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Written Determination

Matter of: College Products

File No.: 2024-122B

Date: February 13, 2024

Contracting Entity: College of Charleston

Solicitation No.: 2025-JCB-000000273-IFB

Description: Combination Refrigerator/Freezer/Microwave Units

BACKGROUND

This matter comes before the Chief Procurement Officer¹ (CPO) through a request from the College of Charleston (CoC) to cancel the award of a contract after award but prior to performance per S.C. Code Ann. § 11-35-1520(7) and Regulation 19-445.2085C, because CoC has revised specifications. [Exhibit A] This decision is based on CoC's request, information in the procurement file, and information obtained through handling of a formal protest of the award.

On November 13, 2024, the College of Charleston (CoC) issued an Invitation for Bids (IFB) to purchase eighty-five (85) combination refrigerator/freezer/microwave units (Units). [Exhibit B] By the deadline for receipt of bids, CoC received five bids. [Exhibit C] College Products submitted the apparent lowest responsive bid of \$34,765, and on November 22, 2024, CoC posted an Intent to Award to College Products in the amount of \$34,765. [Exhibit D] On

¹ The Materials Management Officer delegated the administrative review of this protest to the Deputy Chief Procurement Officer.

November 26, 2024, the CPO received a protest from Standards for Living protesting the award.
[Exhibit E]

Upon receipt and review of the protest, CoC became aware that the requirement of having a "patented smoke sensor" resulted in an overly restrictive specification that unintentionally limited competition. Based on this finding, the CoC believes it would be in its best interest to cancel the award, revise the specifications, and rebid to ensure fair and open competition.

DISCUSSION

The Consolidated Procurement Code states “[a]ll specifications shall be drafted so as to assure cost effective procurement of the state’s actual needs and shall not be unduly restrictive.” S.C. Code Ann. §11-35-2730. “[I]n other words, [specifications] must be written in such a manner as to balance the reasonable, objective needs of the State against the goal of obtaining maximum practicable competition.” *Appeal of Mets Corporation*, Panel Case No. 2003-9.

Section 11-35-1520(7) authorizes the cancellation of awards or contracts after award but before performance in accordance with regulations promulgated by the Board. Regulation 19-445.2085(C) authorizes cancellation due to revised specifications:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;
- (3) The supplies, services, information technology, or construction being procured are no longer required;
- (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- (7) Administrative error of the purchasing agency discovered prior to performance, or
- (8) For other reasons, cancellation is clearly in the best interest of the State.

While the authority to cancel awards and solicitations should be exercised carefully and sparingly, these provisions authorize the CPO to cancel an award of a contract before performance begins, when a compelling reason exists and one or more of the grounds listed in the Regulation are present. For the reasons set forth above, the CPO finds that a compelling reason to cancel the award in this case exists.

DETERMINATION

For these reasons, the CPO cancels the award of a contract to College Products and remands this procurement to CoC for processing in accordance with the Procurement Code.



Stacy Adams
Deputy Chief Procurement Officer

Columbia, South Carolina

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

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b), states:

- (1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
- (b) requests for review of other *written determinations*, decisions, *policies*, and *procedures* arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(Emphasis added.) See generally *Protest of Three Rivers Solid Waste Authority by Chambers Development Co., Inc.*, Case Nos. 1996-4 & 1996-5, *Protest of Charleston County School District*, Case No. 1985-5, *Charleston County School Dist. v. Leatherman*, 295 S.C. 264, 368 S.E.2d 76 (Ct.App.1988).

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 Enterprises, 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.

Exhibit A

From: [Bassett, Casey](#)
To: [Craig, Kimber](#)
Cc: [Dick-McKeon, Susan M](#); [Williams, Wendy](#); [White, John](#)
Subject: [External] Cancel Award and Rebid for Combination Refrigerator/Freezer/Microwave Units 2025-JCB-000000273-IFB
Date: Wednesday, December 4, 2024 9:05:21 AM
Attachments: [Outlook-A group of.png](#)
[Statement of Award for 2025-JCB-000000273-IFB.pdf](#)

Dear Kimber,

The College is seeking your approval to cancel the award of the above-referenced contract prior to performance. The second lowest bidder protested the attached statement of the award based on the specification requirement of a "patented smoke sensor." Although the award is for less than \$50,000 and is not subject to protest, we felt it was prudent to review their complaint. Reviewing the protest, we found that using the term "patented" was inappropriate and created a restrictive specification. Based on this finding, we believe it would be in the College's best interest to cancel the award, revise the specifications, and rebid to ensure fair competition.

Please let me know if you have any questions regarding this.

Thanks,

Casey Bassett, NIGP-CPP, CPSM, CPPB, CPCP

Procurement Manager I

Office of Procurement and Supply

176 Lockwood Dr.

Charleston SC 29424

p: (843)953-5508

f: (843)953-5443

e: bassettjc@cofc.edu



Exhibit B

**COMBINATION REFRIGERATOR/FREEZER/MICROWAVE UNITS
2025-JCB-000000273-IFB**

Solicitation Table of Contents:

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IMPORTANT: This solicitation may contain additional documents under separate attachments with more precise descriptions of the physical and/or functional characteristics of the supplies, equipment and/or services requested. Refer to the “Buyer Attachments” section and any other attachments for further details.

I. Scope of Solicitation / Introduction

ACQUIRE SERVICES AND SUPPLIES / EQUIPMENT (C.02.15): The purpose of this solicitation is to acquire services and supplies or equipment complying with all terms and conditions of this document and any additional documents found in the “Buyer Attachments” section. [01-1005-1]

DEFINITIONS, CAPITALIZATION, AND HEADINGS (C.02.15): Clause headings used in this solicitation are for convenience only and shall not be used to construe meaning or intent. Even if not capitalized, the following definitions are applicable to all parts of this solicitation, unless expressly provided otherwise.

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

AUTHORITY means the South Carolina Budget & Control Board State Fiscal Accountability Authority or its successor in interest.

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

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)]

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

PROCUREMENT OFFICER means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice.

YOU and YOUR means Offeror.

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

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

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

US or WE means the using governmental unit.

