



UNIVERSITY OF SOUTH CAROLINA

AMENDMENT NO. 3 TO SOLICITATION

TO: ALL VENDORS

FROM: Charles Johnson, Procurement Manager

SUBJECT: SOLICITATION NUMBER: USC-RFP-2527-CJ

DESCRIPTION: Management Services for the Colonial Center at The University of South Carolina

DATE: February 19, 2014

This Amendment **No.3** modifies the Requests for Proposals only in the manner and to the extent as stated herein.

Attachments

BIDDER SHALL ACKNOWLEDGE RECEIPT OF AMENDMENT **NO. 3** IN THE SPACE PROVIDED BELOW AND RETURN IT WITH THEIR BID RESPONSE. FAILURE TO DO SO MAY SUBJECT BID TO REJECTION.

Authorized Signature

Name of Offeror

Date

Excess Operating Profits (per Section 5.3)

<u>Stadium</u>	<u>USCAD</u>	<u>Volume</u>
Years 1 - 15	90%	10%
<u>Arena</u>	<u>USCAD</u>	<u>Volume</u>
Years 1 - 5	50%	50%
Years 6 - 10	65%	35%
Years 11 - 15	80%	20%

Volume Funding (per Section 11.1(a))

	<u>Stadium</u>	<u>Payable</u>
	\$200,000.00	July 1, 2002
	\$250,000.00 07/08	During 6 th Contract Year
	<u>\$400,000.00</u>	During 11 th Contract Year
TOTAL	\$850,000.00	
	<u>Arena</u>	<u>Payable</u>
	\$1,500,000.00	July 1, 2002
	\$1,500,000.00	September 1, 2002
	\$ 50,000.00 07/08	During 6 th Contract Year
	<u>\$ 100,000.00</u>	During 11 th Contract Year
TOTAL	\$3,150,000.00	

5.2 Management Fee. For the services rendered under this Agreement by Volume, Volume is entitled to receive as its Base Management Fee the sum of \$100,000.00 for the Stadium operations and the sum of \$325,000.00 for the Arena operations during each Contract Year. Volume shall receive its Base Management Fees only to the extent that Operating Profits exceed the Minimum Amounts paid to USCAD in Section 5.1. If there are insufficient Operating Profits to pay Volume its entire Base Management Fee during any Contract Year, any unpaid Base Management Fee shall not accrue to any subsequent Contract Year.

5.3 Excess Operating Profits. If in any Contract Year the Operating Profits exceed both the Minimum Amount and the Base Management Fee due and payable for the Stadium and Arena, respectively, such Operating Profits shall be shared between USCAD and Volume as follows:

<u>Stadium</u>	<u>USCAD</u>	<u>Volume</u>
Years 1 - 15	90%	10%
<u>Arena</u>	<u>USCAD</u>	<u>Volume</u>
Years 1 - 5	50%	50%
Years 6 - 10 2007/08	65%	35%
Years 11 - 15 2012/2013	80%	20%

5.4 Arena Financial Option. The USCAD, may, at its option, by giving written notice to Volume on or before July 1, 2002, substitute the financial terms pertaining to the Arena that are set forth in Sections 5.1, 5.2, 5.3 and 11.1(a) so that such financial terms in their entirety read as follows:

Minimum Amount for Arena Operating Profits Per Year

Years 1 - 5	\$ 650,000.00
Years 6 - 10	\$ 700,000.00
Years 11 - 15	\$ 750,000.00

Arena Management Fee per Contract Year

Years 1 - 15	\$ 300,000.00
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Excess Arena Operating Profits

<u>Arena</u>	<u>USCAD</u>	<u>Volume</u>
Years 1 - 15	90%	10%

Volume Funding

\$ 500,000.00
\$1,500,000.00
\$ 25,000.00
\$ 50,000.00

Payable

July 1, 2002
September 1, 2002
each year during 6 th through 10 th Contract Year
Each year during 11 th through 15 th Contract Year

If the USCAD exercises this option, all references in this Agreement to the dollar amounts, percentages and payment dates set forth in Section 5.1, 5.2, 5.3 and 11.1(a) shall be deemed to refer to the corresponding terms in this Section 5.4 as substituted for the initial Arena financial terms. All other terms and conditions contained in this Agreement respecting the Minimum Amount, Arena Management Fee, Excess Arena Operating Profits and Volume's Capital Funding of the Arena shall remain unchanged if the USCAD exercises the option contained in this Section.

