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Protest Decision

Matter of: Blanchard Machinery
File No.: 2025-108
Posting Date: October 25, 2024
Contracting Entity: Coastal Carolina University
Project No.: CCU-9300645
Description: Annual Generator Maintenance Program

DIGEST

The Chief Procurement Officer (CPO) grants protest where administrative error resulted in vendor being deemed non-responsible.

AUTHORITY

Per S.C. Code Ann. § 11-35-4210, the Chief Procurement Officer (CPO) conducted an administrative review of a protest filed by Blanchard Machinery (Blanchard). Blanchard's protest is attached as Exhibit A. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

- On August 5, 2024, Coastal Carolina University (Coastal) issued a solicitation for the Annual Generator Maintenance Program. [Exhibit B]
- On September 5, 2024, Coastal received 3 bids including one from Blanchard.
- On September 5, 2024, Coastal e-mailed Blanchard requesting information regarding references pursuant to Section 11-35-1520 (13).

- On September 17, 2024, Coastal e-mailed Melton Power Systems requesting information regarding technician certification pursuant to Section 11-35-1520 (13).
- On September 17, 2024, Coastal posted an Intent to Award a contract to Melton Power Systems
- On September 23, 2024, Blanchard filed a Notice of Intent to Protest with the CPO.
- On October 3, Blanchard submitted their grounds for protest.

DISCUSSION

The solicitation includes the following language as a Special Standard of Responsibility:

a) This section establishes special standards of responsibility. UNLESS YOU POSSESS THE FOLLOWING MANDATORY MINIMUM QUALIFICATIONS, DO NOT SUBMIT AN OFFER:

1. Contractor must have a service facility within a forty (40) mile radius of the University.
2. The competency and experience of the contractor is a concern for the University; therefore proposals will only be considered from companies who can affirmatively demonstrate and give evidence showing that they are an established electrical/mechanical contractor providing electrical/mechanical maintenance service on generating systems of comparable size.
3. Offeror shall provide the names and contact information of three (3) businesses for which contractor has provided similar services during the last two (2) years. The University reserves the right to contact any, all or none of the references provided pursuant to this section.
4. Technicians employed by the Contractor must be factory certified to maintain the specific brand generators listed in Attachment A.

The offer from Blanchard did not include the names and contact information of three business for which contractor has provided similar services during the last two (2) years. On September 5, 2024, the procurement officer determined the failure to submit references a minor informality and e-mailed Blanchard requesting this information in order to cure the minor informality. The procurement officer inadvertently included an incorrect e-mail address in this request to Blanchard. Blanchard responded to the incorrect e-mail address on September 5, 2024 with the requested references. The procurement officer never received the requested information and determined Blanchard to be non-responsive.¹ The basis for the determination was not the quality

¹ Failure to meet a Special Standard of Responsibility should result in a Determination of Non-Responsibility rather than a Non-Responsive Determination.

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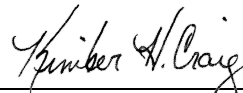
Case No. 2025-108

October 25, 2024

of the information received but rather the failure to receive the information. Since Blanchard did provide the information as requested but it was not received due to an administrative error, the determination is erroneous.

DECISION

For the reasons stated above, the CPO grants Blanchard's protest, cancels the award, and remands this Procurement back to Coastal to proceed in accordance with the Procurement Code.



Kimber H. Craig, CPM
Chief Procurement Officer

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised July 2024)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILING FEE: Pursuant to Proviso 111.1 of the 2024 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. *[The Request for Filing Fee Waiver form is attached to this Decision.]* If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." **PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."**

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Goldmans, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

-
1. What is your/your company's monthly income? _____
 2. What are your/your company's monthly expenses? _____
 3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.



10/02/2024

Vía email – (protest-mmo@mmo.sc.gov)

Chief Procurement Officer

Materials Management Office

RE: Protest of Award for Solicitation CCU-9300645

Hello Procurement Officer Tracy Okeefe,

Blanchard Machinery Company appreciates the opportunity to raise its legal and practical concerns to CCU regarding the awarded solicitation decision.

Blanchard Machinery Company is a values driven business bringing the best talent, products and solutions to every experience. We are a dependable partner committed to the safety and success of our people, partners and communities.

Blanchard Machinery Company's submitted proposal had met all the qualifications as described.

V. QUALIFICATIONS OF OFFEROR:

1. Contractor must have a service facility within a forty (40) mile radius of the University. –

Blanchard Machinery Company

2334 Chestnut Rd, Longs, SC

2. The competency and experience of the contractor is a concern for the University; therefore, proposals will only be considered from companies who can affirmatively demonstrate and give evidence showing that they are an established electrical/mechanical contractor providing electrical/mechanical maintenance service on generating systems of comparable size.

Blanchard Machinery Company's Energy Division has been selling, installing and the servicing generator systems of all sizes since 1996.

3. Offeror shall provide the names and contact information of three (3) businesses for which contractor has provided similar services during the last two (2) years. The University reserves the right to contact any, all or none of the references provided pursuant to this section.

Reference letter submitted.

4. Technicians employed by the Contractor must be factory certified to maintain the specific brand generators listed in Attachment A.

Blanchard Machinery Company's Energy Division employees over 30 certified electric power service technicians in South Carolina.

VI. AWARD CRITERIA AWARD CRITERIA:

BIDS: Award will be made to the lowest responsible and responsive bidder.

Blanchard Machinery Company's bid - \$67,750.00.

Blanchard Machinery Company had followed one of its main values while compiling and submitted its bid pricing for this solicitation. – **Collaboration.**

Blanchard Machinery Company had generated ideas to find solutions to achieve a common goal with our partner – COST.

Please take all into consideration when reviewing and thank you again for the opportunity.

Sincerely, Michael Costa

Energy Product Support Service Sales Representative


Blanchard Energy

2334 Chestnut Rd | Longs, SC 29568

Mobile:843-877-2075

mikecosta@blanchardmachinery.com

EXHIBIT B

 COASTAL CAROLINA UNIVERSITY	SOLICITATION TYPE: Invitation for Bid
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Solicitation Number:	CCU-9300645
Description:	Annual Generator Maintenance Program
Procurement Officer:	Tracy O’Keefe
Email:	tokeefe@coastal.edu
Telephone:	843-349-2741
Date:	August 5, 2024

This document contains the bidding instructions, scope of work, and the contractual terms and conditions applicable to the solicitation referenced above which is being issued and conducted by Coastal Carolina University.

SUBMIT YOUR OFFER ON-LINE THROUGH THE BUSINESS OPPORTUNITIES WEBSITE AT THE FOLLOWING URL: <https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=CoastalCarolina>

SUBMIT OFFER BY (Opening Date/Time)	September 5, 2024 at 1:00 p.m.	(See “Deadline For Submission Of Offer” provision)
QUESTIONS <u>MUST</u> BE RECEIVED BY:	August 23, 2024 at 5:00 p.m.	(See “Questions From Offeror” provision)

CONFERENCE TYPE: Non- Mandatory Site Visit DATE & TIME (EST): August 22, 2024 at 10:00 a.m. (As appropriate, see “Conferences – Pre-Bid/Proposal” and “Site Visit” provisions.)	LOCATION: Coastal Carolina University Facilities 1 Building Facilities 1 CR 755 Hwy 544 Conway, SC 29526
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AWARD & AMENDMENTS	Award will be posted on September 17, 2024 . The award and any amendments to this solicitation will be posted at the same URL address as shown above.
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You must submit a signed copy of this form with Your Offer. By signing, 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" provision.)