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

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. [02-2A003-3]

II. Instructions to Offerors

ADDENDA (C.08.14): The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor <http://ebid.cofc.edu> for the issuance of addenda. Offerors shall acknowledge receipt of any addenda to this solicitation by checking the appropriate box under the "Questions" section on this eBid site. If an addendum is issued for this solicitation, all unmodified terms and conditions remain unchanged. [02- 2A005-1]

AUTHORIZED AGENT (S.02.15): All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract. [02-2A007-1]

AWARD NOTIFICATION (C.07.19): Notice regarding any award, cancellation of award and/or extension of award will be posted on our web page: [College of Charleston eBid Results](#). Should the contract resulting from this Solicitation have a potential value of \$100,000.00 or more, such notice will be sent electronically to all Offerors responding to the Solicitation and any award will not be effective until the calendar day (excluding weekends and holidays) immediately following the seventh business day after such notice is given. [02-2A010-2]

BID / PROPOSAL ACCEPTANCE PERIOD (C.04.13): In order to withdraw your Offer after the minimum period specified in the solicitation”, you must notify the Procurement Officer in writing. [02-2A020-1]

BID / PROPOSAL AS OFFER TO CONTRACT (C.11.12): By submitting your Bid or Proposal, you are offering to enter into a contract with the College of Charleston. 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 Supplier Response. An Offer may be submitted by only one legal entity. “Joint bids” are not allowed. [02-2A015-1]

BID IN ENGLISH AND DOLLARS (S.01.06): Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

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

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

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

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

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

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

**CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS
(C.02.15):**

A.

1. By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-
 - a. Offeror and/or any of its Principals:
 1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
 2. 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
 3. 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.a.(2) of this provision.
 - b. Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (federal, state, or local) entity.
 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 paragraph A.1, Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.
- D. Nothing contained in the foregoing shall be construed to require the 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 College, the Procurement Officer may terminate the contract resulting from this solicitation for default. [02-2A035-1]

CLARIFICATION (C.02.15): Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

CODE OF LAWS APPLICABLE (C.11.12): [SC Code of Laws, with Consolidated Procurement Code](#) and [SC Code of Regulations](#). [02-2A040-2]

COLLEGE OFFICE CLOSINGS (C.11.12): If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the College of Charleston by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which normal operating processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If the College of Charleston is closed at the time of a pre-bid or pre-proposal conference, an Amendment will be issued to reschedule. Helpful information may be found at [College of Charleston Emergency Information](#).

DEADLINE FOR SUBMISSION OF OFFER (C.11.12): Any offer received after the deadline stated in online eBid system, shall be rejected unless the offer has been delivered to and date/time stamped by the College of Charleston Office of Procurement or College of Charleston Mail Services. [R.19- 445.2070(H)] [02-2A050-1]

DELIVERY/PERFORMANCE LOCATION - PURCHASE ORDER (S.01.06): After the award, all deliveries shall be made, and all services provided to the location specified by College of Charleston in its purchase order. [03-3015-1]

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 State may withhold award. Before withholding award on these grounds, the State will notify you of the concerns and provide a reasonable opportunity for you to respond. The State 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. [02-2A047-3]

DISCLOSURE OF YOUR BID / PROPOSAL & SUBMITTING CONFIDENTIAL DATA (FEB 2021)

(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 Offeror contends contains solicitation for marking information exempt from public disclosure privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that

Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do Information not entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as protected, the State required by the applicable instructions may determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. 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 STATE MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD.

1. By submitting a response to this solicitation or request, Offeror agrees to the public disclosure of every page, or portion thereof, of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is, 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.
2. 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.
3. 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 State may, in its sole discretion, determine it nonresponsive.
4. 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 State will detrimentally rely on Offeror's your redaction and marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". "Protected". By submitting a response, you agree to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every

claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that you have redacted or marked as "confidential" or "trade secret" "Confidential" or "Trade Secret" or "Protected". (All references to S.C. Code of Laws.) [02-2A125-3]

DRUG FREE WORKPLACE CERTIFICATION (S.01.06): 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 SC Code of Laws, as amended. [02-2A065-1]

ETHICS CERTIFICATE (C.02.15): By submitting an offer, the Offeror certifies that the Offeror has and will comply with, and has not, and will not, induce a person to violate the [SC Ethics Act](#), Title 8, Chapter 13 of the SC Code of Laws, as amended. 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 College of Charleston may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If the Contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, Contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the Procurement Officer at the same time the law requires the statement to be filed. [02-2A075-2]

ETHICS – PROHIBITED COMMUNICATIONS AND DONATIONS (C.02.15): 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 the publication of the Solicitation and final award, you must not communicate, directly or indirectly, with the College of Charleston 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.
- 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 College of Charleston during the period beginning eighteen months prior to the Opening Date. [R. 19-445.2165] [02-2A087-1]

MULTIPLE OFFERS: Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted or uploaded as a separate document and must clearly indicate that it is a separate offer. If this solicitation is a Request for Proposals, multiple offers may be submitted or uploaded as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable. [02-2A079-1]

OMIT FROM PRICE (C.11.12): Do not include any sales or use taxes in your price that the College of Charleston may be required to pay. [02-2A080-1]

OPEN TRADE REPRESENTATION (S.06.15): 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. [02-2A083-1]

PREFERENCES – A NOTICE TO VENDORS (C.06.13): On June 16, 2009, the South Carolina General Assembly rewrote the SC Preferences 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. Offerors must claim all preferences by line item, regardless of whether award is made by line item or lot.
- B. The Procurement Officer will apply preferences by line item, regardless of whether award is made by line item or lot.
- C. A business is not entitled to any preferences unless the business, to the extent required by law, has paid all taxes assessed by the State and has registered with the South Carolina Secretary of State and the South Carolina Department of Revenue.
- D. Preferences do not apply to a single unit of an item with a price in excess of \$50,000.00, or a single award with a total potential value in excess of \$500,000.00.
- E. Preferences do not apply to a bid for an item of work (service) by the Offeror if the annual price of the Offeror's work exceeds \$50,000.00 or the total potential value of the Offeror's work (service) exceeds \$500,000.00.
- F. Vendors are cautioned to carefully review the statute before claiming any preferences. An Offeror requesting a preference is certifying the Offer qualifies for the preference claimed. Improperly requesting a preference can have serious consequences. [11-35-1524(E)(4)&(6)] [02-2B111-1]

PREFERENCES – SC / US END-PRODUCT (C.11.12): 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 signing your offer and checking the appropriate space(s) provided and identified on the bid schedule, you certify that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law. Post award substitutions are prohibited. See "Substitutions Prohibited - End Product Preferences (Sep 2009)" provision. [02-2B112-1]

PREFERENCES – SC RESIDENT VENDOR PREFERENCE (S.02.15): To qualify for the RVP, you must maintain an office in the State of SC. 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 Offeror 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:

- A. 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

- B. 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). [02-2B114-1]

PRICING: (a) Fixed Price. If a fixed price is required, award will not be made on an Offer if the total possible price to the State cannot be determined. (b) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. S.C. Code Ann. Reg. 19-445.2070E. (c) Unbalanced Pricing. The State will analyze all offers with separately priced line items or subline items to determine if the prices are unbalanced. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated. The responsible procurement officer may reject an offer as unreasonably priced if she determines that unbalanced pricing increases performance risk (e.g., it is so unbalanced as to be tantamount to allowing an advance payment) or could result in payment of unreasonably high prices. S.C. Code Ann. Reg. 19-445.2122C. [02-2A082-1]

