

**LAKE MICHIGAN AIR DIRECTORS CONSORTIUM**

# **PROCUREMENT POLICY MANUAL**

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Lake Michigan Air Directors Consortium  
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Rosemont, Illinois 60018**

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## **I. INTRODUCTION**

### **A. General Procurement Policy**

The purpose of this manual is to establish the policies and procedures of the Lake Michigan Air Directors Consortium (LADCO) concerning the acquisition of goods and services. LADCO's procurement policies and procedures are designed to ensure timely, efficient, and economic procurement, within the guidelines of good business practices. Unless stated otherwise, these policies and procedures will apply to all procurement actions irrespective of funding source and payment method. All purchases and procurements shall be reasonable and necessary (i.e., no unnecessary items shall be purchased).

### **B. Procurement Responsibilities**

It is the responsibility of the Executive Director to ensure the implementation of the policies and procedures in this manual.

Specific procurement responsibilities are identified in the LADCO By-Laws (March 1, 2004):

“The Treasurer shall receive and disperse funds in accordance with the policies determined by the Board of Directors.” (Article XI, Section 4)

“Some or all duties of the Secretary and the Treasurer may be delegated in writing to one or more of the executive staff.” (Article XI, Section 5)

In accordance with these provisions, the Executive Director has been authorized to write and sign checks drawn against the accounts of the Consortium, up to the amount of ten thousand dollars (\$10,000) per check, for the following administrative purposes:

- payment of contractors with whom the Board of Directors has negotiated a contract, provided that the contractors have performed the work to the satisfaction of the Board;
- payment of on-going or regularly recurring expenses of the organization, including, but not necessarily limited to, monthly rent, telephone charges, utility charges, and equipment rental fees;
- purchase of office supplies, postage, and other expendable items, as required;
- payment of salaries to any and all employees of the Consortium, as authorized by the Board of Directors;
- reimbursement of expenses incurred by Consortium employees, members of the Board of Directors, and any others, in performance of duties directly related to the work of the Consortium, provided that proper documentation is supplied;
- purchase of equipment necessary for the operation of the Consortium offices, including, but not limited to, facsimile machine, computer systems, copy machines, and office furniture; and
- any other incidental purposes as may arise for the orderly operation of the Consortium offices.

## **C. Regulating Authorities**

**1. LADCO Policy.** LADCO will follow the policies set forth in this manual, except as it is deemed necessary to adhere to certain rules set forth by a specific donor. In the case of conflict, LADCO will defer to the donor's policies except if it could prejudice or liable LADCO by such action. In such a situation, the Board of Directors will decide what further course of action to take. It is the responsibility of the Executive Director to bring any potential policy conflicts immediately to the attention of the Board of Directors.

**2. Federal Acquisition Regulations (FARs).** LADCO will adhere to the FARs, as appropriate (i.e., whenever LADCO receives a contract from a federal agency).

**3. Office of Management and Budget (OMB) Circulars.** As a non-profit organization and a recipient of federal grants, LADCO will adhere to and incorporate into its policy manuals, the following OMB Circulars:

- A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
- A-122, Cost Principles for Non-Profit Organizations.
- A-133, Audits of States, Local Governments, and Non-Profit Organizations.

**4. Implementation of OMB Circular A-110.** Through the Code of Federal Regulations (CFR), federal agencies provide guidance on its implementation of A-110. EPA implemented A-110 under 40 CFR Part 30, "Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations". This regulation will be followed because LADCO receives federal grants from EPA. For any awards received from other federal agencies, LADCO will adhere to that agency's implementation of A-110, as published in the CFR.

## **II. PROCUREMENT POLICIES**

### **A. Procurement Instruments**

LADCO uses three basic procurement instruments: (1) purchase orders, (2) consultant agreements, and (3) project contracts. It is LADCO's policy to not use the "cost-plus-a-percentage-of-cost" or the "percentage of construction cost" methods of contracting.

