

Solicitation Outline

I. Scope of Solicitation/Introduction II. General Instructions to Offerors III. General Terms and Conditions

IMPORTANT: This solicitation contains **Special Instructions, Specifications, Required Information, Required Qualifications, Award Criteria, and Special Terms and Conditions** under a separate attachment with more precise descriptions of the physical and/or functional characteristics of the supplies, equipment and/or services requested. Refer to the "Attachments" tab for further details.

I. Scope of Solicitation / Introduction

ACQUIRE SERVICES (C.02.15): The purpose of this solicitation is to acquire services complying with all documents found in the "Attachments" and "Line Items" tabs. [01-1010-1]

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

- A. Offerors should register with the College of Charleston eBid Sourcing System well in advance of the applicable solicitation's submittal deadline. The College requires 1 – 2 business days to review and activate your registration.
- B. If you are unfamiliar with our eBid Sourcing System, do not wait until the last day to submit your response. Give yourself time to comfortably learn and navigate the system.
- C. Thoroughly review all information under each tab and read each attached document.
- D. Check applicable dates/times for pre-bid conferences, site visits and deadlines for submittal of questions as listed under the "Activities" tab. If you have concerns and/or questions about the solicitation, inquire in writing before the deadline for questions. Please refer to "Submission of Questions" and "Pre-Bid / Proposal Conferences" sections of this document.
- E. Answer all questions under the "Attributes" tab and acknowledge all addenda. If an optional question does not apply to your Offer, enter "N/A" instead of leaving blank. If you claim any preferences, be sure to claim those same preferences under each applicable item listed under the "Line Items" tab.
- F. Enter your Offer / prices under the "Line Items" tab and not under "Notes". Be sure to bid as specified according to quantities and units of measure requested.
- G. Reread your entire bid / proposal to ensure it does not take exception to any of the College's and/or State's mandatory requirements.
- H. Properly mark all protected, confidential or trade secret information in accordance with the "Submitting Confidential Information" section of this document. *Do not mark your entire bid / proposal as Confidential, Trade Secret or Protected! Do not include any notation stating that your entire response is not to be released!*
- I. Do not include any of your standard contract forms. Unless expressly required, do not include any additional boilerplate contract clauses.
- J. Check to ensure your bid / proposal includes everything requested. Consult the "Information for Offerors to Submit" in this document as well as any separate specifications documents. If not submitting electronically, ensure you submit the number of copies requested.
- K. Ensure your Offer is signed by a person who is authorized to contractually bind your business. After entering bid amount(s) under the "Line Items" tab, you must digitally "sign" your Offer and click the "Submit Your Offer" button. If not submitting electronically, the signed Offer must be on a completed "Invitation Document" form, found under the "Documents" Icon.
- L. If you are awarded, be prepared to furnish requested documents such as W-9 form, insurance certificates, etc. within 2 business days after award is posted.

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

DEFINITIONS, CAPITALIZATION, AND HEADINGS (C.02.15): Clause headings used in this solicitation are for convenience only and shall not be used to construe meaning or intent. Even if not capitalized, the following definitions are applicable to all parts of this solicitation, unless expressly provided otherwise. More information may be found at the [NIGP Dictionary of Procurement Terms](#) [02-2A-003-1]

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

Board – The South Carolina Budget and Control Board or its successor in interest.

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

Change Order – Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. [11-35-310(4)]

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

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

Contract Modification – A written order signed by the Procurement Officer, directing the contractor to make changes which the clause of the contract titled "Changes", if included herein, authorizes the Procurement Officer to order without the consent of the Contractor.

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

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

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

Procurement Officer – The person, or his/her successor, representing the College of Charleston in this solicitation; identified as such in the “Event Details” tab under “Bid Contact Information”, on an addendum and/or award notice.

