



# RICHLAND COUNTY RECREATION COMMISSION

Invitation for Bid  
Advertisement #11222  
  
Amendment #1

Solicitation Number: IFB0002-2023  
Date Issued: 02 November 2022  
Procurement Manager: Sheila Smith  
Phone: (803) 741-7272 Ext. 176  
E-Mail Address: [Sheila.Smith@rcrc.state.sc.us](mailto:Sheila.Smith@rcrc.state.sc.us)

DESCRIPTION: Richland County Recreation HVAC

*The Term "Offer" Means Your "Bid" or "Proposal". Unless submitted on-line, your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.*

SUBMIT OFFER BY (Opening Date/Time): **11/16/2022 10:00 a.m.** (See "Deadline for Submission of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **11/09/2022 10:00 a.m.** (See "Questions from Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **3**

Due to the COVID-19 Offers can be emailed to [sheila.smith@rcrc.state.sc.us](mailto:sheila.smith@rcrc.state.sc.us) before the **11/16/2022 10:00 a.m. deadline.** Offers may still submitted in a sealed package. Solicitation number and Opening Date must appear on package exterior.

SUBMIT YOUR SEALED OFFER TO:  
RICHLAND COUNTY RECREATION COMMISSION  
ATTN: SHEILA SMITH  
7473 PARKLANE RD.  
COLUMBIA, SC 29223

CONFERENCE TYPE: N/A  
DATE & TIME:  
(As appropriate, see "Conferences - Pre-Bid/Site Visit" provisions)

LOCATION: SEE SECTION IIB "Conferences - Pre-Bid/Site Visit" provisions FOR SITE SCHEDULES:

AWARD & AMENDMENTS

Award will be posted on **12/07/2022**. The award, this solicitation, any amendments, and any related notices will be posted at the following web address:  
<https://richlandcountyrecreation.com/purchasing/>

You must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, you agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of ninety (90) calendar days after the Opening Date.  
(See "Signing Your Offer" and "Electronic Signature" provisions.)

NAME OF OFFEROR  (full legal name of business submitting the offer)		Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.	
AUTHORIZED SIGNATURE  (Person must be authorized to submit binding offer to contract on behalf of Offeror.)		TAXPAYER IDENTIFICATION NO.  (See "Taxpayer Identification Number" provision)	
TITLE  (Business title of person signing above)		STATE VENDOR NO.  (Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a> )	
PRINTED NAME  (Printed name of person signing above)	DATE SIGNED	STATE OF INCORPORATION  (If you are a corporation, identify the state of incorporation.)	

OFFEROR'S TYPE OF ENTITY: (Check one)

(See "Signing Your Offer" provision.)

Sole Proprietorship       Partnership       Other \_\_\_\_\_  
 Corporate entity (not tax-exempt)       Corporation (tax-exempt)       Government entity (federal, state, or local)

**PAGE TWO**

**(Return Page Two with Your Offer)**

<b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)	<b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)
	_____ Area Code - Number - Extension                      Facsimile
	_____ E-mail Address

<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.) (See "Payment" clause)	<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)
___ Payment Address same as Home Office Address ___ Payment Address same as Notice Address ( <b>check only one</b> )	___ Order Address same as Home Office Address ___ Order Address same as Notice Address ( <b>check only one</b> )

**ACKNOWLEDGMENT OF AMENDMENTS**  
 Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)

Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

<b>DISCOUNT FOR PROMPT PAYMENT</b> (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	____ Calendar Days (%)
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**TOTAL PROPOSAL PRICING:**

**PREFERENCES –**  
 2% Minority  
 2% Women Owned  
 2% Veteran Owned  
 \*Not to exceed 5%

End of PAGE TWO

## I. SCOPE OF SOLICITATION

### ACQUIRE SERVICES

The purpose of this solicitation is to acquire services to provide and install new HVAC units to various locations at Richland County Recreation Commission.

Successful Bidders shall have a minimum of (3) year's commercial experience working on a contract or project of this size or larger.

### MAXIMUM CONTRACT PERIOD - ESTIMATED

**Start date: 12/08/22 - End date: 12/07/23.** Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period".

This contract is for an initial term of one (1) year with the possibility of one (1) additional, one (1) year renewals.

## II. INSTRUCTIONS TO OFFERORS

### A. GENERAL INSTRUCTIONS

#### 1. DEFINITIONS, CAPITALIZATION, AND HEADINGS

CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.