**1. Purchase Orders.** LADCO will use a purchase order to procure small quantities of office supplies and equipment. Purchases will be made from vendors offering the best value in price, support services, and delivery procedures. Purchase orders are not used for consultant services and subcontracts, travel advances and reimbursements, monthly or periodic bills (e.g., rent, telephone, utilities, equipment leases, and maintenance agreements), minor recurring expenses (e.g., courier services), and items paid from petty cash. Purchase orders will be prepared by the Administrator Assistant, with the approval of the Executive Director, and should clearly describe the item(s) being purchased, the estimated purchase amount, and the purpose of the purchase.

**2. Consultant Agreements.** Consultant agreements are contracts with individuals (i.e., consultants or independent contractors in business for themselves, not bona fide companies and not LADCO employees) for specialized services that cannot (either because of time or skill level) be performed by LADCO employees. LADCO will use a consultant agreement when the individual is performing a specialized type of work under a contract that clearly specifies the scope of work, rate and terms of compensation, time period of performance, deliverables, and terms of the agreement.

**3. Project Contracts.** Project contracts are contractual relationships for project-related services. LADCO will use a project contract when none of the other procurement instruments are appropriate and when the contract will have very specific responsibilities for a major component of LADCO's award. Normally, a project contract is for large dollar amounts where each party is seeking terms and conditions that will protect both parties. The project contract should clearly describe the scope of work, the rate and terms of compensation, the period of performance, deliverables, and terms of the agreement. LADCO's standard contract language shall generally be used in establishing project contracts (see Attachment A), although a simple letter contract, which specifies the scope of work, the rate and terms of compensation, the period of performance, deliverables and terms of the agreement, may also be used in certain cases (e.g., short-term or lower cost contracts).

## **B. Full and Open Competition**

LADCO strives to ensure full and open competition, guarantee the objective performance of the contract, and eliminate the possibility for unfair competitive advantages. Proposal selection shall be based on responsiveness to the solicitation, price, quality, deadlines of delivery, warranties, accountability and fulfillment of the service, and other relevant factors.

## **C. Use of Small, Minority, Women's, and Disadvantaged Businesses**

LADCO will make positive efforts to utilize small, minority business enterprises (MBE), women's business enterprises (WBE), and disadvantaged business enterprises (DBE), whenever possible. To further this goal, LADCO will:

- make information available to MBE/WBE/DBE companies and encourage and facilitate their participation;
- consider whether firms competing for larger contracts intend to subcontract with MBE/WBE/DBE companies;
- encourage contracting with a consortium of MBE/WBE/DBE companies when a contract is too large for one of them to handle individually; and
- use local Chambers of Commerce and their Small Business Administration to identify MBE/WBE/DBE companies.

## **D. Sole Source Basis**

LADCO reserves the right to award purchase orders, consultant agreements, or project contracts on a sole source basis when there is a predominate capability, significant prior knowledge of LADCO's programs and program philosophy, and a prior history of fulfilling

similar assignments successfully and timely. A written justification will be prepared and kept on file for any sole source procurement.

## **E. Code of Conduct**

LADCO requires full and open disclosure when dealing with procurement. As such, LADCO employees and members of the Board of Directors must avoid strictly any conflict of interest or the appearance of a conflict of interest. LADCO employees and the Board of Directors must at all times provide full disclosure of their actions or relationships with prospective vendors, contractors, or consultants. If there is the slightest doubt as to the propriety of a procurement action, then the Executive Director should be contacted immediately.

**1. LADCO Employees.** LADCO employees shall not engage in conduct resulting in a real, potential, or apparent conflict of interest. A conflict of interest may arise when any action by a LADCO employee, whether isolated, recurring, or continuous, is to the direct financial advantage of this employee, of their spouse, parent, or child. Employees shall not participate in the selection, final choice, or management of a contract, covered by donor funds, if a real, potential, or apparent conflict of interest would be involved. Such a conflict of interest would arise when any employee or any member of their family, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm/organization selected for a final contract. LADCO employees must at all times provide full disclosure of their actions or relationships with perspective vendors, contractors, or consultants. If any family member is to be employed or contracted, then prior approval from the Board of Directors is required.

LADCO employees shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, sub-recipients, parties of project contractors, or entities regulated by its member states. LADCO employees are, however, allowed to accept gifts at of a nominal face value not to exceed \$25. As appropriate, either the Executive Director or the Board of Directors will be responsible for determining the disciplinary action that will be imposed for any conflict of interest violations.