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

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

State – The State of South Carolina

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

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

Us and We – The College of Charleston

You and Your – Offeror and/or Contractor

eBID NAVIGATION (C.03.15): The following definitions will be helpful in navigating the College of Charleston automated procurement system for submitting offers electronically (preferred) or downloading documents for paper submittal (acceptable).

Activities Tab – Contains information regarding all mandatory and non-mandatory activities occurring before the closing of the solicitation. Examples include, but are not limited to pre-bid conferences, presentations, site visits and deadlines for submittal of questions.

Attachments Tab – Contains this document, specifications, addenda, notices, appendices and any attachments relevant to this solicitation

Attributes Tab – A series of questions and checklists that all Offerors must review and acknowledge/answer to indicate full comprehension of the scope of solicitation as well as determine responsiveness, responsibility and preference consideration.

Award Details – Contains data relating to an award after the lowest responsive/responsible Offeror has been determined. Documents may include, but are not limited to Statements of Award, Statements of Intent to Award, and Tabulations of Responses.

Bid Events and Auction Events Tabs – Become aware of any events in your profession that may be of interest to you or someone you know.

Documents Icon – Contains an Invitation Document for downloading/printing to manually submit a paper bid.

Event Details Tab – Contains bid information such as bid type, issue/closing dates/times, bid status, bid notes, Procurement Officer and shipping/billing contact information.

Line Items Tab – Contains all line items applicable to this solicitation. This is where Offerors enter the dollar amount(s) of their bid(s) as well as any notes pertaining to each line item.

Response Attachments Tab – This tab allows you to electronically attach required submittals and supporting documents, if applicable.

Response Submission Tab – Contains the last steps in submitting your Offer. After entering bid amount(s) under the Line Items Tab, you must digitally “sign” and submit your Offer. This tab also permits you to verify/edit your profile information as well as insert notes, if applicable.

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

MAXIMUM CONTRACT PERIOD – ESTIMATED (S.01.06): 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]

II. General Instructions to Offerors

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

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

AWARD NOTIFICATION (C.02.15): Notice regarding any award, cancellation of award and/or extension of award will be posted on our web page: [College of Charleston eBid Results](#). Should the contract resulting from this Solicitation have a potential value of \$100,000.00 or more, notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh calendar day after such notice is given. [02-2A010-12]

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (C.11.12): Giving false, misleading or incomplete information on this certification may render you subject to prosecution under Section 16-9-10 of the SC Code of Laws and other applicable laws.

- A. By submitting an Offer, the Offeror certifies that-
1. The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Offeror or competitor relating to-
 - a. Those prices;
 - b. The intention to submit an offer; or
 - c. The methods or factors used to calculate the prices offered.
 2. The prices in this offer have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
 3. No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- B. Each signature on the offer is considered to be a certification by the signatory that the signatory-
1. Is the person in the Offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs A.1 – A.3 of this certification
 2. Has been authorized, in writing, to act as agent for the Offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs A.1 – A.3 of this certification [As used in this subdivision B.1, the term "principals" means the person(s) in the Offeror's organization responsible for determining the prices offered in this bid or proposal]
 3. As an authorized agent, does certify that the principals referenced in subdivision B.1 of this certification have not participated, and will not participate, in any action contrary to paragraphs A.1 – A.3 of this certification; and
 4. As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs A.1 – A.3 of this certification.
- C. If the Offeror deletes or modifies paragraph A.2 of this certification, the Offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1]

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

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

CLARIFICATION (C.02.15): The Procurement Officer at his/her sole discretion may elect to communicate with you after opening to clarify or discuss your offer or the solicitation requirements. Such communications may be conducted only with Offerors who have submitted a responsive offer which conforms in all material aspects to the solicitation. All communications must be documented in writing, included with the offer and may not be used to revise an offer or solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

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

COLLEGE OFFICE CLOSINGS (C.11.12): If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the College of Charleston by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal operating processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If the College of Charleston is closed at the time of a pre-bid or pre-proposal conference, an Amendment will be issued to reschedule. Helpful information may be found at [College of Charleston Emergency Information](#) [02-2A120-2]