2. **AMENDMENT** means a document issued to supplement the original solicitation document.
3. **BOARD** means the South Carolina Budget & Control Board or its successor in interest.
4. **BUSINESS** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.
5. **BUYER** means the Procurement Manager.
6. **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.
7. **CONTRACT** See clause entitled Contract Documents & Order of Precedence.
8. **CONTRACT MODIFICATION** means a written order signed by the procurement manager, directing the contractor to make changes which the clause of the contract titled "Changes," if included herein, authorizes the Procurement Manager to order without the consent of the contractor.
9. **CONTRACTOR** means the Offeror receiving an award because of this solicitation.
10. **COVER PAGE** means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.
11. **OFFER** means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.
12. **OFFEROR** means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal as Offer to Contract.
13. **ORDERING ENTITY** Using Governmental Unit that has submitted a Purchase Order.
14. **PROCUREMENT MANAGER** means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice.
15. **YOU and YOUR** means Offeror.
16. **SOLICITATION** means this document, including all its parts, attachments, and any Amendments.
17. **STATE/COUNTY** means the Using Governmental Unit(s) identified on the Cover Page.
18. **SUBCONTRACTOR** means any person you contract with to perform or provide any part of the work.

**19. US or WE** mean the using governmental unit.

**20. USING GOVERNMENTAL UNIT** means the unit(s) of government identified as such on the Cover Page. If the Cover Page identifies the Using Governmental Unit as "Statewide Term Contract," the phrase "Using Governmental Unit" means any South Carolina Public Procurement Unit [11-35-4610(5)] that has submitted a Purchase Order to you pursuant to the contract resulting from this solicitation. Reference the clauses titled "Purchase Orders" and "Statewide Term Contract."

**21. WORK** means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

#### **B. AUTHORIZED AGENT**

1. All authority regarding this procurement is vested solely with the responsible Procurement Manager. Unless specifically delegated in writing, the Procurement Manager is the only government official authorized to bind the government regarding this procurement or the resulting contract.

#### **C. AMENDMENTS TO SOLICITATION**

1. The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following website: <https://richlandcountyrecreation.com/purchasing/> for the issuance of Amendments: (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

#### **D. AWARD NOTIFICATION**

1. Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given.

#### **E. BID/PROPOSAL AS OFFER TO CONTRACT**

1. By submitting Your Bid or Proposal, you are offering to enter a contract with the Using Governmental Unit(s). 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 on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed.

#### **F. BID ACCEPTANCE PERIOD**

1. In order to withdraw Your Offer after the minimum period specified on the Cover Page, you must notify the Procurement Manager in writing.

#### **G. BID IN ENGLISH**

1. Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

#### **H. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.**

1. By submitting an offer, the offeror certifies that-

(a) 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- Those prices.

The intention to submit an offer; or

The methods or factors used to calculate the prices offered.

(b) 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

(c) 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.

(d) Each signature on the offer is a certification by the signatory that the signatory-

(i) Is the person in the offeror's organization responsible for determining the prices being offered in this

- bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (1)(a) through 1(d) of this certification; or
- (ii) 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 (1)(a) through 1(d) of this certification as used in this subdivision, the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal;
  - (iii) As an authorized agent, does certify that the principals referenced in subdivision (1)(d)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (1)(a) through 1(d) of this certification; and
  - (iv) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (1)(a) through 1(d) of this certification.
  - (v) If the offeror deletes or modifies paragraph (1)(b) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

## **I. CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS**

1. By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-
  - (a) Offeror and/or any of its Principals-
    - (i) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
    - (ii) 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
    - (iii) 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)(B) of this provision.
  - (b) 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.
  - (c) "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).
2. Offeror shall provide immediate written notice to the Procurement Manager 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.
3. 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 Manager may render the Offeror not responsible.
4. 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.
5. 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 County, the Procurement Manager may terminate the contract resulting from this solicitation for default.

## **J. CIVIL RIGHTS PROVISIONS**

1. The contractor providing services under this Invitation to Bid must comply with the provisions of the Civil Rights Act of 1964, as amended. The contractor must comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with contractor's performance of work under this contract, contractor agrees not to discriminate against any employee(s) or applicant(s) for employment because of race, color, national origin, sex, age, or disability. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating based on race, color, national origin, sex, age or disability. To file a complaint, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free at (866) 632-

9992. Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at 800-877-8339; of 800-845-6136 (Spanish). USDA is an equal opportunity provider and employer.

#### **K. CODE OF LAWS AVAILABLE**

1. The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at: <http://www.scstatehouse.gov/code/statmast.php>
2. The South Carolina Regulations are available at: <http://www.scstatehouse.gov/coderegs/statmast.php>
3. Richland County Recreation Commission Procurement Regulation is available upon request.

#### **L. CONTRACT VIOLATION**

1. During the term of the contract, contractors who violate any contract will be considered in breach and subject to cancellation for cause. Contractors may be suspended or debarred from doing business with the District. Examples of vendor violations include but are not limited to: (1) Adding items to the contract without approval. (2) Increasing contract price without approval. (3) Misrepresentation of the contract to any District entity.

