

Idaho AGC

A PROUD CHAPTER OF AGC OF AMERICA



May 14, 2021

Mr. Ron Whitney
Acting Administrator
Idaho Division of Building Safety
1090 E Watertower Street, #150
Meridian, ID 83642

--hand-delivered--

Dear Administrator Whitney,

The Idaho Associated General Contractors (AGC) is the state's largest, most-trusted network of construction professionals. Among our almost 600 member companies are over 250 licensed public works contractors and more than 100 licensed construction managers. It is on their behalf that I submit the enclosed complaint regarding violations of the Public Works Construction Management Licensing Act, together with copies of the illegal construction management agreement and bid solicitation documents.

In addition to the complaint, we've attached an unpublished legal opinion from the Office of the Attorney General addressing, among other things, your authority to address these violations. As you are aware, Idaho Code section 54-4514 states:

INJUNCTIVE RELIEF. The administrator may bring an action in the district court for a temporary restraining order, preliminary injunction or permanent injunction against any person who violates the provisions of this chapter.

We ask that you take the necessary action to see that injunctive relief from the violations outlined in the complaint is provided as soon as possible.

Thank you for your dedication to our great state. We look forward to your speedy reply.

Sincerely,

Wayne L. Hammon
CEO, Idaho AGC

Enclosures

CC: Members of the Idaho Public Works Contractors License Board
Russ Barron, Administrator, Division of Occupational and Professional Licenses
Tim Rosandick, Executive Director, Idaho School District Council

SERVING THE IDAHO CONSTRUCTION INDUSTRY SINCE 1934

Headquarters: 1649 W. Shoreline Dr. Boise, Idaho 83702 (208) 344-2531

Visit our website: IdahoAGC.org

STATE OF IDAHO
Division of Building Safety
1090 E. Watertower St., Suite 150
Meridian, ID 83642
(208) 334-4057
(208) 855-9666 Fax

Public Works
Contractor Licensing

CONTRACTOR COMPLAINT

The facts listed below are believed to be in violation of Title 54 - PROFESSIONS, VOCATIONS, AND BUSINESSES.

Chapter 45 – PUBLIC WORKS CONSTRUCTION MANAGEMENT LICENSING ACT of Idaho Code, and/or the Administrative Rules of the Division of Building Safety, Public Works Contractor Licensing, as promulgated by the Idaho State Public Works Contractor Licensing Board.

Company or person(s) committing alleged violation:

The Gordian Group, Inc., and individuals acting on its behalf
30 Patewood Dr., Ste. 350
Greenville, SC 29615
Phone: (800) 874-2291

Idaho School District Council, and individuals acting on its behalf
777 S. Latah St.
Boise, ID 83705
Phone: (208) 338-0427

Project Name and Location: Public works construction projects for public school districts, charter schools, and other education institutions throughout Idaho

Date(s) of alleged violation: May 14, 2020 (Illegal construction management services agreement in violation of Idaho Code § 54-4504(1)); April 13, 2021 through present (illegal procurement of public works construction in violation of Idaho Code § 54-4511)

Description of alleged violation: ISDC and Gordian entered into the enclosed Professional Services and Licensing Agreement dated May 14, 2020, under which Gordian would provide construction management services as defined by Idaho Code § 54-4503(6) to the ISDC and public school districts, charter schools, and other educational institutions throughout Idaho. The agreement violates Idaho Code § 54-4504(1) because Gordian does not have a Certificate of Authority to provide construction management services under Idaho Code § 54-4509.


Since April 13, 2021, ISDC has been and continues to publish the enclosed solicitations for public works construction bids on up to three Job Order Contracts in six regions covering the entire State of Idaho. For each region, ISDC intends to award up to three contracts as follows: "One (1) contract will be awarded to the successful lowest bidder, one (1) to the second lowest bidder, and one (1) to the third lowest bidder per region. The apparent lowest responsive and responsible bidder on one JOC same scope contract in each region will be excluded from consideration for any successive contract in each individual region." These bid solicitations violate Idaho Code §§ 54-4511(1), 67-2805, and 33-601(2).

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 14th day of May, 2021.

IDAHO AGC

By:



Wayne Hammon, CEO

Please include any additional pages, photographs, invoices, contracts and/or other relevant information and mail to the address above.



PROFESSIONAL SERVICES AND LICENSE AGREEMENT

This Agreement is made this 14th day of May, 2020 by and between the Idaho School District Council ("Owner"), a cooperative service agency with an address of 777 S. Latah St., Boise, ID 83705, and The Gordian Group, Inc., whose address is 30 Patewood Drive, Suite 350, Greenville, South Carolina 29615 ("Gordian").

WITNESSETH

WHEREAS, Owner desires to engage the services of a firm to perform services related to the development, implementation, and support of a Job Order Contracting ("JOC") program (the "Services") in accordance with the terms and conditions set forth herein;

WHEREAS, Owner desires to establish JOC contracts and make the benefits of JOC available to public school districts, charter schools, and other educational institutions ("Purchasers") as authorized in Title 67, Chapter 23, Section 67-2328 and Title 33, Chapter 3, Sections 315 – 318, Idaho Code; and intends to implement the JOC program on behalf of itself and Purchasers,

WHEREAS, Gordian has the necessary skills and expertise required to perform the Services and is willing and able to provide the Services to Owner;

WHEREAS, Sourcewell, formerly the National Joint Powers Alliance ("NJPA"), is a service cooperative created to provide programs and services to members in education and government, and is authorized to establish competitively awarded cooperative purchasing contracts on behalf of itself and its member agencies;

WHEREAS, Gordian and NJPA, now Sourcewell, are parties to Contract No. 071415-GGI, dated September 15, 2015 (the "NJPA Contract") under which Gordian is authorized to provide JOC consulting and other value-added services to eligible Sourcewell members for the pricing and terms set forth in the NJPA Contract;

WHEREAS, Owner is a Sourcewell member and is authorized to enter into this Agreement;

WHEREAS, Owner desires, through this Agreement, to procure certain services set forth in the NJPA Contract in accordance with the pricing and other terms set forth in the NJPA Contract which is incorporated by reference herein and included as Exhibit A;

WHEREAS, pursuant to the NJPA Contract, Sourcewell (formerly NJPA) members may engage Gordian directly under the NJPA Contract; and

WHEREAS, the parties intend that this Agreement, including all additional terms stated in this Agreement which are not expressly stated in the NJPA Contract, and the NJPA Contract serve as the Agreement between the parties.



NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I
TERM**

Owner hereby retains Gordian as Owner's JOC Services provider for the term commencing on the date of this Agreement and expiring sixty (60) months thereafter, unless terminated or extended as provided for herein. This Agreement may be extended for additional periods of twelve (12) months each by the mutual written agreement of the parties.