COMPLETION OF FORMS / CORRECTION OF ERRORS (C.11.12):

- A. Preferred Method, for offers submitted electronically: All prices and notations should be entered electronically on this eProcure site under the "Line Items" tab. Neither the solicitation documents, nor any of its components may be modified by the Offeror.
- B. Alternate Method, for offers submitted on paper: 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). [02-2A045-1]

CONTENTS OF OFFER (BVB & RFP) (C.03.15): (See also section entitled "Information for Offerors to Submit")

- A. Offers should be complete and carefully worded and should convey all of the information requested.
- B. Offers should be prepared simply and economically, providing a straightforward, concise description of Offeror's capabilities to satisfy the requirements of the solicitation. Emphasis should be on completeness and clarity of content.
- C. The contents of your offer must be divided into two parts, the technical proposal and the business proposal. Each part should be bound in a separate electronic document.
- D. If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the solicitation's contractual requirements or an Offeror's standard terms and conditions may be deemed non-responsive and not considered for award. [02-2B040-2]

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

DESCRIPTIVE LITERATURE – LABELLING (S.01.06): Include Offeror's name on the cover of any specifications or descriptive literature submitted with your offer. [02-2B045-1]

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

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

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

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

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

IRAN DIVESTMENT ACT – CERTIFICATION (C.01.15): The [Iran Divestment Act List](#) is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. The government shall provide a person ninety days written notice before he/she is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State and/or College to award a contract to you.

- A. By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List.
- B. You must notify the Procurement Officer immediately if, at any time before posting of a final Statement of Award, you are added to the Iran Divestment Act List. [02-2A077-1]

OPENING OFFERS / PROPOSALS – INFORMATION NOT DIVULGED (C.02.15): In competitive sealed Requests for Proposals and Best Value Bids, neither the number, nor identity of Offerors, nor prices will be divulged at opening.

PROPOSAL ACCEPTANCE PERIOD (C.04.13): In order to withdraw your Offer after the minimum period specified on the “Event Details” tab, you must notify the Procurement Officer in writing.

PROPOSAL AS OFFER TO CONTRACT (C.04.13): By submitting your Proposal, you are offering to enter into a contract with the College of Charleston. Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Supplier Response Document. An Offer may be submitted by only one legal entity. “Joint proposals” are not allowed.

PROPOSE IN ENGLISH AND DOLLARS (C.04.13): Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

PROTESTS (C.03.15): Any prospective bidder, Offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen (15) calendar days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, Offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten (10) calendar days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided and must be received by the appropriate Chief Procurement Officer within the time provided. [SC Protest Process Overview](#) [Section 11-35-4210] [02-2A085-1]

- A. **Protests for Goods and Services Solicitations – CPO - MMO Address (S.06.06):** Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and **submitted in writing** by email to protest-mmommo@mmo.sc.gov or by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B122-1]

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

QUESTIONS – DUTY TO INQUIRE (C.02.15): Offeror, by submitting an Offer, represents that he/she has read and understands the Solicitation and that his/her Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by addendum. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the College's attention. See clause entitled “Questions from Offerors.” [02-2A070-2]

QUESTIONS FROM OFFERORS (C.02.15):

- A. Any prospective Offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated under the “Activities” tab of this solicitation. Label any communication regarding your questions with the name of the Procurement Officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)]. Any information given a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. See clause entitled “Duty to Inquire.” We will not identify you in our answer to your question.

