 <b>UNIVERSITY OF SOUTH CAROLINA</b>	<b>REQUEST FOR PROPOSAL</b>	Solicitation Number	<b>USC –RFP-1870-CJ</b>
		Date Printed	<b>January 10, 2011</b>
		Date Issued	<b>January 10, 2011</b>
		Procurement Officer	<b>Charles Johnson</b>
		Phone	<b>803-777-4115</b>
		E-Mail Address	<b>charles.johnson@sc.edu</b>

DESCRIPTION: Provide Consulting Services for the University of South Carolina Columbia Campus

USING GOVERNMENT AGENCY: UNIVERSITY OF SOUTH CAROLINA

*The Term "Offer" Means Your "Bid" or "Proposal".*

SUBMIT OFFER BY: (Opening Date/Time): **1/26/2011 at 3:00 PM** See "Deadline for Submission of Offer" provision

QUESTIONS MUST BE RECEIVED BY: **1/18/2011 at 12:00 PM** See "Questions From Offerors" provision

NUMBER OF COPIES TO BE SUBMITTED: **One (1) Original and Seven (7) Hardcopies (marked 'COPY') Plus (1) Electronic Copy (Original Hardcopy Shall Prevail)**

**Offers must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior.**

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

<b>MAILING ADDRESS:</b>	<b>PHYSICAL ADDRESS:</b>
University of South Carolina – Purchasing Dept. 1600 Hampton St., Suite 606 Columbia, SC 29208	University of South Carolina – Purchasing Dept. 1600 Hampton St., Suite 606 Columbia, SC 29208

See "Submitting Your Offer" provision

<b>CONFERENCE TYPE:</b> N/A <b>DATE &amp; TIME:</b>  As appropriate, see "Conferences-Pre-Bid/Proposal" & "Site Visit" provisions	<b>LOCATION:</b>
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<b>AWARD &amp; AMENDMENTS</b>	Award will be posted at the Physical Address stated above on <b>February 15, 2011</b> . The award, this solicitation, and any amendments will be posted at the following web address: <a href="http://purchasing.sc.edu">http://purchasing.sc.edu</a>
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You must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date.

<b>NAME OF OFFEROR</b> (Full legal name of business submitting the offer)		<b>OFFEROR'S TYPE OF ENTITY:</b> (Check one) <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Tax –exempt corporate entity <input type="checkbox"/> Government entity (federal, state, or local) <input type="checkbox"/> Other _____ (See "Signing Your Offer" provision.)
<b>AUTHORIZED SIGNATURE</b>  (Person signing must be authorized to submit binding offer to enter contract on behalf of Offeror named above.)		
<b>TITLE</b> (Business title of person signing above)		
<b>PRINTED NAME</b> (Printed name of person signing above)	<b>DATE SIGNED</b>	

Instructions regarding Offeror's name: Any award issued will be issued to, and the contract will be formed with, the entity identified as the offeror above. An offer may be submitted by only one legal entity. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, *i.e.*, a separate corporation, partnership, sole proprietorship, etc.

<b>STATE OF INCORPORATION</b> (If offeror is a corporation, identify the state of Incorporation.)
<b>TAXPAYER IDENTIFICATION NO.</b>  (See "Taxpayer Identification Number" provision)

**PAGE TWO**

**(Return Page Two with Your Offer)**

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

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

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

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

\_\_\_\_\_ In-State Office Address same as Home Office Address  
 \_\_\_\_\_ In-State Office Address same as Notice Address    (check only one)

## Solicitation Outline

- I. Scope of Solicitation
- II. Instructions to Offerors
  - A. General Instructions
  - B. Special Instructions
- III. Scope of Work / Specifications  
May be blank if Bidding Schedule / Cost Proposal attached
- IV. Information for Offerors to Submit
- V. Qualifications
- VI. Award Criteria
- VII. Terms and Conditions
  - A. General
  - B. Special
- VIII. Bidding Schedule / Cost Proposal
- IX. Attachments to Solicitation

### I. Scope Of Solicitation

ACQUIRE SERVICES (JANUARY 2006): The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions.

#### **MAXIMUM CONTRACT PERIOD - ESTIMATED (January 2006)**

Start date: 2/01/2011 End date: 1/31/2016 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]

It is the intention of the University of South Carolina to solicit proposals from qualified sources of supply to provide consulting services to the University of South Carolina Columbia campus in accordance with all of the specifications stated herein. The University is seeking a consultant who has expertise in addressing issues of discrimination and harassment in postsecondary educational environments, particularly expertise in addressing peer-on-peer racial discrimination and/or harassment, drafting anti-discrimination and harassment policies and procedures, and conducting training concerning discrimination and harassment.

### II. Instructions To Offerors - A. General Instructions

DEFINITIONS (JANUARY 2006) EXCEPT AS OTHERWISE PROVIDED HEREIN, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION.

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

BUYER – means the Procurement Officer.

CHANGE ORDER - means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT - See clause entitled "Contract Documents & Order of Precedence."

CONTRACT MODIFICATION – means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

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

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

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

OFFEROR – means the single legal entity submitting the offer. The term "Bidder" is used interchangeably with the term "Offeror." See bidding provisions entitled "Signing Your Offer" and "Bid/Proposal As Offer To Contract."

ORDERING ENTITY - Using Governmental Unit that has submitted a Purchase Order.

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

PROCUREMENT OFFICER – means the person, or his successor, identified as such on the Cover Page.

YOU and YOUR – means Offeror.

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

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

**SUBCONTRACTOR** – means any person having a contract to perform work or render service to Contractor as a part of the Contractor’s agreement arising from this solicitation.

**USING GOVERNMENTAL UNIT** – means the unit(s) of government identified as such on the Cover Page. If the Cover Page names a “Statewide Term Contract” as the Using Governmental Unit, the Solicitation seeks to establish a Term Contract [11-35-310(35)] open for use by all South Carolina Public Procurement Units [11-35-4610(5)].

**WORK** - means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations under the Contract.

**AMENDMENTS TO SOLICITATION (JANUARY 2006)** (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: <http://purchasing.sc.edu>. (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

**AWARD NOTIFICATION (NOV 2007):** Notice regarding any award or cancellation of award will be posted at the location specified on the Cover Page. If the contract resulting from this Solicitation has a total or potential value of fifty thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation. Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given. [02-2A010-1]

**BID / PROPOSAL AS OFFER TO CONTRACT (JANUARY 2006)** By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; “joint bids” are not allowed.

**BID ACCEPTANCE PERIOD (JANUARY 2006)** In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing.

**BID IN ENGLISH & DOLLARS (JANUARY 2006)** Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

**CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JANUARY 2006)**

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

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

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

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

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

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

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

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

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the

Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsive.

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

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

#### CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)

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

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

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

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

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

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

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

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

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

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

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

CODE OF LAWS AVAILABLE (JAN 2006): The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at <http://www.scstatehouse.net/code/statmast.htm>. The South Carolina Regulations are available at: <http://www.scstatehouse.net/coderegs/statmast.htm>.

COMPLETION OF FORMS / CORRECTION OF ERRORS (JAN 2006): 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). (Applicable only to offers submitted on paper.)

DEADLINE FOR SUBMISSION OF OFFER (JANUARY 2006) Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies' mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)]

DISCUSSIONS and NEGOTIATIONS (NOV 2007): Submit your best terms from a cost or price and from a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are submitted, the State may elect to consider only your unrevised initial proposal. [11-35-1530(6); R.19-445.2095(I)] The State 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). If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [02-2B060-1]

DRUG FREE WORK PLACE CERTIFICATION (JANUARY 2006) By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

DUTY TO INQUIRE (JANUARY 2006) Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention.

