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Protest Decision

Matter of: emocha Mobile Health, Inc., dba Scene Health
File No.: 2025-211
Posting Date: April 9, 2025
Contracting Entity: Department of Public Health
Solicitation No.: 5400027854
Description: VDOT – Video Directly Observed Therapy

DIGEST

The Chief Procurement Officer (CPO) denies protest of emocha Mobile Health, Inc.'s (Emocha). Emocha's protest is attached as Exhibit A.

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review per S.C. Code Ann. §11-35-4210. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

On January 9, 2025, the Department of Public Health (Department) issued this solicitation seeking competitive sealed bids for a Video Directly Observed Therapy (VDOT) platform. [Exhibit B] By the deadline for receipt of bids, the Department received two bids, one of which was from Emocha and the other from Dimagi, Inc. [Exhibit C] On February 24, 2025, the Department posted a notice of intent to award a contract to Dimagi. [Exhibit D] On March 10,

2025, after timely filing a notice of intent to protest, Emocha protested. On March 26, 2025, DPH filed a response with the CPO. [Exhibit E]

The bid tabulation, Exhibit C, requires some explanation since on the face of the bid tab Emocha is the low bidder. However, Emocha does not protest that the Department did not award to the lowest bidder.

The bidding schedule in the solicitation provided for unit price bidding. The unit was a single license per year and the quantity was 35 as follows:

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	35.000	each		
Product Catg.: 84056 - Teleconference Systems Audio/Video (Incl. VOD)				
Item Description: VDOT Licenses YEAR 1				
Tendering Text: Annual Cost, Year 1				

The bidding schedule had four additional numbers in the same format for each of the following contract years. The bidding schedule had two additional line numbers, one for a one-time cost of implementation and one for the cost for optional additional licenses.

Emocha submitted a bid for line number 0001 as follows:

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	35.000	each	\$165	\$69,300 / yr
Product Catg.: 84056 - Teleconference Systems Audio/Video (Incl. VOD)				
Item Description: VDOT Licenses YEAR 1				
Tendering Text: Annual Cost, Year 1				

However, the quantity of 35 times a price of \$165 equals \$5,775, not \$69,300. Each of Emocha’s bid prices for line numbers 0002 through 0005 had the same discrepancy. Because the unit prices and the extended prices on Emocha’s bid did not match up, the Department reached out to Emocha to seek clarification and to offer it the opportunity to withdraw due to mistake if its unit price was not \$165 per license per year. [Exhibit E] Emocha ultimately responded “I

believe it's clear our unit price is \$165/license/month. We do not wish to withdraw." If one works backwards from Emocha's extended price, dividing it by the unit price and then dividing it by the number of units, it becomes apparent that Emocha's unit price is a monthly price not an annual price. The Department did not correct Emocha's numbers on the bid tabulation but apparently accepted Emocha's explanation as sufficient to make a bid correction.¹ Regardless, Emocha was not the lowest bidder.²

DISCUSSION

Emocha first alleges that Dimagi was not responsive to the requirements of the solicitation. A responsive bidder is one "who has **submitted a bid** or proposal **which conforms** in all material aspects to the invitation for bids. S.C. Code Ann. §11-35-1410(9) [emphasis supplied]. Emoch alleges Dimagi is not responsive not because of anything in the bid Dimagi submitted but based on information regarding Dimagi's platform that it found on the internet.

Responsiveness is determined from the four corners of one's bid, not information outside the bid. *Appeal by Greenville Office Supply*, Panel Case No. 2014-5. Emocha does not allege that Dimagi's bid took exception to any of the requirements of the solicitation nor does Emocha present any evidence that anything in Dimagi's bid fails to conform to the material requirements of the solicitation.³ As the protestant, Emocha bears the burden of proving its allegations upon the preponderance of the evidence. *Appeal of Venturi Tech. Partners*, Panel Case No. 2004-1. In this case, Emocha has failed to provide any evidence that Dimagi's bid was non-responsive on its face.

¹ Bid correction is governed by Section 11-35-1520(7) and Reg 19-445.2085. The facts of this case seem to support allowing a bid correction under these provisions.

² Upon correction of Emocha's bid prices, Dimagi's five-year total price is less than half of Emocha's

³ The closest Emocha comes to alleging a non-conformity within the bid documents is where the General Requirements stated that "[T]he applications must consist of a patient-facing mobile application, provider-facing web portal, and provider-facing mobile application." In response, Dimagi answered "Yes" it was compliant and stated that it has "a patient-facing mobile application and a provider-facing web portal that can be assessed remotely using mobile devices." While Dimagi's bid does not show a "provider facing mobile *application*," DPH considered Dimagi's provider-facing web portal with mobile access to be the functional equivalent and, therefore, responsive. [Exhibit E].

On the other hand, DPH's response sets forth the numerous places in its proposal where Dimagi agreed to be bound by the requirements of the solicitation. Dimagi filled out and signed pages one and two of the solicitation. Page one, the signature page states, "By signing, You agree to be bound by the terms of the Solicitation." A bidder who takes no exception to the IFB requirements and signs the cover page agrees to be bound by the terms of the solicitation. *Appeal by Otis Elevator Company*, Panel Case No. 2017-1. In the documents it submitted with its bid, Dimagi did not take exception to any of the requirements of the solicitation and committed to full compliance in several places:

- Dimagi's cover letter, stating, "The platform . . . meets all South Carolina DPH functional and security requirements . . . SureAdhere meets or exceeds all South Carolina DPH VDOT system requirements specified in this Solicitation."
- Page immediately after Dimagi's cover letter "As the Compliance with Required Features chart (Table 2) illustrates, SureAdhere meets all SCDPH VDOT system specifications listed in the solicitation."⁴
- Table 1. Compliance with Required Specifications, in which Dimagi entered under the "Compliant (Yes/No)" column, "Yes" for each specific requirement of the Solicitation. See Solicitation pp.6-28.
- Dimagi filled out the first matrix on the bidding schedule as follows:

⁴ There is no Table 2 in Dimagi's documentation. However, immediately below this statement is Table 1 titled "Compliance with Required Specification." Therefore, it is clear this reference to "Table 2" was a typographical error and should have read "Table 1."

BIDDING SCHEDULE (NOV 2007)

Question	Mandatory / Optional	Multiple Responses Accepted?	Response
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	<input checked="" type="checkbox"/> Yes. I have read and understand the terms and conditions.
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	<input checked="" type="checkbox"/> Yes, I am in accordance with the terms and conditions.
The bidder has read and understands all Amendments.	Mandatory	No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The Department reviewed Dimagi’s bid and found that it conformed to the essential requirements of the solicitation and was responsive on its face. Eموcha has not provided any evidence to the contrary.

Eموcha next alleges that Dimagi is not a responsible bidder. In this regard, Eموcha states:

We believe Dimagi has not considered the need to maintain continuity of care and avoid treatment interruptions and integrating current and historical patient data during implementation.

The SureAdhere⁵ implementation cost is a gross underestimate of implementation costs and effort: SureAdhere’s proposed \$5,000 implementation fee does not appear to consider or cover: 1) software implementation, 2) training and implementation of all SCDPH staff, 3) integration of data from the previous vendor and the required data transformation, encryption, and integrity checks needed to avoid an interruption of treatment for patients, and 4) the effort to migrate 60+ patients currently using Scene’s software to Sureadhere’s mobile application. Such oversights indicate Dimagi lacks the necessary capacity or reliability to perform, making them non-responsible under the Procurement Code.

⁵ In its protest, Eموcha uses the names Dimagi and SureAdhere interchangeably.

In short, Emocha believes that Dimagi cannot perform the implementation for the price Dimagi bid. Emocha argues this underpricing makes Dimagi a nonresponsible bidder. This speculation about Dimagi's future contract performance does not raise a proper challenge to responsibility. *Appeal by Catamaran*, Panel Case No. 2015-2.

Emocha's next two grounds of protest misconstrue the source selection method for this procurement. Emocha argues that the Department violated the requirements of Sections 11-35-1530(5) and (7). These sections only apply to a procurement using the competitive sealed proposal source selection method. This procurement uses the competitive sealed bidding (low bid) source selection method per Section 11-35-1520. Under this source selection method, the only evaluation criteria are lowest responsive and responsible bidder. Emocha does not claim Dimagi was not the low bidder. Moreover, while Emocha claims Dimagi is both nonresponsive and nonresponsible, it has failed to prove these claims.⁶

DECISION

For the reasons stated above, the CPO denies Emocha's protest.



John St. C. White
Chief Procurement Officer

Columbia, South Carolina

⁶ Both Emocha and Dimagi seem to misconstrue the source selection method despite the statement "Invitation for Bid" at the top of the first page of the solicitation. Both bidders submitted extensive extraneous information typical with a response to a request for proposals. Moreover, the Department did not ask for this information.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2024)

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

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

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

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

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C SubscribeITs, 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.

[Scene]

Scene Health
10807 Falls Road, # 828
Brooklandville, MD 21022

(410) 864-8587
www.scene.health
@Scene.Health

March 10, 2025

Chief Procurement Officer,
Information Technology Management Office
SC Department of Public Health
1201 Main St, Ste 601
COLUMBIA SC, 29201-3073
Delivered via email to: protest-itmo@itmo.sc.gov

Re: Protest of Award – Solicitation No. 5400027854
Title: VDOT – VIDEO DIRECTLY OBSERVED THERAPY
Notice of Intent to Award to Dimagi Inc. (SureAdhere Platform)

Dear Chief Procurement Officer:

We submit this formal protest of the award to Dimagi Inc. (owner of the SureAdhere platform) for the above-referenced solicitation (the “Solicitation”). Dimagi Inc. is referred to herein interchangeably as “Sureadhere” or “Dimagi”. This protest is filed pursuant to S.C. Code Ann. § 11-35-4210, within the statutory deadlines, and on the grounds set forth below.

I. Introduction and Timeliness

1. Scene Health (“Protestor”) is an aggrieved bidder with standing to protest under S.C. Code Ann. § 11-35-4210(1).
2. Timeliness: The Notice of Intent to Award for Solicitation No. 5400027854 was posted on February 24, 2025. We submit this protest within the required seven (7) business days for the notice of protest and fifteen (15) days for the formal letter under § 11-35-4210(1).
3. Contract Value Exceeds \$50,000: As the contract is valued above \$50,000, protest rights are proper under the Consolidated Procurement Code.

II. Factual Background

1. Solicitation Requirements: The South Carolina Department of Public Health (“SCDPH”) issued Solicitation No. 5400027854 seeking a Video Directly Observed Therapy (VDOT) platform to monitor patient medication adherence and facilitate public health operations. The Solicitation included mandatory functionality requirements such as:
 - A patient-facing mobile application, provider-facing web portal, and provider-facing mobile application (Section 3.1.2, 3.1.3).
 - The ability to capture and alert staff to patient side effects (Sections 3.1.3.3, 3.1.3.5, 3.1.3.6).

[Scene]

- An option for patients to reset their passwords without involving DPH personnel (Section 3.2.2.1.3).
- 2. Award to Dimagi Inc. (SureAdhere): SCDPH announced the intended award to Dimagi Inc., whose solution is the “SureAdhere” platform.
- 3. Protestor’s Existing Platform: Protestor has an established platform (“Scene”) currently used by SCDPH for VDOT services, with over 5+ years of SCDPH data, 62 active patients, more than 12,000 videos of medication dosing, thousands of reported side effects, and 16 active DPH staff users.
- 4. Publicly Available Materials: Protestor has reviewed SureAdhere’s training manuals, user guides, and marketing websites:
 - SureAdhere Customer Training resources:
<https://dimagi.atlassian.net/wiki/spaces/sa/pages/2144174472>
 - SureAdhere Patient App resources:
<https://dimagi.atlassian.net/wiki/spaces/sa/pages/2144174303>
 - SureAdhere Provider App resources:
<https://dimagi.atlassian.net/wiki/spaces/sa/pages/2144174229/Provider+Application>

From our review, we identified specific areas in which the SureAdhere platform does not appear to meet the Solicitation’s mandatory requirements, rendering Dimagi’s proposal non-responsive. We also believe the agency’s evaluation and subsequent award raise additional concerns addressed below.

III. Grounds for Protest

A. Ground 1: Non-Responsiveness of the SureAdhere Proposal

1. Legal Standard: Under S.C. Code Ann. § 11-35-1410(9), a responsive proposal must conform in all material respects to the solicitation. Minor informalities may be waived under § 11-35-1520(13) only if they do not affect price, quality, quantity, or performance. By contrast, missing a mandatory RFP requirement is a material deviation and renders the proposal non-responsive.
2. Specific Failures to Meet Mandatory Requirements

A. No Provider-Facing Mobile Application (Sections 3.1.2, 3.1.3)

The SureAdhere platform materials indicate only a web-based provider portal, not a native mobile application that public health personnel can use in the field to log DOT visits. Scene’s Care Team mobile application for providers, currently used by SCDPH, is specifically designed for TB DOT, and is linked to Scene’s web platform. This ensures all data is streamlined into one database. SureAdhere’s provider-facing mobile application is a web platform. Viewing the website on a mobile device is not the same as a mobile application. Dimagi’s other mobile products (ie CommCare) may not be part of the SureAdhere platform without significant configuration and further implementation (SureAdhere is a recent acquisition of Dimagi Inc. and not fully integrated). SureAdhere’s deficiency to this point is material because it affects performance (off-line or field-based care) and quality (Solicitation explicitly requires a provider-facing mobile application and not the ability to later configure a generic mobile application for SCDPH). See SureAdhere’s full provider portal training

[Scene]

materials online here:

<https://dimagi.atlassian.net/wiki/spaces/sa/pages/2144174229/Provider+Application>

B. Lack of Side Effect Data Capture, Reporting, and Automated Alerts; no Side Effect Capture before Medication Taking Event (Sections 3.1.3.3, 3.1.3.5, 3.1.3.6, 3.1.4.7)

SureAdhere’s patient app workflow does not include capturing side effects as a unique data point, nor does it include such capture as the first step within the application. Collecting side effects is a core part of DOT by CDC standards, making this omission a material quality/performance issue. The SureAdhere training materials include a PDF print out sheet with icons for patients to point to when recording a video during medication taking, but relies on the User to review the video to understand the report. Thus the SureAdhere application *cannot block medication taking based on side effect reports as required, and cannot automatically generate alerts to DPH staff, as is mandatory in the Solicitation*. This also precludes the ability to ensure that with any reported side effects, the application will prompt the patient not to take their medications and to call their case manager as is mandatory in 3.1.4.7 (provided for reference immediately below):

3.1.4.7 Must ensure patients conduct a review of potential side effects through a series of questions as the first step within the application. Must ensure that with any reported side effects, the application will prompt the patient not to take their medications and to call their case manager.

The SureAdhere application may have a capability to collect a questionnaire, but this questionnaire is collected after medication taking. See patient app training and support materials available online here:

<https://dimagi.atlassian.net/wiki/spaces/sa/pages/2144174303/Patient+Mobile+Application>

*Attachment A. Evidence of Lack of Side-Effect Reporting and Alerts

C. No “Forgot Password” Function for Patients, Health Department Staff provides passwords (Section 3.2.2.1.3, 3.5.3.1.6.)

The SureAdhere mobile application lacks an in-app feature for patients to reset passwords without staff intervention. In fact, the SureAdhere application requires the health department staff to set and communicate passwords, and password changes, to the patient. The Solicitation demands a self-service “request new password” capability, which is missing. This is a material usability and security requirement. Lack of end user ability to set or reset a password is a major security concern and not market standard.

*Attachment B. Evidence Lack of Log-in functionality Password Reset

Because these omissions affect core functionality, they cannot be deemed “minor informality.” Per § 11-35-1410(9) and § 11-35-1520(13), Dimagi’s failure to meet these material requirements require rejection of its proposal as non-responsive.

[Scene]

B. Ground 2: Additional Responsibility Concerns (Capability to Perform)

Even if SCDPH deemed SureAdhere’s proposal “responsive,” the awardee must also be a responsible vendor with the technical and financial capability to perform. See S.C. Code Ann. § 11-35-1810 (and related sections). We believe Dimagi has not considered the need to maintain continuity of care and avoid treatment interruptions and integrating current and historical patient data during implementation.

