

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND)	
)	
)	ORDER
IN RE: Appeal by DTZ, Inc.)	
[DTZ, Inc., et al., Appellants,)	Case No. 2015-3
v. South Carolina State University and the)	
State of South Carolina, Respondents)	
(Contract Controversy)])	
)	

This matter came before the South Carolina Procurement Review Panel (the Panel) for a hearing on September 23, 2015, pursuant to a request for review by DTZ, Inc. (DTZ)¹ under sections 11-35-4230(6) and 11-35-4410(1)(a) of the Consolidated Procurement Code (the Procurement Code). DTZ sought review of the June 29, 2015, written determination of the Interim Chief Procurement Officer for Goods and Services (the CPO) dismissing for lack of jurisdiction the State of South Carolina (the State) as a party to a contract controversy involving facilities management services DTZ was providing to South Carolina State University (SCSU).² At the Panel’s hearing, John E. Schmidt, III, Esquire, and Melissa J. Copeland, Esquire, represented DTZ. Deputy Solicitor General J. Emory Smith of the South Carolina Attorney General’s Office represented the State. Craig E. Burgess, Esquire, represented SCSU. W. Dixon Robertson, III, Esquire, represented the CPO.

¹ DTZ’s appeal letter notes that DTZ, Inc. was “formerly known as UGL Services Unicco Operations Co. and formerly known as UNICCO Service Company.” Record at PRP47. For ease of reference, this order uses the name “DTZ.”

² The CPO’s June 29th written determination also granted DTZ’s motion for partial summary judgment against SCSU in the amount of five million three hundred ninety-nine thousand eight hundred ninety-five and 59/100 (\$5,399,895.59) dollars based on SCSU’s admission that it owed money to DTZ under the facilities management contract. The Panel notes that this portion of the CPO’s decision has not been appealed by any party and is not before the Panel for review. Therefore, the only issue to be decided by the Panel is whether the CPO and the Panel have jurisdiction over the State as a party in a contract controversy brought pursuant to section 11-35-4230 of the Procurement Code.

Solicitation Background

Acting on behalf of SCSU, the Materials Management Office (MMO) of the South Carolina Budget and Control Board (the Board) issued a Request for Proposals (RFP) on April 1, 2010, seeking to acquire facilities management services at SCSU's campus in Orangeburg, South Carolina.³ DTZ submitted a proposal in response to the RFP, and MMO posted a notice of Intent to Award the contract to DTZ on June 9, 2010. [Panel Attachment A]. The award became final on June 21, 2010. *Id.* As noted by the CPO, the contract consists of the RFP, as amended, together with DTZ's proposal, and the record of negotiations.

The RFP contains definitions for terms used within the solicitation documents. In particular, the RFP defines the term "STATE" to mean "the Using Governmental Unit(s) identified on the Cover Page." [Panel Attachment B, RFP at page 7.] Similarly, the "USING GOVERNMENTAL UNIT" is defined as "the unit(s) of government identified as such on the Cover Page." *Id.* The term "Cover Page" refers to the top page of the solicitation. *Id.* The cover page of the solicitation in question identifies SCSU as the "USING GOVERNMENTAL

³ MMO conducted this procurement on SCSU's behalf in accordance with the provisions of section 11-35-510 of the Procurement Code. The Panel notes that the RFP contained the following clause regarding the Board's authority and liability:

BOARD AS PROCUREMENT AGENT (JAN 2004)

(a) Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement. (b) Purchasing Liability. The Procurement Officer is an employee of the Board acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. **Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Unit(s).** The Board is not a party to such contracts, unless and to the extent that the board is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract.

Record at PRP38 (emphasis added). The Panel also takes note that as a result of the South Carolina Restructuring Act of 2014 (Act 121), MMO has been transferred and incorporated into the Procurement Services Division of the State Fiscal Accountability Authority. See <http://sfaa.sc.gov/divisions?p=6> (Website last accessed September 24, 2015). This change became effective on July 1, 2015.

UNIT.” Record at PRP37. Thus, the Panel finds that as the “using governmental unit,” SCSU is also the “State” with regard to the provisions of the RFP and resulting contract.

The RFP also provides that by submitting an offer, the offeror is “offering to enter into a contract with the Using Governmental Unit(s).” Record at PRP38, “BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004). Therefore, the Panel finds that the contract resulting from DTZ’s offer and the subsequent award was formed between DTZ and SCSU.

Contract Performance and Dispute

DTZ began performing services under the contract on July 1, 2010, and the contract was renewed on an annual basis. On February 20, 2015, DTZ filed a request for resolution of a contract controversy with the CPO pursuant to section 11-35-4230 of the Procurement Code. Record at PRP10 – PRP18. DTZ’s request named both SCSU and the State of South Carolina as parties to the contract controversy. Record at PRP10 – PRP11. In its request for review, DTZ alleged that although it had been performing services as set forth in the contract, SCSU had fallen behind in its payment and was currently indebted to DTZ in the amount of four million two hundred thousand dollars (\$4,200,000.00). Record at PRP13. DTZ also claimed that this amount continued to accrue at a monthly rate of four hundred one thousand nine hundred sixty-four dollars and thirty-four cents (\$401,964.34) as it continues to perform services for SCSU. Record at PRP13 – PRP14. DTZ asserted causes of action based on (1) breach of contract for non-payment; (2) breach of statutory duty of good faith and fair dealing; (3) quantum meruit, contract implied by law and quasi-contract; and (4) promissory estoppel. Record at PRP15 – PRP17.

SCSU answered DTZ’s claims and admitted an indebtedness of approximately three million five hundred thirty-three thousand and eighty-eight dollars (\$3,533,088.00), with

additional amounts accruing at an approximate monthly amount of \$402,000.00. Record at PRP19 – PRP23. As previously mentioned, the CPO entered a judgment against SCSU based on its admission of indebtedness in the amount of not less than five million three hundred ninety-nine thousand eight hundred ninety-five dollars and fifty-nine cents (\$5,399,895.59) as of June 16, 2015. Record at PRP7. This entry of judgment against SCSU is not before the Panel for review.

For its part, the State moved before the CPO to be dismissed as a party to the contract controversy for lack of jurisdiction. Record at PRP32 – PRP36. In support of its position, the State cited section 11-35-4230 of the Procurement Code (the contract controversy provision) and the definition of “governmental body” set forth in section 11-35-310(18). *Id.*; S.C. Code Ann. §§ 11-35-4230 and 11-35-310(18) (2011). In addition, the State relied on the fact that it is not in privity of contract with DTZ. Record at PRP35 – PRP36.

Considering the scope of his authority as established by section 11-35-4230 and the definition of “governmental body” set forth in section 11-35-310(18), the CPO found that he had jurisdiction over the State’s agencies, but not the State itself. Therefore, the CPO granted the State’s motion and “dismiss[ed] DTZ’s claims against the State for lack of jurisdiction.” Record at PRP6. DTZ timely appealed the CPO’s dismissal of the State as a party on July 8, 2015. Record at PRP47 – PRP53.

Discussion

In its appeal letter and argument before the Panel, DTZ urges the Panel to exercise jurisdiction over the State and hold it equally responsible for the debts incurred by SCSU under the contract in question. DTZ first argues that the State’s motion to dismiss for lack of jurisdiction was not made in writing and that, therefore, “DTZ was not given due notice of and

reasonable opportunity to be heard on that issue, as required by law.” Record at PRP49. Pursuant to section 11-35-4410(1)(a) of the Procurement Code, the Panel is charged with the responsibility of conducting a *de novo* review of a CPO’s written determinations. S.C. Code Ann. § 11-35-4410(1) (2011). To facilitate its review, the Panel set a scheduling order affording all parties the opportunity to file pre-hearing briefs. Although the State filed a timely brief with the Panel, DTZ did not, choosing to rely on the arguments presented in its appeal letter. In addition, the Panel heard and considered oral arguments from all parties. Therefore, even assuming for the sake of argument that DTZ did not understand that the State’s written motion for dismissal was based in part on the CPO’s lack of jurisdiction over the State, the Panel finds that any due process violation by the CPO has been “rendered harmless” by the Panel’s *de novo* review. *See Unisys Corp. v. South Carolina Budget and Control Bd., et al.*, 346 S.C. 158, 174, 551 S.E.2d 263, 272 (2001) (citing *Ross v. Med. Univ. of South Carolina*, 328 S.C. 51, 492 S.E.2d 62 (1997) (an adequate *de novo* review by the Panel “renders harmless a procedural due process violation based on the insufficiency of the lower administrative body.”)).

DTZ next argues that the language of section 11-35-40 grants the CPO and the Panel jurisdiction to consider claims against “the State” arising out of contracts entered into under the Procurement Code. Section 11-35-40(2) provides in pertinent part: “This code applies to every procurement or expenditure of funds by this State under contract acting through a governmental body as herein defined irrespective of the source of the funds” S.C. Code Ann. § 11-35-40(2) (2011). The Panel finds that this provision identifies the types of procurements and expenditures that must be solicited under the Procurement Code’s requirements and does not establish jurisdiction to resolve contract controversies. Indeed, jurisdiction over contract controversies is explicitly set forth in a different Procurement Code provision: section 11-35-

4230. Therefore, the Panel disagrees with DTZ's characterization of section 11-35-40(2) and finds that it does not give the CPO or the Panel any authority to take actions with regard to "the State."

DTZ also cites numerous cases from the South Carolina Supreme Court for the propositions that (1) the State is ultimately responsible for the actions of its agencies, *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008); and (2) the State authorized SCSU to enter into contracts and thus received goods and services through those contracts and is equally responsible for paying for those goods and services, *State ex rel. McKinlay v. Cardozo*, 8 S.C. 71 (1876); *Morton, Bliss & Co. v. Comptroller General*, 4 S.C. 430 (1873); *Walker v. State*, 12 S.C. 200 (1879); and *McCullough v. Brown*, 41 S.C. 220, 10 S.E. 458 (1894). The Panel finds that none of these cases were decided under the Procurement Code or address the question of whether an administrative body may exercise jurisdiction over the State as a party to a dispute involving one of the State's agencies or institutions. Therefore, the Panel finds them irrelevant to the case at hand.