PROTESTS (S.05.19): 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 Section 11-35-4210. To protest a solicitation, you must submit a protest within fifteen days of the date the applicable solicitation document is issued. To protest an award, you must (i) submit notice of your intent to protest within seven (7) business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in 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. [Section 11-35-4210] [022A085-1]

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. [02-2B122-2]

PUBLIC OPENING (C.04.13): Offers will be electronically unsealed and/or publicly opened at the date, time and location identified in the bid documents, or last Amendment, whichever is applicable. [02-2A090-1]

QUESTIONS – DUTY TO INQUIRE (C.02.15): Offeror, by submitting an Offer, represents that he/she has read and understands the Solicitation and that his/her 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 addendum. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the College's attention. See clause entitled "Questions from Offerors." [02-2A070-2]

QUESTIONS FROM OFFERORS (C.02.15):

- 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 under the “Activities” tab of this solicitation. 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 by a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an Amendment to the solicitation if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. See clause entitled “Duty to Inquire.” We will not identify you in our answer to your question.
- B. The College of Charleston 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. [See R. 19-445.2140] [02-2A095-2]

REJECTION / CANCELLATION (C.11.12): The College of Charleston may cancel this Solicitation in whole or in part. The College of Charleston may reject any or all bids, offers and/or proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065.] [02-2A100-1]

RESPONSIVENESS (MAR 2024): (a) Award will not be made on a nonresponsive offer. An offer is nonresponsive (i) if it does not constitute an unambiguous offer to enter into a contract with the State, or (ii) if it imposes conditions inconsistent with, or does not unambiguously agree to, the solicitation’s material requirements. (b) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation. [02-2A105-3]

SECURITY (C.11.17): The College of Charleston is located in an urban setting. Buildings are secured by Campus Police officers after normal operating hours. Buildings during summer months are open as needed to reflect operational needs (ex., Maymester and summer school, summer conference housing for specialty groups). Campus Police Officers conduct frequent checks of building interiors daily. Access to residence halls is restricted to residents and their guests. Numerous security cameras are strategically placed within major residence hall facilities and around campus (e.g., stairwells, lobbies, laundry areas, on buildings, on poles). Security review of buildings and security maintenance updates are ongoing.

- A. All Contractor personnel MUST sign in when arriving on and sign out when departing campus. This can be done at College of Charleston’s Central Energy located at 78 Coming St, Charleston, SC.
- B. Access to student housing buildings must be with a College staff escort. The escort must always remain with the Contractor.
- C. Access to any interior space of facility outside of the scope of work is strictly prohibited.
- D. Personnel must be readily identifiable as Contractor’s employees by appropriate attire and/or by identification badge while on campus.
- E. Contractor shall maintain roster sheets of all of employees assigned to the College’s premises.
- F. The College of Charleston reserves the right to require and/or review security background checks of any Contractor and/or its employees.

SIGNING YOUR OFFER (C.11.12): For electronic submittals, every Offer must be “signed” electronically through this eProcure site by an individual with actual authority to bind the Offeror.

Your electronic submittal of an Offer serves as your signature. For paper submittals, every Offer must be signed by an individual with actual authority to bind the Offeror. For both methods of submittal -

- A. If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm.
- B. If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words "by its Partner," and signed by a general partner.
- C. If the Offeror is a corporation, the Offer must be submitted in the corporate name, with the signature and title of the person authorized to sign.
- D. An Offer may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs A – C above for each type of participant.
- E. If an Offer is signed by an agent, other than as stated in paragraphs A – D above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

SUBCONTRACTOR – IDENTIFICATION (C.02.15): If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either exceeds 10% of your price or 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 College of Charleston may evaluate your proposed subcontractors. [05-5030-2]

SUBMITTING A PAPER OFFER OR MODIFICATION (C.03.15): Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification online via <http://ebid.cofc.edu>. Paper offers are discouraged. 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 the address noted in solicitation.
 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. Submit the number of copies indication in solicitation.
- E. Facsimile or email offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. [02-2A130-2]

TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (C.02.15): Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to 4% 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 \$50,000.00 annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC- 2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 7342498.

For a list of certified disadvantaged small businesses, please consult the [OSMBA Minority Business Directory](#). [02-2A135-1]

TAXES – OMIT FROM PRICE (C.11.12): Do not include any sales or use taxes in your price that the College of Charleston may be required to pay. [02-2A080-1]

UNIT PRICES REQUIRED (S.01.06): Unit price to be shown for each item. [02-2B170-1]

WITHDRAWAL OR CORRECTION OF OFFER (C.11.12): Offers may be withdrawn electronically by logging into eBid system, accessing submitted bid, then clicking on 'Withdraw Bid' link or 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. To withdraw your offer after the minimum period specified, you must notify the Procurement Officer in writing. [02-2A150-1]

III. Information for Offerors to Submit

INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (C.02.15): Unless submitted by electronic means, Offeror shall submit a cover letter signed by a person with authority to commit Offeror to a binding contract. Offeror should submit all other information and documents requested in this solicitation and any appropriate attachments addressed. By submitting a bid/proposal, the Offeror agrees to all terms, specifications, and condition of solicitation. [04-4010-2]

IV. Qualifications

QUALIFICATIONS OF OFFEROR (MAR 2015):

(1) To be eligible for the award, you must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. (2) You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested

information is grounds for rejection. (3) **Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability**; however, we may elect to consider any security, e.g., letter of credit, performance bond, parent-company corporate guaranty, that you offer to provide. Instructions and forms to help assure acceptability are posted on procurement.sc.gov, link to "Standard Clauses & Provisions." [05-5005-2]

QUALIFICATIONS – REQUIRED INFORMATION (C.11.12): In order to evaluate your responsibility, Offeror shall submit the following information or documentation with bid -

- A. Include a brief history of the Offeror’s experience in providing work of similar size and scope; and
- B. A narrative statement listing the three most recent, comparable contracts (including contact information) which you have performed and the general history and experience of your organization. [055015-2]

SUBCONTRACTOR – IDENTIFICATION (C.02.15): If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either exceeds 10% of your price or 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 College of Charleston may evaluate your proposed subcontractors. [05-5030-2]

VENDOR REGISTRATION MANDATORY (MODIFIED)

You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, [visit www.procurement.sc.gov](http://www.procurement.sc.gov) and select Doing Business with Us. Then select Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered and know your User ID & Password, you can update your information by selecting Update Vendor Registration. If you need to update information but do not have your User ID/Password, you must complete a new vendor registration and On Step 9 – Messages to Administration indicate "Update vendor number" with your existing 10-digit vendor number. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State [Index - Business Entities Online - S.C. Secretary of State \(sc.gov\)](http://www.sc.gov) or S.C. Department of Revenue [Withholding \(sc.gov\)](http://www.sc.gov)).