SECTION VI
REPORTING PAYMENT AND RECORD KEEPING

6.1 Maintenance of Records. Volume shall establish and maintain an accounting system for its operations at the Facility in accordance with generally accepted accounting practices consistently applied, and Volume shall maintain books and records for its operations hereunder for a period of three (3) years after the end of the Term. Upon reasonable notice during the Term, and for a period of three (3) years thereafter, USCAD, at its expense, may cause its designated accountants to audit and copy all sales records retained by Volume pertaining to operations at the Facility.

6.2 Reporting. Volume shall submit a profit and loss statement to the USCAD on or before the twentieth (20th) day after the end of each Monthly Accounting Period indicating Gross Receipts and Direct Operating Costs incurred by Volume in the prior Monthly Accounting Period.

6.3 Payment

(a) Volume shall establish and maintain a commercial corporate bank account ("Volume's Account") in which it shall deposit all Gross Receipts collected for and on behalf of the USCAD. All Direct Operating Costs shall be paid from Volume's Account. Volume shall keep and maintain records showing all deposits to and disbursements from such account for and on behalf of the USCAD.

(b) The Minimum Amount of Stadium Operating Profits due to the USCAD per home football game shall be paid to the USCAD within seven (7) days after each USC home football game. Volume may withdraw from Volume's Account after each Monthly Accounting Period one twelfth (1/12) of the \$100,000.00 annual Stadium Management Fee. Within sixty (60) days after each Contract Year, Volume shall submit an annual report of the Stadium operations. If annual Operating Profits for the Contract Year are insufficient for Volume to earn the entire Base Management Fee, Volume shall immediately reimburse the USCAD the amount that Base Management Fees paid to Volume exceed Operating Profits during such Contract Year. Within ten (10) days after such submission, the parties will reconcile Excess Operating Profits, if any, pursuant to Section 5.3 and same shall be disbursed from Volume's Account.

(c) The Minimum Amount of Arena Operating Profits shall be paid to the USCAD in twelve equal installments of Forty Five Thousand Eight Hundred Thirty Three Dollars and Thirty Three Cents (\$45,833.33) at such time as Volume submits the profit and loss statement pursuant to Section 6.2 and Volume may, at such time, withdraw from Volume's Account one twelfth (1/12) of the \$325,000 annual Arena Management Fee (adjusted accordingly if USCAD exercises its option under Section 5.4). Within sixty (60) days after each Contract Year, Volume shall submit an annual report of the Arena Operations. If annual Operating Profits for the Contract Year are insufficient for Volume to earn the entire Base Management Fee, Volume shall immediately reimburse the USCAD the amount that Base Management Fees paid to Volume exceed Operating Profits during such Contract Year. Within ten (10) days after such submission, the parties will reconcile Excess Operating Profits, if any, pursuant to Section 5.3 and same shall be disbursed from Volume's Account.

6.4 Confidentiality. Each party may be exposed to trade secrets or other confidential or proprietary information and materials of the other party ("Confidential Information"). Each party agrees to hold in confidence and not use or disclose any Confidential Information, except that a party may use or disclose Confidential Information which (i) is known to the receiving party at the time of disclosure and is not then subject to any confidentiality restriction; (ii) before or after the time of disclosure, becomes publicly known, not as a result of any action or inaction of the receiving party; (iii) is obtained by the receiving party from a third party which has no obligation of confidentiality; (iv) is developed by the receiving party completely independently of any disclosure from the disclosing party; or (v) is required by law to be disclosed to a court or other governmental authority. Upon request, each party will promptly return all copies of documents or other materials containing Confidential Information of the other party. In the event of a breach or a threatened breach of this Section, the non-breaching party shall be entitled to all remedies available at law or in equity, including, but not limited to, a temporary restraining order or injunction to prevent disclosure or use of any Confidential Information. This subsection shall survive termination of this Agreement.

