

## Contract for Services

This Contract, entered into by and between Indiana Department of Administration, Facilities Management Division (the "State") and Edwards Electrical & Mechanical Inc. (the "Contractor"), is executed pursuant to the terms and conditions set forth herein.

WHEREAS, the State desires to contract for services for facilities maintenance and repair; and

WHEREAS, the Contractor has the necessary knowledge and expertise to provide such services.

NOW, THEREFORE, the parties agree as follows:

### 1. Duties of Contractor

Contractor shall provide the services set forth on Exhibit "A", attached hereto and incorporated herein (the "Services").

### 2. Consideration

Contractor shall be paid, in arrears, as set forth on Exhibit "B", attached hereto and incorporated herein. The total remuneration under this Contract shall not exceed Three Million Six Hundred Ninety One Thousand Five Hundred Sixty Two dollars and Forty cents (\$ 3,691,562.40).

### 3. Term

This Contract shall be effective for a period of 24 months. It shall commence on July 1<sup>st</sup>, 2012 or date of final State approval, whichever is later, and shall terminate on June 30<sup>th</sup>, 2014 or months after date of final approval, whichever is later.

### 4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this agreement. They shall make such materials available at their respective offices at all reasonable times during the contract period, and for three (3) years from the date of final payment under the contract, for inspection by the State or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.

### 5. Assignment

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

## **6. Audits**

Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1 and audit guidelines specified by the State.

## **7. Authority to Bind Contractor**

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and certifies that this Contract is not subject to further acceptance by Contractor when accepted by the State of Indiana.

## **8. Changes in Work**

In the event the State requires a major change in the scope, character or complexity of the work after the work has begun, adjustments in compensation to the Contractor shall be determined by the State in the exercise of its honest and reasonable judgment. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

## **9. Compliance with Laws.**

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 *et seq.*, the regulations promulgated there under, and Executive Order 04-08, dated April 27, 2004. If the contractor is not familiar with these ethical requirements, the contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract, that neither it nor its principal(s) is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the Contractor agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current or pending or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, Contractor agrees that the State may delay, withhold, or deny work under any Supplement or contractual device issued pursuant to this Contract and any supplements or amendments.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State of Indiana or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA)

following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed is a material breach of this Contract and grounds for immediate termination of the Agreement and denial of further work with the State.

H. The Contractor hereby affirms that it is properly registered and owes no outstanding reports with the Indiana Secretary of State.

I. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations], or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor: (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

## **10. Condition of Payment**

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state, or local statute, ordinance, rule or regulation.

## **11. Confidentiality of State Information**

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers or other personal information maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) or personal information (as defined in IC 4-1-11-3) is/are disclosed by Contractor, Contractor agrees to pay

the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

Attached hereto and incorporated herein by reference as Exhibit \_\_\_ is a copy of Contractor's internal privacy/confidential information policy. Contractor agrees to comply with such internal privacy/confidential information policy with regard to data, materials, and information disclosed or otherwise provided to Contractor by the State under the terms of this contract.

## **12. Continuity of Services**

- A. The Contractor recognizes that the services under this contract are vital to the State and must be continued without interruption and that, upon contract expiration, a successor, either the State or another Contractor, may continue them. The Contractor agrees to:
1. Furnish phase-in training, and
  2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
1. Furnish phase-in, phase-out services for up to sixty (60) days after this contract expires, and
  2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

## **13. Debarment and Suspension**

A. The Contractor certifies that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor also further certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under this Contract and shall be solely responsible for any recoupments, paybacks and or penalties that might arise from non-compliance. Contractor shall immediately notify the State if any sub-contractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the sub-contractor for work to be performed under this Contract.

#### **14. Default by State**

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, then the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect all monies due up to and including the date of termination.

#### **15. Disputes**

- A.** Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B.** The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:
1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.
  2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

#### **16. Drug-Free Workplace Certification**

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the Contractor's workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that this contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform it's employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

#### **17. Employment Eligibility Verification**

The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

### **18. Employment Option**

If the State determines that it would be in its best interest to hire and employ an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or employee.

### **19. Force Majeure**

In the event that either party is unable to perform any of its obligations under this contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this contract.

### **20. Funding Cancellation**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

### **21. Governing Laws**

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

### **22. Indemnification**

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall **not** provide such indemnification to the Contractor.