Finally, DTZ reminds the Panel that section 11-35-4230 of the Procurement Code was enacted pursuant the General Assembly's authority to "direct, by law, in what manner claims against the State may be established and adjusted." S.C. Const. art. X, § 10; art. XVII, § 2. In addition, DTZ cites the case of *Unisys Corp. v. South Carolina Budget and Control Board, et al.*, 346 S.C. 158, 551 S.E.2d 263 (2001) for the proposition that section 11-35-4230 is the exclusive means of resolving disputes between the State⁴ and its contractors with regard to contracts solicited and awarded under the Procurement Code. DTZ argues that failing to join the State as a party to the instant contract controversy would result in all future contract controversy cases

⁴ In the *Unisys* decision, the South Carolina Supreme Court used the term "the State" to refer to all of the respondents in the case collectively. These parties included numerous state agencies and officials, but not the State as a corporate entity.

being brought before the Circuit Court rather than the CPO and the Panel as intended by section 11-35-4230. The Panel agrees that section 11-35-4230 was enacted pursuant the cited state constitutional articles and that *Unisys* discussed the CPO and Panel’s jurisdiction over contract controversy claims. However, the Panel disagrees that failing to join the State as a party in the instant dispute would have the dire result predicted by DTZ and notes that the *Unisys* court did not consider the precise jurisdictional question currently before the Panel. Indeed, the Panel is mindful that the *Unisys* court also viewed section 11-35-4230 as a statute waiving the State’s sovereign immunity that “must be strictly construed, the State can be sued only in the manner and upon the terms and conditions prescribed by the statute.” *Id.* at 170, 551 S.E.2d at 270 (citation omitted). In other words, the Panel must consider the express language of section 11-35-4230.

Section 11-35-4230(1) provides:

This section applies to controversies between a **governmental body** and a contractor . . . which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recession. The procedure set forth in this section constitutes the exclusive means of resolving a contract controversy between a **governmental body** and a contractor . . . concerning a contract solicited and awarded pursuant to the provisions of the South Carolina Consolidated Procurement Code.

S.C. Code Ann. § 11-35-4230(1) (2011) (emphasis added). Thus, the clear language of this provision authorizes the Panel and the CPO to exercise jurisdiction over a governmental body and a contractor to resolve a controversy between them relating to a contract awarded under the Procurement Code. Furthermore, the Procurement Code defines the term “governmental body” as “a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch.” S.C. Code Ann. § 11-35-310(18) (2011).

Although SCSU falls squarely within this definition, the State as a separate corporate entity or sovereign does not. As the CPO aptly observed, had the General Assembly wanted to give the CPO and the Panel jurisdiction over the State as well as its agencies in proceedings pursuant to the Procurement Code, it surely could have done so. While sympathetic to DTZ's situation, the Panel simply cannot exercise jurisdiction over the State in a contract controversy proceeding.⁵

Conclusion

Therefore, for the reasons stated herein, the Panel hereby upholds the decision of the CPO dismissing DTZ's claims against the State for lack of jurisdiction.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT REVIEW PANEL

BY: *Willie D. Franks*
WILLIE D. FRANKS, VICE CHAIRMAN

This 12th day of October, 2015.

Columbia, South Carolina

⁵ The Panel is deeply troubled that the Procurement Code appears to offer no means of enforcing a judgment against an apparently insolvent governmental body and respectfully suggests that this is an issue to be addressed by the General Assembly in an amendment to the Procurement Code.

Panel Attachment A
STATE OF SOUTH CAROLINA
MATERIALS MANAGEMENT OFFICE
CAPITAL CENTER
1201 MAIN STREET, SUITE 600
COLUMBIA SC 29201

Intent to Award

Posting Date: June 09, 2010

Solicitation: 5400001770

Description: Facilities Management Services. for SCSU

Agency: SC State University

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **08:00 AM, June 21, 2010**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

(a) by email to protest-mmo@mmo.sc.gov ,

(b) by facsimile at 803-737-0639 , or

(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

Contract Number: 4400002499

Awarded To: UGL UNICCO

275 GROVE STREET - SUITE 3-200

AUBURNDALE MA 02466

Total Potential Value: \$ 26,043,960.00

Initial Contract Period July 01, 2010 through June 30, 2011

Maximum Contract Period: July 01, 2010 through June 30, 2015

Item	Description	Unit Price	Total
00001	Facilities Services for SCSU	\$ 5,208,792.00	\$ 26,043,960.00

Procurement Officer

Daniel W. Covey, CPPB

	State of South Carolina Request for Proposal	Solicitation Number: 5400001770
		Date Issued: 04/01/2010
		Procurement Officer: Daniel W. Covey, CPPB
		Phone: (803)737-0674
		E-Mail Address: dcovey@mmo.sc.gov

DESCRIPTION: **Facilities Management Services for SC State University**

USING GOVERNMENTAL UNIT: **South Carolina State University**

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 YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:	
MAILING ADDRESS: Materials Management Office PO Box 101103 Columbia SC 29211	PHYSICAL ADDRESS: Materials Management Office Capital Center 1201 Main Street, Suite 600 Columbia SC 29201

SUBMIT OFFER BY (Opening Date/Time): **05/03/2010 2:30 PM** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **04/12/2010 5:00 PM** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **One (1) original in hard copy, one (1) electronic copy (See MAGNETIC MEDIA -- REQUIRED FORMAT -- Section II B), five (5) copies in hard copy clearly marked "COPY", one (1) redacted copy in hard copy and one (1) redacted electronic copy (see SUBMITTING CONFIDENTIAL INFORMATION -- Sec. II A and SUBMITTING REDACTED OFFERS -- Sect. 4.)**

CONFERENCE TYPE: Pre-Bid DATE & TIME: 04/12/2010 10:00 AM (As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)	LOCATION: South Carolina State University Fourth Floor Auditorium in Belcher Hall 300 College Street, NE Orangeburg, SC 29117
--	---

AWARD & AMENDMENTS	Award will be posted on 05/21/2010 . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: http://www.procurement.sc.gov
-------------------------------	--

Unless submitted on-line, 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 thirty (30) 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 www.procurement.sc.gov)
---	---

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.)		
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input type="checkbox"/> Other _____
<input type="checkbox"/> Corporate entity (not tax-exempt)	<input type="checkbox"/> Corporation (tax-exempt)	<input type="checkbox"/> Government entity (federal, state, or local)

PAGE TWO

(Return Page Two with Your Offer)

HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business) 	NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause) <div style="text-align: right; margin-top: 10px;"> _____ Area Code - Number - Extension Facsimile _____ E- mail Address </div>
--	---

PAYMENT ADDRESS (Address to which payments will be sent.) (See "Payment" clause) <div style="margin-top: 10px;"> <input type="checkbox"/> Payment Address same as Home Office Address <input type="checkbox"/> Payment Address same as Notice Address (check only one) </div>	ORDER ADDRESS (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses) <div style="margin-top: 10px;"> <input type="checkbox"/> Order Address same as Home Office Address <input type="checkbox"/> Order Address same as Notice Address (check only one) </div>
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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						

DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____ Calendar Days (%)
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I. SCOPE OF SOLICITATION

ACQUIRE SERVICES and SUPPLIES / EQUIPMENT (JAN 2006)

The purpose of this solicitation is to acquire services and supplies or equipment complying with the enclosed description and/or specifications and conditions. [01-1005-1]

South Carolina State University in Orangeburg seeks to enter into an agreement with a qualified contractor to provide assistance and improve the management, administration, and execution of the University's Physical Plant Operations (PPO) to include Grounds Maintenance and Capital Construction Projects.

The University's PPO data is provided in the Appendices of this document. For further detailed information (e.g., Assignable Area; Utilization, Average Weekly Use; etc.), visit South Carolina Commission on Higher Education's Management Information System (CHEMIS) data reports at the following link: http://www.che.sc.gov/New_Web/Rep&Pubs/Facilities.htm

The University has historically managed Facility Operations and Maintenance in-house. In August 2004, the University outsourced the operations and management to Sodexo Incorporated & Affiliates (a contracted management company.) The University currently manages grounds maintenance. A list of personnel that comprise these two units is provided in **Appendices B1 and B2**.

Use of contracted management services has offered the University the best opportunity for cost-effective and high quality service in a manner that is consistent with the University's strategic plan, mission and culture. It is the University's belief that as operating budgets continue to be reduced and systems become more complex, contracting for management services will provide the best mechanism for addressing and expanding an array of tasks and programmatic enhancements without a dramatic increase in permanent staff or departmental budgets.

FY 2011 Budget

The allocated budget amount for the first year of this contract is \$5.3 million. Offerors must provide responses to this RFP that are commensurate with, or exceed the requirements as set forth in the scope of work; price proposals that exceed the \$5.3 budget shall be deemed non-responsive and will not be considered for award. Transition costs are to be included in the \$5.3 million.

MAXIMUM CONTRACT PERIOD - ESTIMATED (Jan 2006)

Start date: 07/01/2010 End date: 06/30/2015. 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". [01-1040-1]

II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS

DEFINITIONS (JAN 2006)

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

AMENDMENT means a document issued to supplement the original solicitation document.

BOARD means the South Carolina Budget & Control Board.

BUYER means the Procurement Officer.

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

CONTRACT See clause entitled Contract Documents & Order of Precedence.

CONTRACT MODIFICATION means a written order signed by the Procurement Officer, directing contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

CONTRACTOR means the Offeror receiving an award as a result of this solicitation.

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.

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

OFFEROR means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.

ORDERING ENTITY Using Governmental Unit that has submitted a Purchase Order.

PAGE TWO means the second page of the original solicitation, which is labeled Page Two.

PROCUREMENT OFFICER means the person, or his successor, identified as such on the Cover Page.