#### **M. COMPLETION OF FORMS/CORRECTION OF ERRORS**

1. All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.)

#### **N. DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE**

1. You warrant and represent 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. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and
2. Preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either.

#### **O. DEADLINE FOR SUBMISSION OF OFFER**

1. Any offer received after the Procurement Manager of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies mail room which services that purchasing office prior to the bid opening.

#### **P. DRUG FREE WORKPLACE CERTIFICATION**

1. By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

#### **Q. DUTY TO INQUIRE**

1. 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 quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors."

#### **R. ETHICS CERTIFICATE**

1. 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 Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks;

Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state 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 Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed.

#### **S. PROHIBITED COMMUNICATIONS AND DONATIONS**

1. Violation of these restrictions may result in disqualification of your offer, suspension, or debarment, and may constitute a violation of law.
2. 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 Manager.*** All communications must be solely with the Procurement Manager.
3. You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek 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.***

#### **T. PROTESTS**

1. For contracts less than \$50,000, any actual or prospective bidder, proposer or contractor who is aggrieved in connection with the solicitation or award of a contract may submit a written protest to the Procurement Officer within ten business days of the purchase being awarded. Within 15 business days of the receipt of such written protest, the Procurement Officer shall hold a hearing on the protest and make a render a decision on the protest. The Procurement Manager's decision shall be final.
2. For contracts greater than \$50,000, any actual or prospective bidder, proposer or contractor who is aggrieved in connection with the solicitation or award of a contract may submit a written protest to the Executive Director within ten business days of the purchase being awarded. Respecting protests for purchases more than \$100,000, the date of the award shall be considered the date of any preliminary award hereof if a preliminary award is actually made in advance of formal approval by the Commission; in the absence of a preliminary award, the formal award date by the Commission shall be controlling. The protest, setting forth the grievance and the grounds thereof, shall be submitted in writing within ten days after such aggrieved person knows or should have known of the facts giving rise thereto, but in no circumstance after 15 business days notification of the award of the contract.

#### **U. PUBLIC OPENING**

1. Offers will be opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. **Due to the COVID-19 Pandemic, the bid openings will not be open to the public.**

#### **V. QUESTIONS FROM OFFERORS**

1. Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Manager no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment 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.**  
*Email is the preferred method for submitting questions with "Questions: Solicitation # as the subject of the email. Questions must be submitted in an easily copied format such as Word.*  
*Email: [Sheila.Smith@rerc.state.sc.us](mailto:Sheila.Smith@rerc.state.sc.us)*  
*Questions may also be submitted to the address listed on the Cover page of this document.*

#### **W. REJECTION/CANCELLATION**

1. The County may cancel this solicitation in whole or in part. The County may reject any or all proposals in whole or in part.

#### **X. RESPONSIVENESS/IMPROPER OFFERS**

1. Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

2. 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 as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, if you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

3. Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. 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 Manager.

4. Price Reasonableness: Any offer may be rejected if the Procurement Manager determines in writing that it is unreasonable as to price.

5. Unbalanced Bidding. RCRC may reject an Offer as nonresponsive if the prices bid is materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to RCRC even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

#### **Y. RESTRICTIONS APPLICABLE TO OFFERORS**

1. 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 Using Governmental Unit or its employees, agents, or officials.*** All communications must be solely with the Procurement Manager. This restriction may be lifted by express written permission from the Procurement Manager. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Manager, ***you agree not to give anything to any Using Governmental Unit or its employees, agents, or officials prior to award.***

#### **Z. SIGNING YOUR OFFER**

1. Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that is has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

#### **AA. RICHLAND COUNTY RECREATION COMMISSION OFFICE CLOSINGS**

1. If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids 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 Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at:

<https://richlandcountyrecreation.com/purchasing/>

#### **BB. SUBMITTING CONFIDENTIAL INFORMATION**

1. (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or about this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is



protected by 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. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page 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 is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not 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. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify, and hold harmless the State 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 Offeror marked as "confidential" or "trade secret" or "PROTECTED".

#### **CC. SUBMITTING YOUR OFFER OR MODIFICATION**

1. Offers and offer modifications shall be submitted in sealed envelopes or packages - (1) Addressed to the office specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package. (c) Each Offeror must submit the number of copies indicated on the Cover Page. (d) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the Solicitation. (e) e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. (f) offers must provide an overall pricing on the Cover Page and submit a detailed proposal with bid sheet.