**2. Members of the Board of Directors.** The Board of Directors shall not engage in conduct resulting in a real, potential, or apparent conflict of interest. A potential conflict of interest may arise when action by a Board member, whether isolated, recurring, or continuous, is to the direct financial advantage of this individual, or their spouse, parent, or child. As appropriate, the Board of Directors will be responsible for determining the disciplinary action that will be imposed for any code of conduct violations.

### **III. POLICIES RELATED TO THE PROCUREMENT PROCESS**

#### **A. Purchasing Necessary Items**

Only items that are necessary for the efficient and effective operation of LADCO will be purchased. This pertains both to items purchased for the indirect operations of LADCO or direct project operations.

#### **B. Lease versus Purchase Analyses**

Where appropriate, an analysis will be conducted as to whether it is more cost effective or practical to purchase or lease a necessary item. This analysis will be performed by an appropriate member of the executive staff, the Executive Director, or the Administrative Assistant.

#### **C. Procurement Authority**

The authority to approve and execute procurement transactions on behalf of LADCO is as follows:

**1. Purchases and Contracts.** Specific procurement responsibilities are identified in the LADCO By-Laws (March 1, 2004):

“The Board of Directors may unanimously authorize any officer or officers, agent or agents to enter into a contract or execute or deliver any instrument in the name of and on behalf of the Consortium and such authorization may be general or confined to specific instances. In the absence of other designation, all contracts, grants, or similar instruments shall be executed in the name of the Consortium by the Chair and the Treasurer; and when so executed, no other party to such instrument or any third party shall be required to make any inquiry into the authority of the signing officer.” (Article XII, Section 1)

“The Treasurer shall receive and disperse funds in accordance with the policies determined by the Board of Directors. Some or all duties of the Secretary and the Treasurer may be delegated in writing to one or more of the executive staff.” (Article XI, Sections 4 and 5). In accordance with these provisions, the Executive Director has been authorized to write and sign checks drawn against the accounts of the Consortium, up to the amount of ten thousand dollars (\$10,000) per check.

**2. Prior Approvals.** Before proceeding with project purchases of goods or services, prior written approval may be required by the donor. For example, the federal government requires prior approval for all equipment purchases, and any subcontracts and subgrants that are awarded under a grant or contract. Prior written approval is considered to have been provided if the item of cost requiring prior approval has been detailed in the proposal’s project description and budget, and it is incorporated into the budget of the final award. (2 CFR 230.25(b)). Supplies, materials and general support service contracts, of a recurring, administrative nature, do not require prior approval. (2 CFR 215.25(c)(8)). Requests for prior approvals, when required, are submitted to the awarding federal agency by the Administrative

Assistant under direction of the Executive Director. No procurement will occur without the required prior approval.

#### **D. Procurement Records**

For each procurement action, the Administrative Assistant shall maintain a procurement file with the following information:

- signed copy of the procurement instrument (e.g., contract or purchase order);
- all amendments to the procurement instrument;
- copies of all bids and offers;
- all purchase specifications including delivery requirements;
- cost/price analysis that was the basis for the award cost or price;
- as applicable, a written justification as to why sole source or minimum competition was used;
- written explanation as to why the winning contractor was selected; and
- upon completion of the contract, written comments regarding the quality of the vendor's services and guidance and recommendations regarding potential future work.

As stated in the Property Management Policy Manual, the Administrative Assistant shall maintain a property control log.

#### **E. Cost/Price Analysis**

A cost/price analysis will be conducted for each procurement action. The cost analysis shall consist of a review and evaluation of each element of a cost proposal to determine its reasonableness, allocability, and allowability. The price analysis shall consist of comparing price quotations, market prices, and similar information. If a cost/price analysis is performed away from the LADCO offices (e.g., state employees on behalf of LADCO), then that procurement shall not be initiated until copies of the cost/price analysis has been received by LADCO.

#### **F. Formal Solicitation Process**

A formal solicitation must be conducted for each procurement greater than (or equal to) \$100,000. This solicitation will be performed in accordance with the following steps:

**1. Bidders' List.** LADCO will prepare and maintain an up-to-date list of qualified and capable individuals and contractors throughout North America. The bidders' list is maintained in the LADCO main office and will be updated on a frequent and regular basis as additional firms submit qualifications and expressions of interest.