- B. The College of Charleston seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer as soon as possible regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140] [02-2A095-2]

RECYCLED PRODUCTS (C.08.14): The College of Charleston abides by the [State of South Carolina Environmentally Preferred Purchasing Policy](#) for procurement of products and services that have a lesser or reduced effect on human health and the environment over the life cycle of the products and services when compared with competing products or services that serve the same purpose. Offerors shall identify products made from or containing recycled and/or recyclable materials. This information will be used for future research. [04-4025-1]

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

RESPONSIVENESS / IMPROPER OFFERS (C.11.12):

- A. **Bid as Specified:** Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.
- B. **Multiple Offers:** Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.
- C. **Responsiveness:** Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the College of Charleston cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]
- D. **Price Reasonableness:** Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].
- E. **Unbalanced Bidding:** The College of Charleston may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the College even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount. [02-2A105-1]

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

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

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

SUBMITTING CONFIDENTIAL INFORMATION AND FOIA (C.02.15): An overview is available at [Submitting Confidential Information and FOIA](#) . For every document Offeror submits in response to or with regard to this solicitation, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either

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

For every document Offeror submits in response to or with regard to this solicitation, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the SC Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire

response (bid, proposal, quote, etc.) as confidential, trade secret, or protected! If your response or any part thereof, is improperly marked as confidential or trade secret or protected, the College of Charleston may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror

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

In determining whether to release documents, the College will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential", "Trade Secret" or "Protected". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, the College of Charleston, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina, the College of Charleston or any of the State's agencies, that Offeror marked as "Confidential", "Trade Secret" or "Protected". (All references to SC Code of Laws.) [02-2A125-2]

SUBMITTING REDACTED OFFERS (C.03.15): Contractor shall mark the original copy of Offer to identify any information that is exempt from public disclosure. Contractor shall do so in accordance with the clause entitled "Submitting Confidential Information and FOIA." In addition, Contractor shall submit one complete copy of Offer from which exempt information was removed, i.e., a redacted copy. The information redacted should mirror in every detail the information marked as exempt from public disclosure. The redacted copy should reflect the same pagination as the original, show the empty space from which information was redacted, and be submitted under the "Attachments" tab as a document with words "Redacted Copy" included in the title. (See clause entitled "Magnetic Media Required Format.") Except for the redacted information, the CD must be identical to the original hard copy. Portable Document Format (.pdf) is preferred. [04-4030-1]

SUBMITTING YOUR OFFER OR MODIFICATION (C.11.12):

- A. Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) –
 - 1. Addressed to the office specified in the Solicitation; and
 - 2. Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder.
- B. If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package.
- C. Each Offeror must submit the number of copies indicated in the Solicitation.
- D. Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs A.1 – A.2 of this provision when delivered to the office specified in the Solicitation.
- E. Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. [02-2A130-1]

TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (C.02.15): Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to 4% of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of \$50,000.00 annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. For a list of certified disadvantaged small businesses, please consult the [OSMBA Minority Business Directory](#). [02-2A135-1]

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

TAXPAYER IDENTIFICATION NUMBER (S.01.04):

- A. If Offeror is owned or controlled by a common parent as defined in paragraph (2) of this provision, Offeror shall submit with its Offer the name and TIN of common parent.
- B. Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member. "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.
- C. If Offeror does not have a TIN, Offeror shall indicate if TIN has been applied for or TIN is not required. If a TIN is not required, indicate whether
 - 1. Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States

2. Offeror is an agency or instrumentality of a state or local government
3. Offeror is an agency or instrumentality of a foreign government
4. Offeror is an agency or instrumentality of the Federal Government [02-2A140-1]

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

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

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

III. General Terms and Conditions

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

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

BANKRUPTCY – GENERAL (C.02.15):

- A. **Notice:** In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the College of Charleston. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State and/or College contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.
- B. **Termination:** This contract is voidable and subject to immediate termination by the College of Charleston upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-12]

CHANGES (C.02.15):

