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Protest Decision

Matter of: Advantage Sports & Fitness, Inc.
File No.: 2024-137
Posting Date: March 27, 2024
Contracting Entity: College of Charleston
Solicitation No.: 2024-JCB-000000203-IFB
Description: Fitness Center Cardio Equipment

DIGEST

The Chief Procurement Officer (CPO) grants the protest of Advantage Sports & Fitness, Inc. (Advantage), challenging the College of Charleston's (College) rescission of Award of a contract to Advantage where the College lacks authority to rescind Award of a contract. The CPO denies the remainder of Advantage's protest where Advantage has failed to allege a violation of the Procurement Code or the Solicitation requirements. Advantage's protests 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 decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

Invitation for Bids Issued	02/08/2024
Addendum 1 Issued	02/12/2024
Addendum 2 Issued	02/21/2024
Statement of Award Posted	03/05/2024
Statement of Award Rescinded	03/06/2024
Revised Statement of Award Posted	03/07/2024
Protests Received	03/19/2024

The facts pertinent to this decision are:

- On February 8, 2024, the College issued a solicitation for bids to supply fitness equipment for its Fitness Center. [Exhibit B]
- By the deadline for receipt of bids, the College received seven bids. [Exhibit C]
- The College initially determined all bid except the bid of Advantage to be non-responsive because their proposed ellipticals did not have adjustable grade ramps. [Response of the College, Exhibit D]
- On March 5, 2024, the College posted a notice of award a contract to Advantage. [Exhibit E] On the same day, the College notified the other bidders that their bids were nonresponsive and why. [Exhibit D]
- Wilkins Fitness Equipment LLC (Wilkins) responded to the College's notice telling the College that its proposed ellipticals did have adjustable grade ramps. [Id]
- On March 6, 2024,¹ after reviewing the specifications for Wilkins' proposed equipment, the College purported to rescind its award of a contract. [Exhibit F]

¹ The date on the document is March 5, 2024, but according to the College, the document was actually posted on March 6, 2024.

- On March 7, 2024, the College posted a notice of award of a contract to Wilkins.
[Exhibit G]
- Advantage timely filed a notice of intent to protest and, on March 19, 2024, perfected its protest.

DISCUSSION

Advantage first questions the basis of the rescission of the award of a contract. Advantage's protest does not hit on the real flaw in the College's rescission, and the CPO would not expect the average vendor to do so. The fact is that the rescission is void *ab initio*, which means it is considered invalid from the outset. Per Regulation 19-445.2085C, only the CPO can cancel an award or intent to award once it is posted. Put another way, the College lacks authority to cancel an award. Therefore, any purported cancellation of award by the College is void and without effect. Moreover, the College committed administrative error by awarding a contract to Wilkins for the same contract it had already awarded to Advantage without following proper procedures to cancel that award.

The CPO is now faced with the question of whether the College committed administrative error in awarding a contract to Advantage.

Wilkins submitted two bids. The bid at issue is the first. [Exhibit H] The College found Wilkins's bid to be nonresponsive on the grounds that the "proposed Vision S70 Accent Trainer does not the adjustable gradient ramp." [Exhibit I] When the College let Wilkins know of this finding, Wilkins challenged it. After further reviewing the documentation that Wilkins provided with its bid, the College was satisfied that Wilkins's proposed elliptical did in fact have an adjustable ramp. [Exhibits D and H]

The College specified a Precor EFX635 elliptical or equal.² Advantage bid a Precor EFX365. Wilkins bid a Vision Fitness S70. Both machines have an adjustable incline. In its protest,

² The College does not identify in its solicitation the salient features that it will consider to determine equivalency. As the Panel has observed, "It should always be clear that a 'Brand-Name or Equal' description is intended to be

Advantage challenges the sufficiency of the Vision Fitness S70 as a substitute for the Precor EFX365 on the basis of its warranty only, arguing that “Vision Fitness products are warranted and intended for home and light commercial use.” Advantage then speculates on the limitations of that warranty. The specifications do not require the Vision Fitness warranty to be equivalent to Precor’s. The specifications state:

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

[Italics supplied]

The warranty information Wilkins provided with its bid clearly meet these requirements.³
[Exhibit H]

Clearly, the College’s basis for finding Wilkins’s bid to be nonresponsive was erroneous and Advantage’s protest fails to provide any basis for finding Wilkins’s bid to be nonresponsive.

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

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

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;
- (3) The supplies, services, information technology, or construction being procured are no longer required;

descriptive and not restrictive and is merely to indicate the quality and characteristics of the product that will be satisfactory and acceptable. Products offered as equal must, of course, meet fully the salient characteristics and product requirements listed in the Invitation for Bids.” *Appeal by Krueger Int’l*, Panel Case No. 2018-7 (quoting *Protest by General Sales*, Panel Case No. 1983-5).

³ When compared to the Precor warranty, the Vision Fitness warranty is not significantly different.

- (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- (7) Administrative error of the purchasing agency discovered prior to performance, or
- (8) For other reasons, cancellation is clearly in the best interest of the State.

While the authority to cancel awards and solicitations should be exercised carefully and sparingly, these provisions authorize the CPO to cancel an award of a contract before performance begins, when a compelling reason exists and one or more of the grounds listed in the regulation are present. The Procurement Code requires the College to award a contract to the lowest responsive and responsible bidder. S.C. Code Ann. §11-35-1520(10). Failure to do so is a compelling reason to cancel award. Awarding the same contract to one vendor after awarding to another, when that previous award is still in effect, is also a compelling reason to cancel award. The CPO finds that the College committed the following administrative errors:

- Erroneously declaring Wilkins bid to be nonresponsive for failure to bid a product with an adjustable ramp/incline when in fact it did;
- Rescinding award of a contract to Advantage when it lacked authority to do so;
- Awarding a contract to Wilkins when the award to Advantage was still effective.

Based on the foregoing, the CPO finds that a compelling reason to cancel the awards to both Wilkins and Advantage exist.

Protest Decision, page 6

Case No. 2024-137

March 27, 2024

DECISION

For the reasons stated above, the CPO vacates the College's awards to both Wilkins and Advantage and remands this Procurement back to the College to proceed in accordance with the requirements of the Procurement Code.

A handwritten signature in blue ink, reading "John St. C. White".

John St. C. White
Chief Procurement Officer

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2023)

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 2023 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. *[The Request for Filing Fee Waiver form is attached to this Decision.]* If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

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

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

Name of Requestor

Address

City

State

Zip

Business Phone

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

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

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

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

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

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



800.308.4382

WWW.ADVANTAGEFITNESS.COM

2255 N. TRIPHAMMER ROAD, ITHACA NY 14850

Chief Procurement Officer
Materials Management Office
protest-mmo@mmo.state.sc.us

3/19/2024

As a bidder and original awardee of College of Charleston solicitation 2024-JCB-00000203-IFB, we are protesting the rescission of our award and subsequent award to another vendor. We protest in the interests of the College of Charleston, that the College receives goods comparable to what was requested. We hope to outline the grounds for our protest, and the relief we request such that the issue may be decided easily.

Grounds - Irregularity of rescission: It is not clear what caused the rescission of our award. Our award was posted March 5th, it was rescinded March 5th, and re-awarded March 7th. If initially, as suggested in the price tabulation and email provided by Procurement Manager I Casey Bassett, we were the only responsive bidder, what caused the reconsideration? SC Code Section 11-35-1520(8) only allows for clarifying communication with bidders whose offers obviously conform to the solicitation in all material aspects. If not from communication with a bidder, then how?

Grounds - Insufficiency of proposed substitutes: Vision Fitness products are warrantied, and intended, for home and light commercial use. Most light commercial warranties cover either 5 hours or less of daily use, and or non-dues paying commercial facilities. Your students pay dues to use the equipment, and your facilities are open for 11+ hours a day. The warranty on the S70 and T600 machines would be void on their first day in use, a material difference from the Precor equipment specified. The Charleston Fitness Equipment website specifically states that the warranty on these goods is Light Commercial, with restrictions that may apply. Pete Rogers, the Territory Sales Manager working on this bid, has been in the education market for 8 years, and in that time, he does not recall seeing a Vision Fitness product in a collegiate recreational facility. This is telling.

Form of Relief Requested - The rescission of our award was unclearly made, and the substitute award materially fails to meet the specifications. We request that the College award the bid to the only responsive bidder, as it had originally.

If you have any questions regarding our bid or our protest, please contact Margot S. McClure, at mstmclure@advantagefitness.com.