V. Award Criteria

AWARD CRITERIA – QUOTES / BIDS (C.08.14): Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]

AWARD TO ONE OFFEROR (S.01.06): Award will be made to one Offeror unless otherwise stated. [06-6040-1]

COMPETITION FROM PUBLIC ENTITIES (S.01.06): 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 nongovernmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]

UNIT PRICE GOVERNS (S.01.06): In determining award, unit prices will govern over extended prices unless otherwise stated. [06-6075-1]

VI. Terms and Conditions

ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (C.02.15):

- 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 College 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 -
 - 1. proof of the assignment;
 - 2. identity (by contract number) of the specific State and/or College contract to which the assignment applies; and
 - 3. 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. [07-7A004-2]

BANKRUPTCY – GENERAL (C.02.15):

- A. Notice: In the event the Contractor enters proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the College of Charleston. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State and/or College 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 College of Charleston upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-2]

CHANGES (C.02.15):

- A. **Contract Modification:** By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following -
 - 1. Drawings, designs, or specifications, if the goods to be furnished are to be specially manufactured for the College in accordance therewith;
 - 2. Method of shipment or packing;
 - 3. Place of delivery;
 - 4. Description of services to be performed;
 - 5. Time of performance (i.e., hours of the day, days of the week, etc.); or
 - 6. Place of performance of the services.

Subparagraphs A.1 – A.3 apply only if goods are furnished under this contract.

Subparagraphs A.4 – A.6 apply only if services are performed under this contract.

- B. **Adjustments of Price or Time for Performance:** If any such change increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether 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 the 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 College of Charleston promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- C. **Time Period for Claim:** Within 30 days after receipt of a written contract modification under Paragraph A 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 College of Charleston is prejudiced by the delay in notification.
- D. **Claim Barred After Final Payment:** No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract. [07-7B025-1]

CISG (S.01.06): The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement. [07-7B030-1]

COMPLIANCE WITH LAWS (S.01.06): During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs. [07-7B035-1]

CONTRACT AWARDED PURSUANT TO CODE: Any contract resulting from this solicitation is formed pursuant to the South Carolina Consolidated Procurement Code and is deemed to incorporate all applicable provisions thereof and the ensuing regulations. See also clause titled "Code of Laws Available." [07-7A012-1]

CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE (C.02.15):

- A. Any contract resulting from this solicitation shall consist of the following documents. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed below.
 - 1. A Record of Negotiations, if any, executed by you and the Procurement Officer;
 - 2. The solicitation, as amended;
 - 3. Your offer;
 - 4. Any statement reflecting the College of Charleston's final acceptance (a/k/a "award"); and
 - 5. Purchase orders.
- B. The terms and conditions of documents A.1 – A.6 shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation -
 - 1. A purchase order or other instrument submitted by the College of Charleston;
 - 2. Any invoice or other document submitted by Contractor; or
 - 3. Any privacy policy, terms of use, or end user agreement

Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect.

- C. No contract, license, or other agreement containing contractual terms and conditions will be signed by any employees, agents or officials of the College of Charleston other than the Procurement Officer. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-2]

CONTRACT LIMITATIONS (S.01.06): 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 the contractor to suspension or debarment. [07-7B045-1]

CONTRACTOR LIABILITY INSURANCE – GENERAL (C.03.15):

- A. Without limiting any other 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, a policy or policies of insurance against claims 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, subcontractors or any other entity for which the contractor is legally responsible.
- B. Coverage must include claims for -
 - 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 **\$1,000,000.00 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 **\$1,000,000.00 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 **\$1,000,000.00 per accident** for bodily injury or disease.
- C. The College of Charleston, every applicable Using Governmental Unit, and the officers, officials, employees, and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
- D. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, the College of Charleston, every applicable Using Governmental Unit, and the officers, officials, employees, and volunteers of any of them. Any insurance or self-insurance maintained by the State, the College of Charleston, every applicable Using Governmental Unit, 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 College of Charleston 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 College of Charleston 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 College of Charleston 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 College of Charleston 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, the College of Charleston, and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State, the College of Charleston, or applicable Using Governmental Unit 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 the State, the College of Charleston or Using Governmental Unit 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 College of Charleston. The College of Charleston 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. For term contracts, Contractor shall remit an updated Certificate of Insurance annually before each contract anniversary date.
- J. The College of Charleston reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. [07-7B056-2]

CONTRACTOR OBLIGATION – GENERAL (C.02.15): The Contractor shall provide and pay for all materials, tools, equipment, labor, and professional / non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete work. The Contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The Contractor will be considered the sole point of contact about all situations, including payment of all charges and the meeting of all other requirements. [07-7B065-1]

CONTRACTOR OBLIGATION – ENVIRONMENTAL HEALTH AND SAFETY (C.03.15):

- A. Contractors are encouraged to implement their own environmental health and safety programs in anticipation of future mandatory requirements.
- B. Prior to starting work, Contractor shall contact the College's Contract Administrator to ensure they have received pertinent information for the project, including, but not limited to floorplans, permits and utility information.
- C. Prior to starting work, the Contractor shall review work site and identify hazards that may occur while performing the job.
- D. Contractor shall ensure proper environmental health and safety precautions are followed in accordance with the Occupational Safety and Health Administration's (OSHA) and the Environmental Protection Agency's (EPA) Code of Federal Regulations (CFR). Additionally, it is the Contractor's responsibility to ensure all applicable State, County and City environmental health and safety requirements are followed.
- E. Contractor shall ensure individuals working at the site are trained and aware of potential hazards. Contractor shall also ensure these individuals are provided with proper safety equipment to prevent accidental injury in accordance with OSHA's CFR.

- F. Contractor shall ensure all personnel follow OSHA, EPA and College of Charleston policies and guidelines, in addition to any jurisdiction(s) in which the work shall be performed.
- G. Contractor shall be responsible for the removal and/or disposal of any/all hazardous waste generated from the project in accordance with federal, state, local and College regulations. The Department of Environmental Health and Safety is available to address any hazardous waste concerns and must be consulted prior to the removal of said waste from College property. All Contractors performing inspections, construction and repairs at the College of Charleston are required to comply with these requirements. Failure to adhere to these requirements may result in an immediate shutdown of work and breach of contract.

CONTRACTOR PERSONNEL (S.01.06): The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. [07-7B060-1]

CONTRACTOR USE OF STATE AND/OR COLLEGE PROPERTY (C.02.15): Upon termination of the contract for any reason, the College of Charleston shall have the right, upon demand, to obtain access to, and possession of, all College of Charleston properties, including, but not limited to, current copies of all College of Charleston 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 College of Charleston without the College of Charleston's written consent, except to the extent necessary to carry out the work. [07-7B067-1]

DAMAGES LIMITATION (C.03.15): Contractor's maximum liability, if any, to the College for all direct, indirect, incidental, punitive, consequential, or special damages, including without limitation contract damages and damages for injuries to persons or property, whether arising from licensor's breach of this agreement, breach of warranty, negligence, strict liability, or other tort, or otherwise with respect to the supplies, services, or software provided under this agreement, shall in no event exceed an amount equal to the contract price. In no event shall any party be liable to another for any indirect, incidental, punitive, consequential, or special damages, including, without limitation, lost revenues, and profits, even if it has been advised of the possibility of such damages. The above limitations of this clause do not apply to any claim for intellectual property infringement or to the clauses entitled, "Indemnification – Intellectual Property" or "Indemnification – Third Party Claims – General".

