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CHAIRMAN, SENATE FINANCE COMMITTEE
BRUCE W. BANNISTER
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE
GRANT GILLESPIE
EXECUTIVE DIRECTOR

Protest Decision

Matter of: Seaboard Asphalt Products Company
File No.: 2026-127
Posting Date: January 23, 2026
Contracting Entity: State Fiscal Accountability Authority
Solicitation No.: 5400028758
Description: STC for Water Activated Pothole Patching

DIGEST

Protest of award challenging the awarded product is not included on the approved products list from the South Carolina Department of Transportation. The protest of Seaboard Asphalt Products Company (Seaboard) is attached as Exhibit A.

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review pursuant to S.C. Code Ann. § 11-35-4210. This determination is based on the evidence and applicable law and precedents.

BACKGROUND

On September 17, 2025, the State Fiscal Accountability Authority (SFAA) issued Solicitation Number 5400028758 requesting bids to provide water activated pothole patching materials as a State Term Contract. On October 17, 2025, SFAA issued Amendment #1 to the solicitation, which was a complete, revised solicitation and included answers to vendor questions. [Exhibit B]

By the deadline for receipt of bids, SFAA received four bids, including one from Seaboard and one from King Asphalt Inc. (King). On November 24, 2025, SFAA posted a notice of intent to award contracts to Seaboard and King. [Exhibit C] On November 24, Seaboard protested.

DETERMINATION

Seaboard protests that the solicitation stated that “Offers will only be considered for water patching supplies that are approved and included on the Qualified Products List posted to the SCDOT website at the time of bid opening.” Question 2 of the amendment further clarifies:¹

Q2: Please state why you are looking for a specific water activated pot-hole repair product? The QPL #43 implies all products listed perform same or satisfactory results, the list is not broken down by water activated and non-water activated products. Any High-Performance qualified product that can repair a pothole in water should be considered.

State’s Response: No change. This solicitation is limited to water-activated patching materials. While QPL #43 lists all qualified High-Performance Pothole Patching Products approved for use by SCDOT, not all products on the list are water-activated. Inclusion on QPL #43 does not imply that a product possesses the unique characteristics of water-activated materials. Only products on QPL #43 that are specifically water-activated will be considered responsive to this solicitation.

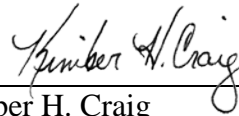
Seaboard protests that King’s offered product, EZ Street Patch, while included on the SCDOT Qualified Products List was not a water activated product. As such, the bid should have been rejected as non-responsive. After receiving the protest, the Procurement Officer contacted the SC Department of Transportation to confirm if the offered product was in fact a water activated product. The Director of Maintenance Office at SCDOT concluded that EZ Street Patch is not a water activated product [Exhibit D]. Based on the confirmation by SCDOT that EZ Street Patch

¹ Questions 3 and 4 were similar in nature and provided similar answers.

is not a water activated product, this product does not meet the specification and the offer from King should have been rejected as non-responsive.

DECISION

For the foregoing reasons, the CPO grants Seaboard's protest.



Kimber H. Craig
Chief Procurement Officer

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2025)

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

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

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

FILING FEE: Pursuant to Proviso 111.1 of the 2025 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 J&Hs, 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 366, 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.

Seaboard Asphalt Products Company



355-0330-0331

1-800-536-0332
Fax: (410) 355-5864

3601 FAIRFIELD ROAD

BALTIMORE, MARYLAND 21226

November 24, 2025

State of South Carolina

SFAA, Division of Procurement Services

1201 Main Street, Suite 600

Columbia, SC 29201

REF: Bid Protest for Solicitation # 5400028758

STC for Water Activated Pothole Patching

Attention: Chief Procurement Officer, Material Management Office

I am writing to submit a Bid Protest for the bid offer provided by King Asphalt for EZ Street Patch on the above referenced solicitation.

Michael Speakmon provided that King Asphalt provided a bid offer on this solicitation with EZ Street Patch; which is on the approved products list; however it is not a water activated pothole patch. See attached email from Michael Speakmon.

In the Question and Answer section of this solicitation; it was repeatedly asked and answered by Michael Speakmon that only pothole patch which was activated with water (water activated) would be accepted for this solicitation. See attached Questions and Answer page from the solicitation.

I spoke prior to this solicitation with SCDOT Materials Department to review the requirements for this solicitation and it was provided that only the items from the approved products list which met the requirement of being activated by water would be accepted on this solicitation.

Seaboard Asphalt provided a bid offer on AquaPatch water activated cold mix, which is on the approved products listed and is approved by SCDOT as meeting the activated by water requirements. Seaboard Asphalt has our BOND-X GREEN on the approved list which meets the same High Performance cold mix requirements as EZ Street, but were provided we could not provide a bid offer using that material. The BOND-X GREEN would have been able to be provided at a much lower cost than the AquaPatch we offered on our bid offer.

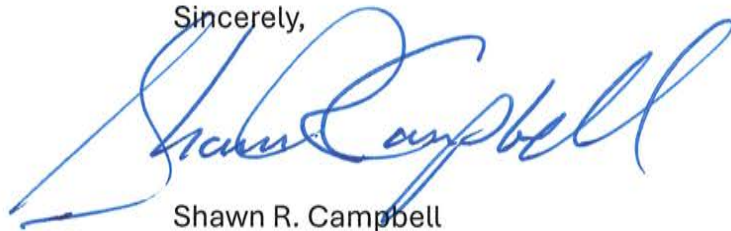
If King Asphalt is allowed to bid EZ Street; then Seaboard Asphalt would have been treated unfairly in this bid process.

We request the following resolution options for this solicitation:

1. King Asphalt bid offer be rejected as not meeting the specifications for this solicitation and Seaboard Asphalt be awarded all line items.
2. Or the bid be cancelled and rebid permitting all the items on the Approved List be allowed for a bid offer.

If you have any questions; please do not hesitate to contact me at 800-536-0332 or via email at shawn.campbell@seaboardasphalt.com.

Sincerely,



Shawn R. Campbell

Shawn Campbell

From: Speakmon, Michael <mspeakmon@mmo.sc.gov>
Sent: Monday, November 24, 2025 11:14 AM
To: Shawn Campbell
Cc: Simmons, Tara
Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

Mr. Campbell,

EZ Street is on the approved list of products. I am out of the office and do not have access to the files. Please send any FOIA request to Tara Simmons, copied here.

Michael

Michael Speakmon, CPPO | Procurement Director | Supplies & Services Contracting Team | Office of State Procurement | Division of Procurement Services | SC State Fiscal Accountability Authority
1333 Main Street, Suite 700 | Columbia, SC 29201 | Phone: (803) 737-9816 | mspeakmon@mmo.sc.gov

-----Original Message-----

From: Shawn Campbell <Shawn.Campbell@seaboardasphalt.com>
Sent: Monday, November 24, 2025 10:53 AM
To: Speakmon, Michael <mspeakmon@mmo.sc.gov>
Subject: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

Michael:

A little confused by this notification.

I see that a contract is intended to be awarded to King Asphalt.

King Asphalt distributes EZ Street cold patch. EZ Street brand is not a water activated cold mix.

If they did not provide a bid offer on EZ Street; can you provide bid tabulation information on which brand of cold patch they offered on their solicitation??

Thank You,

Shawn Campbell

3601 Fairfield Road
Baltimore, MD 21226
P 410-355-0330
F 410-355-5864
E sales@seaboardasphalt.com

-----Original Message-----

From: noreply@admin.sc.gov <noreply@admin.sc.gov>
Sent: Monday, November 24, 2025 10:15 AM

Questions & Answers

Q1: The Policy for high performance patching materials states that the products must be ready to be used as-is upon delivery without blending or mixing. When you add water to the mix, isn't this considered mixing?

State's Response: No change. These products must be delivered in a ready-to-use form that only requires the addition of water to activate. The addition of water to initiate activation is not considered "mixing" or "blending" under the intent of the specification.

Q2: Please state why you are looking for a specific water activated pot-hole repair product? The QPL #43 implies all products listed perform same or satisfactory results, the list is not broken down by water activated and non-water activated products. Any High-Performance qualified product that can repair a pothole in water should be considered.

State's Response: No change. This solicitation is limited to water-activated patching materials. While QPL #43 lists all qualified High-Performance Pothole Patching Products approved for use by SCDOT, not all products on the list are water-activated. Inclusion on QPL #43 does not imply that a product possesses the unique characteristics of water-activated materials. Only products on QPL #43 that are specifically water-activated will be considered responsive to this solicitation.

Q3: Can a High-Performance Pothole Patching Product that is listed on the SCDOT pricing list be considered for this bid? Activation methods may differ but the products with a high-performance polymer will repair potholes in water.

State's Response: No change. This solicitation is limited to water-activated patching materials. Products with alternate activation methods, even if listed on QPL #43, will not be considered for award under this solicitation.

Q4: When reviewing the vendors on the qualified products list, I noticed that product names for pothole patching do not specifically state that they are water activated, is that ok? Are we to assume that the product brand meets all the States requirements?

State's Response: No change. This solicitation is specifically for water-activated patching materials. Only water-activated products will be considered. Bidders are responsible for confirming that the proposed product meets the water-activated criteria, even if this is not explicitly stated on the QPL #43.


Q5: I noticed some of the vendors on the list have either changed their company name or have been bought out. For example, the EZ Street product, with the contact for the EZ Street Division comes up as the Duval Asphalt Plant. Is it still ok to purchase product from them if they still provide the brand EZ Street?