#### **DD. TAXPAYER IDENTIFICATION NUMBER**

1. If Offeror is owned or controlled by a common parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent.

2. Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its federal income tax returns on a consolidated basis, and of which the offeror is a member. "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

3. If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether (i) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States; (ii) Offeror is an agency or instrumentality of a state or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government.

#### **EE. WITHDRAWAL OR CORRECTION OF OFFER**

1. Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

#### **FF. SPECIAL INSTRUCTIONS**

##### **1. CONFERENCE – N/A**

(a) Due to the importance of all offerors having a clear understanding of the specifications and requirements of this solicitation, a conference of potential offerors will be held on the date specified on the cover page. Bring a copy of the solicitation with you. Any changes resulting from this conference will be noted in a written amendment to the solicitation. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without

additional expense to RCRC. RCRC assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does RCRC assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding, or representation is expressly stated in this contract.

**(b) All conference attendees should read the solicitation and develop their questions in reparation for the conference. The pace of the conference will NOT afford individuals enough time to complete an initial review of the document during the conference.**

## 2. BID SUBMITTAL

**(a) By Mail or Hand Delivered:**

All bidding documents must be submitted in a sealed envelope. Do not include more than one bid per envelope. The face of the envelope shall contain the bid title, the bid number, and the date and time of bid opening. Bids not submitted on the bid form will be subject to rejection. RCRC assumes no responsibility for unmarked or improperly marked envelopes.

**(b) By Email:** Due to the COVID-19 Offers can be emailed to [Sheila.Smith@rcrc.state.sc.us](mailto:Sheila.Smith@rcrc.state.sc.us) before the deadline stated on Cover Page "Submit Offers By".

**(c) RFP Offerors are expected to examine the specifications, and all instructions. Failure to do so will be at the offeror's risk. Each offeror shall furnish the information required by the solicitation. The proposal must be signed by an officer of the company, who is legally authorized to enter a contractual relationship in the name of the offeror. All RFP(s) received will become a part of the official contract file and may be subject to disclosure.**

**(d) RFP FORMAT** All RFPs should include the information outlined below and in the following order:

- (i) Cover page: A cover page on company letter head to include business legal name, physical address, or other subordinate elements that will perform the services described in this RFP. Include telephone number, point of contact, and official signature of an authorized company representative.
- (ii) Table of Content: Including all sections and sub-sections.
- (iii) Statement of Work: Clearly define the comprehensive solutions that would include implementation, training, and a complete support program. Specification shall include but not limited to equipment or service type, pricing, and any additional cost related to the proposal. The term of the contract shall be for one year with an option to extend for FOUR (4) additional year(s).
- (iv) Minimum Qualifications & Experience:
  - a. Overview of company background, the relationship of any co-ventures, and an identification of subcontractors proposed for use on the contract and their respective percentages of participation.
  - b. Number of Employees
  - c. Corporate/individual qualifications and experiences, including certifications and licenses.
  - d. Certifications & Training
  - e. Evidence of Insurance
  - f. Price-Business Proposal
  - g. Identify Risk and Proposal Litigation – List of failed projects, suspensions, debarments, etc.
  - h. References – Three Professional references of applicable work and finance performance (Last Three Years Required: Include Company Name, Project, & Point Contact with phone number and email address)
  - i. Financial Statements and/or Dun & Bradstreet Qualifier Report or Number (Last Two Years Required)
- (iv) After reasonable notice to the Contractor, RCRC may review any of the Contractor's internal records, reports or insurance policies.

## 3. CLARIFICATION

(a) The Procurement Manager may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation.

## 4. PREFERENCES - A NOTICE TO VENDORS

(a) If applicable, please provide information if firm is Minority owned. Business must hold a Certificate of Eligibility

issued by the S.C. Division of Small and Minority Business Assistance Office (SMBAO).

(b) If applicable, please provide information if firm is Veteran-Owned. Business must hold a Certificate of Eligibility issued by the Veteran-Owned Small Business Certification (VOSB/SDVOSB/EDVOSB).

(c) If applicable, please provide information if firm is Women owned. Business must hold a Certificate of Eligibility issued by the Woman-Owned Small Business (WOSB/EDWOSB).

## 5. PROTEST –

(a) Any protest must be addressed to the Interim Executive Director, Richland County Recreation Commission, and submitted in writing

(i) By email to: [procurement@rcrc.state.sc.us](mailto:procurement@rcrc.state.sc.us)

(ii) By post or delivery to:

Richland County Recreation Commission

Attn: Tameka Williams

7473 Parklane Rd.

Columbia, SC 29223

## 6. UNIT PRICES REQUIRED

Unit price to be shown for each item.

## 7. MAILED OFFERS: NUMBER OF COPIES (4)

Offers must be submitted in a sealed package, Solicitation number and Opening Date must appear on package exterior.