A handwritten signature in black ink that reads "John Pfuntner".

John Pfuntner
Vice President

From: Zack J. Curtis
To: Protest-MMO
Cc: Peter A. Rogers; Lila Kochergin; Bassett, Casey; Violet C. Goncarov
Subject: [External] Re: Notice of Protest - Fitness Center Cardio Equipment - Event Number 2024-JCB-000000203-IFB
Date: Thursday, March 14, 2024 9:28:03 AM
Attachments: image003.png
image004.png
image005.png
Outlook-Advantaae .png

Chief Procurement Officer, Materials Management Office,

Our protest notice was sent to Casey Bessett and not to you, for which I apologize. Please consider this official notice for our protest of College of Charleston, Event Number 2024-JCB-000000203-IFB for the rescission and re-award of the same.

Best,



Zachary Curtis
Contract & Compliance Coordinator
p: 607-257-2107 x 37 | f: 607-257-2221
www.advantagefitness.com

From: Lila Kochergin <lkochergin@advantagefitness.com>
Sent: Wednesday, March 13, 2024 4:24 PM
To: Bassett, Casey <bassettjc@cofc.edu>
Cc: Peter A. Rogers <parogers@advantagefitness.com>; Zack J. Curtis <zjcurtis@advantagefitness.com>
Subject: Notice of Protest - Fitness Center Cardio Equipment - Event Number 2024-JCB-000000203-IFB

Good Afternoon, Casey,

As a bidder of the College of Charleston, Event Number 2024-JCB-000000203-IFB, we are notifying you of our intent to protest the intended award of the solicitation. This notice is sent to fulfill our obligation under Section 11-35-4210 of the South Carolina Code, so that we may submit a protest under Section 11-35-4210(2) of the same.

Please also note, based on the screenshot provided, the Jaegger portal currently indicates that Advantage Sport & Fitness is listed as the awarded company for the College of Charleston project. If this award was rescinded from Advantage Sport & Fitness, there was no updated information provided on this matter.

We also request access to the bid tabulation for further clarity.

JAGGAER revised its [Service Privacy Policy](#) effective May 25, 2018. By closing this banner, you acknowledge that when you use our Solution, we process your personal information as described in our Service Privacy Policy.

Back to Edit Search Start New Search

Showing 1 - 1 of 1 Results All Dates

Results Per Page: 20 Sort by: Release Date Ascending Page 1 of 1

Customer Name	Event Number	Status	Event Title	Dates	Supplier	Action
College of Charleston Supplier Portal	2024-JCB-000000203-IFB	Awarded	Fitness Center Cardio Equipment	Open: 2/8/2024 1:00:00 PM EDT Close: 2/28/2024 9:00:00 AM EDT Sealed Bid Open: 2/28/2024 9:00:00 AM EDT	Advantage Sport & Fitness, Inc. DBA Carolina Sport & Fitness	View Submitted Response

Filtered by: Date Type: Release Date Date Range: All Dates

Refine Search Results

Date Range: All Dates

Supplier: Advantage Sport & Fitness, Inc. DBA Carolina Sport & Fitness (1)

Best,
Lila Kochergin



Lila Kochergin
Director of Sales Operations
310.903.2997
www.advantagefitness.com

From: Lila Kochergin
Sent: Wednesday, March 13, 2024 7:24 AM
To: Bassett, Casey <bassettjc@cofc.edu>
Cc: Peter A. Rogers <parogers@advantagefitness.com>
Subject: RE: Award - Fitness Center Cardio Equipment - Event Number 2024-JCB-000000203-IFB

Hi Casey,

Thank you for your email.

For clarity, we were awarded but the offer was rescinded? We never received the initial award letter or rescind letter.

Who was the bid awarded to in the end and can you please provide a final bid tabulation?

Best,
Lila



Lila Kochergin
Director of Sales Operations
310.903.2997
www.advantagefitness.com

From: Bassett, Casey <bassettjc@cofc.edu>
Sent: Wednesday, March 13, 2024 6:22 AM
To: Lila Kochergin <lkochergin@advantagefitness.com>
Cc: Peter A. Rogers <parogers@advantagefitness.com>
Subject: Re: Award - Fitness Center Cardio Equipment - Event Number 2024-JCB-00000203-IFB

Hi Lila,

On March 6th we issued the attached Rescind the award letter.

Unfortunately, when we reviewed the bids compared to the specs one of the low bidders was misevaluated. The error was caught and corrected. As a result, they became the lowest bidder.

On March 7th the corrected Statement of Award was issued to the low bid.

Thanks,

Casey Bassett, NIGP-CPP, CPSM, CPPB
Procurement Manager I
Office of Procurement and Supply
176 Lockwood Dr.
Charleston SC 29424
p: (843)953-5508
f: (843)953-5443
e: bassettjc@cofc.edu



From: Lila Kochergin <lkochergin@advantagefitness.com>
Sent: Tuesday, March 12, 2024 12:15 PM
To: Bassett, Casey <bassettjc@cofc.edu>
Cc: Peter A. Rogers <parogers@advantagefitness.com>
Subject: Award - Fitness Center Cardio Equipment - Event Number 2024-JCB-00000203-IFB

You don't often get email from lkochergin@advantagefitness.com. [Learn why this is important](#)
EXTERNAL EMAIL: Verify sender; use caution with attachments/links.

Good Afternoon Casey,

I understand that the College of Charleston has requested a W-9 form from Pete Rogers, and it appears we have been formally granted the award. Could you provide an estimated timeline for when the Purchase Order might be issued?

We are eager to commence our collaboration with you on this project!

JAGGAER revised its [Service Privacy Policy](#) effective May 25, 2018. By closing this banner, you acknowledge that when you use our Solution, we process your personal information as described in our Service Privacy Policy.

Back to Edit Search | Start New Search

Showing 1 - 1 of 1 Results All Dates

Customer Name	Event Number	Status	Event Title	Dates	Supplier	Action
College of Charleston Supplier Portal	2024-JCB-00000203-IFB	Awarded	Fitness Center Cardio Equipment	Open: 2/8/2024 1:00:00 PM EDT Close: 2/28/2024 9:00:00 AM EDT Sealed Bid Open: 2/28/2024 9:00:00 AM EDT	Advantage Sport & Fitness, Inc. DBA Carolina Sport & Fitness	View Submitted Response

Search Details | Search Terms | Filtered by | Refine Search Results | Date Range | Supplier

Best,
Lila



Lila Kochergin
Director of Sales Operations
310.903.2997
www.advantagefitness.com

**FITNESS CENTER CARDIO EQUIPMENT
2024-JCB-000000203-IFB**

Solicitation Table of Contents:

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

I. Scope of Solicitation / Introduction

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

CHECKLIST (C.02.15): Avoid common bidding mistakes by reviewing this checklist prior to submitting your bid / proposal:

1. Offerors should register with the College of Charleston eBid Sourcing System well in advance of the applicable solicitation’s submittal deadline. The College requires 1 – 2 business days to review and activate your registration.
2. If you are unfamiliar with our eBid Sourcing System, do not wait until the last day to submit your response. Give yourself time to comfortably learn and navigate the system.
3. Thoroughly review all information under each tab and read each attached document.
4. Check applicable dates/times for pre-bid conferences, site visits and deadlines for submittal of questions as listed in the “Project Details” and/or the “Public Notices” sections. If you have concerns and/or questions about the solicitation, inquire in writing before the deadline for questions. Please refer to “Submission of Questions” and “Pre-Bid / Proposal Conferences” sections of this document.
5. Answer all questions in the “Information for Offerors to Submit” section VI and acknowledge all addenda. If an optional question does not apply to your Offer, enter “N/A” instead of leaving blank. If you claim any preferences, be sure to claim those same preferences under each applicable item listed in the “Bid Table”.
6. Enter your Offer / prices in the ‘Bid Table’ in the “Requested Information” section. Be sure to bid as specified according to quantities and units of measure requested.

7. Reread your entire bid / proposal to ensure it does not take exception to any of the College's and/or State's mandatory requirements.
8. Properly mark all protected, confidential or trade secret information in accordance with the "Submitting Confidential Information" section of this document. *Do not mark your entire bid / proposal as Confidential, Trade Secret or Protected! Do not include any notation stating that your entire response is not to be released!*
9. Do not include any of your standard contract forms. Unless expressly required, do not include any additional boilerplate contract clauses.
10. Check to ensure your bid / proposal includes everything requested. Consult the "Information for Offerors to Submit" in this document as well as any separate specifications documents. If not submitting electronically, ensure you submit the number of copies requested.
11. Ensure your Offer is signed by a person who is authorized to contractually bind your business. After entering bid amount(s) in the "Bid Table" and uploading any required documents, you must digitally "sign" your Offer and submit.
12. If you are awarded, be prepared to furnish requested documents such as W-9 form, insurance certificates, etc. within 2 business days after award is posted.