State's Response: No change. This solicitation is limited to water-activated patching materials. Only water-activated products will be considered. Per the Annual Reapproval process outlined in QPL #43, any product name or manufacturer changes must be reported to the appropriate SCDOT contacts (as listed in QPL #43) with certification that the approved formula remains unchanged. SCDOT will review this information to determine continued or future inclusion on QPL #43.

Q6: Are we allowed to provide the product directly from the manufacturer or can we only use the distributors listed on the QPL list?

State's Response: No change. The awarded bidder must furnish and deliver the approved water-activated patching material as specified. Products may be sourced directly from the manufacturer or through an authorized distributor.

EXHIBIT B

	<p align="center">State of South Carolina</p> <p align="center">Invitation For Bid Amendment #1</p>	<p>Solicitation: 5400028758 Date Issued: 10/17/2025 Procurement Officer: MICHAEL SPEAKMON Phone: 803-737-9816 E-Mail Address: mspeakmon@mmo.sc.gov Mailing Address: SFAA, Div. of Procurement Services PO Box 101103 Columbia SC 29201-3734</p>
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DESCRIPTION: **STC FOR WATER ACTIVATED POTHOLE PATCHING**

USING GOVERNMENTAL UNIT: **Statewide Term Contract**

SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL: <http://www.procurement.sc.gov>

SUBMIT OFFER BY (Opening Date/Time): **11/03/2025 11:00 AM** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **10/24/2025 12:00 PM** **Questions Limited to Amended Parts Only**

NUMBER OF COPIES TO BE SUBMITTED: **One (1) Electronic Preferred**

CONFERENCE TYPE: **Pre-Bid**
 DATE & TIME: **09/30/2025 10:00 AM**

(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)

LOCATION: **This meeting will be via Microsoft Teams only. Refer to Section IIB, "Conference Pre-Bid/Proposal" for instructions to attend the meeting.**

**AWARD &
AMENDMENTS**

Award will be posted on **11/24/2025**. The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <http://www.procurement.sc.gov>

You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

NAME OF OFFEROR

(full legal name of business submitting the offer)

Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.

AUTHORIZED SIGNATURE

(Person must be authorized to submit binding offer to contract on behalf of Offeror.)

DATE SIGNED

TITLE

(business title of person signing above)

STATE VENDOR NO.

(Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)

PRINTED NAME

(printed name of person signing above)

STATE OF INCORPORATION

(If you are a corporation, identify the state of incorporation.)

OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.)

☐ Sole Proprietorship ☐ Partnership ☐ Other _____

☐ Corporate entity (not tax-exempt) ☐ Corporation (tax-exempt) ☐ Government entity (federal, state, or local)

(Return Page Two with Your Offer)

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IMPORTANT NOTICE: In order to provide a more manageable solicitation, the State has opted to issue a complete new document. This approach has been selected in an effort to ensure the clarity of the contract documents during both the “Pre-Award” and “Post Award” phases of this procurement. Prospective bidders should discard the original solicitation document and use this document when preparing their on-line bids.

In an effort to assist your review of the amendment, we have endeavored to highlight changes in yellow. To use this feature, Offerors will need to view the electronic version of this document.

Despite our best efforts, there is a chance that a change was inadvertently left unhighlighted. Therefore, Offerors are cautioned that they are responsible to review the content of the entire document and cannot rely detrimentally on highlights identifying all changes.

Refer to the last pages of this solicitation entitled “Questions & Answers” for additional information concerning this solicitation.

I. SCOPE OF SOLICITATION

ACQUIRE SUPPLIES / EQUIPMENT (Modified)

It is the intent of the State Procurement Office, to solicit offers and establish statewide contracts for providing water activated flexible pot-hole patch materials for the SC Department of Transportation (SCDOT), and all other using governmental units throughout South Carolina. Product shall be packaged in buckets or bags and must meet all of the requirements contained herein and be delivered to the various maintenance locations in each SCDOT district listed in Attachment #1, or to the location listed on a purchase order used by any other governmental unit. Work shall consist of furnishing a flexible water activated patching material that may be used “as-is” in any ambient temperature conditions typical to South Carolina for road maintenance patching operations. The product shall be used for pothole repairs and will gain its strength and permanent shape by adding water to the patch material. Delivery of the product will be in quantities specified in section VIII. BIDDING SCHEDULE and award will be made to up to the two (2) lowest responsive and responsible Offerors for statewide coverage. Offers will only be considered for water patching supplies that are approved and included on the Qualified Products List posted to the SCDOT website at the time of bid opening.

MAXIMUM CONTRACT PERIOD - ESTIMATED (Modified)

The estimated start date for this contract is **12/21/2025** and the estimated end date is **12/20/2028**. The initial term of the contract is one (1) year with the potential for two (2) optional one-year terms. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period".

II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS

DEFINITIONS, CAPITALIZATION, AND HEADINGS (DEC 2015)

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

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

AUTHORITY means the 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]

AMENDMENTS TO SOLICITATION (JAN 2004)

(a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: www.procurement.sc.gov (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged. [02-2A005-1]

AUTHORIZED AGENT (FEB 2015)

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 (MAR 2024)

Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, the most recent notice of extension of award. Should the contract resulting from this Solicitation have a total or potential value more than one hundred thousand dollars, such notice will be sent electronically to all Offerors responding to the Solicitation. Unless a written notice of intent to protest is timely filed pursuant to Section 11-35-4210(1)(b) or the award is otherwise suspended or canceled, the award will be effective on the calendar day (including weekends and holidays) immediately following the seventh business day after such notice is given. [02-2A010-3]

BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)

By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed. [02-2A015-1]

BID ACCEPTANCE PERIOD (JAN 2004)

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

BID IN ENGLISH and DOLLARS (JAN 2004)

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

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAR 2024)

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 (JAN 2004)

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

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

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

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

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

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

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

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

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

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

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

[02-2A035-1]

CODE OF LAWS AVAILABLE (JAN 2006)

The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:
<http://www.scstatehouse.gov/code/statmast.php>

The South Carolina Regulations are available at:
<http://www.scstatehouse.gov/coderegs/statmast.php>

[02-2A040-2]

DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (APR 2023)

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

(a) You certify that, 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 a significant 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]

DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)

Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental body's mail room which services that purchasing office prior to the opening. [R.19-445.2070(G)] [02-2A050-1]

DRUG FREE WORK PLACE CERTIFICATION (JAN 2004)

By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]

DUTY TO INQUIRE (FEB 2015)

Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors." [02-2A070-2]

ETHICS CERTIFICATE (MAY 2008)

By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]

MULTIPLE OFFERS (MAR 2024)

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 TAXES FROM PRICE (JAN 2004)

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

OPEN TRADE REPRESENTATION (JUN 2015)

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]

PRICING (MAR 2024)

(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 (MAR 2024)

(a) 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 the solicitation or an amendment, your written protest must be received within fifteen Days of the date the applicable solicitation document is issued. To protest an award, (i) written notice of your intent to protest must be received within seven Business Days of the date the award notice is posted, and (ii) your actual written protest must be received within fifteen Days of the date the award notice is posted. Time periods are computed in accordance with Section 11-35-310(13) and the definitions for Day and Business Day. Both protests and notices of intent to protest must be received by the appropriate Chief Procurement Officer (CPO). See clause entitled "Protest-CPO." (b) Pursuant to Section 11-35-410, documents directly connected to a procurement activity may be available within five days after request. All document requests should be directed to DocReq@mmo.sc.gov. If a protest is pending, the protestant's lawyer may access otherwise unavailable information by applying to the CPO for the issuance of a protective order. Additional information is available at www.procurement.sc.gov/legal [02-2A085-3]

PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)

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

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

(b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. ***You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.*** [R. 19-445.2165] [02-2A087-1]

PUBLIC OPENING (JAN 2004)

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

QUESTIONS FROM OFFERORS (FEB 2015)

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors 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 State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140] [02-2A095-2]

QUESTIONS FROM OFFERORS - AMENDMENT (Modified)

The solicitation is amended as provided herein. Information or changes resulting from questions will be shown in a question-and-answer format or made directly in the document. Questions received have been reprinted below. The "state's response" should be read without reference to the questions. The questions are included solely to provide a cross-reference to the potential offeror that submitted the question. Questions do not form a part of the contract; the "state's response" does. Any restatement of part or all of an existing provision of the solicitation in an answer does not modify the original provision except as follows: underlined text is added to the original provision. Stricken text is deleted.