### **23. Independent Contractor**

Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees

**24. Information Technology Enterprise Architecture Requirements.**

If Contractor provides any information technology related products or services to the State, Contractor shall comply with all Indiana Office of Technology (IOT) standards, policies, and guidelines, which are online at <http://iot.in.gov/architecture/>. Contractor specifically agrees that all hardware, software, and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if Contractor fails to cure a breach of this provision within a reasonable time.

**25. Insurance**

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverage, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
2. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
3. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
5. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract.

The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State agency prior to the commencement of this Contract.

**26. Key Person(s)**

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.
- C. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is Thomas Chadwick, on-site supervisor for Edwards Electrical & Mechanical, Inc.

**27. Licensing Standards**

The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to pay the Contractor for any services performed when the Contractor or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification, or accreditation, the Contractor agrees to notify State immediately thereof and the State, at its option, may immediately terminate this Contract.

**28. Material Incorporated or Referred to in Contract**

The Contractor has supplied herewith all written materials, documents, or instruments mentioned or referred to in the contract except, where applicable, user manuals which will be included with the equipment upon delivery and which do not alter the terms of this agreement.

**29. Merger & Modification**

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

**30. Minority and Women's Business Enterprises Compliance**

The Contractor agrees to comply fully with the provisions of 25 IAC 5 and the Subcontractor Commitment submitted to the State. No changes may be made to the commitment without the written approval of the Minority and Women's Enterprises Division of IDOA. The Contractor's Subcontractor Commitment will become the MWBE Participation Plan upon execution of this Contract. The Subcontractor Participation Plan will be kept on file at the MWBE offices.

The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract. If changes to the MWBE participation plan are approved by the MWBE Division, the current participation plan on file will supersede the subcontractors listed below.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>PERCENT</u>
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The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MWBE subcontractor where the State considered the selection of the MWBE by the Contractor when issuing the procurement award. A copy of each subcontractor agreement must be submitted to the MWBE Division in IDOA within thirty (30) days of the execution of the contract between the Contractor and the State. Failure to provide a copy of the subcontractor agreements may be considered a violation of this provision and of 25 IAC 5. The Contractor must obtain approval from the MWBE Division before changing the MWBE Participation Plan submitted in connection with this Contract.

In the event of a violation of this provision or of 25 IAC 5, the department shall notify the contractor of the violations and will seek a course of action to correct them. The selected course of action may include the recommendation for the imposition of sanctions for material breach of contract pursuant to 25 IAC 5-7-8. In the event that it is determined that a violation of this rule has occurred, the department may elect to immediately employ one (1) or more of the sanctions found in 25 IAC 5-7-8(b).

If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements.

### **31. Nondiscrimination**

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

### **32. Notices to Parties**

Whenever any notice, statement or other communication is to be sent to the State or to the Contractor, it shall be sent to the following addresses unless otherwise specifically advised:

**Notice to the Agency shall be sent to:**

Brian Renner, Deputy Commissioner  
Indiana Department of Administration  
402 W. Washington St., E024  
Indianapolis, IN 46204

**Notice to the Contractor shall be sent to:**

**Michael Schmoll, Chief Operating Officer  
Edwards Electrical & Mechanical Inc  
2850 North Shadeland Avenue  
Indianapolis, IN 46219**

**Payment to the Contractor shall be sent to:**

As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by Contractor with the Auditor of State.

**33. Ownership of Documents and Materials**

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the work product during the term of this Contract.

**34. Order of Precedence**

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the State, (3) Solicitation Number, (4) Contractor's response to solicitation number, and (5) attachments prepared by the Contractor. In the event of any conflict between the terms and conditions of this Contract and the provisions of any of the other documents identified in items (2), (3), (4) or (5) of the immediately preceding sentence, the terms and conditions of this Contract shall supersede and control.

**35. Payments**

- A. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.
- B. If Contractor is being paid in advance for the maintenance of equipment and/or software, pursuant to IC 4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

**36. Penalties/Interest/Attorney's Fees**

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, the Parties stipulate and agree that any liability resulting from the State of Indiana's failure to make prompt payment shall be based solely on the amount

of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

### **37. Progress Reports**

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

### **38. Renewal Option**

This contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract. Any provision for automatic renewal is void. Any subsequent renewal to this Contract may include an increase of up to 3% percent per year at the sole discretion of the State.