**2. Prepare Request for Proposals (RFPs):** Upon approval by the Board of Directors, the Executive Director shall prepare RFPs in consultation with the appropriate LADCO Committee and the Project Team. Each RFP will contain the following information:

- brief statement of purpose or intent
- clear statement of the products or services required in sufficient detail to allow the preparation of a responsive bid
- clear statement that the contracting agency will be LADCO;
- date and time by which proposals must be returned;
- statement that all procurements will be in accordance with 40 CFR Part 30, a copy of which will be provided on request;
- if applicable, statement that public and quasi-public agencies will be allowed to submit bids in competition with private firms;
- evaluation criteria; and
- any other information which it may be necessary or desirable to provide.

**3. Distribute RFPs.** LADCO will send RFPs by facsimile, mail, electronic mail, or hand delivery to all firms on the bidders' list. RFPs will also be sent to any other firms, non-profit organizations, or public agencies which express an interest in submitting a proposal; show evidence of sufficient qualifications and experience to submit a serious proposal; and meet the criteria for contractors as set forth in 40 CFR Part 30.

**4. Review Proposals.** All proposals will be reviewed by the Executive Director, the Project Team, the appropriate LADCO Committee, or other appropriate individuals using standard evaluation criteria, such as price, quality, delivery terms, contractor integrity, financial and technical resources, accessibility to other necessary resources, and record of past performance. Any reviewer who has been an employee of any of the organizations submitting proposals, or who is directly related by blood or marriage to a senior employee of any organizations submitting proposals, shall notify the Executive Director of this, and, at the discretion of the Executive Director, may be excluded from participation in the review process. A ranking sheet (see Attachment B) should be completed by the reviewers and returned to LADCO. At its discretion, the LADCO Committee may interview one or more of the applicants.

**5. Contractor Selection.** The Executive Director in consultation with the appropriate LADCO Committee and the Project Team will be responsible for selecting a contractor. Written documentation of the review process, including all ranking sheets, and the basis for contractor selection shall be prepared by the Executive Director and maintained in the LADCO main office. If the recommendation does not represent a consensus, then any minority positions shall be recorded.

No procurement will be made from a contractor identified on the General Services Administration maintained "List of Parties Excluded from Federal Procurement and Non-procurement Programs."

**6. Contracting.** Once the selection has been made, the Executive Director will negotiate a contract with the selected organization. The contract will adhere to the requirements of 40 CFR Part 30 (see, for example, Attachment A), and will be

signed by a duly authorized officer or representative of the contracting organization and by the Chairman and Treasurer of the Consortium.

Prior to forwarding the procurement instrument for signature, the Executive Director shall verify that funds are available to cover the costs of the procurement, and review the reasonableness of the payment provisions.

The Administrative Assistant is responsible for obtaining the appropriate signatures and forwarding a final, original, signed copy to the contracting organization.

**7. Monitoring Performance.** The Executive Director, an appropriate member of the executive staff, or the Administrative Assistant shall be responsible for monitoring the implementation of the procurement instrument and shall ensure the fulfillment of all written requirements. If the contracting organization violates any of the terms or conditions of its award, then LADCO's responsible party shall notify the Executive Director immediately. The Executive Director is responsible for taking appropriate corrective action.

The Administrative Assistant shall provide LADCO's responsible party with sufficient advance notice about the date and hour of each delivery of goods, and shall prepare all the necessary conditions for receiving a delivery. Upon delivery, LADCO's responsible party shall check the type and amount of delivered goods or services by noting them on the back of the delivery form. If a delivery is not in compliance with the terms of the procurement instrument, unless it is within normal commercial practices and there is no evidence of violation of any policies, then the Administrative Assistant shall be advised. The Executive Director, in conjunction with the Administrative Assistant, is responsible for taking appropriate corrective action.

# **ATTACHMENT A STANDARD CONTRACT LANGUAGE**

## **CONTRACT AGREEMENT (Title of Project)**

**THIS AGREEMENT** is made and entered into by and between the **Lake Michigan Air Directors Consortium**, an Illinois not-for-profit corporation ("CONSORTIUM") and xxxxxxxxx ("CONTRACTOR") for consideration of the mutual promises and covenants contained herein.