The SureAdhere implementation cost is a gross underestimate of implementation costs and effort: SureAdhere’s proposed \$5,000 implementation fee does not appear to consider or cover: 1) software implementation, 2) training and implementation of all SCDPH staff, 3) integration of data from the previous vendor and the required data transformation, encryption, and integrity checks needed to avoid an interruption of treatment for patients, and 4) the effort to migrate 60+ patients currently using Scene’s software to Sureadhere’s mobile application. Such oversights indicate Dimagi lacks the necessary capacity or reliability to perform, making them non-responsible under the Procurement Code.

Protestor’s current contract expires on the anticipated start date of the award. There are no costs or concerns to be anticipated with implementation of Protestor’s software as it is already fully operational. No other vendor can implement the Scope of Work in the Solicitation on the timeline required by the Solicitation without significant disruption to patient care.

C. Ground 3: Improper or Arbitrary Evaluation

As this solicitation is an RFP (not an IFB), SCDPH presumably scored or ranked proposals according to stated criteria. We suspect the evaluation panel improperly credited Dimagi for features the SureAdhere solution does not actually possess:

1. Awarding Points for Non-Existent Functionalities:
 - The Solicitation required a provider-facing mobile app, forgot password option, and side-effect capture and related alerts, and a display of dosing history to Patients Pre-Video. If the evaluation documents show Dimagi received positive scores in these areas, that indicates arbitrary or erroneous scoring.
2. Failure to Properly Evaluate Transition/Implementation Feasibility:
 - No plan was required or requested for transition of current patients using the system. Such a transition is implied to avoid a major interruption of operations at SCDPH and treatment interruption for patients. SCDPH should have scrutinized the cost/time feasibility of Dimagi’s plan.

These discrepancies undermine confidence in the fairness of the evaluation and suggest a violation of § 11-35-1530(5)/(7), which requires the agency to evaluate proposals strictly on the stated criteria and in a manner consistent with the Solicitation.

D. Ground 4: Potential Use of Undisclosed Evaluation Factors

Alternatively, if SCDPH did not include obvious requirements in the Solicitation, but nonetheless informally considered them—or decided not to weigh them despite being essential—this constitutes using or ignoring an undisclosed factor contrary to the Code:

[Scene]

- S.C. Code Ann. §§ 11-35-1520(6) & 11-35-1530(7) prohibits introducing new criteria or ignoring published criteria during evaluation.
 - If the agency internally considered intangible preferences (e.g., intangible preference for a new vendor or brand), that is likewise an undisclosed factor.
1. Implementation timing and ability to be operational immediately: SCDPH is aware that Protestor's current contract expires on the same day as the new Award under this Solicitation is set to begin. The Solicitation therefore implies a same-day implementation to avoid service disruption. Only Protestor could possibly meet such a timeframe as Protestor is currently fully implemented and operational with SCDPH and meets SCDPH requirements.. As the Solicitation does not list a single requirement related to Implementation, the Solicitation has ignored an obvious requirement.
 2. No requirements for Implementation listed despite obvious and extensive requirements for any Bidder, except Protestor: Implementation is an obvious effort for any vendor other than Protestor, and was not included in the detailed Scope of Work. Implementation is implied to include securing continuity of care for more than 60 patients currently using Protestor's software and continuity of operations for a minimum of 16 health department staff. Implementation also implies configuration of the patient facing mobile app, the provider-facing web portal, and the provider-facing mobile app.

If the record shows the agency manipulated, ignored or introduced evaluation factors not in the Solicitation, that would violate the requirement of fair and transparent competition.

IV. Requested Remedies

Pursuant to S.C. Code Ann. § 11-35-4210, Protestor requests that the Procurement Officer:

1. Cancel the intended award to Dimagi Inc. due to non-responsiveness or non-responsibility (under § 11-35-1410(9) and § 11-35-1810 respectively).
2. Disqualify Dimagi's proposal for failure to meet mandatory specifications or, alternatively, for lacking the capacity to perform in particular with regards to implementation.
3. Award to Scene, the next responsive and responsible bidder, or
4. Re-solicit updated requirements that reflect current program needs if no other compliant bidder is available.
5. Stay the contract execution (if not already stayed by law) and any further performance until this protest is resolved.

V. Conclusion

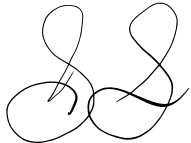
For the reasons detailed above, the SureAdhere solution proposed by Dimagi Inc. does not comply with the mandatory, functional requirements of Solicitation No. 5400027854, nor are the implied requirements related to Implementation of a new system while maintaining continuity of care possible for SureAdhere to meet. Furthermore, obvious and material requirements have been omitted from the Solicitation. Granting an award to a non-responsive (and non-responsible) bidder undermines the fairness and integrity of the procurement process, contravening South Carolina's Consolidated Procurement Code. Use of

[Scene]

non-disclosed, implied criteria is specifically unfair to an incumbent already satisfying those requirements as no other bidder is asked to meet those requirements. We respectfully ask you to sustain this protest, cancel the award, and provide the appropriate remedy under the Code.

If you have questions or require additional information, please contact the undersigned. We reserve the right to supplement or amend this protest if new information arises.

Sincerely,

A handwritten signature in black ink, appearing to read 'SS', with stylized loops and flourishes.

Sebastian Seiguer

Chief Executive Officer

emocha Mobile Health Inc., dba Scene Health

10807 Falls Road, # 828

Brooklandville, MD 21022

sseiguer@scene.health / melmi@scene.health

[Scene]

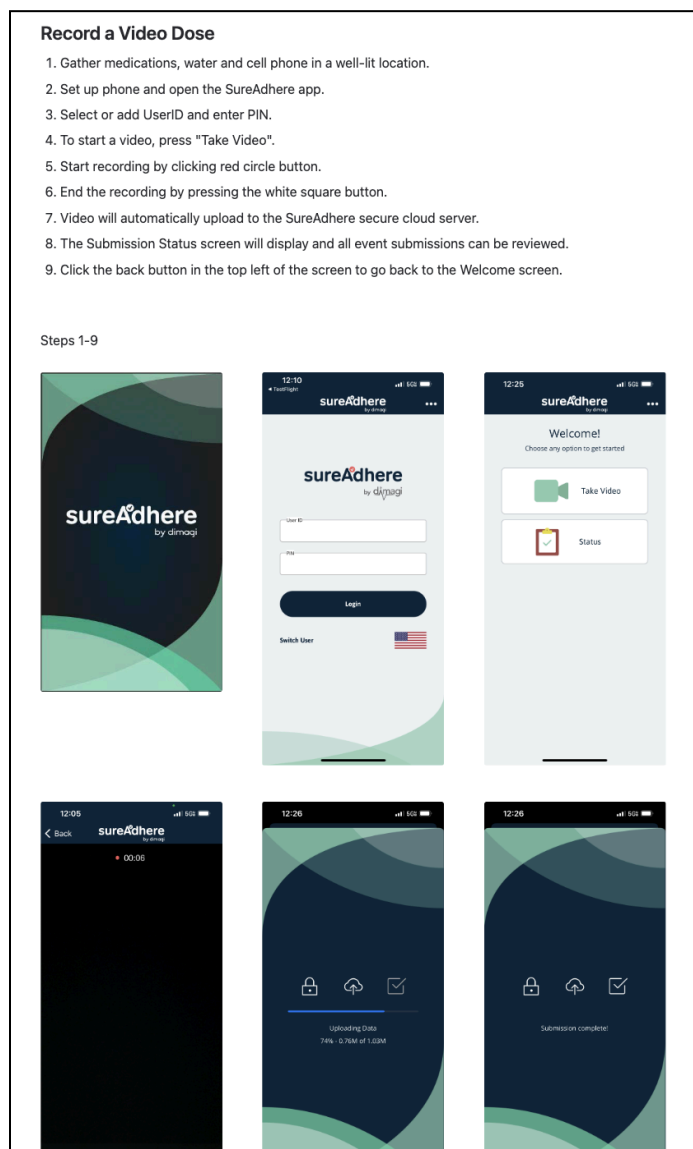
Attachment A

Evidence of Lack of Side-Effect Reporting and Alerts

The inability to capture side effects, keep a patient from recording a video if a side effect is reported, create alerts based on side effect reports, etc are unresponsive to the mandatory sections Sections 3.1.3.3, 3.1.3.5, 3.1.3.6, 3.1.4.7)

Standard patient app workflow

The standard patient app workflow makes no mention of side effect capture of any kind. This does not meet the mandatory requirements of sections 3.1.3.3, 3.1.3.5, 3.1.3.6, and 3.1.



[Scene]

SureAdhere's insufficient standard TB app workflow can be seen online here:

<https://dimagi.atlassian.net/wiki/spaces/sa/pages/2144174193/VDOT+Mobile+Application+Workflow>



Configurable surveys

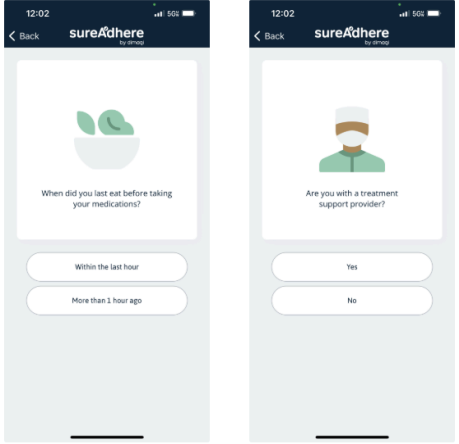
If a claim is made survey questions can be configured to capture side effects they do not fulfill 3.1.4.7.

The questions are asked *after* the video is recorded, thus, the application cannot prompt the patient to take their medications and to call their case manager as is mandatory in 3.1.4.7

Self-Reported & In-Person Survey Questions

The purpose of the self-reported and in-person survey questions are to capture further details on a patient's every dose. These survey questions ask if the patient had a meal with their dose and if they were with a treatment provider at the time of their dose. If the patient indicates that YES, they were with their treatment provider during their dose then the dose will be recorded as an in-person dose. On the other hand, if the patient indicates NO they were not with their treatment provider during their dose then the dose will be recorded as self-reported.

If a dose is 1) reported as in-person, 2) the Medication Pill Survey is turned on, and 3) the patient took all of their medications then the dose will automatically be updated to "taken" in the SureAdhere CMS. This helps staff users from  Comment  in-person doses in SureAdhere.



Take Video From Home Screen with Survey Questions

1. Gather medications, water and cell phone in a well-lit location.
2. Set up phone and open the SureAdhere app.
3. Select or add UserID and enter PIN.
4. To start a video, press "Take Video"
5. Today's Medications will display, click Start Submission.
6. Start recording by clicking red circle button.
7. End the recording by pressing the white square button.
8. Add the number of pills that were taken during dose.
9. Answer the survey questions.
10. Video and survey will automatically upload to the SureAdhere secure cloud server.
11. The Submission Status screen will display and all event submissions can be reviewed.
12. Click the back button in the top left of the screen to go back to the Welcome screen.

<https://dimagi.atlassian.net/wiki/spaces/sa/pages/2188574769/Additional+Features#Self-Reported-&-In-Person-Survey-Questions>

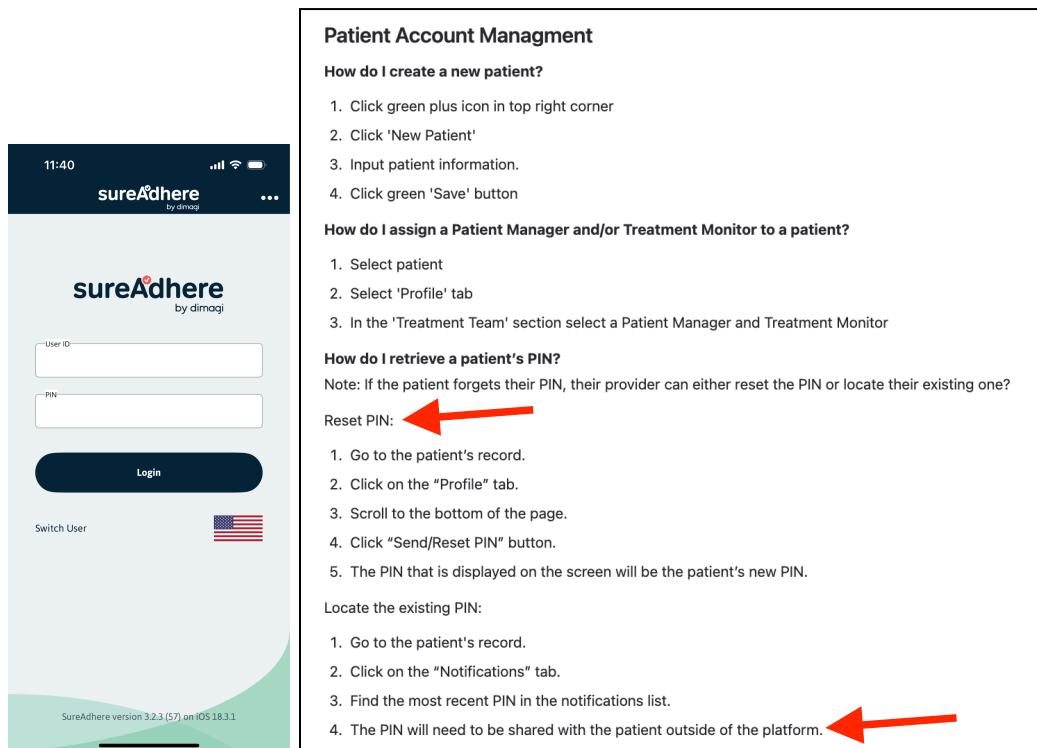
[Scene]

Attachment B

Insufficient App Store and Password Reset workflow

III.2.C. This is unresponsive to the mandatory Sections 3.2.2.1.3, 3.5.3.1.6. in the Solicitation. There is no “forgot password” button available on the patient application. This makes it impossible for a patient to request a new security password at their convenience without engaging DPH personnel.

Below is a screenshot of the SureAdhere patient app (version 3.2.3 (57) as downloaded from the Apple app store on an iPhone 15 (version iOS18.3.1).



The image shows a screenshot of the SureAdhere patient app on an iPhone. The app interface includes a status bar at the top with the time 11:40, signal strength, Wi-Fi, and battery icons. Below the status bar is the app logo 'sureAdhere by dimagi'. The main screen features a 'User ID' input field, a 'PIN' input field, a 'Login' button, and a 'Switch User' option with an American flag icon. At the bottom, it displays 'SureAdhere version 3.2.3 (57) on iOS 18.3.1'.

To the right of the screenshot is a text box titled 'Patient Account Management' containing the following instructions:

Patient Account Management

How do I create a new patient?

1. Click green plus icon in top right corner
2. Click 'New Patient'
3. Input patient information.
4. Click green 'Save' button

How do I assign a Patient Manager and/or Treatment Monitor to a patient?

1. Select patient
2. Select 'Profile' tab
3. In the 'Treatment Team' section select a Patient Manager and Treatment Monitor

How do I retrieve a patient's PIN?

Note: If the patient forgets their PIN, their provider can either reset the PIN or locate their existing one?

Reset PIN: ←



1. Go to the patient's record.
2. Click on the "Profile" tab.
3. Scroll to the bottom of the page.
4. Click "Send/Reset PIN" button.
5. The PIN that is displayed on the screen will be the patient's new PIN.

