

 <b>UNIVERSITY OF SOUTH CAROLINA</b>	<b>REQUEST FOR PROPOSAL</b>	Solicitation Number:	USC-RFP-2945-MR
		Date Issued:	April 22, 2016
		Procurement Officer:	Michelle Robinson
		Phone:	803-777-4115
		E-Mail Address:	<a href="mailto:robinsma@mailbox.sc.edu">robinsma@mailbox.sc.edu</a>
		Mailing Address:	1600 Hampton Street Ste 606 Columbia, SC 29208

DESCRIPTION: Provide Exclusive Management and Operation of the University's Bookstore for USC Aiken Campus  
 USING GOVERNMENTAL UNIT: UNIVERSITY OF SOUTH CAROLINA

*The Term "Offer" Means Your "Bid" or "Proposal". Your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Paper Offer or Modification" provision.*

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

<b>MAILING ADDRESS:</b> University of South Carolina – Purchasing Department 1600 Hampton Street, Suite 606 Columbia SC 29208	<b>PHYSICAL ADDRESS:</b> University of South Carolina – Purchasing Department 1600 Hampton Street, Suite 606 Columbia SC 29208
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SUBMIT OFFER BY (Opening Date/Time): May 12, 2016 at 3:00 PM (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: May 4, 2016 at 11:00 AM (See "Questions From Offerors" provision)

**NUMBER OF COPIES TO BE SUBMITTED: One Original marked "Original", Five (5) Copies Marked "COPY", and 1 Electronic Copy (Flash Drive) Original Copy will prevail.**

<b>CONFERENCE TYPE: Not Applicable</b> <b>DATE &amp; TIME:</b> <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" &amp; "Site Visit" provisions)</small>	<b>LOCATION: Not Applicable</b>
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<b>AWARD &amp; AMENDMENTS</b>	Award will be posted on <b>06/01/2016</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="http://www.procurement.sc.gov">http://www.procurement.sc.gov</a>
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You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of sixty (60) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

<b>NAME OF OFFEROR</b>  <small>(full legal name of business submitting the offer)</small>	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
<b>AUTHORIZED SIGNATURE</b>  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	<b>DATE SIGNED</b>
<b>TITLE</b>  <small>(business title of person signing above)</small>	<b>STATE VENDOR NO.</b>  <small>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>
<b>PRINTED NAME</b>  <small>(printed name of person signing above)</small>	<b>STATE OF INCORPORATION</b>  <small>(If you are a corporation, identify the state of incorporation.)</small>

<b>OFFEROR'S TYPE OF ENTITY: (Check one)</b>	<small>(See "Signing Your Offer" provision.)</small>
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership
<input type="checkbox"/> Corporate entity (not tax-exempt)	<input type="checkbox"/> Corporation (tax-exempt)
<input type="checkbox"/> Other _____	
<input type="checkbox"/> Government entity (federal, state, or local)	

(Return Page Two with Your Offer)

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

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

<p>DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)</p>	<p>10 Calendar Days (%)</p>	<p>20 Calendar Days (%)</p>	<p>30 Calendar Days (%)</p>	<p>_____ Calendar Days (%)</p>
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**PREFERENCES - A NOTICE TO VENDORS (SEP. 2009):** On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at [www.procurement.sc.gov/preferences](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 & SUPPLIES / EQUIPMENT (JAN 2006):** The purpose of this solicitation is to acquire services and supplies or equipment complying with the enclosed description and/or specifications and conditions.

It is the intent of the University of South Carolina to solicit **proposals** from qualified sources of supply to provide exclusive management and operation for the University's Bookstore at the USC **Aiken Campus. This will be a Revenue Generating Contract.**

**MAXIMUM CONTRACT PERIOD -- ESTIMATED (January 2006):** June 1, 2016 – May 31, 2023, dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract – Effective Date / Initial Contract Period".