**NOW, THEREFORE**, the parties agree as follows:

### **ARTICLE I - SCOPE OF WORK AND SCHEDULE**

On xxxxxx, the CONTRACTOR submitted a technical proposal and a cost proposal to (provide short description of work). Specific tasks to be performed are as follows:

The CONTRACTOR shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified herein) to perform the tasks according to the schedule described in the CONTRACTOR's technical proposal and cost proposal dated xxxxxx, which are hereby incorporated by reference. The CONTRACTOR agrees to provide the key personnel, as indicated in Article VI below, for the life of the project and without substitution, except as agreed to in writing by the CONSORTIUM.

The CONTRACTOR shall perform the work described in its technical proposal dated xxxxxxx, within the period of performance identified in Article II below and provide the deliverables described above and in its technical proposal dated xxxxxx.

### **ARTICLE II - PERIOD OF PERFORMANCE**

The period of performance shall commence on xxxxxxx, and continue through xxxxxxxxx, or another date mutually agreed upon in writing.

### **ARTICLE III - COSTS**

The estimated cost of this Contract is \$xxxxxx.

### **ARTICLE IV - LIMITATION OF FUNDS**

Incremental funding in the amount of \$xxxxx has been authorized for expenditure by the CONTRACTOR, subject to the Terms and Conditions of this Agreement. This amount is estimated to cover the CONTRACTOR's performance through xxxxxx.

### **ARTICLE V - INVOICING AND PAYMENT**

The CONTRACTOR shall submit invoices on a regular basis to the following address:

Lake Michigan Air Directors Consortium  
9501 West Devon Avenue, Suite 701  
Rosemont, IL 60018  
Attn: Michael Koerber, Executive Director

Invoices will show sufficient detail to include percent effort, billing rates and all other direct costs incurred during the previous month as well as a summary total of costs incurred to date.

The CONSORTIUM shall remit payments to the following address within thirty (30) days after receipt of completed invoices from the CONTRACTOR:

The CONTRACTOR recognizes the importance of the overall project schedule, and agrees and represents that he will meet the deadlines to which both parties have agreed and deliver the products for which he is responsible in a timely manner. The CONTRACTOR further acknowledges the importance of frequent communications between both parties regarding the progress being made and any potential problems which may arise. The CONSORTIUM agrees that the CONTRACTOR will not be held liable for events or occurrences outside of their control.

#### **ARTICLE VI - KEY PERSONNEL**

The CONTRACTOR shall assign to this Contract the following key personnel:

These personnel will not be reassigned from this project, nor will their committed hours (as itemized in the CONTRACTOR'S Cost Proposal) be substantially reduced, unless necessitated by illness, death, or termination of employment, or until any such changes are approved by the CONSORTIUM in writing.

#### **ARTICLE VII - SUBCONTRACTORS**

The CONTRACTOR shall not enter into any subcontract arrangements for the purposes of performing this project without the written consent of the CONSORTIUM.

#### **ARTICLE VIII - CONTRACTOR**

The CONTRACTOR will act solely as an independent contractor in performing services, and nothing herein will at any time be construed to create the relationship of employer and employee, partnership, or joint venturer between the CONSORTIUM and the CONTRACTOR, or the CONSORTIUM's and the CONTRACTOR's officers, directors, employees or agents. CONTRACTOR and its employees will have no right or authority to act for the CONSORTIUM, and will not attempt to enter into any contract, commitment, or agreement, or incur any debt or liability, of any nature, in the name of or behalf of the CONSORTIUM.

#### **ARTICLE IX - CONFIDENTIALITY**

The CONTRACTOR will not knowingly disclose to others any confidential information furnished by the CONSORTIUM in connection with this project. Any information which the CONSORTIUM intends to be covered by this Article shall be clearly marked "Confidential". These restrictions shall not apply to information that (i) the CONTRACTOR had in its

possession prior to disclosure by the CONSORTIUM; (ii) becomes public knowledge through no fault of the CONTRACTOR, (iii) the CONTRACTOR lawfully acquires from a party not under an obligation of confidentiality to the CONSORTIUM; (iv) is independently developed by the CONTRACTOR; or (v) the CONTRACTOR is required to disclose by law, or administrative order.

