

Clemson University Standard Bidding Terms and Conditions – Revision E
Effective December 1, 2024

This document contains standard bidding instructions and conditions that apply to all solicitations conducted by Clemson University. Instructions and terms specific to an individual solicitation will also apply and are considered in addition to these standard terms and conditions. In case of conflict between terms of a specific solicitation and this document, the terms of the specific solicitation take precedence.

DEFINITIONS - EXCEPT AS OTHERWISE PROVIDED HEREIN, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION.

ADDENDUM – means a document issued to supplement the original solicitation document.

CHANGE ORDER - means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT MODIFICATION – means a written order signed by the Procurement Officer directing the contractor to make changes and authorizes the Procurement Officer to order without the consent of the contractor.

CONTRACTOR - means the Offeror receiving an award as a result of this solicitation or the entity providing work to the University.

OFFER – means the bid or proposal submitted in response this solicitation. The terms “Bid” and “Proposal” are used interchangeably with the term “Offer.”

OFFEROR – means the single legal entity submitting the offer. The term “Supplier” is used interchangeably with the term “Offeror.”

PROCUREMENT OFFICER – means the person, or his successor, identified as the Contact on solicitation, award or PO.

YOU and YOUR – means Offeror.

SEALED BID – means Competitive Sealed Bid [S.C. Code Ann. § 11-35-1520].

SOLICITATION – means the online solicitation document and all parts, attachments, attributes, and any Addenda to the specific Invitation For Bid, Best Value Bid, Fixed Price Bid, Request For Proposal, or Request For Qualification, including the Clemson University Standard Bidding Terms and Conditions and Clemson University Standard Terms of Purchase.

SUBCONTRACTOR – means any person having a contract to perform work for a Contractor as a part of the Contractor’s Contract arising from this solicitation.

UNIVERSITY – means Clemson University and its officers, affiliates, representatives, agents, volunteers, and employees.

WORK - means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations under the Contract.

ADDENDA TO SOLICITATION: (a) The Solicitation may be revised at any time prior to opening. All actual and prospective Offerors should monitor the Clemson bidding system.

(b) Offerors shall acknowledge receipt of any addenda to this solicitation by responding to the solicitation as revised in the Clemson bidding system.

(c) If this solicitation is revised, then all terms and conditions which are not modified remain unchanged.

AWARD NOTIFICATION: Notice regarding any award or cancellation of award will be posted at the location specified in the bid attributes. The date and location of posting will be announced at opening. If the contract resulting from this Solicitation has a potential value of one hundred thousand dollars (\$100,000) or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the seventh day after such notice is given. Notifications under this clause will be sent to the Offerors through the University online bidding system.

BID/AS OFFER TO CONTRACT: By submitting Your Bid or Offer, you are offering to enter into a contract with the University. Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror in your submittal. An Offer may be submitted by only one legal entity; “joint bids” are not allowed.

BID IN ENGLISH & DOLLARS: Offers submitted in response to this solicitation shall be in the English language and in U.S. dollars, unless otherwise permitted by the Solicitation.

BIDS RECEIVED AFTER AWARD – FIXED PRICE BIDDING: Offerors not responding to the initial solicitation may be added to the awarded supplier’s list provided the supplier furnishes evidence of responsibility and responsiveness to the University’s original fixed price bid as authorized by the solicitation during any required timeframes.

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION: GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER S.C. Code Ann. § 16-9-10 AND OTHER APPLICABLE LAWS.

(a) By submitting an offer, the offeror certifies that-

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices; (ii) the intention to submit an offer; or (iii) the methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory-

(1) Is the person in the offeror’s organization responsible for determining the prices being offered in this bid or offer, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or

(ii) (2)(i) Has been authorized, in writing, to act as agent for the offeror’s principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term “principals” means the person(s) in the offeror’s organization responsible for determining the prices offered in this bid or offer]; As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

(c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:

(a)(1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the University, the Procurement Officer may terminate the contract resulting from this solicitation for default.

CODE OF LAWS AVAILABLE The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at: <http://www.scstatehouse.gov/code/statmast.php> The South Carolina Regulations are available at: <http://www.scstatehouse.gov/coderegs/statmast.php>

COMPETITION FROM PUBLIC ENTITIES: If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. [S.C. Reg. 117-304.1].