**ARTICLE II
JOC SYSTEM LICENSE**

Gordian hereby grants to Owner, and Owner hereby accepts from Gordian for the term of this Agreement, a non-exclusive right, privilege, and license to Gordian's Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of operating Owner's Job Order Contracting program. The parties hereby agree that Proprietary Information shall include, but is not limited to, Gordian's JOC Software applications and support documentation, construction cost data, Construction Task Catalog[®] (also commonly referred to as a unit price book), training materials, and any other proprietary materials provided by Gordian. In the event this Agreement expires or terminates as provided herein, this JOC System License shall terminate and Owner shall return to Gordian all Proprietary Information in Owner's possession subject to federal and state laws related to public records disclosure and any court orders issued by a court of competent jurisdiction relating to said laws..

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

Upon expiration or termination of this Agreement as provided herein, Gordian shall provide to Owner all project data generated by Owner in a form accessible by a standard database program, such as Microsoft[®] Access[®].

Gordian agrees to grant a license to each contractor that is awarded a JOC contract by Owner, provided the JOC contractor agrees to terms similar to this JOC System License, and provided Owner includes licensing language in the JOC contract similar in form to this JOC System License.

In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Agreement or any purchase order or similar purchasing document issued by Owner, this JOC System License shall take precedence.



**ARTICLE III
GORDIAN DUTIES AND RESPONSIBILITIES**

Gordian will perform the following duties and responsibilities specified in Section 9 of the NJPA Contract for the development, implementation and ongoing support of a JOC program for Owner, including the provision of the optional services as set forth below:

1. **Program Development, Implementation and Support:** Gordian shall be responsible for the development, implementation, and on-going support of the Owner's customized JOC program.
2. **Contract Documents:** Gordian shall be responsible for preparing the JOC documents that will be used by the Owner to procure the JOC construction contractors including:
 - a) **Unit Price Book(s):** Gordian shall prepare one or more customized Unit Price Books (also known as a Construction Task Catalog[®]) containing prices covering material, equipment and labor costs for various units of construction, and adjusting these costs to current market conditions. Local prevailing wages and local material and equipment costs (obtained directly from local, contractors, subcontractors and suppliers) shall be used when applicable to the construction task pricing. Unit prices for demolition shall be provided for each construction task when applicable; and
 - b) **Technical Specifications:** Gordian shall prepare and publish Technical Specifications describing the materials, performance, and installation requirements for each of the construction tasks listed in the unit price book. Where available, the Owner standard specifications shall be incorporated into the Technical Specifications; and
 - c) **Contractual Terms and Conditions and Bid Forms:** Gordian shall prepare, in conjunction with Owner staff, contractual terms and conditions and bid forms which incorporate JOC language and forms with all appropriate Owner contract language and forms.
3. **Information Management System:** Gordian shall be responsible for providing the Owner with a comprehensive web-based JOC Information Management System (hereinafter referred to as "IMS") for an unlimited number of Owner users. The JOC IMS must be capable of providing full project tracking, developing cost proposals, preparing independent Owner estimates, generating all project documentation, providing project scheduling, budgeting and cost control, tracking MBE participation, and generating customized reports. Gordian must incorporate any current Owner forms and documentation into the IMS; and
4. **Procurement Support:** Gordian shall be responsible for providing Owner with procurement support to market the Owner JOC Program to potential JOC Contractor's. Gordian shall organize and conduct pre-bid meetings with the interested bidders as well as make presentations on behalf of the Owner with prospective bidders. Gordian's staff assigned to perform procurement support must have JOC procurement experience; and
5. **Training Programs:** Gordian shall be responsible for developing and conducting all training programs for the Owner and JOC Contractor staff to ensure that the JOC program functions properly.



The training programs will include specialized training courses that will involve all Owner staff and JOC contractors utilizing and administering the JOC program. The training programs will include training on the use of the JOC IMS. All training will be “hands on” with user competency as the objective. Actual Owner projects that the Owner plans to perform through JOC may be included in the training programs; and

6. **Marketing:** Gordian shall be responsible for marketing the JOC program by informing potential Purchasers staff about JOC
7. **Job Order Development:** Gordian shall assist Owner and Purchasers with developing Job Orders utilizing the following process:
 - a) **Project Identification:** When a project is identified and requested by Owner or Purchaser, Gordian will contact Owner or Purchaser and assist with determining whether the project is appropriate for JOC.
 - b) **Contractor Identification:** In the event Owner has multiple JOC Contractors, Gordian will assist the Owner or Purchaser in identifying the appropriate JOC Contractor for the project based on factors which include, but are not limited to, the type of work involved and the location of the project.
 - c) **Joint Scope Meeting:** The Gordian’s project manager will schedule a Joint Scope Meeting at the project site to help Owner or Purchaser and the JOC Contractor agree on the details of the work that the JOC Contractor will perform. The purpose of the scoping process is to allow the JOC Contractor an opportunity to inspect the site and ask questions before submitting a Price Proposal. The goals of this process are to foster open communication, reduce misunderstandings and mistakes that lead to change orders, and provide results that are more cost-effective and collaborative.
 - d) **Develop Detailed Scope of Work:** Gordian will assist in preparing a Detailed Scope of Work that describes the work the JOC Contractor will perform. Gordian will also assist with resolving issues when project plans and actual conditions vary.
 - e) **Request for Price Proposal:** After all parties are in agreement that the Detailed Scope of Work properly reflects the work to be performed, Gordian’s project manager will send the Detailed Scope of Work and a Request for Proposal to the JOC Contractor.
 - f) **Request Price Proposal:** As the next step in the process, the JOC Contractor prepares and submits a Price Proposal by selecting the appropriate tasks from the Unit Price Book. Gordian’s IMS will automatically multiply the unit price of the task by the required quantities by the JOC Contractor’s competitively bid Adjustment Factor. Gordian shall also request the JOC Contractor’s preparation of any additional Owner or Purchaser required information (e.g., construction schedule, list of proposed local subcontractors, etc.).
 - g) **Price Proposal Review:** Gordian’s project manager will review the Price Proposal to make sure the JOC Contractor has selected the appropriate tasks and quantities and will ask the JOC



Contractor to make any required changes. Gordian will also obtain and review any Owner required information submitted by the JOC Contractor such as a construction schedule and list of proposed subcontractors. Gordian's project manager will submit the Price Proposal and related documents to Owner or Purchaser.

- h) **Issue Job Order:** Once Owner or Purchaser approves the Price Proposal and related documents, and decides to move forward with the project, Owner or Purchaser is then responsible for the issuance of a job order (which may be in the form of a purchase order) to the selected JOC Contractor.
 - i) **Construction Management:** During construction, Owner or Purchaser's project managers will follow its standard internal policies and procedures for construction management and site inspections, including coordinating any required code inspections. When unforeseen conditions arise or Owner or Purchaser desires to change the Detailed Scope of Work, a supplemental Job Order is developed in the same manner as the original Job Order.
8. **On-Going Technical Support:** Gordian shall be responsible for providing on-going technical support for the duration of the Agreement. On-going technical support shall include providing updated contract documents, assisting with the procurement of additional JOC Contractors, providing Owner with access to all applicable updates and revisions to the IMS, and providing training for new Owner staff and JOC Contractors during the term of the Agreement. Providing on-going technical support is considered a vital component to ensuring a successful Owner JOC program.
9. **Administrative Fee Requirements:** To facilitate potential Purchasers' utilization of Owner's JOC contracts, Gordian shall include language in the JOC contracts that: (1) instructs the JOC contractors to include a License Fee of Six and Twenty-Five Hundredths Percent (6.25%) in their competitively-bid adjustment factors to cover Gordian's fee for cooperative purchases and an Administrative Fee of One percent (1%) that covers Owner's administrative fee for the procurement and management of the JOC contracts; and (2) requires the JOC contractors to remit to Gordian the License Fee and Administrative Fee within five (5) days of receiving payment from the Purchaser. Gordian shall remit the Administrative Fee to Owner on a monthly basis for all Administrative Fees received during the preceding month.

