



**focus on energy**<sup>sm</sup>

Partnering with Wisconsin utilities

**REQUEST FOR QUALIFICATIONS**

Issued by Focus on Energy

for

**Training Vendor / Instructors**

Proposal Due:

**December 7, 2016 (by 5:00 p.m. CST)**

## **1.0 GENERAL INFORMATION**

The Focus on Energy Program Administrator, Chicago Bridge & Iron (CB&I) is issuing this Request for Qualifications (RFQ) to select independent training vendors who can deliver energy efficiency, industrial process and technical training courses for the Focus on Energy Program. The purpose of this document is to provide interested training vendors and instructors with information to enable them to prepare and submit qualifications to perform training functions on behalf of Focus on Energy.

Focus on Energy is Wisconsin utilities' statewide energy efficiency and renewable resource program funded by the state's investor-owned energy utilities, as required under Wis. Stat. §196.374(2)(a), and participating municipal and electric cooperative utilities. Focus on Energy has been in existence since 2001 providing electric and natural gas programs to Wisconsin residents and businesses.

## **2.0 Request for Qualifications**

(CB&I) is requesting qualifications from individuals or organizations to provide services as training vendors on behalf of the Focus on Energy Training Program. This qualification process will identify individuals or organizations with appropriate educational background, work experience in energy efficiency, experience as training consultant(s), references and professional skills required to provide energy efficiency training sessions for the Focus on Energy Program.

A qualified training vendor is able to:

- Under the direction of the Program Administrator, develop training course(s) to educate and instruct end customers and Trade Allies across Wisconsin regarding energy efficiency concepts, energy efficient technologies and energy management concepts. (Trade Ally means any independent organization that participates in the Program to enable the delivery of the Program to end use Customers including, but not limited to, HVAC, insulation, and electrical contractors, builders, and retailers.)
- Promote the Focus on Energy program through training course curricula targeting energy efficiency improvements via low-cost, no-cost or equipment upgrades by end customers and/or via Trade Ally recommendations to end customers.
- Facilitate training program courses as identified by the Focus on Energy.

The approved training vendor will work directly with the Program Administrator to deliver energy efficiency training courses. Focus on Energy Training Programs provide participants with the ability to identify, justify and implement energy efficient projects. Attendance at trainings by end customers or Trade Allies will be paid for by the participant or sponsored by an Investor Owned Utility, Retail Electric Cooperatives or Municipal Electric. Training Program materials created for the Focus on Energy Training Program, including, but not limited to, slide decks, case studies, project examples, class exercises, Program descriptions, fact sheets, brochures and advertisements will be provided in advance to CB&I as the Program Administrator, and reviewed, prior to course delivery. The vendor will receive payment from CB&I on a per course basis. The approved vendor(s) are not guaranteed any minimum amount of work or fees.

## **3.0 Qualifications Requested**

Training vendors who would like to be selected to participate in the Focus on Energy Training Program shall provide proof of qualifications to CB&I. Training vendors who were previously

selected to facilitate Focus on Energy courses will be required to resubmit documentation requested in the RFQ on an annual basis. CB&I reserves the right to request additional details or documentation regarding facilitator experience based upon specific courses or training needs. All vendors must provide electronic copies of the following: (not to exceed 3 pages)

- A resume/biography of the individual(s) who would facilitate training courses
- Summary of experience within the energy efficiency field

Vendors must provide additional information in the following categories (not to exceed two-pages) for consideration as an approved training vendor for the Focus on Energy Training Program:

- Comparable training experience
- Relevant training experience in energy efficiency
- Company background and history

Appendix reference material to include:

- Two letters of reference from past clients or customers
- IRS W-9 form. A signed Focus on Energy Request for Qualifications Response Form (see page 4)

Submitted requests will be reviewed by CB&I to determine if all general qualification requirements are met. Failure to meet all such qualifications may result in rejection of the request.

CB&I will inform all training vendors who respond to this RFQ, via email to the primary point of contact, whether they became qualified. By submitting a response to this RFQ, prospective training vendors agree to the terms and conditions contained in this RFQ and Attachment A; any exceptions must be expressly stated.

#### **4.0 Terms and Conditions of Submission**

All responses, along with all other documentation, submitted in connection with this RFQ shall become and will remain the property of Focus on Energy and will not be returned to the training vendor. By submitting the documents pursuant to this RFQ, training vendors acknowledge and agree that (a) they will be fully bound by the terms and conditions of this RFQ and the provisions contained in Attachment A, (b) they have had the opportunity to seek independent legal advice of their own choosing with respect to this RFQ and their responses, (c) they have obtained all necessary authorizations, approvals and waivers, if any, required by them as a condition of submitting their responses, (d) they are submitting their responses subject to all applicable laws, and e) they have not engaged and will not engage in communications with any other training vendor regarding participating in this RFQ process or resulting contracts.