YOU and YOUR means Offeror.

SOLICITATION means this document, including all its parts, attachments, and any Amendments.

STATE means the Using Governmental Unit(s) identified on the Cover Page.

SUBCONTRACTOR means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

USING GOVERNMENTAL UNIT means the unit(s) of government identified as such on the Cover Page. If the Cover Page names a Statewide Term Contract as the Using Governmental Unit, the Solicitation seeks to establish a Term Contract [11-35-310(35)] open for use by all South Carolina Public Procurement Units [11-35-4610(5)].

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

[02-2A003-1]

AMENDMENTS TO SOLICITATION (JAN 2004)

(a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: www.procurement.sc.gov (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. [02-2A005-1]

AWARD NOTIFICATION (NOV 2007)

Notice regarding any award or cancellation of award will be posted at the location specified on the Cover Page. If the contract resulting from this Solicitation has a total or potential value of fifty thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation. 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. [02-2A010-1]

BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)

By submitting Your Bid or Proposal, You are offering to enter into 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. [02-2A015-1]

BID ACCEPTANCE PERIOD (JAN 2004)

In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. [02-2A020-1]

BID IN ENGLISH and DOLLARS (JAN 2004)

Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

BOARD AS PROCUREMENT AGENT (JAN 2004)

(a) Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement. (b) Purchasing Liability. The Procurement Officer is an employee of the Board acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between Contractor and the Using Governmental Units(s). The Board is not a party to such contracts, unless and to the extent that the board is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract. [02-2A030-1]

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)

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.

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

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to-

- (i) Those prices;
- (ii) The intention to submit an offer; or
- (iii) The methods or factors used to calculate the prices offered.

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

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

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

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

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

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

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

(c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1]

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)

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

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

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

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

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

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

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

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

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

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

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

[02-2A035-1]

CODE OF LAWS AVAILABLE (JAN 2006)

The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at: <http://www.scstatehouse.net/code/statmast.htm>. The South Carolina Regulations are available at: <http://www.scstatehouse.net/coderegs/statmast.htm> [02-2A040-1]

COMPLETION OF FORMS/CORRECTION OF ERRORS (JAN 2006)

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.) [02-2A045-1]

DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)

Any offer received after the Procurement Officer 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. [R.19-445.2070(H)] [02-2A050-1]

DRUG FREE WORK PLACE CERTIFICATION (JAN 2004)

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. [02-2A065-1]

DUTY TO INQUIRE (JAN 2006)

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. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. [02-2A070-1]

ETHICS CERTIFICATE (MAY 2008)

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. [02-2A075-2]

OMIT TAXES FROM PRICE (JAN 2004)

Do not include any sales or use taxes in Your price that the State may be required to pay. [02-2A080-1]

PROTESTS (JUNE 2006)

Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [Section 11-35-4210] [02-2A085-1]

PUBLIC OPENING (JAN 2004)

Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. [02-2A090-1]

QUESTIONS FROM OFFERORS (JAN 2004)

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated 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. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation, that unnecessarily or inappropriately limits full and open competition. [02-2A095-1]

All questions must be writing and received by Daniel W. Covey, CPPB, no later than **04/12/2010 5:00 PM**. Send questions by mail, email, or fax to one of the following addresses:

Materials Management Office
Attn: Daniel W. Covey
1201 Main Street – Suite 600
Columbia, SC 29201

Fax: 803-737-0639
Email: dcovey@mmo.sc.gov

REJECTION/CANCELLATION (JAN 2004)

The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]

RESPONSIVENESS/IMPROPER OFFERS (JAN 2004)

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

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. 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 Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or sub-line 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 the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

[02-2A105-1]

RESTRICTIONS APPLICABLE TO OFFERORS (JAN 2004)

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 Officer. This restriction may be lifted by express written permission from the Procurement Officer.

This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, *you agree not to give anything to any Using Governmental Unit or its employees, agents or officials prior to award.* [02-2A110-1]

SIGNING YOUR OFFER (JAN 2004)

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 venturer 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 it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

STATE OFFICE CLOSINGS (JAN 2004)

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 work day 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:

http://www.scemd.org/scgovweb/weather_alert.html [02-2A120-1]

SUBMITTING CONFIDENTIAL INFORMATION (AUG 2002)

(An overview is available at 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 with regard to 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 officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-1]

SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004)

(a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) - (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) Facsimile or 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. [02-2A130-1]

TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)

Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. [02-2A135-1]

TAXPAYER IDENTIFICATION NUMBER (JAN 2004)

(a) 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.
(b) 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.
(c) 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. [02-2A140-1]

VENDOR REGISTRATION MANDATORY (JAN 2006)

You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit www.procurement.sc.gov and select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor

information current. If you are already registered, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm>) [02-2A145-1]

WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)

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. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085. [02-2A150-1]

II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS

CONFERENCE - PRE-BID/PROPOSAL (JAN 2006)

Pre-Bid/Proposal Conference Date and Time: **04/12/2010 10:00 A.M.**

Location of Pre-Bid/Proposal Conference:

South Carolina State University
Fourth Floor Auditorium in Belcher Hall
300 College Street, NE
Orangeburg, SC 29117

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 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 the State. The State assumes no responsibility for any conclusions or interpretations made by contractor based on the information made available at the conference. Nor does the State 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. [02-2B025-1]

CONTENTS OF OFFER (RFP) -- SPO (JAN 2006)

- (a) Offers should be complete and carefully worded and should convey all of the information requested.
- (b) Offers should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
- (c) Each copy of your offer should be bound in a single volume where practical. All documentation submitted with your offer should be bound in that single volume.
- (d) If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

[02-2B040-1]

CLARIFICATION (NOV 2007)

Pursuant to Section 11-35-1520(8), the Procurement Officer 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. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

DISCUSSIONS and NEGOTIATIONS (NOV 2007)

Submit your best terms from a cost or price and from a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are submitted, the State may elect to consider only your unrevised initial proposal. [11-35-1530(6); R.19-445.2095(I)] The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [02-2B060-1]

MAGNETIC MEDIA -- REQUIRED FORMAT (JAN 2006)

As noted on the cover page, an original hard copy of your offer must be accompanied by the specified number of copies in the following electronic format: compact disk (CD) in one of the following formats: CD-R; DVD ROM; DVD-R; or DVD+R. Formats such as CD-RW, DVD-RAM, DVD-RW, DVD+RW, or DVIX are not acceptable and will result in the Offeror's proposal being rejected. Every CD must be labeled with offeror's name, solicitation number, and specify whether contents address technical proposal or business proposal. If multiple CD sets are provided, each CD in the set must be appropriately identified as to its relationship to the set, e.g., 1 of 2. Each CD must be identical to the original hard copy. File format shall be MS Word 97 or later. [02-2B070-1]

NOTE: PDF format is acceptable.

MAIL PICKUP (JAN 2006)

The State Procurement Office picks up all mail from The US Postal Service once daily around 8:30 a.m. (excluding weekends and holidays). See provision entitled Deadline for Submission of Offer. [02-2B080-1]

OPENING PROPOSALS -- PRICES NOT DIVULGED (JAN 2006)

In competitive sealed proposals, prices will not be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(c) (1)] [02-2B110-1]

PROTEST - CPO - MMO ADDRESS (JUNE 2006)

Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing
(a) by email to protest-mmo@mmo.state.sc.us ,
(b) by facsimile at 803-737-0639 , or
(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B122-1]

SITE VISIT -- BY APPOINTMENT (JAN 2006)

Appointment for a site visit may be made by contacting:

Director of Business Services at 803 536-7081

[02-2B140-1]

III. SCOPE OF WORK/SPECIFICATIONS

DELIVERY/PERFORMANCE LOCATION -- SPECIFIED (JAN 2006)

After award, all deliveries shall be made and all services provided to the following address, unless otherwise specified:

South Carolina State University
300 College Street,
Orangeburg, SC 29117

[03-3030-1]

Scope of Work

Introduction

In an attempt to narrow the breadth of professional oversight and bring some level of order to an organization's many activities, the Association of Higher Education Facilities Officers (APPA) identified four (4) core competencies that encompass the broad range of facilities management oversight:

- General Administration and Management
- Maintenance and Operations
- Energy and Utility Systems
- Planning, Design and Construction

This Request for proposals will follow the same format.

3.1 GENERAL ADMINISTRATION AND MANAGEMENT

You will provide management personnel and corporate support to manage the daily operations of the University's Physical Plant Operations (PPO), including Grounds Maintenance, and Planning and Construction units at SC State in an effective and efficient manner. **Appendix D** – "Campus Facilities/Buildings" is a full list of facilities to be maintained and operated.

You will assume complete responsibility for all operating units of the PPO, including but not limited to: buildings, grounds, and all the technical issues associated with these assets, including architectural systems, heating and cooling systems, electrical systems, custodial maintenance, utility systems including central plant and distribution systems (see **Appendix C** for list "Fixed Asset Inventory Record for Depreciation".) You will not be responsible for maintenance or repair in the kitchen/dinning areas.

The current Computerized Maintenance Management System (CMMS) in use is Facilities Center Version 7.3. The system belongs to the current contractor. While historical data from the current CMMS will be made available, you shall be responsible for providing your own CMMS.

Any work completed outside of the Operation and Maintenance (O&M) contract will be subject to State Procurement regulations. You will obtain a purchase order from the University prior to commencing work. The payment will be made upon submission of the invoice (See **Exhibit P** Clarification of procurement responsibilities.)

3.1.2 Management Practices

You shall manage the daily operations of the PPO. You will develop and implement policies and procedures that will enhance the efficiency and effectiveness of the supervisory staff and the productivity of the work force.

3.1.3 Basic Services/Capital Expenditure

You shall be responsible for maintenance supplies (all items necessary for the execution of the contract excluding labor and equipment; costs are non-reimbursable) and minor equipment to maintain and repair existing facilities and service contracts consistent with the following definitions of basic services and capital services:

3.3.3.1 Basic services – All preventive maintenance, corrective maintenance, general maintenance, grounds maintenance, repair, custodial and other services. All basic services shall be performed to a standard that ensures a safe, attractive, functional and efficient environment in line with the high standards specified by the client in the Scope of Work.