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.)	DATE SIGNED
TITLE (business title of person signing above)	TAXPAYER IDENTIFICATION NO.
PRINTED NAME (printed name of person signing above)	STATE OF INCORPORATION (If you are a corporation, identify the state of incorporation)

PAGE 2

(You must return Page 2 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)			
	Area Code	Number	Extension	Facsimile
	E-mail Address			

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

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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PREFERENCES - A NOTICE TO VENDORS: On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at www.procurement.sc.gov/preferences. **ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES. [11-35-1524(E)(4)&(6)]**

PREFERENCES - ADDRESS AND PHONE OF IN-STATE OFFICE: Please provide the address and phone number for your in-state office in the space provided below. An in-state office is necessary to claim either the Resident Vendor Preference (11-35-1524(C)(1)(i)&(ii)) or the Resident Contractor Preference (11-35-1524(C)(1)(iii)). Accordingly, you must provide this information to qualify for the preference. An in-state office is not required, but can be beneficial, if you are claiming the Resident Subcontractor Preference (11-35-1524(D)).

In-State Office Address same as Home Office Address
 In-State Office Address same as Notice Address (check only one)

End of Page 2

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This page is reserved for responses to questions in the event of the issuance of an Amendment to provide such information.

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I. SCOPE OF SOLICITATION

ACQUIRE SERVICES, SUPPLIES AND/OR EQUIPMENT: The purpose of this solicitation is to acquire services, supplies and/or equipment complying with the description, specifications and conditions listed in the Scope of Solicitation and other documents related to this solicitation.

Coastal Carolina University seeks a source to provide preventative maintenance, inspection, and emergency repair services for twenty-one (21) generators on campus.

MAXIMUM CONTRACT PERIOD — ESTIMATED: October 18, 2024- October 17, 2029. 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".

The five (5) year maximum contract period consists of a one (1) year initial term plus four (4) additional one (1) year options.

II. INSTRUCTIONS TO OFFERORS – A. GENERAL INSTRUCTIONS

DEFINITIONS, CAPITALIZATION, AND HEADINGS

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

ADDENDUM means a document issued to supplement the original solicitation document; see Amendment.

AMENDMENT means a document issued to supplement the original solicitation document; see Addendum.

AUTHORITY means the State of South Carolina State Fiscal Accountability Authority or its successor in interest.

BUSINESS OPPORTUNITIES means the website designated for the posting of open, closed, and awarded solicitations for the University, found at this URL: <https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=CoastalCarolina>

BUSINESS means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity. [11-35-310(3)]

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. [11-35-310(4)]

CLOSE DATE means the date shown on the Business Opportunities website for the specific solicitation and/or the SUBMIT OFFER BY date shown on Page 1 of this solicitation.

CONTACT means the name shown on the Business Opportunities website who is also the Procurement Officer.

CONTRACT See clause entitled "Contract Documents & Order of Precedence".

CONTRACT MODIFICATION means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract titled "Changes", if included herein, authorizes the Procurement Officer to order without the consent of the contractor. [11-35-310(9)]

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".

PAGE 2 means the second page of the original solicitation, which is labeled Page 2.

PROCUREMENT OFFICER means the person, or his successor, employed and duly authorized by the University with the responsibility to administer the procurement process, enter into and administer contracts, and make written determinations with respect thereto and identified as such on the Cover Page, the Business Opportunities website, amendments to Solicitations, an award notice, and change orders.

SOLICITATION means the online solicitation document and all parts, attachments, attributes, and any Addendums of the specific solicitation which includes the Coastal Carolina University Standard Bidding Terms and Conditions and Coastal Carolina University Standard Purchase Order Terms and Conditions.

STATE may also mean the University which is a State of South Carolina state agency.

STATEWIDE TERM CONTRACT. If the description or other areas of this solicitation indicates the solicitation will become a "statewide term contract", then the meaning of University also includes any South Carolina Procurement Units [11-35-4610(5)] that has submitted a Purchase Order to you pursuant to the contract resulting from this solicitation. Reference the clauses titled "Purchase Orders" and "Statewide Term Contract".

SUBCONTRACTOR means any person you contract with to perform or provide any part of the work.

SUPPLIER (see VENDOR).

US or WE means the University.

UNIVERSITY means Coastal Carolina University.

USING GOVERNMENTAL UNIT generally means the University. If the resulting award from this solicitation creates a Statewide Term Contract, the phrase "Using Governmental Unit" also means any South Carolina Public Procurement Unit that submits a purchase order to the contractor pursuant to the contract resulting from this solicitation.

VENDOR means a supplier or seller of goods and services. The term "Supplier" is used interchangeably with the term "Vendor".

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

YOU and YOUR means Offeror.

AMENDMENTS TO SOLICITATION:

(a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the Business Opportunities web site for the issuance of Amendments.

(b) Offerors will be required to acknowledge receipt of any amendment to this solicitation.

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

AUTHORIZED AGENT: All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only University official authorized to bind the University with regards to this procurement or the resulting contract.

AWARD NOTIFICATION: Notice regarding any award, cancellation of award, or extension of award will be posted on the Business Opportunities website. For contracts with a total or potential value in excess of one hundred thousand dollars, notice of an intended award of a contract will be given by posting the notice for seven business days before a contract is entered into and will be sent electronically to all bidders responding to the solicitation on the same day that the notice is posted.

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

BID ACCEPTANCE PERIOD: In order to withdraw Your Offer after the Close Date, you must notify the Procurement Officer in writing.

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

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION:

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

(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) By submitting an offer, each authorized person submitting the offer is certifying that he/she-
- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the authorized person as 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.

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:

- (a) (1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-
- (i) Offeror and/or any of its Principals-
 - (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
 - (B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
 - (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.
 - (ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.
- (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).
- (b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror non-responsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the University, the Procurement Officer may terminate the contract resulting from this solicitation for default.

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

DEADLINE FOR SUBMISSION OF OFFER: Any offer received after the Procurement Officer 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 University purchasing office or the University's mail room which services that purchasing office prior to the bid opening. (Paper offers are not the preferred method of submission however.) [Reference Code Section R.19-445.2070(H)]

DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE

("OCI FAQ for Contractors" is available at www.procurement.sc.gov)

(a) You certify that, after reasonable inquiry, to the best of your knowledge and belief:

(1) your offer identifies any services that relate to either this solicitation or the work and that have already been performed by you, a proposed subcontractor, or an affiliated business or consultant of either; and

(2) there are no relevant facts or circumstances that may give rise to an actual or potential organizational conflict of interest, as defined in S.C. Code Ann. Reg. 19-445.2127, or that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award.

(b) If you, a proposed subcontractor, or an affiliated business or consultant of either, have an unfair competitive advantage or an actual or potential conflict of interest, the University may withhold award. Before withholding award on these grounds, the University will notify you of the concerns and provide a reasonable opportunity for you to respond. The University may consider efforts to avoid or mitigate such concerns, including restrictions on future activities.