#### **5.0 Subcontract**

All training vendors selected to deliver the Focus on Energy Training Program are required to sign the Consulting & Service Agreement which is attached hereto as Exhibit A with CB&I and adhere to the [Focus on Energy Policy Manual](http://www.focusonenergy.com) (www.focusonenergy.com).



## Focus on Energy Training Program Request for Qualifications Response

Individuals or companies interested in providing services through the Focus on Energy Training Program must complete this form and attach additional documentation as outlined in the “Qualifications Requested” section of the Request for Qualifications Response document.

Materials can be submitted electronically to: [rfp@focusonenergy.com](mailto:rfp@focusonenergy.com) or mailed to CB&I, 1 S. Pinckney Street, Ste. 340, Madison, WI 53703. *No RFQ responses will be received after the due date and time.*

Vendor Information						
Contact Name			Title			
Company Name						
Address						
City		State		Zip Code		
Phone #			Fax #			
Email Address						
County			Website URL			
Business License #			Date Established			
<b>Business Classification (Select One)</b>						
<input type="checkbox"/>	Individual/ Sole Proprietor	<input type="checkbox"/>	Corporation	<input type="checkbox"/>	Limited Liability Company	
<input type="checkbox"/>	Partnership	<input type="checkbox"/> Other				
<b>Federal Tax Identification (Select One)</b>						
<input type="checkbox"/>	Social Security #:			<input type="checkbox"/>	Employer ID #:	
<b>Vendor Employee Information</b>						
	<b># Full Time Employees</b>		<b># of Part Time Employees</b>			
Administrative Support						
Energy Efficiency Installation						
Other						
Total Number Employees						
<b>Company Service Area (provide a list of counties/cities in which your company can provide timely service)</b>						
Counties/Cities:						

I have attached the necessary qualification documents as outlined in “Qualifications Requested”. I hereby certify that I am authorized by the above named company to submit this proposal and all of the above information is true and correct to the best of my knowledge.

Name (Please print)	Title
Signature	Date

# ATTACHMENT A

## Consulting and Service Agreement

IN CONSIDERATION OF the mutual covenants contained in this Agreement, CB&I Environmental & Infrastructure, Inc., ("CB&I"), and \_\_\_\_\_("Consultant"), hereby agree as follows:

- SERVICES.** CB&I hereby retains Consultant to render consulting services or technical assistance to CB&I, and Consultant hereby agrees to provide such services as set forth in Attachment One to this Agreement or set forth in a Purchase Order pursuant to this Agreement or such other services as CB&I may from time to time request during the term of this Agreement. Consultant agrees to furnish all materials, supplies, apparatus, appliances, equipment, fixtures, tools, implements and all labor, supervision, transportation, utilities, storage, and all other services to perform and complete the work. The term of this Agreement is set forth on Attachment A or in a Purchase Order; provided, however, that CB&I may terminate this Agreement without cause upon five (5) days' prior written notice to Consultant. In case of such termination, Consultant will be paid for services properly performed up to the date of termination.
- LIMITS ON SERVICES.** The CB&I representative designated in Attachment One or the Purchase Order or such other representative as CB&I may from time to time designate will arrange the number of hours or value of consulting services Consultant will provide during each week or other specified period. The number of hours per week or value of consulting services provided by consultant shall depend upon CB&I's need for such services. Consultant shall not exceed the prescribed maximum number of hours or value without the express written consent of the authorized CB&I representative and Consultant shall not be entitled to any payments in excess of the prescribed maximum value without CB&I's express written consent.
- INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that neither it nor its employees or subcontractors or their respective employees are servants, agents or employees of CB&I. The actual performance and superintendence of all work hereunder shall be by Consultant, under the control and direction of Consultant as to the details of the work; provided, however, CB&I, being interested in the results to be obtained, is authorized to designate a representative or representatives who shall at all times have access to the location where the work is to be performed for the purposes of observing and inspecting same, and, provided further, that such work shall be performed in accordance with this Agreement. Consultant understands that CB&I assumes no liability as an owner or operator of a site, or as an arranger for the treatment, transportation, or disposal of any material, or as owner or possessor of any material, with respect to which Consultant is to perform work. Consultant agrees to take no action inconsistent with the foregoing.
- COMPENSATION.** CB&I agrees to compensate Consultant for the consulting services provided by Consultant under this Agreement at the rates specified in Attachment One based on the actual number of hours of consulting services provided by consultant pursuant to Paragraph 2. Consultant acknowledges that the compensation payable hereunder may be subject to 20% federal backup withholding tax and/or other deductions as required unless CB&I has an IRS Form W-9, "Payer's Request For Taxpayer Identification Number and Certification" or other appropriate forms on file for Consultant. Consultant shall not, as a result of this Agreement, be entitled to any employee or fringe benefits which CB&I provides to its employees. CB&I may, but shall not be obligated to, provide Consultant with office space, secretarial or other clerical services. Expenses incurred in performing Consultant services will not be reimbursed and are for Consultant's own account unless previously authorized in writing by the CB&I representative. Unless otherwise provided herein or in the Purchase Order (such as when the work is for a firm fixed price, in which case Consultant will invoice CB&I