OPTIONAL SERVICES

10. **Optional Project Management Services:** On a project-by-project basis, Gordian shall provide project management services to Purchaser, to be requested by Purchaser in its sole discretion. The project management services shall include the following:
- a) **Preconstruction** – Gordian's project manager will assist Purchaser in determining whether professional design services are required and conduct a pre-construction meeting with the Purchaser's representative(s), the JOC contractor and, if applicable, the architect or engineer to review the basic project parameters and funding. Where design services are required, the project manager will work with the architects or engineers to coordinate necessary studies and design standards, and deliver plans and specifications that maximize the benefits of JOC for



each Purchaser project. Next, the project manager will coordinate and share any preconstruction information with Purchaser, the JOC contractor and other appropriate parties, and will assist in the coordination of the JOC contractor obtaining the necessary permits.

- b) **Site Visit** – During construction, Gordian’s project manager will monitor the JOC contractor's work in-progress, manage the JOC contractor's compliance with the approved safety plan and complete a report for each site visit.
- c) **Communication** – Gordian’s project manager will provide weekly construction status reports to Purchaser, conduct project progress meetings with the JOC contractor and staff on a periodic basis, and coordinate any required technical and code inspections.
- d) **Supplemental Job Orders** – In the event there are unforeseen conditions or Purchaser requests changes to the Detailed Scope of Work after construction has begun, Gordian’s project manager will analyze and process a supplemental Job Order by utilizing the procedures to develop the initial Job Order.
- e) **Approvals** – Gordian’s project manager will review and recommend for approval, or direct necessary revisions to, the JOC contractor’s applications for payment and obtain Purchaser’s approval of the work. Final acceptance of the work will be the responsibility of Purchaser. Technical and code inspections will be the responsibility of the appropriate inspection agencies.
- f) **Project Close-out** – As the final step in the process, Gordian’s project manager will enter all Job Order related information into the IMS and collect any required as-builts, warranties and OEMs from the JOC contractor.

**ARTICLE IV
ADDITIONAL SERVICES**

Gordian will provide to Owner or Purchasers any of the Additional Services set forth in the NJPA Contract for the same terms and conditions set forth therein. No such Additional Services shall be performed without the issuance of a purchase order, notice to proceed, or other written documentation from Owner or Purchaser authorizing Gordian to provide such Additional Services as set forth above.

**ARTICLE V
OWNER DUTIES AND RESPONSIBILITIES**

Owner will assume the following duties and responsibilities:

- I. Owner shall review all documentation and requests for information submitted by Gordian in a timely manner.



2. Owner shall provide full information regarding requirements for the JOC program, including but not limited to, facilities lists, current Owner procedures, programs, technical specifications and bidding information.
3. Owner shall designate, in writing, a representative who shall render or obtain decisions pertaining to the JOC program in a timely manner.
4. Owner shall provide work space and access to the Internet, copiers, printers, facsimile machines, and local telephone service for use by Gordian's on-site staff.
5. Owner shall be responsible for reproduction of the Construction Task Catalog®, Technical Specifications, Contract and General Conditions, Instructions to Bidders and Bid Forms, including the bid packages distributed to construction contractors.

ARTICLE VI INDEMNIFICATION

Gordian agrees to indemnify and hold harmless Owner and its officers, including all elected and appointed officials, agents, and employees from any and all claims against Owner or its officers, agents, or employees that arise out of any negligent act of Gordian or its officers, agents, employees, or subcontractors.

Owner agrees to indemnify and hold harmless Gordian and its officers, agents, employees, and subcontractors from any and all claims against Gordian or its officers, agents, employees, or subcontractors that arise out of any negligent act of Owner or its officers, agents, or employees.

ARTICLE VII INSURANCE

Gordian shall maintain general liability insurance coverage of \$1,000,000 per occurrence, automobile liability insurance of \$1,000,000 per occurrence, employers' liability insurance of \$1,000,000 and workers' compensation insurance as required by law during the entire term of this Agreement. Gordian shall furnish to Owner a certificate of insurance evidencing the required coverage, naming Owner as an additional insured and providing that the insurance will not be cancelled without thirty (30) days written notice to Owner.

ARTICLE VIII FEES

1. For all purchases made under the JOC program by Purchasers, and by Owner, Gordian shall collect a License Fee of Six and Twenty-Five Hundredths Percent (6.25%) of the value of work ordered by each Purchaser and shall assess and collect the Administrative Fee of One Percent (1%) as set forth in Article III, Para. 9. Gordian shall remit the Administrative Fee to Owner upon receipt from the JOC contractor. Owner agrees that, as a condition precedent to Gordian's obligation to make payment of the Administrative Fee to Owner, Gordian must receive payment from the JOC contractor. In the event Gordian does not receive all or part of the payment of the Administrative Fee from the JOC contractor, Gordian shall not be liable to Owner for any sums in respect hereto until such payment is received by Gordian from the JOC contractor. Owner agrees to cooperate and



assist with any collections issues raised by Gordian as it relates to the payment of any License Fees and Administrative Fees by the JOC contractors.

2. In the event Owner or Purchasers elect to receive the Project Management services set forth in Article III, Para. 10, Owner or Purchaser shall remit to Gordian a Project Management Fee equal to Six and One Hundredths Percent (6.01%) of the value of the Job Order for which the project management services are provided. The Project Management Fee is payable when construction of the Job Order has been completed and accepted and will only apply when JOC Project Management Services are requested by Purchaser on a project-by project basis. At the election of Gordian, for Job Orders requiring more than sixty (60) days to complete the project, the Project Management Fee shall be payable monthly on a percentage of completion basis.

ARTICLE IX TERMINATION

Owner may terminate this Agreement for any reason by providing written notice to Gordian specifying the termination date, which shall be a minimum of thirty (30) days after the date such notice is given. In the event Owner exercises such termination right, Owner shall pay Gordian, within thirty (30) days, the License Fee for all work ordered by Owner prior to the effective date of termination, and shall assist in the collection of any outstanding payments owed by Owner's JOC contractors.

Gordian may terminate this Agreement for cause if Owner shall fail to fulfill its obligation under this Agreement, or if Owner shall violate any of the material provisions of this Agreement, by providing written notice to Owner specifying the cause for such termination and the termination date, which shall be a minimum of seven (7) days after the date such notice is given. In the event Gordian exercises such termination right, Owner shall pay Gordian, within thirty (30) days, the License Fee for all work ordered prior to the effective date of termination.