REJECTION/CANCELLATION (JAN 2004)

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

RESPONSIVENESS (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]

SIGNING YOUR OFFER (JAN 2004)

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

STATE OFFICE CLOSINGS (JAN 2004)

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <https://scemd.org/closings/> [02-2A120-3]

DISCLOSURE OF YOUR BID / PROPOSAL and 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 solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public." **IF YOU IDENTIFY YOUR ENTIRE RESPONSE AS EXEMPT FROM PUBLIC DISCLOSURE, OR IF YOU DO NOT SUBMIT A REDACTED COPY AS REQUIRED, THE STATE MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD.** (b) By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page, or portion thereof, of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page, or portion thereof, was redacted and conspicuously marked "Trade Secret" or "Confidential" or "Protected", (2) agrees that any information not redacted and marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. (c) If your offer includes any information that you claim is exempt from public disclosure, you must submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). Except for the information removed or concealed, the redacted copy must be identical to your original offer. (d) Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If only portions of a page are subject to some protection, do not redact the entire page. The redacted copy must reflect the same pagination as the original and show the empty space from which information was redacted. The Procurement Officer must be able to view, search, copy and print the redacted copy without a password. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. (e) On the redacted copy, you must identify the basis of your claim by marking each redaction as follows: You must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that you redacted and claim as exempt from public disclosure because it is either (1) a trade secret as defined in Section 30-4-40(a)(1) of the Freedom of Information Act, or (2) privileged and confidential, as that phrase is used in Section 11-35-410. You must separately mark with the words "TRADE SECRET" every page, or portion thereof, that you redacted and claim as exempt from public disclosure as a trade secret pursuant to Section 39-8-20 of the Trade Secrets Act. You must separately mark with the word "PROTECTED" every page, or portion thereof, that you redacted and claim as exempt from public disclosure pursuant to Section 11-35- 1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. (f) In determining whether to release documents, the State will detrimentally rely on your redaction and marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "Protected". By submitting a response, you agree to defend, indemnify and hold harmless the 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" or "Protected". (All references to S.C. Code of Laws.) [02-2A125-3]

SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015)

Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification in accordance with the clause titled "ON-LINE BIDDING INSTRUCTIONS." 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 on the Cover Page. (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 indicated on the Cover Page. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. [02-2A130-2]

TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (APR 2024)

Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Schedule TC-2, "Credit for State Contractors Subcontracting with Socially and Economically Disadvantaged Small Business." A copy of the subcontractor's certificate from the Division of Small and Minority Business Contracting and Certification is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, <http://dor.sc.gov>. Questions regarding subcontractor certification are to be referred to: Division of Small and Minority Business Contracting and Certification, <http://smbcc.sc.gov> . [02-2A135-2]

VENDOR REGISTRATION MANDATORY (MAR 2024)

You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit www.procurement.sc.gov and select Doing Business with Us. Then select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered and know your User ID and 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 or S.C. Department of Revenue. You can register with the agencies at South Carolina Business One Stop, <http://scbos.sc.gov>) [02-2A145-2]

WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)

Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085. [02-2A150-1]

II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS

BID SAMPLES OR DESCRIPTIVE LITERATURE (MAR 2024)

Do not submit bid samples or descriptive literature unless expressly requested.

Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077D. [02-2B017-1]

CONFERENCE – PRE-BID/PROPOSAL (Modified)

~~Pre Bid/Proposal Conference Date and Time: 09/30/2025 10:00 AM~~

~~Location of Pre Bid/Proposal Conference: The conference will be conducted entirely via Microsoft Teams at no cost to the participants. A computer is required to attend the meeting, but a camera is not. If you would like to participate in the conference, click on the “Pre-Bid Meeting Link” below.~~

Pre-Bid Meeting Link

~~Should you have trouble with the link above, or you would prefer to call in from a phone, please email Ginger Hardee for attendance instructions no later than Friday, September 26th, at 2:00 PM. Note in the Subject line: “STC Water Activate Pothole Patching Pre-Bid Conference Instructions.” Attendance information and links will be provided one business day before the conference.~~

~~Due to the importance of all offerors having a clear understanding of the specifications and requirements of this solicitation, a conference of potential offerors will be held on the date specified on the cover page. Bring a copy of the solicitation with you. Any changes resulting from this conference will be noted in a written amendment to the solicitation. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State. The State assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does the State assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding, or representation is expressly stated in this contract.~~

~~This solicitation includes a NON-Mandatory Pre Proposal Conference. While attendance is not required, Offerors are strongly encouraged to participate. The purpose of the Pre-Proposal is to identify items that are in error, unclear, or unduly restrictive.~~

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

MAIL PICKUP (JAN 2006)

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

ON-LINE BIDDING INSTRUCTIONS (Modified)

(a) Mandatory Registration. You must register before you can submit an offer on-line See clause entitled “VENDOR REGISTRATION MANDATORY.”

(b) Steps for On-Line Bidding

#1 The link provided on the solicitation's Cover Page will take you to our web based on-line bidding system, where you will enter and/or upload your offer.

#2 Follow the general user instructions posted at www.procurement.sc.gov under the heading "Doing Business with Us" and then "Submitting Offers."

#3 Confirm your offer has a status of "submitted" by refreshing the "RFx and Auctions" screen.

Only offers with a status of "submitted" have been received by the State.

Offers with a status of "saved" have not been received.

#4 Save or print a copy of your offer using the "Print Preview" button after your offer has been submitted.

(c) If you have problems entering an on-line offer, you must contact the SCEIS Help Desk for assistance at (803) 896-0001 and follow the prompts. You may also contact the SCEIS Help Desk on-line at <http://www.sceis.sc.gov/vendorrequests/>. Do not contact the Procurement Officer with problems entering an offer into the system. Only questions regarding the solicitation document should be addressed with the Procurement Officer.

(d) Do not wait until the last minute to submit your offer. If an on-line offer is not completed and in a submitted status prior to the submission deadline, the offer will not be considered for award.

PROTEST - CPO - MMO ADDRESS (MAR 2024 Modified)

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)~~

QUALIFIED PRODUCTS LIST (Modified)

Offer only products that are on the qualified products list.

This solicitation requires that all manufactures be pre-qualified by SCDOT to produce pothole patching products before they can be eligible to bid. It does not require bidders to be pre-qualified producers of the product in order to bid, but rather that all products delivered under the proposed contract be produced by a pre-qualified manufacturer. Therefore, any supplier can bid as long as the source of the product is from a pre-qualified manufacturer.

All aggregates used in the mixture shall meet and comply with the terms of the below SCDOT policy for High Performance Pothole Patching Products – Qualified Products Policy # 43 (See Attachment #2)

Offerors are required to meet all terms and conditions as shown in the Qualified Products List. The Qualified Manufacturer/Product list can be accessed at:

[QualifiedProd](#)

Qualified Product Policy for High Performance Pothole Patching Products (See Attachment #2) can be accessed at:

[43%20QPP%20022412.pdf](#)

Only the approved manufacturers product lines specified in the Qualified Manufacturer/Product list for this scope of work are acceptable for this bid. The State will not consider or evaluate other product offers as part of this solicitation.

RESPONSIVENESS – CORRECTION OF NON-CONFORMITY (MAR 2024)

Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [02-2B127-1]

UNIT PRICES REQUIRED (JAN 2006)

Unit price to be shown for each item. [02-2B170-1]

III. SCOPE OF WORK/SPECIFICATIONS

South Carolina is soliciting bids to provide water activated flexible pot-hole patching material, packaged in buckets or bags meeting the specifications in Attachment #2 - SCDOT Policy for High Performance Pothole Patching Products. Work shall consist of furnishing a flexible water activated patching material that may be used "as-is" in any ambient temperature conditions typical to South Carolina for use in road maintenance patching operations. The product shall be used for pothole repairs and will gain its strength and permanent shape by adding water to the patch material.

SEE BIDDING SCHEDULE

See Bidding Schedule [03-3005-1]

DELIVERY/PERFORMANCE LOCATION -- PURCHASE ORDER (Modified)

After award, all deliveries shall be made and all services provided to the location specified by the Using Governmental Unit in its purchase order.

For SCDOT orders, delivery will be made to the various county maintenance units in each district. See Attachment #1 for SCDOT delivery locations. All normal freight charges, except if expedited delivery is requested, shall be included in the unit price offered. Using governmental units may request expedited delivery when needed. Any additional delivery or packaging fees must be invoiced to the using governmental unit as a pass-through cost. Contractor must communicate to the using governmental unit any additional shipping charges **PRIOR** to order acceptance.

DELIVERY DATE -- 30 DAYS ARO (JAN 2006)

Unless otherwise specified herein, all items shall be delivered no later than thirty days after contractor's receipt of the purchase order. If the using governmental unit requests delivery sooner than the time specified, contractor may invoice the ordering entity any additional shipping charges approved by the ordering entity on the purchase order. [03-3037-1]

QUALITY -- NEW (JAN 2006)

All items must be new. [03-3060-1]

ADMINISTRATIVE SERVICES FEE - COLLECTION AND REPORTING (MAR 2024)

(a) Procurement Services (PS) establishes and maintains master State contracts for the benefit of all South Carolina state and local public entities. These contracts allow all public entities both to maximize the State's purchasing power by aggregating their requirements and to benefit from increased efficiencies in the acquisition process. Procurement Services' cost for this central purchasing activity is offset by an administrative fee which each contractor includes in its contract pricing (though not separately itemized or invoiced) and is paid to the vendor by each participating public entity. The contractor collects the fee as a fiduciary for the State and remits the same as calculated in accordance with the clause titled "ADMINISTRATIVE SERVICES FEE - CALCULATION." The price stated in the contractor's bid or proposal must include all amounts necessary for contractor to meet this obligation.

(b) As used in this clause, the term "reporting period" means each full calendar quarter (Jan. - Mar., Apr. - Jun., Jul. - Sep., and Oct. - Dec.) and any remaining periods less than a full calendar quarter during the term of this contract. For each reporting period, contractor shall report to PS its total sales pursuant to this contract for the period and shall remit the fee to the PS Reports Manager. Payment for each reporting period is due no later than the last day of the month immediately following the end of the reporting period (Example: payment for the reporting period ending March 31 is due April 30). If the amount due for a reporting period is less than \$10.00, no payment is required. The procurement officer will provide contractor an information packet, including a detailed explanation of reporting and payment requirements, within fifteen (15) calendar days following contract award. You may contact the Reports Manager at:

Procurement Services Division

Attn: Reports Manager
1201 Main Street, Suite 600
Columbia, SC 29201
Phone: (803) 737-1254 (ask to speak to the Reports Manager)

Failure to receive the information packet does not relieve contractor from its obligations hereunder.