This checklist is included only as a reminder to help Offerors avoid common mistakes. Responsiveness will be evaluated against the solicitation, *not* against this checklist. You do not need to return this checklist with your response.

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

Addendum – A document issued to supplement the original solicitation document. Also referred to as "Amendment".

Authority – Authority means the State Fiscal Accountability Authority or its successor in interest.

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

Change Order – 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)]

College – College of Charleston, its officers, officials, employees, and volunteers. Also referred to as "Agency", "Agent", "Ordering Entity" "State Agency", "State Agent" and "Using Governmental Unit".

Contract – A legally binding agreement between parties, enforceable by law. See clause entitled "Contract Documents & Order of Precedence."

Contract Modification – 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.

Contractor – The Offeror receiving an award as a result of this solicitation.

Offer – The bid or proposal submitted in response this solicitation. The terms "Bid" and "Proposal" are used interchangeably with "Offer."

Offeror – The single legal entity submitting the offer. The term "Bidder" is used interchangeably with the terms "Offeror" and "Vendor." See bidding provisions entitled "Signing Your Offer" and "Bid/Proposal as Offer to Contract."

Procurement Officer – The person, or his/her successor, representing the College of Charleston in this solicitation; identified as such in the solicitation, on an addendum and/or award notice.

Solicitation – An invitation or request used to obtain bids, proposals, or quotes for the purpose of entering into a contract. The solicitation consists of this document, specifications, attachments, and any amendments.

Specifications – A precise description of the physical or functional characteristics of the supplies, equipment and/or services requested in this solicitation. Specifications for this solicitation are published in a separate document under the “Buyer Attachments” section.

State – The State of South Carolina

Subcontractor – Any person you contract with to perform and/or provide any part of the work.

Work – All labor, materials, equipment, services and/or property of any type to be provided by the Contractor to fulfill the Contractor’s obligations under the Contract.

Us and We – The College of Charleston

You and Your – Offeror and/or Contractor [02-2A003-2]

eBID REGISTRATION (C.08.14): Vendors are not required to register to view bid, quote or proposal opportunities, but they **must be registered in order to enter a quote or bid**. At <http://ebid.cofc.edu>, you may register as a new user. Interested parties must do a one-time registration as a vendor, but the submitted information is secure and not shared with third parties. Registered vendors may register for as many or as little categories as desired to be informed of any future bid, quote, or proposal opportunities.

II. Instructions to Offerors

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

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

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

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

BID / PROPOSAL AS OFFER TO CONTRACT (C.11.12): By submitting your Bid or Proposal, you are offering to enter into a contract with the College of Charleston. Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to,

and the contract will be formed with, the entity identified as the Offeror on the Supplier Response. An Offer may be submitted by only one legal entity. "Joint bids" are not allowed. [02-2A015-1]

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

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (C.11.12): Giving false, misleading, or incomplete information on this certification may render you subject to prosecution under Section 16-9-10 of the SC 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:
 - a. Those prices;
 - b. The intention to submit an offer; or
 - c. 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 – A.3 of this certification;
 2. 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 – A.3 of this certification [As used in this subdivision B.1, the term "principals" means the person(s) in the Offeror's organization responsible for determining the prices offered in this bid or proposal];
 3. As an authorized agent, does certify that the principals referenced in subdivision B.1 of this certification have not participated, and will not participate, in any action contrary to paragraphs A.1 – A.3 of this certification; and
 4. As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs A.1 – A.3 of this certification.
- C. If the Offeror deletes or modifies paragraph A.2 of this certification, the Offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1]

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

- A.
1. By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-
 - a. Offeror and/or any of its Principals:
 1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

2. Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
 3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph A.1.a.(2) of this provision.
- b. Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (federal, state, or local) entity.
2. "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).
- B. Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- C. If Offeror is unable to certify the representations stated in paragraph A.1, Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.
- D. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render, in good faith, the certification required by paragraph A of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- E. The certification in paragraph A of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the College, the Procurement Officer may terminate the contract resulting from this solicitation for default. [02-2A035-1]

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

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

COLLEGE OFFICE CLOSINGS (C.11.12): If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the College of Charleston by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which

normal operating processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If the College of Charleston is closed at the time of a pre-bid or pre-proposal conference, an Amendment will be issued to reschedule. Helpful information may be found at [College of Charleston Emergency Information](#).

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

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

DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (C.02.15): You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the College of Charleston may withhold an award. Before withholding the award on these grounds, an Offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your Offer identifies any services that relate to either this solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either. [02-2A047-2]

DRUG FREE WORKPLACE CERTIFICATION (S.01.06): By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the SC Code of Laws, as amended. [02-2A065-1]

ETHICS CERTIFICATE (C.02.15): By submitting an offer, the Offeror certifies that the Offeror has and will comply with, and has not, and will not, induce a person to violate the [SC Ethics Act](#), Title 8, Chapter 13 of the SC Code of Laws, as amended. The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The College of Charleston may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If the Contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, Contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the Procurement Officer at the same time the law requires the statement to be filed. [02-2A075-2]

ETHICS – PROHIBITED COMMUNICATIONS AND DONATIONS (C.02.15): Violation of these restrictions may result in disqualification of your Offer, suspension, or debarment, and may constitute a violation of law.

- A. During the period between the publication of the Solicitation and final award, you must not communicate, directly or indirectly, with the College of Charleston or its employees, agents or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by the Procurement Officer. All communications must be solely with the Procurement Officer.
- B. You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. You represent that your Offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the College of Charleston during the period beginning eighteen months prior to the Opening Date. [R. 19- 445.2165] [02-2A087-1]

OPEN TRADE REPRESENTATION (S.06.15): By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11- 35-5300. [02-2A083-1]

OPEN TRADE (S.06.15): 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]

PREFERENCES – A NOTICE TO VENDORS (C.06.13): On June 16, 2009, the South Carolina General Assembly rewrote the SC Preferences Law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws.

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

PREFERENCES – SC / US END-PRODUCT (C.11.12): Section 11-35-1524 provides a preference to vendors offering South Carolina end-products or US end-products, if those products are made, manufactured, or grown in SC or the US, respectively. An end-product is the tangible project identified for acquisition in this solicitation, including all component parts in final form and ready for the use intended. The terms "made," "manufactured," and "grown" are

defined by Section 11-35-1524(A). By signing your offer and checking the appropriate space(s) provided and identified on the bid schedule, you certify that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law. Post award substitutions are prohibited. See "Substitutions Prohibited - End Product Preferences (Sep 2009)" provision. [02-2B112-1]

PREFERENCES – SC RESIDENT VENDOR PREFERENCE (S.02.15): To qualify for the RVP, you must maintain an office in the State of SC. An office is a non-mobile place for the regular transaction of business or performance of a particular service which has been operated as such by the Offeror for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty-five hours a week each. In addition, you must either:

- A. Maintain at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities for which the award will be made, and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars [\$50,000] or the annual amount of the contract; or
- B. Be a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product being sold is either made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code). [02-2B114-1]

PROTESTS (S.05.19): If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest a solicitation, you must submit a protest within fifteen days of the date the applicable solicitation document is issued. To protest an award, you must (i) submit notice of your intent to protest within seven (7) business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided. [Section 11-35-4210] [022A085-1]

PROTESTS – CPO - MMO ADDRESS (S.06.06): Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and
submitted in writing

- A. by email to protest-mmo@mmo.state.sc.us
- B. by facsimile at 803-737-0639, or
- C. by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B122-1]

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

QUESTIONS – DUTY TO INQUIRE (C.02.15): Offeror, by submitting an Offer, represents that he/she has read and understands the Solicitation and that his/her Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities,

discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require better quality or greater quantity of work and/or materials, unless otherwise directed by addendum. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the College's attention. See clause entitled "Questions from Offerors." [02-2A070-2]

QUESTIONS FROM OFFERORS (C.02.15):

- A. Any prospective Offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated under the "Activities" tab of this solicitation. Label any communication regarding your questions with the name of the Procurement Officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)]. Any information given by a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an Amendment to the solicitation if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. See clause entitled "Duty to Inquire." We will not identify you in our answer to your question.
- B. The College of Charleston seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer as soon as possible regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140] [02-2A095-2]

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

RESPONSIVENESS / IMPROPER OFFERS (C.06.15):

- A. **Bid as Specified:** Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.
- B. **Multiple Offers:** Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, if you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.
- C. **Responsiveness:** Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as non-responsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the College of Charleston cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19- 445.2070 and Section 11-35-1520(13)]
- D. **Price Reasonableness:** Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19- 445.2070].
- E. **Unbalanced Bidding:** The College of Charleston may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is

a reasonable doubt that the bid will result in the lowest overall cost to the College even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount.

