00 a.m. to 5:00 p.m. Monday through Friday, except for County holidays.
- 1.16. **Notice to Proceed** - A written notice issued by the County directing the Contractor to proceed with construction activities to complete the Job Order.
- 1.17. **Pre-priced Task** - A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
- 1.18. **Project** - The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.
- 1.19. **Restricted Working Hours** - Includes the hours of 5:01 p.m. to 7:59 a.m. Monday through Friday and all day Saturday, Sunday, and County Holidays. Monday through Friday, 5:01 PM to 7:59 AM, all day Saturday, Sunday, and holidays, and anytime the County restricts the Contractor's Work to 6 hours or less a day.
- 1.20. **Request for Proposal** - A written request to the Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein.
- 1.21. **Subsequent Term** - An additional period of time beyond the Initial Term which extends the termination date of the Contract.
- 1.22. **Supplemental Job Order** - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
- 1.23. **Technical Specifications** - The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- 1.24. **Unit Price** - The price published in the RSMeans Construction Cost Data Books for specific construction or construction related work tasks. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the RSMeans Construction Cost Data Books. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
- 1.25. **Work** - All materials, labor and use of tools, equipment and services necessary by the Contractor and/or Subcontractor to complete the Job Order.

2. CONTRACTOR SELECTION AND AWARD OF INDIVIDUAL JOB ORDERS

- 2.1. Job Order Contracting: The County will award an individual Job Order to any selected Contractor on a rotational selection basis among all Contractors, unless otherwise determined by the County.
- 2.2. Selection of the Contractor and award of the Job Order will be in compliance with one or more of the following criteria, unless otherwise determined by the County:
 - 2.2.1. Location of Work and the type of Work being performed.
 - 2.2.2. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
 - 2.2.3. Balancing of workload (Job Order dollar volume and construction backlog) among Contractors.
 - 2.2.4. Management of Job Order dollar volume within bonding limitations of the Contractor.
 - 2.2.5. Price, as it relates to the County's independent cost estimate or to an offer from any other contractor.
 - 2.2.6. Contractor's responsiveness to the County on Job Orders.
 - 2.2.7. Other appropriate criteria as deemed in the best interest of the County.

3. INITIATION OF A JOB ORDER

- 3.1. As the need exists, the County will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.
- 3.2. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
 - 3.2.1. the general scope of the work;
 - 3.2.2. alternatives for performing the work and value engineering;
 - 3.2.3. access to the site and protocol for admission;
 - 3.2.4. hours of operation;
 - 3.2.5. staging area;

- 3.2.6. requirements for catalog cuts, technical data, samples and shop drawings;
 - 3.2.7. requirements for professional services, sketches, drawings, and specifications;
 - 3.2.8. construction duration;
 - 3.2.9. liquidated damages;
 - 3.2.10. the presence of hazardous materials;
 - 3.2.11. date on which the Job Order Proposal is due.
- 3.3. Upon completion of the joint scoping process, the County will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the County will issue a Request for Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the County, will be the basis on which the Contractor will develop its Job Order Proposal and the County 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. No work shall begin until a Purchase Order (PO) is issued by the County.

4. PREPARATION OF THE JOB ORDER PROPOSAL

- 4.1. The Contractor's Job Order Proposal shall include, at a minimum:
 - 4.1.1. Job Order Price Proposal;
 - 4.1.2. Required drawings or sketches;
 - 4.1.3. List of anticipated Subcontractors;
 - 4.1.4. Construction schedule;
 - 4.1.5. Other requested documents.
- 4.2. The Job Order Price shall be the value of the approved Job Order Price Proposal.
- 4.3. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (unit price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 4.4. The Contractor will prepare Job Order Price Proposals in accordance with the following:

- 4.4.1. Pre-priced Task: A task described in, and for which a unit price is set forth in, the RSMeans Construction Cost Data Books.
- 4.4.2. Non Pre-priced Task: A task that is not set forth in the RSMeans Construction Cost Data Books.
- 4.4.3. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:

- 4.4.3.1. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.

- 4.4.3.2. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the RSMeans Construction Cost Data Books. If the work is to be subcontracted, the Contractor must submit three independent quotes from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The County may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable.

- 4.4.3.3. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

For Non Pre-priced Tasks Performed with Contractor's Own Forces:

A = The hourly rate for each trade classification not in the RSMeans Construction Cost Data Books multiplied by the quantity;

B = The rate for each piece of Equipment not in the RSMeans Construction Cost Data Books multiplied by the quantity;

C = Lowest of three independent quotes for all materials.