COMPLETION OF FORMS/CORRECTION OF ERRORS: All prices and notations should be typewritten in the appropriate location on the bid form. Errors can be corrected prior to bid opening/due date/time by “retracting” your bid in the system and resubmitting. Once the Bid Closing date/time has passed a bid cannot be retracted and therefore not corrected. Do not modify the solicitation document itself (including bid schedule).

CONTENTS OF OFFER (Request for Proposal): (a) Offers should be complete and carefully worded and should convey all of the information requested.

(b) Offers should be prepared simply and economically, providing a straightforward, concise description of the capabilities required by the Request For Proposal with an emphasis on completeness and clarity of content.

(c) If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix to your offer.

(d) Offers must be submitted as a single technical document either as a .pdf file or as a .doc file attached as part of your bid submittal. These technical documents must not contain any financial information unless specifically requested to do so in the solicitation. Offers which include either modifications to any of the solicitation’s contractual requirements or an Offeror’s standard terms and conditions may be deemed non-responsive and not considered for award. Any modification to the scope requirements must be CONSPICUOUS and accepted by University in writing. If the modification is not addressed, and the contract is awarded, University may terminate the Agreement immediately without penalty and take other appropriate measures.

DEADLINE FOR SUBMISSION OF OFFER: Any offer received after the University’s time set for opening has arrived, shall be rejected unless the offer has been delivered electronically prior to the bid opening. [S.C. Reg. 19-445.2070(G)].

DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (“OCI FAQ for Contractors” is available at www.procurement.sc.gov) (a) You certify that, after reasonable inquiry, to the best of your knowledge and belief: (1) your offer identifies any services that relate to either this solicitation or the work and that have already been performed by you, a proposed subcontractor, or an affiliated business or consultant of either; and (2) there are no relevant facts or circumstances that may give rise to an actual or potential organizational conflict of interest, as defined in S.C. Code Ann. Reg. 19-445.2127, or that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. (b) If you, a proposed subcontractor, or an affiliated business or consultant of either, have an unfair competitive advantage or an actual or potential conflict of interest, the University may withhold award. Before withholding award on these grounds, the University will notify you of the concerns and provide a reasonable opportunity for you to respond. The University may consider efforts to avoid or mitigate such concerns, including restrictions on future activities. (c) The certification in paragraph (a) of this provision is a material representation of fact upon which the University will rely when considering your offer for award.

DISCLOSURE OF YOUR BID/PROPOSAL & SUBMITTING CONFIDENTIAL DATA (a) According to Section 11-35-410, any person submitting a document in response or with regard to any solicitation or other request must “comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public.” IF YOU IDENTIFY YOUR ENTIRE RESPONSE AS EXEMPT FROM PUBLIC DISCLOSURE, OR IF YOU DO NOT SUBMIT A REDACTED COPY AS REQUIRED, THE UNIVERSITY MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD. (b) By submitting a response to this solicitation or request, Offeror agrees to the public disclosure of every page, or portion thereof, of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page, or portion thereof, was redacted and conspicuously marked “Trade Secret” or “Confidential” or “Protected,” (2) agrees that any information not redacted and marked, as required by these bidding instructions, as a “Trade Secret” is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. (c) If your offer includes any information that you claim is exempt from public disclosure, you must submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). Except for the information removed or concealed, the redacted copy must be identical to your original offer. (d) Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If only portions of a page are subject to some protection, do not redact the entire page. The redacted copy must reflect the same pagination as the original and show the empty space from which information was redacted. The Procurement Officer must be able to view, search, copy and print the redacted copy without a password. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the University may, in its sole discretion, determine it nonresponsive. (e) On the redacted copy, you must identify the basis of your claim by marking each redaction as follows: You must separately mark with the word “CONFIDENTIAL” every page, or portion thereof, that you redacted and claim as exempt from public disclosure because it is either (1) a trade secret as defined in Section 30-4-40(a)(1) of the Freedom of Information Act, or (2) privileged and confidential, as that phrase is used in Section 11-35-410. You must separately mark with the words “TRADE SECRET” every page, or portion thereof, that you redacted and claim as exempt from public disclosure as a trade secret pursuant to Section 39-8-20 of the Trade Secrets Act. You must separately mark with the word “PROTECTED” every page, or portion thereof, that you redacted and claim as exempt from public disclosure pursuant to Section 11-35- 1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. (f) In determining whether to release documents, the University will detrimentally rely on your redaction and marking of documents, as required by these bidding instructions, as being either “Confidential” or “Trade Secret” or “Protected.” By submitting a response, you agree to defend, indemnify and hold harmless the University of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney’s fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that you have redacted or marked as “Confidential” or “Trade secret” or “Protected.”