ETHICS CERTIFICATE (May 2008): By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]

#### **ILLEGAL IMMIGRATION CLAUSES (2008)**

Procurement Code Transactions: Non-Construction

ILLEGAL IMMIGRATION (NOV. 2008): (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your 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]

Procurement Code Transactions: Construction

By signing its bid or proposal, Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to Contractor and its subcontractors or sub-subcontractors; or (b) that Contractor and its 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." Contractor agrees to include in any contracts with its subcontractors language requiring its 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. (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov))

Other Transactions

By submitting an offer, Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14

of the South Carolina Code of Laws (originally enacted as Section 3 of The South Carolina Illegal Immigration Reform Act, 2008 S.C. Act No. 280) and agrees to provide upon request any documentation required to establish either: (a) the applicability of Title 8, Chapter 14 to Contractor and any subcontractors or sub-subcontractors; or (b) the compliance with Title 8, Chapter 14 by Contractor and any subcontractor or sub-subcontractor. 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." Contractor agrees to include in any contracts with its subcontractors language requiring the subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in any contracts with the sub-subcontractors language requiring the sub-subcontractor to comply with the applicable requirements of Title 8, Chapter 14.

**OMIT TAXES FROM PRICE (JANUARY 2006):** Do not include any sales or use taxes in Your price that the State may be required to pay.

**PROCUREMENT AGENT (AUG 2004)** Authorized Agent. All authority regarding the conduct of 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.

**PROTESTS (JUNE 2006)** Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen 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 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. See clause entitled "Protest-CPO". [~ 11-35-4210]

**PUBLIC OPENING (JANUARY 2006)** Offers will be publicly opened at the date / time and at the location identified on the Cover Page, or last Amendment, whichever is applicable

**QUESTIONS FROM OFFERORS (JANUARY 2006):** (a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. 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. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer – as soon as possible – regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.

**REJECTION/CANCELLATION (JAN 2004)** The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065.]

**RESPONSIVENESS / IMPROPER OFFERS (JANUARY 2006)**

(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 State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(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 State 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 State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

**RESTRICTIONS APPLICABLE TO OFFERORS (JANUARY 2006)** Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, *you agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials.* All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, *you agree not to give anything to any Using Governmental Unit*

**SIGNING YOUR OFFER (JANUARY 2006)** Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words "by its Partner," and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

**STATE OFFICE CLOSINGS (JANUARY 2006)** If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: [http://www.scemd.org/scgovweb/weather\\_alert.htm](http://www.scemd.org/scgovweb/weather_alert.htm).

**SUBMITTING REDACTED OFFERS (FEB 2007):** You are required to mark the original copy of your offer to identify any information that is exempt from public disclosure. You must do so in accordance with the clause entitled "Submitting Confidential Information." In addition, you must also submit one complete copy of your offer from which you have removed any information that you marked as exempt, 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 (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on magnetic media. (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 CONFIDENTIAL INFORMATION (AUG 2002):** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) For every document Offeror submits in response to or with regard to this solicitation or request, 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 or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do 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 State 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 (1) 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 "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) 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 (3) agrees that,



notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.)

**SUBMITTING YOUR OFFER OR MODIFICATION (JANUARY 2006)** (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 on the Cover Page. (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) and (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. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

**TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008):** Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. [02-2A135-1]

**TAXPAYER IDENTIFICATION NUMBER (JANUARY 2006):** (a) If Offeror is owned or controlled by a common parent as defined in paragraph (b) 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 either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether (i) 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; (ii) Offeror is an agency or instrumentality of a state or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government.

**WITHDRAWAL OR CORRECTION OF OFFER (JANUARY 2006)** Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085.

## II. Instructions To Offerors - B. Special Instructions

### SUBMISSION OF QUESTIONS

Mark envelopes on questions mailed:

**QUESTIONS: USC-RFP-xxxx-CJ**

**Title: Provide Consulting Services for the University of South Carolina Columbia Campus**

**Attn.: Charles Johnson**

**QUESTIONS MAY BE E-MAILED TO:**

Charles.Johnson@sc.edu

**FAXED TO:**

**803-777-2032**

### CLARIFICATION (NOV 2007)

Pursuant to Section 11-35-1530(6), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1530(6); R.19-445.2080] [02-2B055-1]

**CONTENTS OF OFFER (RFP) – SPO (JAN 2006):** (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 RFP. Emphasis should be on completeness and clarity of content. (c) Each copy of your offer should be bound in a single volume where practical. All documentation submitted with your offer should be bound in that single volume. (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.

**DISCUSSION WITH OFFERORS (JAN 2006):** After opening, the Procurement Officer may, in his sole discretion, initiate discussions with you to discuss your offer. [Section 11-35-1530(6)]

**MAGNETIC MEDIA – REQUIRED FORMAT (JAN 2006):** As noted on the cover page, an original hard copy of your offer must be accompanied by the specified number of copies in the following electronic format: compact disk (CD) in one of the following formats: **CD-R; DVD ROM; DVD-R; or DVD+R**. Formats such as CD-RW, DVD-RAM, DVD-RW, DVD+RW, or DVIX **are not acceptable** and will result in the Offeror's proposal being rejected. Every CD must be labeled with offeror's name, solicitation number, and specify whether contents address technical proposal or business proposal. If multiple CD sets are provided, each CD in the set must be appropriately identified as to its relationship to the set, e.g., 1 of 2. Each CD must be identical to the original hard copy. File format shall be MS Word 97 or later.

**OPENING PROPOSALS – PRICES NOT DIVULGED (JAN 2006):** In competitive sealed proposals, prices will not be divulged at opening. [§ 11-35-1530 & R. 19-445.2095(c) (1)]

**PROTEST - CPO - MMO ADDRESS (JUNE 2006)**

Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to protest-mmo@mmo.state.sc.us, (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B122-1]

### LEGAL AGREEMENTS INCLUDED WITH PROPOSALS MUST BE APPROVED

**Any proposal that includes legal agreement(s) the University is expected to sign to do business with offeror, offeror's terms and conditions, and/or similar type legal documents pursuant to potential contract award that have not been approved by the University of South Carolina Purchasing Department (i.e. Procurement Officer for the solicitation) prior to the deadline for**

receipt of proposals / bid opening will cause offeror's proposal to be rejected. Vendors interested in including legal agreement(s) the University is expected to sign to do business with them, their terms and conditions, and/or similar type legal documents pursuant to potential contract award with their proposals must submit these documents to the University of South Carolina Purchasing Department (i.e. Procurement Officer for the solicitation) for consideration during the time period for questions regarding the solicitation. If vendor submits legal agreement(s) the University is expected to sign to do business with it, its terms and conditions, and/or similar type legal documents pursuant to potential contract award to the University of South Carolina Purchasing Department (i.e. Procurement Officer for the solicitation) for consideration, the legal documents are subject to being published in their entirety in the amendment to the solicitation that includes questions and answers.

### **III. Scope of Work / Specifications**

DELIVERY / PERFORMANCE LOCATION – PURCHASE ORDER (January, 2006): After award, all deliveries shall be made to the location specified by the using Governmental Unit in its purchase order.

#### **BACKGROUND INFORMATION**

The Department of Justice (“DOJ”) and the University of South Carolina (“USC”) have entered into an Agreement that is attached hereto **in Section IX. Attachments to Solicitation**, the terms of which are incorporated herein, pursuant to which USC has agreed to hire a third party consultant (contractor) to perform the services set forth in Article II of the Agreement, which include evaluating USC’s current anti-discrimination and harassment policies and procedures, recommending the adoption of or modification to USC’s procedures, designing a training program, and conducting training.