- A. **Contract Modification:** By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:
 1. Drawings, designs, or specifications, if the goods to be furnished are to be specially manufactured for the College in accordance therewith
 2. Method of shipment or packing
 3. Place of delivery
 4. Description of services to be performed
 5. Time of performance (i.e., hours of the day, days of the week, etc.)
 6. Place of performance of the services.
 Subparagraphs A.1 – A.3 apply only if goods are furnished under this contract. Subparagraphs A.4 – A.6 apply only if services are performed under this contract.
- B. **Adjustments of Price or Time for Performance:** If any such change increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether 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 College of Charleston promptly and duly makes such

provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

- C. **Time Period for Claim:** Within 30 days after receipt of a written contract modification under Paragraph A of this clause, unless such period is extended by the Procurement Officer in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless the College of Charleston is prejudiced by the delay in notification.
- D. **Claim Barred After Final Payment:** No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract. [07-7B025-1]

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

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

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

- A. Any contract resulting from this solicitation shall consist of the following documents. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed below.
 - 1. A Record of Negotiations, if any, executed by you and the Procurement Officer
 - 2. The solicitation, as amended
 - 3. Documentation of clarifications of an offer [11-35-1520(8)] or discussions [11-35-1530(6)], if applicable
 - 4. Your offer
 - 5. Any statement reflecting the College of Charleston's final acceptance (a/k/a "award")
 - 6. Purchase orders.
- B. The terms and conditions of documents A.1 – A.6 shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation,
 - 1. A purchase order or other instrument submitted by the College of Charleston or
 - 2. Any invoice or other document submitted by Contractor.
 - 3. Any privacy policy, terms of use, or end user agreementExcept as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect.
- C. No contract, license, or other agreement containing contractual terms and conditions will be signed by any employees, agents or officials of the College of Charleston other than the Procurement Officer. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-2]

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

CONTRACTOR LIABILITY INSURANCE – GENERAL (C.03.15):

- 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 **\$1,000,000.00 per occurrence**. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.
 - 2. **Auto Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000.00 per accident** for bodily injury and property damage.
 - 3. **Worker's Compensation:** As required by the State of South Carolina, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000.00 per accident** for bodily injury or disease.
- C. The College of Charleston, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.
- D. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, the College of Charleston, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, the College of Charleston, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

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

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

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

- A. Contractors are encouraged to implement their own environmental health and safety programs in anticipation of future mandatory requirements.
- B. Prior to starting work, Contractor shall contact the College's Contract Administrator to ensure they have received pertinent information for the project, including, but not limited to floorplans, permits and utility information.
- C. Prior to starting work, Contractor shall review work site and identify hazards that may occur while performing the job.
- D. Contractor shall ensure proper environmental health and safety precautions are followed in accordance with the Occupational Safety and Health Administration's (OSHA) and the Environmental Protection Agency's (EPA) Code of Federal Regulations (CFR). Additionally, it is the Contractor's responsibility to ensure all applicable State, County and City environmental health and safety requirements are followed.
- E. Contractor shall ensure individuals working at the site are trained and aware of potential hazards. Contractor shall also ensure these individuals are provided with proper safety equipment to prevent accidental injury in accordance with OSHA's CFR.
- F. Contractor shall ensure all personnel follow OSHA, EPA and College of Charleston policies and guidelines, in addition to any jurisdiction(s) in which the work shall be performed.
- G. Contractor shall be responsible for the removal and/or disposal of any/all hazardous waste generated from the project in accordance with federal, state, local and College regulations. The Department of Environmental Health and Safety is available to address any hazardous waste concerns and must be consulted prior to the removal of said waste from College property. All Contractors performing inspections, construction and repairs at the College of Charleston are required to comply with these requirements. Failure to adhere to these requirements may result in an immediate shutdown of work and breach of contract.