(c) Contractor shall submit a usage report for each reporting period, even if no payment is due for the reporting period. The usage report shall include any information requested by PS to verify the amount due. At a minimum, each usage report shall reflect the following information for the applicable reporting period: contractor's name, contract number, contract description, reporting period/quarter, total dollar value of sales (excluding sales taxes and showing any adjustments for credits or refunds), total number of units (if practicable), and the number, date, and amount of contractor's check to PS. Unless otherwise specified by the reports manager, the usage report shall be submitted electronically according to instructions in the information packet. If the reports manager requires the contractor to provide a more detailed usage report, the reports manager will work directly with the contractor to determine the appropriate content and format of the report.

(d) During the term of this contract and for a period of three years thereafter, PS or its authorized representatives shall be afforded access at reasonable times to contractor's records (including, without limitation, bank statements, deposits, checks; invoices; correspondence; ledgers; receipts; transmittals) in order to audit all transactions involving goods sold, work performed, or fees due pursuant to this contract. If the audit indicates that contractor has materially underpaid PS, then contractor shall remit the balance found to be due (including any amounts assessed pursuant to subparagraph (e)) and reimburse PS for all costs of the audit.

(e) Payments of the fee which are due and unpaid by the contractor (including amounts disclosed by audit) shall accrue interest as provided in the Payment and Interest clause for amounts due to the State. In addition to the fee and interest, contractor agrees to pay to PS its reasonable expenses of collection, including costs and attorneys' fees (and fees for inside counsel), whether or not PS commences legal action.

(f) If the contractor fails to (i) timely submit accurate usage reports; (ii) remit to PS the fee when due; or (iii) promptly and fully cooperate with an audit request, the State may, without prejudice to any other remedy available to the State, take any one or more of the following actions:

(1) direct the contractor to not accept any further orders under the contract until PS determines that the cause for such direction has been eliminated;

(2) terminate this contract;

(3) direct the contractor to not accept any further orders under any other master State contract established by PS until PS determines that the cause for such direction has been eliminated.

(g) For purposes of this clause, PS is intended as a third-party beneficiary of this contract.

[03-3090-4]

ADMINISTRATIVE SERVICES FEE - CALCULATION - SPO (Modified)

For each reporting period, Contractor shall pay to PS a fee equal to one and one-quarter (1.25%) percent of the total dollar amount (excluding sales taxes and adjusted for credits or refunds) of purchases made by any public procurement unit from Contractor pursuant to this contract.

IV. INFORMATION FOR OFFERORS TO SUBMIT

INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (Modified)

You shall submit a signed Cover Page and Page Two. If you submit your offer electronically, you must upload an image of a signed Cover Page and Page Two. Your offer should include all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in Part IX. Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis.

In addition to the items listed above, Offerors should attach a completed copy of “Attachment #3” and “Attachment #4” with their offer. Failure to provide a copy of “Attachment #3” may deem your offer as non-responsive.

MINORITY PARTICIPATION (MAR 2024)

Is the bidder a South Carolina Certified Minority Business? ☐ Yes ☐ No

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

If so, please list the certifying governmental entity: _____

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

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

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

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

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

☐ Traditional minority

☐ Traditional minority, but female

☐ Women (Caucasian females)

☐ Hispanic minorities

☐ DOT referral (Traditional minority)

☐ DOT referral (Caucasian female)

☐ Temporary certification

☐ SBA 8 (a) certification referral

☐ Other minorities (Native American, Asian, etc.)

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

The Department of Administration, Division of Small and Minority Business Contracting and Certification, publishes a list of certified minority firms. The Minority Business Directory is available at the following URL: <http://smbcc.sc.gov> (.)
[04-4015-4]

V. QUALIFICATIONS

QUALIFICATIONS OF OFFEROR (MAR 2015)

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

QUALIFICATIONS - SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2015)

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

Offers will only be accepted for patching material that has been manufactured at a SCDOT approved facility as evidenced by inclusion on the Qualified Product List posted to the SCDOT website at the time of the bid opening. Please refer to the Qualified Products List clause found in Section II, Instructions to Offerors-- B. Special Instructions.

(b) Provide a detailed, narrative statement with adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation. If you intend for us to consider the qualifications of your key personnel, predecessor business(es), or subcontractor(s), explain the relationship between you and such person or entity. [R. 19-445.2125(F)]
[05-5010-2]

QUALIFICATIONS -- REQUIRED INFORMATION (Modified)

If requested by the Procurement Manager after bid opening, submit the following information or documentation for you and for any subcontractor (at any tier level) that you identify pursuant to the clause titled Subcontractor - Identification. Err on the side of inclusion. You represent that the information provided is complete. (a) The general history and experience of the business in providing work of similar size and scope. (b) Information reflecting the current financial position. Include the most current financial statement and financial statements for the last two fiscal years. If the financial statements have been audited in accordance with the following requirements, provide the audited version of those statements. [Reference Statement of Financial Accounting Concepts No. 5 (FASB, December, 1984), as amended.] (c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) which have been performed. For each contract, describe how the supplies or services provided are similar to those requested by this solicitation, and how they differ. (d) A list of every business for which supplies or services substantially similar to those sought with this solicitation have been provided, at any time during the past three years. (e) A list of every South Carolina public body for which supplies or services have been provided at any time during the past three years, if any. (f) List of failed projects, suspensions, debarments, and significant litigation.

VI. AWARD CRITERIA

AWARD CRITERIA -- BIDS (Modified)

Award will be made to up to the two lowest responsible and responsive bidder(s).

AWARD TO MULTIPLE OFFERORS (JAN 2006)

Award may be made to more than one Offeror. [06-6035-1]

CALCULATING THE LOW BID

Low bids will be determined by multiplying the Offeror's Unit Price bid times the Estimated Quantity to determine each Offeror's Estimated Extended Price by line item. Each Offeror's line item Estimated Extended Price will be totaled to calculate each Offerors total Evaluated Price. Each Offerors total Evaluated Price will then be compared. Award will be made to up to the two (2) lowest responsive and responsible Offerors with the lowest total Evaluated Price. See below example:

Line Item 1 - (Offeror's Unit Price) X 19,800 (Estimated Quantity) = Offeror's Estimated Extended Price

The sum of each Offeror's Estimated Extended Price for all line items (1-21) = Offeror's Evaluated Price

[06-6050-1]

COMPETITION FROM PUBLIC ENTITIES (JAN 2006)

If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]

UNIT PRICE GOVERNS (JAN 2006)

In determining award, unit prices will govern over extended prices unless otherwise stated. [06-6075-1]

VII. TERMS AND CONDITIONS -- A. GENERAL

ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015)

(a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer 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 (FEB 2015)

(a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-2]

CHOICE-OF-LAW (JAN 2006)

The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]

CONTRACT AWARDED PURSUANT TO CODE (MAR 2024)

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 & ORDER OF PRECEDENCE (MAY 2024)

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) the solicitation, as amended, (2) your offer, as amended, (3) any statement reflecting the State's final acceptance (a/k/a "award"), and (4) purchase orders. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (4) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) any instrument submitted by the State other than a purchase order, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed by the solicitation, the terms and conditions of all such documents and any purchase orders shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-2]

DISCOUNT FOR PROMPT PAYMENT (JAN 2006)

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

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

[07-7A020-1]

DISPUTES (JAN 2006)

(1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the government regarding the Agreement is not a waiver of either the government's sovereign immunity or the government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]

EFT INFORMATION (APR 2024)

The Contractor must furnish to the State Treasurer's Office information necessary for making a payment by electronic funds transfer (EFT). Additional information is available at the STO's website at <https://treasurer.sc.gov> (.). The Contractor is responsible for the currency, accuracy and completeness of the EFT information. Updating EFT information may not be used to accomplish an assignment of the right to payment, does not alter the terms and conditions of this contract, and is not a substitute for a properly executed contractual document. [07-7A027-2]

FALSE CLAIMS (JAN 2006)

According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime. [07-7A035-1]

FIXED PRICING REQUIRED (JAN 2006)

Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award. [07-7A040-1]

NO INDEMNITY OR DEFENSE (FEB 2015)

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 (JAN 2006)

(A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

OPEN TRADE (JUN 2015)

During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [07-7A053-1]

ORGANIZATIONAL CONFLICT OF INTEREST (APR 2023)

(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]

PAYMENT and INTEREST (FEB 2021)

The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by electronic funds transfer (EFT). See clause titled " EFT Information." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 (" an amount not to exceed fifteen percent each year "), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off. [07-7A055-4]

PUBLICITY (JAN 2006)

Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a

published list of customers, without the prior written approval of the Procurement Officer. [07-7A060-1]

PURCHASE ORDERS (JAN 2006)

Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

SURVIVAL OF OBLIGATIONS (JAN 2006)

The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]

TAXES (JAN 2006)

Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]

TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)

Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term. [07-7A085-1]

THIRD PARTY BENEFICIARY (JAN 2006)

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

WAIVER (JAN 2006)

The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

VII. TERMS AND CONDITIONS -- B. SPECIAL

CHANGES (JAN 2006)

(1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

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

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.

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

[07-7B025-1]

CISG (JAN 2006)

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

CONFERENCE -- PRE-PERFORMANCE (JAN 2006)

Unless waived by the Procurement Officer, a pre-performance conference between the contractor, state and Procurement Officer shall be held at a location selected by the state within five (5) days after final award, and prior to commencement of work under the contract. The responsibilities of all parties involved will be discussed to assure a meeting of the minds of all concerned. The successful contractor or his duly authorized representative shall be required to attend at contractor's expense. [07-7B040-1]

CONTRACT LIMITATIONS (JAN 2006)

No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment. [07-7B045-1]

DEFAULT (JAN 2006)

(a) (1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

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

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

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

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

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that 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 State has an interest.