The consulting services to be provided to USC pursuant to this solicitation are set forth in Article II of the Agreement that is attached hereto **in Section IX. Attachments to Solicitation**.

### **IV. Information For Offerors To Submit**

**INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (JANUARY 2006):** Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations.

#### **PROPOSAL CONTENTS**

To be considered for award, all proposals should include, as a minimum, the following information. **All information should be presented in the order listed.**

1. Submittal Letter – Executive Overview
2. Technical Proposal
  - a. Offeror is to describe its plan and approach to meet the requirements listed in Section III Scope of Work / Specifications of the solicitation.

- b. Offeror is to provide a detail explanation of its expectation(s) of The University of South Carolina. This should include any special equipment that offeror may require.
- c. Implementation Schedule – Offeror should supply time line and milestones for completing the project.

### 3. Offeror’s Experience and Qualifications

Offeror should submit any information that documents successful and reliable experience in past performances similar to those of the services required in Section III. Scope of Work / Specifications of the solicitation.

- a. Provide a brief description of your entity.
- b. Provide a minimum of three (3) references demonstrating experience performing the same or similar services required in Section III. Scope of Work / Specifications of the solicitation.
- c. Provide a name, title, and experience of the person(s) who will be managing the project for the University account. Please include position descriptions of those persons who will be performing services required in Section III. Scope of Work / Specifications of the solicitation.
- d. Provide documentation to substantiate that you meet the Contractor’s Requirements stated in Section III. Scope of Work / Specifications of the solicitation.
- e. Provide documentation that your entity has personnel knowledgeable about applicable laws and regulations pertaining to anti-discrimination in postsecondary environments.

### 4. Price and Business Proposal

Offeror is to provide a thorough and detailed presentation of all costs to be incurred by the University during the project. Include in the business proposal: a breakdown of your entity’s rates for each of the requested areas: Staff time/rates and travel expenses.

Travel cost shall be in accordance with the University of South Carolina travel policy. In addition, offeror must submit its total cost based on its proposed implementation and timeline.

### 5. Documented Deliverables and Associated Timelines

Implementation Schedule – Offeror should supply time line and milestones/deliverables for completing the project.

## **V. Qualifications**

QUALIFICATION OF OFFEROR (JAN 2006) To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror’s responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810.

SUBCONTRACTOR – IDENTIFICATION (January, 2006): If you intend to subcontract with another business for any portion of the work and that portion exceeds 10% of your price, 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 the point of contact. In determining your responsibility, the state may evaluate your proposed subcontractors.

**While it is not mandatory, it is the University's preference that all work pursuant to the contract be performed by the contractor.**

## **VI. Award Criteria**

**AWARD CRITERIA – PROPOSALS (JAN 2006):** Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State.

**EVALUATION FACTORS – PROPOSALS:** Responsive Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important.

1. **Technical Proposal:** The completeness and suitability of the Offeror's proposed plan and approach to meet or exceed the requirements of this RFP.
2. **Offeror's Experience & Qualifications:** Qualifications and experience of the offeror and its personnel to perform services required. Includes references of at least three present or former clients for which the offeror has performed similar studies.
3. **Offeror's Documented Deliverables and Associated Timelines:** Ability of the offeror to complete the requirements within the deadlines set forth in the solicitation.
4. **Price and Business Proposal :** All costs to be incurred for the services requested in the solicitation.

**The Procurement Officer will provide each evaluation committee member with a copy of the DOJ Assessment of responsive offers received by the University. Evaluation committee members will take the DOJ Assessments into consideration as they independently evaluate each responsive offer.**

**NEGOTIATIONS (JAN 2006):** The Procurement Officer may elect to make an award without conducting negotiations. However, after the offers have been ranked, the Procurement Officer may elect to negotiate price or the general scope of work with the highest ranked offeror. If a satisfactory agreement cannot be reached, negotiations may be conducted with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the Procurement Officer.

**COMPETITION FROM PUBLIC ENTITIES (JAN 2006):** If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004).

## **VII. Terms and Conditions - A. General**

**ASSIGNMENT (JANUARY 2006):** No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer.

**BANKRUPTCY (JANUARY 2006):** (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

**CHOICE-OF-LAW (JANUARY 2006):** The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

**CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (JANUARY 2006):** (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) purchase orders. 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 above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

**DISCOUNT FOR PROMPT PAYMENT (JANUARY 2006)**

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

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

**DISPUTES (JANUARY 2006)wq:** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

**EQUAL OPPORTUNITY (JANUARY 2006).** Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

**FALSE CLAIMS (JANUARY 2006):** 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.

**FIXED PRICING REQUIRED (JANUARY 2006):** Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award.

**NON-INDEMNIFICATION (JANUARY 2006):** Any term or condition is void to the extent it requires the State to indemnify anyone.

**NOTICE (JANUARY 2006):** (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

**PAYMENT (JANUARY 2006):** (a) The Using Governmental Unit shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless the purchase order specifies another method of payment, payment will be made by check. (c) Payment and interest shall be made in accordance with S.C. Code Section 11-35-45. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable.

**PUBLICITY (JANUARY 2006):** Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

**PURCHASE ORDERS (JANUARY 2006):** Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order.

**SETOFF (JANUARY 2006)** The state shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the state with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

**SURVIVAL OF OBLIGATIONS (JANUARY 2006):** The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit.

**TAXES (JANUARY 2006):** Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor.

**TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JANUARY 2006)** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract

shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

**THIRD PARTY BENEFICIARY (JANUARY 2006)** This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise.

**WAIVER (JANUARY 2006)** The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing.

## **VII. Terms and Conditions - B. Special**

**HIPAA LAW:** The Contractor agrees that to the extent that some or all of the activities within the scope of this Contract are subject to the Health Insurance Portability Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the University of South Carolina may require to ensure compliance. Additional information may be viewed at: <http://www.sc.edu/hipaa/>

**PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT -** The University of South Carolina requires that all contractual activities to be in compliance with local, state and federal mandates concerning "protection of human health and the environment". In addition, the University of South Carolina is a "Drug Free Work Place" and requires all contractors to comply with South Carolina Code of Laws Section 41-15-10 ET sequence (1976 w/amendments). Any contractor doing business with the University will be required to document compliance with these mandates and to furnish specific information requested by the University's Department of Environmental Health and Safety when notified to do so. The Contractor understands and agrees that jobsites are open at all times work is being performed by the Contractor to authorized University employees who have been trained to identify unsafe work conditions. The Contractor will immediately correct any deficiencies noted by these inspections when requested by the University's Department of Environmental Health and Safety to do so. In work areas where a specific hazard is posed which includes but is not limited to lead paint and asbestos abatement projects, Contractors will be required to produce Lead Compliance Plans and Asbestos Project Designs which outline their method of work prior to the start of work. Each contractor shall designate a responsible member of the Contractor's organization to be at the site whose duty shall be the prevention of accidents. By submission of this bid, the vendor agrees to take all necessary steps to insure compliance with the requirements outlined above.

**CONTRACTOR'S LIABILITY INSURANCE (JAN 2006):** (1) Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in South Carolina such insurance as will protect the contractor from the types of claims set forth below which may arise out of or result from the contractor's operations under the contract and for which the contractor may be legally liable, whether such operations be by the contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the contractor's employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the contractor's employees; (d) claims for damages insured by usual personal injury liability coverage; (e) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; (g) claims for bodily injury or property damage arising out of completed operations; and (h) claims involving contractual liability insurance applicable to the Contractor's obligations under the provision entitled Indemnification – Third Party Claims.