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

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

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

DEFAULT (C.02.15):

- A. The College of Charleston may, subject to paragraphs D – E of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:
1. Deliver the supplies or to perform the services within the time specified in this contract or any extension
 2. Make progress, so as to endanger performance of this contract (but see paragraph B of this clause)
 3. Perform any of the other material provisions of this contract (but see paragraph B of this clause).
- B. The College of Charleston's right to terminate this contract under subdivisions A.2 – A.3 of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.
- C. If the College of Charleston terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the College of Charleston for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- D. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- E. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- F. If this contract is terminated for default, the College of Charleston may require the Contractor to transfer title and deliver to the College, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the College of Charleston has an interest.
- G. The College of Charleston shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The College of Charleston may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the College against loss because of outstanding liens or claims of former lien holders.
- H. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the College of Charleston, be the same as if the termination had been issued for the convenience of the College of Charleston. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the College of Charleston, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.
- I. The rights and remedies of the College in this clause are in addition to any other rights and remedies provided by law or under this contract. [07-7B075-1]

DISCOUNT FOR PROMPT PAYMENT (C.11.12):

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

DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (C.02.15) Submit your best terms from both a price and a technical standpoint. Your offer may, as practicable, be evaluated and accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the College may elect to conduct discussions, including the possibility of limited revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(1)] If improper revisions are submitted during discussions, the College may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The College of Charleston may also elect to conduct negotiations, beginning with the highest ranked Offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the solicitation. If negotiations are conducted, the College may elect to disregard the negotiations and accept your original proposal. [06-6058-1]

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

DISPUTES (C.02.15):

- A. **Choice-of-Forum:** All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the SC Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Charleston County, State of SC. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.
- B. **Choice of Law:** The Agreement, related dispute, claim, or controversy, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of SC, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]
- C. **Service of Process:** Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]

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

ESTIMATED QUANTITY – PURCHASES FROM OTHER SOURCES (C.02.15): The College may bid separately any unusual requirements or large quantities of supplies covered by this contract. [07-7B090-1]

ESTIMATED QUANTITY – UNKNOWN (C.02.15): The total quantity of purchases of any individual item on the contract is not known. The College of Charleston does not guarantee that the College will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information. [07-7B095-1]

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

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

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

- A. That Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or
- B. That you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14.

Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to

- A. Comply with the applicable requirements of Title 8, Chapter 14, and
- B. Include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

INDEMNIFICATION – INTELLECTUAL PROPERTY (C.02.15):

- A. Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the College of Charleston, the State and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. The College of Charleston shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. The College shall allow Contractor to settle such claim so long as
 1. All settlement payments are made by Contractor
 2. The settlement imposes no non-monetary obligation upon the College of Charleston. The College shall reasonably cooperate with Contractor's defense of such claim.

- B. In the event an injunction or order shall be obtained against College's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either:
1. Procure for the College the right to continue to use, or have used, the acquired item, or
 2. Replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by the College.
- If neither 1 nor 2, above, is practical, the College may require that Contractor remove the acquired item from the College, refund to the College any charges paid by the College therefor, and take all steps necessary to have the College released from any further liability.
- C. Contractors obligations under this paragraph do not apply to a claim to the extent
1. That the claim is caused by Contractor's compliance with specifications furnished by the College unless Contractor knew its compliance with the College's specifications would infringe an IP right, or
 2. That the claim is caused by Contractor's compliance with specifications furnished by the College of Charleston if the College knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor.
- D. As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work.
- E. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. [07-7B103-1]

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

IRAN DIVESTMENT ACT – ONGOING OBLIGATIONS (C.01.15): Contractor must notify the procurement officer immediately if, at any time during the contract term, the Contractor is added to the [Iran Divestment Act List](#). Consistent with Section 11-57-330(8), the Contractor shall not subcontract with any person to perform a part of the work, if, at the time you enter into the subcontract, that subcontractor is on the then-current version of the Iran Divestment Act List. [07-7A072-1]

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

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

NOTICE (C.11.12):

- 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 electronic.
 3. Upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used.
- B. Notice to contractor shall be to the address identified by the Offeror on the Supplier Response Document. Notice to the College of Charleston shall be to the Procurement Officer's address identified in the "Event Details" tab under "Bid Contact Information". Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

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

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

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

PAYMENT AND INTEREST (C.02.15):