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

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

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

[07-7B075-1]

ESTIMATED QUANTITY -- PURCHASES FROM OTHER SOURCES (JAN 2006)

The state may bid separately any unusual requirements or large quantities of supplies covered by this contract. [07-7B090-1]

ESTIMATED QUANTITY -- UNKNOWN (JAN 2006)

The total quantity of purchases of any individual item on the contract is not known. The State does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information. [07-7B095-1]

PRICE ADJUSTMENTS (JAN 2006)

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

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

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

(c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

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

(e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

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

[07-7B160-1]

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

Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase. [07-7B165-1]

PRICE ADJUSTMENTS -- LIMITED BY PPI (JAN 2006)

Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Producer Price Indexes (PPI) for the applicable commodity, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov (.) [07-7B180-1]

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

[Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be

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

PURCHASING CARD (JAN 2006)

Contractor agrees to accept payment by the South Carolina Purchasing Card for no extra charge. The Purchasing Card is issued by Visa. The purchasing card allows state agencies to make authorized purchases from a vendor without the requirement to issue a purchase order. [07-7B200-1]

RELATIONSHIP OF USING GOVERNMENTAL UNITS (JAN 2006)

Each Using Governmental Unit's obligations and liabilities are independent of every other Using Governmental Unit's obligations and liabilities. No Using Governmental Unit shall be responsible for any other Using Governmental Unit's act or failure to act. [07-7B210-1]

SHIPPING / RISK OF LOSS (JAN 2006)

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

STATEWIDE TERM CONTRACT – MANDATORY (MAY 2024)

(a) With this solicitation, the state seeks to establish a contract available for use by all South Carolina public procurement units (as defined in Section 11-35-4610(5)). This contract is a "term contract" as defined in Section 11-35-310(37). Accordingly, use by state governmental bodies (as defined in Section 11-35-310(18)), which includes most state agencies, is mandatory except under limited circumstances. See clause entitled "Acceptance of Offers 10% Below Price" in Part VII.B. of this solicitation. Use by local public procurement units is optional. Section 11-35-4610 defines local public procurement units to include any political subdivision, or unit thereof, which expends public funds. Section 11-35-310(24) defines the term political subdivision as all counties, municipalities, school districts, public service or special purpose districts.

(b) The State is entitled to audit the books and records of you and any subcontractor to the extent that such books and records relate to the performance of the work. Such books and records will be maintained by the contractor for a period of three years from the date of final payment under the contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is authorized in writing by the Chief Procurement Officer.

(c) Subject to the limitations herein, a Using Governmental Unit may include "additional contract terms" in a purchase order. For purposes of this paragraph, "additional contract terms" shall mean only terms included to either: (i) comply with federal laws as are mandatorily applicable to an expenditure of federal assistance, grant, or contract funds, or (ii) impose organizational, operational, or technical security measures designed to protect the integrity, availability, or confidentiality of the Using Governmental Unit's data. Additional contract terms may not be used if they will result in an increase in pricing or materially alter the scope of work, regardless of whether the Contractor accepts the terms. Contractor may decline to honor a purchase order that includes additional contract terms, but only if the Contractor provides the applicable Using Governmental Unit with prompt written notice of such rejection and the work acquired with that purchase order has not begun. For purposes of a specific purchase order, Contractor accepts additional contract terms by performing any of the work acquired with that purchase order.

(d) EFT information the Contractor provides to the State Treasurer's Office (STO) is only used to process payment of invoices to Using Governmental Units on whose behalf the STO makes payment. For all other Using Governmental Units the method of payment must be addressed in the purchase order. See clause titled "Payment & Interest."

(e) If the contractor is suspended or debarred pursuant to Section 11-35-4220, the State may, without prejudice to any other remedy available to the State, take any one or more of the following actions: (1) order the contractor to not accept any further orders under the contract until the suspension or debarment has been lifted; (2) terminate this contract; (3) order the contractor to not accept any further orders under any other statewide contract; or (4) terminate the contractor's award of any other statewide contract. [07- 7B225-4]

STATEWIDE TERM CONTRACT – MANDATORY [TERM] – ACCEPTANCE OF OFFERS 10% BELOW PRICE (MAY 2024)

Pursuant to Section 11-35-310(37), the state may purchase items available on this contract from a third party (an "alternate vendor") if the alternate vendor offers a price at least ten percent less than the price established by this contract and, after being offered an opportunity, you decline to meet the alternate vendor's price. With regard to the items acquired, the alternate vendor must agree to be bound by all the terms and conditions of this contract. All acquisitions pursuant to this clause must be documented by the procurement officer using the attached form. [07-7B227-2]

STATEWIDE TERM CONTRACT – MANDATORY – SCOPE (MAY 2024)

The scope of this contract is limited by the Bidding Schedule / Cost Proposals and by the description included in Part I, Scope of Solicitation. Sales of supplies or services not within the scope of this contract are prohibited. See clause entitled Contract Limitations. [07-7B230-2]

STORAGE OF MATERIALS (Modified)

Material shall be guaranteed to remain functional after storage under a covered shelter for a minimum period of one (1) year from date of receipt.

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

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is one (1) year from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

TERM OF CONTRACT -- OPTION TO RENEW (FEB 2021)

At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of one (1) year unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B245-3]

TERM OF CONTRACT -- TERMINATION BY CONTRACTOR (JAN 2006)

Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least 90 days prior to the expiration of the then current term. [07-7B250-1]

TERMINATION FOR CONVENIENCE -- INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (JAN 2006)

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]

TERMINATION FOR CONVENIENCE (JAN 2006)

- (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.
- (2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- (3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State 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 State has breached the contract by exercise of the Termination for Convenience Clause.
- (4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.
- (b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;
- (c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:
- (i) contract prices for supplies or services accepted under the contract;
 - (ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;
 - (iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;
 - (iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.
- (d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.
- (5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the State's right to require the termination of a subcontract, or (ii) increase the obligation of the State beyond what it would have been if the subcontract had contained an appropriate clause.
- [07-7B265-1]

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

BIDDING SCHEDULE (NOV 2007)

A bid for each line item below is required. The Unit Prices entered must match the price per pound calculations in the Attachment #3 spreadsheet. The Attachment #3 spreadsheet must also be submitted with your offer. Offerors should round their unit prices offered to the nearest penny.

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0001	19,800	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D1 Water Patching (1-10 Pallets)				
Tendering Text: Enter your price per pound for 1-10 pallets to be delivered to any of the listed locations for SCDOT District 1 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 1				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0002	29,700	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D1 Water Patching (11-20 Pallets)				
Tendering Text: Enter your price per pound for 11-20 pallets to be delivered to any of the listed locations for SCDOT District 1 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 2				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0003	83,160	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D1 Water Patching (21 or more Pallets)				
Tendering Text: Enter your price per pound for 21 pallets to be delivered to any of the listed locations for SCDOT District 1 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 3				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0004	19,800	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D2 Water Patching (1-10 Pallets)				
Tendering Text: Enter your price per pound for 1-10 pallets to be delivered to any of the listed locations for SCDOT District 2 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 4				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0005	29,700	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D2 Water Patching (11-20 Pallets)				
Tendering Text: Enter your price per pound for 11-20 pallets to be delivered to any of the listed locations for SCDOT District 2 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 5				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0006	83,160	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D2 Water Patching (21 or more Pallets)				
Tendering Text: Enter your price per pound for 21 pallets to be delivered to any of the listed locations for SCDOT District 2 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 6				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0007	19,800	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D3 Water Patching (1-10 Pallets)				
Tendering Text: Enter your price per pound for 1-10 pallets to be delivered to any of the listed locations for SCDOT District 3 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 7				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0008	29,700	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D3 Water Patching (11-20 Pallets)				
Tendering Text: Enter your price per pound for 11-20 pallets to be delivered to any of the listed locations for SCDOT District 3 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound . The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 8				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0009	83,160	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D3 Water Patching (21 or more Pallets)				
Tendering Text: Enter your price per pound for 21 pallets to be delivered to any of the listed locations for SCDOT District 3 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 9				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0010	19,800	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D4 Water Patching (1-10 Pallets)				
Tendering Text: Enter your price per pound for 1-10 pallets to be delivered to any of the listed locations for SCDOT District 4 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 10				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0011	29,700	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D4 Water Patching (11-20 Pallets)				
Tendering Text: Enter your price per pound for 11-20 pallets to be delivered to any of the listed locations for SCDOT District 4 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 11				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0012	83,160	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D4 Water Patching (21 or more Pallets)				
Tendering Text: Enter your price per pound for 21 pallets to be delivered to any of the listed locations for SCDOT District 4 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 12				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0013	19,800	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D5 Water Patching (1-10 Pallets)				
Tendering Text: Enter your price per pound for 1-10 pallets to be delivered to any of the listed locations for SCDOT District 5 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 13				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0014	29,700	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D5 Water Patching (11-20 Pallets)				
Tendering Text: Enter your price per pound for 11-20 pallets to be delivered to any of the listed locations for SCDOT District 5 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 14				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0015	83,160	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D5 Water Patching (21 or more Pallets)				
Tendering Text: Enter your price per pound for 21 pallets to be delivered to any of the listed locations for SCDOT District 5 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 15				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0016	19,800	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D6 Water Patching (1-10 Pallets)				
Tendering Text: Enter your price per pound for 1-10 pallets to be delivered to any of the listed locations for SCDOT District 6 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 16				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0017	29,700	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D6 Water Patching (11-20 Pallets)				
Tendering Text: Enter your price per pound for 11-20 pallets to be delivered to any of the listed locations for SCDOT District 6 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 17				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0018	83,160	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D6 Water Patching (21 or more Pallets)				
Tendering Text: Enter your price per pound for 21 pallets to be delivered to any of the listed locations for SCDOT District 6 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 18				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0019	19,800	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D7 Water Patching (1-10 Pallets)				
Tendering Text: Enter your price per pound for 1-10 pallets to be delivered to any of the listed locations for SCDOT District 7 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 19				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0020	29,700	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D7 Water Patching (11-20 Pallets)				
Tendering Text: Enter your price per pound for 11-20 pallets to be delivered to any of the listed locations for SCDOT District 7 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound . The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 20				