(2) Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the work until date of final payment. Coverage must include the following on a commercial basis: (i) Premises – Operations, (ii) Independent Contractor's Protective, (iii) Products and Completed Operations, (iv) Personal and Advertising Injury, (v) Contractual, including specific provision for contractor's obligations under the provision entitled Indemnification – Third Party Claims, (vi) Broad Form Property Damage including Completed Operations, and (vii) Owned, Non-owned and Hired Motor Vehicles.

(3) The insurance required by this paragraph shall be written for not less than the following limits of liability or as required by law, whichever coverage is greater.:

**COMMERCIAL GENERAL LIABILITY:**  
General Aggregate (per project) \$1,000,000



Products/Completed Operations \$1,000,000  
Personal and Advertising Injury \$1,000,000  
Each Occurrence \$1,000,000  
Fire Damage (Any one fire) \$ 50,000  
Medical Expense (Any one person) \$ 5,000  
BUSINESS AUTO LIABILITY (including All Owned, Nonowned, and Hired Vehicles):  
Combined Single Limit \$1,000,000  
OR

Bodily Injury & Property Damage (each) \$750,000

WORKER'S COMPENSATION:

State Statutory

Employers Liability \$100,000 Per Acc.

\$500,000 Disease, Policy Limit; \$100,000 Disease, Each Employee

(4) Required Documentation. (a) Prior to commencement of the work, contractor shall provide to the state a signed, original certificate of liability insurance (ACORD 25). The certificate shall identify the types of insurance, state the limits of liability for each type of coverage, include a provision for 30 days notice prior to cancellation, name every applicable using governmental unit (as identified on the cover page) as a Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. (b) Prior to commencement of the work, contractor shall provide to the state a written endorsement to the contractor's general liability insurance policy that (i) names every applicable using governmental unit (as identified on the Cover Page) as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named governmental unit(s) has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the state as secondary and noncontributory. (c) Both the certificate and the endorsement must be received directly from either the contractor's insurance agent or the insurance company.

(5) Contractor shall provide a minimum of thirty (30) days written notice to every applicable using governmental unit of any proposed reduction of coverage limits (on account of revised limits or claims paid under the General Aggregate) or any substitution of insurance carriers.

(6) The state's failure to demand either a certificate of insurance or written endorsement required by this paragraph is not a waiver of contractor's obligations to obtain the required insurance.

**Insurance Requirement: The successful bidder must provide a copy of its Liability Insurance certificate within ten (10) days upon the posting of the intent to award statement or statement of award and on each anniversary date thereafter attesting to such insurance coverage.**

COMPLIANCE WITH LAWS (JAN 2006): During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

CONTRACTOR PERSONNEL (JAN 2006): The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

CONTRACTOR'S OBLIGATION – GENERAL (JAN 2006): The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006): Upon termination of the contract for any reason, the State shall have the right, upon demand, to obtain access to, and possession of, all State properties, including, but not limited to, current copies of all State application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the State without the State's written consent, except to the extent necessary to carry out the work.

DEFAULT (JAN 2006):

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

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

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

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

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

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

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

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

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

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

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

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

**INDEMNIFICATION - THIRD PARTY CLAIMS (JAN 2006):** Notwithstanding any limitation in this agreement, Contractor shall defend and indemnify the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all suits or claims of any nature (and all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party which arise out of, or result in any way from, any defect in the goods or services acquired hereunder or from any act or omission of Contractor, its subcontractors, their employees, workmen, servants or agents. Contractor shall be given written notice of any suit or claim. State shall allow Contractor to defend such claim so long as such defense is diligently and capably prosecuted through legal counsel. State shall allow Contractor to settle such suit or claim so long as (i) all settlement payments are made by (and any deferred settlement payments are the sole liability of) Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall not admit liability or agree to a settlement or other disposition of the suit or claim, in whole or in part, without the prior written consent of Contractor. State shall reasonably cooperate with Contractor's defense of such suit or claim. The obligations of this paragraph shall survive termination of the parties' agreement.

LICENSES AND PERMITS (JAN 2006): During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

OWNERSHIP OF DATA & MATERIALS (JAN 2006): All data, material and documentation either prepared for the state pursuant to this contract shall belong exclusively to the State.

PRICE ADJUSTMENTS (JAN 2006): (1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

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

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

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

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

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

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

PRICE ADJUSTMENT - LIMITED - AFTER INITIAL TERM ONLY (JAN 2006): Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase.

PRICE ADJUSTMENTS – LIMITED BY CPI “All Items” (JAN 2006): Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), “all items” for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at [www.bls.gov](http://www.bls.gov).

PRICING DATA – AUDIT – INSPECTION (JAN 2006) [Clause Included Pursuant to § 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. § 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions – Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. § 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR § 15.406-2(a) (adapted as necessary for the state context).

(e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

RELATIONSHIP OF THE PARTIES (JAN 2006): Neither party is an employee, agent, partner, or joint venture of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006): The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is one year from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award.

TERM OF CONTRACT – OPTION TO RENEW (JAN 2006): 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 state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award.

TERMINATION FOR CONVENIENCE (JAN 2006): (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

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

(3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

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

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

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

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

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

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

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

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

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

**VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL**

**PLEASE REFER TO ITEM 4. PRICE AND BUSINESS PROPOSAL OF THE PROPOSAL CONTENTS CLAUSE IN SECTION IV. INFORMATION FOR OFFERORS TO SUBMIT OF THE SOLICITATION.**

## **IX. ATTACHMENTS TO SOLICITATION**

1. Important Tax Notice – Nonresidents Only
2. State of SC Department of Revenue Nonresident Taxpayer Registration Affidavit Income Tax Withholding (I-312)
3. Offeror’s Checklist
4. Agreement between USC and DOJ

**IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

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

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

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

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For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at [www.sctax.org](http://www.sctax.org).

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This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898-5383.



STATE OF SOUTH CAROLINA  
 DEPARTMENT OF REVENUE  
**NONRESIDENT TAXPAYER  
 REGISTRATION AFFIDAVIT  
 INCOME TAX WITHHOLDING**

**I-312**  
 (Rev. 5/7/04)  
 3323

**The undersigned nonresident taxpayer on oath, being first duly sworn, hereby certifies as follows:**

1. Name of Nonresident Taxpayer: \_\_\_\_\_
2. Trade Name, if applicable (Doing Business As): \_\_\_\_\_
3. Mailing Address: \_\_\_\_\_
4. Federal Identification Number: \_\_\_\_\_
5. Hiring or Contracting with: \_\_\_\_\_  
     Name: \_\_\_\_\_  
     Address: \_\_\_\_\_
- Receiving Rentals or Royalties From: \_\_\_\_\_  
     Name: \_\_\_\_\_  
     Address: \_\_\_\_\_
- Beneficiary of Trusts and Estates: \_\_\_\_\_  
     Name: \_\_\_\_\_  
     Address: \_\_\_\_\_

6. I hereby certify that the above named nonresident taxpayer is currently registered with  
**(check the appropriate box):**  
 The South Carolina Secretary of State or  
 The South Carolina Department of Revenue

Date of Registration: \_\_\_\_\_

7. I understand that by this registration, the above named nonresident taxpayer has agreed to be subject to the jurisdiction of the South Carolina Department of Revenue and the courts of South Carolina to determine its South Carolina tax liability, including estimated taxes, together with any related interest and penalties.

8. I understand the South Carolina Department of Revenue may revoke the withholding exemption granted under Code Sections 12-8-540 (rentals), 12-8-550 (temporarily doing business or professional services in South Carolina), and 12-8-570 (distributions to nonresident beneficiary by trusts or estates) at any time it determines that the above named nonresident taxpayer is not cooperating with the Department in the determination of its correct South Carolina tax liability.