(c) The certification in paragraph (a) of this provision is a material representation of fact upon which the State will rely when considering your offer for award. [Ref. Compendium 02-2A047-3 Jul 2023]

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

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

ETHICS CERTIFICATE: By submitting an offer and/or accepting an order, 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 University may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the Procurement Officer at the same time the law requires the statement to be filed.

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

OPEN TRADE REPRESENTATION: By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

PROTESTS: If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in Code Section 11-35-4210. To protest a solicitation, you must submit a protest within fifteen (15) days of the date the applicable solicitation document is issued. To protest an award, you must (i) submit notice of your intent to protest within seven (7) business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen (15) days of the date the award notice is posted. Days are calculated as provided in Code Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided.

PROHIBITED COMMUNICATIONS AND DONATIONS: Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law.

(a) During the period between publication of the solicitation and final award, **you must not communicate, directly or indirectly, with the University or its employees, agents or officials regarding any aspect of this procurement activity**, unless otherwise approved in writing by the Procurement Officer. All communications must be solely with the Procurement Officer. [R. 19-445.2010]

(b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. **You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the University during the period beginning eighteen months prior to the Opening Date.** [Reference Code Section R. 19-445.2165]

PUBLIC OPENING: Offers will be publicly opened at the date/time shown as the Close date. Unless notified otherwise, the location of all Public Openings will be:

Coastal Carolina University
Atlantic Hall
642 Century Circle
Conway SC 29526

(This section does not apply to contracts with an actual or potential value of one hundred thousand dollars or less.) [Reference Code Section 11-35-1550]

QUESTIONS FROM OFFERORS:

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page and/or the Business Opportunities website. 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. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." **We will not identify you in our answer to your question.**

The preferred method for submitting questions is through the Business Opportunities website and the Question and Answer Board for this particular solicitation. Responses to questions received through the Business Opportunities website will be posted to the Question and Answer Board or may be provided in an Amendment to the solicitation. Alternatively, an email may be sent to the Contact's address noted on the Business Opportunities website, with the subject line indicating "Questions – Solicitation (insert identifying Solicitation Number); or questions may be sent to the Contact's attention at Coastal Carolina University, Procurement Services, PO Box 261954, Conway SC 29528-6054, or by facsimile to 843-349-2184, to include the appropriate indication in the subject line.

(b) The University seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [Reference Code Section R. 19-445.2140]

REJECTION/CANCELLATION: The University may cancel this solicitation in whole or in part. The University may reject any or all proposals in whole or in part. [Reference Code Section 11-35-1710 & R.19-445.2065]

RESPONSIVENESS/IMPROPER OFFERS:

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

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted 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 University 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. [Reference Code Section 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. [Reference Code Section R. 19-445.2070].

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

SIGNING YOUR OFFER: Every Offer must be submitted by an individual with actual authority to bind the Offeror.

(a) If the Offeror is an individual, the Offer must be submitted by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name 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. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name and include the name 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 list 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 submitted by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

DISCLOSURE OF YOUR BID / PROPOSAL & SUBMITTING CONFIDENTIAL DATA:

(a) According to Section 11-35-410, any person submitting a document in response or with regard to any solicitation or other request must "comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public."

IF YOU IDENTIFY YOUR ENTIRE RESPONSE AS EXEMPT FROM PUBLIC DISCLOSURE, OR IF YOU DO NOT SUBMIT A REDACTED COPY AS REQUIRED, THE UNIVERSITY MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD.

(b) By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page, or portion thereof, of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page, or portion thereof, was redacted and conspicuously marked "Trade Secret" or "Confidential" or "Protected", (2) agrees that any information not redacted and marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure.

(c) If your offer includes any information that you claim is exempt from public disclosure, you must submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). Except for the information removed or concealed, the redacted copy must be identical to your original offer.

(d) Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If only portions of a page are subject to some protection, do not redact the entire page. The redacted copy must reflect the same pagination as the original and show the empty space from which information was redacted. The Procurement Officer must be able to view, search, copy and print the redacted copy without a password. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the University may, in its sole discretion, determine it nonresponsive.

(e) On the redacted copy, you must identify the basis of your claim by marking each redaction as follows: You must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that you redacted and claim as exempt from public disclosure because it is either (1) a trade secret as defined in Section 30-4-40(a)(1) of the Freedom of Information Act, or (2) privileged and confidential, as that phrase is used in Section 11-35-410. You must separately mark with the words "TRADE SECRET" every page, or portion thereof, that you redacted and claim as exempt from public disclosure as a trade secret pursuant to Section 39-8-20 of the Trade Secrets Act. You must separately mark with the word "PROTECTED" every page, or portion thereof, that you redacted and claim as exempt from public disclosure pursuant to Section 11-35-1810. All markings must be

conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text.

(f) In determining whether to release documents, the University will detrimentally rely on your redaction and marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "Protected". By submitting a response, you agree to defend, indemnify and hold harmless the University, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the University, that you have redacted or marked as "Confidential" or "Trade Secret" or "Protected". (All references to S.C. Code of Laws.)

TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES: Pursuant to Section 12-6-3350, a taxpayer having a contract with this University 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 South Carolina Department of Administration, Division of Small and Minority Business Contracting and Certification (SMBCC) 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: SC Division of Small and Minority Business Contracting and Certification, Phone: (803) 734-0657, Fax: (803) 734-2498.

UNIVERSITY OFFICE CLOSINGS: If an emergency or unanticipated event interrupts normal University processes so that offers cannot be received at the University 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 University processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If University offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference.

VENDOR REGISTRATION MANDATORY: The University has implemented an online, electronic bidding system to receive bids and proposals from prospective offerors. In order to submit offers in response to posted solicitations, prospective must be registered through this electronic system. Registration can be completed through the following link: <https://solutions.scquest.com/apps/Router/SupplierLogin?CustOrg=CoastalCarolina>. Once registered, suppliers must keep their information current.

WITHDRAWAL OR CORRECTION OF OFFER: Offers may be withdrawn by written notice 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.

II. INSTRUCTIONS TO OFFERORS – B. SPECIAL INSTRUCTIONS

DESCRIPTIVE LITERATURE – LABELLING: Include offeror's name on the cover of any specifications or descriptive literature submitted with your offer.

ELECTRONIC FILES – REQUIRED MEDIA AND FORMAT: Documents and/or electronic files submitted shall contain the solicitation number and the offeror's name, and be compatible with Microsoft Office (version 2003 or later), or Adobe Acrobat or equivalent Portable Document Format (.pdf) viewer. The Procurement Officer must be able to view, search, copy and print electronic documents without a password. If required by the solicitation, your business and technical proposals must be within separate files.

ON-LINE BIDDING INSTRUCTIONS:

(a) Mandatory Registration: You must register before you can submit an offer on-line! See clause entitled "VENDOR REGISTRATION MANDATORY." To register or submit an offer, please visit the following site:

<https://solutions.scquest.com/apps/Router/SupplierLogin?CustOrg=CoastalCarolina>

(b) Once registered and signed into the system, chose the solicitation you wish to respond to. The system will provide the necessary steps to obtain the required information from you.

(c) Only offers with a "submitted" status have been received by the University.