DEFAULT (C.02.15):

- A. The College of Charleston may, subject to paragraphs D – E of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:
 - 1. Deliver the supplies or to perform the services within the time specified in this contract or any extension
 - 2. Make progress, so as to endanger performance of this contract (but see paragraph B of this clause)
 - 3. Perform any of the other material provisions of this contract (but see paragraph B of this clause).
- B. The College of Charleston's right to terminate this contract under subdivisions A.2 – A.3 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.

- C. If the College of Charleston 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 College of Charleston for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- D. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- E. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- F. If this contract is terminated for default, the College of Charleston may require the Contractor to transfer title and deliver to the College, 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 College of Charleston has an interest.
- G. The College of Charleston 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 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 College of Charleston may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the College against loss because of outstanding liens or claims of former lien holders.
- H. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the College of Charleston, be the same as if the termination had been issued for the convenience of the College of Charleston. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the College of Charleston, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.
- I. The rights and remedies of the College in this clause are in addition to any other rights and remedies provided by law or under this contract. [07-7B075-1]

DISCOUNT FOR PROMPT PAYMENT (C.11.12):

- A. Discounts for prompt payment will not be considered in the evaluation of offers. However, any discount offered 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 College of Charleston Accounts Payable receives a proper invoice, and stamps with the date and time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when College of Charleston offices are closed, payment may be made the following business day. [07-7A020-1]

DISPOSAL OF PACKAGING (C.02.15): Contractor use of recyclable and/or biodegradable product packaging is preferred. Contractor shall dispose of all wrappings, crating, and other materials pertaining to this contract at the end of each working day and upon completion of installation. [07-7B085-1]

DISPUTES (C.02.15):

- A. Choice-of-Forum: All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the SC Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Charleston County, State of SC. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.
- B. Choice of Law: The Agreement, related dispute, claim, or controversy, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced, and governed by and under the laws of the State of SC, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]
- C. 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 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. [077A025-1]

EQUAL OPPORTUNITY (C.11.12): Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the [US Department of Labor Code of Federal Regulations](#), including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference. [07-7A030-1]

FALSE CLAIMS (S.01.06): 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. [07-7A035-1]

FIXED PRICING REQUIRED (C.11.12): Any pricing provided by the Contractor shall include all costs for performing the work associated with that price. Unless otherwise provided in this solicitation, Contractor's price shall be fixed for the duration of this contract. This clause does not prohibit the Contractor from offering lower pricing after the award. [07-7A040-1]

ILLEGAL IMMIGRATION (C.02.15): Contractor certifies with signing of Offer, compliance with applicable requirements of Title 8, Chapter 14 of SC Code of Laws, [SC Illegal Immigration Reform Act](#) and agrees to provide upon request to the College 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 subcontractor's language requiring your subcontractors to:
 - 1. Comply with the applicable requirements of Title 8, Chapter 14, and
 - 2. Include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

INDEMNIFICATION – INTELLECTUAL PROPERTY (C.02.15):

A. Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the College of Charleston, the State and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. The College of Charleston shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. The College shall allow Contractor to settle such claim so long as

- 1. All settlement payments are made by Contractor
 - 2. The settlement imposes no non-monetary obligation upon the College of Charleston. The College shall reasonably cooperate with Contractor's defense of such claim.
- B. In the event an injunction or order shall be obtained against College's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either:
- 1. Procure for the College the right to continue to use, or have used, the acquired item, or
 - 2. Replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by the College.

If neither 1 nor 2, above, is practical, the College may require that Contractor remove the acquired item from the College, refund to the College any charges paid by the College therefor, and take all steps necessary to have the College released from any further liability.

C. Contractors obligations under this paragraph do not apply to a claim to the extent

- 1. That the claim is caused by Contractor's compliance with specifications furnished by the College unless Contractor knew its compliance with the College's specifications would infringe

an IP right, or

2. That the claim is caused by Contractor's compliance with specifications furnished by the College of Charleston if the College knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor.

A. As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work.

B. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. [07-7B103-1]

INDEMNIFICATION – THIRD PARTY CLAIMS – GENERAL (C.02.15): Any term or condition is void to the extent it requires the State and/or College of Charleston to indemnify, defend, and/or pay attorney's fees to anyone for any reason. As used in this clause, "Indemnitees" means the College of Charleston, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents, and employees. Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor assumes full liability for all damages, death, or injury of any kind to all person(s), whether employees or otherwise, and all property damages arising out of or in any way connected with this contract and 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 the concurrence, actual, implied, vicarious, active, passive, direct, or indirect, of joint conduct, negligence or omission of an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee. Notwithstanding the foregoing, this indemnity shall not extend to losses, damages or expenses arising out of the sole negligence of the Indemnitees. 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, cancellation, 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. [07-7A045-2] [07-7B100-2]

LICENSES AND PERMITS (S.02.15): During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, County, City or other government entity or unit to accomplish the work specified in this solicitation and the contract. [07-7B115-1]

MATERIAL AND WORKMANSHIP (S.01.06): Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. [07-7B120-1]

NO INDEMNITY OR DEFENSE (S.02.15): Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason. [07-7A045-2]

NOTICE (C.11.12):

- A. After the 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 electronic; 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 Offeror in Supplier's response submission. Notice to the College of Charleston shall be to the Procurement Officer's address identified in the "Project Details" section. Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

OFFENSIVE SITUATIONS (C.08.14): The College of Charleston is a high traffic coed student campus. The Contractor and his/her personnel are cautioned against creating interruptions, noise or offensive situations that may interfere with the learning process or could be construed as fraternization and/or sexual harassment. In the event the College receives a complaint regarding the behavior of a Contractor and/or his/her personnel, the College shall notify the Contractor in writing. Upon receipt of such notification, the Contractor shall promptly remove such personnel from the College's premises and take immediate steps to ensure that its performance under this contract will not be reduced.

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 State 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 State 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 State may terminate the contract for default. [07-7A054-1]

OWNERSHIP OF DATA & MATERIALS (C.02.15): All data, material and documentation prepared for the College of Charleston pursuant to this contract shall belong exclusively to the College. [07-7B125-1]

PARKING (C.08.14): Contractor parking is prohibited in Faculty/Staff parking spaces. A Service Vehicle Permit must be obtained by the Contractor for each vehicle used. For emergency situations, communication by the Contractor with Parking Services is required. Further information may be obtained at <http://parkingservices.cofc.edu/parking/service-vehicles.php>.