The undersigned understands that any false statement contained herein could be punished by fine, imprisonment or both.

Recognizing that I am subject to the criminal penalties under Code Section 12-54-44 (B) (6) (a) (i), I declare that I have examined this affidavit and to the best of my knowledge and belief, it is true, correct and complete.

\_\_\_\_\_  
 Signature of Nonresident Taxpayer (Owner, Partner or Corporate Officer, when relevant) (Seal) \_\_\_\_\_  
 Date

If Corporate officer state title:

\_\_\_\_\_  
 (Name - Please Print)

**Mail to:** The company or individual you are contracting with.



# OFFEROR'S CHECKLIST

## *AVOID COMMON BID/PROPOSAL MISTAKES*

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

- DO NOT INCLUDE ANY OF YOUR STANDARD CONTRACT FORMS!
- UNLESS EXPRESSLY REQUIRED, DO NOT INCLUDE ANY ADDITIONAL BOILERPLATE CONTRACT CLAUSES.
- REREAD YOUR ENTIRE BID/PROPOSAL TO MAKE SURE YOUR BID/PROPOSAL DOES NOT TAKE EXCEPTION TO ANY OF THE STATE'S MANDATORY REQUIREMENTS.
- MAKE SURE YOU HAVE PROPERLY MARKED ALL PROTECTED, CONFIDENTIAL, OR TRADE SECRET INFORMATION IN ACCORDANCE WITH THE INSTRUCTIONS ENTITLED: SUBMITTING CONFIDENTIAL INFORMATION. ***DO NOT MARK YOUR ENTIRE BID/PROPOSAL AS CONFIDENTIAL, TRADE SECRET, OR PROTECTED! DO NOT INCLUDE A LEGEND ON THE COVER STATING THAT YOUR ENTIRE RESPONSE IS NOT TO BE RELEASED!***
- HAVE YOU PROPERLY ACKNOWLEDGED ALL AMENDMENTS? INSTRUCTIONS REGARDING HOW TO ACKNOWLEDGE AN AMENDMENT SHOULD APPEAR IN ALL AMENDMENTS ISSUED.
- MAKE SURE YOUR BID/PROPOSAL INCLUDES A COPY OF THE SOLICITATION COVER PAGE. MAKE SURE THE COVER PAGE IS SIGNED BY A PERSON THAT IS AUTHORIZED TO CONTRACTUALLY BIND YOUR BUSINESS.
- MAKE SURE YOUR BID/PROPOSAL INCLUDES THE NUMBER OF COPIES REQUESTED.
- CHECK TO ENSURE YOUR BID/PROPOSAL INCLUDES EVERYTHING REQUESTED!
- IF YOU HAVE CONCERNS ABOUT THE SOLICITATION, DO NOT RAISE THOSE CONCERNS IN YOUR RESPONSE! **AFTER OPENING, IT IS TOO LATE! IF THIS SOLICITATION INCLUDES A PRE-BID/PROPOSAL CONFERENCE OR A QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS!** PLEASE SEE INSTRUCTIONS UNDER THE HEADING "SUBMISSION OF QUESTIONS" AND ANY PROVISIONS REGARDING PRE-BID/PROPOSAL CONFERENCES.

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.

**AGREEMENT OF THE UNITED STATES AND  
THE UNIVERSITY OF SOUTH CAROLINA**

The United States of America acting by and through the Department of Justice ("DOJ") and the University of South Carolina ("USC"), hereinafter identified jointly as the "parties," hereby enter into the following Agreement, whereby the parties agree to take the steps specified below to resolve DOJ's investigation into USC's policies and practices for addressing student complaints of racial discrimination on USC's Columbia campus. USC has voluntarily agreed to enter into this Agreement and nothing in this Agreement should be construed as an admission by USC that its current policies and procedures do not comply with existing law.

**I. PROCUREMENT OF THIRD PARTY CONSULTANT**

Pursuant to the South Carolina Procurement Code, USC shall retain a third party consultant to provide the services set forth in ¶¶ II.A-D. of this Agreement.

- A.** Within thirty (30) days of the entry of this Agreement, USC shall, in writing, provide DOJ with a draft solicitation it proposes to use in order to procure the services of a third party consultant. This proposed consultant shall have expertise addressing issues of discrimination and harassment in postsecondary educational environments, particularly expertise addressing peer-on-peer racial discrimination and/or harassment, drafting anti-discrimination and harassment policies and procedures, and conducting training concerning discrimination and harassment. The draft solicitation shall set forth the proposed scope of work, the required level of expertise, and the factors that will be used for the selection of the third party consultant. The content of the draft solicitation shall be consistent with the terms of this Agreement.
- B.** Within ten (10) business days of receiving the draft solicitation, DOJ shall inform USC in writing as to whether it agrees to USC proceeding with the solicitation.
- If DOJ does not agree to any aspect of the draft solicitation, the parties shall continue working together to prepare a mutually agreeable solicitation.
- C.** Upon approval of the mutually-agreeable draft solicitation by DOJ, and consistent with the applicable provisions of the South Carolina Procurement Code, USC shall, by January 15, 2011, engage and retain a third party consultant to perform the services set forth in ¶¶ II.A-D. of this Agreement.
- D.** Throughout the procurement process, USC shall consult with DOJ in assessing the qualifications of prospective offerors. To that end, USC shall provide DOJ with copies of all the proposals received by USC and DOJ shall have the opportunity to provide the Evaluation Committee with its assessment of the relative strengths and weaknesses of each proposal. The Evaluation Committee shall then score the proposals in accordance with the South Carolina Procurement Code.

## II. SERVICES OF THE RETAINED CONSULTANT

USC shall direct the retained third party consultant to accomplish the services set forth in ¶¶ II.A-D. of this Agreement, which include evaluating USC's current anti-discrimination and harassment policies and procedures, recommending the adoption of or modification to USC's procedures, designing a training program, and conducting training. USC shall work cooperatively with the consultant through the completion of the 2012-13 school year, and USC shall be responsible for ensuring that the consultant performs all of these services and that the services are accomplished by dates mandated under the Agreement.

### A. Evaluate USC's Anti-Discrimination Policies and Practice

Within ninety (90) days of being retained, the consultant will identify and evaluate USC's policies and procedures, both formal and informal, that relate to student complaints of racial discrimination and harassment.

1. Examine Current Delegation of Authority. The consultant will examine the roles and responsibilities of USC's various administrators and staff to determine the current delegation of authority for implementing and enforcing federal and state anti-discrimination and harassment laws and related USC policies and procedures.
2. Review Documents. The consultant will review all of USC's written policies that relate to student complaints of racial discrimination and harassment, including but not limited to:
  - a. Equal Opportunity Policy (EOP 1.00);
  - b. Equal Opportunity Complaint Processing Procedures (EOP 1.01);
  - c. Discriminatory Harassment Policy (EOP 1.03);
  - d. Non-Discrimination Policy (EOP 1.04);
  - e. Carolinian Creed (STAF 1.02);
  - f. Student Organizations Policy (STAF 3.10);
  - g. Student Rights and Hearing Procedures (STAF 6.26); and
  - h. Student Grievance Policy (STAF 6.27).

The consultant also will review any additional documents that may further his or her understanding of USC's student complaint procedures, including relevant housing guidelines, "University 101" lesson plans, training materials disseminated by the Office of Multicultural Student Affairs, and information provided to student organization officers and advisors.