ARTICLE X EQUAL EMPLOYMENT OPPORTUNITY

Gordian shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital/domestic partner status or disability, except where any of the above is a bona fide occupational qualification or need. Gordian has an affirmative action program to ensure that applicants are employed, and employees are treated during employment without regard to race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital/domestic partner status or disability. Such action includes, but is not limited to, hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

ARTICLE XI FORCE MAJEURE

Neither party shall be held responsible for failure to perform the duties and responsibilities imposed by this Agreement if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the



control of the parties and outside the scope of the parties' respective disaster plans that make performance of the obligations impossible.

**ARTICLE XII
INDEPENDENT CONTRACTOR**

Gordian is an independent contractor, and neither Gordian nor its employees or subcontractors will, under any circumstances, be considered employees, servants, or agents of Owner. Owner will not be legally responsible for any negligence or other wrongdoing by Gordian, its employees, servants, or agents. Owner will not withhold from payments to Gordian any federal, state or unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Gordian or its employees, servants, or agents. Furthermore, Owner will not provide to Gordian any insurance coverage or other benefits, including workers' compensation, normally provided by Owner for its employees.

**ARTICLE XIII
ASSIGNMENT**

Gordian shall not assign, transfer, convey or otherwise dispose of its rights, obligations, or interests under this Agreement without the prior written consent of Owner, such consent not to be unreasonably withheld.

**ARTICLE XIV
APPLICABLE LAW**

This Agreement and the work performed hereunder shall be governed in all respects by the laws of the State of Idaho, and the jurisdiction, venue, and forum for any litigation with respect hereto shall be in the state or federal courts located within Ada County, ID, and in no other court.

**ARTICLE XV
WAIVER**

The failure of either party to exercise in any respect a right provided for in this Agreement shall not be deemed to be a subsequent waiver of the same right, or any other right.

**ARTICLE XVI
NOTICES**

Unless otherwise provided for herein, all notices and other communications required by this Agreement shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified, or registered, addressed as follows:

To the Owner:



Phone: _____

Email: _____

To Gordian

The Gordian Group, Inc.
Attn: Ammon T. Leshner
30 Patewood Drive, Suite 350
Greenville, SC 29615
Phone: (800) 874-2291
Email: a.lesher@thegordiangroup.com

**ARTICLE XVII
SEVERABILITY**

The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph, or section of this Agreement shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining clauses, phrases, sentences, paragraphs, or sections of this Agreement.

**ARTICLE XVIII
ENTIRE AGREEMENT**


This Agreement represents the entire and integrated agreement between Owner and Gordian and may be amended only by written instrument approved by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Owner

The Gordian Group, Inc.

By: 
Authorized Signature
Geoffrey M. Thomas CHAIR ISSDC
Name and Title
5/14/20
Date


By: _____
Ammon T. Leshner
Vice President, General Counsel
Title
6/8/20
Date

The Board of Managers of Idaho School District Council (referred to herein as ISDC) is soliciting sealed Bids for up to three (3) Job Order Contracts, each to be fulfilled through separate Contractors, for General Construction per region including the six (6) regions of the State of Idaho. The Bid submittal deadline is Thursday, May 27, 2021 at 2:00 PM MDT. Bid submittals should be mailed USPS certified to:

Attention: Cathy Bidwell, ISDC Office Manager

C/O Hagerman School District No. 233

324 North 2nd Avenue

Hagerman, ID 83332

Bids will be opened and read aloud via teleconference on Thursday, May 27, 2021 at 2:00 PM MDT. Bids received after the submittal deadline will not be considered and no Bidder may withdraw his/her Bid after the time set for opening or before Bid award unless said award is delayed for a period exceeding sixty (60) days.

A Job Order Contract is an indefinite quantity Contract pursuant to which the Contractor may perform an ongoing series of individual Projects at different locations **under the jurisdiction of ISDC**. An Owner may be the district offices or a participating school district that initiates an individual Project. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.

The Contractor will bid two initial Adjustment Factors to be applied to the Unit Prices plus a Non Pre-priced Adjustment Factor yielding three total Adjustment Factors. One Adjustment Factor for performing work during Normal Working Hours and a second Adjustment Factor for performing work during Other Than Normal Working Hours. The same two Adjustment Factors shall apply to every Pre-priced Task in the Construction Task Catalog[®]. The Contractor will also bid a third Adjustment Factor for performing Non Pre-priced Tasks.

This Contract will be awarded to the lowest, responsive, responsible Bidder(s). The lowest responsive and responsible bidder shall be determined sequentially for each contract in the following order:

Region one (1): R1-ISDC2021- JOC101GC, R1-ISDC2021- JOC102GC, R1-ISDC2021-JOC103GC.

Region two (2): R2-ISDC2021-JOC101GC, R2-ISDC2021-JOC102GC, R2-ISDC2021-JOC103GC

Region three (3): R3-ISDC2021-JOC101GC, R3-ISDC2021-JOC102GC, R3-ISDC2021-JOC103GC

Region four (4): R4-ISDC2021-JOC101GC, R4-ISDC2021-JOC102GC, R4-ISDC2021-JOC103GC

Region five (5): R5-ISDC2021-JOC101GC, R5-ISDC2021-JOC102GC, R5-ISDC2021-JOC103GC

Region six (6): R6-ISDC2021-JOC101GC, R6-ISDC2021-JOC102GC, R6-ISDC2021-JOC103GC

ISDC reserves the right to award up to three (3) individual contracts for General Construction per region as detailed above. One (1) contract will be awarded to the successful lowest bidder, one (1) to the second lowest bidder, and one (1) to the third lowest bidder per region. The apparent lowest responsive and responsible bidder on one JOC same scope contract in each region will be excluded from consideration for any successive contract in each individual region.

Thereafter, as projects are identified the Contractor will jointly scope the work with the Owner. The Owner will prepare a Detailed Scope of Work and issue a Request for Proposal to the Contractor. The Contractor will then prepare a Job Order Proposal for the Project including a Job Order Price Proposal, drawings and sketches, a list of subcontractors and materialmen, construction schedule, and other requested documentation. The Job Order Price shall equal the value of the approved Job Order Price Proposal. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.

If the Job Order Proposal is found to be complete and reasonable, a Job Order may be issued by the Owner.

A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, and the Job Order Price. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate Job Order will be issued for each Project. Extra work, credits, and deletions will be contained in a Supplemental Job Order.

The work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

This Contract is for construction work and related services to be performed within a **designated region of the state (See the State map)**. However, if the need arises, ISDC reserves the right to require the JOC Contractor to work at any location or facility in an adjacent region using its competitively bid Adjustment Factor(s), unless Contractor has opted not to work outside of the bid designated region on Bid Proposal Form 3.