- A. Contractor invoices shall be remitted, in order of preference, via (1.) eMail to accountspayable@cofc.edu, (2.) Facsimile to 843.953.5996, or (3.) USPS to Accounts Payable, College of Charleston, Controller's Office, 66 George Street, Charleston, SC 29424. The College of Charleston purchase order number must be prominently displayed on each page of the invoice for fastest processing.
- B. The College of Charleston shall pay the Contractor, after the submission and approval of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government.
- C. The College's method of making payment, in order of preference, is (1.) ePayable, (2.) Electronic Funds Transfer or Automated Clearing House, (3.) College of Charleston Purchasing Card, or (4.) by check.
- D. Notwithstanding any other provision, payment shall be made in accordance with SC Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the College of Charleston. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable and in violation of the terms and conditions stated on the purchase order. The College is responsible for the payment of all goods and services within thirty work days after the acceptance of the goods or services and proper invoice, whichever is received later. Except as set forth in this paragraph, the College shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason.
- E. Amounts due to the State and/or College shall bear interest at the rate of interest established by the SC Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30.
- F. Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including SC Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items D – E above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding.
- G. The College of Charleston and State shall have all of its common law, equitable and statutory rights of set-off. [07-7A055-3]

PRICE ADJUSTMENTS (S.01.06):

- A. **Method of Adjustment:** Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):
 - 1. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable
 - 2. By unit prices specified in the Contract or subsequently agreed upon
 - 3. By the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon
 - 4. In such other manner as the parties may mutually agree
 - 5. In the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the SC Code of Laws.
- B. **Submission of Price or Cost Data:** Upon request of the Procurement Officer, Contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830. [07-7B160-1]

PRICE ADJUSTMENT – LIMITED – AFTER INITIAL TERM ONLY (S.01.06): Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this

paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends Contractor notice rejecting the requested price increase. [07-7B165-1]

PRICE ADJUSTMENTS – LIMITED BY CPI “Other Goods & Services” (S.01.06): Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), “Other Goods & Services” for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov. [07-7B175-1]

PRICING DATA – AUDIT – INSPECTION (C.02.15): [Clause Included Pursuant to § 11-35-1830, - 2210, & -2220]

- A. **Cost or Pricing Data:** Upon Procurement Officer's request, the Contractor shall submit cost or pricing data, as defined by 48 C.F.R. § 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 College of Charleston 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 College and/or 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 College and/or 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. § 15.408 (2004) (adapted as necessary for College of Charleston context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR § 15.406-2(a) (adapted as necessary for College of Charleston 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 College of Charleston. [07-7B185-1]

PRIVACY (C.04.13): Contractor agrees that any information acquired by Contractor about individuals or businesses that is available as a result of this contract shall not be retained beyond the end of the term of the contract without the express written consent of the College of Charleston. Such information shall never be sold, traded, or released to another entity, including affiliates, and shall not be used for any purpose other than performing this contract. Upon request, Contractor shall provide written confirmation of compliance with this clause. [07-7B195-1]

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

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

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

RELATIONSHIP OF USING GOVERNMENTAL UNITS (C.04.13): (Applicable to Multi-Agency Solicitations) Each Using Governmental Unit's obligations and liabilities are independent of every other Using Governmental Unit's obligations and liabilities. No Using Governmental Unit shall be responsible for any other Using Governmental Unit's act or failure to act. [07-7B210-1]

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

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

- C. Any reference to Contractor in items A – B also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that Contractor authorizes to take any action related to the work.
- D. Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the College of Charleston liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction. [07-7B212-1]

SECURITY (C.02.15): The College of Charleston is located in an urban setting. Buildings are secured by Campus Police officers after normal operating hours. Buildings during summer months are open as-needed to reflect operational needs (ex., Maymester and summer school, summer conference housing for specialty groups). Campus Police Officers conduct frequent checks of building interiors daily. Access to residence halls is restricted to residents and their guests. Numerous security cameras are strategically placed within major residence hall facilities and around campus (e.g. stairwells, lobbies, laundry areas, on buildings, on poles). Security review of buildings and security maintenance updates are ongoing.

