

Memorandum

To: Ms. Rosie Loeffler-Kemp / School Board Chair
Ms. Cathy Erickson / CFO Executive Director of Business Services

From: Dave Spooner 
Manager of Facilities

Date: April 10, 2019

Re: Kraus-Anderson Construction Company Sourcewell Project Procurement/Gordian ezIQC for Denfeld High School Stairwell Ceiling Repair Project.
School Board Approved LTFM FY-20 Project

Attached are two copies of a Sourcewell (state contract) agreement with Kraus-Anderson Construction Company. This agreement is to perform the work as defined in plans and specification to repair temporary shoring installed in 2016 for failing stairwell plaster finishes at Denfeld HS, as created by Robert Fern, RW Fern and Associates. These construction services are procured through Gordian ezIQC, Sourcewell contract MN021R-042517-KRU.

The contract sum for this work as defined in the attached Sourcewell Gordian ezIQC agreement is \$534,794.00.

Recommendation:

I am recommending that Ms. Rosie Loeffler-Kemp, School Board Chair, enter into agreement on behalf of the School Board with Kraus-Anderson Construction Company, as authorized by the regular School Board Meeting on April 23, 2019.

The contract sum for the work defined in the Sourcewell agreement is \$534,794.00.

Attachments:



April 8, 2019

Mr. David Spooner, Manager of Facilities
Duluth Public Schools, ISD 709
730 East Central Entrance
Duluth, MN 55811

RE: ISD 709 – Denfeld High School –Plaster Repair

Mr. Spooner,

Thank you for contacting Kraus-Anderson Construction Company regarding your upcoming construction project. As we have discussed, Kraus-Anderson Construction Company currently holds a Sourcewell contract for construction services, under contract number MN02IR-042517-KRU. Kraus-Anderson Construction Company is pleased to offer the following Lump Sum proposal for your review.

We propose to furnish all labor, materials, compensation, public liability insurance and to pay all federal, state and local tax necessary for the ISD 709 – Denfeld High School –Plaster Repair project through the Sourcewell Project Procurement and the ezIQC process for the Lump Sum amount not to exceed, of Five Hundred Thirty Four Thousand Seven Hundred Ninety Four and 00/100 Dollars, **\$534,794.00.**

Clarifications

1. Bid figures access to one stairwell in May during school. And complete access to all stairwells during summer break.
2. Scaffold will be set up in no more than three stairwells at a time throughout construction.
3. Project completion prior to Fall school opening.

Inclusions

1. Sourcewell fee is included.
2. Building permit fee.
3. Temp toilets.
4. Dumpsters.

Exclusions

1. Builders risk insurance.
2. Any and all potential fire protection work (sprinkler heads, system draining, etc). This will be an extra costs if it is deemed necessary.
3. Painting of stair components (handrails, guardrails, fixtures, etc).
4. KA construction trailer. Assume we will have access to a classroom or conference room for construction meetings.

We propose to do the above mentioned work using the following contractors:

<u>Workscope</u>	<u>Name</u>	<u>City, State</u>
WS 6-A Scaffold Erection	Kraus-Anderson	Duluth, MN
WS 9-A Drywall	Quality Drywall and Plastering, Inc.	Duluth, MN
WS 9-K Painting	Regional Contracting & Painting	Duluth, MN
WS 26-A Combined Electrical	Benson Electric Company	Superior, WI

This letter shall serve as a notice to proceed with the project in SUMMER of 2019 under the above mentioned Sourcewell Project Procurement and the eZIQC process. An official contract will follow.

All Costs in this proposal are subject to change due to the project not being entered through the Sourcewell Gordian software system. In the case that the Gordian data entry does not match the costs proposed, this proposal will be void.

If you have any questions regarding this letter, please let me know.

Sincerely,

Dustin Wick
Project Manager

Acceptance

David Spooner, Manager of Facilities

Date

Sourcewell

Indefinite Quantity Construction Agreement Purchase Order

This Purchase Order (hereinafter "Purchase Order" or "PO") is entered into and effective this 11th day of April, 2019, by and between the following parties:

Duluth Public Schools, ISD 709
730 East Central Entrance
Duluth, MN 55811

(hereinafter called "Owner"), and

Kraus-Anderson® Construction Company
3716 Oneota Street
Duluth, MN 55807

(hereinafter called "Contractor").