(a) SUBMIT YOUR SEALED OFFER TO:

RICHLAND COUNTY RECREATION COMMISSION

ATTN: SHEILA SMITH

7473 PARKLANE RD.

COLUMBIA, SC 29223

(b) All Offerors should attach all additional requested documents to their response.

## 8. ELECTRONIC OFFERS

**Due to the COVID-19 Offers can be emailed to [cicily@rcrc.state.sc.us](mailto:cicily@rcrc.state.sc.us) before deadline. All offerors should attach all additional requested document to their response.**

**IF YOU QUALIFY YOUR OFFER WITH A STATEMENT SUCH AS, “THIS IS NOT AN OFFER”, THE OFFER WILL BE DEEMED “NON-RESPONSIVE” AND REMOVED FROM FURTHER CONSIDERATION.**

# III. SCOPE OF WORK/SPECIFICATIONS

## A. INTRODUCTION AND PURPOSE:

Richland County Recreation Commission (RCRC), located in Columbia, South Carolina, is requesting bids from successful vendors to provide and install HVAC units throughout various RCRC locations.

## B. GENERAL REQUIREMENTS:

The vendors shall have the capacity and capability to provide all required replacement HVAC units, listed below are the locations along with the HVAC's that are to be replaced:

1. Ballentine Community Center, 1009 Bickley Road, Ballentine SC 29002
  - a. Unit #1, Make: Carrier, Model #: 38YDB060300 Serial #: 3802E10470
  - b. Unit #1A A/H Make: Carrier, Model #: FV4ANB006, Serial #: 1072A73733
  - c. Unit #2 Make: Carrier, Model #: 38YCC024340, Serial #: 3802E18827
  - d. Unit #2 A/H Make: Carrier, Model #: FK4CNF002, Serial #: 2802A72984
  - e. Unit #3 Make: Carrier, Model #: 38YCC03550, Serial #: 3502E00230
  - f. Unit #3A A/H Make: Carrier, Model #:FK4CNF003, Serial #: 0102A67005
  - g. Unit #4 Make: Carrier, Model #: 38YCC048560, Serial #: 3502E00230
  - h. Unit #4 A/H Make: Carrier, Model #: FK4CNB006, Serial #: 2502A62590

2. Denny Terrace Sheriff's Department, 6429 Bishop Avenue, Columbia SC 29203
  - a. Unit #6A A/H Make: York, Model #: G2FD036H17A, Serial #: XDNS108720
  - b. Unit #6B, Make: York, Model #: H1RA036S46B, Serial #: WDMM058905

**C. SPECIAL REQUIREMENT/OBJECTIVES:**

1. All HVACs shall be Carrier or equivalent.

**D. COMPLIANCE:**

1. Contractor shall submit a project safety plan with proposal.

**E. REPORTS AND PROJECT CONTROLS:**

1. **Estimated Project Start Date:** 12/08/2022
2. **Project Completion Date:** 04/27/2023

**IV. INFORMATION FOR OFFERORS TO SUBMIT**

**INFORMATION FOR OFFERORS TO SUBMIT – GENERAL**

Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations. [04-4010-1]

**MINORITY PARTICIPATION (JAN 2006)**

Is the bidder a South Carolina Certified Veteran-Owned Business? [ ] Yes [ ] No

Is the bidder a South Carolina Certified Minority-Owned Business? [ ] Yes [ ] No

Is the bidder a South Carolina Certified Women-Owned Business? [ ] Yes [ ] No

Is the bidder a Minority Business certified by another governmental entity?  Yes  No

If so, please list the certifying governmental entity: \_\_\_\_\_

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

- Traditional minority
- Traditional minority, but female
- Women (Caucasian females)
- Hispanic minorities
- DOT referral (Traditional minority)
- DOT referral (Caucasian female)
- Temporary certification
- SBA 8 (a) certification referral
- Other minorities (Native American, Asian, etc.)

(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)

For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL:  
<http://www.govoepp.state.sc.us/osmba/>

## **V. QUALIFICATIONS**

### **A. QUALIFICATION OF OFFEROR**

1. To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810.

### **B. QUALIFICATIONS - MANDATORY MINIMUM**

1. In order to be qualified to receive award, you must meet the following mandatory minimum qualifications:
2. The Procurement Manager may, in his discretion, consider (1) the experience of a predecessor firm or of a firm's key personnel which was obtained prior to the date offeror was established, and/or any subcontractor proposed by offeror.
3. Provide a detailed, narrative statement providing adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation.
4. As an attachment to the bid, Offerors shall also furnish the following items, which shall be used to determine responsibility:
  - (a) Summary or overview of manpower intended for use in the performance of this contract
  - (b) List of references to include contact information (name, telephone, and e-mail address) for a minimum of three (3) organizations with projects of similar size and scope.