3. Conduct Interviews. The consultant will conduct interviews of USC employees and students to obtain additional information concerning USC's approaches to responding to student complaints of racial

discrimination and harassment. At a minimum, the consultant will interview:

- a. Vice President for Student Affairs;
- b. Associate Vice President for Student Affairs;
- c. Executive Assistant to the President for Equal Opportunity Programs;
- d. Director of Multicultural Student Affairs;
- e. Relevant staff within the Department of Student Life; and
- f. Student government officers and other representatives of the student body.

**B. Prepare a Report of Recommendations**

Within 120 days of being retained, the consultant will prepare and submit to both parties a report of recommendations regarding the implementation of new policies and procedures that relate to student complaints of racial discrimination and harassment to ensure such complaints are properly and effectively reported, investigated, and resolved. At a minimum, the consultant's report must address the following issues:

1. Delegation of Authority. The consultant will recommend how USC should delegate the authority and responsibility for resolving both formal and informal allegations of discrimination and harassment involving students to its various officials in a clear and orderly fashion to ensure that USC is effectively implementing and enforcing applicable federal and state laws and related USC policies and procedures. The consultant also will suggest techniques USC personnel should employ to ensure that communication regarding such complaints is efficient and effective.
2. Dissemination of Information. The consultant will recommend actions USC should take to disseminate information about its anti-discrimination and harassment policies and procedures to ensure that students and relevant USC personnel are well-informed about the policies; that the policies and procedures are broadly publicized; and that accurate information about the policies and procedures is readily available for interested individuals.
3. Complaint Resolution. The consultant will recommend the type of complaint resolution system USC should use to address allegations of discrimination and harassment involving students in an appropriate and effective manner. The consultant also will describe different approaches employed at other postsecondary institutions, such as mediations, informal grievances, administrative hearings, and student conduct hearings, as well as any related appeal processes, and explain the relative strengths and

weaknesses of the different approaches as they might be employed at USC.

4. Complaint Intake. The consultant will recommend procedures USC should implement to ensure that allegations of discrimination and harassment are promptly and accurately reported to the proper official, including protocols and “best practice” techniques for receiving and documenting complaints; determining whether and how allegations implicate particular policies and procedures; and making proper notifications and referrals. The consultant also will recommend actions USC should take to respond to “informal” complaints, anonymous reports, and complaints from witnesses who are not the victims of the discriminatory conduct.
5. Investigations. The consultant will recommend procedures USC should implement to ensure that allegations of discrimination and harassment are quickly and effectively investigated, including protocols and “best practice” techniques for conducting and recording interviews with complainants, victims, alleged perpetrators, and witnesses; obtaining and maintaining necessary documents and other materials; conducting independent research; and preparing investigation summaries and reports.
6. Remedial and Disciplinary Measures. The consultant will recommend criteria USC should use to determine when certain remedial measures, such as educational and training initiatives or disciplinary sanctions, will be employed to effectively respond to discrimination and harassment complaints involving students and to minimize the likelihood that discriminatory actions will recur. In addition, the consultant will suggest criteria USC should use to determine when to take remedial actions against student organizations or groups for the actions of individual members. The consultant also will propose possible sanctions that should be used by USC to respond to violations of its anti-discrimination and harassment policies and procedures, such as written warnings, probations, mandatory training classes, restricted privileges, fines and restitutions, community service, suspensions, and expulsions, as well as organizational sanctions, and explain the relative strengths and weakness of these different approaches as they might be employed at USC.
7. Record Maintenance. The consultant will make recommendations on procedures USC should implement to ensure that records related to allegations of discrimination and harassment, including notifications of complaints, interview notes, investigation summaries and reports, and documentation of remedial actions, are properly preserved and maintained.
8. Monitoring. The consultant will make recommendations about how USC should monitor its policies and practices on a periodic basis to ensure that

it is effectively resolving both formal and informal allegations of discrimination and harassment involving students.

9. Diversity Initiatives. The consultant will evaluate all diversity initiatives implemented by USC's Department of Student Life to determine whether they are congruent with USC's anti-discrimination and harassment obligations, and if s/he determines that USC erroneously conflates the two programs or that USC's diversity initiatives somehow conflict with its anti-discrimination and harassment obligations, then the consultant will recommend appropriate recommendations for modifying or revising the two programs.

### C. Develop Training

Within forty-five (45) days of the adoption date of the new anti-discrimination and harassment policies and procedures, the consultant will prepare and submit to both parties a written report containing a comprehensive plan for conducting training for students and employees on such policies, which shall be adopted by USC pursuant to ¶¶ III.C. of this Agreement. For purposes of this Agreement, USC's "training" for students shall consist of direct or other appropriate instruction on its policies and procedures related to discrimination and harassment (e.g., through educational or orientation programming). The consultant's plan will propose appropriate and reasonable training programs for individuals and groups, and tailor the topics and scope of coverage according to the needs of the different audiences.

1. Individuals to be Trained. At a minimum, the plan will provide for appropriate and reasonable training to the following individuals and groups:
  - a. The USC officials and administrators who are responsible for ensuring that USC complies with federal and state anti-discrimination and harassment laws and related USC policies and procedures;
  - b. All individuals who are responsible for processing or resolving student complaints of discrimination and harassment;
  - c. All USC staff who work in the Department of Student Life and interact directly with students or student organizations, including but not limited to staff who work in Offices of Campus Recreation, Carolina Productions, Greek Life, Multicultural Student Affairs, Student Government, and Student Organizations;
  - d. All USC faculty and staff advisors to student organizations, including any third-party or alumni advisors;
  - e. All USC staff who work in the Department of Student Development and University Housing and interact directly with students or student organizations, including but not limited to staff

who work in Offices of Student Judicial Programs, University Housing, and National Student Exchange;

- f. Members of the USC Student Grievance Committee;
- g. All USC staff who work in the Office of the Vice President for Student Affairs, the Office of Equal Opportunity Programs, and the Office of the General Counsel, and may by virtue of their position receive notice of allegations of discrimination and harassment;
- h. All USC staff who work in the Office of Orientation and Testing Services and "University 101" Programs responsible for coordinating new student training and orientation programs;
- i. All students who serve as officers in student organizations that are registered or recognized by USC; and
- j. All USC students, including both first year students and transfers.

2. Training Objectives. The plan will ensure that the content of the proposed training programs is tailored to provide adequate instruction that addresses the unique roles and responsibilities of the individuals being trained. Depending on the needs of the individuals or groups, the training may address any or all of the issues listed in ¶¶ II.B. of this Agreement. At a minimum, the plan will ensure that each training addresses the following topics:

- a. Federal and state anti-discrimination and harassment laws, briefly summarized;
- b. USC's anti-discrimination and harassment policies and procedures, and where written copies of the policies can be obtained;
- c. The types of conduct that constitute a violation of USC's anti-discrimination policies, including but not limited to disparate treatment, exclusionary practices, harassment, and other actions that establish a hostile educational environment, such as physical, verbal, written, and visual harassment, with examples of each;
- d. The responsibility of students, faculty, and staff members when witnessing actions that violate the anti-discrimination or harassment policies;
- e. The identity and contact information for the USC official(s) or office(s) responsible for resolving discrimination and harassment complaints;
- f. The process for initiating a discrimination or harassment complaint; and
- g. Potential consequences for violations of the anti-discrimination or harassment policies and procedures.

3. Diversity Training. The plan should ensure that the training on USC's anti-discrimination and harassment policies and procedures is independent

of any diversity training offered by USC, including through its Office of Multicultural Affairs.