upon successful completion of the Consultant's services), Consultant will invoice CB&I every thirty (30) days until substantial completion, at which time CB&I must receive final billing within thirty (30) days thereof. In the event CB&I does not receive the final billing within thirty (30) days of substantial completion, CB&I shall have no obligation to honor such invoices. CB&I's standard payment terms are net sixty (60) days.

**5. INDEMNIFICATION.**

- A. As separate consideration of receipt by Consultant from CB&I of one hundred dollars (\$100) for each Purchase Order, Consultant shall defend, indemnify, and hold harmless CB&I, and its Client, including the parent and affiliates of each, and their respective directors, officers, agents, and employees ('CB&I Indemnitees') from and against all liabilities, losses, damages, demands, claims, suits, costs and expenses, including reasonable legal fees and other expenses of litigation arising out of or related to Consultant's performance or non-performance pursuant this Agreement and for all injuries to and death of persons and for loss of or damage to property arising out of or related to services performed by Consultant, its agents, or employees, or subcontractors,
- B. In addition, Consultant agrees to defend, indemnify and hold harmless the CB&I Indemnities against any and all liabilities, losses, claims, suits, costs, and expenses arising from infringement or alleged infringement of any and all intellectual property rights of others (including patents) covering apparatus, machinery, equipment, methods, processes, and compositions of any material installed and used by Consultant or its subcontractors in any and all operations under this Agreement.

**6. INSURANCE.** Consultant shall, at all times while operations are conducted hereunder, maintain the following insurance coverages:

- A. Worker's Compensation, providing statutory benefits and Employer's Liability Insurance covering the employees of the Consultant engaged in operations hereunder in compliance with the state having jurisdiction over each employee. The limit for Employer's Liability shall be \$1,000,000 per occurrence.
- B. Comprehensive General Liability Insurance, including products, contractual, and automobile liability with a combined single-limit occurrence of \$1,000,000 for bodily injury and property damage. Such policy shall be endorsed to cover liability of Consultant under Section 5 hereof and automobile liability insurance shall include non-owned and hired vehicle coverage.
- C. Professional errors and omissions coverage with a limit of \$1,000,000 per occurrence.
- D. Such other insurance as deemed necessary by CB&I in any Purchase Order issued hereunder to cover the risks inherent to the work being performed by Consultant.

The insurance policies provided for in B and D shall name the CB&I Indemnities as an additional insured, shall be primary as to any other valid insurance available to CB&I, and shall contain a standard cross liability and endorsement or severability of interests clause and provision stating that Consultant's insurers waive all rights of subrogation in favor of CB&I.

CB&I reserves the right to require additional insurance coverage or additional coverage amounts for the policies identified above based on its evaluation of specific work requirements and the work to be performed by Consultant.

Certificates evidencing the required insurance coverage and endorsements (including that required by Section 22 hereof) shall be delivered to CB&I prior to commencement of work and shall provide

that any material change in or cancellation of any policy(ies) under which certificates are issued shall not be valid as respects CB&I until CB&I has received thirty (30) days' written notice of such change or cancellation. If any of Consultant's insurance policies contain a pollution or asbestos exclusion, or other exclusion relevant to the Consultant's work hereunder, these shall be stated on the certificate of insurance or shall be deemed waived. Such certificates shall provide that CB&I shall be an additional insured for two (2) years following completion of Consultant's work.

Consultant hereby waives all subrogation rights against CB&I and CB&I's client to the extent of the risk coverage by any insurance policy required hereunder for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone or perils arising out of this Agreement. The Consultant shall require similar waivers from all of its subcontractors. This provision applies to all policies of insurance required under this Agreement or any Purchase Order (including workers' compensation, professional liability and general liability).