SECTION VII
OPERATING STANDARDS

7.1 Product and Service Quality. All Food Products sold or kept for sale by Volume at the Facility shall conform to all applicable federal, state, county and city food laws, ordinances and regulations. All services provided to patrons at the Facility shall be of high quality, in accordance with the standards of the industry, and Volume shall implement and enforce appropriate rules and regulations to ensure that its employees conform to the service standard required hereunder.

7.2 Operating Control. Volume shall not sell or permit the sale of any Food Products unless pricing and quality thereof have been approved in advance by the USCAD. Volume shall present to USCAD, in writing, the menus and the prices to be charged for all Food Products to be sold by Volume at the Facility at least fourteen (14) days prior to the adoption of such menus and prices. Volume shall have the right to make interim menu and price changes (including, without limitation, menu deletions), subject to USCAD's reasonable prior approval. USCAD shall not unreasonably withhold or delay its approval of the menus, prices and changes to menus and prices submitted by Volume. In the event that USCAD fails to deliver to Volume in writing its approval or denial of the menus, prices or changes to menus and prices submitted to USCAD's Associate Athletics Director for Business or USCAD's other designee, within seven (7) days after such submission, USCAD shall be deemed to have approved them. Nothing in this Agreement shall be deemed to give USCAD the right to require Volume to operate the Food Services in a way which is inconsistent with customary and reasonable practices in the food service industry or to provide Food Products or Food Services below reasonable and customary prices.

7.3 Pricing Standard. The prices for all Food Products sold at the Facility (excluding the Carolina Arena) shall be commensurate with prevailing prices at comparable collegiate facilities in similar demographic areas of the Southeast, whose operators are charged commissions similar to those that Volume is charged pursuant to this Agreement. With respect to the Carolina Arena, prices for Food Products shall be commensurate with prevailing prices at comparable arenas (collegiate or otherwise) in the Southeast, whose operations are charged commissions similar to those that Volume is charged pursuant to this Agreement. In determining the prices to be charged, and in resolving any disputes which may arise between the parties with respect to pricing, the parties shall look to prevailing prices charged at such facilities.

7.4 Subcontractors. Volume may hire subcontractors, provided that any subcontractor shall be subject to USCAD's reasonable approval, which approval shall not be unreasonably withheld or delayed. All net income received by Volume from a subcontractor shall be treated as Gross Receipts.

7.5 Designated Suppliers. In the event the USCAD enters into a sponsorship arrangement with companies that produce and distribute food, beverages and other merchandise of the type to be sold by Volume at the Facility (such food, beverage and merchandise items being referred to herein as "Sponsor Products") that involves payment by the sponsor to the USCAD or the in-kind provision of sponsor products to the USCAD, the USCAD shall have the right to require Volume to purchase Sponsor Products produced or provided by the sponsor. However, such sponsors must agree to sell Sponsor Products to Volume at the same or equivalent prices and that such prices are set at all times competitively based on price and quality with similar goods available to Volume from other suppliers. Additionally, the terms and/or conditions, if any, that such sponsor seeks to impose on Volume in connection with the sale of such Sponsor Products cannot require Volume to incur additional costs or to make substantive, material changes in its usual and

customary operating methods at the Facility without appropriate compensation therefore. Volume shall have the right to sell off any existing inventory of other brands in the event the USCAD designates a supplier under this section.

SECTION VIII USE OF PREMISES

8.1 Occupancy and Enjoyment of Food Service Premises. For and in consideration of the foregoing, USCAD shall permit Volume to occupy, operate and quietly enjoy the Food Service Premises without interference or molestation of any kind from USCAD or any other person claiming by, through, from or under USCAD.

8.2 Access to USCAD's Premises. In addition to the right to occupy and operate the Food Service Premises, Volume and its agents, employees, suppliers and other persons necessary for Volume to render the services contemplated herein shall have access to additional areas of the Facility as necessary or appropriate to provide such services, subject to such reasonable regulations as USCAD may adopt with respect to such access. Without limiting the generality of the foregoing, Volume's agents, employees, suppliers and other persons necessary to its operations shall be entitled to free admission to the Facility through a reasonably convenient entrance designated by USCAD, use of restrooms, changing rooms and like areas, and access to the areas where Food Products are to be sold. USCAD will provide adequate parking for full time Volume employees during events in which those employees work. USCAD will use its best efforts to secure parking for temporary supervisory employees during events, but USCAD is not responsible for providing parking for temporary event workers.