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

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

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

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

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

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

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

TERM CONTRACT – PROPOSALS (C.03.15):

- A. The scope of this contract is limited by the Cost Proposal(s) and by the description included in the "Scope of Solicitation" and "Specifications" documents. Sales of supplies or services not within the scope of this contract are prohibited. See clause entitled Contract Limitations. [07-7B230-1]
- B. Pursuant to Section 11-35-310(35), the College of Charleston may purchase items available on this contract from a third party (an "alternate vendor") if the alternate vendor offers a price that is at least ten percent less than the price established by this contract and, after being offered an opportunity, you decline to meet the alternate vendor's price. With regard to the items acquired, the alternate vendor must agree to be bound by all the terms and conditions of this contract. All acquisition pursuant to this clause must be documented by the Procurement Officer. [07-7B227-1]
- C. The College of Charleston shall be entitled to audit the books and records of you and any subcontractor to the extent that such books and records relate to the performance of the work. Such books and records shall be maintained by the Contractor for a period of three years from

the date of final payment under the contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Procurement Officer.

- D. As used herein, "additional contract terms" means additional terms not otherwise allowed by the "Purchase Orders" clause. Notwithstanding the "Purchase Orders" clause, a purchase order may include additional contract terms but only if and to the extent necessary
1. To comply with a requirement directly related to the work and imposed on the College either by law or as a condition of using state or federal assistance, grant, or contract funds, or
 2. For the College to impose organizational, operational, or technical security measures designed to protect the integrity, availability, or confidentiality of the College's data. Contractor may decline to honor a purchase order including additional contract terms. [07-7B225-12]

TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD (S.01.06): The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is one year from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

TERM OF CONTRACT – OPTION TO RENEW (C.01.15): Initial contract period: One year from date of award.

- A. At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of one year, unless Contractor receives notice that the College elects not to renew the contract at least thirty (30) days prior to the date of renewal. The extensions may be less than, but will not exceed four (4) additional one year periods. Regardless, this contract expires no later than the last date stated on the final statement of award.
- B. Contractor acknowledges that, unless excused by Section 11-57-320, if the Contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio. [07-7B245-2]

TERM OF CONTRACT – TERMINATION BY CONTRACTOR (S.01.06): Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least ninety (90) days prior to the expiration of the then current term. [07-7B250-1]

TERMINATION DUE TO UNAVAILABILITY OF FUNDS (S.01.06): Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds 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]

TERMINATION FOR CONVENIENCE (C.02.15):

- A. **Termination:** The Procurement Officer may terminate this contract in whole or in part, for the convenience of the College of Charleston. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.
- B. **Contractor's Obligations:** The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the College of Charleston. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- C. **Right to Supplies:** The Procurement Officer may require the contractor to transfer title and deliver to the College of Charleston in the manner and to the extent directed by the Procurement Officer: (1) any completed supplies; and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the College of Charleston has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the College of Charleston has breached the contract by exercise of the Termination for Convenience Clause.
- D. **Compensation:**
1. The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph 3 of this Paragraph.
 2. The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the College of Charleston, the proceeds of any sales of supplies and manufacturing materials under Paragraph C of this clause, and the contract price of the work not terminated
 3. Absent complete agreement under Subparagraph 2 of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph 2 shall not duplicate payments under this Subparagraph:
 - a. Contract prices for supplies or services accepted under the contract

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

[07-7B265-1]

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

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

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

WAIVER (C.11.12): The College of Charleston does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the College's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

WARRANTY – ONE YEAR (C.11.12): Contractor warrants all items acquired shall conform to all Contractor's representations, the requirements of this contract, and all published documentation. Contractor must provide the manufacturer's standard written warranty upon delivery of all products associated with this solicitation. Contractor warrants that manufacturer will honor the standard written warranty provided. [07-7B275-1]