7. **CONFIDENTIALITY AND REGULATIONS.** Consultant agrees to maintain in confidence and not to disclose to others, without the written permission of CB&I, all information received or made available to Consultant from CB&I, its client, its or their respective parents, subsidiaries, agents, or employees, except information which was known to Consultant prior to acquisition hereunder, or which without fault of Consultant becomes generally known to the public, or is acquired by Consultant from a third party having a legal right to disclose the same. All information received or developed hereunder is presumed to be confidential and not to be disclosed to others unless otherwise stated in writing by CB&I. Consultant further agrees not to use any information received or developed hereunder for any purpose except in furtherance of this Agreement. Upon termination under any circumstances, Consultant shall transfer to CB&I all data and information, including copies of same in its possession relating to the work hereunder. Consultant also agrees to not compete with CB&I for any specific project in which Consultant has performed services for CB&I hereunder.
8. **INTELLECTUAL PROPERTY RIGHTS.** CB&I shall retain the right to any work, submissions, designs, inventions, applications, improvements, know-how, or discoveries made or conceived by Consultant resulting from the performance of this Agreement. Consultant agrees to promptly disclose any such invention, application, improvement, know-how, or discovery to CB&I. With respect to any such invention, improvement, or discovery, Consultant further agrees that it will cooperate with CB&I, its officers, and agents in obtaining patents, trademarks, copyrights, or other appropriate protection on such inventions, improvements, know-how, or discoveries in the name of and for the benefit of CB&I in the United States and foreign countries, to the extent that CB&I considers desirable, and in executing all patent applications, assignments, and other instruments necessary to procure such patents and to vest title thereto in CB&I.
9. **CONFLICT OF INTEREST.** Prior to accepting an assignment under this Agreement, Consultant must declare any direct, indirect, or potential conflicts with its obligations under this Agreement, and Consultant shall provide to CB&I from time to time such information as CB&I shall request to evaluate the presence, nature, and extent of any direct, indirect, or potential conflict of interest. During the period of this Agreement, Consultant agrees to notify CB&I of any work Consultant performs for any CB&I client where the Consultant has previously worked for the client under similar circumstances.
10. **NO ASSIGNMENT OR SUBCONTRACTING.** Consultant shall not subcontract any portion of its duties hereunder, or assign or delegate any of its rights or obligations hereunder, without the prior written consent of CB&I.
11. **TAXES.**
  - A. Except for sales and use tax, if applicable, the price for each time or service covered by this Agreement is inclusive of all other taxes, fees, excises, and/or changes which are now or may

hereafter be imposed (whether by federal, state, municipal, or other local public authority) with respect to the manufacture and sale of such items, any services to be rendered by Consultant hereunder, or the Purchase Order itself. Consultant shall separately state on its invoice the amount of sales or use tax applicable to the sale of the items or services covered by this Agreement.

- B. Consultant is an independent contractor as provided in Section 3 above. However, in the event that Consultant is subsequently determined to be an "employee" by the Internal Revenue Service (IRS) or other federal, state, or local government or its agencies, Consultant will be responsible for all taxes, withholding, fees, penalties, interest, or any other cost imposed by such government or agency of such taxes, withholding, fees, penalties, interest or other cost as a result of the services provided under this Agreement. Consultant will reimburse CB&I for all such costs and expenses immediately upon demand.

- 12. COMPLIANCE WITH LAW AND EQUAL OPPORTUNITY.** Consultant shall observe and abide by and perform all of its obligations hereunder in accordance with all applicable laws, rules, and regulations or all governmental authorities having jurisdiction, including the federal Occupational Safety and Health ACT (OSHA). Consultant shall obtain all necessary licenses and permits and similar authorizations from government authorities required to perform its obligations hereunder, and shall give all notices required by applicable laws, ordinances, rules, regulations, and restrictions. Unless this Agreement is exempted by law, Consultant shall comply with Executive Order 11246, the Rehabilitation Act of 1973, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, including, without limitation, those provisions, rules, and regulations issued pursuant to said Order and Acts, as amended. Consultant shall furnish to CB&I from time to time upon request written proof of licenses, permits, and certifications required under applicable law.
- 13. LIENS.** Consultant shall neither file nor permit any laborer, materialmen, mechanics, or other lien to be filed or otherwise imposed on any part of the work or the property on which the work is performed. If any laborer, materialmen, mechanics, or other similar lien or claim thereon is filed and Consultant does not cause such lien to be released and discharged forthwith or file a bond in lieu thereof, CB&I shall have the right to pay all sums and post all bonds necessary to obtain such release and discharge and deduct all amounts so paid from the contract price or recover the same from Consultant, and any further payment shall not be due until all such claims or liens have been satisfied, released, and/or discharged of record. As separate consideration of receipt by Consultant from CB&I of one hundred dollars (\$100) for each Purchase Order, Consultant shall indemnify and hold harmless CB&I and CB&I's Client from, and defend their interests against any and all liens or similar claims against the Property filed by a Subcontractor in connection with the Work including all expenses and attorney's fees incurred in discharging any liens or similar encumbrances.
- 14. STANDARD OF CARE.** Consultant guarantees all work and services rendered under this Agreement, and any Purchase Order(s), will be performed in accordance with the highest degree of care and skill exercised by consulting firms engaged in similar work at the time and location the services are performed. Consultant also guarantees all equipment and materials furnished pursuant to the Agreement against defects in construction and/or workmanship for a period of one (1) year following completion of its work and acceptance by CB&I, except where a longer guaranty is provided by a supplier or manufacturer of such equipment or required pursuant to the terms of any agreement entered between CB&I and a customer of CB&I relating to the work performed. If requested by CB&I, Consultant shall replace or repair any equipment required pursuant to the terms of any agreement entered between CB&I and a customer of CB&I relating to the work performed or re-perform any defective services at no cost to CB&I. If requested by CB&I, Consultant shall replace or repair any equipment provided or defective work performed. In the event Consultant fails to diligently proceed to cure the nonconformity, CB&I may do so and all costs incurred shall be for Consultant's account.