The Base Term of the Contract is two (2) years. There are three (3) one (1) year bilateral Option Terms. Both parties must agree to extend the Contract for an Option Term. The duration of each Option Term is one year. The Board of Managers of Idaho School District Council and the Contractor may agree to extend the term of an Option Term. All Job Orders issued by an Owner during the term of this Contract shall be valid and remain in effect notwithstanding that the term has expired or has been terminated. All terms and conditions of the Contract apply to each Job Order and shall survive the termination of the Contract.

The Contractor may withdraw from the Contract: (1) on the first anniversary of the Contract; or (2) the first anniversary of the option period. In the event the Contractor elects to withdraw from the Contract, it must provide to the Board of Managers of Idaho School District Council 90 days written notice of its intent to withdraw. Exercising an option to withdraw shall not relieve either party from its obligations to completely fulfil Job Orders issued prior to such withdrawal. The Board of Managers of the Idaho School District Council may terminate the Contract at any time and for any reason prior to the end of the Term

or an Option Term by giving 30 days’ written notice. In addition, an Owner may withdraw a Job Order and terminate any work at any time for any reason by giving written notice to the Contractor. If such a termination occurs by an Owner, the Owner will be responsible to pay for any labor and material costs reasonably incurred and substantiated through the date the notice of termination was given. The Owner and Contractor may agree on work to be completed or transitioned.

The Estimated Maximum Annual Value for each Contract awarded to a Contractor in a region is up to \$4,000,000. The Contractor may be issued Job Orders totaling the Estimated Maximum Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders. It is merely an estimate. Neither the Board of Managers of Idaho School District Council nor the Owner has any obligation to give the Contractor the opportunity to perform Job Orders. There is no Minimum Contract Value. The Owner may increase the Estimated Maximum Annual Value of the Contract at its own discretion.

A performance bond and labor and material payment bonds are required; each in an amount of not less than 100% of each individual Job Order in the amount of \$50,000 and above, and by a surety company authorized to do business in Idaho. In addition, ISDC will require upon Contract award a “Letter of Bondability” for the Estimated Annual Maximum Contract Value of \$4,000,000 issued by a surety company authorized to do business in Idaho.

There are two Adjustment Factors for this Contract. When preparing a Job Order Price Proposal, the Contractor shall select the appropriate Adjustment Factor for each task.

The Adjustment Factors are as follows:

- a. Normal Working Hours: Monday through Friday 7:00 am to 4:00 pm except holidays.
- b. Other Than Normal Working Hours: Monday through Friday 4:01 pm to 6:59 am and all day Saturday, Sunday and holidays.
- c. Non Pre-priced: For Non Pre-priced Tasks.

The Other than Normal Working Hours Adjustment Factor must be equal to or greater than the Normal Working Hours Adjustment Factor. The Non Pre-priced Adjustment Factor must be between 1.1000 and 1.2000.

For Bid evaluation purposes only, the following work distributions shall be used to determine the Award Criteria Figure:

Adjustment Factor	% Weight (For Bid Evaluation Only)
Normal Working Hours	70%
Other than Normal Working Hours	25%
Non Pre-priced	5%

All Unit Prices listed in the Construction Task Catalog® are priced at a net value of 1.0000. The Adjustment Factors shall be an increase or decrease to all the Unit Prices listed in the Construction Task Catalog®. For example, 1.1000 would be a 10% increase to the Unit Prices and 0.9500 would be a 5% decrease to the Unit Prices. Bidders who submit separate Adjustment Factors for separate Unit Prices will be considered non-responsive and their Bid will be rejected.

Specifications, including bidding documents, specific instructions for submission of bids, and conditions of agreement, are available from insert who to contact and respective contact information.

An ISDC hosted **MANDATORY** pre-bid meeting will be held in multiple locations throughout the state.

- Shelley School District at 185 W Center St, Shelley, ID 83274, Tuesday April 27, 2021 at 10:00 AM.
- Snake River High School, 922 ID-39, Blackfoot, ID 83221, Tuesday April 27, 2021 at 2:00 PM.
- Jerome Joint School District #261, District Office Conference Room, 125 4th Ave. West, Jerome, ID 83338, Wednesday, April 28, 2021 at 10:00 AM.
- Weiser High School, 690 W Indianhead Rd., Weiser, ID 83672, Thursday, April 29, 2021 at 10:00 AM.
- Clearwater County Clinic Conference Room, 1055 Riverside Ave., Orofino, ID 83544, Tuesday, May 4, 2021 at 10:00 AM.
- Mullan High School, 355 Park St., Mullan, ID 83846, Wednesday, May 5, 2021 at 10:00 AM.
- West Ada School District, 1303 E. Central Dr. Meridian, ID 83642, Thursday, May 6th at 4:15 PM in the Salmon Room.

Additionally, for respondents not within driving distance and/or for those preferring to attend a webinar due to precautions for COVID-19, a ISDC hosted webinar is available on Friday, May 7th at 2:00 PM MDT by clicking this link: <https://zoom.us/meeting/register/tJ0scOCurDgiG9wRzEAmCJFbPSwef7txYQMM>

All Bidders must be in attendance at the in person Pre-Bid meeting or the Pre-Bid Webinar Meeting in order to continue the bidding process. The in person Pre-Bid and Pre-Bid Webinar Meeting will be conducted one time only. Attendance will be taken at the webinar meeting as well as the in person meeting, in the beginning and the end of the meeting. Attendance during entire webinar is required. Prospective bidders for this project **MUST** attend this pre-bid meeting. Bids will not be accepted from those that have not attended.

Please RSVP your attendance by sending an email to trosandick@idsdc.org by close of business day five (5) working days prior to your scheduled pre-bid conference. Upon sending your RSVP you will receive a webinar invitation.

The purpose of the Pre-Bid Meeting is to go over key dates and requirements for the solicitation, discuss the Job Order Contract (JOC) concept and discuss JOC from a Contractor's perspective.

The District strongly encourages a responsible managing officer from the Contractor's office to attend this meeting.

Questions from interested prospective bidders will only be accepted by the District in writing via written correspondence or via Internet electronic mail (preferred) to Tim Rosandick, at trosandick@idsdc.org. Neither the district nor its representative will be responsible for any oral instructions. No interpretations

will be issued later than three (3) calendar days prior to the bid date so that all inquiries can be answered in writing and distributed to all bidders on the plan-holders list in the form of addenda to the contract in ample time before the bid opening date. The cutoff for questions from interested prospective bidders is **Wednesday, May 12, 2021 at 3:00 PM.**

**Bid Documents will be available after April 13, 2021 on the ISDC website at:
<https://www.idsd.org/announcements>**

In following guidance from the Centers for Disease Control and Prevention (CDC) and OSHA, Contractors, and their subcontractors, are responsible for taking all reasonably practical measures to prevent the spread of COVID-19. This will include following social distancing guidelines where practical, the wearing of a Face Covering (mask) in settings where social distancing measures are difficult to maintain, use of stringent hygiene measures, encouraging employees that are sick to stay home, limiting meetings that require close contact, practice respiratory etiquette, including covering coughs and sneezes, and discourage workers from using other workers' phones, tools or equipment where possible. In addition to the other indemnification obligations in the Contract Documents, Contractors hereby agree to immediately defend and indemnify the Idaho School District Council and Owners from and against any and all claims, expenses, damages or any losses relating to or arising from Contractor's actions or responsibilities under this Contract, including those related to COVID-19.