PAYMENT AND INTEREST (C.02.15):

- A. Contractor invoices shall be remitted, in order of preference, via (1.) eMail to accountspayable@cofc.edu, (2.) Facsimile to 843.953.5996, or (3.) USPS to Accounts Payable, College of Charleston, Controller's Office, 66 George Street, Charleston, SC 29424. The College of Charleston purchase order number must be prominently displayed on each page of the invoice for fastest processing.
- B. The College of Charleston shall pay the Contractor, after the submission and approval of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government.
- C. The College's method of making payment, in order of preference, is (1.) ePayable, (2.) Electronic Funds Transfer or Automated Clearing House, (3.) College of Charleston Purchasing Card, or (4.) by check.
- D. Notwithstanding any other provision, payment shall be made in accordance with SC 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 College of Charleston. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable and in violation of the terms and conditions stated on the purchase order. The College is responsible for the payment of all goods and services within thirty work days after the acceptance of the goods or services and proper invoice, whichever is received later. Except as set forth in this paragraph, the College 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.
- E. Amounts due to the State and/or College shall bear interest at the rate of interest established by the SC 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.
- F. Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including SC 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 D – E 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.
- G. The College of Charleston and State shall have all of its common law, equitable and statutory rights of set-off. [07-7A055-3]

PRICE ADJUSTMENTS (S.01.06):

- A. **Method of Adjustment:** Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed) -
1. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable.
 2. By unit prices specified in the Contract or subsequently agreed upon.
 3. 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.
 4. In such other manner as the parties may mutually agree.
 5. In the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed all as computed

by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the SC Code of Laws.

- B. **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. [07-7B160-1]

PUBLICITY (C.11.12): Contractor shall not publish any comments or quotes by any employees, agents, or officials of the College of Charleston other than the Procurement Officer or include the College of Charleston in either news releases or a published list of customers, without the prior written approval of the Procurement Officer. [07-7A060-1]

PURCHASE ORDERS (C.08.14): Contractor shall not perform any work prior to the receipt of a purchase order from the College of Charleston Office of Procurement. The College 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 or in writing in the event of an emergency. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

PURCHASING CARD (C.11.12): If applicable in this solicitation, **Contractor agrees to accept payment by the SC Purchasing Card for no extra charge.** The Purchasing Card is issued by Visa and allows the College of Charleston to make authorized purchases from a vendor without the requirement to issue a purchase order. [07-7B200-1]

RELATIONSHIP OF THE PARTIES (S.01.06): Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party. [07-7B205-1]

RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (C.02.15):

- A. Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government pursuant to this contract (hereinafter “applicable services”) or, in the case of public employees, to perform their job duties; accordingly, in performing the work, Contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter “terms of use”) not previously approved in writing by the Procurement Officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect.
- B. Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the Procurement Officer) any additional products or services not required by the contract.
- C. Any reference to Contractor in items A – B also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that Contractor authorizes to take any action related to the work.

- D. Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the College of Charleston liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction. [07-7B212-1]

SAFEGUARDING INFORMATION: Without limiting any other legal or contractual obligations, Contractor shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality, and integrity of the government and/or College information in its possession. In addition, Contractor shall apply security controls when the Contractor reasonably determines that safeguarding requirements, in addition to those identified in paragraph C. of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability.

SHIPPING / RISK OF LOSS (C.02.15): If applicable in this solicitation, all deliveries regarding this solicitation shall be FOB Destination, freight prepaid to the College of Charleston's Central Warehouse facility unless otherwise noted in the Specifications document of this solicitation or the purchase order. [07-7B220-1]

SMALL AND MINORITY-OWNED BUSINESS UTILIZATION (C.08.14): The College fully supports the efforts of the Governor and the State Legislature to assist small and minority-owned businesses to develop as part of the State's policies and programs which are designed to promote balanced economic and community growth. The following steps have been taken to ensure that those small and minority-owned businesses in the State of South Carolina are afforded the opportunity to participate fully in the overall procurement process.

- A. This solicitation includes a "Tax Credit for Subcontracting with Minority Firms" clause to promote the engagement of minority firms as subcontractors. The clause was authored by the State of South Carolina Office of Procurement and updated by the College of Charleston to reflect the most current information available. A web link to the [OSMBA Minority Business Directory](#) is provided as a convenience to Offerors.
- B. The Procurement Officer of this solicitation has consulted the Small and Minority Business Directory for services/commodities being solicited. Certified qualified vendors have been placed on the solicitation invitation list for distribution when practical.
- C. When practical, large orders for goods and services have been solicited, and possibly awarded, by lots.

STORAGE OF MATERIALS (C.11.12): If applicable in this solicitation, contractor shall not store items on the premises of the College of Charleston prior to the time set for installation, unless otherwise approved in writing by the Procurement Officer. [07-7B235-1]

SUBSTITUTIONS PROHIBITED OF SUBCONTRACTORS – RESIDENT SUBCONTRACTOR PREFERENCE (C.11.12): If you receive an award because 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 College of Charleston may terminate your contract for cause, and you may be debarred. In addition, the Procurement Officer may require you to pay the College of Charleston an amount equal to twice the difference between the price paid by the College of Charleston and the price offered by the next lowest bidder, unless the substituted subcontractor qualifies for the preference. [11-35-1524(D)(5)(c)] [07-7B237-1]

SURVIVAL OF OBLIGATIONS (C.02.15): 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 Indemnification clauses, and any provisions regarding warranty or audit. [07-7A075-1]

TAXES (C.02.15): Any tax the Contractor may be required to collect or pay upon the sale, use or delivery of products shall be paid by the College of Charleston, and such sums shall be due and payable to Contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the College. It shall be solely the College'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 College to Contractor, Contractor shall be liable to the College for any loss (such as assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the Contractor. [07-7A080-1]

TERMINATION DUE TO UNAVAILABILITY OF FUNDS (S.01.06): Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. Therefore, 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. The Contractor will not be reimbursed any costs amortized beyond the initial contract term. [07-7A085-1]

TERMINATION FOR CONVENIENCE (C.02.15):

- A. **Termination:** The Procurement Officer may terminate this contract in whole or in part, for the convenience of the College of Charleston. 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.
- B. **Contractor's Obligations:** The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the College of Charleston. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- C. **Right to Supplies:** The Procurement Officer may require the contractor to transfer title and deliver to the College of Charleston in the manner and to the extent directed by the Procurement Officer: (1) any completed supplies; and (2) 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 the direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the College of Charleston 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 College of Charleston has breached the contract by exercise of the Termination for Convenience Clause.