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. 19-445.2077(D). [022A105-2]

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

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

SIGNING YOUR OFFER (C.11.12): For electronic submittals, every Offer must be "signed" electronically through this eProcure site by an individual with actual authority to bind the Offeror. Your electronic submittal of an Offer serves as your signature. For paper submittals, every Offer must be signed by an individual with actual authority to bind the Offeror. For both methods of submittal -

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

SUBMITTING CONFIDENTIAL INFORMATION AND FOIA (C.02.15): An overview is available at [Submitting Confidential Information and FOIA](#). For every document Offeror

submits in response to or with regard to this solicitation, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either

- A. A trade secret as defined in Section 30-4-40(a)(1), or
- B. Privileged and confidential, as that phrase is used in Section 11-35-410.

For every document Offeror submits in response to or with regard to this solicitation, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the SC Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected! If your response or any part thereof, is improperly marked as confidential or trade secret or protected, the College of Charleston may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror

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

In determining whether to release documents, the College will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential", "Trade Secret" or "Protected". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, the College of Charleston, its 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, the College of Charleston or any of the State's agencies, that Offeror marked as "Confidential", "Trade Secret" or "Protected". (All references to SC Code of Laws.) [02-2A125-2

SUBMITTING A PAPER OFFER OR MODIFICATION (C.03.15): Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification online via <http://ebid.cofc.edu>. Paper offers are discouraged. If you must submit a paper offer or modification, the following instructions apply -

- A. All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule).
- B.
 1. All copies of the offer or modification, and any other documents required to be submitted with the offer shall be enclosed in a sealed, opaque envelope or package.
 2. Submit your offer or modification to the address noted in solicitation.
 3. The envelope or package must show the time and date specified for opening, the solicitation number, and the name and address of the bidder. If the offer or modification

is sent by mail or special delivery service (UPS, Federal Express, etc.), the outermost envelope or wrapper must be labeled "OFFER ENCLOSED" on the face thereof.

- C. If you are responding to more than one solicitation, submit each offer in a separate envelope or package.
- D. Submit the number of copies indication in solicitation.
- E. Facsimile or email offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. [02-2A130-2]

TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES

(C.02.15): Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to 4% of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of \$50,000.00 annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC- 2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 7342498.

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

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

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

WITHDRAWAL OR CORRECTION OF OFFER (C.11.12): Offers may be withdrawn electronically by logging into eBid system, accessing submitted bid, then clicking on 'Withdraw Bid' link or by written notice received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085. To withdraw your offer after the minimum period specified, you must notify the Procurement Officer in writing. [02-2A150-1]

III. Information for Offerors to Submit

INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (C.02.15): Unless submitted by electronic means, Offeror shall submit a cover letter signed by a person with authority to commit Offeror to a binding contract. Offeror should submit all other information and documents requested in this solicitation and any appropriate attachments addressed. By submitting a

bid/proposal, the Offeror agrees to all terms, specifications, and condition of solicitation. [04-4010-2]

IV. Qualifications

QUALIFICATIONS OF OFFEROR (MAR 2015):

(1) To be eligible for the award, you must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. (2) You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection. (3) **Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability**; however, we may elect to consider any security, e.g., letter of credit, performance bond, parent-company corporate guaranty, that you offer to provide. Instructions and forms to help assure acceptability are posted on procurement.sc.gov, link to "Standard Clauses & Provisions." [05-5005-2]

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

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

SUBCONTRACTOR – IDENTIFICATION (C.02.15): If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either exceeds 10% of your price or otherwise involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the portion of work which they are to perform. Identify potential subcontractors by providing the business' name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the College of Charleston may evaluate your proposed subcontractors. [05-5030-2]

VENDOR REGISTRATION MANDATORY (C.02.15): You must have a State Vendor Number to be eligible to submit an Offer. To obtain a State Vendor Number, [register here](#). (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a State Vendor Number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm>). [02-2A145-1]

V. Award Criteria

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

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

COMPETITION FROM PUBLIC ENTITIES (S.01.06): If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by nongovernmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]

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

VI. Terms and Conditions

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

- A. Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible Procurement Officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, Contractor may assign monies receivable under the contract provided that the College shall have no obligation to make payment to an assignee until thirty days after Contractor (not the assignee) has provided the responsible Procurement Officer with -
 - 1. proof of the assignment;
 - 2. identity (by contract number) of the specific State and/or College contract to which the assignment applies; and
 - 3. name of the assignee and the exact address or account information to which assigned payments should be made.
- B. If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer prompt written notice of such change.
- C. Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restrict transfers by operation of law. [07-7A004-2]

BANKRUPTCY – GENERAL (C.02.15):

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

CHANGES (C.02.15):

- A. **Contract Modification:** By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following -
1. Drawings, designs, or specifications, if the goods to be furnished are to be specially manufactured for the College in accordance therewith;
 2. Method of shipment or packing;
 3. Place of delivery;
 4. Description of services to be performed;
 5. Time of performance (i.e., hours of the day, days of the week, etc.); or
 6. Place of performance of the services.
- Subparagraphs A.1 – A.3 apply only if goods are furnished under this contract.
Subparagraphs A.4 – A.6 apply only if services are performed under this contract.
- B. **Adjustments of Price or Time for Performance:** If any such change increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the contract as changed, provided that the College of Charleston promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- C. **Time Period for Claim:** Within 30 days after receipt of a written contract modification under Paragraph A of this clause, unless such period is extended by the Procurement Officer in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the College of Charleston is prejudiced by the delay in notification.
- D. **Claim Barred After Final Payment:** No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract. [07-7B025-1]

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

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

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

- A. Any contract resulting from this solicitation shall consist of the following documents. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed below.
1. A Record of Negotiations, if any, executed by you and the Procurement Officer;
 2. The solicitation, as amended;
 3. Your offer;
 4. Any statement reflecting the College of Charleston's final acceptance (a/k/a "award"); and
 5. Purchase orders.

- B. The terms and conditions of documents A.1 – A.6 shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation -
1. A purchase order or other instrument submitted by the College of Charleston;
 2. Any invoice or other document submitted by Contractor; or
 3. Any privacy policy, terms of use, or end user agreement
- Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect.
- C. No contract, license, or other agreement containing contractual terms and conditions will be signed by any employees, agents or officials of the College of Charleston other than the Procurement Officer. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-2]

CONTRACT LIMITATIONS (S.01.06): No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject the contractor to suspension or debarment. [07-7B045-1]

CONTRACTOR LIABILITY INSURANCE – GENERAL (C.03.15):

- A. Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible.
- B. Coverage must include claims for -
1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than **\$1,000,000.00 per occurrence**. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.
 2. **Auto Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000.00 per accident** for bodily injury and property damage.
 3. **Worker's Compensation:** As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000.00 per accident** for bodily injury or disease.
- C. The College of Charleston, every applicable Using Governmental Unit, and the officers, officials, employees, and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
- D. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, the College of Charleston, every applicable Using Governmental Unit, and the officers, officials, employees, and volunteers of any of them. Any insurance or self-insurance maintained by the State, the College of Charleston, every

- applicable Using Governmental Unit, or the officers, officials, employees, and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.
- E. Prior to commencement of the work, the Contractor shall furnish the College of Charleston with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the College of Charleston before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The College of Charleston reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.
 - F. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the College of Charleston immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.
 - G. Contractor hereby grants to the State, the College of Charleston, and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State, the College of Charleston, or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the State, the College of Charleston or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.
 - H. Any deductibles or self-insured retentions must be declared to and approved by the College of Charleston. The College of Charleston may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
 - I. For term contracts, Contractor shall remit an updated Certificate of Insurance annually before each contract anniversary date.
 - J. The College of Charleston reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. [07-7B056-2]

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

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

- A. Contractors are encouraged to implement their own environmental health and safety programs in anticipation of future mandatory requirements.
- B. Prior to starting work, Contractor shall contact the College's Contract Administrator to ensure they have received pertinent information for the project, including, but not limited to floorplans, permits and utility information.
- C. Prior to starting work, the Contractor shall review work site and identify hazards that may occur while performing the job.
- D. Contractor shall ensure proper environmental health and safety precautions are followed in accordance with the Occupational Safety and Health Administration's (OSHA) and the Environmental Protection Agency's (EPA) Code of Federal Regulations (CFR). Additionally,

it is the Contractor's responsibility to ensure all applicable State, County and City environmental health and safety requirements are followed.