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

#### **DEFINITIONS, CAPITALIZATION, AND HEADINGS (FEB 2015)**

**CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.**

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

**BOARD** means the South Carolina Budget & Control Board or its successor in interest.

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

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

**CONTRACT** See clause entitled Contract Documents & Order of Precedence.

**CONTRACT MODIFICATION** means a written order signed by the procurement officer, directing the contractor to make changes which the clause of the contract titled "Changes," if included herein, authorizes the Procurement Officer to order without the consent of the contractor. [11-35-310(9)]

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

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

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

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

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

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

**YOU and YOUR** means Offeror.

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

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

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

**US or WE** means the using governmental unit.

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

**WORK** means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

[02-2A003-2]

**AMENDMENTS TO SOLICITATION (JAN 2004):** (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: <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. [02-2A005-1]

#### **AUTHORIZED AGENT (FEB 2015)**

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

#### **AWARD NOTIFICATION (FEB 2015)**

Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. 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. [02-2A010-2]

**BID / PROPOSAL AS OFFER TO CONTRACT (JAN 2004):** By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer

may be submitted by only one legal entity; “joint bids” are not allowed. [02-2A015-1]

**BID ACCEPTANCE PERIOD (JAN 2004):** In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. [02-2A020-1]

**BID IN ENGLISH & DOLLARS (JAN 2004):** Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

**CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008): GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.**

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

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

(i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the prices offered.

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

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

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

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

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

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

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

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

**CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 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.

[02-2A035-1]

**CODE OF LAWS AVAILABLE (JAN 2006):** The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at: <http://www.scstatehouse.gov/code/statmast.php>  
The South Carolina Regulations are available at: <http://www.scstatehouse.gov/coderegs/statmast.php>  
[02-2A040-2]

**DEADLINE FOR SUBMISSION OF OFFER (JAN 2004):** Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental body's mail room which services that purchasing office prior to the opening. [R.19-445.2070(G)] [02-2A050-1]

### **DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015)**

You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this

solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either. [02-2A047-2]

**DRUG FREE WORK PLACE CERTIFICATION (JAN 2004):** By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]

**DUTY TO INQUIRE (FEB 2015)**

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

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

**IRAN DIVESTMENT ACT - CERTIFICATION (JAN 2015):** (a) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-iran-divestment.phtm> (.). Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List. [02-2A077-1]

**OMIT TAXES FROM PRICE (JAN 2006):** Do not include any sales or use taxes in Your price that the State may be required to pay. [02-2A080-1]

**OPEN TRADE REPRESENTATION (JUN 2015):** By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with

a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2A083-1]

**PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)**

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

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

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

**PROTESTS (JUN 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". [Section 11-35-4210] [02-2A085-1]

**PUBLIC OPENING (JAN 2004):** Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. [02-2A090-1]

**QUESTIONS FROM OFFERORS (FEB 2015)**

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

**REJECTION/CANCELLATION (JAN 2004):** The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]

**RESPONSIVENESS/IMPROPER OFFERS (JUN 2015):** (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.

(f) **Do not submit bid samples or descriptive literature unless expressly requested.** Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D).

[02-2A105-2]

**SIGNING YOUR OFFER (JAN 2004):** Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

**STATE OFFICE CLOSINGS (JAN 2004):** If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <http://www.scemd.org/planandprepare/disasters/severe-winter-weather>

**SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015)**

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

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

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

**TAXPAYER IDENTIFICATION NUMBER:** (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; (ii) Offeror is an agency or instrumentally of a state or local government; (iii) Offeror is an agency or instrumentally of a foreign government; (iv) Offeror is an agency or instrumentally of the Federal Government.

**WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004):** Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085. [02-2A150-1]

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

### **SUBMISSION OF QUESTIONS**

**Mark envelopes on questions mailed:**

**QUESTIONS:** USC-RFP-2945-MR

**Title:** Provide Exclusive Management and Operation of the University's Bookstore for the USC Aiken Campus

**Attn:** Michelle Robinson

**QUESTIONS MAY BE E-MAILED TO:** [marobins@mailbox.sc.edu](mailto:marobins@mailbox.sc.edu)  
**FAXED TO:** 803-777-2032

**DISCUSSION WITH OFFERORS:** After opening, the Procurement Officer may, in his/her sole discretion, initiate discussions with you to discuss your offer.