D. Compensation:

1. 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 3 of this Paragraph.
 2. 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 College of Charleston, the proceeds of any sales of supplies and manufacturing materials under Paragraph C of this clause, and the contract price of the work not terminated.
 3. Absent complete agreement under Subparagraph 2 of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph 2 shall not duplicate payments under this Subparagraph:
 - a. Contract prices for supplies or services accepted under the contract.
 - b. Costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services.
 - c. Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph B of this clause. These costs must not include costs paid in accordance with Subparagraph 3.b of this paragraph.
 - d. Any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the number of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph 2 of this Paragraph, and the contract price of work not terminated.
 4. Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs 2 – 3 of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.
- E. Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not -
1. Affect the College of Charleston's right to require the termination of a subcontract, or
 2. Increase the obligation of the College beyond what it would have been if the subcontract had contained an appropriate clause. [07-7B265-1]

TERMINATION FOR CONVENIENCE – INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (S.01.06): Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination. [07-7B255-1]

THIRD PARTY BENEFICIARY (S.01.06): This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third-party beneficiary or otherwise. [07-7A090-1]

TOBACCO-FREE CAMPUS (C.08.14): Use of all tobacco products is prohibited in all College-owned or leased buildings; in all buildings on college-owned or leased land; on all College-owned or leased property, including outdoor seating areas; and in all College-owned, leased, and rented vehicles. Use of tobacco products is prohibited in all those places here identified, including but not limited to, offices (including private offices), classrooms, laboratories, stairwells, elevators, restrooms, hallways, porches and piazzas, rooftops, indoor and outdoor athletic facilities, residence halls and historic properties, shuttle buses, shuttle bus stops, parking structures and parking areas on College-owned or College-leased property, sidewalks on College-owned or College-leased property, lobbies and waiting areas, outdoor benches, green spaces on campus, and other common areas. Use of tobacco products is permitted in personal vehicles parked or being driven on college-owned or leased property, provided that the windows and doors of such personal vehicles are closed (i.e., tobacco products are used in an enclosed vehicle space) and tobacco waste products are stored in the vehicle and disposed of at off-campus locations. This policy does not restrict or prohibit the lawful possession of tobacco products on the College of Charleston campus. This Policy shall be applicable to the College Board of Trustees; faculty and staff of the College, whether part-time, full-time, or temporary; students while attending or employed by the College; contractors and consultants performing work or providing services on College-owned or leased property; individuals and organizations renting, leasing, or otherwise granted permission to use campus facilities; College affiliates; alumni and alumnae, guests, visitors, or invitees of the College; and members of the general public. All members of the campus community and members of the general public shall comply with this policy.

WAIVER (C.11.12): The College of Charleston 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 College's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

WARRANTY – ONE YEAR (C.11.12): Contractor warrants all items acquired shall conform to all Contractor's representations, the requirements of this contract, and all published documentation. Contractor must provide the manufacturer's standard written warranty upon delivery of all products associated with this solicitation. Contractor warrants that manufacturer will honor the standard written warranty provided. [077B275-1]

VII. Scope of Work / Specifications

OBJECTIVE:

The College of Charleston seeks a vendor who can provide a combination refrigerator/freezer/microwave units as listed on the bid table found on our procurement platform (<https://ebid.cofc.edu>) under the ITEMS section – Product Line Items (1).

MARKET BASKET: Vendors are required to bid on all items in the market basket. Failure to offer pricing on all items within the market basket will be reason for rejection.

EQUIPMENT SPECIFICATION:

- a. The type of unit specified is a single appliance that includes a refrigerator and separate freezer (each with their own doors) and a microwave oven unit. Approximately 3.1 cubic feet and must be black.
- b. Product must be UL listed as a pre-assembled combination appliance with refrigerator, freezer and microwave. UL approval as a combination appliance ensures that the assembled unit passes the stringent UL "Stability Test" to satisfy student safety concerns in the residence hall rooms. Combination appliances that are not UL listed and approved as a combination appliance will not comply with the requirements of the College.
- c. The units must have the most recent Energy Star rating for energy conservation.
- d. Product must include a Patented internal safety mechanism that cannot be easily bypassed that lessens the likelihood of smoke or fire that arise from improper use. The internal microwave smoke sensor should be an integrated component within the unit. Units that do not have a Patented internal smoke sensing safety system will not comply with the requirements of the College. Products that utilize external or non-Patented smoke sensor systems will not be accepted.
- e. Product must utilize an internal circuitry that safely allocates energy to the refrigerator/freezer and the microwave without exceeding 15 amps. This internal circuitry must be embedded directly into the microwave oven to safely shut off the refrigerator compressor when the microwave oven is in use. The technology automatically shuts off the refrigerator/freezer when the microwave oven is in use, preventing simultaneous operation of both components. Product must only utilize one-plug to the wall operation.
- f. Product must contain at least one electrical outlet and one USB ports on the microwave, which must not exceed 4 amps and must be able to charge small electronic devices such as laptops or cell phones.
- g. All units delivered to the College must be the Manufacturer's most recent design and must be covered under the Manufacturer's original warranty of at least 1-year (parts & labor), and 7-years for the compressor and sealed system of the refrigerator-freezer; and for the Magnetron tube of the microwave.

NOTE TO BIDDERS:

1. The items listed above must meet the college's minimum requirements for each piece of equipment. Bidders may offer the same products listed above or offer an equivalent piece of equipment that meets all the specifications of each of the above-listed items.
2. Bidders are to specify the Brand and Model that is being offered in the "comment box" found in the bidding schedule section.
3. Bidders are to attach specification sheets for the brand/model offered.

VIII. Bidding Schedule/Price-Business and Key Dates

SUBMIT WITH YOUR BID:

In addition to submitting a price for the required units the following information must also be submitted with your bid. This information can be submitted by completing the answers to this solicitation’s Questions and Bid Table sections located in the eBid system.

1. **Bidder’s Contact Information:** List name(s), e-mail addresses and phone number(s) of the company representatives who can be contacted regarding your bid.
2. **Attributes Included with Every Solicitation:** Provide answers to the ten (10) questions on this questionnaire.
3. **References:**
 - a. Provide references from at least three (3) other customers for whom Offeror has provided substantially similar products and/or services. Include names, addresses, telephone numbers and e-mail addresses of administrators who can evaluate the general quality of your performance.