3.3.3.2 Capital Expenditures – Capital expenditures shall be \$5,000 or greater and have a useful life of at least three years and are defined as any new construction, replacement, renovation and/or modification of client's buildings, equipment, appliances, electrical and mechanical systems that change the original purpose of, extend the life of, or increase the value of the client's facility. The University will be responsible for capital expenditures over the \$5,000 threshold.

3.1.4 Operating Programs

You will prepare operating programs for each operating unit and necessary sub-units. Timelines for submission of these operating programs will be established with successful offeror. The operating programs shall include - but not be limited to - the following information:

3.1.4.1 Organization of the operating unit and sub-units;

3.1.4.2 Staffing of the operating unit by job classification keyed to work identification

3.1.4.3 Updated and approved job descriptions for each job classification

3.1.4.4 Individual worker assignments and responsibilities

3.1.4.5 Operating procedures including tasks, frequencies, methods, and information flow

3.1.4.6 Material, tools, equipment, and supply requirements including basic specifications for individual items

3.1.4.7 Performance standards for the work to be done by the operating unit;

3.1.4.8 Quality assurance program to ensure compliance with the performance standards;

3.1.4.9 Schedules for work to be done on an infrequent but recurring basis;

3.1.4.10 Description of training requirements including training rosters and records;

3.1.4.11 Methods for providing relief for absent workers;

Any program instituted by you will include work identification, responsibilities and accountability of the work force.

3.1.5 Management Planning

You shall utilize on-site staff, corporate resources, and SC State personnel to both develop new, and update, existing management plans.

3.1.6 Training and Development Plan

Contractor shall provide a staff training and development plan to include strategies and training to help prevent and reduce the frequency and severity of on-the-job injuries/illnesses.

3.1.7 Principal Management and Leadership Responsibilities

Responsibilities include, but are not limited to, the following:

- 3.1.7.1 Setting department direction (vision and mission)
- 3.1.7.2 External relations
- 3.1.7.3 Strategic planning
- 3.1.7.4 Establishment of goals and objectives
- 3.1.7.5 Establishment of policies and procedures
- 3.1.7.6 Resource allocation
- 3.1.7.7 Workload planning
- 3.1.7.8 Definition of priorities and departmental services
- 3.1.7.9 Assurance of coordination and cooperation among operations components
- 3.1.7.10 Inspection and monitoring of performance
- 3.1.7.11 Physical facilities
- 3.1.7.12 Support services
- 3.1.7.13 Administrative services
- 3.1.7.14 Budget, cost accounting, financial management
- 3.1.7.15 Human resources
- 3.1.7.16 Training, education and development
- 3.1.7.17 Information systems support
- 3.1.7.18 Regulatory and compliance
- 3.1.7.19 Serve on various University committees as required

3.2 MAINTENANCE AND OPERATIONS

You shall be responsible for the following:

3.2.1 Deferred Maintenance Plan

A deferred maintenance plan based upon a facilities condition assessment of each building and Campus infrastructure. The plan will identify work items, cost, priority, and will include a 10 year renewal or replacement plan for major building components/systems and Campus infrastructure.

3.2.2 Assessment of Equipment and Tools

Contractor will assess equipment and tools for each operating unit and will prepare a plan illustrating the need for additional vehicles, powered equipment, tools, and other devices needed to complete the required work on a timely basis. The plan will include costs for the items and a justification based on essential work, increased quality, and/or increased productivity. Contractor must document any labor savings that may result due to the purchase of the equipment. At this time, Facilities maintain approximately \$90K in spare parts. Grounds maintain approximately \$2K in spare parts. Contractor will have the option to purchase the initial inventory; however, this is not required. SCSU will provide all their existing tools, materials and supplies required to deliver the work in this RFP; however, SCSU will not provide special tools or testing devices for proprietary equipment. Costs for equipment

replacement shall be included in the cost proposal. Offerors who wish to see the current equipment may schedule a site visit with the Director of Business Services by calling 803 536-708.

3.2.3 Existing Contracts

The University has several contracts in place for services in connection with the operations and maintenance of the facilities. There is a list of these contracts and their terms in **Appendix G** "Current Contract Expenses and Third Party Contract Expenses." Contractor shall act as the University's Agent and manage these contracts. The contracts shall be rebid by the successful offeror when they expire. Generally, an appropriate University procurement official can cancel these contracts with 90 days written notice. Please note, the pending ESCO contract does not fall into this category and will not be subject to cancellation.

3.2.4 Implementation Plan

You will develop an implementation plan that illustrates goals, changes to be made, dates of completion, and associated costs for assuming management control and responsibility for the operation of the Physical Plant Operations

3.2.5 Plan Compliance

All plans shall comply with occupational, environmental, life and fire safety as well as health regulations at Federal, State, and local levels.

3.2.6 Zone Maintenance Program

You shall produce a Zone Maintenance Program or other appropriate maintenance program utilizing multi-skilled maintenance mechanics.

3.2.7 Preventive Maintenance Program

You shall produce a preventive maintenance program for buildings, steam plant, and equipment in accordance with the requirements of the Energy Performance Contract and industry best practices.

3.2.8 Energy, Fuel and Water Management

You shall coordinate and provide construction contract administration for the implementation phase of the Energy Performance Contract (EPC) currently under procurement. Verify work performed complies with the EPC scope of work and monitor performance of the measures implemented. Evaluate and provide any additional recommendations for the Energy Management System (EMS) expansion plan, including priorities and estimated costs. Collect data reported from the measurement and verification plan in the EPC and provide a summary of savings to the University monthly. Reconcile savings with the EPC Contractor no less than annually. Any guaranteed savings lost over the term of the EPC attributable to this Facilities Management Services Contractor such as, but not limited to, failure to perform prescribed preventative maintenance or failure to manage the terms and conditions of the EPC, shall be the financial responsibility of this Facilities Management Services Contractor.

3.2.9 Campus landscaping plan

Campus landscaping plan to enable SC State to improve the appearance of the Campus and to reduce grounds maintenance costs (See **Appendix A** for a list of landscaping tasks and locations.)

3.2.10 Time Table for Management Planning

You will submit the following management plans for approval within the time limits shown below. The time limits begin upon award of the contract and/or receipt of official purchase order, unless otherwise noted.

- 3.2.10.1 Implementation Plan – **To be included with proposal**
- 3.2.10.2 Organization/Staffing Plan – **To be included with proposal**
- 3.2.10.3 Zone Maintenance or other appropriate program – **To be included with proposal**
- 3.2.10.4 Preventive Maintenance Program – 90 days
- 3.2.10.5 Energy Management System (EMS) Expansion Plan – 90 days
- 3.2.10.6 Energy Conservation Plan – 90 days
- 3.2.10.7 Campus Landscaping Plan – 180 days
- 3.2.10.8 Deferred Maintenance Plan – 270 days
- 3.2.10.9 Equipment Assessment Plan – 30 days
- 3.2.10.10 Operating Programs for Individual Operating Units – 90 days

3.2.11 Reporting Requirements

You shall prepare an annual report in both electronic and hard copy. The report will be submitted to the SC State Contract Administrator within 30 days after the end of each fiscal year. The report will summarize the activity of the Department of Facilities Management for the fiscal year. Activities shall include the financial performance, training and education programs, quality control, and other areas that are the responsibility of a Director of the Department of Facilities Management.

3.2.12 Construction Management Expenditure Reports

SC State will provide you with a monthly report of the construction management expenditures from the previous month. The reports will list the accounts in the same manner as set forth in the SC State capital budget. The reports are to aid you in tracking financial obligations to SC State in monitoring PPO expenditures. You shall analyze expenditure variations and prepare a report of the analysis. You shall submit reports to the SC State Contract Administrator each month.

3.2.13 Submitting Monthly Operating Reports

You will submit monthly operating reports in the form of an electronic file e-mailed as an attachment to the Contract Administrator. The University reserves the right to add, delete or change the frequency of reports. Reports include, but not limited to the following:

- 3.2.13.1 Work order report illustrating the number of routine maintenance work orders completed, backlog of pending work orders, average response and completion time of work orders;
- 3.2.13.2 Non-routine report illustrating expenditures for non-routine maintenance repairs, renovations, and replacement items including work performed during the implementation phase of the Energy Performance Contract. This report shall include a progress report of projects in progress, but not completed, and shall illustrate up-to-date cost summaries for each renovation project;
- 3.2.13.3 Complaint resolution report, illustrating the disposition of complaints by students, faculty and staff, parents, and others;
- 3.2.13.4 Preventive Maintenance (PM) Summary, showing PM work orders scheduled, PM work orders completed, total hours spent on PM, and PM work order backlog;
- 3.2.13.5 Billing report illustrating by work order number or account number, the billing completed to other operating departments on SC State Campus;

- 3.2.13.6 Training summary for Supervisors and workers, illustrating subject matter and documented attendance;
- 3.2.13.7 Staffing/personnel summary: List positions by area and the number of positions filled or vacant. If vacant, note the length of time the position has been vacant and the intent to refill.
- 3.2.14.8 Measurement and verification savings report from the Energy Performance Contract and other measurement devices installed to monitor energy and water savings.
- 3.2.14.9 Other reports as required and requested by the Contract Administrator.

3.2.14 Annual Evaluation

You will submit a yearly evaluation of the Campus PPO as determined by a customer survey, and shall include a plan to improve the ratings as directed by the Contract Administrator. You shall reconcile the guaranteed water and energy savings for the contract with the Energy Performance Contractor and shall submit the results to the University along with any recommendations for the next year.

3.2.15 Personnel

You will retain all existing state employees with less than 10 retention points under the University's Reduction in Force policy at their current rate of pay. You shall credit employees in the contractor's retirement system with the same years of service as the employee has on the date of the contract. It is the University's desire to have all existing employees retained under the terms of this contract subject to the listed exceptions.