Locate the existing PIN:

1. Go to the patient's record.
2. Click on the "Notifications" tab.
3. Find the most recent PIN in the notifications list.
4. The PIN will need to be shared with the patient outside of the platform. ←

Patient password (PIN) reset instructions that require DPH personnel are available online here: <https://dimagi.atlassian.net/wiki/spaces/sa/pages/2144174205/SureAdhere+Training+Videos+and+FAQs>

Exhibit B

	<h2 style="margin: 0;">State of South Carolina</h2> <p style="margin: 10px 0 0 0;">Invitation For Bid</p>	Solicitation: 5400027854 Date Issued: 01/09/2025 Procurement Officer: JOHN HARLESTON Phone: 803-898-8054 E-Mail Address: HARLESJ1@DPH.SC.GOV Mailing Address: SC Dept. of Public Health Attn: Procurement 301 Gervais Street Columbia SC 29201-2104	
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DESCRIPTION: VDOT- Video Directly Observed Therapy

USING GOVERNMENTAL UNIT: SC Department of Public Health

SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL: <http://www.procurement.sc.gov>
(See Page 3 for instructions)

SUBMIT OFFER BY (Opening Date/Time): 02/06/2025 2:30 PM ET (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: 01/21/2025 5:00 PM ET (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **Prefer On-Line Submittals If Submitting Paper Submittals – 1**

CONFERENCE TYPE: Not Applicable DATE & TIME: <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)</small>	LOCATION: Not Applicable
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------

AWARD & AMENDMENTS	Award will be posted on 02/11/2025 . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: http://www.procurement.sc.gov
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You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

NAME OF OFFEROR <small>(full legal name of business submitting the offer)</small>	<small>Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.</small>
AUTHORIZED SIGNATURE <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	DATE SIGNED
TITLE <small>(business title of person signing above)</small>	STATE VENDOR NO. <small>(Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)</small>
PRINTED NAME <small>(printed name of person signing above)</small>	STATE OF INCORPORATION <small>(If you are a corporation, identify the state of incorporation.)</small>
OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.) <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____ <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Corporation (tax-exempt) <input type="checkbox"/> Government entity (federal, state, or local)	

COVER PAGE - ON-LINE ONLY (MAR. 2015)

PAGE TWO

(Return Page Two with Your Offer)

HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business)	NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)
	_____ Area Code - Number - Extension Facsimile _____ E-mail Address

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

ACKNOWLEDGMENT OF AMENDMENTS
 Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)

Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____ Calendar Days (%)
----------------------------------------------------------------------------------	----------------------	----------------------	----------------------	-------------------------

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

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

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

OFFERORS ENCOUNTERING REGISTRATION OR BIDDING PROBLEMS SHOULD CONTACT:

DSIT Help Desk (803) 896-0001 Select Option 1 then Option 2

Monday – Friday 8:00 AM – 4:30 PM

Offeror instructions can be found at:

<https://www.procurement.sc.gov/doing-biz/submitting-offers>

NOTICE

- To submit bids vendors should use either Google Chrome or Microsoft Edge, which are compatible with SAP. Other browsers may not function properly and may prohibit bid submissions.
- **Only offers with a status of “submitted” will be accepted by the State. (See Online Bidding Instructions Clause in Section II.B.)**
- Bidders are encouraged to review the 'Simulation for Bid Creation' before trying to submit their response.
- Electronic bid submission (SRM Login) – <https://vendorportal.sc.gov/irj/portal>
- Submitting Confidential Data - <https://www.procurement.sc.gov/legal/general-info>

NUMBER OF COPIES – HARD COPY SUBMISSION

If submitting a hard copy in lieu of an online bid, the Offeror must submit the following:

1. **One (1)** original (hard copy) marked “ORIGINAL”
2. **One (1)** redacted hard copy (marked “Redacted”), if applicable. (See Section IV – “Submitting Redacted Offers”.)

For hard copies that are hand-delivered, the entirety of the submittal **must be received by no later than the date and time specified** on the cover page of the solicitation **at the following address** (which also serves as the site for all public bid openings):

**South Carolina Department of Public Health
Division of Procurement Services – Johnny Harleston
Solicitation #: 5400027854
301 Gervais Street – Columbia Mills Building – 4th Floor
Columbia, SC 29201**

See Section II.A. – Public Opening Information – DPH Clause

Hard copies -- Mailing Address

SCDPH – Division of Procurement Services – **Johnny Harleston**

Solicitation #: **5400027854**

301 Gervais Street

Columbia, SC 29201

PLEASE NOTE THAT IF TERMS AND CONDITIONS ARE OBJECTED OR QUALIFIED OR OFFEROR INCLUDES ADDITIONAL TERMS AND CONDITIONS TO BE CONSIDERED, THE OFFER WILL BE DEEMED NON-RESPONSIVE AND WILL BE ELIMINATED FROM FURTHER CONSIDERATION.

IF YOU QUALIFY YOUR OFFER WITH A STATEMENT SUCH AS, “THIS IS NOT AN OFFER”, THE OFFER WILL BE DEEMED “NON-RESPONSIVE” AND REMOVED FROM FURTHER CONSIDERATION.

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I. SCOPE OF SOLICITATION

It is the intent of the State of South Carolina, South Carolina Department of Public Health (DPH) to solicit offers to establish a contract to update current SAS codes and identify ways to improve and automate report creation, in accordance with the requirements stated herein.

ACQUIRE SERVICES (JAN 2006)

The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions. [01-1010-1]

MAXIMUM CONTRACT PERIOD - ESTIMATED (JAN 2006)

Start date: 03/11/2025 End date: 03/10/2030. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period". [01-1040-1]

The resulting contract is for one (1) year with four (4) one-year renewal options for a possible maximum term of five (5) years.

II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS

DEFINITIONS, CAPITALIZATION, AND HEADINGS (MAY 2024)

DEFINITIONS, CAPITALIZATION, AND HEADINGS (MAY 2024) CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND WILL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS APPLY TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.

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

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

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

CHANGE ORDER means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. [11-35-310(5)]

CONTRACT See clause entitled Contract Documents & Order of Precedence.

CONTRACT MODIFICATION means a written order signed by the procurement officer, directing the contractor to make changes which the clause of the contract titled "Changes," if included herein, authorizes the Procurement Officer to order without the consent of the contractor. [1135-310(9)]

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

COVER PAGE means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

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

OFFEROR means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror.

See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.

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

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

YOU and YOUR means Offeror.

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

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

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

US or WE means the using governmental unit.

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

WORK means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract. [02-2A003-4]

AMENDMENTS TO SOLICITATION (JAN 2004)

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

AUTHORIZED AGENT (FEB 2015)

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

AWARD NOTIFICATION (MAR 2024)

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

BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)

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

BID ACCEPTANCE PERIOD (JAN 2004)

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

BID IN ENGLISH and DOLLARS (JAN 2004)

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

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)

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

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

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

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

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

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

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

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

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

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

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

[02-2A035-1]

CODE OF LAWS AVAILABLE (JAN 2006)

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

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

[02-2A040-2]

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

("OCI FAQ for Contractors" is available at www.procurement.sc.gov) (a) You certify that, to the best of your knowledge and belief: (1) your offer identifies any services that relate to either this solicitation or the work and that have already been performed by you, a proposed subcontractor, or an affiliated business or consultant of either; and (2) there are no relevant facts or circumstances that may give rise to an actual or potential organizational conflict of interest, as defined in S.C. Code Ann. Reg. 19445.2127, or that your offer identifies and explains any unfair competitive advantage you may

have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. (b) If you, a proposed subcontractor, or an affiliated business or consultant of either, have an unfair competitive advantage or a significant actual or potential conflict of interest, the State may withhold award. Before withholding award on these grounds, the State will notify you of the concerns and provide a reasonable opportunity for you to respond. The State may consider efforts to avoid or mitigate such concerns, including restrictions on future activities. (c) The certification in paragraph (a) of this provision is a material representation of fact upon which the State will rely when considering your offer for award. [02-2A0473]

DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)

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

DRUG FREE WORKPLACE CERTIFICATION (JAN 2004)

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

DUTY TO INQUIRE (FEB 2015)

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

ETHICS CERTIFICATE (MAY 2008)

By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting

public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]

OMIT TAXES FROM PRICE (JAN 2004)

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

OPEN TRADE REPRESENTATION (JUN 2015)

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

PRICING (MAR 2024)

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

PROTESTS (MAY 2024)

(a) If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest the solicitation or an amendment, your written protest must be received within fifteen Days of the date the applicable solicitation document is issued. To protest an award, (i) written notice of your intent to protest must be received within seven Business Days of the date the award notice is posted, and (ii) your actual written protest must be received within fifteen Days of the date the award notice is posted. Time periods are computed in accordance with Section 11-35-310(13) and the definitions for Day and Business Day. Both protests and notices of intent to protest must be received by the appropriate Chief Procurement Officer (CPO). See clause entitled "Protest-CPO." (b) Pursuant to Section 11-35-410, documents directly connected to a procurement activity may be available within five days after request. All document requests should be directed to Procurement Officer. If a protest is pending, the protestant's lawyer may access otherwise unavailable information by applying to the CPO for the issuance of a protective order. Additional information is available at www.procurement.sc.gov/legal [02-2A085-3]

PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)

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

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

(b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity

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

PUBLIC OPENING (JAN 2004)

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

PUBLIC OPENING INFORMATION - DPH (AUG 2014)

Vendors arriving at 301 Gervais Street will notice that this is also the location of the State Museum. Do not enter using the main museum entrance. To enter SC DPH, vendors are to proceed from the front of the building to the left side (canal side). Park in either the lower or upper deck of the two-level parking garage.

Adjacent to the first floor parking garage is a glass door with a SC DPH logo. This entrance is locked at all times. Press the intercom button in order to request entrance to the building. The door will be opened by the Agency receptionist. When you enter the building you will be required to sign in. You will be escorted to the 4th floor receptionist for your offer to be date/time stamped and then, if desired, escorted to the conference room where the public opening will take place. If you have issues with building access, please call DPH's procurement receptionist at (803) 898-3501.

It will take several minutes to obtain building access and have offers date/time stamped. The public opening date/time is identified on the Cover Page, or the last Amendment, if applicable. Please plan accordingly. Opening times will not be adjusted.

QUESTIONS FROM OFFERORS (FEB 2015)

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

REJECTION/CANCELLATION (JAN 2004)

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

RESPONSIVENESS (MAR 2024)

(a) Award will not be made on a nonresponsive offer. An offer is nonresponsive (i) if it does not constitute an unambiguous offer to enter into a contract with the State, or (ii) if it imposes conditions inconsistent with, or does not unambiguously agree to, the solicitation's material requirements. (b) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation. [02-2A1053]

SIGNING YOUR OFFER (JAN 2004)

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

STATE OFFICE CLOSINGS (JAN 2004)

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

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

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

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

SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015)

Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification in accordance with the clause titled "ON-LINE BIDDING INSTRUCTIONS." Paper offers are discouraged. If you must submit a paper offer or modification the following instructions apply. (a) All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (b) (1) All copies of the offer or modification, and any other documents required to be submitted with the offer shall be enclosed in a sealed, opaque envelope or package. (2) Submit your offer or modification to the address on the Cover Page. (3) The envelope or package must show the time and date specified for opening, the solicitation number, and the name and address of the bidder. If the offer or modification is sent by mail or special delivery service (UPS, Federal Express, etc.), the outermost envelope or wrapper must be labeled "OFFER ENCLOSED" on the face thereof. (c) If you are responding to more than one solicitation, submit each offer in a separate envelope or package. (d) Submit the number of copies indicated on the Cover Page. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. [02-2A130-2]

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

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

VENDOR REGISTRATION MANDATORY (MAY 2024)

VENDOR REGISTRATION MANDATORY (MAY 2024): You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit www.procurement.sc.gov and select Doing Business with Us. Then select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Note that your vendor registration submission may take up to 30 days to process due to high numbers of registrants. Vendors must keep their vendor information current. If you are already registered and know your User ID and Password, you can update your information by selecting Update Vendor Registration. If you need to update information but do not have your User ID/Password, you must complete a new vendor registration and On Step 9 – Messages to Administration indicate "Update vendor number" with your existing 10-digit vendor number. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at South Carolina Business One Stop, <http://scbos.sc.gov>) [02-2A145-2]

WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)

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

II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS

ON-LINE BIDDING INSTRUCTIONS (MAR 2015)

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

(b) Steps for On-Line Bidding

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

2 Follow the general user instructions posted at www.procurement.sc.gov under the heading "Submitting Offers."

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

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

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

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

[02-2B105-2]

It is extremely important that you do not wait until the last minute to enter your submission. Registration for new offerors can take up to three (3) days.

PREFERENCES - A NOTICE TO VENDORS (SEP 2009)

On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at www.procurement.sc.gov/preferences. **ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES.** [11-35-1524(E)(4)&(6)] [02-2B111-1]

PREFERENCES - RESIDENT CONTRACTOR PREFERENCE (SEP 2009)

To qualify for the RCP, you must maintain an office in this state. An office is a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must, at the time you submit your bid, directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and your total direct labor cost for those individuals to provide those services must exceed fifty percent of your total bid price. [11-35-1524(C)(1)(iii)] Upon request by the procurement officer, you must identify the persons domiciled in South Carolina that will perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, and documentation of the your labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and, potentially, for other enforcement action). [02-2B113A-1]

PREFERENCES - RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009)

To qualify for this preference, You must meet the following requirements. (1) You must -- at the time you submit your bid -- have a documented commitment from a single proposed first tier subcontractor to perform some portion of the services expressly required by the solicitation. (2) The subcontractor -- at the time you submit your bid -- must directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds, as applicable, either twenty percent for a 2% preference or forty percent of bidder's total bid price for a 4% preference. (3) You

must identify the subcontractor that will perform the work, the work the subcontractor is to perform, and your factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement. [11-35-1524(D)] You can stack this preference, i.e., earn another 2% or 4% preference for each additional qualifying subcontractor, but the preference is capped. [11-35-1524(D)(4), (E)(7)] Upon request by the procurement officer, you must identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, the employer of those persons, your relationship with the employer, and documentation of the subcontractor's labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and, potentially, for other enforcement action). **YOU WILL NOT RECEIVE THE PREFERENCE UNLESS YOU SPECIFY WHETHER YOU ARE CLAIMING THE 2% OR 4% PREFERENCE AND YOU PROVIDE THE INFORMATION REQUIRED BY ITEM (3) ABOVE.** [02-2B113B-1]

PROTEST - CPO – ITMO ADDRESS – (MAR 2024)

Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing

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

(b) by post or delivery to 1201 Main Street, Suite 601, Columbia, SC 29201

[02-2B120-2]

RESPONSIVENESS – CORRECTION OF NON-CONFORMITY (MAR 2024)

Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [022B127-1]

UNIT PRICES REQUIRED (JAN 2006)

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

III. SCOPE OF WORK/SPECIFICATIONS

SCOPE OF WORK

The South Carolina Department of Public Health is soliciting bids from qualified vendors to establish a contract to provide an application that will allow DPH providers to perform a live (synchronous) approach known as Video Directly Observed Therapy (VDOT).

Many communicative diseases such as Tuberculosis (TB) are treatable yet have poor medication adherence. This in turn leads to ongoing transmission, disease progression, and development of drug-resistant strains. Given the severe consequences of poor adherence, numerous Public Health programs have begun to use videoconferencing technology through videophones, computers, or smartphones to remotely observe patients swallowing pills. Studies of synchronous VDOT indicate that patients adhere to their regimens and mostly prefer VDOT over in-person DOT and that VDOT saves Public Health programs money by reducing travel and personnel costs.

3.1. General Requirements:

- 3.1. Vendor's application for video directly observed therapy (VDOT) must be an asynchronous video conferencing system.
- 3.1.2. The applications must consist of a patient-facing mobile application, provider-facing web portal, and provider-facing mobile application.
- 3.1.3. The system must provide a mobile application for public health personnel to log DOT visits conducted face-to-face in the field.
- 3.1.4. The system must be a scalable solution accessed by a minimum of 35 concurrent users, with the ability to add more.
 - 3.1.4.1. Reserves the option to add additional users throughout the life of the resulting contract.
- 3.1.5. The system must have patient adherence visualization tools to provide unique insights into patient progress
- 3.1.6. The system must be available 24 hours **per** day, 365 days per year.
- 3.1.7. The system must be HIPAA-compliant
- 3.1.8. The system must have the ability to transfer licenses from one user to another in the event of staff separating from the agency.

3.1.2. Language Compatibility:

- 3.1.2.1. Must have translation services available for multiple languages to allow the program to reach high-risk, non-English speaking patients with VDOT.
- 3.1.2.2. Must have minimum of the following languages: Spanish, Arabic, Vietnamese, Mandarin, and Burmese.
- 3.1.2.3. Must be able to adapt or have new languages added to the application upon request in order to meet the literacy needs of a patient.
- 3.1.2.4. Must ensure that medical info is being translated appropriately.