KEY DATES:

Activity	Date
Release of Solicitation Documents	November 13, 2024
Deadline to Submit Written Questions	November 18, 2024, at 9:00 AM
Response to Written Questions/Solicitation Amendments	November 19, 2024
Bids Due	November 21, 2024, at 9:00 AM
Anticipated Date of Award Notification	On or before November 22, 2024

Exhibit C

COLLEGE OF CHARLESTON BID OPENING WITNESS LOG

TITLE: Combination Refrigerator/Freezer/Microwave Units **OPENING:** November 13, 2024
DATE

BID/QUOTE NUMBER: 2025-JCB-000000273-IFB **CLOSING:** November 21, 2024
DATE

BIDDER	TOTAL	COMMENTS/CLARIFICATIONS
Business Services	\$50,913.30	Responsive bid
Collegiate Marketing	\$38,250.00 ** Non-responsive **	Unit does not have USB or 100v plugs in front of microwave. Per VII. F. Product must contain at least one electrical outlet and one USB ports on the microwave.
Inhoff LLC Absocold Division	\$60,265.00 ** Non-responsive **	Unit does not have USB ports or smoke sensors. Per VII d. Product must include a Patented internal safety mechanism that cannot be easily bypassed that lessens the likelihood of smoke or fire that arise from improper use. The internal microwave smoke sensor should be an integrated component within the unit. Units that do not have a Patented internal smoke sensing safety system will not comply with the requirements of the College. Products that utilize external or non-Patented smoke sensor systems will not be accepted. Per VII. f. Product must contain at least one electrical outlet and one USB ports on the microwave.
Standard For Living	\$49,435.15	Responsive bid
College Products	\$34,765.00	Responsive bid

Procurement Officer Signature: Casey Bassett

Witness Signature: Anthony M. [Signature]

Dated: 11/21/24

Exhibit D



Procurement & Supply Services

Statement of Intent to Award

Posting Date: November 22, 2024

Bidder's right to protest as listed in section 11-35-4210 in the South Carolina Consolidated Procurement Code applies to this award.

Solicitation: 2025-JCB-000000273-IFB
Issue Date: November 13, 2024
Opening Date: November 21, 2024
Description: Combination Refrigerator/Freezer/Microwave Units

Awarded to: College Products, Inc.
1400 West 1st Street
Sioux City. IA 51103

Evaluated Amount: \$34,765.00

Awarded Amount: \$34,765.00

Procurement Officer:

Casey Bassett

A handwritten signature in blue ink, appearing to read 'Casey Bassett', is written over the printed name.

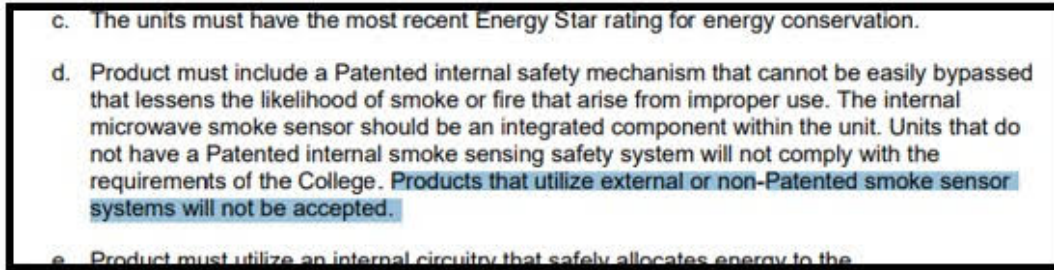
Exhibit E

From: [Mason Smith](#)
To: [Protest-MMO](#)
Subject: [External] Protesting 2025-JCB-000000273-IFB Combination Refrigerator / Freezer / Microwave Units
Date: Tuesday, November 26, 2024 12:48:35 PM
Attachments: [image.png](#)
[image.png](#)
[image.png](#)

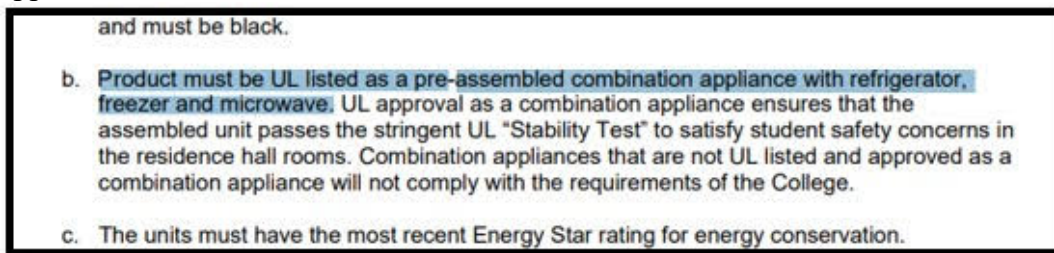
Good afternoon,

We would like to respectfully submit a formal protest to bid 2025-JCB-000000273-IFB Combination Refrigerator / Freezer / Microwave Units. The basis of our protest is the awarded product does not meet the College of Charleston's minimum bid specs.

The bid's solicitation (page 30; Section VII, equipment specification) requires that the microwave include a **patented** internal smoke sensor. The MicroChill (the brand owned and made by College Products) combination appliance proposed does not have a patented internal smoke sensor. If the College of Charleston was to ask that College Products provide proof of a patent, we are confident they will not be able to supply such documentation.



Also, in the bid specification requisites, the appliance must be UL listed as a combination appliance.



MicroChill only has 2 UL combination appliances; MC714POBU/MC78U and MCH4G16/MC78. The number before the "/" is the fridge model number and the number after the "/" is the microwave model number. The MC78U is a microwave that does not have an internal smoke sensor but does have USB ports. The MC78 is their (baseline) microwave that has NEITHER an internal smoke sensor nor USB ports.

The addition of USB ports to the MC78 was an electronic change that created a different microwave, the MC78U. That new microwave model had to go through the UL process to gain it's own UL approval.

(below is all of the MicroChill appliances that UL has listed as combination appliances)

COMPANY

MicroChill

1400 West First St.

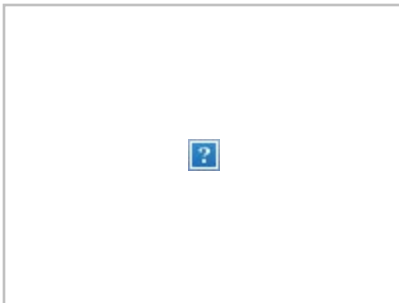
Sioux City, IA 51103 United States

Microwave/refrigerator combinations, Model(s): [MC714POBU/MC78U, MCH4G16/MC78](#)

The model of MicroChill microwave that has been presented (MC78US23) to College of Charleston is NOT UL listed. The addition of the smoke sensor and it's accompanying electronic hardware and components to the circuitry of a microwave creates a VERY different microwave; far more complex than adding something simple like USB ports. The MC78US23 is a microwave that has not undergone any UL processes. Any attempt to pass off the non-UL MC78US23 as the same as the UL listed MC78U would be patently false. Pun intended.

The awarded product fails to meet 2 crucial safety and liability requirements set forth by College of Charleston. It is on these grounds that we protest. Please advise us on the next steps to follow your process for a protest and if there is any additional information required.

J. Mason Smith
(704) 488-5082
Owner



Mason@StandardsForLiving.com
www.StandardsForLiving.com