There will be an exception for SC State permanent employees that have earned at least 10 retention points under the University's Reduction in Force policy. SC State permanent employees meeting this criterion may elect to remain employed by the State.

The University has two types of employees: permanent and temporary.

- 3.2.15.1 Permanent employees are State employees who are provided benefits and a retirement plan by the State of South Carolina. Benefits include medical and dental insurance, a minimum of three weeks vacation, 120 sick hours per year, short-term disability coverage, group life insurance, and optional long-term disability insurance and deferred compensation plans.
- 3.2.15.2 Temporary Employees are employed for up to 2000 work hours per year and do not receive any of the benefits of permanent employees except the for the option to join the State Retirement Plan. These employees do not have recourse to the grievance procedures of the Human Resources Policy. (**Appendix B** "Temporary and Permanent Personal on SCSU Payroll" contains information about the number, salary expenses, and years of service of each type of employee affected by this contract.) **Schedules 8 and 10** contain more information on employee seniority, retention points, etc.

Employee Benefits:

The link below exhibits the benefits brochure available to State employees. This is from the State Office of Human Resources website.

<http://www.ohr.sc.gov/OHR/OHR-employer.phtm#benefits>

The following link is to the Employee Insurance program that gives specifics on insurance for State Employees.

<http://www.eip.sc.gov/>

The following link describes the leave regulations for State employees

<http://www.ohr.sc.gov/OHR/employer/OHR-annual-leave-faqs.phtm>

3.2.16 Resident Personnel

Changes to the contractor's resident personnel assigned to SC State will be subject to prior approval of the Senior Vice President for Finance, Facilities, and MIS or designee. The contractor's general manager will continue serving SC State only as long as his/her performance is acceptable to SC State.

3.2.17 Relationship of Contractor/Contractors Personnel

All of the contractor's employees furnishing services to SC State shall be deemed employees solely of contractor and not – for any purposes whatsoever – employees of SC State. No acts performed or representations – whether oral or written – made by the contractor with respect to third parties shall be binding on the University except as identified in writing in both the Facilities Management Services contract and the applicable third party contract(s).

3.2.18 Contractor's employment policies

You shall meet the requirements of the Fair Labor Standards and all other regulations of the U.S. Department of Labor. You must be an "Equal Opportunity Affirmative Action Employer."

3.2.18 Employee Qualifications

You shall provide trained and qualified personnel to perform the duties required in accordance with the contract and General Conditions and Specifications.

3.2.19 Vacant Positions/Absenteeism

In the event of periods of vacant positions and/or scheduled absenteeism for contractor employees, Contractor will provide suitable replacement employees within a timely manner. Periods of scheduled absenteeism include vacation time and extended illness longer than ten (10) consecutive workdays. If you are unable to provide a suitable replacement, then SC State shall deduct the appropriate charge for the employee from its monthly payment in addition to a proportionate reduction in overhead, profit, or management fee payment.

3.2.20 Employee Safety

The University seeks to provide a working environment that is safe and free from elements that might cause workplace illnesses and injuries. Employee education, training and preventive measures shall be used as strategies to reduce the risk and severity of injury. When an injury does occur, the goal is to restore the employee to a health status for prompt and full return to the workforce.

3.2.21 Employee Relations

All employees must conduct themselves in a professional manner at all times while fulfilling the requirements of this contract. The University places particular emphasis on the employee/employer relationship and subscribes to a philosophy of training, encouragement, recognition, customer service excellence and accountability. You shall agree to abide by all University human resource policies with respect to employee relations and job performance (Please refer to HR Policies and Procedures found on SC State website). You shall not unilaterally terminate the employment of any University employee, but rather shall follow established disciplinary procedures and other guidance provided by the University's Office of Human Resources. The Contract Administrator and Office of Human Resources must approve all terminations in advance.

3.2.22 Performance appraisals

Performance appraisals represent a key management/supervisory responsibility and serve as a structured method for documenting performance results and corrective coaching. Consequently, you shall conduct performance appraisals of employees according to the guidelines established annually by

the University. Delays or neglect in fulfilling this responsibility will result in issuance of a letter of adverse action.

3.2.23 Contractor Fiduciary Responsibility and Conflict of Interest

The Facilities Management Services Contractor represents that it is an independent contractor, competent, knowledgeable, and familiar with the type of work contemplated by this Contract. The Facilities Management Services Contractor agrees and understands that neither it nor any of its agents or employees may act in the name of the Owner except and unless specifically authorized in writing by the University to do so.

Integrity, objectivity and absence of self-dealing are essential at all levels and in all aspects of governmental and private activities. The Facilities Management Services Contractor must be committed to conducting itself and its activities in accordance with the highest standards of integrity and ethics. The Facilities Management Services Contractor represents that it accepts a fiduciary role and responsibility with respect to the University and that it owes the University the duties of good faith, trust, confidence, and candor, and that it must exercise a high standard of care in managing money, property and other capital assets. The Facilities Management Services Contractor will, to its best abilities, act in the best interests of the University and the timely completion of the Work. The Facilities Management Services Contractor shall evaluate conditions, provide recommendations, implement approved actions, manage third party contracts on behalf of the University, and use the Facilities Management Services Contractor's best efforts to execute the Work in an expeditious and economical manner consistent with the interests of the University.

The University recognizes that actual or potential conflicts of interest could occur in the normal conduct of business. It is essential that conflicts of interest be avoided and that possible conflicts of interest be disclosed in writing to and reviewed by the University and the State before the Facilities Management Services Contractor proceeds with any action. After disclosure, the University can make an informed judgment about a particular action/circumstance, and require appropriate oversight, limitations, or prohibitions in accordance with this policy.

Neither the Facilities Management Services Contractor nor any employee, agent, or officer of the contractor shall himself or through a business in which he owns or controls an interest, or by any other persons for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the University. This prohibition shall not apply to contracts or purchases that are available on the same terms and conditions to the public or which are made at public auction or by competitive sealed bid.

The Facilities Management Services Contractor shall disclose to the University any corporate or individual direct or indirect interest in any undertaking that could potentially put contractor's interest in conflict with that of the University including, but not limited to, bonuses, rebates, preferential pricing and other financial compensation or consideration associated with the implementation of an action/circumstances.

3.2.24 Environmental Health and Safety

You and your subcontractors shall comply with all applicable Federal, State, and Local laws and regulations, as well as all University Environmental Health and Safety policies and procedures. You and your subcontractors shall cooperate with SC State Environmental Health and Safety Administrator to ensure regulatory compliance.

3.2.25 Parking

The same regulations and fees as apply to SC State employees shall govern parking on University property by the contractor's employees. See **Schedule 14** for information regarding costs associated with parking permits.

3.2.26 Office and Storage Space

The University agrees to provide you with the use of office and storage spaces on the University premises from which to conduct its management-support services. All such spaces are to be under the control of contractor. Such use shall include all utilities including water, sewer, electricity and local telephone services. Such utilities shall be provided without costs to contractor. Office furniture and internet access will be provided.

3.2.27 Additional Items/Services

Additional items or services within the scope of the contract and found to be needed by the University may be added to the contract if mutually agreeable to you and the University and approved by the State Procurement Office. No additional items or services may occur without the appropriate procurement officer's written consent in the form of a University issued purchase order. Any work outside of the contract completed by you without proper approval and an authorized purchase order issued in advance will be done at the cost of the contractor.

3.2.28 Service Performance

All services performed under the Contract shall be in accordance with the terms and provisions of the contract. The University will determine whether such services rendered are performed and acceptable. Major deviations of services performed will not be made without the written approval of the Contract Administrator.

3.2.29 Accessibility to Employees and Facilities

To ensure a smooth transition of services, the successful Contractor will be allowed contact with employees and access to the University's facilities prior to the starting date of the contract. Contact with employees and access to facilities will be in accordance with a mutually agreed upon transition schedule. The anticipated transition time is approximately thirty (30) days.

3.2.30 Contractor Vehicles

You may provide vehicles for the management staff; however, it is optional. Contractor's staff will be allowed to operate University owned vehicles in accordance with SC State Insurance requirements, SC State Motor Pool Policies, and Procedure and/or at the Contract Administrators discretion. The University is willing to underwrite the insurance to allow contractor employees to drive university vehicles.

3.2.31 Audit

The University reserves the right to audit and/or examine for compliance any provisions associated with the contract to determine that the company has met all obligations under the terms of the contract. Such records and accounts shall be maintained for five (5) years after the end of the contract year to which they relate.

3.2.32 Dangerous/Hazardous Conditions

You shall not do, or permit anything to be done on said premises, nor bring or keep on the premises anything which will in anyway increase the fire insurance rate or premium to the University, or which will constitute a nuisance or create a dangerous or hazardous condition.

3.2.33 Grounds Maintenance

You shall provide all labor, materials, supplies, equipment, repair parts, and transportation, vehicles to meet the requirements to manage and maintain grounds and landscaping. While the University has strived to represent all tasks required in **Exhibit A** and the Scope of Work, additional tasks may be added if agreeable to both parties (See **Exhibit A** for a list of landscaping tasks and locations and

Schedule 7 for a list of grounds maintenance equipment and supplies available for contractors use). The current annual Grounds Maintenance Costs are approximately \$645,000.