- 15. DEFAULT.** If Consultant fails to carry out the work diligently; or if consultant shall become insolvent; or if insolvency, receivership, or bankruptcy proceedings shall be commenced by or against Consultant; or if Consultant shall make an assignment for the benefit of creditors; or if Consultant shall materially default in its performance of any provision of this Agreement, then CB&I and Consultant shall have the following rights, obligations and duties:
- A. CB&I, without prejudice to any other right or remedy, may terminate this Agreement forthwith on written notice to Consultant.
  - B. Consultant shall, if requested by CB&I in writing, withdraw from the premises and assign to CB&I such of Consultant's subcontracts as CB&I may request and remove such materials, equipment, tools, and instruments used by Consultant in the performance of the work as CB&I may direct.
  - C. CB&I shall have the right, either with or without using Consultant's materials, equipment, tools, and instruments to complete the work itself or with or through third parties.
  - D. CB&I shall be entitled to withhold the payment of any further sums due to Consultant under this Agreement, except such final balance as may be due pursuant to the following paragraph.
  - E. Upon final completion of the work, CB&I shall determine the amount, if any, of damages suffered by CB&I, the amount to which Consultant is entitled for its performance of the work up to the date of such termination and the amount, with due regard to the circumstances of terminations, sufficient to equitably compensate Consultant to CB&I for the use of Consultant's materials, equipment, tools, and instruments; and upon such determination, CB&I shall pay the net amount which may be due, if any, in accordance with such determination.
- 16. INTERPRETATION AND SEVERABILITY.** This Agreement shall be governed by and construed in accordance with the rules and laws of the State of Louisiana without regard to its conflict of law provision. Every part, term, or provision of this Agreement shall be enforced to the maximum extent permitted by law and if any part, term, or provision is unenforceable, it shall be deemed automatically redrawn to the extent necessary to be enforceable. Further, notwithstanding any possible future finding by duly constituted authority that a particular part, term, or provision is invalid, void, or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms, and provisions shall not be affected thereby.
- 17. PURCHASE ORDER.** When this Agreement is fully executed by the parties hereto, Consultant will be issued a Purchase Order by CB&I to facilitate processing of invoices. The terms and conditions of this Agreement shall apply to each such Purchase Order and shall take precedence over any conflicting similar term and condition thereon. All other terms and conditions of the Purchase Order(s) apply to this Agreement and are part hereof. Any invoices or correspondence to CB&I must reference that Purchase Order number.
- 18. ATTORNEY FEES AND NOTICES.** In the event of any action or proceeding to construe or enforce this Agreement or to enjoin the breach hereof, if CB&I is the Prevailing Party, it shall be entitled to recover its costs of investigation and litigation, including reasonable attorney fees, costs and expenses. For these purposes, CB&I will be considered the "Prevailing Party" if it obtains a litigation or arbitration result in its favor. Any notices required or permitted to be sent may be delivered personally, or by electronic mail, overnight delivery service, or certified mail-return receipt requested to the address set forth below or such other addresses as either party may designate by written notice to the other.
- 19. TIME.** Time is of the essence to CB&I. Tender of goods or services shall be made in the manner and on the date(s) specified in Attachment One or in any Purchase Order issued pursuant hereto.