WITNESSETH THAT WHEREAS:

- A. The Contractor entered into an Indefinite Quantity Construction Agreement with Sourcewell (formerly NJPA), dated December 14, 2018 (the "Sourcewell Agreement").
- B. Owner is a Sourcewell Member that requested a Proposal Package from Contractor pursuant to the Sourcewell Agreement.
- C. Owner and Contractor desire to amend the Sourcewell Agreement pursuant to this Purchase Order for the following project: **ISD 709 – Denfeld High School – Plaster Repair** (the "Project").
- D. Except as expressly modified by this PO, all terms and conditions of the Sourcewell Agreement, and all the respective rights and obligations of the parties under the Sourcewell Agreement, shall continue unchanged and in full force and effect. Capitalized words and phrases herein shall have the same meanings as are ascribed to such words in the Sourcewell Agreement, except to the extent otherwise defined in this PO.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby amend the Sourcewell Agreement and agree as follows.

1. Project Name and Description of the Detail Scope of Work:
Repairing plaster walls and ceilings in the stairways of Denfeld High School.

2. Owner's Representative: Mr. David Spooner, Manager of Facilities

3. Contractor's Representative: Mr. Dustin Wick, Project Manager

4. Architect Name and Address: Mr. Robert Fern

RW FERN Associates, Inc. Architects
5517 Grand Ave.
Duluth, MN 55807

5. Contract Sum: The Owner shall pay the Contractor the Contract Sum, NOT TO EXCEED, of Five Hundred Thirty Four Thousand Seven Hundred Ninety Four and 00/100 Dollars (\$534,794.00) plus any future purchase order amendments for the Contractor's performance of this Purchase Order. This NTE contract price will be amended in a future Purchase Order Amendment to a final Lump Sum Amount with the Gordian Cost Attachment Exhibit 1. The attached Exhibits are part of this PO as if each were physically incorporated therein:

Exhibit 1 Contract Sum Breakdown, to be included in a Future Purchase Order Amendment.

Exhibit 2 List of Assumptions and Clarifications, dated April 11, 2019.

Exhibit 3 List of Drawings, Plans and Specifications (the "Contract Documents"), dated April 11, 2019.

6. Date of Commencement: The date of commencement of the Work shall be (a) the date of the PO, (b) upon receipt of the Building Permit for the Project, or (c) the date on which the Construction Manager receives a written notice to proceed from the Owner, whichever is later.

(Alternatively, if a calendar date is desired in coordination with the substantial completion date, please insert a calendar date below.)

The date of commencement shall be (b) upon receipt of building permit .

7. Substantial Completion Date: The Construction Manager shall achieve Substantial Completion of the entire Work not later than N/A calendar days from the date of commencement under this PO (the "Contract Time").

The date of Substantial Completion shall be August 30, 2019.

8. Liquidated Damages: No

If yes, the following language applies:

The Contractor acknowledges and agrees that if the Contractor fails to achieve Substantial Completion of the Work as a whole on or before the required date for achieving Substantial Completion of the Work, as specified in Section 7 of this PO, and subject to adjustments of the Contract Time and/or Substantial Completion date as provided in the Contract Documents, the Owner shall be entitled to retain or recover from the Contractor, as the Owner's sole and exclusive remedy and Contractor's sole and exclusive liability for such failure, an amount equal to _____ Dollars (\$_____) for each day thereafter that Substantial Completion is delayed beyond the required date for achieving Substantial Completion of the Work.

9. Payment and Performance Bond: Yes, will be provided by Kraus-Anderson. Subcontracted work will not be bonded back.
10. Builder's Risk Insurance: By Owner
11. Amendments to General Conditions: The following amendments are hereby made to the IQCC Contract General Conditions (MN-IRA-GC02-120518-KRU) (the "General Conditions"):
- a. Section 7.1 shall be amended to delete "materials" in the first line and "or provided by the manufacturer" in the last line.
 - b. Section 7.2 shall be amended to read as follows:

"During the guarantee period, the Contractor shall repair and replace at Contractor's own expense, all Work that may develop defects in workmanship."
 - c. Section 18.2 shall be deleted in its entirety.
 - d. The following provisions shall be inserted as Section 25.7:

“Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect’s consultants, Owner’s separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section 25 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner. Owner or Contractor, as appropriate, shall require of the Architect, Architect’s consultants, Owner’s separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

If during the Project construction period Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, Owner shall waive all rights in accordance with the terms of this Section 25.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.”

- e. The following provision shall be inserted as Section 25.8:

“The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of the Agreement. Nothing contained in this Section 25.8 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents."

The parties hereto have executed this Purchase Order as of the date first set forth above.