8.3 Inspection. USCAD shall have access to the Food Service Premises at any reasonable time upon notice reasonably given, for the purpose of inspection, provided that such access and inspections do not unreasonably interfere with Volume's operations.

SECTION IX OPERATING RESPONSIBILITIES

9.1 Cleaning. Volume shall be responsible for maintaining in an orderly, clean and sanitary condition all nonpublic areas of the Facility used exclusively by Volume, including food preparation areas, tabletops, bars and countertops, commissary areas and the areas behind the bars and any concession stands. USCAD shall clean all other areas of the Facility premises, including all areas which are accessible to the public.

9.2 Utilities. USCAD shall furnish and pay for all public and private utility services which may be required in connection with Volume's operations under this Agreement, including, without limitation, electricity, hot and cold water, sewer and gas, and shall pay all taxes, levies and other charges which may be imposed in connection with the use of such utilities. As to locations other than the Carolina Arena, nothing herein shall be construed to require the USCAD to provide utility services other than as currently existing in each location.

9.3 Security. USCAD shall be responsible for providing and bearing the cost of adequate security at the Facility, including the Food Service Premises. USCAD shall be responsible for public order and safety and shall have the responsibility to eject persons from the Facility as necessary.

9.4 Trash Removal. USCAD shall pick up and dispose of all trash generated from operation of the Food Services.

9.5 Cooperation. The parties shall use reasonable efforts to cooperate with one another to maximize the revenue from the Food Services hereunder.

SECTION X
LICENSES AND COMPLIANCE

10.1 Volume's Licenses and Permits. Volume shall obtain and shall maintain throughout the Term of this Agreement, all licenses and permits, including all applicable Liquor Licenses in Volume's name, required for its operations hereunder. Volume shall comply at all times with restrictions, rules and conditions of all such licenses and permits. USCAD shall observe all rules and regulations pertaining to such licenses and permits and cooperate with Volume as necessary to avoid any loss, restriction or suspension thereof. If requested, USCAD shall use its good faith efforts to assist Volume in procuring such licenses and permits.

10.2 USCAD's Licenses and Permits. USCAD shall obtain and shall maintain throughout the Term of this Agreement, all licenses and permits which may be required for the general operation of the Facility. USCAD shall comply at all times with restrictions, rules and conditions of all such licenses and permits. Volume shall observe all rules and regulations pertaining to such licenses and permits and cooperate with the USCAD as necessary to avoid any loss, restriction or suspension thereof.

10.3 Alcohol Policy. Volume's policy is to comply strictly and absolutely with all state and federal laws governing the alcoholic beverage industry. In the event USCAD sells advertising and/or participates in other promotional arrangements with any manufacturer, distributor or wholesaler of alcoholic beverages, such advertising or promotional arrangement can not be dependent upon, in any way conditioned upon, or intended to induce Volume to purchase alcoholic beverages from such third party. As part of the sale of advertising or promotional services, USCAD can not require or expect Volume to purchase any specific alcoholic beverage products for resale to consumers. Volume must retain full and independent discretion to determine what alcoholic beverage it will purchase and may determine, in its sole discretion the brewer, vintner or wholesaler from whom to purchase same.

SECTION XI
FUNDING BY VOLUME

11.1 Volume Funding.

(a) Volume shall invest an amount not to exceed Four Million Dollars (\$4,000,000.00), unless modified by the USCAD's exercise of the option pursuant to Section 5.4 in the aggregate (the "Investment") in the Stadium and the Arena as follows:

	<u>Stadium</u>	<u>Payable</u>
	\$200,000.00	July 1, 2002
	\$250,000.00	During 6 th Contract Year
	\$400,000.00	During 11 th Contract Year
TOTAL	\$850,000.00	
	<u>Arena</u>	<u>Payable</u>
	\$1,500,000.00	July 1, 2002
	\$1,500,000.00	September 1, 2002
	\$ 50,000.00	During 6 th Contract Year
	\$ 100,000.00	During 11 th Contract Year
TOTAL	\$3,150,000.00	

Each of the foregoing payments shall be an "Investment Expenditure".