DISCUSSIONS WITH SUPPLIERS:

Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated, and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal

DRUG FREE WORKPLACE CERTIFICATION: By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, S.C. Code Ann., Title 44, Chapter 107.

DUTY TO INQUIRE: Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater of work and/or materials, unless otherwise directed by an Addendum. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the University's attention.

END USER LICENSE AGREEMENT/SOFTWARE AGREEMENT SCOPE LIMITATIONS: No licensing agreement is valid unless executed through this procurement process. This includes "click-thru" or "click to accept" End User License Agreements (EULAs) and other software agreements that attempt to commit the university to additional terms and conditions by end user action. Institutional commitments are only valid if they are accepted and signed by authorized University personnel.

ETHICS CERTIFICATE: By submitting an offer, the Offeror certifies that the Offeror has and will comply with, and has not, and will not, induce a person to violate S.C. Code Ann., Title 8, Chapter 13 (Ethics Act). The following statutes require special attention: § 8-13-700, regarding use of official position for financial gain; § 8-13-705, regarding gifts to influence action of public official; § 8-13-720, regarding offering money for advice or assistance of public official; §§ 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; § 8-13-775, prohibiting public official with economic interests from acting on contracts; § 8-13-790, regarding recovery of kickbacks; § 8-13-1150, regarding statements to be filed by consultants; and § 813-1342, regarding restrictions on contributions by a contractor to a candidate who participated in awarding a contract. The University may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by § 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed.

OMIT TAXES FROM PRICE: Do not include any sales or use taxes in Your price that the University may be required to pay.

ONLINE REGISTRATION: You must register in the online bidding system to submit an offer. (Please note that registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue.)

PREFERENCES - A NOTICE TO SUPPLIERS: S.C. Code Ann. §11-35-1524 governs preferences available to in-state suppliers, suppliers using in-state subcontractors, and suppliers selling in-state or US end products. ***ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. SUPPLIERS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE. THIS SECTION DOES NOT APPLY TO A REQUEST FOR PROPOSAL.***

PREFERENCES – S.C./U.S. END-PRODUCT: S.C. Code Ann. § 11-35-1524 provides a preference to suppliers offering South Carolina end-products or U.S. end-products, if those products are made, manufactured, or grown in SC or the US, respectively. An end-product is the tangible product identified for acquisition in this solicitation, including all component parts in final form and ready for the use intended. The terms "made," "manufactured," and "grown" are defined by S.C. Code Ann. § 11-35-1524(A). By signing your offer and checking the appropriate space(s) provided and identified on the bid schedule, you certify that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law. Post award substitutions are prohibited. See "Substitutions Prohibited - End Product Preferences" provision. This Section does not apply to a Request for Proposal.

PREFERENCES - RESIDENT SUBCONTRACTOR PREFERENCE: To qualify for this preference, you must meet the following requirements. (1) You must -- at the time you submit your bid -- have a documented commitment from a single proposed first tier subcontractor to perform some portion of the services expressly required by the solicitation. (2) The subcontractor -- at the time you submit your bid -- must directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds, as applicable, either twenty percent for a 2% preference or forty percent of supplier's total bid price for a 4% preference. (3) You must identify the subcontractor that will perform the work, the work the subcontractor is to perform, and your factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement. [S.C. Code Ann. § 11-35-1524(D)] You can stack this preference, i.e., earn another 2% or 4% preference for each additional qualifying subcontractor, but the preference is capped. [S.C. Code Ann. § 11-35-1524(D)(4), (E)(7).] Upon request by the procurement officer, you must identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, the employer of those persons, your relationship with the employer, and documentation of the subcontractor's labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and,

potentially, for other enforcement action). YOU WILL NOT RECEIVE THE PREFERENCE UNLESS YOU SPECIFY WHETHER YOU ARE CLAIMING THE 2% OR 4% PREFERENCE AND YOU PROVIDE THE INFORMATION REQUIRED BY ITEM (3) ABOVE. This Section does not apply to a Request for Proposal.