## **VI. AWARD CRITERIA**

### **A. AWARD CRITERIA -- BIDS**

1. Award will be made by a grading panel.

### **B. CALCULATING BID**

1. See Section X. Selection Process and Evaluation Criteria within this document.

### **C. COMPETITION FROM PUBLIC ENTITIES**

1. If a South Carolina governmental entity submits an offer, the Procurement Manager 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.

## **VII. TERMS AND CONDITIONS**

### **A. GENERAL**

## **1. ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015)**

(a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales).

Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made.

(b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer promptwritten notice of such change.

(c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restrict transfers by operation of law.

## **2. BANKRUPTCY - GENERAL**

(a) Notice. In the event the Contractor enters proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

(b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

## **3. CHOICE-OF-LAW**

(a) The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced, and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

## **4. CONTRACT DOCUMENTS & ORDER OF PRECEDENCE**

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Manager, (2) the solicitation, as amended, (3) documentation of clarifications or discussions of an offer, if applicable, (4) your offer, (5) any statement reflecting the final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

(b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by RCRC, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect.

(c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Manager shall be void and of no effect.

## **5. DISCOUNT FOR PROMPT PAYMENT**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt

at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date.

When the discount rate falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed, and Government business is not expected to be conducted, payment may be made on the following business day.

## **6. DISPUTES**

(a) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States' Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

## **7. EQUAL OPPORTUNITY**

(a) Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

## **8. FALSE CLAIM**

(a) According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

## **9. FIXED PRICING REQUIRED**

(a) Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award.

## **10. NO INDEMNITY OR DEFENSE**

(a) Any term or condition is void to the extent it requires RCRC to indemnify, defend, or pay attorney's fees to anyone for any reason.

## **11. NOTICE**

(a) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the State shall be to the Procurement Manager's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

## **12. NO INDEMNITY OR DEFENSE**

(a) Any term or condition is void to the extent it requires RCRC to indemnify, defend, or pay attorney's fees to anyone for any reason anyone.

## **13. PAYMENT & INTEREST**

(a) The County shall pay the Contractor within 30 days after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on "Page Two." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive



means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason.

#### **14. PUBLICITY**

- (a) Contractor shall not publish any comments or quotes by County employees or include the County in either news releases or a published list of customers, without the prior written approval of the Procurement Manager.

#### **15. PURCHASE ORDERS**

- (a) Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order.

#### **16. SETOFF**

- (a) RCRC shall have all its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, RCRC option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the county with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

#### **17. SURVIVAL OF OBLIGATIONS**

- (a) The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit.

#### **18. TAXES**

- (a) Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor.

#### **19. TERMINATION**

- (a) Subject to the conditions below, RCRC, providing a (30) thirty-day advance written notice is given to the vendor, may terminate the contract for any reason. **NON-APPROPRIATIONS:** Any contract entered by RCRC resulting from this bid invitation shall be subject to cancellation without damages or further obligation when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year. **FOR CONVENIENCE:** If this contract is terminated or canceled upon request and for the convenience of RCRC without the required thirty (30) days advance written notice, then RCRC may negotiate reasonable termination costs, if applicable. **FOR CAUSE:** Termination by RCRC for cause, default or negligence on the part of the vendor shall be excluded from the foregoing conditions; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived and the default clause in this bid shall apply.
- DEFAULT:** In case of default by the vendor, RCRC reserves the right to purchase any or all items in default in the open market, charging the vendor with any additional costs. The defaulting vendor shall not be considered a responsible bidder until the assessed charge has been satisfied.

#### **20. TERMINATION DUE TO UNAVAILABILITY OF FUNDS**

- (a) Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made

available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably

incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

## **21. THIRD PARTY BENEFICIARY**

(a) This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third-party beneficiary or otherwise.

## **22. WAIVER**

(a) The County does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to insist upon any term of the Contract strictly or promptly. Only the Procurement Manager has actual authority to waive any of the County's rights under this Contract. Any waiver must be in writing.

# **VII. TERMS AND CONDITIONS**

## **B. SPECIAL**

### **1. BANKRUPTCY – GOVERNMENT INFORMATION**

(a) All government information (as defined in the clause herein entitled "Information Security - Definitions") shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate.

(b) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by the State.

(c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information.

### **2. CHANGES**

- (a) **Contract Modification.** By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:
- (i) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
  - (ii) method of shipping or packing;
  - (iii) place of delivery;
  - (iv) description of services to be performed;
  - (v) time of performance (i.e., hours of the day, days of the week, etc.); or
  - (vi) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract.
- (b) **Adjustments of Price or Time for Performance.** If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- (c) **Time Period for Claim.** Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.