- 3.2.33.1 Work shall include inspection, mowing and trimming, turf replacement and maintenance, clearing storm damage, leaf removal, snow removal (none required for the last three (3) years), correction of soil erosion areas or problems, tree and shrub maintenance, irrigation (See **Schedule 9**, Irrigation System), fertilization, herbicide application, natural resource conversation (composting), sports field maintenance, tree stump removal, and policing of areas. You are expected to develop a plan to correct existing erosion; however, repair of existing erosion will not be at the contractor's expense.
- 3.2.33.2 Coverage Area: Magnolia Street, Russell Street, Chestnut Street and Goff Avenue in Orangeburg County, SC currently bound The University's main campus. This contract addresses the existing lands within the boundaries noted. If, and/or when, custodianship of other lands becomes the responsibility of the University, this contract may be modified accordingly (e.g. Camp Harry Daniels, Elloree, SC). The University's main campus consists of 160 acres of which approximately 74 acres are green space.
- 3.2.33.3 Grounds Master Plan: A copy of the Landscaping and Grounds Maintenance Guidelines for the University's Master Plan is included in **Appendix E**.
- 3.2.33.4 Trash: You shall pick up and dispose of all trash and litter. Trash and litter includes paper, plastic, cans, cardboard, rags, and other foreign material for the entire campus.
- 3.2.33.5 Trash Receptacles: You shall install the appropriate amount of trash receptacles throughout the campus (uniform in style and color but not necessarily size). The contractor shall perform a study to determine the number of trash receptacles required. Prior to execution of the needs assessment, the University shall approve it prior to implementation.
- 3.2.33.6 Waste and Trash Removal: You shall remove all trash and/or waste at the contractor's expense. See **Schedule 4** for more information on waste removal frequencies of service, dumpsters, receptacle locations, etc. You will not be responsible for the removal or neutralization hazardous materials used in some classroom/laboratory settings. Various Departments store these materials and the University contracts with an outside Company to dispose of these materials on an annual basis
- 3.2.33.7 Fountains: Contractor shall ensure that all campus fountains are cleaned and working properly. Currently there are three (3) outdoor fountains: Mitchell Hall, Student Plaza & Whittaker Library. The fountains located at Mitchell Hall and Student Plaza are not operational. The fountain at Whittaker Library is operational.
- 3.2.33.8 Power Washing: You shall provide power washing (on an as needed basis) of all campus sidewalks, and retaining walls, including the Campus Plaza and annual cleaning of the interior of the Oliver Dawson Stadium (ODS). The University reserves the right to request the power washing of other areas as deemed necessary or request competitive quotes from other sources on these special projects. All power washing shall be done to a standard that is acceptable to the University. All power washing will be funded outside of the O&M contract.
- 3.2.33.9 Special Campus Events: You will furnish personnel to clean the overall campus grounds, parking areas and exterior areas of the stadium before the next "work

day” following each Stadium Event or as required by the University. (See **Appendices F and O** for a partial list of scheduled events and functions). Areas to be cleaned are the Stadium and parking precinct.

3.2.33.10 Athletic Fields: You shall provide appropriate marking, stripping, and cleaning required for the University’s outdoor athletic facilities. These facilities include Oliver C. Dawson (synthetic turf) Football Stadium, Lorry H. Dawkins Track and Field Complex, football practice fields, intramural sports fields, band practice field (Felton School), tennis courts and a softball field. Historically, grounds have purchased approximately \$7,200 worth of paint to stripe athletic fields per year. You will not be responsible for painting any logos or special artwork on the football field. See **Schedule 16** for manufacturer’s specifications on the maintenance of the synthetic turf on the football field.

3.2.33.11 Maintenance Schedule: You are required to develop and present to the Contract Administrator for approval, a monthly schedule for landscaping, grounds Maintenance and athletic field management.

3.2.33.12 Planting Beds: You shall perform maintenance on planting beds as required during the appropriate planting period. Maintenance shall include planting, fertilizing, weed control, pruning, and mulching. Mulch is turned or replaced semi-annually. In the recent past, Pine Bark mulch has been used throughout the campus. The VP for Finance, Facilities and MIS or designee shall direct the numbers, species, and locations of new plants to be placed. Currently, there are approximately 5,000 square feet of planting beds.

You shall maintain mulched planting beds and individual mulched trees/shrubs free from all grass, leaves, weeds, and other debris or vegetation. Grass, weeds, sod, rocks, and other debris or vegetation shall not be turned under but shall be removed the same day that cultivations are done. Historically, ~ 200 cubic yards of mulch has been used per semi-annual application. Playground mulch is replaced once a year. The thickness of mulch shall be governed by industry standards (2”-4”).

3.2.33.13 Trees and Shrub Maintenance: You shall prune trees, shrubs and hedges in accordance with the American Association of Nurseryman Standards to preserve the natural character of the plants. Trees shall be pruned to promote growth and to enhance appearance or, as necessary, to prevent obstructions to utilities, blockage or illumination from security or street lighting, obstruction to traffic or potential hazards from falling limbs.

There are currently 108 palm/palmetto trees and 126 crape myrtles on campus. There is no expectation to “hard prune” crape myrtles. Hard pruning is not a recommended practice by many horticulturists.

You shall replace trees and shrubs that have decayed or died. Trees and shrubs should be replaced at the appropriate time of the year. At this time, there is no cost history for replacing trees and shrubs.

3.2.34 Hardscaping

You will be responsible for the following hardscape maintenance; however, the work will be funded outside of the O & M contract:

3.2.34.1 Sidewalk repair

3.2.34.2 Parking lots to include:

- i. Restriping
- ii. Painting of reserved / handicap
- iii. Repair
- iv. Overlay

3.2.34.3 Roads

3.2.34.4 Storm drains

3.3 ENERGY AND UTILITY SYSTEMS

3.3.1 Facilities Management Services Contractor shall:

3.3.1.1 Review and make recommendations beyond the scope of the Energy Performance Contract for a comprehensive energy management plan to include short, medium and long-term energy management goals for water, natural gas and electricity, and include initiatives required to achieve them.

3.3.1.2 Analyze existing energy management activities, document effectiveness and update the University as needed

3.3.1.3 Verify the statistical accuracy of the energy supplier invoices and represent SC State in investigating and reconciling discrepancies as may arise

3.3.1.4 In cooperation with SC State and ESCO firm or another third party contractor, coordinate the efforts of energy suppliers, local distribution companies and other essential parties to ensure maximum reliability of service and the most economical prices

3.3.1.5 Manage natural gas and electric supplier relationships including but not limited to, administrative approval of vendors based on qualification standards established in advance by SC State

3.3.1.6 Assist in developing a management plan for water and sewer usage.

3.3.1.7 Provide at least two full time construction/project managers.

3.4 Planning and Construction

3.4.1 It is SC State's desire to institute sustainable strategies, energy conservation methods, low maintenance materials, and renewable energy sources to the extent possible.

The successful Facilities Management Services Contractor shall:

3.4.1.2 Coordinate planning and construction projects with University staff. These services will vary from project to project, but will generally consist of managing architectural and/or engineering services procured and administered in accordance with the South Carolina Consolidated Procurement Code

3.4.1.2 Provide recommendations to facility planning and facility operations with regard to building construction and renovation practices and their impact on energy and sustainability.

3.4.2 The successful Facilities Management Services Contractor will provide assistance with research, planning, development and site analysis.

3.4.3 The successful Facilities Management Services Contractor will provide planning, construction administration and post construction services for University renovation and capital construction projects. You will provide assistance with a wide variety of projects including, but not limited to, the following:

- 3.4.3.1 Architecture Design
- 3.4.3.2 Landscaping Design
- 3.4.3.3 Structural Repairs
- 3.4.3.4 Mechanical, Electrical and Life Safety Upgrades and Replacements
- 3.4.3.5 Building Interior and Exterior Renovations and Repairs
- 3.4.3.6 New Construction
- 3.4.3.7 Recreational and Athletic Facilities
- 3.4.3.8 Utility and Infrastructure Systems
- 3.4.3.9 Historical Restoration
- 3.4.3.10 Educational Facilities
- 3.4.3.11 Low maintenance and sustainable materials
- 3.4.3.12 Renewable energy sources

SC State reserves the right to add, change and/or delete from this contract as necessary. All change orders and/or amendments to the contract must be communicated in writing between you and the university procurement office and must be approved by the State Procurement Office prior to implementation.

IV. INFORMATION FOR OFFERORS TO SUBMIT

INFORMATION FOR OFFERORS TO SUBMIT -- EVALUATION (JAN 2006)

In addition to information requested elsewhere in this solicitation, offerors should submit the following information for purposes of evaluation:

4.1 GENERAL ADMINISTRATION MANAGEMENT

4.1.1 Management Plan for Physical Plant Operations (PPO) Provide a recommended organizational structure whereby the leadership and management components of the organization provides overall direction to the organization, aligns the numerous constituencies and inspires and motivates the organization to achieve its stated purpose.

Describe and outline a five-year plan that provides for continuous improvement for PPO at South Carolina State University. Include grounds maintenance, Planning, and Construction. Discuss the approach to be used to interface with the SC State's administration, faculty, staff and students. Describe the interface with the work force of PPO.

4.1.1.1 Implementation Plans: Describe the process you will use to implement the contracted management services. Include events, time schedules, and the like. Describe a process for implementing "light-duty" and return to work programs for employees who have suffered from illness or injury. Describe how you may share in risk and accountability associated with workers' compensation cost to include evaluation criteria and objective measures.

4.1.1.2 Proposed Staff
Provide detailed resumes with references for all proposed personnel to fill the contracted positions. An explanation of why the proposed personnel were selected as part of the proposal management team is to be included. In accordance with SC state HR Policies and Procedures. If, at the time you submit your offer, the above referenced personnel have not been hired by you, submit a position description and sample resume of the type of candidates you will hire to fill the contracted positions. You will be required to obtain background checks on all staff that you intend to use to perform the work.

4.1.1.3 Training and Development
Describe the training and development program you will implement at SC State for existing PPO supervisory personnel. Include subjects and hours of training as well as a description of what components will be developed specifically for SC State personnel.

4.1.1.4 Facilities Management Software
Describe the Facilities Management software you will provide including any hardware requirements. The description of software must include as a minimum: system modules, operating system, reports generated, data format, database engine, query capabilities and the like. SC State will retain unconditional rights of ownership of all data generated by the system and such data must be submitted to SC State at the end of the contract period in a standard file format (.dbf or equivalent) accompanied by table definitions and data dictionaries. Describe provisions for licensing and continued use of the software by SC State at the end of the contract period.