PREFERENCES - A NOTICE TO VENDORS: On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at www.procurement.sc.gov/preferences. ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES. [Reference Code Section 11-35-1524(E)(4)&(6)]

PREFERENCES - SC/US END-PRODUCT: Section 11-35-1524 provides a preference to vendors offering South Carolina end-products or US end-products, if those products are made, manufactured, or grown in SC or the US, respectively. An end-product is the tangible project identified for acquisition in this solicitation, including all component parts in final form and ready for the use intended. The terms "made," "manufactured," and "grown" are defined by Section 11-35-1524(A). By submitting your offer and selecting the appropriate space(s) provided and identified on the bid schedule, you certify that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law. Post award substitutions are prohibited. See "Substitutions Prohibited - End Product Preferences (Sep 2009)" provision.

PREFERENCES - RESIDENT CONTRACTOR PREFERENCE: To qualify for the RCP, you must maintain an office in this state. An office is a non-mobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must, at the time you submit your bid, directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and your total direct labor cost for those individuals to provide those services must exceed fifty percent of your total bid price. [11-35-1524(C)(1)(iii)] Upon request by the Procurement Officer, you must identify the persons domiciled in South Carolina that will perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, and documentation of the your labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and, potentially, for other enforcement action).

PREFERENCES - RESIDENT SUBCONTRACTOR PREFERENCE: To qualify for this preference, you must meet the following requirements: (1) You must -- at the time you submit your bid -- have a documented commitment from a single proposed first tier subcontractor to perform some portion of the services expressly required by the solicitation.

(2) The subcontractor -- at the time you submit your bid -- must directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds, as applicable, either twenty percent for a 2% preference or forty percent of bidder's total bid price for a 4% preference.

(3) You must identify the subcontractor that will perform the work, the work the subcontractor is to perform, and your factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement. [11-35-1524(D)] You can stack this preference, i.e., earn another 2% or 4% preference for each additional qualifying subcontractor, but the preference is capped. [11-35-1524(D)(4), (E)(7)] Upon request by the Procurement Officer, you must identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, the employer of those persons, your relationship with the employer, and documentation of the subcontractor's labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and, potentially, for other enforcement action).

YOU WILL NOT RECEIVE THE PREFERENCE UNLESS YOU SPECIFY WHETHER YOUR ARE CLAIMING THE 2% OR 4% PREFERENCE AND YOU PROVIDE THE INFORMATION REQUIRED BY ITEM (3) ABOVE.

PREFERENCES - RESIDENT VENDOR PREFERENCE: To qualify for the RVP, you must maintain an office in this state. An office is a non-mobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must either: (1) maintain at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities for which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars [\$50,000] or the annual amount of the contract; or (2) be a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product being sold is either made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code).

PROTEST – CPO - MMO ADDRESS: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing
(a) by email to protest-mmo@mmo.state.sc.us , or
(b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201

SITE VISIT (Non-Mandatory): A non-mandatory site visit will be held at the following date, time and location. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the University. The University assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does the University 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.

Date and Start Time: August 22, 2024 at 10:00 a.m.
Contact Person's Name: Tracy O'Keefe
Contact's Phone Number: 843-349-2741
Location: Coastal Carolina University
Facilities 1 Building
755 Hwy 544 Conway SC 29526

SUBMITTING A PAPER OFFER OR MODIFICATION: Paper offers are not the preferred method of submission. Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification electronically. See clauses titled "VENDOR REGISTRATION MANDATORY" and "ON-LINE BIDDING INSTRUCTIONS."

If you must submit a paper offer or modification the following instructions apply:

(a) 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).

(b) (1) All copies of the offer or modification, and any other documents required to be submitted with the offer shall be enclosed in a sealed, opaque envelope or package. (2) Submit your offer or modification to one of the following address:

MAILING ADDRESS:
Coastal Carolina University
Procurement Services
PO Box 261954
Conway, SC 29528-6054

PHYSICAL ADDRESS:
Coastal Carolina University
Procurement Services
642 Century Circle
Conway, SC 29526

(3) The envelope or package must show the time and date specified for opening, the solicitation number, and the name and address of the bidder. If the offer or modification is sent by mail or special delivery service (UPS, Federal Express, etc.), the outermost envelope or wrapper must be labeled "OFFER ENCLOSED" on the face thereof.

(c) If you are responding to more than one solicitation, submit each offer in a separate envelope or package.

(d) If the solicitation is a Request For Proposal, you must submit one (1) original and five (5) copies.

(e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation.

The University's Mail Services picks up all mail from the US Postal Service once daily around 9:00AM (excluding weekends and holidays), and disseminates the mail to the Procurement Services office normally by 12:00 PM. See provision entitled Deadline for Submission of Offer.

UNIT PRICES REQUIRED: Unit price to be shown for each item.

III. SCOPE OF WORK

Coastal Carolina University seeks a source to provide preventative maintenance, inspection, and emergency repair services for twenty-one (21) generators on campus.

A. Scope of Services: The contractor shall furnish all labor, materials, supplies, service vehicles, communication needs, parts, tools, test equipment, special equipment lubricants, shut down schedules, and labor supervision necessary to provide preventative maintenance, inspection, and emergency repair services as described herein. These services shall include generator equipment inspections, examinations, lubrication, testing, cleaning and adjusting.

A.1. Quarterly Inspection and Maintenance: The Contractor shall perform quarterly operational inspections on each generator listed in the Bidding Schedule. The service shall consist of the following:

1. Inspect cooling system hoses;
2. Check engine heater operation;
3. Check/adjust belts;
4. Check engine and generator gauge and meter operation;
5. Check generator set for fuel, oil and coolant leaks;
6. Check air intakes and outlets and emergency stop;
7. Check transfer/day tank operation;
8. Inspect silencer;
9. Check output voltage and adjust as necessary;
10. Check battery charger operation and charger rate;
11. Check battery connections and specific gravity;
12. Lubricate louver linkage as necessary;
13. Visually inspect transfer switch and accessory operation;
14. Check anti-freeze mixture, add fluid and adjust mixture as necessary;
15. Check cooling system hoses;
16. The contractor shall notify the University, in written form, of any improper operating parts, and assist with determining the corrective repair and/or replacement action, to include an accompanying quote for parts and labor. The University reserves the right to request a second opinion from another source. Any service for corrective repair is not to be performed until expressly authorized by the Facilities 1 project manager.

A.2. Annual Preventative Maintenance Service: In addition to the quarterly preventative maintenance items listed above, the Contractor shall perform the following services one (1) time per year for all generators referenced in the Bidding Schedule:

1. Replace and add oil filters;
2. Change fuel filters;
3. Check coolant level;
4. Test anti-freeze and adjust as necessary;
5. Check transfer switch and accessory operation;
6. Check unit controller functions and shutdown;
7. Emergency system operation w/load transfer;
8. Test and condition diesel fuel to eliminate water and sludge;
9. Replace air filter;
10. Tune engine, if required.