3.1.3. Patient/Provider Interaction and Alerts:

- 3.1.3.1. Have a bi-directional chat feature that allows patients and care team members to securely send messages from the patient app to the web interface that is HIPAA-compliant.
- 3.1.3.2. Have the ability to send patient reminders via secure email and SMS.
- 3.1.3.3. Must have SMS functionality and/or email alerts if a patient ever reports a potential side effect, misses a dose of meds, has a video pending review, etc.
- 3.1.3.4. Must have configurable SMS and push-notification medication reminders for the patients and/or alerts for critical events configurable by DPH (i.e. natural disasters).
- 3.1.3.5. Alert DPH staff if a patient misses a dose, reports symptoms or side effects, has a video pending review, etc.
- 3.1.3.6. Allow patients to asynchronously report side effects.

- 3.1.4. **Health/Medication Monitoring:**
 - 3.1.4.1. Must allow for medications to be stopped and resumed by a practitioner and not affect reports (i.e. - adherence or progress in treatment) within the application.
 - 3.1.4.2. Must dose count to allow for an overall total of meds taken.
 - 3.1.4.3. Enable DPH staff to edit patient's medication, dosage, or medication schedule per practitioner order.
 - 3.1.4.4. All patient's medication history should be maintained in accordance with DPH's retention schedule.
 - 3.1.4.5. Retention schedule should be configurable by patient type.
 - 3.1.4.6. Must allow patients to see their progress, adherence rate, and video submission throughout their treatment.
 - 3.1.4.7. Must ensure patients conduct a review of potential side effects through a series of questions as the first step within the application. Must ensure that with any reported side effects, the application will prompt the patient not to take their medications and to call their case manager. Confirm adherence to each medication in a patient's regimen for every submission and see analytics at the medication level.
 - 3.1.4.8. The list of side effects to be monitored must be customizable by the DPH.
 - 3.1.4.9. Patient and provider must be able to complete their parts of medication management visits on their own schedule.
 - 3.1.4.10. System must provide functionality or ability for patients to upload videos (not live streaming) to eliminate the need for specifically appointed times for patients to receive meds and must also permit public health personnel to view VDOTs at any time.
 - 3.1.4.11. Capability to print patient medical record, history, and medication dosages.
- 3.1.5. **Reports:**
 - 3.1.5.1. Provide reports on a per patient level.
 - 3.1.5.2. Must provide reports at a minimum that will contain analytics at the medication level to address adherence rates that are medication specific.
 - 3.1.5.2.1. Ability to examine per patient
 - 3.1.5.2.2. Ability to examine at population level
 - 3.1.5.3. Must provide ad hoc reporting capabilities
 - 3.1.5.4. Be auditable and able to generate reports of the video sessions (i.e. date/time stamp, completed VDOT and which is available to upload, record whether viewed, archived/not archived)
 - 3.1.5.5. Must provide functionality allowing providers to create reports to monitor patient adherence of medications and completion of recommended therapy in the recommended time frame.
 - 3.1.5.6. Must have the ability to export reports in multiple formats (i.e. csv, PDF) to include data at both the population and patient-specific Levels
 - 3.1.5.7. Must have the ability to export patient videos in raw and mp4 format.
 - 3.1.5.8. Allow authorized public health personnel to review videos, data, and assess adherence.
 - 3.1.5.9. System should maintain continuous audit trails of all use and provide for reporting features.
- 3.1.6.
 - 3.1.6.1. Allow patients to securely video-record themselves taking medication.
 - 3.1.6.2. Date and time stamp all video recording sessions.
 - 3.1.6.3. Patient video conferencing sessions shall be stored by the vendor for retrieval by DPH personnel.
 - 3.1.6.4. Must be capable of recording videos offline to allow patient access in areas that do not have continuous Wi-Fi access (e.g. rural, domestic or any area underserved with connectivity or while traveling).

3.1.7. **Technical Support**

- 3.1.7.1. Will provide initial training for all DPH providers (end users) and administrators, in addition to offering on-going technical support/training for new personnel that were not present or part of the initial implementation.
- 3.1.7.2. Must have a 24-hour support portal available for providers and patients to report any technical issues, assess information on frequently asked questions, and access step-by-step training videos on each part of the platform

3.1.8. **Training**

- 3.1.8.1. Vendor agrees to provide virtual training for any new platforms

3.2. **Technical Specifications:**

3.2.1. **Compatibility:**

- 3.2.1.1. Meet all DPH, State of South Carolina, HIPAA, and other federal security requirements.
- 3.2.1.2. Must provide documentation of an assessment by an accredited third party that it meets data security and HIPAA compliance requirements for sharing patient information to include encryption, audit logs, hosting environment, data backups, etc.
- 3.2.1.3. The system must be compatible with Android and IOS phones and tablets that are still supportable by carriers and vendors.
- 3.2.1.4. Must be compatible with supported versions of all major browsers (i.e. Internet Explorer, Google Chrome, Firefox, etc.)
- 3.2.1.5. Must be compatible with supported desktop computers and/or laptops.
- 3.2.1.6. Must have ability for patients to record videos via their smart phone camera access
- 3.2.1.7. Roles/privileges will be tiered; certain number of users in regions, super-users, etc.
- 3.2.1.8. Provide support at a minimum of 35 concurrent users, with the ability to increase as directed by DPH.
 - 3.2.1.8.1. Reserves the option to add additional users throughout the life of the resulting contract.

3.2.2. **Log-in functionality:**

- 3.2.2.1. Must offer several options to securely log into the patient mobile app, such as username/password, personal ID number, face ID, or fingerprint scan depending on the patient's device.
 - 3.2.2.1.1. Have the ability to register public health personnel with a unique login/user ID and passwords (for every license category) and provide patients with a unique log-in/user ID and password as well.
 - 3.2.2.1.2. Must have the ability to register public health personnel with a unique login/user ID and passwords (for every license category)
 - 3.2.2.1.3. Must have the ability for a patient to request to a new security password at their convenience without engaging DPH personnel.
- 3.2.2.2. Be scalable to allow for growth, intuitive, user-friendly and simple interface; reliable and highly-available.
- 3.2.2.3. Provide registration status of patients in system at any given time.

3.3. **Data Fields:**

- 3.3.1. Enrolled Date
- 3.3.2. Name (Last, First, Middle)
- 3.3.3. Date of Birth
- 3.3.4. Gender
- 3.3.5. Address (Number, Street, Unit, City, State, Zip code)

- 3.3.6. Phone Number
- 3.3.7. Medical Record Number
- 3.3.8. Case Manager
- 3.3.9. International Classification of Diseases (ICD) Code
- 3.3.10. Preferred Language of Patient
- 3.3.11. DOT Frequency
- 3.3.12. Dose Completed
- 3.3.13. Start Date
- 3.3.14. Stop Date
- 3.3.15. Reason for Stopping
- 3.3.16. Dose Count

3.4. **VDOT Functionality Requirements:**

The system must have the following functionalities:

- 3.4.1. Report Generation: ability to create regular, real-time customizable data exports at patient, provider, and population levels and import data from providers, such as dosages (.csv and/or .pdf).
 - 3.4.1.1. Generation of reports at local/regional reports to assist w/ front-line in automation of program evaluation; generate by client type, geographical area, and time-sensitive.
- 3.4.2. Notification Generation: must have customizable notification functionality (i.e. daily medication reminders, provider reports, etc).
- 3.4.3. Analytics: ability to visualize data at both population and patient-specific levels.
- 3.4.4. This platform should provide a HIPAA-secure app chat.
- 3.4.5. In-person DOT Support: Platform can be able to record in-person DOT in addition to collecting video data.
- 3.4.6. Recording Dosing History: must be able to render a history of a patient's medication regimens and dosing to providers via the interface, while providing patients with the ability to see their medication dosing on the mobile application before they submit a video.
- 3.4.7. Multi-user Login Per Device: patient data is tied to a patient username, allowing for multiple patients to share a device and keep data securely stored separately.
 - 3.4.7.1. Tracks provider and user usage and entries.
- 3.4.8. 24-hour Support Portal: providers and patients are able to access a secure online portal to report any technical issues, access information on frequently asked questions, and access step-by-step training videos on each part of **the** platform.
- 3.4.9. Electronic Medical Record Integration: Vendor's technology team includes staff with EMR integration experience.

3.5. **Technical Requirements - Security/Privacy**

- 3.5.1. User Accounts -- *DPH Internal Accounts*
 - 3.5.1.1. Internal Users will be authenticated using DPH's Active Directory via LDAPS, ADFS, or other DPH approved solution.
 - 3.5.1.2. Exchanges/validations of all user IDs and passwords must be encrypted using minimum AES-256 encryption in transit.
 - 3.5.1.3. Automatically log User off after 15 minutes of inactivity.
- 3.5.2. User Accounts – *External User Accounts*
 - 3.5.2.1. Each user must have unique user id/username and password.
 - 3.5.2.2. Notification to user via the email address associated with the account for any changes of account logon information (password).
 - 3.5.2.3. Automatically log off user after 15 minutes of inactivity.

- 3.5.3. Enforce external system user password requirements of:
 - 3.5.3.1.1. Minimum 8-character password
 - 3.5.3.1.2. Disallow use of dictionary words or username as any part of the password
 - 3.5.3.1.3. Must contain a minimum of one upper case, one lower case, one numeral and one specialty character (e.g. &, @, \$, (, *, #,),_, +)
 - 3.5.3.1.4. Password must expire minimum of once every 180 days
 - 3.5.3.1.5. Passwords cannot be reused for a minimum of 10 password change cycles
 - 3.5.3.1.6. Provide for self-service password reset
 - 3.5.3.1.7. Lock user account after 5 unsuccessful attempts
 - 3.5.3.1.8. Passwords must be saved within the system/database using best practice AES-256 encryption or industry standard hashing algorithms.
- 3.5.4. Notification via email and logon prior to password expiration for external accounts.
 - 3.5.4.1. Email validation and confirmation must be used for all new external user registrations.
 - 3.5.4.2. Provide ability to unlock or reset password using a combination of security questions and email validation to ensure the identity of the signer.
 - 3.5.4.3. Ability to change their password.
 - 3.5.4.4. All exchanges/validations of user ID and passwords must be encrypted using minimum AES-256 encryption in transit.
- 3.5.5. System
 - 3.5.5.1. All network traffic (e.g. between database server and web server, between web server and browser) is encrypted using a minimum of AES-256 encryption.
 - 3.5.5.2. Database, database backups and database replication instances are encrypted using minimum AES-256 encryption.
 - 3.5.5.3. All system components (e.g. database server, application server, backup sites, replication sites) must reside in the contiguous United States. No data will be replicated, transmitted or backed up outside of the United States.
 - 3.5.5.4. Audit logs shall be maintained for all system transactions (e.g. logon events successful and unsuccessful, queries, records viewed, records submitted, account changes, record changes, source user IP address) for a minimum of six (6) years.
 - 3.5.5.5. Encryption technologies are in alignment with industry standard practices and technologies; use of proprietary encryption technologies is prohibited.
 - 3.5.5.6. All client access will be over https; http protocol is explicitly prohibited by the system/servers.
 - 3.5.5.7. System and hosting facility (datacenter) must comply with Federal, State of South Carolina and DPH privacy and security laws, regulations and rules. A Level III or better data center is required for the hosting and operation of this system.
 - 3.5.5.8. The system must comply to all laws and regulations mandated by the State and the Federal Agencies (I.e. EPA, USDA, DAA, CDC, FDA) for data exchange.
- 3.5.6. Data Access and Third-Party Disclosure Contractor agrees to the following:
 - 3.5.6.1. All data received from or stored for DPH shall be referenced herein as "DPH Data." Contractor understands and acknowledges that the DPH data is confidential and proprietary. For the limited purpose of understanding restrictions on access to DPH Data, the parties agree that "DPH Data Access" shall be defined as the ability to view, retrieve, or manipulate DPH Data within a file, database, or other repository. Contractor will be in possession of and have access to the hardware and virtual servers that house the data but should not view, retrieve or manipulate data at a readable level, such as the individual files, records or databases except as required for addressing any problems reported by DPH and with DPH's authorization by email.
 - 3.5.6.1.1. Contractor will not utilize DPH data except as needed to perform responsibilities under this contract.
 - 3.5.6.1.2. Contractor shall not use or disclose DPH data for any purpose other than as stated herein.
 - 3.5.6.1.3. Contractor shall use reasonable care to protect DPH data and prevent the unauthorized disclosure of such data. DPH retains all ownership rights to the data. Contractor acquires no rights in DPH data.
 - 3.5.6.2. Contractor shall limit DPH data access to the minimum necessary to achieve the purposes of this contract and to individual users on a need-to-know basis only. Contractor will ensure that every person with potential DPH data access has a current signed DPH-0321 "DPH

- Employee/Volunteer Confidentiality Agreement" in place and on file at DI-IBC; and understands the applicable security standards.
- 3.5.6.3. Contractor will not copy, replicate, or store any data to a site or datacenter without approval by DPH in writing.
- 3.5.6.4. Contractor will treat all data received from or stored on behalf of DPH as confidential and will not disclose DPH data to any person or entity except as provided by this contract. Contractor will abide by all applicable federal, state, and local privacy, confidentiality, and data security laws, regulations, and requirements as may now be or in the future may become applicable.
- 3.5.7. Requests for Information and Subpoenas, Contractor agrees to the following:
- 3.5.7.1. Contractor will direct any request it receives for DPH information obtained under this contract including, but not limited to, a subpoena, litigation discovery request, court order, or Freedom of Information Act request, to the DPH Compliance Officer and DPH Office of General Counsel as soon as possible, and in every case within three business days of receipt and before disclosing any DPH information.
- 3.5.8. Exit Strategy, Contractor agrees to the following:
- At the end of the contract, all DPH Data is required to be returned to the agency within 30 days of contract termination (by either party for any reason) and should come at no additional cost to DPH.
- 3.5.8.1. The file format of the delivered documents after offloading in a mutually agreed upon non-proprietary format which will allow DPH to read, process and reconstruct the data sets.
- 3.5.8.2. The data file format and structure of the delivered data after offloading must be a mutually agreed upon non-proprietary format which will allow DPH to read, process and reconstruct the data sets to include all audit and tracking information.
- 3.5.8.3. The means and mode for delivering the data and documents must be defined and meet DPH data security requirements (State of SC Security Policies).
- 3.5.8.4. Contractor performance and services should continue during the Turnover or Disengagement process without disruption to DPH services at the same level and quality as provided in the contract.
- 3.5.8.5. Transition responsibilities of the Contractor and DPH during the Turnover or Disengagement should be specified in the contract.
- 3.5.8.6. These requirements may be contained in a Turnover or Disengagement Plan negotiated by DPH and the Contractor as part of the contract.
- 3.5.8.7. After the DPH Data is accepted and approved by DPH, the selected Contractor must destroy the data within 30 days and provide written certification when completed.
- 3.5.9. Data Destruction, Contractor agrees to the following:
- 3.5.9.1. All destruction/disposal of media, digital or physical, will be done in accordance with federal and state laws, regulations and industry best practices commensurate with the data classification. All removable media used by Contractor in the execution of this Contract will be restricted, audited, and encrypted in accordance with industry best practices and commensurate with the classification of the DPH data.
- 3.5.9.2. Contractor assumes all disposable and removable media used in the execution of this Contract contains restricted or confidential data, and therefore it treats all disposable and removable media, electronic and physical, with the protections and disposal procedures in accordance with this Contractor.
- 3.5.9.3. Before reuse of any media used in the execution of this Contract, all DPH data will be sanitized in accordance with industry best practices to ensure data is rendered inaccessible and otherwise unrecoverable.
- 3.5.9.4. Contractor will ensure all media containing DPH data is disposed of using methods that ensure the DPH data could not be recovered or reconstructed.
- 3.5.9.5. Contractor will bi-annually assess its methods of destruction, disposal, and reuse to ensure methods used are based on current state and federal laws, technology and industry best practices.
- 3.5.9.6. Contractor will ensure all employees, representatives and agents of Contractor, upon termination of the Contract, will return or destroy/dispose of all DPH data in accordance with this Contractor.
- 3.5.9.7. Records involved in any open investigation, audit or litigation must be retained until the matter has been resolved.