4.2 MAINTENANCE AND OPERATIONS

4.2.1 References

Provide five references of clients where you are currently providing similar management services. By supplying these references, you are granting SC State permission to contact the institution. Include name of client, contact name (this person must be familiar with your work), title, physical address, email address and telephone number. Describe the type of service provided to each client named as a reference.

Provide a complete client list of all colleges and Universities for whom you currently provide similar management services. Also, list all colleges and universities where the client canceled Contractor's contract and explain the circumstances. Report on any/all citations or fines that have been assessed by governmental regulatory agencies such as EPA, OSHA, etc. related to similar management services provided for the above clients.

4.3 PLANNING AND CONSTRUCTION

Describe a specific management plan for assuming the responsibility for managing the Planning, Design and Construction unit.

4.3.1 Discuss your approach to interfacing with SC State administration, faculty, staff and students.

4.3.2 Describe your approach to interfacing with project managers within the department. Provide a detailed resume for the person selected to fill the contracted position and an explanation of why this person was selected to be part of the management team. If, at the time you submit your offer, the above referenced personnel have not been hired by you, submit a position description and sample resume of the type of candidates you will hire to fill the contracted position.

4.4 ENERGY AND UTILITY SYSTEMS

4.4.1 Program Experience

Provide a brief, concise description of your capabilities and experience in developing the types of programs/plans shown below:

4.4.1.1 Zone maintenance utilizing multi-skilled maintenance mechanics

4.4.1.2 Preventive maintenance programs for mechanical and building systems

4.4.1.3 Energy conservation studies, including performance contracting

4.4.1.4 Campus landscaping plans

4.4.1.5 Facilities condition assessments, including a deferred maintenance and 10 year renewal or replacement plan.

4.5 FINANCIAL PROPOSAL

4.5.1 Year 1 cost to provide on-site management personnel (from worksheet – Appendix L)*

4.5.2 Overhead and Profit

4.5.3 Management Fee

4.5.4 All other costs to perform the work as described in this document

4.5.5 TOTAL: you shall provide an unconditional total to perform all of the tasks described in this document for the first year of the contract to include transition costs.

* Appendix L is an example work sheet, offerors may use their own worksheet to reflect the cost of providing management personal.

Evaluation points for financial proposal will be assigned using the following methodology:

The Materials Management Office will assign points for the cost proposal. The responsive offeror submitting the lowest cost proposal will receive ten (10) points and all other responsive offerors will be prorated points by determining the percentage of difference between the lowest responsive Offeror's total cost and each of the other offerors total cost and applying this difference accordingly.

Example (numbers and weighting are for example purposes only. Assumes maximum points awarded for price = 10)

<u>Offeror</u>	<u>Price Proposal</u>	<u>Formula</u>	<u>Points</u>
Offeror 1	\$10,000.00	lowest price receives max points (100% of 15 = 15)	10
Offeror 2	\$15,000.00	$10,000/15,000 \times 100 = 66.66\%$ (66.66 % of 15 = 10)	6.66
Offeror 3	\$20,000.00	$10,000/20,000 \times 100 = 50\%$ (50 % of 15 = 7.5)	5

[04-4005-1]

INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (JAN 2006)

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 Minority Business? Yes No

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

If so, please list the certifying governmental entity: _____

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor? Yes No

If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor? _____

Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor? Yes No

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? _____

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/>
[04-4015-1]

SUBMITTING REDACTED OFFERS (FEB 2007)

You are required to mark the original copy of your offer to identify any information that is exempt from public disclosure. You must do so in accordance with the clause entitled "Submitting Confidential Information." In addition, you must also submit one complete copy of your offer from which you have removed any information that you marked as exempt, i.e., a redacted copy. The information redacted should mirror in ever detail the information marked as exempt from public disclosure. The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on magnetic media. (See clause entitled "Magnetic Media Required Format.") Except for the redacted information, the CD must be identical to the original hard copy. Portable Document Format (.pdf) is preferred. [04-4030-1]

V. QUALIFICATIONS

QUALIFICATION OF OFFEROR (JAN 2006)

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 [R.19-445.2125] 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. [05-5005-1]

QUALIFICATIONS -- REQUIRED INFORMATION (JAN 2006)

In order to evaluate your responsibility, offeror shall submit the following information or documentation for the offeror and any subcontractor, if the value of subcontractor's portion of the work exceeds 10% of your price (if in doubt, provide the information):

- (a) Include a brief history of the offeror's experience in providing work of similar size and scope.
 - (b) **Your most current financial statement, financial statements for your last two fiscal years, and information reflecting your current financial position. If you have audited financial statements meeting these requirements, you must provide those statements. [Reference Statement of Concepts No. 5 (FASB, December, 1984)]**
 - (c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) which you have performed and the general history and experience of your organization.
 - (d) A list of every business for which offeror has performed, at any time during the past three year(s), services substantially similar to those sought with this solicitation. Err on the side of inclusion; by submitting an offer, offeror represents that the list is complete.
 - (e) List of failed projects, suspensions, debarments, and significant litigation.
- [05-5015-1]

A. The successful contractor shall provide satisfactory evidence of all required insurance coverage and bonds PRIOR TO PERFORMANCE

SUBCONTRACTOR -- IDENTIFICATION (JAN 2006)

If you intend to subcontract with another business for any portion of the work and that portion exceeds 10% of your price, your offer must identify that business and the portion of work which they are to perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the state may evaluate your proposed subcontractors. [05-5030-1]

VI. AWARD CRITERIA

AWARD CRITERIA -- PROPOSALS (JAN 2006)

Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State. [06-6030-1]

AWARD TO ONE OFFEROR (JAN 2006)

Award will be made to one Offeror. [06-6040-1]

EVALUATION FACTORS -- PROPOSALS (JAN 2006)

Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous.

6.1	General Administration and Management Plan	Maximum Points 30
6.2	Maintenance and Operations References/Program Experience	Maximum Points 25
6.3	Planning and Construction	Maximum Points 20
6.4	Energy and Utility Systems	Maximum Points 15
6.5	Financial Proposal	Maximum Points 10

[06-6065-1]

VII. TERMS AND CONDITIONS -- A. GENERAL

ASSIGNMENT (JAN 2006)

No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer. [07-7A004-1]

BANKRUPTCY (JAN 2006)

(a) Notice. In the event contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within five (5) 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. [07-7A005-1]

CHOICE-OF-LAW (JAN 2006)

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. [07-7A010-1]

CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (JAN 2006)

(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 Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) 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 (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. 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 Officer shall be void and of no effect. [07-7A015-1]

DISCOUNT FOR PROMPT PAYMENT (JAN 2006)

(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 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 date 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 [07-7A020-1]

DISPUTES (JAN 2006)

(1) 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 State's 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. [07-7A025-1]

EQUAL OPPORTUNITY (JAN 2006)

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. [07-7A030-1]

FALSE CLAIMS (JAN 2006)

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. [07-7A035-1]

FIXED PRICING REQUIRED (JAN 2006)

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. [07-7A040-1]

NON-INDEMNIFICATION (JAN 2006)

Any term or condition is void to the extent it requires the State to indemnify anyone. [07-7A045-1]

NOTICE (JAN 2006)

(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 Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

PAYMENT (JAN 2006)

(a) The Using Governmental Unit shall pay the Contractor, 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 in this contract, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless the purchase order specifies another method of payment, payment will be made by check. (c) Payment and interest shall be made in accordance with S.C. Code Section 11-35-45. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. [07-7A055-1]

PUBLICITY (JAN 2006)

Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer. [07-7A060-1]

PURCHASE ORDERS (JAN 2006)

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 particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

SETOFF (JAN 2006)

The state shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to contractor under this contract up to any amounts due and owing to the state 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. [07-7A070-1]

SURVIVAL OF OBLIGATIONS (JAN 2006)

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. [07-7A075-1]

TAXES (JAN 2006)

Any tax 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 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 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. [07-7A080-1]

TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)

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. [07-7A085-1]

THIRD PARTY BENEFICIARY (JAN 2006)

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. [07-7A090-1]

WAIVER (JAN 2006)

The State 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 strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

VII. TERMS AND CONDITIONS -- B. SPECIAL

CHANGES (JAN 2006)

(1) **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:

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) description of services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) **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 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, Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) **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, 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.

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

[07-7B025-1]

CISG (JAN 2006)

The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement.

[07-7B030-1]

COMPLIANCE WITH LAWS (JAN 2006)

During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs. [07-7B035-1]

CONTRACTOR'S LIABILITY INSURANCE (JAN 2006)

(1) Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in South Carolina such insurance as will protect contractor from the types of claims set forth below which may arise out of or result from the contractor's operations under the contract and for which contractor may be legally liable, whether such operations be by Youor by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the contractor's employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the contractor's employees; (d) claims for damages insured by usual personal injury liability coverage; (e) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; (g) claims for bodily injury or property damage arising out of completed operations; and (h) claims involving contractual liability insurance applicable to the Contractor's obligations under the provision entitled Indemnification -- Third Party Claims.

(2) Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the work until date of final payment. Coverage must include the following on a commercial basis: (i) Premises -- Operations, (ii) Independent Contractor's Protective, (iii) Products and Completed Operations, (iv) Personal and Advertising Injury, (v) Contractual, including specific provision for contractor's obligations under the provision entitled Indemnification --Third Party Claims, (vi) Broad Form Property Damage including Completed Operations, and (vii) Owned, Non-owned and Hired Motor Vehicles.

(3) The insurance required by this paragraph shall be written for not less than the following limits of liability or as required by law, whichever coverage is greater.:

COMMERCIAL GENERAL LIABILITY:

General Aggregate (per project) \$1,000,000

Products/Completed Operations \$1,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

Fire Damage (Any one fire) \$ 50,000

Medical Expense (Any one person) \$ 5,000

BUSINESS AUTO LIABILITY (including All Owned, Nonowned, and Hired Vehicles):

Combined Single Limit \$1,000,000

OR

Bodily Injury & Property Damage (each) \$750,000

WORKER'S COMPENSATION:

State Statutory

Employers Liability \$100,000 Per Acc.