A.3. Emergency/Unscheduled Repair. The Contractor shall be responsible for all emergency and unscheduled service calls and must be prepared to begin work to make repairs within one (1) hour of request by CCU Procurement Services (rev Nov 2023)

University personnel. The technician shall be required to check in and out at the Facilities Management office for all emergency and unscheduled calls and are required to have their service ticket signed by a Facilities Management staff member. A copy of the service ticket with the complete description of work performed must be left at the Facilities Maintenance office after each visit. Contractor shall provide twenty-four (24) hour standby service, seven (7) days per week, and shall provide backup portable generator power as necessary.

B. Reporting. The Contractor shall provide a written, detailed, quarterly report and invoice describing the cost per generator.

B. 1. Corrective Maintenance and Scheduled Repair Reporting. The Contractor shall include with its quarterly report and invoicing recommendations for corrective maintenance not covered by the preventative maintenance schedules, to include a quote for the corrective action separating labor and materials. The University will review these recommendations and have final approval on any corrective maintenance or repairs that may be required or suggested. Additional service not covered by this contract is not to be performed until expressly authorized by the Facilities 1 project manager. The University will not be obligated to issue other repair work to the Contractor, and reserves the right to seek quotations from other contractors. The University will exercise care with regards to work performed by other contractor(s) and the impact on warranties and guaranties.

C. Warranty. For parts installed under this contract, the Contractor agrees to correct, by repair or replacement at no additional cost, any defects in material or workmanship which may develop under normal use within one (1) year from installation.

D. Hours of work: All preventative maintenance, repairs, routine adjusting and service procedures must be performed during regular University business days and hours, which are Monday through Friday, 8:00 A.M. to 5:00 P.M.

E. Qualifications and Appearance. The Contractor shall perform the maintenance as herein specified by trained, skilled, professional technicians who are familiar with inspection, maintenance and repair procedures as identified in the specifications listed herein. Certified technicians must be able to perform basic to medium level troubleshooting on commercial power supply side, transfer switches, control software, and related control hardware. Contractor must also be able to supply high level electrical technicians if the need should arise. The technicians shall dress in identifiable company uniforms provided by the Contractor at all times while on University premises.

F. Damages. The Contractor shall be responsible for all damages to persons or property caused by Contractor or any of its agents or employees. Contractor shall promptly repair any damage caused to the University's premises or equipment by its employees and/or agents. If Contractor fails to do so, the University may repair such damage and either invoice the Contractor or reduce the Contractor's invoice by the appropriate amount.

G. Unit Addition/Deletion. Generators to be serviced and maintained under this contract are specified on the Bidding Schedule. Any unit added or deleted by the University from said list will result in an equitable adjustment to the contract price. If added, the price will be negotiated by the parties. If a unit is deleted, the price as then in effect on said individual unit will be prorated over the remainder of the contract period and so subtracted from the contractual amount due under this contract.

H. Payment: Payment will be made on a quarterly basis as charges are incurred.

I. Contractor Service Facility: The University realizes the importance of maintaining student safety and critical operations. Based on this, the successful Contractor must have a service facility within a forty (40) mile radius of the University.

DELIVERY / PERFORMANCE LOCATION – PURCHASE ORDER: After award, all deliveries shall be made and all services provided to the location specified by the University in its purchase order.

DELIVERY – GENERAL: Subject to conditions beyond the control of the Contractor, delivery or completion must actually be affected within the time stated on any order, if so stated. If, for any reasons whatsoever, including conditions beyond the control of Contractor, completion is not timely, the University reserves the right to obtain

the goods or services elsewhere and to charge Contractor with any loss incurred as a result thereof or, as its option, to cancel the order.

IV. INFORMATION FOR OFFERORS TO SUBMIT

INFORMATION FOR OFFERORS TO SUBMIT – GENERAL: You must submit a signed Cover Page and Page 2 by uploading a copy into the to the Supplier Attachments section of the Business Opportunities system. Your offer should include 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 Part IX. Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis.

MINORITY PARTICIPATION: A Minority Participation questionnaire will be provided in the Buyer Attachments area of the event within the Business Opportunities portal. If applicable, Offerors are asked to complete the questionnaire and attach it to their offer via electronic upload.

V. QUALIFICATIONS

QUALIFICATIONS OF OFFEROR:

(1) To be eligible for award, you must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award, including, but no limited to, Google search, Dun and Bradstreet reports, business continuity plans, and internal control assessments. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify.

(2) You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection.

(3) **Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability;** however, we may elect to consider any security, e.g., letter of credit, performance bond, parent-company corporate guaranty, that you offer to provide Instructions and forms to help assure acceptability are posted on procurement.sc.gov, link to "Standard Clauses & Provisions."

QUALIFICATIONS - SPECIAL STANDARDS OF RESPONSIBILITY:

(a) This section establishes special standards of responsibility. **UNLESS YOU POSSESS THE FOLLOWING MANDATORY MINIMUM QUALIFICATIONS, DO NOT SUBMIT AN OFFER:**

1. Contractor must have a service facility within a forty (40) mile radius of the University.
2. The competency and experience of the contractor is a concern for the University; therefore proposals will only be considered from companies who can affirmatively demonstrate and give evidence showing that they are an established electrical/mechanical contractor providing electrical/mechanical maintenance service on generating systems of comparable size.
3. Offeror shall provide the names and contact information of three (3) businesses for which contractor has provided similar services during the last two (2) years. The University reserves the right to contact any, all or none of the references provided pursuant to this section.
4. Technicians employed by the Contractor must be factory certified to maintain the specific brand generators listed in Attachment A.

(b) Provide a detailed, narrative statement with adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation. If you intend for us to

consider the qualifications of your key personnel, predecessor business(es), or subcontractor(s), explain the relationship between you and such person or entity. [Reference Code Section R. 19-445.2125(F)]

SUBCONTRACTOR – IDENTIFICATION: If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either (1) exceeds 10% of your cost, (2) involves access to any “government information”, as defined in the clause entitled “Information Security – Definitions, “ if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion), 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 University may evaluate your proposed subcontractors.

VI. AWARD CRITERIA

AWARD CRITERIA – BIDS: Award will be made to the lowest responsible and responsive bidder.

AWARD TO ONE OFFEROR: Award will be made to one Offeror.

COMPETITION FROM PUBLIC ENTITIES: If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by on governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs. 117-304.1 (Supp. 2004).

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

VII. TERMS AND CONDITIONS – A. GENERAL

ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE:

(a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible Procurement Officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g. bankruptcy, corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the University shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible Procurement Officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made.

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

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

BANKRUPTCY - GENERAL:

(a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the University. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all University orders/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 University upon the contractor’s insolvency, including the filing of proceedings in bankruptcy.

CHOICE OF LAW: The Agreement, any dispute, claim, or controversy relating to the Agreement, and all 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.

CONTRACT DOCUMENTS & ORDER OF PRECEDENCE:

- (a) Any contract resulting from this solicitation shall consist of the following documents:
 - (1) a Record of Negotiations, if any, executed by you and the Procurement Officer,
 - (2) the solicitation, as amended,
 - (3) documentation of discussions [11-35-1530(6)] of an offer , if applicable,
 - (4) your offer,
 - (5) any statement reflecting the University's final acceptance (a/k/a "award"), and
 - (6) purchase orders.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

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

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

DISCOUNT FOR PROMPT PAYMENT:

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

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the University 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 a legal holiday when Federal Government offices are closed and University business is not expected to be conducted, payment may be made on the following business day.