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

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

CONTRACTOR USE OF STATE AND/OR COLLEGE PROPERTY (C.02.15): Upon termination of the contract for any reason, the College of Charleston shall have the right, upon demand, to obtain access to, and possession of, all College of Charleston properties, including, but not limited to, current copies of all College of Charleston application programs and necessary documentation, all data, files, intermediate materials and supplies held by the Contractor. Contractors shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the College of Charleston without the College of Charleston's written consent, except to the extent necessary to carry out the work. [07-7B067-1]

CONTRACTOR SECURITY ACCESS TO BUILDINGS (C.10.17):

- A. All contractors are required to sign-in at Central Energy at 78 Coming St, Charleston SC when performing services in any College building.
- B. All contractors providing services in College of Charleston's (CofC) security-controlled buildings must obtain an access card. Contractors will be issued an access card only when essential to the recurring performance of their contractual obligations and then only to those areas of College real property on such days and at such times as are needed for the provision of their services. Prior to the issuance of a Contractor Access Card, the contractor must obtain a criminal history background check for all of its personnel performing services on CofC campus. Only personnel with successful background checks in accordance with provisions established by the College prior to the commencement of services will be eligible to obtain an access card. Contractor Access Cards will be issued for a period of one (1) year from the date of issuance, after which a new authorization will be required. The Contractor Security Access Form can be found on the College's Human Resources webpage under 'Forms'.
<http://hr.cofc.edu/forms/assets/Contractor%20Access%20Form%20-%20Fillable.pdf>
- C. Access cards are non-transferable and intended for the use of the authorized individual only. Contractors must immediately notify the College at RH-VendorAccess@cofc.edu, if any of its employees granted an access card are arrested of a crime, are dismissed from employment, resign/retire or no longer require access to College real property.

- D. Contractors who perform duties of a non-recurring nature must be escorted within residence halls by the College department supervising the work and will not be issued access cards.

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

DEFAULT – SHORT FORM (C.02.15): The College of Charleston may terminate this contract, or any part hereof, for cause on the event of any default by the Contractor, or if the Contractor fails to comply with any material contract terms and conditions, or fails to provide the College of Charleston, upon request, with adequate assurances of future performance. In the event of termination for cause, the College of Charleston shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the College of Charleston for all rights and remedies provided by law. If it is determined that the College of Charleston improperly terminated this contract for default, such termination shall be deemed a termination for convenience. [07-7B080-2]

DISCOUNT FOR PROMPT PAYMENT (C.11.12):

- A. Discounts for prompt payment will not be considered in the evaluation of offers. However, any discount offered will form a part of the award and will be taken if payment is made within the discount period indicated in the offer by the Offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, Offerors awarded contracts may include discounts for prompt payment on individual invoices.
- B. In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date College of Charleston Accounts Payable receives a proper invoice, and stamps with the date and time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when College of Charleston offices are closed, payment may be made the following business day. [07-7A020-1]

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

DISPUTES (C.02.15):

- A. Choice-of-Forum: All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the SC Code of Laws, or in the absence of jurisdiction, only in

the Court of Common Pleas for, or a federal court located in, Charleston County, State of SC. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

- B. Choice of Law: The Agreement, related dispute, claim, or controversy, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced, and governed by and under the laws of the State of SC, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]
- C. Service of Process: Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [077A025-1]

EFT INFORMATION (FEBRUARY 2021): The Contractor must furnish the State Treasurer's Office information necessary for making a payment by electronic funds transfer (EFT). You may do this by completing STO Form 4 and filing it with the STO. 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. [07-7A027-1]

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

FALSE CLAIMS (S.01.06): According to the S.C. Code of Laws § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is "guilty" of a crime. [07-7A035-1]

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

ILLEGAL IMMIGRATION (C.02.15): Contractor certifies with signing of Offer, compliance with applicable requirements of Title 8, Chapter 14 of SC Code of Laws, [SC Illegal Immigration Reform Act](#) and agrees to provide upon request to the College any documentation required to establish either -

- A. That Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or

- B. That you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractor's language requiring your subcontractors to:
1. Comply with the applicable requirements of Title 8, Chapter 14, and
 2. Include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

INDEMNIFICATION – INTELLECTUAL PROPERTY (C.02.15):

- A. Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the College of Charleston, the State and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. The College of Charleston shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. The College shall allow Contractor to settle such claim so long as
1. All settlement payments are made by Contractor;
 2. The settlement imposes no non-monetary obligation upon the College of Charleston.
- The College shall reasonably cooperate with Contractor's defense of such claim.
- B. In the event an injunction or order shall be obtained against College's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either:
1. Procure for the College the right to continue to use, or have used, the acquired item, or
 2. Replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by the College.

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

- C. Contractors obligations under this paragraph do not apply to a claim to the extent
1. That the claim is caused by Contractor's compliance with specifications furnished by the College unless Contractor knew its compliance with the College's specifications would infringe an IP right, or
 2. That the claim is caused by Contractor's compliance with specifications furnished by the College of Charleston if the College knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor.
- D. As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work.
- E. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. [07-7B103-1]

INDEMNIFICATION – THIRD PARTY CLAIMS – GENERAL (C.02.15): Any term or condition is void to the extent it requires the State and/or College of Charleston to indemnify, defend, and/or pay attorney’s fees to anyone for any reason. As used in this clause, “Indemnitees” means the College of Charleston, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents, and employees. Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor assumes full liability for all damages, death, or injury of any kind to all person(s), whether employees or otherwise, and all property damages arising out of or in any way connected with this contract and shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by the concurrence, actual, implied, vicarious, active, passive, direct, or indirect, of joint conduct, negligence or omission of an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee. Notwithstanding the foregoing, this indemnity shall not extend to losses, damages or expenses arising out of the sole negligence of the Indemnitees. Contractor shall be given timely written notice of any suit or claim. Contractor’s obligations hereunder are in no way limited by any protection afforded under workers’ compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancellation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. [07-7A045-2] [07-7B100-2]

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

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

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

NOTICE (C.11.12):

- A. After the award, any notices shall be in writing and shall be deemed duly given -
 - 1. Upon actual delivery, if delivery is by hand;
 - 2. Upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is electronic; or
 - 3. Upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used.
- B. Notice to contractor shall be to the address identified by the Offeror in Supplier’s response submission. Notice to the College of Charleston shall be to the Procurement Officer's

address identified in the "Project Details" section. Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

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

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

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

PAYMENT & INTEREST (FEBRUARY 2021):

- A. 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]

PRIVACY (C.04.13): Contractor agrees that any information acquired by Contractor about individuals or businesses that is available because of this contract shall not be retained beyond the end of the term of the contract without the express written consent of the College of Charleston. Such information shall never be sold, traded, or released to another entity, including affiliates, and shall not be used for any purpose other than performing this contract. Upon request, Contractor shall provide written confirmation of compliance with this clause.

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

PURCHASE ORDERS (C.08.14): Contractor shall not perform any work prior to the receipt of a purchase order from the College of Charleston Office of Procurement. The College shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic or in writing in the event of an emergency. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

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

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

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

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

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

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

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

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

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

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

SUBSTITUTIONS PROHIBITED OF SUBCONTRACTORS – RESIDENT SUBCONTRACTOR PREFERENCE (C.11.12): If you receive an award because of the subcontractor preference, you may not substitute any business for the subcontractor upon which you relied to qualify for the preference, unless first approved in writing by the Procurement Officer. If you violate this provision, the College of Charleston may terminate your contract for cause, and you may be debarred. In addition, the Procurement Officer may require you to pay the College of Charleston an amount equal to twice the difference between the price paid by the College of Charleston and the price offered by the next lowest bidder, unless the substituted subcontractor qualifies for the preference. [11-35-1524(D)(5)(c)] [07-7B237-1]

SURVIVAL OF OBLIGATIONS (C.02.15): The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the Indemnification clauses, and any provisions regarding warranty or audit. [07-7A075-1]

TAXES (C.02.15): Any tax the Contractor may be required to collect or pay upon the sale, use or delivery of products shall be paid by the College of Charleston, and such sums shall be due and payable to Contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the College. It shall be solely the College's obligation, after payment to Contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to Contractor by the taxing authority. In the event that the Contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the College to Contractor, Contractor shall be liable to the College for any loss (such as assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the Contractor. [07-7A080-1]

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

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

WAIVER (C.11.12): The College of Charleston does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the

Contract. Only the Procurement Officer has actual authority to waive any of the College's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

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

VII. Scope of Supply / Specifications

OBJECTIVE:

The College of Charleston is seeking bids to purchase fitness cardio equipment for the College's Fitness Center. The winning vendor will be required to supply brand name or equivalent, deliver and install the equipment.