\$500,000 Disease, Policy Limit; \$100,000 Disease, Each Employee

(4) Required Documentation. (a) Prior to commencement of the work, contractor shall provide to the state a signed, original certificate of liability insurance (ACORD 25). The certificate shall identify the types of insurance, state the limits of liability for each type of coverage, include a provision for 30 days notice prior to cancellation, name every applicable using governmental unit (as identified on the cover page) as a Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. (b) Prior to commencement of the work, contractor shall provide to the state a written endorsement to the contractor's general liability insurance policy that (i) names every applicable using governmental unit (as identified on the Cover Page) as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named governmental unit(s) has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the state as secondary and noncontributory. (c) Both the certificate and the endorsement must be received directly from either the contractor's insurance agent or the insurance company.

(5) Contractor shall provide a minimum of thirty (30) days written notice to every applicable using governmental unit of any proposed reduction of coverage limits (on account of revised limits or claims paid under the General Aggregate) or any substitution of insurance carriers.

(6) The state's failure to demand either a certificate of insurance or written endorsement required by this paragraph is not a waiver of contractor's obligations to obtain the required insurance.

[07-7B055-1]

FIDELITY BONDS/LOSS FROM DISHONEST ACTS

The Contractor agrees to maintain a fidelity bond at his own expense on all of his employees in the amount of \$100,000 on each individual and \$100,000 for each loss; or the Contractor, in lieu of fidelity bonds, agrees to bear any loss resulting from dishonest acts on the part of the Contractor or his employees via crime insurance, or any other mechanism employed by offeror to provide the State with the protection required.

CONTRACTOR PERSONNEL (JAN 2006)

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

[07-7B060-1]

CONTRACTOR'S OBLIGATION -- GENERAL (JAN 2006)

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. Contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. Contractor

will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements. [07-7B065-1]

CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006)

Upon termination of the contract for any reason, the State shall have the right, upon demand, to obtain access to, and possession of, all State properties, including, but not limited to, current copies of all State application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the State without the State's written consent, except to the extent necessary to carry out the work. [07-7B067-1]

DEFAULT (JAN 2006)

(a) (1) The State 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 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, so as 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).

(2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.

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

(c) Except for defaults of subcontractors at any tier, 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.

(d) 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 Contractor and subcontractor, and without the fault or negligence of either, 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 contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the State may require contractor to transfer title and deliver to the State, as directed by the Procurement Officer, 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 Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, Contractor shall also protect and preserve property in its possession in which the State has an interest.

(f) The State shall pay contract price for completed supplies delivered and accepted. Contractor and Procurement Officer 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 Officer 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 Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that 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 the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, 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.

(h) 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.

[07-7B075-1]

ILLEGAL IMMIGRATION (NOV. 2008)

(An overview is available at 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. [07-7B097-1]

INDEMNIFICATION -- THIRD PARTY CLAIMS (JAN 2006)

Notwithstanding any limitation in this agreement, Contractor shall defend and indemnify the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all suits or claims of any nature (and all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party which arise out of, or result in any way from, any defect in the goods or services acquired hereunder or from any act or omission of Contractor, its subcontractors, their employees, workmen, servants or agents. Contractor shall be given written notice of any suit or claim. State shall allow Contractor to defend such claim so long as such defense is diligently and capably prosecuted through legal counsel. State shall allow Contractor to settle such suit or claim so long as (i) all settlement payments are made by (and any deferred settlement payments are the sole liability of) Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall not admit liability or agree to a settlement or other disposition of the suit or claim, in whole or in part, without the prior written consent of Contractor. State shall reasonably cooperate with Contractor's defense of such suit or claim. The obligations of this paragraph shall survive termination of the parties' agreement. [07-7B100-1]

INTELLECTUAL PROPERTY INFRINGEMENT (JAN 2006)

(a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement.

"Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. [07-7B105-1]

LICENSES AND PERMITS (JAN 2006)

During the term of the contract, 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. [07-7B115-1]

MATERIAL AND WORKMANSHIP (JAN 2006)

Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. [07-7B120-1]

OWNERSHIP OF DATA and MATERIALS (JAN 2006)

All data, material and documentation prepared for the state pursuant to this contract shall belong exclusively to the State. [07-7B125-1]

PRICE ADJUSTMENTS (JAN 2006)

(1) 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 contractor (including profit, if otherwise allowed):

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the Contract or subsequently agreed upon;

(c) 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;

(d) in such other manner as the parties may mutually agree; or,

(e) 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.

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

[07-7B160-1]

PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY (JAN 2006)

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 sufficient 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.

[07-7B165-1]

PRICE ADJUSTMENTS -- LIMITED BY CPI "ALL ITEMS" (JAN 2006)

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), "all items" for services, as determined by the Procurement

Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov
[07-7B170-1]

PRICING DATA -- AUDIT -- INSPECTION (JAN 2006)

[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 of your subcontracts. (f) Nothing in this clause limits any other rights of the state.
[07-7B185-1]

PRIVACY -- WEB SERVICES (JAN 2006)

You agree that any information acquired by you about individuals or businesses that is available to you as a result of your performance of this contract shall not be retained beyond the end of the term of the contract without the express written consent of the government. Such information shall never be sold, traded, or released to another entity, including affiliates, and shall not be used for any purpose other than performing this contract. Upon request, contractor shall provide written confirmation of compliance with this clause. [07-7B195-1]

RELATIONSHIP OF THE PARTIES (JAN 2006)

Neither party is an employee, agent, partner, or joint venturer 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. [07-7B205-1]

SHIPPING / RISK OF LOSS (JAN 2006)

F.O.B. Destination. Destination is the shipping dock of the Using Governmental Units' designated receiving site, or other location, as specified herein. (See Delivery clause) [07-7B220-1]

TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006)

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 1years, 0months, 0days from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

TERM OF CONTRACT -- OPTION TO RENEW (JAN 2006)

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(s), 0 month(s), and 0 day(s), unless contractor receives notice that the state 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. [07-7B245-1]

TERMINATION FOR CONVENIENCE (JAN 2006)

- (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to contractor specifying the part of the contract terminated and when termination becomes effective.
- (2) Contractor's Obligations. Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- (3) Right to Supplies. The Procurement Officer may require contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (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 contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. Contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of contractor in which the State has an interest. If the Procurement Officer does not exercise this right, Contractor shall use best efforts to sell such supplies and manufacturing materials in a accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.
- (4) Compensation. (a) 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 contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.
- (b) The Procurement Officer and 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;
- (c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:
- (i) contract prices for supplies or services accepted under the contract;
 - (ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;
 - (iii) 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 accordance with Subparagraph (c)(ii) of this paragraph;
 - (iv) any other reasonable costs that have resulted from the termination. The total sum to be paid contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of 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.
- (d) 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 system is consistent with any applicable Generally Accepted Accounting Principles.
- (5) 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.

[07-7B265-1]

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

SECTION NOT APPLICABLE -- INTENTIONALLY OMITTED

SECTION NOT APPLICABLE -- INTENTIONALLY OMITTED [08-8005-1]

PRICE PROPOSAL (JAN 2006)

Notwithstanding any other instructions herein, you shall submit the following price information as a separate document:
[08-8015-1]

See INFORMATION FOR OFFERORS TO SUBMIT -- EVALUATION (JAN 2006) - 4.5 FINANCIAL PROPOSAL

Financial proposal shall be submitted in a separate, sealed envelope. NO financial information shall be contained within the technical proposal.

IX. ATTACHMENTS TO SOLICITATION

LIST OF ATTACHMENTS

ATTACHMENTS LIST [09-9002-1]

The following documents are attached to this solicitation:

EXHIBITS AND SCHEDULES

Exhibits

- Appendix A Grounds Keeping and Janitorial Specifications
- Appendix B Temporary and Permanent Personnel on SCSU Payroll
- Appendix B1 Personnel on SCSU Payroll
- Appendix B2 Personnel not on SCSU Payroll
- Appendix C Fixed Asset Inventory Record for Depreciation Area
- Appendix D Campus Facilities – Buildings
- Appendix E Grounds Master Plan
- Appendix F Master Calendar of Events
- Appendix G Current Contract Expenses and Third Party Contract Expenses
- Appendix H Main Campus Map
- Appendix I DPU Utilities 3 Year Cost Report
- Appendix J Current Position Descriptions
- Appendix K Resident Halls and Number of Beds
- Appendix L Cost Proposal Work Sheet
- Appendix M Utilities 2006/7 to 2007/8
- Appendix N Annual Events
- Appendix O Clarification of Procurement Responsibilities

Schedules

- Schedule 1a Equipment Listing by Building
- Schedule 1b Equipment Listing by Building (Cont)
- Schedule 2 General Construction Contractor Indefinite Delivery Contracts (IDC)
- Schedule 3 FCAP – Facility Condition Assessment Program (see attached spreadsheet)
- Schedule 4 Waste Management History
- Schedule 5 Summer Camp Listings
- Schedule 6 Organizational Chart
- Schedule 7 Grounds Asset Equipment Listing
- Schedule 8 Grounds Employees
- Schedule 9 Irrigation System
- Schedule 10 SCSU Employees with Years of Service
- Schedule 11 Vehicles
- Schedule 12 Comprehensive Permanent Improvement Plan (CPIP)
- Schedule 13a Minor Deferred Maintenance Projects
- Schedule 13b Capital Projects
- Schedule 14 Parking Rules and Regulations
- Schedule 15 Non-SCSU Temporary & Permanent Employees
- Schedule 16 MAXPLAY Artificial Grass Care/Maintenance Procedures (Manufacturer)

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

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+and+Instructions/withholding/default.htm>

[09-9005-1]

OFFEROR'S CHECKLIST (JUN 2007)

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.

[09-9010-1]