Each Bid must be accompanied by a Bid bond with a surety company licensed to do business in Idaho or a certified/cashier's check drawn on an Idaho Bank in an amount not less than five thousand dollars (\$5,000.00), made payable to Idaho School District Council. In the event of the successful Bidder's failure to execute the Contract, this Bid surety may be forfeited to Idaho School District Council at the sole discretion of the Council.

The Board of Managers of Idaho School District Council selected The Gordian Group's Job Order Contracting (JOC) System for their JOC program. The Gordian JOC Solution includes proprietary Gordian Cloud JOC (or eGordian®) JOC Applications and Construction Task Catalog®, which shall be used by the Contractor to prepare and submit Job Order Proposals, subcontractor lists, and other requirements specified by the Owner.

Idaho School District Council reserves the right to disregard all non-conforming, non-responsive or conditional bids, to waive any minor informality/irregularity, to reject all Bids, or to accept the Bid or Bids it deems best. Any and all participants that submit a bid waive any challenges to the bidding process and/or any claims against ISDC or participating entities.

Dated April 12, 2021

Idaho School District Council

Publish: April 13, 2021

April 14, 2021

The Board of Managers of Idaho School District Council (referred to herein as ISDC) is soliciting sealed Bids for **up to three (3) Job Order Contracts, each to be fulfilled through separate Contractors, for General Engineering per region including the six (6) regions of the State of Idaho.** The Bid submittal deadline is **Thursday, May 27, 2021 at 2:00 PM MDT. Bid submittals should be mailed USPS certified to:**

Attention: Cathy Bidwell, ISDC Office Manager

C/O Hagerman School District No. 233

324 North 2nd Avenue

Hagerman, ID 83332

Bids will be opened and read aloud via teleconference on **Thursday, May 27, 2021 at 2:00 PM MDT.** Bids received after the submittal deadline will not be considered and no Bidder may withdraw his/her Bid after the time set for opening or before Bid award unless said award is delayed for a period exceeding sixty (60) days.

A Job Order Contract is an indefinite quantity Contract pursuant to which the Contractor may perform an ongoing series of individual Projects at different locations **under the jurisdiction of ISDC.** An Owner may be the district offices or a participating school district that initiates an individual Project. The bid documents include a Construction Task Catalog[®] containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction.

The Contractor will bid two initial Adjustment Factors to be applied to the Unit Prices plus a Non Pre-priced Adjustment Factor yielding three total Adjustment Factors. One Adjustment Factor for performing work during Normal Working Hours and a second Adjustment Factor for performing work during Other Than Normal Working Hours. The same two Adjustment Factors shall apply to every Pre-priced Task in the Construction Task Catalog[®]. The Contractor will also bid a third Adjustment Factor for performing Non Pre-priced Tasks.

This Contract will be awarded to the lowest, responsive, responsible Bidder(s). The lowest responsive and responsible bidder shall be determined sequentially for each contract in the following order:

Region one (1): R1-ISDC2021- JOC101GE, R1-ISDC2021- JOC102GE, R1-ISDC2021-JOC103GE

Region two (2): R2-ISDC2021-JOC101GE, R2-ISDC2021-JOC102GE, R2-ISDC2021-JOC103GE

Region three (3): R3-ISDC2021-JOC101GE, R3-ISDC2021-JOC102GE, R3-ISDC2021-JOC103GE

Region four (4): R4-ISDC2021-JOC101GE, R4-ISDC2021-JOC102GE, R4-ISDC2021-JOC103GE

Region five (5): R5-ISDC2021-JOC101GE, R5-ISDC2021-JOC102GE, R5-ISDC2021-JOC103GE

Region six (6): R6-ISDC2021-JOC101GE, R6-ISDC2021-JOC102GE, R6-ISDC2021-JOC103GE

ISDC reserves the right to award up to three (3) individual contracts for General Engineering per region as detailed above. One (1) contract will be awarded to the successful lowest bidder, one (1) to the

second lowest bidder, and one (1) to the third lowest bidder per region. The apparent lowest responsive and responsible bidder on one JOC same scope contract in each region will be excluded from consideration for any successive contract in each individual region.

Thereafter, as projects are identified the Contractor will jointly scope the work with the Owner. The Owner will prepare a Detailed Scope of Work and issue a Request for Proposal to the Contractor. The Contractor will then prepare a Job Order Proposal for the Project including a Job Order Price Proposal, drawings and sketches, a list of subcontractors and materialmen, construction schedule, and other requested documentation. The Job Order Price shall equal the value of the approved Job Order Price Proposal. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.

If the Job Order Proposal is found to be complete and reasonable, a Job Order may be issued by the Owner.

A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, and the Job Order Price. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate Job Order will be issued for each Project. Extra work, credits, and deletions will be contained in a Supplemental Job Order.

The work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

This Contract is for construction work and related services to be performed within a **designated region of the state (See the State map)**. However, if the need arises, ISDC reserves the right to require the JOC Contractor to work at any location or facility in an adjacent region using its competitively bid Adjustment Factor(s), unless Contractor has opted not to work outside of the bid designated region on Bid Proposal Form 3.

The Base Term of the Contract is two (2) years. There are three (3) one (1) year bilateral Option Terms. Both parties must agree to extend the Contract for an Option Term. The duration of each Option Term is one year. The Board of Managers of Idaho School District Council and the Contractor may agree to extend the term of an Option Term. All Job Orders issued by an Owner during the term of this Contract shall be valid and remain in effect notwithstanding that the term has expired or has been terminated. All terms and conditions of the Contract apply to each Job Order and shall survive the termination of the Contract.

The Contractor may withdraw from the Contract: (1) on the first anniversary of the Contract; or (2) the first anniversary of the option period. In the event the Contractor elects to withdraw from the Contract, it must provide to the Board of Managers of Idaho School District Council 90 days written notice of its intent to withdraw. Exercising an option to withdraw shall not relieve either party from its obligations to completely fulfil Job Orders issued prior to such withdrawal. The Board of Managers of the Idaho School District Council may terminate the Contract at any time and for any reason prior to the end of the Term or an Option Term by giving 30 days' written notice. In addition, an Owner may withdraw a Job Order and terminate any work at any time for any reason by giving written notice to the Contractor. If such a

termination occurs by an Owner, the Owner will be responsible to pay for any labor and material costs reasonably incurred and substantiated through the date the notice of termination was given. The Owner and Contractor may agree on work to be completed or transitioned.

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Catalog®. For example, 1.1000 would be a 10% increase to the Unit Prices and 0.9500 would be a 5% decrease to the Unit Prices. Bidders who submit separate Adjustment Factors for separate Unit Prices will be considered non-responsive and their Bid will be rejected.

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Please RSVP your attendance by sending an email to trosandick@idsdc.org by close of business day five (5) working days prior to your scheduled pre-bid conference. Upon sending your RSVP you will receive a webinar invitation.