4. Training Policies. The plan will propose policies and procedures for both initiating and continuing training for USC administrators, faculty, staff, and students to ensure that the campus community is familiar with USC's anti-discrimination and harassment policies and procedures, and interested parties know, and will continue to know, their responsibilities and obligations under the policies. Specifically, the plan will propose procedures for creating and training teams of select administrators, faculty, staff, and student leaders who shall be responsible for designing and conducting appropriate trainings sessions. The plan will also propose policies regarding when and how individuals shall be re-trained on the anti-discrimination and harassment policies.

**D. Conduct Training**

Before the end of the 2011-12 academic year or as soon as practicable, the consultant will conduct the trainings required by ¶¶ 1-3 below, and before the start of the 2012-13 academic year conduct the training required by ¶ 4 below:

1. Using the training plan adopted by USC pursuant to ¶¶ III.F. of this Agreement, the consultant will train all USC officials who are responsible for ensuring that USC complies with federal and state anti-discrimination and harassment laws and related USC policies and procedures that shall be implemented pursuant to ¶¶ III.C. of this Agreement;
2. Using the training plan adopted by USC pursuant to ¶¶ III.F. of this Agreement, the consultant will train all USC personnel responsible for processing or resolving student complaints of discrimination or harassment under the USC policies and procedures that shall be implemented pursuant to ¶¶ III.C. of this Agreement;
3. Using the training plan adopted by USC pursuant to ¶¶ III.F. of this Agreement, the consultant will train USC administrators, faculty, and staff who shall be selected by USC pursuant to ¶¶ III.D.1. of this Agreement; and
4. Using the training plan adopted by USC pursuant to ¶¶ III.F. of this Agreement, the consultant will train teams of USC administrators, faculty, staff, and student leaders who shall be selected by USC pursuant ¶¶ III.D.4. of this Agreement.



### III. ADOPTION AND IMPLEMENTATION OF NEW POLICIES AND PROCEDURES

USC shall adopt new anti-discrimination and harassment policies and procedures or modify existing policies as set forth in ¶¶ III.A-C. of this Agreement and adopt a new training plan as set forth in ¶¶ III.D-F. of this Agreement to ensure that its administrators, faculty, and staff implement these revised policies so that student complaints of racial discrimination and/or harassment are fully and appropriately resolved in the future.

#### A. Prepare Proposed Changes to Anti-Discrimination Policies and Procedures

Within forty-five (45) days of receiving the consultant's report on policies and procedures, USC shall prepare and submit to DOJ for review a written report containing proposed changes to its anti-discrimination and harassment policies and procedures. It is expected that this report will adopt many, if not all, of the recommendations contained in the third party consultant's report, which will be submitted to the parties pursuant to ¶¶ II.B. of this Agreement. If USC declines to adopt any of the consultant's recommendations, its report must explain USC's reasons for doing so. Wherever appropriate, USC's report should provide proposed policy language and, at a minimum, the report shall address the following issues:

1. Delegation of Authority. USC shall state how it proposes to delegate the authority and responsibility for resolving both formal and informal allegations of discrimination and harassment involving students to its various officials in a clear and orderly fashion to ensure that USC is effectively implementing and enforcing applicable federal and state laws and related USC policies and procedures. USC also shall state the techniques it intends to employ to ensure that communication between its administrators and staff regarding such complaints is done efficiently and effectively.
2. Dissemination of Information. USC shall state how it proposes to disseminate information about its anti-discrimination and harassment policies and procedures to ensure that students and relevant USC personnel are well-informed about the policies; that the policies and procedures are broadly publicized; and that accurate information about the policies and procedures is readily available to interested individuals.
3. Complaint Resolution. USC shall describe the type of complaint resolution system it intends to use to address allegations of discrimination and harassment involving students in an appropriate and effective manner. If USC proposes to employ multiple methods to resolve complaints, it shall clearly state what criteria would determine the method to be used. USC also shall indicate whether any appeals would be permitted under its proposed system and how any such appeals would occur.

4. Complaint Intake. USC shall describe the procedures it proposes to implement to ensure that allegations of discrimination and harassment are promptly and accurately reported to the proper official, including protocols its staff will use to receive and document complaints; determine whether and how allegations implicate particular policies and procedures; and make proper notifications and referrals. USC shall also state how it intends to respond to “informal” complaints, anonymous reports, and complaints from witnesses who are not the victims of the discriminatory conduct.
5. Investigations. USC shall describe the procedures it proposes to implement to ensure that allegations of discrimination and harassment are quickly and effectively investigated, including protocols its staff will use to conduct and record interviews with complainants, victims, alleged perpetrators, and witnesses; obtain and maintain necessary documents and other materials; conduct independent research; and prepare investigation summaries and reports.
6. Remedial and Disciplinary Measures. USC shall describe the criteria it intends to use to determine when certain remedial measures, such as educational and training initiatives or disciplinary sanctions, will be employed to respond to discrimination or harassment complaints involving students and to minimize the likelihood that discriminatory actions will recur. In addition, USC shall describe the criteria it intends to use to determine when to take remedial actions against student organizations or groups for the actions of individual members. USC also shall list and describe some of the different sanctions that may potentially be imposed against individuals or organizations that violate USC’s anti-discrimination and harassment policies and procedures.
7. Record Maintenance. USC shall describe the procedures it proposes to implement to ensure that records related to allegations of discrimination and harassment, including notifications of complaints, interview notes, investigation summaries and reports, and documentation of remedial actions, are properly preserved and maintained.
8. Monitoring. USC shall describe how it proposes to periodically monitor its anti-discrimination and harassment policies and practices to ensure they are effectively resolving both formal and informal allegations of discrimination and harassment involving students.
9. Diversity Initiatives. If the consultant determines that the diversity initiatives implemented by USC’s Department of Student Life are incongruent with USC’s anti-discrimination and harassment obligations,

or that USC erroneously conflates the two programs, then USC shall describe how it proposes to modify the two programs.

**B. Review Proposed Changes to Anti-Discrimination Policies and Procedures**

Within thirty (30) days of receiving USC's report of proposed changes to its anti-discrimination and harassment policies and procedures, DOJ shall inform USC in writing of any objections it might have regarding USC's proposed changes.

If DOJ objects to any of the changes USC proposes to make to its existing anti-discrimination and harassment policies and procedures, then the parties will work together to develop mutually agreeable policies and procedures. Any delays in developing new anti-discrimination and harassment policies and procedures will not excuse any party from fulfilling any other obligation set forth in this Agreement.

**C. Adopt and Implement New Anti-Discrimination Policies and Procedures**

On or before the start of the 2011-12 academic year, USC shall adopt and implement new anti-discrimination and harassment policies and procedures that adequately and reasonably address the issues listed in ¶¶ III.A. of this Agreement, and have been approved by DOJ as set forth in ¶¶ III.B. of this Agreement.

**D. Develop Proposed Training Plan**

Within thirty (30) days of receiving the consultant's report on training, USC shall prepare and submit to DOJ for review a written report containing a comprehensive plan for conducting training on USC's policies and procedures for resolving student complaints of racial discrimination and harassment, which will be adopted pursuant to ¶¶ III.C. of this Agreement. It is expected that this report will adopt many, if not all, of the recommendations contained in the third party consultant's report, which will be submitted to the parties pursuant to ¶¶ II.C. of this Agreement. The plan shall propose appropriate and reasonable training for different individuals and groups, and tailor the topics and scope of coverage according to the needs of the different audiences.

1. Individuals to be Trained. At a minimum, the plan shall provide for training to the individuals and groups listed in ¶¶ II.C.1. of this Agreement.
2. Training Objectives. The plan shall provide for appropriate training and alter the content of the training based on the roles and responsibilities of the person receiving the training. At a minimum, the plan shall ensure that the training objectives set forth in ¶¶ II.C.2. of this Agreement are achieved.