Line Number	Estimated Quantity	Unit of Measure	Unit Price	Estimated Extended Price
0021	83,160	Pound		
Product Catg.: 74565 - Patching Mix Asphalt Concrete				
Item Description: D7 Water Patching (21 or more Pallets)				
Tendering Text: Enter your price per pound for 21 pallets to be delivered to any of the listed locations for SCDOT District 7 in the Unit Price space provided above. See Attachment 1 for delivery locations and use the Attachment 3 worksheet to calculate your price per pound. The Unit Price entered above must match the calculated price per pound for this line item in Attachment 3. Please also complete the Estimated Extended Price in the space provided above.				
Internal Item Number: 21				

IX. ATTACHMENTS TO SOLICITATION

ATTACHMENTS LIST [09-9002-1]

The following documents are attached to this solicitation:

Attachment #1 - SCDOT Delivery Locations

Attachment #2 - SCDOT Policy for High Performance Pothole Patching Products

Attachment #3 – Product Pricing Worksheet **Amend 1**

Attachment #4 – Contractor’s Point of Contact Form

Attachment #5 – Draft Reporting Template

IMPORTANT TAX NOTICE - NONRESIDENTS ONLY

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

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

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

For information about other withholding requirements (e.g., employee withholding), contact the South Carolina Department of Revenue at 1-844-898-8542 or visit the Department's website at: **dor.sc.gov**

This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration and withholding tax questions should be directed to the South Carolina Department of Revenue at 1-844-898-8542. Additional contact information can be found by visiting the Department's website at dor.sc.gov

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: **dor.sc.gov**

[09-9005-5]

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

Review this checklist prior to submitting your bid/proposal.

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

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

[09-9010-1]

Purchase Order Attachment

Acceptance of Offers 10% Below Statewide Term Contract Price

Instructions: If an agency purchases any item available on the Term Contract identified below from a business (an Alternate Vendor) other than the Term Contract Contractor and the total price of the purchase order exceeds \$500, then the procurement officer making the purchase must attach this form to the purchase order issued to the Alternate Vendor. The agency procurement officer must complete the following four blanks: the number and description of the applicable Term Contract, the number of the agency's Purchase Order, and the name of Term Contract Contractor that you offered an opportunity to match.

Term Contract Solicitation No.	Term Contract Description
Term Contract Contractor	Purchase Order No.

Agreement

By signing this document, Alternate Vendor is entering into a contract with the agency named above regarding the items referenced on Purchase Order identified above. Regarding the items acquired with the Purchase Order, Alternate Vendor agrees to be bound by all the terms and conditions of the Term Contract Solicitation identified above. Alternate Vendor has received and read a copy of the Term Contract Solicitation identified above. The Purchase Order may be used to elect only those options expressly allowed in the Term Contract Solicitation. Possible options might include quantity, item, delivery date, and payment method. Any contract resulting from this Purchase Order is limited to the documents identified in the clause entitled Contract Documents & Order of Precedence.

NAME OF ALTERNATE VENDOR <small>(full legal name of business entering this contract)</small>	STATE VENDOR NO. <small>(Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)</small>
AUTHORIZED SIGNATURE <small>(person authorized to enter binding contract on behalf of Alternate Vendor)</small>	TITLE <small>(business title of person signing)</small>
PRINTED NAME <small>(printed name of person signing above)</small>	DATE SIGNED

Certification of Compliance

I certify as follows: (1) every item acquired with the Purchase Order is priced at least ten percent less than the Term Contract price for the same item; (2) the Term Contract Contractor identified above declined to meet the prices stated on the Purchase Order after being offered a reasonable opportunity to meet the price stated on the Purchase Order; and, (3) this purchase complies with Section 11-35-310(35), which is reprinted below.

AUTHORIZED SIGNATURE <small>(procurement officer authorized to issue purchase order and sign certification)</small>	TITLE <small>(business title of person signing)</small>
PRINTED NAME <small>(printed name of person signing above)</small>	DATE SIGNED

Section 11-35-310(35) of the South Carolina Code of Laws reads as follows: ""Term contract" means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. As provided in the solicitation, if a public procurement unit is offered the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multi term contract as provided in Section 11-35-2030."

----- PURCHASE ORDER ATTACHMENT (APR 2015) -----

[09-9020-2]

Questions & Answers

Q1: The Policy for high performance patching materials states that the products must be ready to be used as-is upon delivery without blending or mixing. When you add water to the mix, isn't this considered mixing?

State's Response: *No change. These products must be delivered in a ready-to-use form that only requires the addition of water to activate. The addition of water to initiate activation is not considered "mixing" or "blending" under the intent of the specification.*

Q2: Please state why you are looking for a specific water activated pot-hole repair product? The QPL #43 implies all products listed perform same or satisfactory results, the list is not broken down by water activated and non-water activated products. Any High-Performance qualified product that can repair a pothole in water should be considered.

State's Response: *No change. This solicitation is limited to water-activated patching materials. While QPL #43 lists all qualified High-Performance Pothole Patching Products approved for use by SCDOT, not all products on the list are water-activated. Inclusion on QPL #43 does not imply that a product possesses the unique characteristics of water-activated materials. Only products on QPL #43 that are specifically water-activated will be considered responsive to this solicitation.*

Q3: Can a High-Performance Pothole Patching Product that is listed on the SCDOT pricing list be considered for this bid? Activation methods may differ but the products with a high-performance polymer will repair potholes in water.

State's Response: *No change. This solicitation is limited to water-activated patching materials. Products with alternate activation methods, even if listed on QPL #43, will not be considered for award under this solicitation.*

Q4: When reviewing the vendors on the qualified products list, I noticed that product names for pothole patching do not specifically state that they are water activated, is that ok? Are we to assume that the product brand meets all the States requirements?

State's Response: *No change. This solicitation is specifically for water-activated patching materials. Only water-activated products will be considered. Bidders are responsible for confirming that the proposed product meets the water-activated criteria, even if this is not explicitly stated on the QPL #43.*

Q5: I noticed some of the vendors on the list have either changed their company name or have been bought out. For example, the EZ Street product, with the contact for the EZ Street Division comes up as the Duval Asphalt Plant. Is it still ok to purchase product from them if they still provide the brand EZ Street?

State's Response: *No change. This solicitation is limited to water-activated patching materials. Only water-activated products will be considered. Per the Annual Reapproval process outlined in QPL #43, any product name or manufacturer changes must be reported to the appropriate SCDOT contacts (as listed in QPL #43) with certification that the approved formula remains unchanged. SCDOT will review this information to determine continued or future inclusion on QPL #43.*

Q6: Are we allowed to provide the product directly from the manufacturer or can we only use the distributors listed on the QPL list?

State's Response: *No change. The awarded bidder must furnish and deliver the approved water-activated patching material as specified. Products may be sourced directly from the manufacturer or through an authorized distributor.*

EXHIBIT C
STATE OF SOUTH CAROLINA
SFAA, DIV. OF PROCUREMENT SERVICES
1201 MAIN STREET, SUITE 600
COLUMBIA SC 29201

Intent to Award
Posting Date: November 24, 2025

Solicitation: 5400028758
Description: STC FOR WATER ACTIVATED POTHOLE PATCHING
Agency: Statewide Term Contract

The State intends to award contract(s) noted below. Unless a written notice of intent to protest is timely filed pursuant to Section 11-35-4210(1)(b), or the award is otherwise suspended or canceled, this document becomes the final Statement of Award effective **December 6, 2025**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

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

If you are aggrieved in connection with the award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest an award, you must (i) submit notice of your intent to protest within seven 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.