Total for a Non Pre-priced Tasks performed with Contractor's Own Forces = $(A+B+C) \times$ Non Pre-Priced Task Adjustment Factor

For Non Pre-priced Tasks Performed by Subcontractors:

If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent quotes for the work.

D = Lowest of three Subcontractor Quotes

Total Cost for Non Pre-priced Tasks performed by Subcontractors =
D x Non Pre-Priced Task Adjustment Factor

- 4.4.3.4. After a Non Pre-priced Task is used on three separate Job Orders, the Unit Price for such task will be established, following approval by the County, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.
 - 4.4.3.5. The County's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.
- 4.5. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the County may permit the Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.
 - 4.6. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid with mark-up. The County shall pay the Contractor a mark-up of 10% on the fees paid to a governmental entity to obtain filings and permits. Contractor shall submit written documentation of such fees. The 10% mark-up shall cover all costs over and above the filing and permit fees, including expeditor fees. The cost of expediting services or equipment use fees are not reimbursable.
 - 4.7. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
 - 4.8. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

- 4.9. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.
- 4.10. By submitting a Job Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the County.
- 4.11. If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

5. REVIEW OF THE JOB ORDER PROPOSAL AND ISSUANCE OF THE JOB ORDER

- 5.1. The County will evaluate the entire Job Order Price Proposal and compare these with the County's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
- 5.2. The Contractor may choose the means and methods of construction; subject however, to the County's right to reject any means and methods proposed by the Contractor that:
 - 5.2.1. Will constitute or create a hazard to the work, or to persons or property;
 - 5.2.2. Will not produce finished Work in accordance with the terms of the Contract; or
 - 5.2.3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
- 5.3. The County reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The County also reserves the right not to issue a Job Order if it is determined to be in the best interests of the County. The County may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the County.
- 5.4. By submitting a Job Order Proposal to the County, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the County.

- 5.5. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, issued by the County and delivered to the Contractor constitutes the County's acceptance of the Contractor's Job Order Proposal. A copy of the executed Job Order will be provided to the Contractor.
- 5.6. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the County. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures.
- 5.7. If the location of the Work is determined, in the sole opinion of the County, to be a location in which access to the site or the site's daily operations negatively affects the Contractor's productivity on a daily basis, the following may apply. Such locations may include, but are not limited to, certain areas within the Department of Corrections, Hospital and Medical Facilities, and Courts.
 - 5.7.1. The County and Contractor will agree on the lost productivity in terms of hours per day.
 - 5.7.2. The Contractor will include in the Price Proposal the agreed upon hours per day times the number of days to complete the affected portions of the Detailed Scope of Work. The Contractor shall be paid according to the labor rates included in the RSMeans Construction Cost Data Books.
 - 5.7.3. The Contractor will include a note the calculation for determining the number of total labor hours attributed to the lost productivity.

6. ENR CCI ADJUSTMENT OF THE ADJUSTMENT FACTORS

- 6.1. Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the award date to account for changes in construction costs, provided, the Contractor requests in writing, thirty days prior to the anniversary of the award date, that the Adjustment Factors be updated. Such request shall be delivered to the County and to Gordian. In the event the Contractor fails to deliver the request timely, then the County shall determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty days after the written request to update the Adjustment Factors is received by the County. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:
 - 6.1.1. The Contractor's Normal Working Hours and Restricted Working Hours Adjustment Factors will be adjusted according to the following:

- 6.1.1.1. A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the bid due date (e.g. April bid date, Base Year Index is April of the prior year to March of the bid date year).
 - 6.1.1.2. A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities published in the Engineering News Record (ENR) for the 12 months beginning with the month of anniversary of the bid due date (e.g. April bid date, Current Year Index is April of the prior year to March of the current year).
 - 6.1.1.3. The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
 - 6.1.1.4. The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next 12 months.
 - 6.1.1.5. Averages shall be obtained by summing the 12 month indices and dividing by 12.
 - 6.1.1.6. All calculations in this article shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
 - 6.1.1.7. The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
 - 6.1.1.8. The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 6.2. ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.
- 6.3. Under all circumstances, should the Contractor submit a Job Order Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the Job Order Price submitted in the Job Order Proposal.
- 6.4. The Contractor cannot delay submission of the Job Order Proposal past the due date to

take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.

- 6.5. The Adjustment Factor for Non Pre-priced Tasks will remain constant for the duration of the Contract.