20. **ENTIRE AGREEMENT.** This Agreement and the attachment(s) hereto, and any Purchase Order(s) issued thereunder contain the entire Agreement and understanding of the parties with respect to the matters contained herein and cannot be amended or modified except in a writing signed by Consultant and CB&I.
21. **EXCUSABLE DELAY.** Neither party shall be liable for damages for delay in delivery or performance arising out of causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, and unusually severe weather. Consultant will notify CB&I in writing five (5) days after the beginning of any such cause which would affect its performance.
22. **RISK OF LOSS.** Consultant shall bear all risk of loss, theft, damage, or destruction to (1) the items covered by this Agreement and/or (2) the items covered by any Purchase Order issued to Consultant, and/or (3) Consultant's equipment, appliances, tools, facilities and materials necessary to commence and complete the work on CB&I's property. Consultant will at all times carry insurance ensuring against such destruction in the face amount, not less than the replacement value of said items.
23. **LIMITATION OF LIABILITY. IN NO EVENT SHALL CB&I BE LIABLE FOR ANY INCIDENTAL, INDIRECT IMPACT OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES IN EXCESS OF THE COMPENSATION PAID BY CB&I HEREUNDER.**
24. **DISPUTES.** In the event of any dispute between Consultant and CB&I due to any conduct of CB&I's Client or involving the Contract Documents, Consultant shall be bound to any disputes procedure to which CB&I is bound under the Contract Documents with its Client and to any decision rendered thereunder, whether or not Consultant elects to participate in such procedure. Consultant shall bear the burden of proving its claims and refuting claims made against it through CB&I by CB&I's Client and shall bear all of its costs, expenses and attorneys' fees in connection therewith.
25. **ARBITRATION.** Except as set forth in Paragraph 24 above, any controversy, dispute, or claim arising out of or relating to this Agreement or the breach thereof, not settled through negotiations, may be submitted to mediation or other alternative dispute resolution procedure upon mutual agreement of the parties. Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach thereof, not settled through negotiation or other mutually agreed alternative dispute resolution procedure, shall be finally settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules or as otherwise mutually agreed. This agreement to resolve any disputes by binding arbitration shall extend to claims against any shareholder, any brother-sister company, subsidiary or affiliates, any officers, directors, employees or agents of any of the above and shall apply as well to claims arising out of state and federal statutes and local ordinances as well as to claims arising under the common law. The parties intend that this provision to arbitrate be valid, enforceable and irrevocable and that it provide the exclusive remedy with respect to all disputes with its scope. Any arbitration and award hereunder shall be final and binding upon the parties, a judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Unless otherwise mutually agreed by the parties, such arbitration will be conducted in New Orleans, Louisiana.
26. **ADDITIONAL PROVISIONS APPLICABLE UNDER U.S. GOVERNMENT OR COMMERCIAL PRIME CONTRACTS OR SUBCONTRACTS.** If this Agreement or any Purchase Order covers work under a contract between CB&I and any agency, agent or prime CONTRACTOR of the United States Government, the additional provisions throughout this Article are made a part hereof, and shall apply to this agreement and/or any Purchase Orders issued pursuant hereto.

## **26.1 DEFINITIONS**

As used throughout these provisions, the following terms shall have the meanings set forth below:

- 1.1 "Government" means the United States of America and its agencies or agents.
- 1.2 "CONTRACTOR" and "SUBCONTRACTOR", and "CONSULTANT" shall have the same meaning.
- 1.3 "Client" means the Government Agency, Agent, or Subcontractor with whom CB&I Environmental & Infrastructure, Inc. ("CB&I") has executed a contract.
- 1.4 "Client Contract" means the prime contract between CB&I and its client.

**26.2 GOVERNMENT AUDIT RIGHTS.** Any agency of the Government, which is afforded audit rights under the Client Contract, shall be entitled to the same rights under this Consulting and Service Agreement.

**26.3 INDEMNIFICATION.** CONTRACTOR shall defend, indemnify, and hold harmless the CB&I indemnities, to the full extent permitted by applicable law, from and against any and all claims, damages, demands, suits, actions, judgments, liabilities, defaults, or costs and expenses, including court costs and attorney's fees, but only to the extent arising directly or indirectly out of or related to CONTRACTOR's performance hereunder related to the following:

- (a) Any assertion that any costs, price, or fee included in or incurred under the Client Contract or this Consulting and Service Agreement should or will be reduced as a result of, or arising out of facts attributable to, cost or pricing data furnished or required to be furnished by CONTRACTOR which was not complete, accurate, or current.
- (b) A violation by CONTRACTOR or any applicable local, state, or federal law, rule or regulation.
- (c) Any penalty or fine incurred or assessed which is caused by CONTRACTOR, its employees, agents, suppliers, subcontractors, or consultants.
- (d) Any failure by CONTRACTOR to provide any reasonably required certification or supporting information required hereunder or under applicable laws and regulations.
- (e) The provision by CONTRACTOR of any false or erroneous certification or supporting information required hereunder or under applicable laws and regulations.
- (f) Any false claims by CONTRACTOR under this Subcontract, or any misrepresentation of facts, or fraud, under or in connection with appeals made under the article entitled "Applicable Laws and Disputes."