### **39. Security and Privacy of Health Information**

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

### **40. Severability**

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provision of this contract.

### **41. Substantial Performance**

This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

### **42. Taxes**

The State of Indiana is exempt from state, many federal and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this contract.

### **43. Termination for Convenience**

This contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of

termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

#### **44. Termination for Default**

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this contract in whole or in part, if the Contractor **fails to**:
1. Correct or cure any breach of this contract;
  2. Deliver the supplies or perform the services within the time specified in this contract or any extension;
  3. Make progress so as to endanger performance of this contract; or
  4. Perform any of the other provisions of this contract.
- B. If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **45. Travel.**

No expenses for travel will be reimbursed unless specifically permitted under the scope of the services or consideration provision. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-State travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines. (Financial management Circular (2003-1)).

#### **46. Waiver of Rights**

No right conferred on either party under this contract shall be deemed waived and no breach of this contract excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

#### **47. Work Standards**

The Contractor agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this contract, the State may request in writing the replacement of any or all such individuals and Contractor shall grant such request.

**48. State Boilerplate Affirmation Clause**

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses in any way except for the following clauses which are identified by name below:

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**NON-COLLUSION AND ACCEPTANCE**

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**In Witness Whereof**, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

**Contractor:** Edwards Electrical & Mechanical

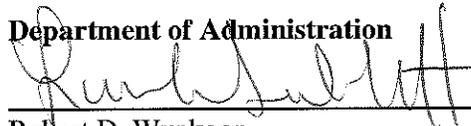
**State of Indiana Agency:** Administration

Signature:   
Printed Name: Michael Z. Schmoltz  
Title: C.O.O  
Date: 6-7-12

Signature:   
Printed Name: BRIAN KENNER  
Title: Deputy Commissioner  
Date: 6/7/12

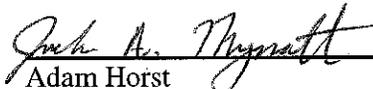
**Indiana Office of Technology**

\_\_\_\_\_  
Brian Arrowood, Chief Information Officer  
Date: \_\_\_\_\_

**Department of Administration**  
  
Robert D. Wynkoop  
Commissioner  
Date: 6-19-12

**State Budget Agency**

**Office of the Attorney General**

 *for*  
Adam Horst  
Director  
Date: 6.22.12

  
Gregory F. Zoeller  
Attorney General  
Date: 6/22/12

RFP 12-73

**TECHNICAL PROPOSAL**

**ATTACHMENT G**

*Instructions: Please supply all requested information in the areas shaded yellow and indicate any attachments that have been included. Document all attachments and which Section and question they pertain to. The State is expecting creative cost saving solutions from all of the Respondents in an effort to distinguish the best partner(s) to select.*

**2.4.1 Company Information**

1. Please provide a background on your Company. Be sure to include any pertinent information that could help the State have a better understanding of your business.

Edwards Electrical & Mechanical is a merit shop employer providing a wide range of HVAC and electrical construction related services to institutional, industrial, and commercial customers. We offer heating, ventilation, air conditioning services, refrigeration, electrical, sheet metal, process piping, facility controls installation and management, plumbing, and certified welding.

Within the last five years, Edwards Electrical and Mechanical has performed over \$9.2 million in Governmental Public Works projects, \$6.5 million in local, State, and federal work, and more than \$45 million in private commercial work.

**Our History:**

Don and Ruth Edwards founded Edwards Electric, Inc. in 1968. The company started out as a small union commercial shop based out of their garage. The business quickly grew and moved to an old two story house on the corner of East Street and Terrace Blvd. in 1970.

In 1972, Edwards Electric changed its operation to a merit based shop and six years later in 1978, the company moved to a 2500 square foot building at the corner of East Street and Merrill Ave.

By 1981, this structure became too small and working with a customer of the company, MacDougall Pierce Construction, an additional 2500 square feet were added to the building.

During the 1970's and early 80's, the annual sales averaged between \$750,000 and \$1,000,000 annually. The company name was changed to Edwards Electrical and Refrigeration in 1980 and to Edwards Electrical and Mechanical in 1986.

From this point, the applicant now employee, is released to the department manager to be assigned to his work duties. Training is determined by the department manager based on observed deficiencies and the need for on-going training in new systems and practices.