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

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

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

Contract Number: 4400038484
Awarded To: KING ASPHALT INC (7000329591)
107 TECH LN
LIBERTY SC 29657

Initial Contract Period: December 20, 2025 through December 19, 2026
Maximum Contract Period: December 20, 2025 through December 19, 2028

Item	Description	Per Pound Unit Price
00001	D1 Water Patching (1-10 Pallets)	\$ 0.43
00002	D1 Water Patching (11-20 Pallets)	\$ 0.43
00003	D1 Water Patching (21 Pallets)	\$ 0.43
00004	D2 Water Patching (1-10 Pallets)	\$ 0.43
00005	D2 Water Patching (11-20 Pallets)	\$ 0.43
00006	D2 Water Patching (21 Pallets)	\$ 0.43
00007	D3 Water Patching (1-10 Pallets)	\$ 0.43
00008	D3 Water Patching (11-20 Pallets)	\$ 0.43
00009	D3 Water Patching (21 Pallets)	\$ 0.43

00010	D4 Water Patching (1-10 Pallets)	\$ 0.43
00011	D4 Water Patching (11-20 Pallets)	\$ 0.43
00012	D4 Water Patching (21 Pallets)	\$ 0.43
00013	D5 Water Patching (1-10 Pallets)	\$ 0.43
00014	D5 Water Patching (11-20 Pallets)	\$ 0.43
00015	D5 Water Patching (21 Pallets)	\$ 0.43
00016	D6 Water Patching (1-10 Pallets)	\$ 0.43
00017	D6 Water Patching (11-20 Pallets)	\$ 0.43
00018	D6 Water Patching (21 Pallets)	\$ 0.43
00019	D7 Water Patching (1-10 Pallets)	\$ 0.43
00020	D7 Water Patching (11-20 Pallets)	\$ 0.43
00021	D7 Water Patching (21 Pallets)	\$ 0.43

Contract Number: 4400038485
Awarded To: SEABOARD ASPHALT PRODUCTS COMPANY (7000166108)
 3601 FAIRFIELD ROAD
 BALTIMORE MD 21226

Initial Contract Period: December 20, 2025 through December 19, 2026
Maximum Contract Period: December 20, 2025 through December 19, 2028

Item	Description	Per Pound Unit
		Price
00001	D1 Water Patching (1-10 Pallets)	\$ 0.77
00002	D1 Water Patching (11-20 Pallets)	\$ 0.77
00003	D1 Water Patching (21 Pallets)	\$ 0.77
00004	D2 Water Patching (1-10 Pallets)	\$ 0.77
00005	D2 Water Patching (11-20 Pallets)	\$ 0.77
00006	D2 Water Patching (21 Pallets)	\$ 0.77
00007	D3 Water Patching (1-10 Pallets)	\$ 0.77
00008	D3 Water Patching (11-20 Pallets)	\$ 0.77
00009	D3 Water Patching (21 Pallets)	\$ 0.77
00010	D4 Water Patching (1-10 Pallets)	\$ 0.77
00011	D4 Water Patching (11-20 Pallets)	\$ 0.77
00012	D4 Water Patching (21 Pallets)	\$ 0.77
00013	D5 Water Patching (1-10 Pallets)	\$ 0.77
00014	D5 Water Patching (11-20 Pallets)	\$ 0.77
00015	D5 Water Patching (21 Pallets)	\$ 0.77
00016	D6 Water Patching (1-10 Pallets)	\$ 0.77
00017	D6 Water Patching (11-20 Pallets)	\$ 0.77
00018	D6 Water Patching (21 Pallets)	\$ 0.77
00019	D7 Water Patching (1-10 Pallets)	\$ 0.77
00020	D7 Water Patching (11-20 Pallets)	\$ 0.77
00021	D7 Water Patching (21 Pallets)	\$ 0.77

Procurement Officer
 MICHAEL SPEAKMON, CPPO

EXHIBIT D

From: [Speakmon, Michael](#)
To: [Craig, Kimber](#)
Subject: FW: [External] FW: SC Award: STC FOR WATER ACTIVATED POT HOLE PATCHING
Date: Friday, January 9, 2026 2:25:00 PM
Attachments: [image001.png](#)
[image002.png](#)



Michael Speakmon, CPPO | Procurement Director | Supplies & Services Contracting Team | Office of State Procurement | Division of Procurement Services | SC State Fiscal Accountability Authority
1333 Main Street, Suite 700 | Columbia, SC 29201 | Phone: (803) 737-9816 | mspeakmon@mso.sc.gov



From: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>
Sent: Wednesday, December 3, 2025 2:23 PM
To: Speakmon, Michael <mspeakmon@mso.sc.gov>
Cc: Wheeler, Cruz <WheelerJC@scdot.org>; Boyd, Harry, L. <BoydHL@scdot.org>
Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POT HOLE PATCHING

Michael,

Cruz has responded that the answer is “No, EZ Street is not a water activated product”.

He also referred back to the Question and Answers, where there were multiple references to not all products on the QPL being water activated (Q & A #2, for example), and reiterating that only the water activated products would be considered for this solicitation.

Thanks.

From: Schwalk, Jeffery, C.
Sent: Wednesday, December 3, 2025 1:25 PM
To: Boyd, Harry, L. <BoydHL@scdot.org>
Cc: Wheeler, Cruz <WheelerJC@scdot.org>; Speakmon, Michael <mspeakmon@mso.sc.gov>
Subject: FW: [External] FW: SC Award: STC FOR WATER ACTIVATED POT HOLE PATCHING

Harry,

Michael is needing a non-qualified, straight up answer.

Yes – this is water activated

No – this is not water activated

I think we already answered (“so the short answer...”), but please respond on behalf of DOM.

Thanks.

From: Speakmon, Michael <mspeakmon@mmo.sc.gov>

Sent: Wednesday, December 3, 2025 1:08 PM

To: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>

Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POT HOLE PATCHING

*** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. ***

Jeffery,

I spoke with Kimber and we’re going to need a straight up yes or no answer on this one please. It is or it isn’t water activated as described in the solicitation.

Thanks

Michael



Michael Speakmon, CPPO | Procurement Director | Supplies & Services Contracting Team | Office of State Procurement | Division of Procurement Services | SC State Fiscal Accountability Authority
1333 Main Street, Suite 700 | Columbia, SC 29201 | Phone: (803) 737-9816 | mspeakmon@mmo.sc.gov



From: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>

Sent: Wednesday, December 3, 2025 10:02 AM

To: Speakmon, Michael <mspeakmon@mmo.sc.gov>

Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

The response below from Director of Maintenance is all I can go with:

“So the short answer: It’s not a water-activated product in the sense of hydraulic cement.”

In terms of the future use of Attachment #2: if we don’t differentiate between water-activated and non-water activated, why wouldn’t you continue to use attachment #2, and not designate the patch as water activated? I think all the QPL cares about is that it doesn’t need to be heated, blended, or mixed.

Based on this situation, looks like making ‘water activated’ a requirement is limiting competition down to two suppliers.

From: Speakmon, Michael <mspeakmon@mmo.sc.gov>

Sent: Wednesday, December 3, 2025 9:39 AM

To: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>

Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

*** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. ***

So we’re confident that EZ Street does NOT meet the specifications as a water activated product?

Do we need to stop using the Attachment #2 with the solicitation?



Michael Speakmon, CPPO | Procurement Director | Supplies & Services Contracting Team | Office of State Procurement | Division of Procurement Services | SC State Fiscal Accountability Authority

1333 Main Street, Suite 700 | Columbia, SC 29201 | Phone: (803) 737-9816 | mspeakmon@mmo.sc.gov



From: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>

Sent: Wednesday, December 3, 2025 9:30 AM

To: Speakmon, Michael <mspeakmon@mmo.sc.gov>

Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

The Director of Maintenance Office states the following:

It appears that EZ Street binds and cures mostly through compaction + evaporation/ setting of the asphalt binder. It “works in water” property means it’s formulated to displace water and bond even if the pothole contains water, ***not that water triggers hardening.***

So the short answer: It’s not a water-activated product in the sense of hydraulic cement.

Jeff is out today but I did speak with Chris Kelly and he agrees that attachment 2 in the solicitation contradicts the first sentence in the SOW: “*South Carolina is soliciting bids to provide water activated flexible pot-hole patching material...*”. Attachment 2 calls for products must be ready to use upon delivery without heating, blending, or mixing. The actual list does not break out which products are actually water activated, etc. I believe the products on the list meet the spirit/intent of attachment 2.

From: Speakmon, Michael <mspeakmon@mmo.sc.gov>

Sent: Wednesday, December 3, 2025 8:52 AM

To: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>

Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

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I’m convinced that EZ Street does not meet the specifications of the solicitation as being water activated but I need the pros at DOT to verify that.

In the future we’ll need to list the specific products that are acceptable instead of just pointing to the QPL, and that would apply to the cold patch contract as well.

We’ve never had a problem with this one in the past.



Michael Speakmon, CPPO | Procurement Director | Supplies & Services Contracting Team | Office of State Procurement | Division of Procurement Services | SC State Fiscal Accountability Authority



From: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>

Sent: Wednesday, December 3, 2025 8:33 AM

To: Speakmon, Michael <mspeakmon@mmo.sc.gov>

Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

There does not seem to be any application direction in the materials they provided – which will be a determining factor.

Here is what I found searching for “EZ Street how to apply”:

EZ Street Asphalt Patch Water Activated? How to Apply

To apply EZ Street Asphalt patch water activated, follow these steps:

1. **Sweep away loose debris:** Clear the pothole of sand, leaves, and other debris to ensure a solid foundation for the repair.
2. **Fill the pothole:** If the crater is deeper than three inches, fill it with two-inch layers of EZ Street asphalt, compacting each layer before adding the next.
3. **Compact the material:** Use a hand tamper or a compaction plate to compress the EZ Street asphalt, activating it for the repair.
4. **Leave a slight crown:** After compaction, leave a slight crown on the patch to accommodate secondary compaction from traffic.
5. **Traffic readiness:** The repair should be traffic ready after the compaction process, ensuring durability and longevity.

For detailed instructions and to ensure maximum performance, refer to the EZ Street Asphalt Quick Use Guide or contact Red Stag Materials directly.

The detailed instructions indicate it is activated by compaction.

Additional search of “EZ Street Water Activated?” comes up with this:

Can be applied in water-activated conditions

EZ Street asphalt can be applied in water-activated conditions. It is designed to work effectively in wet conditions by displacing water without the need to remove it first. Simply sweep away loose debris, apply the asphalt, and compact it to create a durable repair. This method allows for quick and efficient patching in waterlogged potholes, ensuring a reliable repair regardless of the weather.

From: Speakmon, Michael <mspeakmon@mmo.sc.gov>
Sent: Wednesday, December 3, 2025 8:15 AM
To: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>
Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

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This is what they provided. During my evaluation I verified that the product was on the QPL as referenced in the solicitation, but I think the fact that there is no differentiation between the types of products on the list is the issue. What I'm being told is that there are only two products on the QPL that are water activated; Aquaphalt and Aquapatch.