DISPUTES:

(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 University regarding the Agreement is not a waiver of either the University's sovereign immunity or the University's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

(2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page 2 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.

EQUAL OPPORTUNITY: The University is an Equal Opportunity Employer and does not discriminate on the basis of race, color, religion, sex, national origin, age, handicap or veteran status. The Contractor will comply with all Federal and State requirements concerning fair employment of the handicapped, and concerning the treatment of all employees and applicants for employment without discrimination by reason of race, color, religion, sex, national origin, age, handicap or veteran status. 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.

FALSE CLAIMS: According to the S.C. Code of Laws § 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.

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

NO INDEMNITY OR DEFENSE: Any term or condition is void to the extent it requires the University to indemnify, defend, or pay attorney's fees to anyone for any reason.

NOTICE:

(A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used.

(B) Notice to contractor shall be to the address identified by the Contractor in the electronic registration system. Notice to the University shall be to the Procurement Officer's attention at Coastal Carolina University, Procurement Services, PO Box 261954, Conway SC 29528-6054, or to the Procurement Officer's email address as noted on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

OPEN TRADE:

During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

ORGANIZATIONAL CONFLICT OF INTEREST

(a) The Contractor agrees to immediately advise the Procurement Officer if an actual or potential organizational conflict of interest is discovered after award, and to make a full written disclosure promptly thereafter to the Procurement Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Procurement Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(b) The University may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not increase the obligation of the University beyond what it would have been if the subcontract had contained such a clause.

(c) The disclosure required by paragraph (a) of this provision is a material obligation of the contract. If the Contractor knew or should have known of an organizational conflict of interest prior to award, or discovers an actual or potential conflict after award, and does not disclose, or misrepresents, relevant information to the Procurement Officer, the University may terminate the contract for default.

[Ref. Compendium 07-7A054-1 Jul 2023]

PAYMENT & INTEREST:

(a) The University 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 herein, including the purchase order, payment shall not be made on partial deliveries accepted by the University.

(b) Unless otherwise provided herein, including the purchase order, payment will be made by electronic funds transfer (EFT).

(c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the University shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason.

(d) Amounts due to the University shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30.

(e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding.

(f) The University shall have all of its common law, equitable and statutory rights of set-off.

PUBLICITY: Contractor shall not publish any comments or quotes by University employees, or include the University in either news releases or a published list of customers, or other such media, without the prior written approval of the Procurement Officer and the office of University Communication.

PURCHASE ORDERS: Contractor shall not provide any goods or services or perform any work prior to the receipt of a purchase order from the University. The University 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.

SURVIVAL OF OBLIGATIONS: 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.

TAXES: Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the University, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the University. It shall be solely the University's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the University to contractor, contractor shall be liable to the University 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.

TERMINATION DUE TO UNAVAILABILITY OF FUNDS: 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.

THIRD PARTY BENEFICIARY: 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.

WAIVER: The University 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 University's rights under this Contract. Any waiver must be in writing.

VII. TERMS AND CONDITIONS – B. SPECIAL

CHANGES:

(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 University 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 the contractor from proceeding with the contract as changed, provided that the University promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(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, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the University is prejudiced by the delay in notification.

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

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

COMPLIANCE WITH LAWS: Through acceptance of an order or contract, and during the term of any contract, the Contractor shall be deemed to represent that it has complied, or will comply, with all applicable provisions of Federal, State and local laws, codes, ordinances, rules, regulations and tariffs, and all University regulations and policies while on University property or while conducting University associated activities off of University property. University policies are available through this web site: <http://www.coastal.edu/policies/>

The Contractor acknowledges that persons under the age of eighteen (18) are considered minors in the State of South Carolina and protected under State law. The University's policy on Protection of Minors can be found at: <http://www.coastal.edu/policies/policyDetails.html?x=182>

By acceptance of an order or contract, the Contractor is deemed to represent that it has complied or will comply with the Drug-Free Workplace Act, Section 44-107-10, Chapter 107, of the South Carolina Code of Laws.

Failure to comply with any applicable laws, ordinances, rules, regulations, and policies may result in unilateral and immediate revocation of this contract.

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

CONTRACTOR'S LIABILITY INSURANCE – GENERAL:

(a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages

to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.

(b) Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.

(2) Auto Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

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

"Coastal Carolina University, including its current and former trustees, officers, directors, employees, volunteer workers, agents, assigns and students, is added to this policy as additional insured."

(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, the University, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, the University, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(e) Prior to commencement of the work, the Contractor shall furnish the University with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the University before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The University reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

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

(g) Contractor hereby grants to the State and the University a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or the University by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State or the University has received a waiver of subrogation endorsement from the insurer.

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

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

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

The Contractor certifies that its employees, volunteers, and participants are not registered sex offenders and have not been convicted of a felony. The Contractor will be responsible for compliance with Title IX and Title VII of federal civil rights laws while on University property or while conducting associated activities off University property. Failure to comply with the above may result in unilateral and immediate revocation of this contract.

The use of all tobacco products is prohibited in or on all University property. Tobacco products include all forms of tobacco and smoke-related products, including but not limited to, cigarettes, cigars, pipes, chewing tobacco, snuff, water pipes (hookahs), bidis, kreteks, smokeless tobacco, electronic cigarettes and other devices allowing for the ingestion, combustion, inhalation or other use of tobacco.

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

CONTRACTOR'S USE OF UNIVERSITY PROPERTY: Upon termination of the contract for any reason, the University shall have the right, upon demand, to obtain access to, and possession of, all University properties, including, but not limited to, current copies of all University 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 University without the University's written consent, except to the extent necessary to carry out the work.

DEFAULT:

(a)(1) The University may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to-(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

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

(b) If the University 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 the Contractor will be liable to the University for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the University 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 the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

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

(f) The University shall pay contract price for completed supplies delivered and accepted. The 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 University may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the University against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the University, be the same as if the termination had been issued for the convenience of the University. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the University, 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 University in this clause are in addition to any other rights and remedies provided by law or under this contract.

DISPOSAL OF PACKAGING: Contractor shall dispose of all wrappings, crating, and other disposable materials pertaining to this contract at the end of each working day and upon completion of installation.

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA): Contractor warrants that it will not make available or distribute any student education records it receives from the University in violation of the federal Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. section 1232g. Contractor agrees to limit access to records provided by the University to its employees with a legitimate need to know in order for the Contractor to fulfill its obligations under this agreement. Contractor warrants that it has procedures in place to prevent unauthorized access to data provided by the University, and the procedures will be documented and available to the University upon request. Contractor will notify the University immediately in the event of a security breach that could or does impact the University records or data. Contractor agrees that University data will not be shared or sold to third parties without prior written authorization from the University. Contractor agrees to notify the University immediately if it receives a subpoena, court order or other request for University data so the University can take appropriate action if needed.

HOLD HARMLESS: The University, its officers, agents, and employees shall be held harmless from liability from any claims, damages, and actions of any nature arising from the use of any materials furnished by the Contractor, provided that such liability is not attributable to negligence on the part of the University or failure of the University to use the materials in the manner outlined by the Contractor in descriptive literature or specifications submitted with the Contractor's proposal.

ILLEGAL IMMIGRATION: (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 University 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.