- 3.5.10. Data Ownership, Contractor agrees to the following:
DPH owns and retains full rights to the data and the documents to be hosted. The Contractor has no right to agency data. The contract should describe the process for DPH to request data and document export and receive delivery of all or a defined subset of all hosted data and documents at any time during the life of the contract.
- 3.5.11. Confidentiality and Security Laws, Contractor shall comply with all laws, regulations, and standards governing confidentiality, privacy, and data security including, but no limited to:
All DPH data is protected under one or more state and federal laws and regulations including but not limited to:
- 3.5.11.1. Breach of security of state agency data, S.C. Code §1-11-490
 - 3.5.11.2. Family Privacy Protection Act, S.C. Code §§30-2-10 through-50
 - 3.5.11.3. Personal Identifying Information Privacy Protection, S.C. Code §§30-2-300 through -340
 - 3.5.11.4. Financial Identity Fraud and Identity Theft Protection Act, S.C. Code §39-9-90
 - 3.5.11.5. Data Breach Notification, 2014 S.C. Acts No. 286, §117.117
 - 3.5.11.6. 42 U.S.C. §654a(d) -- Information integrity and security
 - 3.5.11.7. South Carolina Division of Technology Information Security Policies, Procedures, and Controls commensurate with Data classification (<http://www.admin.sc.gov/tecnology/information-security/policies-and-procedures>).
 - 3.5.11.8. The Health Insurance Portability Protection Act, Public Law 104-92, as amended and regulations.
 - 3.5.11.9. The Federal Information Security Management Act (FISMA), 44 U.S.C. § 3541, et seq.
- 3.5.12. Record Keeping and Audit, Contractor agrees to the following:
- 3.5.12.1. Contractor shall create and maintain adequate records to document ail matters covered by this Contract. Contractor shall retain all such records for six (6) years or other longer period required by law after termination, cancellation, or expiration of the Contract, and make records available for inspection and audit at any time DPH deems necessary. If any litigation, claim, or audit has begun but is not completed at the end of the six-year period, or if audit findings have not been resolved at the end of the six-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. Contractor shall allow DPH to inspect facilities and locations where activities under this Contract are to be performed on reasonable notice. Unjustified failure to produce any records required under this paragraph may result in immediate termination of this Contract with no further obligation on the part of DPH.
 - 3.5.12.2. Contractor shall allow DPH to audit its systems and records on request at reasonable times to ensure that data received from or stored on behalf of DPH is used and disclosed only for purposes authorized under this Contract.
- 3.5.13. Unauthorized Disclosure/Breach Notification, Contractor agrees to the following:
- 3.5.13.1. Contractor shall immediately report to DPH in writing any unauthorized use, access or disclosure of the DPH Data received from or on behalf DPH (whether inadvertent or intentional) in violation of the Contract. Initial notification shall be made by the Contractor or Third-Party no later than 24 hours after discovery. Contractor or Third-Party will fully cooperate with any investigation conducted by DPH or its agent of any such unauthorized use or disclosure. The report will provide details including:
 - 3.5.13.1.1. recipient and transmitter of such Data
 - 3.5.13.1.2. date of the unauthorized use or disclosure
 - 3.5.13.1.3. name and address (if known) of the user or recipient
 - 3.5.13.1.4. a brief description of the information used or disclosed
 - 3.5.13.1.5. any remedial measures taken to retrieve or otherwise repossess such information or other measures to mitigate the use or further disclosure of such information
 - 3.5.13.1.6. all other details concerning the unauthorized or inadvertent use or disclosure and the resulting mitigating steps being taken or recommended as are requested by DPH
 - 3.5.13.2. Upon learning of an unauthorized disclosure of the DPH Data, the Contractor or Third-Party shall:
 - 3.5.13.2.1. Immediately cure the cause of the breach to mitigate further loss
 - 3.5.13.2.2. Immediately commence an investigation to determine the scope of the unauthorized

disclosure to determine if a data breach occurred and prepare an incident report containing its findings, including the identity and number of individuals whose protected data was or is reasonably believed to have been the subject of the breach

- 3.5.13.2.3. As required by law, promptly notify the affected individual(s) of the breach of data concerning the individual no later than 30 days after discovery, except where a law enforcement official determines that notification would impede a criminal investigation or cause damage to national security.
- 3.5.13.3. Upon learning of a breach, DPH may immediately suspend system use until conclusion of any investigation and implementation of any corrective measures that may be necessary to reasonably assure prevention of future incidents.
- 3.5.13.4. Contractor or Third-Party shall be responsible for any breach of data security leading to the unauthorized disclosure or use of the DPH data. DPH will not be liable for any use or disclosure of the DPH Data by Contractor or Third-Party, its employees, agents, and/or Contractors or for any claims, damages, losses, or liabilities of whatsoever kind or nature that may arise out of or in connection with the use or disclosure of the DPH data by the Contractor or Third-Party, its employees, agents, and/or contractors.
- 3.5.13.5. Conduct an initial investigation.
- 3.5.13.6. Confiscate and secure any evidence in conjunction with any such occurrences.
- 3.5.13.7. Provide DPH with a written report and status of the investigation within three (3) business days of first learning of the breach.
- 3.5.13.8. Subsequently supply a written report within 7 business days outlining the impact of the breach and the steps taken to correct the situation and prevent future breaches and time frame for completion. Assist DPH, including testifying, in any proceedings or hearings which may be undertaken for any security violation.
- 3.5.13.9. Contractor must work with DPH and the State of South Carolina Department of Administration to review and address the security of the solution and associated data, including the:
 - 3.5.13.9.1. Risk analysis and management
 - 3.5.13.9.2. Physical security of servers and other hardware
 - 3.5.13.9.3. Disaster Recovery and Emergency Preparedness
 - 3.5.13.9.4. Recovery Services
- 3.5.14. Change Management Plan, Contractor agrees to the following:
 - 3.5.14.1. All planned service outages are to be communicated in writing to the appropriate agency TB point of contact no less than fifteen (15) business days prior to planned outage. Any planned change to existing functionality must be communicated in writing to the appropriate agency IT point of contact in sufficient time to allow for impact analysis and, if applicable, reintegration, reprogramming, and/or testing can be conducted prior to implementation of the change.
 - 3.5.14.2. All unplanned service outages are to be communicated in writing to the appropriate DPH IT point of contact within 60 minutes of outage and every 60 minutes thereafter until full service is restored. Included in communication will be the expected user impact and expected length of outage.

3.6. Optional Pricing:

Optional pricing will not be used in the evaluation of responses to determine the lowest bidder. Pricing will be used for the purchase of additional licenses over and above the quantity specified as deemed more advantageous to the State.

SEE BIDDING SCHEDULE

See Bidding Schedule [03-3005-1]

DELIVERY/PERFORMANCE LOCATION -- SPECIFIED (JAN 2006)

After award, all deliveries shall be made and all services provided to the following address, unless otherwise specified:
[03-3030-1]

TECHNICAL SUPPORT -- INCLUDED (JAN 2006)

Upon request, contractor shall provide technical assistance or service. Such service shall be available within hours following request. [03-3075-1]

IV. INFORMATION FOR OFFERORS TO SUBMIT

INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (MAR 2015)

You shall submit a signed Cover Page and Page Two. If you submit your offer electronically, you must upload an image of a signed Cover Page and Page Two. Your offer should include all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in Part IX. Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis. [04-4010-2]

MINORITY PARTICIPATION (APR 2024)

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

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

If so, please list the certifying governmental entity: _____

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

No If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor? _____

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

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

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

Traditional minority

Traditional minority, but female

Women (Caucasian females)

Hispanic minorities

DOT referral (Traditional minority)

DOT referral (Caucasian female)

Temporary certification

SBA 8 (a) certification referral

Other minorities (Native American, Asian, etc.)

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

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

SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE - REQUIRED (APR 2024)

The Contractor must demonstrate that programs, policies and procedures are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used by contractor to process, store, transmit, and access all government information. In order for the State to accurately evaluate the strength and viability of the Contractor's security policies, procedures and practices related to confidentiality, integrity and availability, Offerors must submit with their offers a thorough and complete written response to the Service Provider Security Assessment Questionnaire ("Response to SPSAQ") attached to this Solicitation, which must address all applicable organizations and applicable information systems. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. [04-4027-2]

SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015)

The following obligations are subordinate to any other contract clause to the extent the other clause specifically provides for enhanced safeguarding of government information, applicable information systems, or applicable organizations. Offeror

(i) warrants that the work will be performed, and any applicable information system (as defined in the clause titled "Information Security - Definitions") will be established and maintained in substantial conformity with the information provided in Offeror's Response to SPSAQ; (ii) agrees to provide the Using Governmental Unit with prompt notice of any material variation in operations from that reflected in the Response to SPSAQ; and (iii) agrees to comply with all other obligations involving either information security or information use and disclosure imposed by the contract, notwithstanding any inconsistent statement in Offeror's Response to SPSAQ. To the extent Offeror's Response to SPSAQ does not conform to any other contractual requirements, the Using Agency's lack of objection does not constitute a waiver [07-7B217-1]

V. QUALIFICATIONS

QUALIFICATIONS OF OFFEROR (MAR 2015)

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

SUBCONTRACTOR -- IDENTIFICATION (FEB 2015)

If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either (1) exceeds 10% of your cost, (2) involves access to any "government information," as defined in the clause entitled "Information Security - Definitions," if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the work which they are to perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, **and point of contact**. In determining your responsibility, the state may contact and evaluate your proposed subcontractors. [05-5030-2]

VI. AWARD CRITERIA

AWARD CRITERIA -- BIDS (JAN 2006)

Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]

AWARD TO ONE OFFEROR (JAN 2006)

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

COMPETITION FROM PUBLIC ENTITIES (JAN 2006)

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

VII. TERMS AND CONDITIONS -- A. GENERAL

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

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

BANKRUPTCY - GENERAL (FEB 2015)

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

CHOICE-OF-LAW (JAN 2006)

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

CONTRACT AWARDED PURSUANT TO CODE (MAR 2024)

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

CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (MAY 2024)

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

DISCOUNT FOR PROMPT PAYMENT (JAN 2006)

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

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

[07-7A020-1]

DISPUTES (MAY 2024)

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

EFT INFORMATION (APR 2024)

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

EQUAL OPPORTUNITY (JAN 2006)

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

FALSE CLAIMS (JAN 2006)

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

FIXED PRICING REQUIRED (JAN 2006)

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

NO INDEMNITY OR DEFENSE (FEB 2015)

Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason. [07-7A045-2]

NOTICE (MAY 2024)

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

OPEN TRADE (JUN 2015)

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

ORGANIZATIONAL CONFLICT OF INTEREST (APR 2023)

(a) The Contractor agrees to immediately advise the Procurement Officer if an actual or potential organizational conflict of interest is discovered after award, and to make a full written disclosure promptly thereafter to the Procurement Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Procurement Officer, to avoid, mitigate, or neutralize the actual or potential conflict. (b) The State may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not increase the obligation of the State beyond what it would have been if the subcontract had contained such a clause. (c) The disclosure required by paragraph (a) of this provision is a material obligation of the contract. If the Contractor knew or should have known of an organizational conflict of interest prior to award, or discovers an actual or potential conflict after award, and does not disclose, or misrepresents, relevant information to the Procurement Officer, the State may terminate the contract for default. [07-7A054-1]

PAYMENT and INTEREST (FEB 2021)

(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 29-630. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly

waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off. [07-7A055-4]

PUBLICITY (JAN 2006)

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

PURCHASE ORDERS (JAN 2006)

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

SURVIVAL OF OBLIGATIONS (JAN 2006)

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

TAXES (JAN 2006)

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

TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)

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

THIRD PARTY BENEFICIARY (JAN 2006)

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

WAIVER (JAN 2006)

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

VII. TERMS AND CONDITIONS -- B. SPECIAL

CHANGES (JAN 2006)

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

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

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

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

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

[07-7B025-1]

COMPLIANCE WITH LAWS (JAN 2006)

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

CONFERENCE -- PRE-PERFORMANCE (JAN 2006)

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

[07-7B040-1]

CONTRACTOR'S LIABILITY INSURANCE - GENERAL (FEB 2015)

(a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII,

and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.

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

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

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

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

(c) 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, 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, 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 State 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 State 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 State 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 State immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.

(g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State 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 effect this waiver of subrogation, but this provision applies regardless of whether or not the State 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 State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(i) The State 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'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015)

Note: Certificate of Insurance MUST be submitted to the procurement manager no later than 10 days after contract goes final.

[ASK QUESTIONS NOW: For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially available insurance products. **Any offeror having concerns with any specific requirements of this clause should communicate those concerns to the procurement officer well in advance of bid opening.**]

(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:

- (i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;
- (ii) privacy risks, including (A) failure to properly handle, manage, store, dispose of, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss of, unauthorized access to, or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations.
- (iii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims – Disclosure Of Information" and "Information Use And Disclosure;" and
- (iv) errors, omissions, or negligent acts in the performance, by the contractor or by any entity for which the contractor is legally responsible, of professional services included in the work.
- (c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media and content offenses.
- (d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)
- (e) Coverage shall have limits no less than five million (\$5,000,000.00) dollars per occurrence and ten million (\$10,000,000.00) dollars aggregate.
- (f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.
- (g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims-made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.
- (h) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.
- (i) For any claims related to this contract, the insurance coverage required by this clause shall be primary insurance as respects the State, 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, 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.
- (j) Prior to commencement of the work, the Contractor shall furnish the State with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer 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 State reserves the right to require complete, certified copies of all required insurance policies, including policy declarations and any endorsements required by this section, at any time.
- (k) 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 State immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.
- (l) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.
- (m) Any deductibles or self-insured retentions must be declared to and approved by the State. The State 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. [07-7B058-1]

CONTRACTOR PERSONNEL (JAN 2006)

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'S OBLIGATION -- GENERAL (JAN 2006)

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

CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006)

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

DEFAULT (JAN 2006)

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

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

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

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

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

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

(e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its

possession in which the State has an interest.

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

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

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract. [07-7B075-1]

ILLEGAL IMMIGRATION (NOV 2008)

(An overview is available at www.procurement.sc.gov) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractor's language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractor's language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

INDEMNIFICATION-THIRD PARTY CLAIMS - GENERAL (NOV 2011)

Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B100-2]

INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015)

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

government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law. (b) Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractor's ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitee's attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction. (c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. (d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B102-1]

INFORMATION SECURITY - DEFINITIONS (FEB 2015)

The following definitions are used in those clauses that cross reference this clause. Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term "compromise" includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract. Data means a subset of information in an electronic format that allows it to be retrieved or transmitted. Government information means information (i) provided to Contractor by, or generated by Contractor for, the using governmental unit, or (ii) acquired or accessed by Contractor as a result of performing the Work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information. Information means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual. Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. Public information means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request. Software means any computer program accessed or used by the Using Governmental Unit or a third party pursuant to or as a result of this contract. Third party means any person or entity other than the Using Governmental Unit, the Contractor, or any subcontractors at any tier. Unrestricted information means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work. Web-based service means a service accessed over the Internet and acquired, accessed, or used by the using governmental unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services. [07-7B104-1]

INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)

(a) Definitions. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. In addition, as used in this clause— Clearing means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods. Intrusion means an unauthorized act of bypassing the security mechanisms of a system. Media

means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, portable hard drives, “thumb” drives, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system. Safeguarding means measures or controls that are prescribed to protect information. Voice means all oral information regardless of transmission protocol. (b) 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 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. (c) Safeguarding requirements and procedures. Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure: (1) Protecting information on public computers or Web sites: Do not process government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Government information shall not be posted on Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts).

(2) Transmitting electronic information. Transmit email, text messages, blogs, and similar communications that contain government information using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.

(3) Transmitting voice and fax information. Transmit government information via voice and fax only when the sender has a reasonable assurance that access is limited to authorized recipients.

(4) Physical and electronic barriers. Protect government information by at least one physical and one electronic barrier (e.g., locked container or room, login and password) when not under direct individual control.

(5) Sanitization. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 80088, Guidelines for Media Sanitization, at http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf.

(6) Intrusion protection. Provide at a minimum the following protections against intrusions and compromise: (i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware. (ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.

(7) Transfer limitations. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause.