Michael Speakmon, CPPO | Procurement Director | Supplies & Services Contracting Team | Office of State Procurement | Division of Procurement Services | SC State Fiscal Accountability Authority
1333 Main Street, Suite 700 | Columbia, SC 29201 | Phone: (803) 737-9816 | mspeakmon@mmo.sc.gov



From: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>
Sent: Wednesday, December 3, 2025 7:55 AM
To: Speakmon, Michael <mspeakmon@mmo.sc.gov>
Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

Understood.

EZ Street is on QPL 43 which is specific to High Performance Pothole Patching Products.
[43 QPL.pdf](#)

There is not a differentiation on the QPL between water activated and non-water activated. A product search indicates EZ Street is a water-activated product, however it is also described as using a water displacement process. The issue might not be one of whether they are on the list, but around what 'water-activated' means. I am not an expert on these products by any means.

Did the materials provided by the vendor state it as water-based?

From: Speakmon, Michael <mspeakmon@mmo.sc.gov>
Sent: Wednesday, December 3, 2025 7:38 AM
To: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>
Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

*** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. ***

Thanks. I've had three vendors question whether EZ Street is a water activated product, one has already submitted a protest and another is about to so we need to get this resolved as soon as possible.

Michael



Michael Speakmon, CPPO | Procurement Director | Supplies & Services Contracting Team | Office of State Procurement | Division of Procurement Services | SC State Fiscal Accountability Authority
1333 Main Street, Suite 700 | Columbia, SC 29201 | Phone: (803) 737-9816 | mspeakmon@mmo.sc.gov



From: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>
Sent: Wednesday, December 3, 2025 6:11 AM
To: Speakmon, Michael <mspeakmon@mmo.sc.gov>
Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

Michael,

I have sent the request for additional confirmation this morning.

Thanks.

From: Speakmon, Michael <mspeakmon@mmo.sc.gov>

Sent: Tuesday, December 2, 2025 8:05 AM

To: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>

Subject: FW: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

*** This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. ***

Jeffery,

See the vendors response below. Can you once again confirm with the Director of Maintenance.

Thanks

Michael



Michael Speakmon, CPPO | Procurement Director | Supplies & Services Contracting Team | Office of State Procurement | Division of Procurement Services | SC State Fiscal Accountability Authority

1333 Main Street, Suite 700 | Columbia, SC 29201 | Phone: (803) 737-9816 | mspeakmon@mmo.sc.gov



From: Shawn Campbell <Shawn.Campbell@seboardasphalt.com>

Sent: Monday, December 1, 2025 4:25 PM

To: Speakmon, Michael <mspeakmon@mmo.sc.gov>

Subject: Re: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

EZ Street is not approved as water activated per SCDOT Materials department. We will not withdraw protest

Sent from my iPhone

On Dec 1, 2025, at 2:51 PM, Speakmon, Michael

<mspeakmon@mmo.sc.gov> wrote:

Mr. Campbell,

SCDOT has verified that the EZ Street product is an approved water activated pothole patching product on the QPL.

We would ask that Seaboard Asphalt rescind their protest of the award.

Michael

<image005.png>

Michael Speakmon, CPPO | Procurement Director | Supplies & Services Contracting Team | Office of State Procurement | Division of Procurement Services | SC State Fiscal Accountability Authority
1333 Main Street, Suite 700 | Columbia, SC 29201 | Phone: (803) 737-9816 | mspeakmon@mmo.sc.gov

<image006.png>

From: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>

Sent: Tuesday, November 25, 2025 8:51 AM

To: Speakmon, Michael <mspeakmon@mmo.sc.gov>

Subject: FW: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

Michael,

Here is the response from the SCDOT Director of Maintenance office.

From: Boyd, Harry, L. <BoydHL@scdot.org>

Sent: Tuesday, November 25, 2025 8:49 AM

To: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>

Subject: RE: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

Hey Jeffery-

It looks like EZ street is an approved water -activated pothole patching

brand:

☒ **SCDOT-Approved (Qualified) Pothole Patching Products — QPL 43**

From SCDOT QPL 43:

Product	Manufacturer / Contact
UPM	Unique Paving Materials Corporation
Perma-Patch	Perma-Patch, LLC.
SEACO HPL	SEACO, Inc. (Columbia, SC)
EZ Street	EZ Street Division
Aquaphalt	Roadstone Production, LLC
Green Patch Cold Mix	Green Patch Cold Mix Manufacturing Corp.
BOND-X GREEN	Seaboard Asphalt Products Company
EcoPatch	Southeast Emulsions
Max A Patch	ACP SpecChem
QPR (Quick-Patch / Quickcrete)	The Quikcrete Companies DBA-QPR
Aqua Patch	Aqua Patch / Road Materials

<image004.jpg>

Harry Boyd

Maintenance Contracts Manager

P 803-737-1467 **E** boydhl@scdot.org

South Carolina Department of Transportation
955 Park Street, P.O. Box 191, Columbia, SC 29202-0191

From: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>

Sent: Tuesday, November 25, 2025 6:41 AM

To: Boyd, Harry, L. <BoydHL@scdot.org>

Subject: FW: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

Importance: High

Harry,

Can you track down an answer for the question below? Specifically, there is a question about whether EZ Street is an approved water-activated pothole patching brand.

Thanks.

From: Speakmon, Michael <mspeakmon@mmo.sc.gov>

Sent: Monday, November 24, 2025 3:48 PM

To: Schwalk, Jeffery, C. <SchwalkJC@scdot.org>

Subject: FW: [External] FW: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

Importance: High

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Jeff,

See below. I looked at the approved list of products under pothole patching using the link in the solicitation. Is EZ Street NOT an approved water activated pothole patching? I'm out of the office but I'll keep an eye out for your response.

Michael

<image005.png>

Michael Speakmon, CPPO | Procurement Director | Supplies & Services Contracting Team | Office of State Procurement | Division of Procurement Services | SC State Fiscal Accountability Authority

1333 Main Street, Suite 700 | Columbia, SC 29201 | Phone: (803) 737-9816 | mspeakmon@mmo.sc.gov

<image006.png>

Hi Michael,

I am reaching out regarding solicitation **5400028758**. I believe that your QPL 43 lists Aquaphalt and Aquapatch as the only two approved products that are water activated, not just your traditional cold patch products. Is this correct or do you maintain a separate list just for "water activated" asphalt cold patch?

The reason I am asking is because I believe the intention of your IFB was to procure a "water activated" cold patch product, like Aquaphalt or Aquapatch. The below contract might have inadvertently been rewarded to two companies that do not have an approved "water activated" cold patch. The IFB specs called out for water activated and I think they submitted traditional cold patch products. Can you please advise and help us get it straightened out.

Thank you,

From: noreply@admin.sc.gov <noreply@admin.sc.gov>
Sent: Monday, November 24, 2025 10:14 AM
To: Troy Fite <Troy.Fite@fortiline.com>
Subject: SC Award: STC FOR WATER ACTIVATED POTHOLE PATCHING

The following Award has been posted by the State of South Carolina.
The Award is available on the State Web site and can be accessed from the following address:

https://link.edgepilot.com/s/02454a8d/biS0ON9ox0Cludw1GDzJcg?u=https://urldefense.proofpoint.com/v2/url?u=https-3A_apps.sceis.sc.gov_SCSolicitationWeb_contractSearch.do-3Fsolicitnumber-3D5400028758%26d=DwIFAg%26c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_Cdp gnVfiiMM%26r=ATJnCd fRh7jzsG6vHvjchLcdf lcpLn_YpLRUmz-SWHI%26m=1ldrXCM4DZoLwQx9jbE4Pvj9_jlIMKViwRGiXp2IYLtxCr4qxx3kFyOhKjksaFpb%26s=dQYP6EeFA29LxcAaUaHPD_QeKECXWk6Ck-wXWTljLpw%26e%3D

Solicitation Number: 5400028758

Description: STC FOR WATER ACTIVATED POTHOLE PATCHING

Sincerely,
MICHAEL SPEAKMON

South Carolina State Government

mspeakmon@mmo.sc.gov

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[https://link.edgepilot.com/s/64be0f48/g0C_GLFmpkCc4daKU8fkPQ?
u=https://us1.proofpointessentials.com/app/report_spam.php?
mod_id=11%26mod_option=logitem%26report=1%26type=easyspam%26k=k1%
26payload=53616c7465645f5f4c882ea3ce761026e4b9c8969e46644f100d88749
5e4dcda722b8e5022215ddf520a6b8e4caff894f2ed4c1ee3d14bfd7a6b57177b54
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c8e615d798e3ff9dd32c10df31332895031d0f6c84c5ae4a7e2793a5ae4d](https://link.edgepilot.com/s/64be0f48/g0C_GLFmpkCc4daKU8fkPQ?u=https://us1.proofpointessentials.com/app/report_spam.php?mod_id=11%26mod_option=logitem%26report=1%26type=easyspam%26k=k1%26payload=53616c7465645f5f4c882ea3ce761026e4b9c8969e46644f100d887495e4dcda722b8e5022215ddf520a6b8e4caff894f2ed4c1ee3d14bfd7a6b57177b54a75993681a239c918bcc1bd21b431a8df0fdf0314af1a6db61fb338fb77f2f11bcef3e77fa07e78fc011992e7df5b028f75b321d0e766dc84dd95c14caaf19529306612bc8e615d798e3ff9dd32c10df31332895031d0f6c84c5ae4a7e2793a5ae4d)

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