**CLARIFICATION (NOV 2007):** Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

**CONTENTS OF OFFER (RFP) (FEB 2015)**

- (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) The contents of your offer must be divided into two parts, the technical proposal and the business proposal. Each part should be bound in 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.

**ELECTRONIC COPIES – REQUIRED MEDIA AND FORMAT (MAR 2015):** In addition to your original offer, you must submit an electronic copy or copies on compact disk (CD), DVD, or USB drive. Submit the number of copies indicated on the cover page. Each copy should be on separate media. Your business and technical proposals must be on separate media. Every disk or USB drive must be labeled with the solicitation number and the offeror's name, and specify whether its contents address technical proposal or business proposal. If the multiple-disk sets are provided, each disk in the set must be appropriately identified as to its relationship to the set, e.g. 1 of 2. The electronic copy must be identical to the original offer. File format shall be compatible with Microsoft Office (version 2003 or later), or Adobe Acrobat or equivalent Portable Document Format (.pdf) viewer. The Procurement Officer must be able to view, search, copy and print electronic documents without a password. [02-B070-2]

**OPENING PROPOSALS -- INFORMATION NOT DIVULGED (FEB 2015)**

In competitive sealed proposals, neither the number nor identity of offerors nor prices will be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(C)(1)]

**PROTEST - CPO - ITMO ADDRESS (JUNE 2006):** Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing

- (a) by email to [protest-itmo@itmo.state.sc.us](mailto:protest-itmo@itmo.state.sc.us) ,
- (b) by facsimile at 803-737-0102 , or

(c) by post or delivery to 1201 Main Street, Suite 601, Columbia, SC 29201.  
[02-2B120-1]

**UNIT PRICES REQUIRED (JAN 2006):** Unit price to be shown for each item.

**LEGAL AGREEMENTS INCLUDED WITH PROPOSALS MUST BE CLEARLY LABELLED “SAMPLE”**

Every page of legal agreement(s) that Offeror expects the University to sign in order to do business with Offeror, Offeror’s terms and conditions, and/or similar type legal documents pursuant to potential contract award that Offeror chooses to include with its proposal must be clearly labeled “SAMPLE”. If Offeror’s proposal is the highest ranked offer from the evaluation process for the solicitation, the then University will consider the legal documents pursuant to potential contract award that the Offeror included with its bid and clearly labelled “SAMPLE”.

**III. Scope of Work / Specifications**

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

**Introduction**

USC Aiken bookstore is located on campus at 471 University Parkway, Aiken, South Carolina 29801. The bookstore contains approximately 4160 square feet of retail space, a 1380 sf stock room along with an additional 1000 sf of office/workroom space and maintains a staff of eight (8) employees; three (3) full time, one (1) part time and four (4) student employees. With annual sales volume of more than \$1.3M (FY2014-15), USCA enrolls approximately 3300 students and employs approximately 565 full-time and part-time faculty and staff.

A senior institution of the University of South Carolina system, USC Aiken (USCA) is ranked by *U. S. News and World Report* as the number one comprehensive public institution in the South and enrolls approximately 3300 students.

- 32% minority enrollment
- 632 freshmen enrolled in Fall 2008
- 27% of our students live on campus
- 9% out-of-state student enrollment
- 13:1 student to faculty ratio
- Approximately 87% of our students receive financial aid
- Average class size is 16 students
- 66% female and 34% male enrollment

Emphasizing small classes and individual attention, the university offers 43 majors and concentrations, as well as two master’s programs, with the professional schools of Business, Education and Nursing most popular among student majors. The University also offers completion baccalaureate degrees at University of South Carolina regional campuses, and all courses of study are grounded in a liberal arts and sciences core curriculum, with interdisciplinary studies and collaborative endeavors encouraged. USCA is a member of the NCAA Division II – Peach Belt Athletic Conference.