Any liabilities incurred shall not be deemed or considered "allowable costs" for purposes of this Consulting and Service Agreement.

**26.4 PUBLIC DISCLOSURES.** CONTRACTOR shall make no public announcements or disclosures relative to information contained in or developed under this Consulting and Service Agreement except as authorized in writing by the CB&I.

**26.5 APPLICABLE LAWS AND DISPUTES WITH U.S. GOVERNMENT.** If a decision or a question is issued by an authorized representative of the Client under the Client Contract and the decision relates to this Consulting and Service Agreement, said decision, if binding upon CB&I under the Client Contract, shall also be binding upon the CONTRACTOR with respect to this Consulting and Service Agreement. However, if CONTRACTOR is affected by such decision, and if CB&I elects not to appeal such decision under the "Disputes" clause of the Client Contract, CB&I shall notify CONTRACTOR. After receipt of such notice by CONTRACTOR, if CONTRACTOR submits a timely written request to CB&I to appeal such decision, CB&I will appeal at CONTRACTOR's cost and expense.

For any appeals or claims to be submitted in excess of \$50,000, CONTRACTOR shall certify to CB&I, as to its portion of the claim that: (i) the claim is made in good faith; (ii) the supporting data is accurate to the best of CONTRACTOR's knowledge and belief; and (iii) the amount requested accurately reflects the Consulting and Service Agreement adjustment for which CONTRACTOR believes the Client is liable.

If any such appeal is denied or otherwise decided adversely to CONTRACTOR's interest, or if CONTRACTOR is otherwise affected by any decision made by any representative of the Client on any question of fact and/or law arising under the Client Contract which is also related to this Consulting and Service Agreement, from which an appeal under the "Disputes" clause in the Client Contract is not available, said decision, if binding upon CB&I under the Client Contract, shall in turn be binding upon CB&I and CONTRACTOR with respect to such questions as it relates to this Consulting and Service Agreement; provided, however, if CONTRACTOR is adversely affected by any such decision, and if CB&I elects not to bring suit against the Client with respect to such decision, CB&I shall notify CONTRACTOR.

If CONTRACTOR submits a timely written request to CB&I to bring suit against the Client, CB&I shall initiate such suit. If CB&I brings suit against the Client with respect to any such decision, whether at its election or at CONTRACTOR's request, a final judgment in any such suit, if binding upon CB&I under the Client Contract, shall in turn be binding upon CB&I and CONTRACTOR with respect to the question decided as it relates to this Consulting and Service Agreement.

If any such appeal is taken or brought by CB&I, whether at its election or at CONTRACTOR's request, CONTRACTOR shall assist CB&I in its prosecution thereof to the extent CONTRACTOR's interest may be affected. To the extent requested by CB&I, CONTRACTOR shall prosecute for CB&I any appeal or suit taken or brought at CONTRACTOR's request and, in such event, CB&I shall assist CONTRACTOR in every reasonable manner.

All costs and expenses incurred by CONTRACTOR and CB&I in prosecuting any appeal or suit taken or brought at CONTRACTOR's request shall be paid by CONTRACTOR.

If as a result of any decision or judgment which is binding upon CONTRACTOR and CB&I, CB&I is unable to obtain reimbursement from the Client under the Client Contract, or is required to refund or credit to the Client any amount with respect to any item of cost or fee for which CB&I paid CONTRACTOR, CONTRACTOR shall, on demand, promptly repay such amount to CB&I, together with applicable interest and penalties (if any).

The rights and obligations herein shall survive completion and final payment under this Consulting and Service Agreement.

Pending the resolution of any dispute, CONTRACTOR shall proceed as directed by CB&I in writing.

**26.6** 26.6 CLIENT CONTRACT PROVISIONS. The provisions of the attached Applicable Client Contract Clauses shall apply to this Consulting and Service Agreement. In interpreting these provisions, the appropriate modifications to make such provisions applicable in all respects to this Consulting and Service Agreement shall be deemed to have been made and the CONTRACTOR assumes toward CB&I under this Consulting and Service Agreement all such obligations and duties as Company assumes toward the Client and the government under such provisions.