3. Training Topics. The plan shall ensure that each training USC provides on its policies and procedures for resolving student complaints of racial discrimination and harassment addresses all of the topics listed in ¶¶ II.C.2. of this Agreement.
4. Training Policies. The plan shall propose policies and procedures for both initiating and continuing training for USC administrators, faculty, staff, and students to ensure that the campus community is familiar with USC's new anti-discrimination and harassment policies and procedures, and interested parties know, and will continue to know, their responsibilities and obligations under the policies. Specifically, the plan will propose procedures for creating and training teams of select administrators, faculty, staff, and student leaders who shall be responsible for designing and conducting appropriate trainings sessions. The plan will also propose policies regarding when and how individuals shall be re-trained on the anti-discrimination and harassment policies.

**E. Review Proposed Training Plan**

Within thirty (30) days of receiving USC's report of its plan for conducting training on USC's policies and procedures for resolving student complaints of racial discrimination and harassment, DOJ shall inform USC in writing of any objections it might have regarding USC's proposed plan.

If DOJ objects to any part of USC's plan for offering training on its anti-discrimination and harassment policies and procedures, then the parties will work together to develop mutually agreeable policies and procedures. Any delays in developing a comprehensive training plan will not excuse any party from fulfilling any other obligation as outlined in this Agreement.

**F. Adopt New Training Plan**

Within fifteen (15) days of receiving DOJ approval, USC shall adopt a comprehensive plan for training on its new anti-discrimination and harassment policies and procedures that is consistent with the ¶¶ III.D. of this Agreement, and has been approved by DOJ as set forth in ¶¶ III.E. of this Agreement.

**G. Conduct Training**

1. USC shall direct the designated third party consultant to conduct training as set forth in ¶¶ II.D.1-3. of this Agreement before the end of the 2011-12 academic year, and to conduct training as set forth in ¶ II.D.4. of this Agreement before the beginning of the 2012-13 academic year.
2. Starting with the 2012-2013 school year and moving forward, USC shall implement the comprehensive plan for conducting training on its policies

and procedures for resolving student complaints of racial discrimination and harassment using the training plan adopted pursuant to ¶¶ III.F. of this Agreement.

#### IV. MONITORING AND CONCLUSION OF INVESTIGATION

- A. In addition to the reports contemplated in ¶¶ II.B., II.C., III.A., and III.D. of this Agreement, USC shall provide documentation of its compliance with this Agreement in a written report (“Compliance Report”). The Compliance Report shall be sent to DOJ on August 30 and January 30 for the years 2010-2013, with the first Compliance Report due January 30, 2011.
- B. From the date USC enters into this Agreement or the date of the last Compliance Report, whichever is the latter, the USC shall provide in its Compliance Reports:
1. For each instance in which a USC employee either witnessed or was notified of allegations of racial discrimination or harassment involving a USC student or prospective student:
    - a. The date on which the employee was informed of or witnessed the alleged discrimination and harassment, and the employee’s name and title;
    - b. A detailed description of the alleged discrimination and harassment, including the date and location of the incident, the nature of the underlying action, and the name of the alleged actor(s);
    - c. A detailed description of all actions taken by USC in response to the allegations, including but not limited to any investigations conducted by USC;
    - d. The name and status (*e.g.*, student, professor, or advisor) of each person who witnessed the alleged discrimination and harassment and each person interviewed in any subsequent investigation conducted by USC;
    - e. The names and titles of the employees involved in USC’s response to the alleged discrimination and harassment and whether these individuals are current USC employees;
    - f. A description of any conclusion and remedial or disciplinary action taken by USC in response to the allegations;
    - g. What, if anything, USC communicated to the complainant(s) regarding the alleged discrimination or harassment and any resulting investigation or actions; and
    - h. All documents that reference the alleged discrimination and harassment, including but not limited to investigation notes, internal memoranda and notes, emails, written/oral communications with the complainant, and notifications/communications with the accused perpetrator.

2. For each training conducted pursuant to ¶ I.D.4. of this Agreement:
  - a. The name and position of all employees and students selected and trained to lead USC trainings on new anti-discrimination and harassment policies;
  - b. The name and position of the individual(s) who conducted the training; and
  - c. A statement describing the subject of the training, the date of the training, and the amount of time spent on the topic.
3. For each training conducted pursuant to ¶ III.F. of this Agreement:
  - a. The number and percentage of students who have received the training (*e.g.*, 26,000 students; 90% of the student body);
  - b. The number and percentage of employees who have received the training;
  - c. The name and position of the individual(s) who conducted the training;
  - d. The name and position of all administrators who have not received the training; and
  - e. A statement describing USC's plan for training those individuals who have not yet received training.
4. A brief description of all training USC intends to conduct related to this Agreement or USC's anti-discrimination and harassment policies and procedures, by topic and date.

- C. Within sixty (60) days of receiving a Compliance Report from USC, DOJ shall notify USC in writing of any objections or concerns it may have regarding USC's compliance with the terms of this Agreement or applicable federal anti-discrimination laws.

If DOJ notifies USC of any objection or concern about USC's compliance with this Agreement or any applicable federal anti-discrimination laws, the parties will work cooperatively to resolve DOJ's objection or concern.

- D. DOJ shall close its current investigation into USC's anti-discrimination and harassment policies and procedures if, pursuant to ¶¶ IV.C. of this Agreement, DOJ does not notify USC of any objection or concern within sixty (60) days of receiving USC's August 30, 2014 Compliance Report, or after all outstanding objections and concerns are resolved.

## V. ENFORCEMENT OF AGREEMENT AND FEDERAL LAWS

- A. If, pursuant to this Agreement, DOJ notifies USC of any objection or concern and the parties are unable to resolve the outstanding objection or concern, DOJ


reserves the right to pursue any investigation or enforcement actions that may be appropriate.

- B. USC understands and acknowledges that DOJ may initiate judicial proceedings to enforce the specific terms and obligations of this Agreement.
- C. USC understands and acknowledges that DOJ retains the right to evaluate USC's compliance with this Agreement, including the right to conduct site visits and engage in *ex parte* communications with students and employees, except for USC vice presidents, the USC president, members of the USC Board of Trustees, USC deans, USC department chairs, any USC employee who supervises, directs or regularly consults with USC's attorneys concerning USC's policies and practices for addressing student complaints of racial discrimination, and any USC employee who has authority to obligate USC with respect to USC's policies and practices for addressing student complaints of racial discrimination, or whose acts or omissions may be imputed to USC for purposes of civil or criminal liability.
- D. USC understands and acknowledges that DOJ retains the right to investigate and, where appropriate, to initiate judicial proceedings concerning any and all allegations of discrimination by USC, consistent with its responsibility to enforce Title IV of the Civil Rights Act of 1964, *see* 42 U.S.C. § 2000c, *et seq.*, and notwithstanding the terms of this Agreement.

SO AGREED,

*For the United States:*

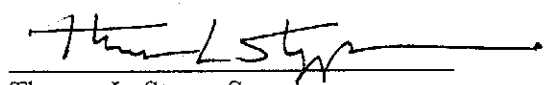
Thomas E. Perez  
Assistant Attorney General

  
\_\_\_\_\_  
Amy I. Berman

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Washington, DC 20530  
Tele: (202) 514-4092  
Fax: (202) 514-8337

Date Signed: 11/10/10

*For the University of South Carolina:*

  
\_\_\_\_\_  
Thomas L. Stepp, Secretary  
University of South Carolina Board of  
Trustees

Date Signed: 11-8-2010