From its founding in September 1961 at the urging of those in Aiken, S.C., the University has held a strong connection to its community and seeks to continue strengthening that bond toward a common good for the region through a variety of activities including the fine and performing arts, athletics, continuing education, distance learning, and community service. Eighty five percent of USC Aiken’s students are traditionally aged, being younger than 25, yet the enrollment base includes students of varying ages and diverse cultural backgrounds. In addition to serving the Savannah River area, USC Aiken actively seeks student enrollment from all parts of South Carolina as well as from other states and countries. In fulfilling its role as an institution of higher learning, the University upholds four key values: Collegiality, Character, Citizenship and being a High Quality Learning Environment.

Situated on 453 acres, USC Aiken is located in Aiken County, which has a population of 160,000. The University is one hour from Columbia, SC, 30 minutes from Augusta, GA, 2.5 hours from Charleston, SC and three hours from the Appalachian Mountains. Aiken is noted for its famous thoroughbred horses, numerous parks and golf courses, warm climate, spacious avenues and historic homes.

Additional information can be found by visiting the USCA web site at: [www.usca.edu](http://www.usca.edu).

Bookstore total net sales for the last three (3) years (July 1 through June 30) are as follows:

Fiscal Year 2014-15	\$1,039,457
Fiscal Year 2013-14	\$1,314,978
Fiscal Year 2012-13	\$1,378,235

## **SCOPE OF WORK**

It is the intent of the University of South Carolina (hereinafter “USC”) to solicit proposals for the exclusive management and operation of the University’s bookstore for the Aiken Campus and related services in accordance with the requirements stated herein. **This will be a Revenue Generating Contract.**

The scope of operation will include, but will not be limited to: procurement and sale of new textbooks, used textbooks, reference and trade books, stationery, student supplies, computer software, imprinted apparel and gifts, and other merchandise items now sold in the University bookstore and additional consumable and non-consumable items normally sold in a university bookstore. Services shall include but not be limited to providing special book orders and correspondence course materials; cap and gown sales; graduation announcements; used textbook purchase (buyback); copyright clearance and course packs; as well as providing other services ordinarily made available in university bookstores.

The contractor will manage and operate the USCA Bookstore in accordance with the following objectives, general specifications, and other requirements contained herein.

### **3.1 Objectives**

The University is seeking the services of a qualified offeror to furnish all financial resources, management, labor, equipment, goods and supplies necessary to manage and professionally operate an academic bookstore and provide the highest caliber of services to USC Aiken. The University’s overall goal in soliciting a contractor to provide bookstore management services is to ensure that the highest level of financial effectiveness, service, and satisfaction is being provided to the campus. It is essential that the Bookstore be managed with maximum sensitivity to the needs and concerns of the students, faculty, staff and other University supporters. Products, prices, and services must promote

confidence that the University is obtaining the best possible combination of product quality, customer service, and value. A critical aspect in meeting the foregoing goal is the identification, selection, and retention of an absolutely first rate on-site Bookstore Manager. To achieve the goals of the University's bookstore, the contractor must adopt the following objectives in managing the Bookstore:

3.1.1 Provide the University with a full range of merchandise and services expected from a quality academic bookstore.

3.1.2 Maintain sufficient quantities of textbooks and related supplies and materials, on-site and available for purchase by students, at the specific times the items are needed, as required or recommended by the faculty for their academic courses.

3.1.3 Ensure the specified editions of textbooks are available for sale.

3.1.4 Provide a wide selection of current trade, academic, and technical literature in support of required material for the academic disciplines of the University.

3.1.5 Offer a significant selection of "non-book items" such as school and office supplies, incidental household goods for resident students, personal care items, University emblematic apparel, memorabilia, computer hardware and software, and other miscellaneous items.

3.1.6 Provide timely response to customers requiring special order literature and other such materials.

3.1.7 Provide textbooks in accordance with the current Textbook Pricing Policy contained in Item 4.4.14 Book Pricing.

3.1.8 Provide other quality merchandise to the University under pricing policies which are both fair and competitive for like or similar quality, as compared to other university bookstores and also with retail establishments in the surrounding area.

3.1.9 Keep apprised of new merchandise and services of interest to the University.

3.1.10 Minimize out-of-stock situations on textbooks and other products.

3.1.11 Provide the staff, store organization, and equipment needed for efficient customer traffic flows during rush periods to minimize the time customers spend waiting in lines.