The CONTRACTOR and its personnel, and its subcontractors may publish, publicize, or disclose information obtained from this project with prior collaboration and dialogue with the CONSORTIUM.

#### **ARTICLE X - INSURANCE**

The CONTRACTOR, at its own expense, will provide and maintain insurance as follows:

- (a) Worker's compensation, occupational disease, employer's liability, disability benefit, and other similar employer benefits insurance required under applicable state law.
- (b) Commercial general liability insurance including protective and contractual liability with a single combined limit of \$1,000,000 per occurrence and \$1,000,000 aggregate for bodily injury, including death and property damage.

The CONTRACTOR will, upon request, furnish the CONSORTIUM with a certificate of insurance evidencing the coverage and providing 30 days prior written notice in the event of cancellation or material change in coverage.

#### **ARTICLE XI - INDEMNIFICATION**

The CONTRACTOR shall indemnify, defend, and hold harmless the CONSORTIUM, its officers, directors, agents, or employees against claims, demands, and causes of action including expenses of defense for personal injury, disease or death and loss or damage of property arising from or during the performance of Services and caused by the negligence or willful misconduct of CONTRACTOR.

The CONSORTIUM shall indemnify, hold harmless and defend the CONTRACTOR, its officers, directors, agents, and employees from all claims, demands and causes of action including expenses of defense for personal injury, disease or death and loss or damage of property arising out of or in any manner connected with or related to the performance of Services and caused by the negligence or willful misconduct of the CONSORTIUM.

Neither party nor their affiliated companies, nor the officers, agents and employees or contractors of any of the foregoing, shall be liable to the other in any action or claim for consequential or special damages, loss of profits, loss of opportunity, loss of product, or loss of use, and any protection against liability for losses or damages afforded any individual or entity by these terms shall apply whether the action in which recovery of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability of any protected individual or entity), statute or otherwise. To the extent permitted by law, any statutory remedies which are inconsistent with these terms are waived.

#### **ARTICLE XII - FORCE MAJEURE**

Except for the obligation to pay for services rendered, no liability will attach to either party from delay in performance or nonperformance caused by circumstances beyond the control of the

party affected, including but not limited to acts of God, fire, flood, explosion, war, action or request of governmental authority, injunction, labor relations, accidents, delays or inability to obtain materials, equipment, fuel or transportation.

### **ARTICLE XIII - TERMINATION**

This Agreement may be terminated in whole or in part in writing by either party in the event of default by the other party in fulfilling its material obligations under this Agreement, provided that no termination may be effected unless the other party is given not less than ten (10) calendar days written notice, delivered by certified mail, or intent to terminate, and ten (10) days from the date of receipt of notice within which to cure the default.

In the event of termination, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONTRACTOR at the time of termination may be adjusted by mutual agreement of the parties to cover any additional costs to the CONSORTIUM because of the CONTRACTOR's default.

Upon termination, the CONTRACTOR shall promptly discontinue all affected work (unless the notice directs otherwise), and shall deliver or otherwise make available to the CONSORTIUM all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONTRACTOR in performing the Agreement, whether completed or in progress.

### **ARTICLE XIV - ACCESS TO RECORDS**

The CONTRACTOR shall maintain books, records, documents, and other evidence directly pertinent to performance on USEPA-funded work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and with 40 CFR Part 30 in effect on the date of execution of this Agreement. The CONTRACTOR shall also maintain the financial information and data used in the preparation or support of the cost submission for any negotiated agreement or change order, and a copy of the cost summary submitted to the CONSORTIUM. USEPA, the Comptroller General of the United States, the U.S. Department of Labor, or any of their authorized representatives, shall have access to all such books, records, documents, and other evidence for the purpose of inspection, audit, and copying during normal business hours.

The CONTRACTOR shall provide proper facilities for such access and inspection. Records from this Agreement shall be maintained and made available by the CONTRACTOR during performance on USEPA-funded work under this Agreement and until three years after the date of final CONSORTIUM payment for the project. In addition, those records which relate to any controversy arising under a USEPA-funded agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained and made available by the CONTRACTOR until three years after the date of the resolution of such appeal, litigation, claim, or exception.