**Duluth Public Schools, ISD 709
(Owner)**

**Kraus-Anderson® Construction Company
(Contractor)**

By: _____

By: 

Name: _____

Name: Daniel Markham

Title: _____

Title: Director of Operations

Exhibit 2

Assumptions and Clarifications

Assumptions and Clarifications

1. Bid figures access to one stairwell in May during school. And complete access to all stairwells during summer break.
2. Scaffold will be set up in no more than three stairwells at a time throughout construction.
3. Project completion prior to Fall school opening.

Inclusions

1. Sourcewell fee is included.
2. Building permit fee.
3. Temporary toilets.
4. Dumpsters.
5. Furring, gypsum board, and taping of 7 Stair Towers.
6. Plaster patching at walls and ceilings.
7. Caulking hairline cracks in plaster.
8. Painting walls, ceilings and stair undersides per plan.
9. Removal and replacement of existing light fixtures, devices, etc. to allow for repairs in 7 stairwells.

Exclusions

1. Builders risk insurance.
2. Any and all potential fire protection work (sprinkler heads, system draining, etc). These will be extra costs if deemed necessary.
3. Painting of stair components (handrails, guardrails, fixtures, etc).
4. KA construction trailer. Assume we will have access to a classroom or conference room for construction meetings.

Exhibit 3

Drawings, Plans, and Specifications

Specifications: None

Addendum No. 01 by Kraus-Anderson Construction Company, with drawings by RW FERN Associates, Inc., 3 pages, dated February 28, 2019.

Addendum No. 01 issues the following drawings:

A1	Title Sheet	February 28, 2019
A2	Section/Details	February 28, 2019

Drawings by RW FERN Associates, Inc.

A1	Title Sheet	February 28, 2019
A2	Section/Details	February 28, 2019

INDEFINITE QUANTITY CONSTRUCTION AGREEMENT

RFP NUMBER: MN-IRA-GC02-120518

GEOGRAPHIC AREA: State of Minnesota - Iron Range Area

This Agreement dated December 14, 2018, by and between Sourcewell (formerly NJPA) and Kraus-Anderson Construction Company at the following address, 501 South Eighth Street, Minneapolis, MN 55404 hereinafter referred to as the CONTRACTOR.

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

ARTICLE 1. CONTRACT DOCUMENTS

- A. Contract Documents: This Agreement; the RFP Documents; (Book 1 - Project Information, Instructions to Proposers and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications, Book 5 – Request for Proposal Forms) and Addenda thereto, all payment and performance bonds (if any), material and workmanship bonds (if any); wage rate decisions and certified payroll records (if any); Notice of Award; all modifications issued thereto, including Supplemental Purchase Orders/Change Orders and written interpretations and all Purchase Orders and accompanying documents (Requests for Proposals, Detailed Scopes of Work, Purchase Order Proposals, etc.) issued hereunder.
- B. The terms and conditions of a Purchase Order issued by a Sourcewell Member in connection with any Project, including supplemental technical specifications referenced therein, will govern.
- C. The Contractor must, within two (2) business days of receipt of a Purchase Order from a Sourcewell Member, provide notification to Sourcewell or their designated representative of each Purchase Order by forwarding a copy of the Purchase Order via email to PO@EZIQC.com or via facsimile to (864) 233-9100.
- D. The Contractor must, within two (2) business days of sending an Invoice to a Sourcewell Member, provide notification to Sourcewell or their designated representative of each Invoice by forwarding a copy of the Invoice via email to Invoice@EZIQC.com or via facsimile to (864) 233-9100.

ARTICLE 2. SCOPE OF WORK

- A. The Contractor must provide the services required to develop each Purchase Order in accordance with the procedures for developing Purchase Orders set forth in the IQCC Standard Terms and Conditions and the Contract Documents.
- B. Each Purchase Order developed in accordance with this Agreement will be issued by an individual Sourcewell Member. The Purchase Order will require the Contractor to perform the Detailed Scope of Work within the Purchase Order Completion Time for the Purchase Order Price.
- C. It is anticipated that the Contractor will perform Work primarily in the Geographic Area set forth above. However, the parties may agree that the Contractor can perform Work in a different Geographic Area at its current Adjustment Factors.