**27. RIGHTS CUMULATIVE; WAIVER OF TERMS AND CONDITIONS; SURVIVAL.** All of CB&I's rights and remedies are cumulative with and nonexclusive of any and all rights and remedies available hereunder, at law, or otherwise. The failure of CB&I in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in this Agreement or the waiver by CB&I of any breach of the terms or conditions of this Agreement shall

not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred. The terms and conditions of this Agreement shall survive the termination of this Agreement.

**IN WITNESS WHEREOF, CB&I and Consultant have caused this Agreement to be executed by their duly authorized officers as of \_\_\_\_\_, 20\_\_.**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Tax Identification Number:** \_\_\_\_\_

**Social Security Number:** \_\_\_\_\_

**Employers Identification Number:** \_\_\_\_\_

## **EXHIBIT A Consulting and Service Agreement**

### **I. AFFIRMATIVE ACTION/EQUAL OPPORTUNITY**

- A. The equal opportunity clause prescribed by Executive Order 11246, as amended by Executive Order 11375, as implemented in Title 41 CFR, Section 60-1.4 is incorporated herein by specific reference and is applicable to orders amounting to \$10,000 or more.
- B. The affirmative action clause prescribed by the Vietnam Era Readjustment Assistance Act of 1974 and set forth in Title 41 CFR, Section 60-250.4 relating to the affirmative action program for disabled veterans and veterans of the Vietnam Era is incorporated herein by specific reference.
- C. The minority business enterprise's requirements of Executive Order 11625 are incorporated herein by specific reference.
- D. The affirmative action clause prescribed by Executive Order 11758 and set forth in Title 41 CFR, Section 60-741.4 relating to the affirmative action program for the handicapped is incorporated herein by specific reference.

### **II. CERTIFICATIONS**

#### A. OCCUPATIONAL SAFETY AND HEALTH ACT

Contractor shall observe and comply with the Federal Occupational Safety and health Act of 1970 and with all safety and health standards promulgated by the Secretary of Labor under authority therefor, and with all applicable state occupational safety and health laws and regulations. Contractor and any subcontractor hereunder shall not require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety. This provision shall also be included in any contracts with subcontractors.

#### B. AFFIRMATIVE ACTION PLAN

If Contractor has 50 or more employees and the contracts of Sale are in an amount of \$50,000 or more, the Contractor may be required under Section 60-1.40 of Title 41 CFR to develop a written affirmative action compliance program for each of its establishments. If the Contractor is so required, it agrees to do so within 120 days from the commencement of a contract and maintain such program until such time as it is no longer required by law or regulation.

### **III. PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

- A. *SEGREGATED FACILITIES*, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color religion, sex, or national origin because of written or oral policies or employees custom. The term does not include separate or single user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- B. The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- C. This clause shall be included in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**EXHIBIT B**

**Consulting and Service Agreement  
Additional Provisions Applicable to Electronic and Purchasing Card Transactions**

**1.0 DEFINITIONS:**

- 1.1 Electronic Transaction - Any transaction between Consultant and CB&I, which is completed through an email, fax, web application, phone, or Internet.
- 1.2 Electronic Signature - an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person (or entity) with the authority and intent to sign the record.
- 1.3 Purchasing Card Transaction - The use of an authorized GE Master Card charge card by an CB&I employee to obtain materials or supplies for the benefit of CB&I.
- 1.4 CB&I Electronic Signature - A signature transmitted electronically of the individual Buyer or Authorized Agent who is duly authorized to so act on a Purchase Order, other Contract or Subcontract document originating from an CB&I source system, computer, web, fax, or server. Said Signature shall be in a secure format that is password protected.

**2.0 USE OF ELECTRONIC TRANSACTIONS**

- 2.1 The parties agree that certain business conducted between the parties may be via an Electronic Transaction. In those circumstances, the CB&I Consulting and Service Agreement terms and conditions shall apply to each such transaction, including but not limited to electronically transmitted purchase orders, contracts, agreements, subcontracts or authorized Purchasing Card Transactions.
- 2.2 The parties agree to be bound by the contracts, purchase orders, agreements, or subcontracts with the transmission of an Electronic Signature and such signature shall attest to the validity of the documents so executed. CB&I's Electronic Signature shall be in accordance with the definition and format as described in 1.4 above. CONTRACTOR's Electronic Signature need only meet the requirements of the definition of 1.2 above, unless otherwise provided herein.

**IN WITNESS WHEREOF, CONSULTANT and CB&I agree to the foregoing and have caused these Addendums to be executed by their respective duly authorized representatives as of the date set forth below.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_