3.1.12 Meet the needs of disabled persons. ADA requirements must be adhered to in all aspects of the management and operation of the Bookstores.

3.1.13 Provide employment opportunities for the University's students.

3.1.14 Be a responsible campus retailer who is sensitive to the City of Aiken business community.

3.1.15 Participate in the academic, cultural, and social environment programs of the University, taking advantage of opportunities to offer special merchandising and other assistance based upon the University's unique and ongoing on-campus activities.

3.1.16 Provide textbook and other product information to the campus community via frequent updates of the University's bookstores website. Market new products, in-store sales specials, book signings by authors, faculty textbook adoption options, and student textbook reservation program, etc., via this website.

3.1.17 Provide a web site allowing students the option of purchasing textbooks on line, with either direct shipment to the student or for pick-up in the Bookstore.

## **3.2 General Specifications**

### **3.2.1 Independent Contractor**

The contractor shall be an independent contractor and shall comply with all employment laws, including the provisions of the Fair Labor Standards Act of 1939, as amended, and all other applicable Federal, State, and Local laws, regulations, orders, ordinances, and codes.

### **3.2.2 Status of Employees**

Neither the contractor, nor its subcontractors, nor their agents or employees shall be deemed to be employees or agents of the University.

### **3.2.3 Liability for Taxes**

The contractor shall be solely liable for all applicable federal, state, and local taxes, including timely payment of sales taxes. The contractor shall be solely liable for withholding and payment of all federal, state, and local personal income taxes, social security, unemployment, and sickness disability insurance, and other payroll taxes with respect to the contractor's employees, including contributions from them when and as required by law.

### **3.2.4 Responsibility for Licenses, Permits and Taxes**

The contractor shall obtain at its sole cost and expense all necessary approvals, licenses, permits, etc., required by law for the operation of the Bookstore. Without additional cost to the University, the contractor shall pay all required fees, taxes, insurance, and other applicable charges unless otherwise directed by the University with respect to and during the performance of the contract resulting from this solicitation.

### **3.2.5 Insurance Coverage**

Without additional cost to the University, the contractor shall obtain and maintain during the term of the contract resulting from this solicitation and any extension thereof, the minimum insurance coverage specified in this RFP.

### **3.2.6 Additional Insured**

The University will be named as an additional insured under insurance policies which shall cover against any and all liability, claims, costs, of whatever kind and nature, for injury to or death of any person or persons and for loss and/or damage to any property occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operations, or performance of work in connection with the contract resulting from this solicitation, resulting in whole or in part from the negligent acts or omissions of the contractor, his or her employees, agents, or representatives.

### **3.2.7 Indemnification and Hold Harmless**

Notwithstanding the above, the contractor hereby agrees to indemnify and hold harmless the University, its Board of Trustees, officers, agents, and employees, from any and all liability,



claims, costs and expenses, of whatsoever kind and nature, for injury to or death of any person or persons and for loss and/or damage to any property occurring in connection with or in any way incident to or arising out of the acts or omissions of the contractor, its employees, agents, or representatives.

### 3.2.8 Loss or Damage to University Property

The contractor shall be responsible for any loss or damage to property owned by the University and in the contractor's possession or control. Contractor bears the responsibility of any financial, inventory, or losses of contents not owned by the University.

### 3.2.9 Notice of Reduction or Termination of Insurance

Each policy of insurance shall contain the following endorsement: "It is understood and agreed that the insurance company shall notify USC/USCA, in writing, thirty (30) days in advance of the effective date of any reduction in or termination or cancellation of this policy."

### 3.2.10 Certificates of Insurance

Certificates of Insurance shall be delivered to the University within fifteen (15) days following the date of notice of contract award. Such certificates shall also indicate the requirement for advance notice of termination or cancellation of or change in coverage. The contractor must furnish a statement of Worker's Compensation as required by law, or a statement that the contractor is self-insured and will not file a claim against USC/USCA.

Minimum requirements are as follows:

Worker's compensation: in accordance with the statutory limits set by the State of South Carolina.