With the exception of Volume's payment of \$1,500,000.00 to USCAD payable on July 1, 2002, all Investment Expenditures shall be used by Volume for the purchase of furniture, fixtures, equipment, leasehold improvements, design and engineering costs, smallwares, uniforms and "tools of the trade" in connection with Volume's operations at the Stadium and Arena as shall be mutually agreed upon by Volume and the USCAD. The payment of \$1,500,000.00 payable on July 1, 2002 shall be used by the USCAD as the USCAD deems necessary or useful.

(b) Volume will amortize each Investment Expenditure monthly on a straight-line basis over the remaining term of this Agreement, each such period to commence the date Volume incurs the expense for such Investment Expenditure. If the Investment Expenditure is a tangible item to be installed at the Facility, Volume may begin the amortization for such Investment Expenditure on the date of installation of such item, rather than the date it incurs the expense.

(c) All costs associated with acquiring the tangible items to be purchased with the Investment shall be borne by Volume as part of the Investment. Title to all such tangible items shall remain in Volume, until fully amortized, or until payment of the amount required to be paid by USCAD pursuant to Section 11.2.

11.2 Early Termination. If this Agreement expires or is terminated by either party, at any time, with or without cause, including, but not limited to, the causes described in Sections XVI and XVII hereof, prior to Volume's complete amortization of the Investment Expenditures, USCAD will pay Volume an amount equal to the unamortized portion of such Investment Expenditures, in accordance with Section 17.3(a).

SECTION XII CONCESSION PREMISES

12.1 Facilities to be Provided by USCAD. USCAD shall make available to Volume at the Facility on the commencement date of Volume's operations hereunder and throughout the Term, the Food Service Premises in good order and repair and in compliance with all building and other codes.

12.2 Repairs and Maintenance. Volume shall timely make and pay for all repairs to the Facility, all equipment, fixtures and furnishings therein (including tangible items which are part of the Investment) and all utility systems serving the Facility, whether required by normal wear and tear or otherwise, so as to permit Volume to operate in an efficient and sanitary manner.

SECTION XIII EMPLOYEES

13.1 Staffing. Volume shall employ a manager to supervise Volume's operations at the Facility. The manager shall be on-site at the Facility when events which require Volume to provide Food Services are taking place at the Facility. Volume shall also employ sufficient staff in accordance with industry standards to perform the Food Services described in this Agreement. If USCAD notifies Volume in writing of a reasonable and significant objection to any of Volume's employees, including the on-site manager, Volume shall have thirty (30) days in which to cure the deficiencies noted by USCAD. If such deficiencies have not been cured to USCAD's reasonable satisfaction within such thirty (30) day period, the assignment of such employee to the Facility shall be discontinued and a suitable person shall be substituted by Volume as soon as practicable. The foregoing notwithstanding, USCAD's right to require replacement of a Volume employee, and Volume's obligation to comply with

any such requests shall be subject to restrictions imposed upon Volume by any federal, state or local statute, law, code, regulation or ordinance or by any collective bargaining agreement or other contract affecting such employee. Unless advance written approval of Volume is obtained, USCAD agrees not to recruit the services of Volume's management-level employees during the Term, and for a period of one year following termination of this Agreement.

13.2 Uniforms. Volume shall provide uniforms for its employees as mutually agreed upon by the parties.

SECTION XIV INSURANCE

14.1 Coverage.

(a) Volume agrees to maintain insurance policies protecting its property and interests at the Facility covering the following risks in the following minimum amounts:

- (i) Workers' Compensation Insurance – in compliance with all applicable State and Federal laws.
- (ii) Commercial General Liability Insurance - \$1,000,000 per occurrence, \$2,000,000.00 policy aggregate, combined single limit for bodily injury liability and property damage liability.
- (iii) Automobile Liability Insurance - \$1,000,000 combined single limit bodily injury and/or property damage.
- (iv) Umbrella Policy – Excess Liability coverage of not less than \$5,000,000.00 in the form of an umbrella policy (and not in the form of an excess policy) endorsed to be excess of the foregoing commercial General Liability coverage.