IMPORTED GOODS: Whenever Contractor acts as the University's agent in importing goods from other countries, the Contractor agrees to show on its invoices the amount of any customs or import duties paid to the United States government as a separate item.

INDEMNIFICATION - THIRD PARTY CLAIMS - GENERAL: Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

INDEMNIFICATION – THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION:

(a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter "action") of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection

with a disclosure of University information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.

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

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

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

INSPECT/REJECT: The University reserves the right to inspect any equipment offered or completed service and to reject equipment or service if it is not acceptable as determined by the University.

INVOICE ITEMIZATION: All transportation, insurance, crating and /or packing charges are to be entered as separate items on Contractor's invoice, unless goods are sold F.O.B. destination or such charges are included in Contractor's price.

LICENSES AND PERMITS: During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in the order. Note: The University campus is located within the city limits of Conway, South Carolina. Questions regarding business license requirements should be directed to City of Conway, Business License Office, 1000 2nd Ave., Conway SC 29526, telephone 843-488-7631, fax 843-248-1718.

MATERIAL AND WORKMANSHIP: 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.

PRICE ADJUSTMENTS:

(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 the 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, CCU Procurement Services (rev Nov 2023)

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, the 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.

PRICE ADJUSTMENT - LIMITED - AFTER INITIAL TERM ONLY: 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.

PRICE ADJUSTMENTS – LIMITED BY CPI “All Items”: 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.

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

STORAGE OF MATERIALS: Absent approval of the University, Contractor shall not store items on the premises of the University prior to the time set for installation.

SUBSTITUTIONS PROHIBITED - END PRODUCT PREFERENCES: If you receive the award as a result of the South Carolina end product or United States end product preference, you may not substitute a non-qualifying end product for a qualified end product. If you violate this provision, the University may terminate your contract for cause and you may be debarred. In addition, you shall pay to the University an amount equal to twice the difference between the price paid by the University and your evaluated price for the item for which you delivered a substitute. [Reference Code Section 11-35-1534(B)(4)]

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

TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD: 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 one year from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award.

TERM OF CONTRACT -- OPTION TO RENEW: At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of one (1) year, zero (0) month, and zero (0) day, unless contractor receives notice that the state elects not to renew the contract at least ninety (90) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award.

TERM OF CONTRACT – TERMINATION BY CONTRACTOR: Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least ninety (90) days prior to the expiration of the then current term.

TERMINATION FOR CONVENIENCE:

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

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the University. The 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 the contractor to transfer title and deliver to the University 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 the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the University has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the University has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the University, 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 the 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 the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(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 University's right to require the termination of a subcontract, or (ii) increase the obligation of the University beyond what it would have been if the subcontract had contained an appropriate clause.

WARRANTIES: In addition to any expressed or implied warranties provided by applicable law, the Contractor hereby represents and warrants that the goods delivered or services performed on this order will be in accordance with the University's specifications, drawings, or samples, if such were submitted, and if any goods or workmanship proves defective within one year from delivery or completion, or is not in accordance with specifications, drawings or samples, the University may cancel this Contract and return the goods or services or correct the defective goods or work at Contractor's expense. The foregoing representations and warranties shall survive acceptance of the goods or services.

WARRANTY – STANDARD: Contractor must provide the manufacturer's standard written warranty upon delivery of product. Contractor warrants that manufacturer will honor the standard written warranty provided.

VIII. BUSINESS PROPOSAL

SECTION NOT APPLICABLE – INTENTIONALLY OMITTED (MODIFIED)

See Section IV. INFORMATION FOR OFFERORS TO SUBMIT.

IX. ATTACHMENTS TO SOLICITATION

The following documents are attached:

GENERATOR LIST- ATTACHMENT A

Attachment A:

Item No.	Building	Mfg.	Description:
1.	Humanities	Kohler	Model # 100 RZ S/N 0693420 Spec. # PA-18744 kW: 100 Phase: 3 Volts: 277/480 Fuel: NG Eng. Mfg.: Ford Model # LGS-87516005-A Engine S/N 3900 HZA-3900-QBA Transfer Switch #1, Model # GLN-166341-150 S/N K0693323, Volts: 277/480 Amps: 150 Poles: 3 Wires: 4 Transfer Switch #2, Model # GLN-166341-0080 S/N K0690883, Volts: 277/480 Amps: 150 Poles: 3 Wires: 4
2.	Wall	Kohler	Model # 50 RZGB S/N 0752831 Spec. # GM 21302-GAI kW: 50 Phase: 3 Volts: 277/480 Fuel: NG Engine Mfg.: Kohler Model # 5.0L S/N 5.0L-005243 Transfer Switch #1, Cummins (Onan) Model # OTCU 150G S/N I910421103, Volts: 277/480 Amps: 150 Poles: 3 Wires: 4 Hertz: 60
3.	Residence Halls (Hicks)	Generac	Model # 95A03434-S S/N 2022052 kW: 75 Phase: 3 Volts: 120/208 Fuel: NG Eng. Mfg.: 350 Chevy Model: 5 Liter Transfer Switch #1, Model # 95A03434-W S/N 30152, Volts: 120/208 Amps: 150 Poles: 3 Wires: 4
4.	Wall (ITS)	Onan	Model # GGLB-5769375 S/N G060943050 kW: 150 Amps: 225.2 Phase: 3 Wire: 4 Volts: 120/208 Fuel: NG Hertz: 60 Transfer Switch #1, Model # OPTCA-5769373/A S/N GO60943733 Volts: 480 Amps: 125 Phase: 3 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #2, Model # OPTCb-5769374/A S/N GO60943732 Volts: 480 Amps: 260 Phase: 3 Poles: 3 Wires: 4 Hertz: 60
5.	Lift Station	Cummins	Model # DGCB-569738/T S/N L040723270 kW: 60 Amps: 90.2 Phase: 3 Wire: 4 Volts: 277/480 Fuel: Diesel Hertz: 60 Eng. Mfg.: Cummins Model # 4BTA3.9-G5 Engine S/N 46451113 Transfer Switch #1, Model # OTECA-57112119/A S/N D050772256 Volts: 277/480 Amps: 125 Phase: 3 Poles: 3 Wires: 4 Hertz: 60
6.	Singleton	Cummins	Model # DGBB-5734954/K S/N G050803675 kW: 35 Amps: 121.4 Phase: 3 Wire: 4 Volts: 120/208 Fuel: Diesel Hertz: 60 Eng. Mfg.: Cummins Model # 4B3.9 Engine S/N 46450422 Transfer Switch #1 Model # OTECB-5734446/A S/N F050793810 Volts: 120/208 Amps: 150 Phase: 3 Poles: 3 Wires: 4 Hertz: 60
7.	Atheneum Hall	Cummins	Model # DGDA-5734984 S/N G050800789 kW: 80 Amps: 277.6 Phase: 3 Wire: 4 Volts: 120/208 Hertz: 60 Fuel: Diesel Eng. Mfg.: Cummins Model # 6BTA5.9-G4 Engine S/N 46491276 Transfer Switch #1 Model # OTECB-5734437 S/N F050793811 Volts: 120/208 Amps: 400 Phase: 3 Poles: 3 Wires: 4 Hertz: 60
8.	Brooks Stadium	Cummins (Onan)	Model # GGHH-7227369 S/N H080201431 kW: 100 Amps: 150.4 Phase: 3 Wire: 4 Volts: 277/480 Fuel: NG Eng. Mfg.: Ford Model # WSG-1068 Engine S/N E182A 070508 1286152 Transfer Switch #1 Model # OTCB-7226934/A S/N G080197669 Volts: 480 Amps: 150 Phase: 3 Poles: 3 Wires: 4