### **ARTICLE XV - RESPONSIBILITY OF THE CONTRACTOR**

The CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all services furnished by the CONTRACTOR under this Agreement, as well as for the services of its subcontractors, if any.

The CONTRACTOR shall perform such services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with all the terms of this Agreement. It is understood that performance of this Agreement may require coordination and/or cooperation with other contractors. This coordination and/or cooperation shall be performed without obstruction.

The CONTRACTOR shall not be liable for the performance of other contractors which have contracted directly with the CONSORTIUM, provided that prompt notice is given to the CONSORTIUM of any problems which may arise.

#### **ARTICLE XVI - ASSIGNMENT**

Neither this Agreement nor any interests therein, or claimed thereunder, shall be assigned or transferred by the CONTRACTOR to any other entity, except as specifically authorized in writing by the CONSORTIUM.

#### **ARTICLE XVII - NOTIFICATION OF OTHER CONTRACTS AND AVOIDANCE OF CONFLICTS**

The CONTRACTOR agrees that during the life of this Agreement, it shall use its best efforts not to enter into any other contracts or agreements which would constitute or create a potential or actual conflict of interest with the scope of work for this Agreement. The CONTRACTOR further agrees to make its best efforts to notify the CONSORTIUM in writing of any such contracts or agreements. The CONSORTIUM in its sole discretion shall determine whether the performance of such contracts or agreements by the CONTRACTOR would constitute or create a potential or actual conflict of interest and if so, then shall notify the CONTRACTOR accordingly. Failure of the CONTRACTOR to withdraw its bid or revoke its acceptance of any such contracts or agreements after notification shall give the CONSORTIUM the right to terminate this Agreement for their convenience.

This requirement shall not apply when the CONTRACTOR is required to sign a Statement of Confidentiality between the CONTRACTOR and a prospective client of the CONTRACTOR, in which case the CONTRACTOR will immediately determine if there is a potential or actual conflict as defined herein. The CONTRACTOR shall also insure that its subcontractors, if any, adhere to this requirement.

#### **ARTICLE XVIII - AMENDMENTS**

This Agreement and any attachments hereto constitute the entire Agreement between the parties. No amendment to this Agreement shall take effect until approved by the CONSORTIUM and the CONTRACTOR in writing.

#### **ARTICLE XIX - ADDITIONAL TERMS AND CONDITIONS**

Notwithstanding clauses included or omitted from this Agreement, it is understood and agreed to by both parties that all applicable laws and regulations regarding contracting with the use of public funds will be adhered to by each party.

No intellectual property is expected to be developed pursuant to this project. Any and all project results shall be made available in the public domain.

Any equipment or property purchased or charged to this Agreement by the CONTRACTOR shall be the property of the CONSORTIUM. All such equipment and property, except for necessary expendable items, shall be returned promptly (but no later than the end date of this Agreement) to the CONSORTIUM.

**ARTICLE XX - DISPUTES**

The CONSORTIUM and the CONTRACTOR shall expend their efforts to amicably resolve any dispute that may arise under this Agreement. Any dispute that the parties are unable to resolve shall be subject to the laws of the State of Illinois.

**IN WITNESS WHEREOF**, the parties have executed this Contract as of the day and year shown below.

**FOR xxxxxxxx:**

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

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

**FOR Lake Michigan Air Directors Consortium:**

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

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

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

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

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

## ATTACHMENT B

### PROPOSAL RANKING SHEET

Criteria	Contractor A	Contractor B	Contractor C	Contractor D
Understanding of project objectives				
Technical approach, completeness of coverage with respect to statement of work, and responsiveness to available project resources				
Task 1				
Task 2				
Task 3				
Task 4				
Task 5				
Experience, expertise, and other qualifications of principal investigator and others, and level of effort for principal investigator				
<p><b><i>Please rate each criteria on a scale from 1 to 5, with 1 being poor and 5 being excellent. For example, 1 = non-responsive, 2 = some definable deficiency, 3 = adequate, 4 = responsive and detailed, and 5 = excellent.</i></b></p>				