(d) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

**3. COMPLIANCE WITH LAWS**

(a) During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

**4. CONTRACT DOCUMENTS & ORDER OF PRECEDENCE–SOFTWARE LICENSING–SINGLE AGENCY:**

(a) Notwithstanding the clause entitled "Contract Documents & Order of Precedence," but as provided in the clause titled "Software Licensing Agreements–Single Solicitation," any contract awarded pursuant to this solicitation shall not include a software licensing agreement. Further, the document titled *South Carolina Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software – Single Agency*, which is attached hereto as an exhibit, is offered as information only and does not form part of the contract.

**5. CONTRACT LIMITATIONS**

(a) No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment.

**6. CONTRACTOR’S LIABILITY INSURANCE - GENERAL**

(a) Contractor shall provide and maintain during the entire performance period minimum insurance limits for LOW RISK as shown in the Minimum Insurance Limits Guideline. Include a copy of your insurance certificate with your bid.

FORM	BASIS	Minimum Insurance Limits Guidelines		
		HIGH RISK	MEDIUM RISK	LOW RISK
CGL	Occurrence	\$5 Million	\$2 Million	\$1Million
	Aggregate	\$10 Million	\$5 Million	\$2Million
	Products-Completed			
	Operation Aggregate	\$10 Million	\$5Million	\$2Million
	Personal/Advertising			
	Injury	\$5 Million	\$2 Million	\$1Million
Employees Liability	BI - Occurrence	\$1 Million	\$500,000	\$250,000
	Disease - Occurrence	\$1 Million	\$500,000	\$250,000
	Disease - Aggregate	\$2 Million	\$1 Million	\$500,000
Business Automobile Liability	Occurrence	\$2 Million	\$2 Million	\$1Million
Workers Comp		Statutory	Statutory	Statutory

(b) Richland County Recreation Commission and the officers, officials, employees, and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

(c) For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance as respect to the County and the officers, officials, employees, and volunteers of any of them. Any insurance or self-insurance maintained by RCRC or the officers, officials, employees, and volunteers of any of them, shall be excess of the Contractor’s insurance and shall not contribute with it.

(d) Prior to commencement of the work, the Contractor shall furnish the County with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by RCRC before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. RCRC

reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

(e) Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify RCRC immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.

(f) Contractor hereby grants to RCRC a waiver of any right to subrogation which any insurer of said Contractor may acquire against RCRC by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether RCRC has received a waiver of subrogation endorsement from the insurer.

(g) Any deductibles or self-insured retentions must be declared to and approved by RCRC. RCRC may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(h) RCRC reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances

(i) RCRC reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

## **7. CONTRACTOR PERSONNEL**

(a) The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

## **8. CONTRACTOR'S OBLIGATION -- GENERAL**

(a) The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact about all situations, including payment of all charges and the meeting of all other requirements.

## **9. DEFAULT**

(a) RCRC may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, to endanger performance of this contract (but see paragraph (a)(2) of this clause); or
- (iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

(b) RCRC right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Manager) after receipt of the notice from the Procurement Manager specifying the failure.

(c) If RCRC terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Manager considers appropriate, supplies, or services like those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(d) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(e) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or

services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(f) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to RCRC, as directed by the Procurement Manager, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Manager, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

(g) RCRC shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Manager shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Manager shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Manager determines to be necessary to protect RCRC against loss because of outstanding liens or claims of former lien holders.

(h) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of RCRC, be the same as if the termination had been issued for the convenience of RCRC. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of RCRC, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

(i) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **10. DEFAULT – SHORT FORM**

(a) RCRC may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any material contract terms and conditions, or fails to provide RCRC, upon request, with adequate assurances of future performance. In the event of termination for cause, the state shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the state for any and all rights and remedies provided by law. If it is determined that the state improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

#### **11. ESTIMATED QUANTITY -- PURCHASES FROM OTHER SOURCES**

(a) RCRC may bid separately any unusual requirements or large quantities of supplies covered by this contract.

#### **12. ESTIMATED QUANTITY -- UNKNOWN**

(a) The total quantity of purchases of any individual item on the contract is not known. The RCRC does not guarantee that RCRC will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information.

#### **13. ILLEGAL IMMIGRATION**

(a) (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14 Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors' language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors' language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

#### **14. INDEMNIFICATION -- THIRD PARTY CLAIMS**

(a) Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or

indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits act, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, or without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents, and employees.

## **15. INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION**

(a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter "action") of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.