Item No.	Building	Mfg.	Description:
9.	Brooks Stadium (HWY 544)	Olympian	Model # G275LG 6 S/N # GXJ05033-OLY0000 kW:400 Phase 3 Volts: 277/480 Fuel: NG Engine Mfg. Generac Model JGNXB14.22C1 S/N G9183001200 Transfer Switch (ATS-2), ASCO Model # MX250, S/N LGGEPE18KZ49000878, Volts: 277/480 Amps: 400 Poles 3 Wires 4 Hertz: 60
10.	HTC Building	Generac	Model # D6.7.1 S/N 2110670 kW: 130 Amps: 225 Phase: 3 Wire: 4 Volts: 277/480 Fuel: Diesel Eng. Mfg.: FPT Model # F4GE9685A*J Engine S/N J60200829943 Transfer Switch #1 Model # 13056260100 S/N 104704 Volts: 277/480 Amps: 200 Phase: 3 Poles: 3 Wires: 4
11.	Public Safety	Cummins	Model # 250GFBC S/N 25376187 kW: 250 Phase: 3 Volts: 120/208 Fuel: NG Engine Mfg.: Cummins Model # GTA19CC S/N M13F259498 Transfer Switch #1, Cummins Model # OTECSED S/N D130499896, Volts: 120/208 Amps: 800 Poles: 3 Wires: 4 Hertz: 60
12.	Swain Hall	Caterpillar Olympian	Model # G200LG S/N *GXD01587 kW: 200 Phase: 3 Volts: 277/480 Fuel: NG Engine Mfg.: Caterpillar Model # OH0924 S/N ----- Transfer Switch #1 (ATS-1), ASCO Model # J7ADTSB30150N5XC, S/N 802209RE, Volts: 277/480 Amps: 150 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #2 (ATS-2), ASCO Model # J7ADTSB30400N5XC, S/N 8022010RE, Volts: 277/480 Amps: 400 Poles: 3 Wires: 4 Hertz: 60
13.	Britain Hall	MTV Onsite Energy	Model # 60-RGC6NLT1 S/N 349230-1-1-0912 kW: 60 Phase: 3 Volts: 277/480 Fuel: NG Engine Mfg.: GM, Model # 5.7L S/N 5.7L24444 Transfer Switch #1 (LS), ASCO Model # D00300030104N1XC S/N 836884RE, Volts: 480Y/277V Amps: 60 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #2 (OS), ASCO Model # D00300030070N1XC S/N 836882RE, Volts: 480Y/277V Amps: 70 Poles: 3 Wires: 4 Hertz: 60
14.	Tradition Hall	Kohler	Model # 180REZXB S/N SGM32C2K2 Spec. # GM 78689-GA1 kW: 184 Phase: 3 Volts: 120/208 Fuel: NG Engine Mfg.: Kohler Model # D111L S/N EE1OH404095 Transfer Switch #1, Nixon Model # S/N, Volts: 120/208 Amps: 400 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #2, Nixon Model # S/N, Volts: 120/208 Amps: 200 Poles: 3 Wires: 4 Hertz: 60

Item No.	Building	Mfg.	Description:
15.	Chanticleer Hall	Kohler	Model # 150REZGC S/N SGM32C2K3 Spec. # GM 80580-GA1 kW: 135 Phase: 3 Volts: 120/208 Fuel: NG Engine Mfg.: Kohler Model # S/N Transfer Switch #1, Nixon Model # S/N, Volts: 120/208 Amps: 400 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #2, Nixon Model # S/N, Volts: 120/208 Amps: 200 Poles: 3 Wires: 4 Hertz: 60
16.	Teal Hall	Olympian	Model # LG0130GG036 S/N *GXC03573 Spec. # kW: 130 Phase: 3 Volts: 120/208 Fuel: NG Engine Mfg.: Generac Model # 6.8GLPNGD-130 S/N Transfer Switch #1 ASCO Model # 4000 S/N, 1148985-001 Volts: 120/208 Amps: 400 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #2 ASCO Model # 4000 S/N, 1148984-002 Volts: 120/208 Amps: 400 Poles: 3 Wires: 4 Hertz: 60
17.	Pat Singleton Young Hall	Olympian	Model # LG0130GG036 S/N *GXC03572 Spec. # kW: 130 Phase: 3 Volts: 120/208 Fuel: NG Engine Mfg.: Generac Model # 6.8GLPNGD-130 S/N Transfer Switch #1 ASCO Model # 4000 S/N, 1148985-002 Volts: 120/208 Amps: 400 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #2 ASCO Model # 4000 S/N, 1148984-001 Volts: 120/208 Amps: 400 Poles: 3 Wires: 4 Hertz: 60
18.	Science Annex II	Cummins	Model # 450GFGA S/N M15G281473 kW: 450 Phase: 3 Volts: 277/480 Fuel: NG Engine Mfg.: Cummins Model # GTA28 S/N Transfer Switch #1, ASCO Model # 7000 S/N 1144145 RE Volts: 480 Amps: 800 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #2, ASCO Model # 7000 S/N 1144144 RE Volts: 480 Amps: 800 Poles: 3 Wires: 4 Hertz: 60

Item No.	Building	Mfg.	Description:
19.	Softball	Olympian	Mfg.: Caterpillar Model # E13 S/N DGNXB13.32C1 Spec. # GM 80580-GA1 kW: 300 Phase: 3 Volts: 480 Fuel: NG Transfer Switch #1, Emerson Model # GP-5 S/N 955578-001 RE Volts: 480 Amps: 150 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #2, Emerson Model # GP-5 S/N 955579-002 RE Volts: 480 Amps: 150 Poles: 3 Wires: 4 Hertz: 60
20.	Thompson Library	Kohler	Mfg.: Kohler Model # KG125 S/N 33MVGMLK0010 Spec. # GM118599-GA2 kW: 125 Phase: 3 Volts: 277/480 Fuel: NG Transfer Switch #1(ATS-EQ), Kohler Model # MPAC 1200 Volts: 277/480 Amps: 125 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #2 (ATS-LS), Kohler Model # MPAC 1200 Volts: 277/480 Amps: 100 Poles: 3 Wires: 4 Hertz: 60
21.	Penny Hall	Kohler	Mfg.: Kohler Model # 400REZXB S/N SGM32H7HG Spec. # GM 99514-GA1 kW: 400 Phase: 3 Volts: 480 Fuel: NG Transfer Switch #1, Kohler Model # MPAC 1500 RE Volts: 480 Amps: 500 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #2, Kohler Model # MPAC 1500 Volts: 480 Amps: 400 Poles: 3 Wires: 4 Hertz: 60 Transfer Switch #3 Kohler Model MPAC 1500 Volts: 480 Amps: 100 400 Poles: 3 Wires: 4 Hertz: 60