Commercial General Liability Insurance: \$1,000,000 per occurrence naming USCA as an additional insured.

Comprehensive Automobile Liability/Bodily Injury/Property Damage Insurance: \$1,000,000 combined single limit per accident.

### 3.2.11 Subleasing, Assigning, or Transferring of Contract

The contractor shall not sublease, assign, transfer, or convey without the advance written approval from the University, any portion of the contract resulting from this solicitation.

### 3.2.12 Payment Schedule

On a monthly basis, Contractor shall pay the University the percentage of gross sales as offered in Attachment 5. Payments are due thirty (30) days after the close of each month and must be deposited by electronic fund transfer into an account specified by the University. Along with each monthly payment, a detailed statement of the computation and supporting documentation shall be emailed to the Vice Chancellor of Finance and Administration, or designee, in an Excel spreadsheet. In the event that commission revenues do not meet or exceed the guaranteed amount for any contract year, the balance due to the University will be remitted within 30 days of the final month of the contract.

### 3.2.13 Monthly Sales Statements

The contractor will provide the designated University official/officials with monthly sales statements. The University shall have the right to inspect the accounting records of the contractor related to sales and expenses of the University's bookstore and may have said

records audited by a competent auditor at its own expense. Such records shall be kept by the contractor for a period of three (3) years, and may be audited by the internal audit staff of the University.

#### 3.2.14 Use of University Name

The contractor will not in any manner use the credit or the name of the University in connection with its business or affairs without the prior written consent of the University.

#### 3.2.15 Bookstore Advisory Committee

The University may maintain a Bookstore Advisory Committee. The contractor's bookstore management team shall meet with the Bookstore Advisory Committee and other designated University officials to review bookstore operations on an as needed basis. Further, the contractor's bookstore management shall work cooperatively with the Bookstore Advisory Committee and with other designated University officials in the development and improvement of the Bookstore's services and policies. The contractor shall make every reasonable effort to comply with requests from the Bookstore Advisory Committee and the designated University officials for the improvement of the Bookstore's services and policies. The Bookstore Manager and/or his/her designee are also expected to meet with students, student groups, deans, directors, budget area heads/chiefs, and other faculty members on an as needed.

#### 3.2.16 Expansion of Sales and Services

The contractor must work closely with the Vice Chancellor of Business and Administration, or appointed designee, for the University to expand bookstore sales and services. The contractor must also be willing to coordinate and/or assist with joint venture promotions of products and services of other Campus Service providers for the mutual benefit of USCA and the vendors.

#### 3.2.17 Inventory

It shall be the responsibility of the successful offeror to purchase any remaining inventory at the USC Aiken campus.

### **3.3 Specific Requirements**

#### 3.3.1 Operating Schedule

The contractor will be required to operate the Bookstore on a 12-month basis, based on the University's academic calendar. An example of the University calendar is contained at <http://www.usca.edu/records/academic-calendars/index.dot> . The University reserves the right, upon consultation with the contractor, to establish or change the days of service, hours of service, plans, or other methods of operation of the Bookstore. See also Item 4.4.26 Hours of Operation.

#### 3.3.2 Merchandising

The University reserves the right to recommend and approve merchandise to be sold in the Bookstore and to request the removal of merchandise from sale in the Bookstore that the University considers offensive or inappropriate.

#### 3.3.3 Operating Equipment and Supplies

The contractor must provide all office machines, equipment, and supplies required for the efficient conduct of business. The contractor may elect to utilize University equipment and fixtures already in place in the Bookstores, but must accept it in "as is" condition and must be responsible for future maintenance. Any equipment or fixtures so utilized will remain property

of the University upon termination of the contract and be returned in the same condition as when accepted for use, normal wear and tear excepted.

#### 3.3.4 Merchandising Rights

The contractor shall have exclusive rights to operate the full service Bookstore located at the University on its campus in Aiken, South Carolina, offering all goods and services, including campus textbook buyback services, normally found in university bookstores and any such additional services as may be required by the University during the term of the contract. The University shall grant the contractor the right to sell University licensed products; however, the right is not exclusive. The appropriate license fee is to be paid by the contractor to licensed vendors. Contractor's exclusive rights do not include merchandise and services currently sold elsewhere within the University by budgeted units of the University, student organizations, or through other contract arrangements.