KEY DATES:

Activity	Date
Release of Solicitation Documents	February 8, 2024
Deadline to Submit Written Questions	February 19, 2024, at 9:00 AM
Response to Written Questions/Solicitation Amendments	February 21, 2024
Bids Due	February 28, 2024, at 9:00 AM
Anticipated Date of Award Notification	On or before March 6, 2024

EQUIPMENT LIST:

1. Ellipticals: Precor BP EFX635 P31 TB Elliptical with Crossramp or equivalent.
Qty: 2
2. Motorless Treadmills: Assault AirRunner Elite or equivalent.
Qty:2
3. Treadmills: Precor BP TRM731 P31 Tread/120V or equivalent.
Qnt: 6

NOTE TO BIDDERS:

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

SUBMIT WITH YOUR BID:

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

1. **Bidder's Contact Information:** List name(s), e-mail addresses and phone number(s) of the company representatives who can be contacted regarding your bid.
2. **Attributes Included with Every Solicitation:** Provide answers to the eleven (11) questions on this questionnaire.
3. **Proven Performance and Customer Service:**
 - a. Provide references from at least three (3) other customers for whom Offeror has provided substantially similar products and/or services. Include names, addresses, telephone numbers and e-mail addresses of administrators who can evaluate the general quality of your performance.

Exhibit C

Vendor	Ellipticals (2 ea)		Motorless Treadmills (2 ea)		Treadmills (6 ea)		Total
	Price	Mfr	Price	Mfr	Price	Mfr	
Advantage Sport & Fitness, Inc. DBA Carolina Sport & Fitness	\$9,754.00	Precor	\$7,998.00	Assault AirRunner Elite	\$37,320.00	Precor	\$55,072.00
Centurion Partners Health & Fitness, LLC	\$7,614.00	Intenza	\$6,374.00	Intenza	\$24,762.00	Intenza	\$38,750.00
J Puckett Enterprises LLC DBA Rep & Run	\$9,980.00	SportsArt E874	\$6,980.00	TKO 8CTM AirRaid Runner	\$29,940.00	SportsArt T673L	\$46,900.00
	\$4,490.00	BodyCraft	\$6,980.00	TKO 8CTM AirRaid Runner	\$26,940.00	BodyCraft	\$42,900.00
LIVunltd (Formerly Heartline Fitness)	\$7,939.34	StarTrac	\$7,042.44	StarTrac	\$29,849.22	Assaulrunner Elite	\$44,831.00
Power Fitness INC	\$7,900.00	Octane XT3700 with Standard Console	\$6,998.00	Cascade Ultra Runner	\$33,594.00	True 650 Treadmill With Emerge	\$48,492.00
WELLNESS SOLUTIONS INC	\$7,459.46	TRUE Commercial Elliptical C400	\$6,754.06	ASSAULT AIRRUNNER PRO	\$35,108.16	TRUE Commercial Treadmill TC650	\$49,321.68
Wilkins Fitness LLC	\$7,850.00	Vision Fitness S70 Ascent Trainer	\$7,794.00	Assault AirRunner Elite	\$20,766.00	Vision Fitness T600	\$36,410.00
	\$7,850.00	Vision Fitness S70 Ascent Trainer	\$7,794.00	Assault AirRunner Elite	\$36,468.00	TRUE	\$52,112.00

Exhibit D

From: [Williams, Wendy](#)
To: [White, John](#)
Subject: [External] College of Charleston - Protest by Advantage Sport & Fitness
Date: Friday, March 15, 2024 12:57:57 PM
Attachments: [image.png](#)
[image.png](#)
[image002.png](#)
[True+Warranty.pdf](#)
[True+650+Treadmill+Sell+Sheet.pdf](#)
[College+of+Charleston+Intro+Letter \(1\).docx](#)
[Vision+S70+Incline+Suspension+Trainer+2019 \(1\).pdf](#)
[Vision+T600+Treadmill+2019 \(3\).pdf](#)
[Vision+Fitness+Commercial+Warranty+and+Service \(1\).pdf](#)
[College+of+Charleston+spec+comparison-+Vision+vs+Precor \(2\).docx](#)
[College+of+Charleston+2nd+Bid+Worksheet \(1\).xlsx](#)
[2024-JCB-00000203-IFB+Fitness+Center+Cardio+Equipment.pdf](#)
[Addendum+to+Fitness+Center+Cardio+Equipment.pdf](#)
[Addendum+2+to+Fitness+Center+Cardio+Equipment.pdf](#)
[Fitness Equipment - Revised.pdf](#)

John:

Brief synopsis of the facts regarding the cancellation of award:

- Initially reviewed all bids and determined that all except Advantage Sport & Fitness were non-responsive due to their proposed ellipticals were missing adjustable grade ramps.
- On March 5th we issued the Statement of Award to Advantage Sport & Fitness. In the same timeframe I issued the non-responsive letters.
- Wilkins Fitness (one of the non-responsive bidders) immediately responded that their ellipticals did have the adjustable grade ramps.
- Buyer contacted the end-user about this and we reviewed their specifications again and it was confirmed that Wilkins Fitness was correct. Wilkins Fitness used different terminology in their bid, incline vs. ramp and we mis-read it. As a result, Wilkins Fitness' bid did meet spec and was found to be responsive.
- On March 6th the Rescind Award was issued. The end-user continued to review their bid and confirmed once more that it was indeed responsive.
- On March 7th the corrected Statement of Award was issued to Wilkins Fitness who was the lowest responsive bid.

Attached are the bid documents Wilkins dba Charleston Fitness Equipment submitted along with a copy of the solicitation and addendums issued and a bid tabulation.

The two screenshots below show Wilkins' response to sourcing questions regarding acceptance of the terms and conditions in the solicitation and the bid table with pricing they submitted.

▼ 1: Bidder's Contact Information

.1

Provide name(s), e-mail addresses and phone number(s) of the company representatives who can be contacted regarding this bid. ★

Michele Wilkins michelewilkinscf@comcast.net 843-224-8532

▼ 2: Attributes Included With Every Solicitation

.1

I have read, understand, and accept all terms, conditions, information, specifications contained in this solicitation. (If your response is No, your submission may be disqualified) ★

Yes

.2

I have read, completed, signed, and attached the SC Non-Resident Taxpayer Registration Affidavit Form I-312, if applicable. ★

Yes

.3

I certify I am duly authorized to certify on behalf of my entity identified in this registration and, as of this date, I am NOT, nor is my entity, on the current Iran Divestment Act List. I further certify that I will notify the Procurement Officer immediately if, at any time, I am added, or my entity is added, to the Iran Divestment Act List. Information regarding this act may be found at www.procurement.sc.gov. ★

Yes

#	Item Name, Description, Etc	Qty	UOM	Requested Delivery	Target Price (USD)	Unit Price (USD)	Total Price (USD)
P1.1	Ellipticals View Details	2	Each	-		3,925.00	7,850.00
	Comment: Vision Fitness S70 Ascent Trainer Elliptical- see attached spec sheet and comparison to Precor						
P1.2	Motorless Treadmills View Details	2	Each	-		3,897.00	7,794.00
	Comment: Bid as Specified- Assault AirRunner Elite						
P1.3	Treadmills View Details	6	Each	-		3,461.00	20,766.00
	Comment: Vision Fitness T600 Treadmill- see attached spec sheet and comparison to Precor						
					Total Price (USD)	36,410.00	

And I reviewed 19.445.2085C. I apologize I overlooked having to get your permission first. It is #7 that would apply here; it was an administrative error on our part.