The purpose of the Pre-Bid Meeting is to go over key dates and requirements for the solicitation, discuss the Job Order Contract (JOC) concept and discuss JOC from a Contractor's perspective.

The District strongly encourages a responsible managing officer from the Contractor's office to attend this meeting.

Questions from interested prospective bidders will only be accepted by the District in writing via written correspondence or via Internet electronic mail (preferred) to Tim Rosandick, at trosandick@idsdc.org. Neither the district nor its representative will be responsible for any oral instructions. No interpretations will be issued later than three (3) calendar days prior to the bid date so that all inquiries can be answered in writing and distributed to all bidders on the plan-holders list in the form of addenda to the contract in

ample time before the bid opening date. The cutoff for questions from interested prospective bidders is **Wednesday, May 12, 2021 at 3:00 PM.**

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Each Bid must be accompanied by a Bid bond with a surety company licensed to do business in Idaho or a certified/cashier's check drawn on an Idaho Bank in an amount not less than five thousand dollars (\$5,000.00), made payable to Idaho School District Council. In the event of the successful Bidder's failure to execute the Contract, this Bid surety may be forfeited to Idaho School District Council at the sole discretion of the Council.

The Board of Managers of Idaho School District Council selected The Gordian Group's Job Order Contracting (JOC) System for their JOC program. The Gordian JOC Solution includes proprietary Gordian Cloud JOC (or eGordian®) JOC Applications and Construction Task Catalog®, which shall be used by the Contractor to prepare and submit Job Order Proposals, subcontractor lists, and other requirements specified by the Owner.

Idaho School District Council reserves the right to disregard all non-conforming, non-responsive or conditional bids, to waive any minor informality/irregularity, to reject all Bids, or to accept the Bid or Bids it deems best. Any and all participants that submit a bid waive any challenges to the bidding process and/or any claims against ISDC or participating entities.

Dated April 12, 2021

Idaho School District Council

Publish: April 13, 2021

April 14, 2021



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

April 30, 2021

TRANSMITTED VIA EMAIL

The Honorable Carl Crabtree
Idaho State Senate
Idaho State Capitol
P.O. Box 83720
Boise, ID 83720-0081
ccrabtree@senate.idaho.gov

Re: Idaho School District Council Solicitations – Our File No. 21-73609

Dear Senator Crabtree:

This letter is in response to your recent inquiry regarding certain solicitations issued by the Idaho School District Council (the "ISDC") and its contractor, the Gordian Group, Inc. Rather than attempt to evaluate the specific solicitations referenced in your inquiry, which are still pending, this analysis provides a general overview of the procurement laws applicable to those solicitations. This letter is intended for you in your capacity as a senator in the Idaho Legislature and is not intended as legal advice for any third parties. Further, the Office of Attorney General does not have authority to enforce the procurement provisions cited in this letter. Any bidder seeking to object to the solicitations should consider consulting with their own private attorney, and any complaints of violations of title 54, chapter 45, Idaho Code, should be referred to the Idaho Division of Building Safety (the "Division").

The ISDC is subject to procurement requirements for political subdivisions. Further, bidders may object to aspects of a solicitation issued by a political subdivision under title 67, chapter 28, Idaho Code, but not under Idaho Code section 67-2320. In addition, the administrator of the Division may take a variety of actions for violations of title 54, chapter 45, Idaho Code. Finally, a private cause of action is not available under Idaho Code section 59-1026, and it is unclear whether a private cause of action exists under Idaho Code section 67-2309.

1. The ISDC is subject to procurement requirements for political subdivisions.

The ISDC is a “cooperative service agency . . . empowered to adopt bylaws, and act as a body corporate and politic with such powers as are assigned through its bylaws but limited to the powers and duties of local school districts.” Idaho Code § 33-317.

Idaho Code section 33-601(2) gives the board of trustees of each school district the power and duty “[t]o contract for the construction, repair, or improvement of any real property, or the acquisition, purchase or repair of any equipment, or other personal property necessary for the operation of the school district” and requires such a contract to “be executed in accordance with the provisions of chapter 28, title 67, Idaho Code.” Further, Idaho Code section 67-2320 applies to political subdivisions and defines a “political subdivision” to include a school district. *See* Idaho Code § 67-2320(5)(b). ISDC’s role in procuring goods, property, or services under these statutes is to act in the place of the school district. As a result, the ISDC is subject to the procurement requirements for political subdivisions.

2. Bidders may object to aspects of a solicitation issued by a political subdivision under title 67, chapter 28, Idaho Code, but not under section 67-2320.

Idaho Code section 67-2805 applies to procurement of public works construction by political subdivisions, and sections 67-2806 and 67-2806A apply to procurement of services or personal property by political subdivisions. Under sections 67-2805 and 67-2806, bidders may lodge an objection to the specifications or bid procedures in a procurement valued in excess of \$50,000 with the political subdivision. *See* Idaho Code §§ 67-2805(1)(c), -2805(2)(a)(ii), -2805(2)(b)(vi), -2806(1)(c), -2806(2)(c). In a procurement of personal property or services valued in excess of \$100,000, bidders may file an objection to the award with the political subdivision. *See* Idaho Code §§ 67-2806(2)(j); -2806A(4). Bidders may file with the political subdivision an objection to the prequalification procedures, if any, and ultimately the award in a procurement of public works construction valued in excess of \$200,000. *See* Idaho Code §§ 67-2805(2)(a)(x); -2805(2)(b)(iii); -2805(2)(b)(xiii). A bidder may further pursue an objection to prequalification procedures with the Public Works Contractors License Board and through judicial review. *See* Idaho Code § 67-2805(2)(b)(iv).

Idaho Code section 67-2320 applies to procurement of professional engineering, architectural, landscape architecture, construction management, and professional land surveying services by political subdivisions.¹ However, that section does not grant persons or firms participating in such solicitations any right of objection. *See generally* Idaho Code § 67-2320.

¹ The procurement requirements of title 67, chapter 28, Idaho Code, are not applicable to such procurements. *See* Idaho Code § 67-2803(4).

3. The administrator of the Division of Building Safety may take a variety of actions for violations of title 54, chapter 45, Idaho Code.

Under Idaho Code section 54-4508(1), the administrator of the Division of Building Safety may suspend, revoke, refuse to renew, or put probationary conditions on a construction manager's license; deny, defer, or precondition licensure; or impose fines and costs of bringing an action if the Public Works Contractors License Board² finds the grounds set forth in that section exist. Those grounds are:

- (a) Fraud or deception in the procurement of a license or certificate of authority or in the taking of an examination required under the provisions of [title 54, chapter 45, Idaho Code];
- (b) Incompetence in the performance of a construction manager's duties;
- (c) Holding oneself or one's firm out as a construction manager by engaging in any act meeting the definition or character of a construction manager as defined herein without a legally required license;
- (d) Fraud or deceit in the performance of a construction manager's duties; or
- (e) Willful violation of the provisions of [title 54, chapter 45, Idaho Code,] or the rules promulgated by the board.