The contractor recognizes that student organizations hold periodic T-shirt sales, book sales, art and crafts sales, and similar fund-raising events and the offeror recognizes the right of the University to approve such events in accordance with University Policy.

The University, subject to its own discretion, shall retain the right to provide other retail sales operations on campus, operated directly or through other contract arrangements. However, such other retail sales operations will not unreasonably compete with the primary bookstore merchandise categories (i.e., new and used textbooks, trade and reference books, supplies, and emblematic items).

### **3.4 Services, Procurement, and Delivery Requirements**

#### 3.4.1 Stocking Requirements

The contractor shall stock in sufficient quantity, display, and offer for sale:

3.4.1.1 All required, recommended, and suggested text and course books, whether new or used, rental or ebook in the editions specified by faculty or other designated academic representatives;

3.4.1.2 Other educational materials and supplies used by the University's students;

3.4.1.3 Speculative merchandise such as trade books, magazines, soft goods, stationery, greeting cards, desk and room accessories, and other items normally sold in the bookstore of a public university, to the extent the sale of such items is compatible with the educational mission of the University and the Bookstore's purposes;

3.4.1.4 Food and snack items and other items currently sold in the University Bookstore and normally sold in other bookstores.

#### 3.4.2 Quality of Merchandise

The contractor must limit the merchandise it offers for sale to those items of quality and character commensurate with the bookstore of a high quality public university.

#### 3.4.3 Withdrawal from Sale

The contractor must withdraw promptly from display and sale any item the University requests not be sold in the Bookstore.

#### 3.4.4 Methods of Payment

The contractor shall provide for charge sales of books, supplies, and all other merchandise to students, faculty, staff, and campus visitors through Master Card, Visa, American Express, Discover, ATM Cards, and CarolinaCard (the University Debit Account). The contractor shall also provide for charge sales to the University departments using departmental accounts. The contractor shall accept personal checks in reasonable amounts in payment for purchases, subject to appropriate identification. The contractor shall be solely responsible for the collection of any debts resulting from charge cards or otherwise.

#### 3.4.5 Verification of Cardholder Identity

In accepting the CarolinaCard for payment, the Contractor will be responsible for authenticating cardholder identity by checking the users CarolinaCard ID photograph as well as any other means of identification deemed necessary by the contractor to establish proper identify. The Contractor will be solely responsible for reimbursing any CarolinaCard account that has been improperly debited through miss use of the card.

#### 3.4.6 CarolinaCard Financial Requirements

The contractor will also be responsible for paying the University for use of the CarolinaCard system and will be responsible for the purchase, maintenance and repair of all equipment that will be needed in processing transactions utilizing the CarolinaCard at the contractor's location. See Attachment 2 for information concerning deposits placed on the CarolinaCard for details. The University shall not guarantee an uninterrupted debit card system, but shall be diligent in restoring service following any interruptions. The contractor must provide physical access for performance of work related to the CarolinaCard system by University employees or its system contractor. The current transaction charge for purchases utilizing the CarolinaCard is 3% of the transaction amount. The charges are subject to modification on an annual basis. At least 30 days' notice will be given in advance of any change in the transaction fee.

#### 3.4.7 Damaged Merchandise

The contractor shall be solely responsible for the disposition of any and all damaged or surplus books, supplies, tools, materials, and other damaged or surplus merchandise, regardless of the cause thereof, from the operation of the bookstore.