PREFERENCES - RESIDENT SUPPLIER PREFERENCE: To qualify for this Preference, you must maintain an office in South Carolina. An office is a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the supplier for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty-five (35) hours a week each. In addition, you must either: (1) maintain at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities for which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars (\$50,000) or the annual amount of the contract; (2) be a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product being sold is either made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code); or (3) at the time of bidding, directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to supplier for those individuals to provide those services exceeds fifty percent of the supplier's total bid price. This clause does not apply if a single unit has a price in excess of \$50,000 or a single award has a potential value exceeding \$500,000. [S.C. Code Ann. § 11-35-1524(E)(2)]. This Section does not apply to a Request for Proposal.

PRINTING MANUAL: The South Carolina Government Printing Services manual, dated September 28, 2005, governs both the procurement and any resulting contract for printing services and is hereby incorporated by reference if this is a solicitation for printing services. You are responsible for obtaining a copy of the manual. This manual is available at www.procurement.sc.gov. No overruns or underruns will be accepted.

PROHIBITED COMMUNICATIONS AND DONATIONS: Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law. (a) During the period between publication of the solicitation and final award, ***you must not communicate, directly or indirectly, with the Using Governmental Unit or its employees, agents or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by the Procurement Officer.*** All communications must be solely with the Procurement Officer. [S.C. Reg. 19-445.2010] (b) You are advised to familiarize yourself with S.C. Reg. 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. ***You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.*** [S.C. Reg. 19-445.2165]

PROTESTS: If you are aggrieved in connection with the solicitation or award of the contract with an actual or potential value of \$50,000 (fifty thousand dollars) or more, you may be entitled to protest, but only as provided in S.C. Code Ann. § 11-35-4210. To protest a solicitation, you must submit a protest within fifteen days of the date the applicable solicitation document is issued. To protest an award, you must (i) submit notice of your intent to protest within seven (7) business

days of the date the award or notification of intent to award notice is posted, and (ii) submit your actual protest within fifteen (15) days of the date the award notice is posted. Days are calculated as provided in S.C. Code Ann. § 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to protest-mmo@mmo.state.sc.us , or (b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided.

PUBLIC OPENING: If this solicitation is indicated as a Sealed Bid, Best Value Bid, or Request For Proposal, offers will be publicly opened at the close date/time and at the location identified in the solicitation, or last Addendum, whichever is applicable. If this solicitation is indicated as an Invitation for Bid or Request for Quotation, it will not be a public opening.

QUALIFICATION OF OFFEROR: (1) To be eligible for award, you must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. (2) You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection. (3) **Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability;** however, we may elect to consider any security, e.g., letter of credit, performance bond, parent-company corporate guaranty, that you offer to provide Instructions and forms to help assure acceptability are posted on procurement.sc.gov, link to “Standard Clauses & Provisions.”

QUESTIONS FROM OFFERORS: (a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated in the Event Activities section of the online bidding system. Email any questions to the appropriate Procurement Officer and be sure to include the solicitation's title and number. Oral explanations or instructions will not be binding. [See S.C. Reg. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Addendum to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled “Duty to Inquire.” **We will not identify you in our answer to your question.**

(b) The University seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer – as soon as possible – regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.

REJECTION/CANCELLATION: The University may cancel this solicitation in whole or in part. The University may reject any or all proposals in whole or in part. [S.C. Code Ann. § 11-35-1710 & S.C. Reg.19-445.2065.]