Idaho Code § 54-4508(1). In addition, “[t]he administrator may bring an action in the district court for a temporary restraining order, preliminary injunction or permanent injunction against any person who violates the provisions of [title 54, chapter 45, Idaho Code].” Idaho Code § 54-4514.

4. Idaho Code section 59-1026 does not contain a private cause of action, and it is unclear whether a private cause of action exists under Idaho Code section 67-2309.

Idaho Code section 59-1026 prohibits an official of any political subdivision from willfully or knowingly avoiding “compliance with procurement or competitive bidding statutes” or splitting or separating “purchases or work projects with the intent of avoiding compliance with such statutes.” For a violation of that section, the political subdivision is liable for a civil penalty “payable to the office of the public agency bringing an enforcement action, upon court order, to reimburse the reasonable expense of enforcing compliance with competitive bidding and procurement statutes.” Idaho Code section 59-1026 does not contain any private cause of action. Further, section 59-1026 does not specify what public agency may bring an “enforcement action” under the section.

Idaho Code section 67-2309 applies to officers of school districts or other persons required “to advertise for bids on contracts for the construction, repair or improvement of public works.” Section 67-2309 generally 1) requires “written plans and specifications” to be made “available for all interested and prospective bidders,” 2) requires such plans and specifications to state “the number, size, kind and quality of materials and service required for such contract[s],” 3) prohibits such plans and specifications from specifying or providing for requirements that “would prevent

² See Idaho Code § 54-4503(3).

Senator Carl Crabtree
April 30, 2021
Page 4

competitive bidding,” and 4) allows the use of the “design-build method of construction” in such contracts. The section states, “In any action which shall arise under this section, the court may assess a civil penalty not to exceed five hundred dollars (\$500) to be paid by the public entity.” The section does not state what action may arise under the section, who may bring such an action, whether there is a private cause of action, under what circumstances a court may award the civil penalty, or to whom such civil penalty is payable. However, an action arising under the section would be necessary for a court to assess the civil penalty under the statutory language in section 67-2309.

I hope you find this analysis helpful.

Sincerely,



BRIAN KANE
Chief Deputy

BK:kw



Idaho School District Council Construction Support Program

As a member of the ISDC, your school district/charter school is now able to utilize a construction procurement service provided by the Council's partner, Gordian.

ISDC/Gordian Program Overview

Job Order Contracting

Traditional construction procurement is often longer and more expensive than you plan for, causing additional workload before a project even begins. Job Order Contracting (JOC) is a proven, efficient and cost-effective alternative to traditional procurement that streamlines renovations, repairs, emergency and time sensitive projects.

JOC is a unique, indefinite delivery, indefinite quantity (IDIQ) construction procurement process, allowing owners to complete many individual projects through a single, competitively-awarded contract.

Job Order Contracts are awarded in compliance with State of Idaho competitive bidding requirements, and Unit Prices are established up-front using local labor, material and equipment costs. Awarded contractors apply their competitive adjustment factor to the Unit Prices, so costs are established upfront and projects can begin faster.

More than \$2.4 billion in construction value is completed through Gordian's JOC solutions each year across North America.

Common JOC Benefits:

 Significant time and costs savings by streamlining administrative processes	 Readily available awarded contractors to begin work faster	 Enhanced transparency and cost certainty through preset pricing
 Improved construction quality thanks to greater contractor collaboration	 Fewer project delays because of reduced claims and changes	

"We have a trust factor here and combine it with the [JOC] procurement process, it makes for a good combination."

Brainerd Public Schools

A Simple Process

Gordian's JOC process is what differentiates this procurement method from other project delivery options. Once the contract is awarded, a standard process is followed each and every time a new project is identified.



A Proven Method

JOC is a proven supplement to other traditional methods. In fact, in a recent JOC performance study¹, both facility and infrastructure owners and contractors agreed JOC yields higher performance and satisfactory rankings when compared to other delivery methods, including Design-Bid-Build (DBB) and Design-Build (DB). JOC also received high marks in project satisfaction, timeliness, cost savings, flexibility, transparency and ease of use, resulting in 99 % of owners recommending JOC to their peers.

"In the end, the project was completed to the specifications and delivered on time and on budget."

M David Haft, Supervisor of Maintenance, Erie School District, PA

How to get started?

By accessing JOC through ISDC, you too can streamline your construction procurement. When you need to get projects like security upgrades, classroom renovations, window replacements, ADA compliance upgrades or HVAC and roofing work underway quickly, Gordian's JOC solution, available through ISDC contract, allows you to access competitively awarded contractors ready to get started on your project immediately.

One-third of the nation's largest public-school districts have used Gordian's solution to give their students better learning environments.

To learn more how Gordian can help you plan, build and maintain safe and reliable K-12 school facilities, contact *Al Palafox* at a.palafox@gordian.com or 408-438-2107.

Process Defined

1. Joint Scope Meeting

Once project information is received, Gordian will contact you to schedule a Joint Scope Meeting at the site to help you and the contractor agree on the details of the work to be performed. This meeting allows the contractor to inspect the site and ask questions before submitting a Price Proposal, helping to eliminate misunderstandings and mistakes. This upfront, open communication often results in more cost-effective, collaborative solutions.

2. Detailed Scope of Work

Gordian helps you prepare a Detailed Scope of Work that describes the work the contractor will perform. The Detailed Scope of Work will be sent along with the Request for Proposal to the contractor.

3. Price Proposal

The contractor prepares a Price Proposal by selecting the appropriate tasks from Gordian's Construction Task Catalog (CTC). The contractor submits the Price Proposal along with a construction schedule and list of proposed local contractors.

4. Price Proposal Review

Gordian reviews the Price Proposal to ensure the contractor has selected the appropriate tasks and quantities and will ask the contractor to make any required changes. The reviewed Price Proposal is submitted for your final review.

5. Purchase Order Issued

Once you are 100% satisfied with the Price Proposal, construction schedule, proposed subcontractors and have received and approved any other required documents (e.g. bonds, certificates of insurance, etc.), you can issue a purchase order for the contractor to proceed.

Gordian JOC Benefits

Gordian JOC solutions are proven to streamline the construction procurement process, providing several benefits to owners:

- **Cost Savings:** Independent studies confirm a 24 percent administrative cost savings compared to traditional processes, such as design-bid-build and design-build. Because JOC combines many small projects into a master contract, contractors can offer volume discounts on the master contract. The contractor actively participates in the Joint Scope Meeting where the site is inspected and the work to be performed is clarified. This collaborative process enables value engineering opportunities and reduces risks, so contractors do not need to include contingencies in their bids.
- **Time Savings:** Since the bidding process happens at the beginning of the project, all job orders can be issued in days versus weeks and months. JOC can reduce procurement cycle time from project identification to start of construction by up to 80 percent.
- **Improved Collaboration and Performance:** The JOC process cultivates a more collaborative relationship between you and the awarded contractor(s). Gordian's JOC programs link volume to performance, so contractors are motivated to provide timely, responsive and quality work.