(d) Subcontracts. Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information. (e) Other contractual requirements regarding the safeguarding of information. This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems. [07-7B105-1]

INFORMATION SECURITY – LOCATION OF DATA (FEB 2015)

Notwithstanding any other provisions, contractor is prohibited from processing, storing, transmitting, or accessing government information, as defined in the clause titled Information Security - Definitions, outside the continental United States. For clarity, this obligation is a material requirement of this contract and applies to subcontractors at any tier. [07-7B106-1]

INFORMATION USE AND DISCLOSURE (FEB 2015)

Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor’s use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be broadly interpreted to effectuate this intent. Every obligation in this clause is material. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information. (a) Definitions. The terms

used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.

(b) Legal mandates. Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide using governmental unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law.

(c) Flow down. Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement the requirements of this clause on, any other person or entity that contractor authorizes to take action related to government information.

(d) Collecting Information. Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work.

(e) Rights, Disclosure and Use. Except as otherwise expressly provided in this solicitation, Contractor agrees NOT to either (1) use or disclose government information, or (2) retain government information after termination or expiration of this contract. Contractor acquires no rights in any government information except the limited rights to use, disclose and retain the government information in accordance with the terms of this solicitation. To the extent reasonably necessary to perform the work, Contractor may: (i) use (including access, process, transmit, and store) and maintain the government information itself; and (ii) disclose government information to persons having a need-to-know (e.g., subcontractors). Before disclosing government information to a subcontractor or third party, Contractor shall give the using governmental unit detailed written notice of both the reason for disclosure and the identity and location of the recipient. The notice shall be provided no later than fifteen (15) business days in advance of the disclosure.

(f) Return. Notwithstanding the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to the using governmental unit (or destroy, at the using governmental unit's option) all government information in its possession as and upon written request of using governmental unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information).

(g) Privacy Policy & Applicable Laws. Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards.

(h) Actions Following Disclosure. Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on the using governmental unit, and (5) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.

(i) Survival & Remedy. All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause.

[07-7B108-1]

LICENSES AND PERMITS (JAN 2006)

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

OWNERSHIP OF DATA AND MATERIALS (JAN 2006)

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

PRICE ADJUSTMENTS (JAN 2006)

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

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

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

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

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

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

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

[07-7B160-1]

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

[Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state. [07-7B185-1]

RELATIONSHIP OF THE PARTIES (JAN 2006)

Neither party is an employee, agent, partner, or joint venture of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party. [07-7B205-1]

SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015)

The following obligations are subordinate to any other contract clause to the extent the other clause specifically provides for enhanced safeguarding of government information, applicable information systems, or applicable organizations. Offeror (i) warrants that the work will be performed, and any applicable information system (as defined in the clause titled "Information Security - Definitions") will be established and maintained in substantial conformity with the information

provided in Offeror's Response to SPSAQ; (ii) agrees to provide the Using Governmental Unit with prompt notice of any material variation in operations from that reflected in the Response to SPSAQ; and (iii) agrees to comply with all other obligations involving either information security or information use and disclosure imposed by the contract, notwithstanding any inconsistent statement in Offeror's Response to SPSAQ. To the extent Offeror's Response to SPSAQ does not conform to any other contractual requirements, the Using Agency's lack of objection does not constitute a waiver [07-7B217-1]

SUBCONTRACTOR SUBSTITUTION PROHIBITED - RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009)

If you receive an award as a result of the subcontractor preference, you may not substitute any business for the subcontractor upon which you relied to qualify for the preference, unless first approved in writing by the procurement officer. If you violate this provision, the State may terminate your contract for cause and you may be debarred. In addition, the procurement officer may require you to pay the State an amount equal to twice the difference between the price paid by the State 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]

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

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 1 years, 0 months, 0 days from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

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

At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of 0 year(s), 6 month(s), and 0 day(s), unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B245-3]

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

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

TERMINATION FOR CONVENIENCE (JAN 2006)

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

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise

this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

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

(b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

(i) contract prices for supplies or services accepted under the contract;

(ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;

(iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;

(iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

(5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the State's right to require the termination of a subcontract, or (ii) increase the obligation of the State beyond what it would have been if the subcontract had contained an appropriate clause.

[07-7B265-1]

VII. TERMS AND CONDITIONS – C. DPH’S SPECIAL CLAUSES

DPH’s CONFIDENTIALITY POLICY (DPH – MAR 2014)

Confidential information includes information known or maintained in any form, whether recorded or not, consisting of protected health information, other health information, personal information, personal identifying information, confidential business information, and any other information required by law to be treated as confidential, designated as confidential by DPH, or known or believed by contractor or contractor’s employee or agent to be claimed as confidential or entitled to confidential treatment.

- (a) Contractor will not:
 - (i) access, view, use, or disclose confidential information without written authorization from DPH, unless required to perform its responsibilities under this contract or required by law (as determined by a court or other governmental body with authority);
 - (ii) discuss confidential information obtained in the course of its relationship with DPH with any other person or in any location outside of its area of responsibility in DPH; or
 - (iii) make any unauthorized copy of confidential information or remove or transfer this information to any unauthorized location or media.
 - (b) If contractor discloses confidential information pursuant to a properly completed authorization or legal process, order, or requirement, contractor must document the disclosure and make the documentation and authorization available for DPH inspection and audit. Contractor will direct any request it receives for confidential information obtained through performance of services under this contract, including a subpoena, litigation discovery request, court order, or Freedom of Information Act request, to the DPH Contracts Manager and DPH Office of General Counsel as soon as possible, and in every case within one business day of receipt.
- (c) Contractor must ensure that its employees, agents, and subcontractors who may have access to DPH confidential information are aware of and comply with these confidentiality requirements. Contractor must ensure that any release of confidential information is limited to the minimum necessary to meet its obligations under this agreement and applicable law. If contractor will or may have access to any Protected Health Information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-92, as amended, and regulations (45 CFR Parts 160 and 164), DPH may require the contractor to sign and comply with DPH’s Business Associate Agreement (DPH Form 0854, attached) and protect PHI in compliance with the referenced HIPAA laws.
- (d) Unauthorized use or disclosure of confidential information may result in termination of this agreement and may be grounds for fines, penalties, imprisonment, injunctive action, damages, civil suit, or debarment from doing business with the State. The contractor must immediately notify the DPH Compliance Officer and the DPH Contracts Manager of any unauthorized use or disclosure of confidential information received under this contract.
- (e) The obligations of this provision shall survive termination, cancellation, or expiration of the contract.

PREVENTING AND REPORTING FRAUD, WASTE AND ABUSE (DPH MAR-2014)

DPH has procedures and policies concerning the prevention and reporting of fraud, waste and abuse (FWA) in agency-funded programs, including but not limited to those funded by federal grants such as Medicaid. No agency employee, agent, or contractor shall direct, participate in, approve, or tolerate any violation of federal or State laws regarding FWA in government programs.

Federal law prohibits any person or company from knowingly submitting false or fraudulent claims or statements to a federally funded program, including false claims for payment or conspiracy to get such a claim approved or paid. The False Claims Act, 31 U.S.C. §3729-3733, and other “whistleblower” statutes include remedies for employees who are retaliated against in their employment for reporting violations of the Act or for reporting fraud, waste, abuse, or violations of law in connection with federal contracts or grants, or danger to public health or safety. Under State law, persons may be criminally prosecuted for false claims made for health care benefits, for Medicaid fraud, for insurance fraud, or for using a computer in a fraud scheme or to obtain money or services by false representations. Additional information regarding the federal and State laws prohibiting false claims and SCDPH’s policies and procedures regarding false claims may be obtained from the agency’s Contracts Manager or Bureau of Business Management.

Any employee, agent, or contractor of SCDPH who submits a false claim in violation of federal or State laws will be reported to appropriate authorities.

If Contractor, Contractor’s agents or employees have reason to suspect FWA in agency programs, this information should be reported in confidence to the agency. A report may be made by writing to the Office of Internal Audits, DPH, 2600 Bull Street, Columbia, SC 29201; or by calling the Agency Fraud, Waste and Abuse Hotline at 803-896-0650 or toll-free at 1-866-206-5202. Contractor is required to inform Contractor’s employees of the existence of DPH’s policy prohibiting FWA and the procedures for reporting FWA to the agency. Contractor must also inform Contractor’s employees, in writing, of their rights and remedies under 41 U.S.C. §4712 concerning reporting FWA or violations of law in connection with federal contracts or grants, or danger to public health or safety, in the predominant native language of the workforce.

[Reference: False Claims Act, 31 U.S.C. §3729-3733; 41 U.S.C. §4712]

TOBACCO-FREE CAMPUS POLICY (DPH - Feb 2016)

Use of all tobacco products, including smokeless tobacco and electronic cigarettes, is prohibited in any facility or on any property owned or controlled by DPH (including parking lots, parking garages, sidewalks, and breezeways).

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

BIDDING SCHEDULE (NOV 2007)

Question	Mandatory / Optional	Multiple Responses Accepted?	Response
1. The Submitter has read and understands the terms and conditions of this solicitation.	Mandatory	No	_____ Yes. I have read and understand the terms and conditions.
2. The offer is in accordance with the terms and conditions of this solicitation.	Mandatory	No	_____ Yes, I am in accordance with the terms and conditions.
The bidder has read and understands all Amendments.	Mandatory	No	_____ Yes _____ No

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	35.000	each		
Product Catg.: 84056 - Teleconference Systems Audio/Video (Incl. VOD)				
Item Description: VDOT Licenses YEAR 1				
Tendering Text: Annual Cost, Year 1				
Internal Item Number: 2				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Contractor Preference? See The SC Procurement Code, Section 11-35-1524(C) (1) (III) and Section IIB of this Solicitation for more Information. For a FAQ on these Preferences, Please See WWW.Procurement.SC.Gov/Preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0002	35.000	each		
Product Catg.: 84056 - Teleconference Systems Audio/Video (Incl. VOD)				
Item Description: VDOT Licenses YEAR 2				
Tendering Text: Annual Cost, Year 2				
Internal Item Number: 1				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Contractor Preference? See The SC Procurement Code, Section 11-35-1524(C) (1) (III) and Section IIB of this Solicitation for more Information. For a FAQ on these Preferences, Please See WWW.Procurement.SC.Gov/Preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0003	35.000	each		
Product Catg.: 84056 - Teleconference Systems Audio/Video (Incl. VOD)				
Item Description: VDOT Licenses YEAR 3				
Tendering Text: Annual Cost, Year 3				
Internal Item Number: 3				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Contractor Preference? See The SC Procurement Code, Section 11-35-1524(C) (1) (III) and Section IIB of this Solicitation for more Information. For a FAQ on these Preferences, Please See WWW.Procurement.SC.Gov/Preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0004	35.000	each		
Product Catg.: 84056 - Teleconference Systems Audio/Video (Incl. VOD)				
Item Description: VDOT Licenses YEAR 4				
Tendering Text: Annual Cost, Year 4				
Internal Item Number: 4				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Contractor Preference? See The SC Procurement Code, Section 11-35-1524(C) (1) (III) and Section IIB of this Solicitation for more Information. For a FAQ on these Preferences, Please See WWW.Procurement.SC.Gov/Preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0005	35.000	each		
Product Catg.: 84056 - Teleconference Systems Audio/Video (Incl. VOD)				
Item Description: VDOT Licenses YEAR 5				
Tendering Text: Annual Cost, Year 5				
Internal Item Number: 5				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Contractor Preference? See The SC Procurement Code, Section 11-35-1524(C) (1) (III) and Section IIB of this Solicitation for more Information. For a FAQ on these Preferences, Please See WWW.Procurement.SC.Gov/Preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0006	1.000	each		
Product Catg.: 84056 - Teleconference Systems Audio/Video (Incl. VOD)				
Item Description: VDOT Licenses Implementation				
Tendering Text: Initial Implementation and deployment of system, plus training				
Internal Item Number: 6				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Contractor Preference? See The SC Procurement Code, Section 11-35-1524(C) (1) (III) and Section IIB of this Solicitation for more Information. For a FAQ on these Preferences, Please See WWW.Procurement.SC.Gov/Preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

OPTIONAL PRICING FOR ADDITIONAL USERS

Optional pricing will not be used in the evaluation of responses to determine the lowest bidder. Pricing will be used for the purchase of additional licenses over and above the quantity specified as deemed more advantageous to the State.

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0007	1.000	each		
Product Catg.: 84056 - Teleconference Systems Audio/Video (Incl. VOD)				
Item Description: VDOT Optional Additional License Cost				
Tendering Text: Optional Additional License Cost				
Internal Item Number: 7				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Contractor Preference? See The SC Procurement Code, Section 11-35-1524(C) (1) (III) and Section IIB of this Solicitation for more Information. For a FAQ on these Preferences, Please See WWW.Procurement.SC.Gov/Preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

IX. ATTACHMENTS TO SOLICITATION

ATTACHMENTS LIST [09-9002-1]

The following documents are attached to this solicitation:

DPH'S BUSINESS ASSOCIATE AGREEMENT (DPH- MAR 2013)

SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE (FEB 2015)

NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING

OFFEROR'S CHECKLIST (JUN 2007)

APPENDIX A

DPH'S BUSINESS ASSOCIATE AGREEMENT (DPH – MAR 2013)

BUSINESS ASSOCIATE AGREEMENT

BETWEEN

SOUTH CAROLINA DEPARTMENT OF PUBLIC HEALTH

AND

PURPOSE

The Department of Public Health (hereafter referred to as "Covered Entity") and _____ (hereafter referred to as "Business Associate") desire to enter into this Business Associate Agreement (hereafter, "BA Agreement" or "the Agreement") for the purpose of protecting the privacy and security of clients' health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including all pertinent regulations (45 CFR Part 160 and Part 164), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

II. DEFINITIONS Terms used, but not otherwise defined, in this Agreement shall have the same meanings as set forth in HIPAA and HITECH. A change to HIPAA or HITECH which modifies any defined term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Agreement.

- a. Breach. "Breach" shall have the meaning given under HITECH Section 13400, 42 U.S.C § 17921, and 45 CFR §164.402.
- b. Data Aggregation. "Data Aggregation" shall have the meaning given under the Privacy Rule, including, but not limited to, 45 CFR §164.501.
- c. Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501.
- d. Disclose and Disclosure shall have the meaning given in 45 CFR §160.103.
- e. Electronic Protected Health Information. "Electronic Protected Health Information" (referred to below as EPHI) shall have the same meaning as the term "electronic protected health information" in 45 CFR § 160.103.
- f. HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, as amended, and related HIPAA regulations (45 CFR Parts 160-164.)
- g. HITECH. "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.
- h. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- i. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information codified at 45 CFR Part 160 and Part 164, Subparts A and E and any other applicable provisions of HIPAA, or amendments thereto, including HITECH.
- j. Protected Health Information. "Protected Health Information" (referred to below as PHI) shall have the same definition contained in 45 CFR §160.103. For purposes of this Agreement, PHI is limited to the information created or received by Business Associate from or on behalf of Covered Entity. "Protected Health Information" includes, without limitation, "Electronic Protected Health Information," as defined below.
- k. Required By Law. "Required By Law" shall have the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR §164.103, and any additional requirements created under HITECH.
- l. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services or his/her designee.
- m. Security Incident. "Security Incident" shall have the meaning given in 45 CFR §164.304.
- n. Security Standards. "Security Standards" shall mean the Standards for the Protection of Electronic Protected Health Information that are codified at 45 CFR Part 160 and Part 164, Subparts A and C, and any other applicable provision of HIPAA, or amendments thereto, including HITECH.

- o. Unsecured PHI. “Unsecured PHI” shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in Section 13402 of HITECH.
- p. “Use” or “Uses” shall have the meaning given in 45 CFR §160.103.

III. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Contract # _____, or as otherwise provided by law, if such use or disclosure would not violate the Privacy Rule or the Security Standards if done by Covered Entity.
- b. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, and may disclose PHI for those purposes provided that as to any such disclosure: 1) the disclosure is required by law; or 2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached.
- c. Business Associate will notify the Covered Entity of any breach of confidentiality or security by a person to whom the Business Associate has disclosed PHI pursuant to this Section, and will mitigate and/or assist the person and the Covered Entity in mitigating any harmful effects resulting from the breach of information.
- d. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- e. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).
- f. Business Associate may disclose PHI to any of its subcontractors for use in fulfilling the obligations of this Agreement as long as the subcontractor agrees in writing to the restrictions and conditions in this Agreement with respect to PHI.
- g. Business Associate may disclose PHI to another entity as authorized by the Covered Entity in a separate written agreement or amendment to this agreement, if such disclosure of PHI would not violate the Privacy Rule or HITECH if done by Covered Entity itself.
- h. Business Associate, upon entering into an agreement using PHI for any of its functions and activities on behalf of the Covered Entity or in its general operations, will make available that agreement to the Covered Entity upon request.