OSHA 10 hour training as well as Vehicle Safety training are mandatory for all employees and are updated as needed. Fork lift training is also mandatory where applicable.

3. What is Respondent's policy for employees whose appearance/uniform is deemed unsatisfactory while the employee is on the job? Please provide details.

As a commercial service provider, we understand it to be of the utmost importance of professional appearance in our customer's workplace. Each individual employee not only represents themselves, but the company as a whole in both mannerisms and appearance.

If an employee's appearance does not meet standards required to project complete professionalism, the employee is addressed directly by his/her supervisor. If this fails in correcting the issue, the employee will be re-assigned to an alternate workplace environment and/or department.

The official uniform policy of Edwards Electrical and Mechanical reads as such, "*For Facility Management service employees, proper attire consists of uniform shirt and pants. An Edwards' polo shirt is approved as long as it does not violate the conditions of the contract as agreed upon with the customer. In addition, hardhats and safety glasses are required.*"

4. What quality assurance measures does the respondent have in place to proactively monitor the State of Indiana contract for services provided? Please provide details.

First and foremost, the Site Supervisor's role in the contract is to monitor the performance of both the technicians assigned under him as well as the general scope of work for compliance under the terms and conditions of the contract.

Beyond that, the Supervisor's monthly 'work in progress' meetings with the Chief Operations Officer is intended to provide a forum of discussion for the Supervisor to bring issues affecting the contracts performance to the attention of the company's upper management and to discuss possible means to rectify outstanding issues.

In all, the Site Supervisor is expected to "take ownership" of the sites under his control as if he were just as financially vested as the actual owner. Instilling this mindset in both the supervisor and the technicians under his leadership is the front line in maintaining a superlative performance contract.

*Thomas Chadwick, Project Manager*

Thomas completed his training in HVAC enrolled in NRI schools while still a member of the United States Armed Forces in 1990. Thomas entered the HVAC field in 1992 as a sheet metal worker and service technician and was hired as a commercial service technician by Edwards Electrical and Mechanical in 1995. He has become intimately familiar with several areas of the HVAC/R field including chiller operation, steam and water boiler systems, automation controls, process steam systems, service plumbing, and large plant management while working for commercial/industrial companies and Johnson Controls in the Mountain States. In 2002, Thomas transferred from the Cincinnati branch of Edwards Electrical and Mechanical and took the position of Metasys technician of the Indiana Government Center contract. In 2007, he took the reins of the Indiana Government Center contract itself as Project Manager and has managed both the IGC service team as well as the Indiana State Museum service technicians since. He has completed training in several areas of HVAC include absorption chillers, Metasys Dx9100 programming and commissioning, York automation systems, Trane Tracer automation systems, boiler operation and troubleshooting, refrigeration systems and process control, and geothermal systems. He holds several certificates of training including HVAC, Metasys GPL, Metasys MSEA, EPA universal certification, and OSHA 30 hour safety training.

*The following individual will serve in the Metasys Technician role at the Indiana Government Center:*

*Luren "Skip" Dalton, Control Technician*

Skip Dalton has been in the HVAC field in 1974 working for a small local company. He graduated Ivy Tech in 1978 and holds two Marion County licenses in both residential Class A and Class B-1. He trained at the Johnson Controls Institute in 2003 for GPL Engineering and again in 2008 for MSEA Building Engineers. Skip has run service in almost every aspect of HVAC/R and is very knowledgeable in chiller plant operations.

*The following individual will serve in the Fire Service Technician role at the Indiana Government Center:*

*Cory Ryan, HVAC & Fire Systems Technician*

Cory was hired by Edwards Electrical and Mechanical in June of 2002 as an apprentice in the Associated Builders and Contractors training program sponsored through Edwards Electrical and Mechanical. Cory graduated from ABC in 2005 at the programs highest GPA with both his ABC diploma and EPA certification has become proficient in HVAC/R systems, Generator, kitchen, piping, and fire systems. Cory has worked with

*Brian Benson, HVAC Service Technician*

Brian graduated from ITT Technical Institute with his diploma and EPA certification in 1996. He immediately began running service with a local refrigeration company. In 1998, he was hired by Johnson Controls as a Facility Engineer and maintained several Ameritech/SBC facilities locally. He joined the service department of Edwards Electrical and Mechanical in April of 2001 and spent two years running commercial service before being assigned to the Indiana State Museum maintenance contract. Brian maintained and managed that contract under the supervision of Thomas Chadwick until 2009 when he transferred to the Indiana Government Center. Since then he has become very proficient in maintaining and servicing all the critical systems within the complex and is considered one of our best technicians.