Thanks for your help and guidance,

Wendy

Wendy E Williams
CPO | College of Charleston

66 George Street
Charleston, SC 29424
843-953-5506
williams@cofc.edu





Procurement & Supply Services

Statement of Award

Posting Date: March 5, 2024

This is a statement of intent to award a contract and becomes the official statement of award effective, March 15, 2024, unless otherwise suspended or canceled. Vendors are cautioned not to begin work on the contract or incur any costs associated with the contract prior to the effective date of the contract. The State assumes no liability for the expenses incurred by vendors prior to the effective date of the contract.

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

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
Facsimile: 803-737-0639
E-mail: protest-mmo@mmo.sc.gov

Solicitation: 2024-JCB-000000203-IFB
Issue Date: February 8, 2024
Opening Date: February 28, 2024
Description: Fitness Center Cardio Equipment
Awarded to: Advantage Sport & Fitness, Inc. DBA Carolina Sport & Fitness
2255 N. Triphammer Rd
Ithaca, NY 14850

Evaluated Amount: \$55,072.00
Total Estimated Contract Value: \$55,072.00

Procurement Officer:

Casey Bassett

A handwritten signature in blue ink, appearing to read "Casey Bassett".



Procurement & Supply Services

RESCIND

Statement of Award

Posting Date: March 5, 2024

This is a statement of intent to award a contract and becomes the official statement of award effective, March 15, 2024, unless otherwise suspended or canceled. Vendors are cautioned not to begin work on the contract or incur any costs associated with the contract prior to the effective date of the contract. The State assumes no liability for the expenses incurred by vendors prior to the effective date of the contract.

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Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
Facsimile: 803-737-0639
E-mail: protest-mmo@mmo.sc.gov

Solicitation: 2024-JCB-000000203-IFB
Issue Date: February 8, 2024
Opening Date: February 28, 2024
Description: Fitness Center Cardio Equipment
Awarded to: Advantage Sport & Fitness, Inc. DBA Carolina Sport & Fitness
2255 N. Triphammer Rd
Ithaca, NY 14850

Evaluated Amount: \$55,072.00
Total Estimated Contract Value: \$55,072.00

Procurement Officer:

Casey Bassett

A handwritten signature in blue ink, appearing to read "Casey Bassett".



Procurement & Supply Services

Statement of Award

Posting Date: March 7, 2024

This is a statement of award a contract and becomes the official statement of award effective, March 19, 2024, unless otherwise suspended or canceled. Vendors are cautioned not to begin work on the contract or incur any costs associated with the contract prior to the effective date of the contract. The State assumes no liability for the expenses incurred by vendors prior to the effective date of the contract.

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

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
Facsimile: 803-737-0639
E-mail: protest-mmo@mmo.sc.gov

Solicitation: 2024-JCB-000000203-IFB
Issue Date: February 8, 2024
Opening Date: February 28, 2024
Description: Fitness Center Cardio Equipment
Awarded to: Wilkins Fitness dba Charleston Fitness Equipment
1795 North Highway 17 – Unit 4
Mount Pleasant, SC 29464

Evaluated Amount: \$36,410.00
Total Estimated Contract Value: \$36,410.00

Procurement Officer:

Casey Bassett

A handwritten signature in blue ink, appearing to read "Casey Bassett".

[Back to Event](#)

This event has been awarded to **Advantage Sport & Fitness, Inc. DBA Carolina Sport & Fitness.**
You may view the [scenario breakdown](#).

Fitness Center Cardio Equipment

2024-JCB-000000203-IFB

Supplier: [Wilkins Fitness LLC](#)
Bid Status: **Disqualified**
Type: **Invitation for Bid**
Event Status: **Awarded**

[Prerequisites](#)

[Supplier Attachments](#)

[Questions](#)

Items

Response from Wilkins Fitness LLC

[History](#) | [?](#)

Items

Product Line Items (3)

Service Line Items (0)

Go To

Group P1 (1 - 3 of 3 items)

#	Item Name, Description, Etc	Qty	UOM	Requested Delivery	Target Price (USD)	Unit Price (USD)	Total Price (USD)	Estimated Delivery
P1.1	Ellipticals View Details	2	Each	-		3,925.00	7,850.00	3/12/2024
Comment:		Vision Fitness S70 Ascent Trainer Elliptical- see attached spec sheet and comparison to Precor						
P1.2	Motorless Treadmills View Details	2	Each	-		3,897.00	7,794.00	3/12/2024
Comment:		Bid as Specified- Assault AirRunner Elite						
P1.3	Treadmills View Details	6	Each	-		3,461.00	20,766.00	3/12/2024
Comment:		Vision Fitness T600 Treadmill- see attached spec sheet and comparison to Precor						

Total Price (USD) 36,410.00

Total for Product Items **36,410.00** USD

Total for Service Items **0.00** USD

Grand Total for Bid **36,410.00** USD

[Previous](#)



To Whom it May Concern:

This is to clarify that Charleston Fitness Equipment is submitting two bids for the fitness equipment solicitation.

The first bid was entered in the portal and the total of that bid was \$36410.00

The second bid was submitted in "Supplier Attachments" and is document #6 in the lineup. The total of that bid was \$52112.00

I did include a number of other documents in the supplier attachments, including spec sheets, comparison of the product quoted to what was specified, warranty information, electrical requirements, etc.

Both of my bids meet or exceed the specifications.

Thanks

Michele Wilkins

Wilkins Fitness LLC dba Charleston Fitness Equipment

843-224-8532

COMPARISON OF PRODUCT SPECIFIED TO PRODUCT QUOTED

Vision Fitness T600/ Vision Fitness S70 vs. Precor

Charleston Fitness Equipment

Treadmill:

Vision Fitness T600 vs Precor TRM 731:

- Both have walking belt size of 22" x 60"
- Both have speed ranging from 0.5 mph to 12 mph
- Both have incline ranging from from 0 to 15%
- Both have 4 horsepower AC motor
- Both have a max user weight of 400 lbs.
- Both have contact plus wireless heart rate technology

While the specifications for the treadmills are very similar, the warranty for the Vision Fitness model is much better.

Vision Fitness warranty:

Lifetime frame, 5 years motor, 5 years parts, 5 years electronics console, 90 days wear items (includes headphone jack, HDMI port, batteries and straps), 2 years labor.

Precor warranty:

7 years frame, 5 years motor, 3 years parts, 3 years electronics console, 1 year labor.

Elliptical:

Vision Fitness S70 vs Precor EFX 635:

- Both have 20 levels of resistance
- Both offer incline changes. Precor incline goes from 10 to 35% while Vision goes from 15 to 37%.
- Both model's stride will adjust to coincide with the incline changes.
- Both have contact plus wireless heart rate technology

Vision Fitness's specifications are superior in many categories:

- Moving arms have resistance / incline toggles so you can change resistance and incline on the handlebars instead of having to reach up to the screen. Precor- have to change incline and resistance on console.
- Multi-position handlebars make it totally intuitive for users to get a workout tailored to their body and abilities. Precor- standard one position handlebars.
- Vision's Suspension design provides a smooth, low-impact exercise experience while minimizing noise and maintenance. Precor- rolling wheels gliding on metal tracks can lead to dust/ dirt settling into tracks, more maintenance needed, more noise.

- Vision's unit is more heavy duty. It weighs 352 lbs and supports a 400 lb max user weight. Precor unit weighs 315 lbs and supports a max user weight of 350 lbs.
- Vision Fitness warranty:
- Lifetime frame, 5 years motor, 5 years parts, 5 years electronics console, 90 days wear items (includes headphone jack, HDMI port, batteries and straps), 2 years labor.
- Precor warranty:
- 7 years frame, 5 years motor, 3 years parts, 3 years electronics console, 1 year labor.

Electrical Requirement for Treadmills:

It is **strongly** recommended that each treadmill is on it's own dedicated circuit (not shared with other treadmills, appliances, etc.)

Power Supply	NEMA 5-15 (100-120v)
Electrical Requirements	100-120v

Charleston Fitness Equipment Service:

- We are located in Mount Pleasant, so we can provide immediate response times for service requests. We are the only brick and mortar fitness store in the Charleston metro area.
- We service everything that we sell and can also provide service on other brands of equipment that you already have in your fitness center.
- We do NOT farm out our service. All service is conducted by our employees, who are certified technicians in the brands that we carry.
- We offer Preventative Maintenance packages which help to keep your equipment in good working order for years to come.



FOR SMOOTH, NATURAL WORKOUTS THAT FIT ANY BODY

In addition to the smooth, natural, low-impact exercise experience made possible by our near-silent suspension design, the S70 Ascent Trainer adds adjustable incline with variable stride length and multi-position handlebars. This unique combination lets users of all sizes hop on and get a workout that feels like it was made just for them.