IV. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI

- a. Business Associate shall comply with the Confidentiality provision contained in Contract # _____ and any Confidentiality Agreement signed by the Business Associate pursuant to that Contract for so long as this BA Agreement remains in effect.
- b. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law. Business Associate will not use PHI in any manner that would constitute a violation of the Privacy Rule, Security Standards, HIPAA, or HITECH if so used by Covered Entity.
- c. Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of PHI or EPHI other than as provided by this Agreement, and shall implement administrative, physical, and technical safeguards to comply with the Security Standards as required by 45 CFR Sections 164.308, 164.310, 164.312 and 164.316 in order to protect the confidentiality, integrity, and availability of EPHI or PHI that Business Associate creates, receives, maintains, or transmits, to the same extent as if Business Associate were a Covered Entity, pursuant to HITECH Section 13401, 42 U.S.C. § 17931. These safeguards are required regardless of the mechanism used to transmit the information.
- d. Business Associate shall adopt the effective and appropriate technical safeguards and technology and methodology standards provided in any guidance issued by the Secretary pursuant to HITECH Sections 13401-13402, 42 U.S.C. §§ 17931-17932.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or of a Breach of Unsecured PHI, pursuant to 45 CFR § 164.530(f) and HITECH § 13402.
- f. Business Associate shall notify Covered Entity by the most expedient manner within one business day of any use or disclosure of PHI or EPHI not authorized by this Agreement or in violation of any applicable federal or state laws or regulations of which Business Associate becomes aware, or of any suspected or actual Security Incident or Breach, unless delayed in accordance with 45 CFR §164.412. Business Associate shall notify Covered Entity immediately upon the law enforcement delay being lifted.

- g. In addition to the notification required by IV.f, Business Associate will provide written notification of a Breach of Unsecured PHI to Covered Entity without unreasonable delay and in no event later than 5 calendar days after discovery of the Breach. A Breach of Unsecured PHI shall be treated as discovered by the Business Associate as of the first day on which such breach is known to Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Notification of a Breach of Unsecured PHI required by this paragraph shall comply with HITECH Section 13402, 42 U.S.C. § 17932, and 45 CFR § 164.410. The Breach notice shall include, to the extent possible, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the Breach. Business Associate shall provide Covered Entity with the following information at the time of the Breach notification or promptly thereafter as soon as information becomes available:
1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known, and the nature of the non-permitted use or disclosure;
 2. A description of the unsecured PHI that was involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 3. Who made the non-permitted use or disclosure;
 4. Who received the non-permitted use or disclosure;
 5. Any steps individuals should take to protect themselves from potential harm resulting from the Breach; and
 6. What Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further breaches.
- h. Business Associate shall ensure that any agent or subcontractor to whom it provides PHI received from Covered Entity, or that creates, receives, maintains, or transmits PHI on behalf of Business Associate, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including this paragraph, and agrees to implement reasonable and appropriate safeguards to protect such PHI, including the safeguards required by paragraph IV.c and IV.d above with respect to PHI. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of such violation.
- i. Business Associate shall provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to fulfill the requirements of 45 CFR § 164.524 if the Business Associate has PHI in a designated record set. If Business Associate receives a request directly from an Individual, Business Associate will direct the Individual to the Covered Entity.
- j. Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, if Business Associate has PHI in a Designated Record St. Business Associate shall not amend PHI received from the Covered Entity or created and/or provided to the Business Associate on behalf of the Covered Entity unless the amendment is directed by or consented to by the Covered Entity. If an Individual requests an amendment of PHI directly from Business Associate or any of its agents or subcontractors, Business Associate will direct Individual to Covered Entity. The Business Associate shall provide a copy of the amended PHI to the Covered Entity.
- k. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate agrees to collect and maintain disclosure information as it relates to PHI including: (i) the date of disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the written request for disclosure under 45 CFR § 164.502(a)(2)(ii) or 164.512, if any. Business Associate will maintain records related to disclosures of PHI for at least six (6) years after the date of the disclosure. The provisions of this subparagraph shall survive termination of this Agreement.
- l. Business Associate will provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section IV.k of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. In addition, Business Associate agrees to make PHI available for purposes of accounting of disclosures as required by Section 164.528 of the Privacy Rule and Section 13405(c)(3) of HITECH, 42 U.S.C. § 17935(c)(3). If the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing.
- m. Business Associate shall comply with any requests for restrictions on certain disclosures of PHI pursuant to Section 164.522 of the Privacy Rule to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity

- n. Business Associate shall comply, pursuant to HITECH and its implementing regulations, with all additional requirements of the Privacy Rule, including those contained in 45 CFR 164.502(e) and 164.504(e)(1)(ii) at such time as the requirements are applicable to Business Associate, pursuant to HITECH Section 13404, 42 U.S.C. § 17934.
- o. If applicable, and if requested by Covered Entity, Business Associate will provide a copy of Covered Entity's Notice of Privacy Practices to the client at the time of first contact, and maintain documentation of the client's receipt of the Notice.
- p. Business Associate shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining compliance with the Privacy Rule. Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.
- q. Business Associate and its agents and subcontractors may only request, use, or disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure pursuant to this agreement and consistent with Covered Entity's minimum necessary policies and procedures. Except as otherwise permitted by HIPAA standards, until the effective date on which the Secretary issues guidance on what constitutes "minimum necessary," when using or disclosing PHI or responding to a request for PHI, Business Associate and its agents or subcontractors must limit such PHI, to the extent practicable, to a Limited Data Set, or if more information than a Limited Data Set is required, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request. After the effective date on which the Secretary issues guidance on what constitutes "minimum necessary," Business Associate and its agents or subcontractors shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, and shall comply with the Secretary's guidance on what constitutes "minimum necessary." See HITECH Section 13405, 42 U.S.C. § 17935.
- r. Business Associate shall provide Covered Entity reasonable access to its premises for review and demonstration of its internal practices and procedures for safeguarding PHI of Covered Entity for purposes of determining that Business Associate has complied with this Agreement and HITECH; provided that 1) the Parties mutually agree in advance upon the scope, location and timing of such access, and 2) Covered Entity shall protect confidential and proprietary information of Business Associate to which Covered Entity has access.
- s. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
- t. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the Agreement or other arrangement, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Business Associate must terminate the Agreement or other arrangement if feasible, or, if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- u. Business Associate acknowledges that if it violates any of the requirements provided under this Business Associate Agreement, Business Associate will be subject to the same civil and criminal penalties that a Covered Entity would be subject to if such Covered Entity violated the same requirement.
- v. The additional requirements of HITECH that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference are incorporated into this Agreement.
- w. Business Associate will contact the Covered Entity's Privacy Officer at (803) 898-3318 at any time clarification or guidance is needed regarding compliance with the terms of this Agreement.
- x. Business Associate shall not use or disclose PHI for fundraising or marketing purposes.
- y. Business Associate may not enter into any agreements with its agents or subcontractors pertaining to its obligations under this Agreement without the express written consent of Covered Entity.

V. DUTIES OF COVERED ENTITY

- a. If applicable, Covered Entity shall provide the Business Associate with a copy of its policies and procedures implementing the Privacy Rule, including the Notice of Privacy Practices.
- b. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to

use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI, within a reasonable period of time after Covered Entity becomes aware of such changes to or revocation of permission.

- d. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must comply with in accordance with 45 CFR § 164.522 and HITECH § 13405(a), 42 USC § 17935(a), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- e. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

VI. TERM AND TERMINATION

- a. Term. The Term of this Agreement shall be effective as of _____, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall do any of the following:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement and Contract # _____ if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2. Immediately terminate this Agreement and Contract # _____ if Business Associate has breached a material term of this Agreement and cure is not feasible;
 - 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary;
 - 4. Immediately stop all further disclosures of PHI to Business Associate pursuant to each agreement between Covered Entity and Business Associate that is the subject of such breach, until the breach is cured.
- c. Effect of Termination.
 - 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason or upon written demand from Covered Entity, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies, including backups, of the PHI. If the return or destruction of PHI held by the Business Associate is not permissible pursuant to South Carolina law, the Business Associate will extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible.
 - 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
- d. Continuing Privacy Obligation. Business Associate's obligation to protect the privacy of PHI is continuous and survives any termination, cancellation, expiration, or other conclusion of this Agreement or any other agreement between Business Associate and Covered Entity.

VII. INDEMNIFICATION (the following does not apply to other government agencies or political subdivisions)

Business Associate agrees to indemnify and hold harmless Covered Entity from any claims, demand, suit, loss, liability, or administrative penalties that the Covered Entity may sustain as a result of the Business Associate's breach of this Agreement, including any breach of confidentiality by a person to whom the Business Associate has disclosed information pursuant to this Agreement; provided, however, that the Business Associate shall not hold the Covered Entity harmless from any claims, demands or causes of action arising or resulting directly or indirectly from negligence of the Covered Entity, its officers, agents, representatives or employees, or any person or entity not subject to the Business Associate's supervision or control. This indemnification shall include reasonable expenses including attorney's fees incurred by defending such claims and damages incurred by reason of the Business Associate's failure to comply with applicable laws and regulations or for damages caused by the Business Associate, its employees and/or agents, including subcontractors. As a condition precedent to asserting a right of indemnity, the Covered Entity shall provide timely written notice to the Business Associate of the assertion of the claim to which the right of indemnification is claimed to exist.

VIII. MISCELLANEOUS

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Standards means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement to comply with the requirements of the Privacy Rule, the Security Standards, HIPAA, HITECH, or any other state or federal law affecting this Agreement. If a Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HITECH or its regulations, such Party shall notify the other Party in writing. For a period of thirty days, the Parties shall address such concern in good faith and amend the terms of the Agreement if necessary to bring it into compliance. If, after such thirty day period, the Agreement fails to comply with HIPAA, the Privacy Rule, the Security Standards or HITECH, then either Party has the right to terminate upon written notice to the other Party.
- c. Survival. The respective rights and obligations of Business Associate under Section VI.c and VI.d of this Agreement shall survive termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule and the Security Standards.
- e. All notices pursuant to this Agreement must be given in writing and shall be effective when received if hand-delivered or upon dispatch if sent by reputable overnight delivery service, facsimile, or U.S. Mail to the appropriate address or facsimile number. Notification of any unauthorized use or disclosure of PHI or of a Breach of Unsecured PHI under paragraphs IV.f and IV.g shall be made to the DPH Privacy Officer at 2600 Bull Street, Columbia, SC 29201, 803-898-0707 (phone), 803-898-0476 (fax).
- f. Business Associate and Covered Entity agree that Individuals who are the subject of PHI are not third-party beneficiaries of this Agreement.
- g. The parties acknowledge that state and federal laws relating to electronic data security and privacy are evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and HITECH and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon Covered Entity's request, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of any amendment to the Agreement embodying written assurances consistent with the standards and requirements of HIPAA and HITECH or other applicable laws. Covered Entity may terminate this Agreement and Contract# _____ upon thirty (30) days written notice if (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section, or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and HITECH.
- h. If any provision of this Agreement violates any applicable statute, ordinance, or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.
- i. This Agreement may not be amended, altered, or modified except by written agreement signed by Business Associate and Covered Entity.
- j. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
- k. The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement.
- l. Neither Covered Entity nor Business Associate shall use the names or trademarks of the other party or of any of the respective party's affiliated entities in any advertising, publicity, endorsement, or promotion unless prior written consent has been obtained for the particular use contemplated.
- m. All references to specific statutes, codes, or regulations shall be deemed to be references to those statutes, codes or regulations as they may be amended from time to time.
- n. Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or authority to control or direct the activities of the other or the right or authority to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party, unless expressly authorized in this or another agreement between the parties.

AS TO DPH

BY: _____
Johnny Harleston, Procurement Officer
Division of Procurement Services
Bureau of Business Management

DATE: _____

AS TO THE CONTRACTING PARTY

BY: _____
(NAME)

Its: _____
(TITLE)

DATE: _____

MAILING ADDRESS:

DPH 0854 (Revised 3/06/13)

SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE

Instructions: (1) Attach additional pages or documents as appropriate and make sure answers cross reference to the questions below. (2) As used in this Questionnaire, the phrase “government information” shall have the meaning defined in the clause titled “Information Security.” (3) This Questionnaire must be read in conjunction with both of the following two clauses (a) Service Provider Security Assessment Questionnaire – Required, and (b) Service Provider Security Representation.

1. Describe your policies and procedures that ensure access to government information is limited to only those of your employees and contractors who require access to perform your proposed services.

2. Describe your disaster recovery and business continuity plans.

3. What safeguards and practices do you have in place to vet your employees and contractors who will have access to government information?

4. Describe and explain your security policies and procedures as they relate to your use of your contractors and next-tier sub -contractors.

5. List any reports or certifications that you have from properly accredited third-parties that demonstrate that adequate security controls and assurance requirements are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used to process, store, transmit, and access all government information. (For example, an ISO/IEC 27001 compliance certificate, an AICPA SOC 2 (Type 2) report, or perhaps an AICPA SOC 3 report (i.e., a SysTrust or WebTrust seal)). For each certification, describe the scope of the assessment performed. Will these reports / certifications remain in place for the duration of the contract? Will you provide the state with most recent and future versions of the applicable compliance certificate / audit report?

6. Describe the policies, procedures and practices you have in place to provide for the physical security of your data centers and other sites where government information will be hosted, accessed or maintained.

7. Will government information be encrypted at rest? Will government information be encrypted when transmitted? Will government information be encrypted during data backups, and on backup media? Please elaborate.
8. Describe safeguards that are in place to prevent unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of government information.
9. What controls are in place to detect security breaches? What system and network activity do you log? How long do you maintain these audit logs?
10. How will government information be managed after contract termination? Will government information provided to the Contractor be deleted or destroyed? When will this occur?
11. Describe your incident response policies and practices.
12. Identify any third party which will host or have access to government information.

Offeror's response to this questionnaire includes any other information submitted with its offer regarding information or data security.

SIGNATURE OF PERSON AUTHORIZED TO REPRESENT THE ACCURACY OF THIS INFORMATION ON BEHALF OF CONTRACTOR:

By: _____
(authorized signature)

(printed name of person signing above)

Its: _____
(title of person signing above)

Date: _____

SPSAQ (JAN 2015) [09-9025-1]

IMPORTANT TAX NOTICE - NONRESIDENTS ONLY

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

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

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

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

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

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

[09-9005-5]


OFFEROR'S CHECKLIST (JUN 2007)

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

Review this checklist prior to submitting your bid/proposal.