(b) Indemnitee must notify contractor in writing within a reasonable period after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractor's ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitees attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.

(c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, or without regard to any clause regarding insurance.

(d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

## **16. LICENSES AND PERMITS**

(a) During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

## **17. OFFSHORE CONTRACTING PROHIBITED**

(a) No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States.

## **18. PRICE ADJUSTMENTS**

(a) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

- (i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (ii) by unit prices specified in the Contract or subsequently agreed upon;
- (iii) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed all as specified in the Contract; or subsequently agreed upon;
- (iv) in such other manner as the parties may mutually agree; or,
- (v) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

(b) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830.

#### **19. PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY**

(a) Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by enough documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase.

#### **20. PRICE ADJUSTMENTS -- LIMITED BY CPI "OTHER GOODS and SERVICES"**

(a) Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), "Other Goods & Services" for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at [www.bls.gov](http://www.bls.gov).

#### **21. PRICING DATA -- AUDIT -- INSPECTION**

(a) [Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all your subcontracts. (f) Nothing in this clause limits any other rights of the state. [07-7B185-1]

#### **22. RELATIONSHIP OF THE PARTIES**

(a) Neither party is an employee, agent, partner, or joint venture of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

#### **23. RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES**

(a) Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government



pursuant to this contract (hereinafter “applicable services”) or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter “terms of use”) not previously approved in writing by the procurement officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect.

(b) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the procurement officer) any additional products or services not required by the contract.

(c) Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work.

(d) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the state liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction.

#### **24. TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD**

(a) The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 1 year from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award.

#### **25. TERM OF CONTRACT -- OPTION TO RENEW**

(a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of 1 year unless contractor receives notice that RCRC elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award.

(b) Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio.

#### **26. TERM OF CONTRACT -- TERMINATION BY CONTRACTOR**

(a) Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Manager notice of its election to terminate under this clause at least 160 days prior to the expiration of the then current term.

#### **27. TERMINATION FOR CONVENIENCE -- INDEFINITE DELIVERY / INDEFINITE**

#### **28. QUANTITY CONTRACTS**

(a) Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination.

#### **29. TERMINATION FOR CONVENIENCE**

(a) Termination. The Procurement Manager may terminate this contract in whole or in part, for the convenience of RCRC. The Procurement Manager shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(b) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Manager may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to RCRC. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(c) Right to Supplies. The Procurement Manager may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Manager: (a) any completed supplies; and (b) such

partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Manager, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Manager does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in an accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that RCRC has breached the contract by exercise of the Termination for Convenience Clause.

(d) Compensation.

- (i) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Manager may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.
- (ii) The Procurement Manager and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;
- (iii) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Manager shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:
  - a. Contract prices for supplies or services accepted under the contract;
  - b. Costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;
  - c. Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in Subparagraph (c) of this paragraph;
  - d. Any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.
- (e) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such is consistent with any applicable Generally Accepted Accounting Principles.
- (f) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause.

## IX. ATTACHMENTS TO SOLICITATION

### NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING

#### IMPORTANT TAX NOTICE - NONRESIDENTS ONLY

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all

contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: [www.sctax.org](http://www.sctax.org)

This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-896-1420.

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: <http://www.sctax.org/forms/withholding/i-312-form>

## OFFEROR'S CHECKLIST

### OFFEROR'S CHECKLIST -- AVOID COMMON BID/PROPOSAL MISTAKES

Review this checklist prior to submitting your bid/proposal.

If you fail to follow this checklist, you risk having your bid/proposal rejected.

- Do not include any of your standard contract forms!
- Unless expressly required, do not include any additional boilerplate contract clauses.
- Reread your entire bid/proposal to make sure your bid/proposal does not take exception to any of the state's mandatory requirements.
- Make sure you have properly marked all protected, confidential, or trade secret information in accordance with the instructions entitled: SUBMITTING CONFIDENTIAL INFORMATION. **DO NOT mark your entire bid/proposal as confidential, trade secret, or protected! Do not include a legend on the cover stating that your entire response is not to be released!**
- Have you properly acknowledged all amendments? Instructions regarding how to acknowledge an amendment should appear in all amendments issued.
- Make sure your bid/proposal includes a copy of the solicitation cover page. Make sure the cover page is signed by a person that is authorized to contractually bind your business.
- Make sure your Bid/proposal includes the number of copies requested.
- Check to ensure your Bid/proposal includes everything requested!
- If you have concerns about the solicitation, do not raise those concerns in your response! **After opening, it is too late! If this solicitation includes a pre-bid/proposal conference or a question & answer period, raise your questions as a part of that process!** Please see instructions under the heading "submission of questions" and any provisions regarding pre-bid/proposal conferences.