ELLIPTICAL

Frame Type	Ascent Trainer®
Variable Stride Length	51-58 cm / 20"-23"
Step-on Height	22 cm / 8.5"
Power Incline	15%-37%
Resistance System	2-stage generator
Resistance Range	1-20
Pedal Type	Oversized with rubber inserts
Handlebar Type	Multi-position dual action, stationary with resistance / incline toggles and contact heart rate grips
Extras	Water bottle holder, accessory tray, reading rack
Assembled Dimensions	191 x 89 x 173 cm / 75" x 35" x 68"
Assembled Weight	160 kg / 352 lbs.
User Weight Capacity	182 kg / 400 lbs.
Electrical Requirements	Self-powered or optional 120v
Power Supply	Optional NEMA 5-15 (requirement may vary outside the USA)
Home Warranty	Lifetime frame and generator, 7 years parts, 2 years labor
Commercial Warranty	Lifetime frame, 5 years generator, 5 years parts, 2 years labor
* For Light Commercial Use. Some Limitations Apply	

CONSOLE

Display	10 x 14 white dot-matrix LED profile display, alphanumeric LEDs, CSAFE
Workout Feedback	Distance, Speed, HR, % Max HR, Watts, METs, RPM, Calories, Time, Resistance
Programs	Sprint 8®, Manual, Interval, Fat Burn, Random, Target HR, HR Weight Loss, HR Interval, HR Hill, Trail 2K, Trail 8K, Glute Burn, Summit Hike, Mountain Trek, Stair Climb, Fitness Test, Custom
Heart Rate	Contact grips, wireless receiver



WARRANTY & SERVICE

FITNESS EQUIPMENT



WARRANTY

We are dedicated to growing your business by offering intuitive and reliable commercial fitness equipment that delivers incredible value. Our products are backed by a comprehensive warranty that will cover all your products for the duration of the agreement, so you can rest easy knowing that you're making a smart investment in the future.

Standard warranty includes labor for the duration of each coverage as outlined in the charts below, up to a maximum of 2 years.

CARDIO

	HOME	COMMERCIAL
Frame *	Lifetime	7 years
Motor **	Lifetime	5 years
Generator	Lifetime	5 years
Parts / Console	7 years	5 years
Labor	2 years	2 years
Wear Items ***	90 days	90 days

* Frame is defined as the welded metal base of the unit and does not include removable parts or coatings. All coatings are covered for one year.

** Vision Fitness will provide a maximum of one replacement motor, and may require other components be replaced, possibly at user's cost, as a condition of supplying the replacement motor..

*** Wear items include: headphone jack, HDMI ports, USB ports, batteries, straps.

STRENGTH

	HOME	COMMERCIAL
Frame *	Lifetime	10 years
Parts	5 years	5 years
Accessories	6 months	6 months
Upholstry	1 year	1 year
Labor	2 years	2 years
Coatings	1 year	1 year

* Frame is defined as the welded metal base of the unit and does not include removable parts or coatings. All coatings are covered for one year.

EXCLUSIVE REMEDY

The exclusive remedy for any of the above warranties shall be repair or replacement of defective Parts, or the supply of Labor to cure any defect, per the terms of the Commercial Warranty. The Product must be located within that service provider's service area. Labor will not be covered for products located outside service area.

SERVICE

We take great pride and care into supporting our customers for the duration of ownership of Vision products. The following methods can be used to reach our Customer Tech Support team to report an issue and request service:

PARTS, TECH & WARRANTY SUPPORT	OUT-OF-WARRANTY-SUPPORT
800.335.4348 M – F 8:00 am – 5:00 pm CST info@johnsonfit.com	888.993.3199 M – F 8:00 am – 5:00 pm CST visionparts@johnsonfit.com

WARRANTY

VISION EXCLUSIONS AND LIMITATIONS

1. This warranty applies only to the original owner and is not transferable.
2. Under no circumstances will Vision Fitness be liable by virtue of this warranty or otherwise for damage to any person or property whatsoever for any special, indirect, incidental, secondary or consequential losses, damages or expenses in connection with exercise products.
3. This warranty is expressly limited to the repair or replacement of a defective Frame, Motor, Electronic component, or Part. Repair or replacement will be at the discretion of Vision Fitness, and is the sole remedy of the warranty.
4. Do not use equipment in any location that is not climate controlled, such as but not limited to garages, porches, poolrooms, saunas, bathrooms, car ports or outdoors. Failure to comply may void the warranty.
5. This warranty does not cover normal wear and tear – including but not limited to: USB port, HDMI port and headphone jack, cuts in upholstery, damage caused externally that is not due to a manufacturer defect, improper assembly or maintenance, or installation of parts or accessories not originally intended or compatible with the Vision Fitness Product as sold.
6. This warranty does not cover damage or failure due to accident, abuse, corrosion, discoloration of paint or plastic, neglect, theft, vandalism, fire, flood, wind, lightning, freezing, or other natural disasters of any kind, power reduction, fluctuation or failure from whatever cause, unusual atmospheric conditions, collision, introduction of foreign objects or intrusion of liquids into the covered unit, or modifications that are unauthorized or not recommended by Vision Fitness.
7. This warranty does not cover damage or corrosion caused by failure to follow recommended cleaning guidelines, including the use of unapproved cleaners, chemicals or solutions.
8. Parts reconditioned to As New Condition by Vision Fitness or its vendors may sometimes be supplied as warranty replacement parts and constitute fulfillment of warranty terms. Any warranty replacement parts shall be warranted for the remainder of the original warranty term.
9. The warranty does not cover damage or equipment failure due to electrical wiring that is not in compliance with applicable electrical codes and Vision Fitness Owner's Manual specifications.
10. Treadmill decks will NOT be replaced unless both surfaces are worn through. Deck & belt replacement limited to one per treadmill. For running deck and belt wear testing and maintenance, please refer to the Treadmill Deck Friction Test document.

This warranty shall NOT apply to the following:

1. Failure to provide reasonable and necessary maintenance as outlined in the Owner's Manual.
2. Software limitations and upgrades.
3. Batteries or other consumable goods.
4. Cosmetic items.
5. Repairs performed on equipment missing a serial number or with a serial number tag that has been altered or removed.
6. Service calls to correct installation of the equipment or instructing on use of equipment.
7. Pick-up, delivery or freight charges involved with repairs.
8. Any labor charges incurred beyond the applicable labor warranty.

Vision Fitness expressly disclaims all other warranties, express or implied, including but not limited to all warranties of fitness for a particular purpose or of merchantability. This warranty gives you specific legal rights, and your rights may vary from state to state.

DETERMINATION OF A NON-RESPONSIVE PROPOSAL

Solicitation: 2024-JCB-000000203-IFB Fitness Center Cardio Equipment
Issue Date: February 8, 2024
Opening Date: February 28, 2024

Proposal Submitted By: Wilkins Fitness LLC

Dear Ms. Wilkins,

The following are excerpts from the original College of Charleston solicitation, SC Consolidated Procurement Code, and SC Procurement Regulations relevant to the Determination of Non-Responsiveness:

RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

§ 11-35-1520: COMPETITIVE SEALED BIDDING:

(13) Minor Informalities and Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State. Such communication or determination shall be in writing. Examples of minor informalities or irregularities include, but are not limited to:

(d) failure of a bidder to acknowledge receipt of an amendment to a solicitation, but only if:

(i) the bid received indicates in some way that the bidder received the amendment, such as where the amendment added another item to the solicitation and the bidder submitted a bid, thereon, provided that the bidder states under oath that it received the amendment prior to bidding and that the bidder will stand by its bid price or,

(ii) the amendment has no effect on price or quantity or merely a trivial or negligible effect on quality or delivery, and is not prejudicial to bidders, such as an amendment correcting a typographical mistake in the name of the governmental body;

R 19-445.2070: REJECTION OF INDIVIDUAL BIDS

A. General Application.

Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.

B. Nonresponsive Bids.

Any bid which fails to conform to the delivery schedule, to permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive.

Bid's 1 and 2 - The proposed Vision S70 Accent Trainer does not have the adjustable gradient ramp.

Based on all the above, Wilkins Fitness LLC's Bid's 1 and 2 proposals are deemed "Nonresponsive".

A handwritten signature in blue ink, appearing to read 'Casey Bassett', enclosed in a thin black rectangular border.

Casey Bassett
Procurement Manager I