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

- Do not include any of your standard contract forms!
 - Unless expressly required, do not include any additional boilerplate contract clauses.
 - Reread your entire bid/proposal to make sure your bid/proposal does not take exception to any of the state's mandatory requirements.
 - Make sure you have properly marked all protected, confidential, or trade secret information in accordance with the instructions entitled: SUBMITTING CONFIDENTIAL INFORMATION. **DO NOT mark your entire bid/proposal as confidential, trade secret, or protected! Do not include a legend on the cover stating that your entire response is not to be released!**
 - Have you properly acknowledged all amendments? Instructions regarding how to acknowledge an amendment should appear in all amendments issued.
 - Make sure your bid/proposal includes a copy of the solicitation cover page. Make sure the cover page is signed by a person that is authorized to contractually bind your business.
 - Make sure your Bid/proposal includes the number of copies requested.
 - Check to ensure your Bid/proposal includes everything requested!
 - If you have concerns about the solicitation, do not raise those concerns in your response! **After opening, it is too late! If this solicitation includes a pre-bid/proposal conference or a question & answer period, raise your questions as a part of that process!** Please see instructions under the heading "submission of questions" and any provisions regarding pre-bid/proposal conferences.
- [09-9010-1]

	<h2>State of South Carolina</h2> <p>Invitation For Bid</p> <h3>AMENDMENT 1</h3>	Solicitation: 5400027854 Date Issued: 01/13/2025 Procurement Officer: JOHN HARLESTON Phone: 803-898-8054 E-Mail Address: HARLESJ1@DPH.SC.GOV Mailing Address: SC Dept. of Public Health Attn: Procurement 301 Gervais Street Columbia SC 29201-2104
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DESCRIPTION: **VDOT- Video Directly Observed Therapy**

USING GOVERNMENTAL UNIT: **SC Department of Public Health**

SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL: <http://www.procurement.sc.gov>
(See Page 3 for instructions)

SUBMIT OFFER BY (Opening Date/Time): ~~02/06/2025~~ **02/11/2025 2:30 PM ET** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: ~~1/21/25~~ **01/22/2025 5:00 PM ET** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: ****Prefer On-Line Submittals** If Submitting Paper Submittals – 1**

CONFERENCE TYPE: Not Applicable DATE & TIME: <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)</small>	LOCATION: Not Applicable
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AWARD & AMENDMENTS	Award will be posted on 02/11/25 02/13/2025 . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: http://www.procurement.sc.gov
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You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

NAME OF OFFEROR <small>(full legal name of business submitting the offer)</small>	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
-------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

AUTHORIZED SIGNATURE <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	DATE SIGNED
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TITLE <small>(business title of person signing above)</small>	STATE VENDOR NO. <small>(Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)</small>
-----------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------

PRINTED NAME <small>(printed name of person signing above)</small>	STATE OF INCORPORATION <small>(If you are a corporation, identify the state of incorporation.)</small>
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OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.) <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____ <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Corporation (tax-exempt) <input type="checkbox"/> Government entity (federal, state, or local)

PAGE TWO

(Return Page Two with Your Offer)

<p>HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business)</p> 	<p>NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)</p> <p align="right">_____ Area Code - Number - Extension Facsimile</p> <p align="right">_____ E-mail Address</p>
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<p>PAYMENT ADDRESS (Address to which payments will be sent.) (See "Payment" clause)</p> <p>____ Payment Address same as Home Office Address ____ Payment Address same as Notice Address (check only one)</p>	<p>ORDER ADDRESS (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)</p> <p>____ Order Address same as Home Office Address ____ Order Address same as Notice Address (check only one)</p>
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ACKNOWLEDGMENT OF AMENDMENTS
 Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)

Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

<p>DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)</p>	<p>10 Calendar Days (%)</p>	<p>20 Calendar Days (%)</p>	<p>30 Calendar Days (%)</p>	<p>_____ Calendar Days (%)</p>
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PREFERENCES - A NOTICE TO VENDORS (SEP. 2009): On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at www.procurement.sc.gov/preferences . ***ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES.*** [11-35-1524(E)(4)&(6)]

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

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

Amendment No. One

Invitation For Bid 5400027854

Description: VDOT- Video Directly Observed Therapy

AMENDMENTS TO SOLICITATION (JAN 2004)

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

****EXTEND BID OPENING: FROM: 02/06/2025 TO 02/11/2025 2:30 PM ET ****

****EXTEND QUESTIONS RECEIVED BY: FROM: 1/21/25 TO 01/22/2025 5:00 PM ET****

****EXTEND AWARD POSTING: FROM: 02/11/25 TO 02/13/2025****

CHANGES TO THE ORIGINAL SOLICITATION

I. SCOPE OF SOLICITATION

It is the intent of the State of South Carolina, South Carolina Department of Public Health (DPH) to solicit offers to establish a contract to ~~update current SAS codes and identify ways to improve and automate report creation~~ provide a Video Directly Observed Therapy (VDOT) software system, in accordance with the requirements stated herein.

III. SCOPE OF WORK/SPECIFICATIONS

SCOPE OF WORK

The South Carolina Department of Public Health is soliciting bids from qualified vendors to establish a contract to provide an application that will allow DPH providers to perform a ~~live~~ recorded (synchronous ~~asynchronous~~) approach known as Video Directly Observed Therapy (VDOT).

VII. TERMS AND CONDITIONS -- B. SPECIAL

TERM OF CONTRACT – OPTION TO RENEW (FEB 2021)

At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of ~~0- 1 year(s), 0 month(s), and 0 day(s)~~, unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B245-3]



Exhibit C

BID OPENING SHEET SC DEPARTMENT OF PUBLIC HEALTH

SOLICITATION NUMBER: 5400027854

PROCUREMENT OFFICER: **Johnny Harleston**

OPENING/CLOSING DATE: 02/11/2025

TIME: 2:30pm

SCOPE: VDOT Video Directly Observed Therapy

Company Name	Unit Pricing	Pricing					
Emocha	\$165	\$165	\$170	\$170	\$175	\$0	\$175
Dimagi Inc	\$600	\$630	\$660	\$690	\$720	\$5000	\$0

CERTIFIED AS TRUE AND ACCURATE

Mary Crooks
BID CLERK: Mary Crooks

Johnny Harleston
WITNESS: Johnny Harleston

STATE OF SOUTH CAROLINA
SC DPH
ATTN: PROCUREMENT SERVICES DIVISION
301 GERVAIS ST, 4TH FLOOR
COLUMBIA SC, 29201-3073

Intent to Award

Posting Date: February 24, 2025

Solicitation: 5400027854
Description: VDOT- VIDEO DIRECTLY OBSERVED THERAPY
Agency: SC Department of Public Health

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **March 06, 2025**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

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

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

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

- (a) by email to protest-itmo@itmo.sc.gov, or
(b) by post or delivery to 1201 Main Street, Suite 601, Columbia, SC 29201

Contract Number: 4400036673
Awarded To: DIMAGI, INC (7000310307)
585 MASSACHUSETTS AVE STE 3
CAMBRIDGE MA 02139

Total Potential Value: \$ 120,500.00
Maximum Contract Period: March 11, 2025 through March 10, 2030

Item	Description	Unit Price
00001	VDOT Licenses Implementation	\$ 5,000.00
00002	VDOT Optional Additional License Cost	\$ 0.00
00003	VDOT License YEAR 1	\$ 600.00/per license
00004	VDOT License YEAR 2	\$ 630.00/per license
00005	VDOT License YEAR 3	\$ 660.00/per license
00006	VDOT License YEAR 4	\$ 690.00/per license
00007	VDOT License YEAR 5	\$ 720.00/per license

Procurement Officer
JOHN HARLESTON



March 26, 2025

Mr. John St. C. White
Division of Procurement Services
South Carolina State Fiscal Accountability Authority
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Protest of Award – IFB 5400027854

Dear John,

This letter serves as the agency's response to the protest filed by Scene Health regarding the award of solicitation 5400027854. Scene Health incorrectly asserts that the solicitation was conducted as a Request for Proposals (RFP). **The solicitation was an Invitation for Bids (IFB)**, which does not involve evaluation factors or scoring. **Award for an IFB is made to the lowest-priced responsive and responsible bidder.** S.C. Code Ann. §11-35-1520(10); IFB p. 28. In this case, Dimagi, Inc.'s bid, and its product, SureAdhere, met all IFB requirements and was less than half the price of Scene Health's offer. Scene Health did not dispute that Dimagi's bid was the lowest price. The protest therefore comes down to responsiveness and responsibility.

I. Responsiveness

A. Legal Standard

A responsive bidder is a person who has submitted a bid that conforms in all material aspects to the IFB. §11-35-1410(9). The IFB stated:

RESPONSIVENESS (MAR 2024)

(a) Award will not be made on a nonresponsive offer. An offer is nonresponsive (i) if it does not constitute an unambiguous offer to enter into a contract with the State, or (ii) if it imposes conditions inconsistent with, or does not unambiguously agree to, the solicitation's material requirements. (b) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation. [02-2A1053]

To be responsive, a proposal need not conform to all the requirements of the RFP; it must simply conform to all the essential requirements of the RFP. *IN RE: Appeal by 3M Company*, SCPD 2022-3 (S.C. Procure. Rev. Panel 2022), 2022 WL 16946502. "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 the 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.” S.C. Code Ann. §11-35-1520(13). A requirement is not “essential” simply because it is stated in mandatory terms. *IN RE: Appeal by 3M Company*, SCPD 2022-3 (S.C. Procure. Rev. Panel 2022), 2022 WL 16946502. When determining whether words carry a mandatory or permissive meaning, they must be considered within the context of the RFP. *Id.*

The responsiveness of a sealed bid is determined solely from the four corners of the bid document. *IN RE: Appeal by Greenville Office Supply*, SCPD 2014-5 (S.C. Procure. Rev. Panel 2014), 2014 WL 5038626. , By signing its bid, a bidder agrees to be bound by the terms and conditions of the IFB and to perform the contract as specified. *IN RE: Appeal by Otis Elevator Company*, SCPD 2017-1 (S.C. Procure. Rev. Panel 2017), 2017 WL 1509317. A bidder who takes no exception to the IFB requirements and signs the cover page agrees to be bound by the terms of the solicitation. *Id.* Any potential conflict between statements in an offeror’s bid and the solicitation should be resolved by giving priority to the Solicitation based on the “Order of Precedence” of the documents that would form the resulting contract. *IN RE: Appeal by 3M Company*, SCPD 2022-3 (S.C. Procure. Rev. Panel 2022), 2022 WL 16946502.

B. Relevant Facts

In its bid, Dimagi committed to all the requirements of the solicitation in:

- The cover page, which stated, “By signing, You agree to be bound by the terms of the Solicitation.” IFB p.1.
- Its cover letter, stating, “The platform . . . meets all South Carolina DPH functional and security requirements . . . SureAdhere meets or exceeds all South Carolina DPH VDOT system requirements specified in this Solicitation.” IFB p.5.
- Scope of Work/Specifications, stating, “As the Compliance with Required Features chart (Table 2) illustrates, SureAdhere meets all SCDPH VDOT system specifications listed in the solicitation.” IFB p.6.
- Table 1. Compliance with Required Specifications, in which Dimagi entered under the “Compliant (Yes/No)” column, “Yes” for each specific requirement. IFB pp.6-28.
- VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL “1. The Submitter has read and understands the terms and conditions of this solicitation. X Yes. I have read and understand the terms and conditions. 2. The offer is in accordance with the terms and conditions of this solicitation. X Yes, I am in accordance with the terms and conditions.”

The IFB contained a standard IFB Order of Precedence clause:

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) the solicitation, as amended, (2) your offer, as amended, (3) any statement reflecting the State’s final acceptance (a/k/a “award”), and (4) purchase orders. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above . . .

C. Allegations

Scene Health alleges Dimagi was nonresponsive in three areas:

1. No Provider-facing Mobile Application – Scene Health alleges Dimagi’s web-based provider portal, accessible on a mobile device, does not satisfy the requirement for a mobile application.
2. Lack of Side Effect Data Capture, Reporting, and Automated Alerts; no Side Effect Capture before Medication Taking Event – Scene Health alleges Dimagi’s platform does not capture side effects as a first step in the application or prompt patients not to take their medication based on side effects.
3. No “Forgot Password” Function for Patients, Health Department Staff provides passwords – Scene Health alleges Dimagi’s system does not allow patients to reset passwords without staff intervention.

D. Response

In each case, Scene Health has improperly referenced sources outside Dimagi’s bid. Responsiveness is determined from the four corners of the bid and consideration of external sources is improper.

Dimagi’s bid took no exception to any of the IFB requirements and committed to full compliance in several places, as noted above. Dimagi also included in its bid a table (Table 1. Compliance with Required Specifications, IFB pp.6-28) with three columns, one listing IFB specifications, a second headed “Compliant (Yes/No),” and a third headed “Details” with Dimagi’s comments on each requirement. Table 1¹ was not required and can be disregarded as superfluous. Even so, Dimagi stated directly above the table, “SureAdhere meets all SCDPH VDOT system specifications listed in the solicitation” and for every requirement, including the three in question, in the second “Compliant” column it answered “Yes.”

Concerning the password-setting issue, Dimagi explicitly stated in the “Details” column in Table 1, “SureAdhere allows patients to request and reset their security passwords independently, without needing to involve DPH personnel,” thus directly confirming compliance with the IFB. As to the other two issues, while the superfluous “Details” comments did not explicitly mimic the IFB language, Dimagi did answer “yes” in the “Compliant” column and the comments can be read as consistent with the IFB. DPH does not judge a lack of precision in an unnecessary comment to be anything more than an immaterial variation having no effect on contract price or performance. Dimagi’s unambiguous statements of commitment to meet IFB requirements must override any perceived conflict in other statements. Dimagi’s bid conformed to the essential requirements of the IFB and was responsive on its face. Therefore, there is no need to inquire further and this protest ground must be dismissed. See *IN RE: Appeal by Otis Elevator Company*, SCPD 2017-1 (S.C. Procure. Rev. Panel 2017), 2017 WL 1509317 (“[B]y signing its bid, American agreed to be bound by the terms and conditions of the IFB and to perform the contract as specified therein. Because Otis' bid is responsive on its face, there is no need for the Panel to inquire further, and the Panel hereby dismisses Otis' protest and appeal grounds based on responsiveness.”)

¹ Directly above the table, Dimagi referred to “Table 2.” As there is no Table 2, DPH presumes this reference was a typographical error and should have read “Table 1.”

II. Responsibility

A. Legal Standard

A responsible bidder or offeror is a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance. S.C. Code Ann. §11-35-1410(8). Under the Procurement Code, a procurement officer's finding of responsibility is a matter of discretion that should not be overturned absent proof that it is "clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A).

Speculation about a bidder's future contract performance does not raise a proper challenge to responsibility. *In re: Appeal by Catamaran*, Panel Case No. 2015-2 (August 6, 2015). A protestor's claim that a competitor has submitted an unreasonably low price is not a valid basis for protest. *Id.* A protestor's claim, based upon speculation and conjecture, that a bidder will not be able to fully perform the contract because of its pricing proposal is a matter of contract administration and does not state a proper challenge to responsibility. *Id.*

B. Allegation

Scene Health contends Dimagi's proposed \$5,000 implementation fee is unrealistic and fails to account for staff training, data migration, and patient continuity.

C. Response

The agency does not dictate a bidder's pricing model. Dimagi proposed \$5,000 for implementation, and, if awarded, this is the maximum amount the agency will pay for those services. Scene Health's complaint about Dimagi's low price does not state a basis for protest.

III. Other Grounds

Scene Health raised two other grounds for its protest: (1) Improper or Arbitrary Evaluation, and (2) Potential Use of Undisclosed Evaluation Factors.

A. Legal Standard

Award of a contract in an IFB must be made to the lowest responsive and responsible bidders. S.C. Code Ann. §11-35-1520(10). The invitation for bids must set forth the evaluation criteria to be used. Criteria must not be used in bid evaluation that are not in the invitation for bids. Bids must be evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board. S.C. Code Ann. §11-35-1520(6). The IFB stated the award criteria: "Award will be made to the lowest responsible and responsive bidder(s)." IFB p.28.

B. Allegations

1. Dimagi received points for features it does not actually offer.
2. The agency did not properly consider the feasibility of transitioning to a new system without interrupting care.

3. Potential use of undisclosed evaluation factors, such as a preference for a new vendor, could have unfairly influenced the decision.
4. The solicitation ignored the need for implementation requirements.

C. Response

Scene Health misunderstands the nature of the solicitation. Scene Health's protest incorrectly references scoring and ranking, which are elements of an RFP, not an IFB. The IFB process determines whether bidders are responsive and responsible and then awards the contract to the lowest-priced offer. There were no undisclosed evaluation factors and no other factors are relevant. Dimagi's offer met all IFB requirements and was priced lower than Scene Health's. There was no preference for a new vendor. Any complaint that the IFB should have addressed implementation or transition was required to be made within fifteen days of IFB issuance and is barred at this stage. S.C. Code Ann. §11-35-4210(1)(a).

DPH believes that none of Scene Health's assertions have merit, and that its requested actions are not appropriate. We respectfully request that the Chief Procurement Officer dismiss the protest and allow DPH to reinstate the award to Dimagi, Inc.

Should you require any additional information or clarification, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tripp Clark', written over a horizontal line.

Tripp Clark
Procurement Director
South Carolina Department of Public Health