*Roger Gough, HVAC Service Technician*

Roger completed HVAC training at YGI Training in Indianapolis in 1995 and has been in the service field for many years running both residential and commercial service. In 2009, Roger joined Edwards Electrical and Mechanical in the HVAC construction department and transferred to the Indiana Government Center in 2011 as a journeyman technician. Roger quickly adapted to the facility management environment and plays a key role in maintaining the daily operations of critical systems and services.

*Steve Strahl, HVAC Service Technician*

Steve Strahl entered the HVAC field in 2002 as a maintenance technician at the U.S. Federal Courthouse. For five years Steve worked maintaining the electrical, HVAC, and building automation systems. After leaving the Courthouse, Steve worked in building automation installation for 4 years before transferring to the Indiana Government Center to resume duties as a facility maintenance technician.

*The following individuals will serve in the 3 Year Technician roles at the Indiana Government Center:*

*Donald Cooper, Plumbing/HVAC Service Technician*

Donald has been in the HVAC field full time since 2007 when he joined Edwards Electrical and Mechanical. Donald worked in the field in both HVAC and plumbing in both the service and installation roles. Currently, Donald is assigned to the Indiana Government Center and is midway through his 3<sup>rd</sup> year of ABC schooling for his plumbing journeyman diploma. Donald is currently registered with the City of Indianapolis as a plumbing apprentice and has filled the role of plumbing repairs at the IGC since joining this service team.

1. Please give an example of a recent post-implementation success where respondent provided large maintenance and repair services for HVAC, electrical, plumbing, and kitchen equipment at the local, state, or federal level. If the respondent has not worked with the public sector prior, please describe a successful maintenance program elsewhere.

Edwards Electrical and Mechanical recently returned as maintenance and service provider for the Indiana State Museum after the 'low bid' contractor walked off the job after one contract year.

The Museum's HVAC equipment was left in poor condition and several other systems were also left unmaintained in order to salvage a sinking contract.

Edwards stepped back in at the request of the Indiana State Museum administration with a price tiered contract agreement that provided the Museum with the necessary staffing and service with a cost savings in the initial phase to allow them to recover from the lack of maintenance from the previous year as well as ride out the term of warranties that were in place.

The contract was approved without hesitation by the Museum board and Edwards began immediately on a continual rotation preventative maintenance program to bring the buildings systems back to full functionality.

The State Museum has seen increased value for dollar spent under the current contract structure and management that far exceeds any previous maintenance agreement that it had in place with the "you get what you pay for" low bid contractor.

2. Please describe your companies, more specifically the individuals who will work onsite, abilities to operate PMC-2000 and how it will be used successfully to implement a maintenance strategy.

*Thomas Chadwick*

Thomas has been utilizing PMC-2000 for more than seven years and is quite familiar with each aspect of PMC-2000's capabilities.

*Mike Carroll*

Mike attended the PMC-2000 training course in 2007 and is familiar with processing of work orders within the main system.

Our goal is to utilize PMC-2000 in as many areas as are currently enabled through the onsite installation. This will include, but is not limited to:

- Automatically or manually generate work orders, purchase requisitions and purchase orders.
- Schedule maintenance by meter.
- Manage inventory and warranties.
- Keep a detailed maintenance and cost history for equipment.

**Total Evaluation Price**

	Cost	
Labor	\$	1,136,283.20
Materials	\$	192,000.00
Sub-Contractors & Contracts	\$	81,798.00
Other	\$	435,700.00
<b>Total Maintenance &amp; Repair</b>		
<b>Contract Price</b>	\$	1,845,781.20

Contractor shall be paid monthly in arrears the sum of One Hundred Fifty Three Thousand Eight Hundred Fifteen dollars and Ten cents (\$153,815.10)

Any unspent funds or savings by Contractor through reduced costs from subcontractors shall be reviewed with owner and deducted from final monthly invoice or applied towards owner directed improvements or upgrades to building systems or equipment that the Contractor is responsible for in the agreement. The decision will be at the discretion of the owner.