ARTICLE 3. THE AGREEMENT PRICE

- A. This Agreement is an indefinite-quantity contract for construction work and services. The Estimated Annual Value of this Agreement is \$2,000,000. This is only an estimate and may increase or decrease at the discretion of Sourcewell.
- B. The Contractor must perform any or all Tasks in the Construction Task Catalog for the Unit Price appearing therein multiplied by the following Adjustment Factors:

TO BE ENTERED BY SOURCEWELL:

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

$$\underline{\quad 1.3892 \quad}$$
 (Specify to four (4) decimal places)
- b. Other Than Normal Working Hours Prevailing Wage: Work performed from 4:00 p.m. to 7:00 a.m. Monday to Friday, and any time Saturday, Sunday and Holidays. Contractor must perform Tasks during Other Than Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

$$\underline{\quad 1.5189 \quad}$$
 (Specify to four (4) decimal places)
- c. Normal Working Hours Non-Prevailing Wage: Work performed from 7:00 a.m. until 4:00 p.m. Monday to Friday, except holidays. Contractor must perform Tasks during Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

$$\underline{\quad 1.3892 \quad}$$
 (Specify to four (4) decimal places)
- d. Other Than Normal Working Hours Non-Prevailing Wage: Work performed from 4:00 p.m. to 7:00 a.m. Monday to Friday, and any time Saturday, Sunday and Holidays. Contractor must perform Tasks during Other Than Normal Working Hours for the Unit Price set forth in the CTC multiplied by the Adjustment Factor of:

$$\underline{\quad 1.5189 \quad}$$
 (Specify to four (4) decimal places)
- e. Non-Pre-priced Adjustment Factor: To be applied to Work deemed not to be included in the CTC but within the general scope of the work:

$$\underline{\quad 1.2973 \quad}$$
 (Specify to four (4) decimal places)

ARTICLE 4. TERM OF THE AGREEMENT

- A. This Agreement has an initial term of one (1) year and a bilateral option provision for three (3) additional terms. One additional one-year renewal-extension may be offered by Sourcewell to Contractor beyond the original three-year term if Sourcewell deems such action to be in the best interests of Sourcewell and its Members. The total term of the Agreement cannot exceed four (4) years. The Contractor may

withdraw from the Agreement on each anniversary of the award, provided that the Contractor gives 60 Days' written notice of its intent to withdraw. Sourcewell may, for any reason, terminate this Agreement at any time.

- B. All Purchase Orders issued during a term of this Agreement will be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such term has expired. All terms and conditions of the Agreement apply to each Purchase Order.

ARTICLE 5. SOFTWARE LICENSING

- A. Sourcewell selected The Gordian Group's (Gordian) software, data and services (IQCC System) for their IQCC program. The system includes Gordian's proprietary ezIQCC, eGordian and Bid Safe IQCC applications (IQCC Applications) and construction cost data (Construction Task Catalog), which must be used by the Contractor to prepare and submit Price Proposals, subcontractor lists, and other requirements specified by Sourcewell and Sourcewell Members. The Contractor's use, in whole or in part, of Gordian's IQCC Applications and Construction Task Catalog and other proprietary materials provided by Gordian for any purpose other than to execute work under this Agreement for Sourcewell and Sourcewell Members is strictly prohibited unless otherwise stated in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following IQCC System License found in Article 6 below.

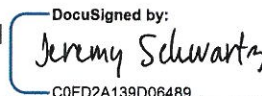
ARTICLE 6. IQCC SYSTEM LICENSE

- A. Gordian hereby grants to the Contractor, and the Contractor hereby accepts from Gordian for the term of this Agreement or Gordian's contract with Sourcewell, whichever is shorter, a non-exclusive right, privilege, and license to Gordian's proprietary IQCC System and related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing Contractor's responsibilities to Sourcewell and Sourcewell Members under this Agreement ("Limited Purpose"). The Contractor hereby agrees that Proprietary Information will include, but is not limited to, Gordian's IQCC Applications and support documentation, Construction Task Catalog, training materials, marketing materials and any other proprietary materials provided to Contractor by Gordian. In the event this Agreement expires or terminates as provided herein, or the Gordian's contract with Sourcewell expires or terminates, this IQCC System License will terminate and the Contractor will return all Proprietary Information in its possession to Gordian.
- B. Contractor acknowledges that Gordian will retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Contractor will have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor will not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.
- C. Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and will at all times maintain complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state and local laws related to public disclosure.


Contractor further acknowledges that a breach of any of the terms of this Agreement by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian will be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to this IQCC System License to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the prevailing party will be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

- D. In the event of a conflict in terms and conditions between this IQCC System License and any other terms and conditions of this Agreement or any Purchase Order, Order or similar purchasing document (Purchase Order) issued by Sourcewell or a Sourcewell Member, this IQCC System License will take precedence.

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

Sourcewell 
By: _____
Authorized Signature

Jeremy Schwartz-Director of Operations & Procurement/CPO
Print Name

Contractor 
By: _____
Authorized Signature

Terry Hart - Vice President, Director of Operations
Print Name

Contract Number: MN-IRA-GC02-120518-KRU (assigned by Sourcewell)