RESPONSIVENESS/IMPROPER OFFERS

- (a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.
- (b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted or uploaded as a separate document and must clearly indicate that it is a separate offer. If this solicitation is a Request For Proposals, multiple offers may be submitted or uploaded as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.
- (c) Responsiveness. Award will not be made on a nonresponsive offer. An offer is nonresponsive (i) if it does not constitute an unambiguous offer to enter into a contract with the University, or (ii) if it imposes conditions inconsistent with, or does not unambiguously agree to, the solicitation's material requirements. Any such modification to the scope requirements that is not accepted in writing will be considered nonresponsive.
- (d) If a fixed price is required, award will not be made on an Offer if the total possible cost to the University cannot be determined.
- (e) Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [S.C. Reg.19-445.2070 and S.C. Code Ann. § 11-35-1520(13)]
- (f) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [S.C. Reg. 19-445.2070].
- (g) Unbalanced Pricing. The University will analyze all offers with separately priced line items or subline items to determine if the prices are unbalanced. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated. The responsible procurement officer may reject an offer as unreasonably priced if she determines that unbalanced pricing increases performance risk (e.g., it is so unbalanced as to be tantamount to allowing an advance payment) or could result in payment of unreasonably high prices.

RESTRICTIONS APPLICABLE TO OFFERORS: Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the State Ethics Act. (a) After issuance of the solicitation, ***you agree not to discuss this procurement activity in any way with the University or its employees, agents or officials.*** All communications must be solely with the Procurement Officer.

This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, ***you agree not to give anything to the University.***

SUBCONTRACTOR SUBSTITUTION PROHIBITED - RESIDENT SUBCONTRACTOR PREFERENCE: . If you receive an award as a result of the subcontractor preference, you may not substitute any business for the subcontractor upon which you relied to qualify for the preference, unless first approved in writing by the procurement officer. If you violate this provision, the University may terminate your contract for cause, and you may be debarred. In addition, the procurement officer may require you to pay the University an amount equal to twice the difference between the price paid by the University and the price offered by the next lowest supplier, unless the substituted subcontractor qualifies for the preference. [S.C. Code Ann. § 11-35-1524(D)(5)(c)].

SUBMITTING YOUR OFFER, MODIFICATION, or WITHDRAWAL: Unless specifically instructed otherwise in the solicitation, you must submit your offer or modification in the University online bidding system. You must register in the system to view the complete solicitation and submit an offer. Only offers with a status of “Submitted” have been received by the University. Offers with a status of “saved” or “unsubmitted” have not been received.

SUBSTITUTIONS PROHIBITED - END PRODUCT PREFERENCES: If you receive the award as a result of the South Carolina end product or United States end product preference, you may not substitute a non-qualifying end product for a qualified end product. If you violate this provision, the University may terminate your contract for cause, and you may be debarred. In addition, you shall pay to the University an amount equal to twice the difference between the price paid by the University and your evaluated price for the item for which you delivered a substitute.

[S.C. § 11-35-1524(B)(4)]

TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES: Pursuant to S.C. Code Ann. § 12-6-3350, a taxpayer having a contract with South Carolina who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in S.C. Code Ann. § 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand (\$50,000) dollars annually. A taxpayer is eligible to claim the credit for ten (10) consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten (10) consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Schedule TC-2, “Credit for State Contractors Subcontracting with Socially and Economically Disadvantaged Small Business.” A copy of the subcontractor’s certificate from the Division of Small and Minority Business Contracting and Certification is to be attached to the contractor’s income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, <http://dor.sc.gov>. Questions regarding subcontractor certification are to be referred to: Division of Small and Minority Business Contracting and Certification, <http://smbcc.sc.gov>.

UNIT PRICE GOVERNS: In determining award, unit prices will govern over extended prices unless otherwise stated.

UNIVERSITY AS PROCUREMENT AGENT (a) Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the University with regard to this procurement.

(b) Purchasing Liability. The Procurement Officer is an employee of the University acting on behalf of the University pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the University.

UNIVERSITY OFFICE CLOSINGS: If an emergency or unanticipated event interrupts normal government processes so that offers cannot be opened at the University Procurement Office by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which

normal government processes resume. In lieu of an automatic extension, an Addendum may be issued to reschedule bid opening. If the University offices are closed at the time a pre-bid or preproposal conference is scheduled, an Addendum will be issued to reschedule the conference. Useful information may be available at: <http://www.clemson.edu/>.

WITHDRAWAL OR CORRECTION OF OFFER: Offers may be withdrawn by “retracting” your bid at any time before the exact time set for closing. The withdrawal and correction of Offers is governed by S.C. Code Ann. §11-35-1520 and S.C. Reg. 19-445.2085. In order to withdraw Your Offer after the minimum period specified in the bid attributes, you must notify the Procurement Officer in writing.