In addition, Volume shall purchase Dram Shop Liability Insurance (liability for the service of intoxicating beverages), with a coverage limit of One Million Dollars (\$1,000,000) per occurrence.

(b) The USCAD shall maintain standard broad form property insurance insuring the Facility and its contents against loss or damage thereto from fire, explosion or other causes normally covered by standard broad form property insurance policies. The USCAD shall also maintain commercial general liability insurance with coverage of One Million Dollars (\$1,000,000) per occurrence.

14.2 Additional Provisions. Volume shall name the USCAD as an additional insured, as its interest may appear, on the policies set forth in Section 14.1(a). Each policy shall provide for thirty (30) days prior written notice to the other party of any cancellation or change in such policy, if any such change would cause the insurance coverages provided to be less than those required under Section 14.1(a). Certificates of insurance shall be provided upon request of either party.

SECTION XV INDEMNIFICATION

15.1 Indemnification by Volume. Volume agrees to indemnify and save USCAD (and its directors, officers, employees, and agents) harmless from any liability, losses, damages, judgments, liens, expenses and costs (including reasonable attorneys' fees) sustained or

incurred in connection with any claims, demands, suits, actions, or proceedings made or brought against any such party as a result of any willful misconduct or negligent acts or omissions of Volume (or its directors, officers, employees, and agents) in the performance of its obligations under this Agreement.

15.2 Indemnification by USCAD. USCAD agrees to be responsible for the actions of its officers and employees acting within the scope of their employment consistent with the provisions of the South Carolina Tort Claims Act, Section 15-78-10 et seq. of the Code of Laws of South Carolina (1976), as amended.

SECTION XVI CONTINGENCIES AND CONDEMNATION

16.1 Failure to Perform Excused. Neither party hereto shall be liable to the other party for any nonperformance, in whole or in part, of its obligations under this Agreement caused by the occurrence of any contingencies beyond the reasonable control of such party, including but not limited to declared or undeclared war, sabotage, insurrection, riot, or other acts of civil disobedience, acts of a public enemy, strikes, labor disputes, acts of third parties not within the control of the party whose performance is affected, shortages of fuel, failures of power, accidents, fires, explosions, floods or other acts of God. In the event that any such contingency occurs, this Agreement shall be terminable as provided in this Section XVI.

16.2 Damage or Destruction. If the Williams-Brice Stadium, Carolina Coliseum, Koger Center or Carolina Arena is damaged by fire or other casualty, USCAD will, within thirty (30) days, notify Volume in writing of the time necessary to repair such damage. The estimate of such repair time shall be certified by USCAD's architect, engineer or contractor. If such notice indicates that repair of all such damage will not be completed within sixty (60) days from the date of such damage, Volume will have thirty (30) days from the date of such notice within which to terminate this Agreement. Volume shall give written notice of any such termination to USCAD.

16.3 Other Contingencies. If any other contingency described in Section 16.1 shall prevent the performance of Volume's services or substantially reduce the level of use of such services for a period exceeding thirty (30) days, Volume shall have the right to terminate this Agreement by written notice at any time after the expiration of such thirty-day period.

16.4 Condemnation.

(a) Full Taking. If all or substantially all of the Williams-Brice Stadium, Carolina Coliseum, Koger Center or Carolina Arena is taken for any public or quasi-public use under any applicable laws or by right of eminent domain, or is sold to the condemning authority in lieu of condemnation, then this Agreement will terminate as of the date that the condemning authority takes physical possession of or title to the Williams-Brice Stadium, Carolina Coliseum, Koger Center or Carolina Arena whichever first occurs.

(b) Partial Taking. If only part of the Williams-Brice Stadium, Carolina Coliseum, Koger Center or Carolina Arena is thus taken or sold, this Agreement shall continue in full force and effect; provided, however, that if over 15% of the Williams-Brice Stadium, Carolina Coliseum, Koger Center or Carolina Arena is thus taken or sold, Volume may terminate this Agreement. Such termination must be exercised by written notice to USCAD given not later than sixty (60) days after Volume is notified of the extent of such taking. It shall be effective as of the date that the condemning authority takes physical possession of or title to the applicable portion of the Williams-Brice Stadium, Carolina Coliseum, Koger Center or Carolina Arena, whichever first occurs.