#### 3.4.8 Special Orders

The contractor shall provide special order service for supplies, merchandise, gift items, etc., as well as, text and trade books for students, faculty, and staff in accordance with the following provisions:

3.4.8.1 Special orders shall be taken in person, by fax, telephone, or e-mail;

3.4.8.2 Persons placing a special order shall have the option of picking up the merchandise upon arrival, or having merchandise shipped to them by parcel postage or as agreed by the customer. Special orders shall not be limited to local territory; special orders shall be shipped anywhere in the United States, and in some instances abroad, at the request of the customer, with the customer paying all shipping charges;

3.4.8.3 The contractor shall make every reasonable effort to obtain special orders within a period of one (1) week, except in special cases, and the customer shall be notified in such cases;

3.4.8.4 These sales must be included as part of USCA Bookstore gross sales.

#### 3.4.9 Book Adoption Processes

In its provision of textbooks, supplies, and materials, the successful offeror will prepare (in a form acceptable to the University) and distribute to faculty members, request forms for such books, supplies, and materials needed for each semester. The contractor must provide a system that allows book adoptions to be made on an electronically provided form that is able to provide, on or through a link provided on that form, the book adoptions that were made by the same professor for the last two comparable semesters and for the same course when it was last taught by the professor being solicited for the adoption. Upon termination of the contract, this information must be provided to the University in a format prescribed by the University, if requested.

#### 3.4.10 Electronic Book Adoption Requirements

When book adoptions are submitted electronically, the contractor must also provide an electronic notification of receipt of the book adoption and, further, must notify the professor submitting the adoption electronically of when the books are sourced based on their adoption.

#### 3.4.11 Modifications in the University Calendar

The contractor must accommodate any modifications in schedule resulting from authorized changes in the University calendar and in the schedule of classes for each year of the contract and for use in the subsequent contract.

#### 3.4.12 Reports to Faculty

The contractor will provide timely reports to faculty members of the status of their orders for books, supplies and other materials for their respective courses, including items discovered to be unavailable, delayed in delivery, new editions, etc.

#### 3.4.13 Insufficient Inventory

The contractor shall not be responsible for books or other items not being ready for sale to students due to the failure of faculty members to submit timely order requests. However, the contractor shall make every effort to supply the items requested even if requests are not timely. The contractor shall also make every effort to meet the schedule requirements with additional orders when the quantities are insufficient and the insufficiency is a result of the contractor failing to order sufficient quantities pursuant to a duly placed book adoption. The contractor will immediately locate a source through which the additional books can be provided and will cover the expense of having the books shipped by overnight delivery.

#### 3.4.14 Book Pricing

The contractor will operate according to the following pricing policies:

3.4.14.1 All new paperback books, trade books and magazines shall be sold at prices no higher than publisher's suggested retail prices;

3.4.14.2 Textbook pricing is as follows:

- (1) New textbooks ordered from publishers will be sold at prices no higher than a 25% margin, i.e.,  $\text{Cost} \div 75\% = \text{Selling Price}$ .

- (2) New textbooks ordered from wholesalers will be sold no higher than the current list price.
- (3) Used textbooks purchased from students and wholesalers are to be priced at 75% of new book prices.
- (4) Course Packs/Class Notes are to be sold at prices no higher than a 25% margin using the same pricing computation method as with new textbooks from publishers.

#### 3.4.15 Graduation Merchandise Pricing

All graduation merchandise such as undergraduate caps and gowns, announcements, and other accessories will be sold at prices no higher than a 25% margin using the same pricing computation method as above.

#### 3.4.16 Other Merchandise Pricing

All other merchandise shall be marked up to reflect a normal gross profit margin for the university bookstore industry, or as pre-priced.

#### 3.4.17 Proof of Pricing

Designated University official/officials may request and shall receive, from the contractor in a timely manner, proof that the above pricing policies are being followed.

#### 3.4.18 Low Price Guarantee

The offeror will develop, maintain, and market a textbook price guarantee that provides that University Bookstore textbook pricing will meet or be lower than that offered by local textbook vendor(s). If a customer notifies us that the USCA Bookstore pricing for a similar textbook is higher than a local competitor, and if the University Bookstore management determines that this is the case, it will match the competitor's price.

#### 3.4.19 Used Book Purchasing

The contractor shall purchase used books from students, faculty (excluding desk copies) and others at locations and schedules that are practical and convenient to both the Bookstore and the University according to the following policy:

3.4.19.1 If the contractor has a faculty order indicating a book will be a course adoption for a following semester, it will pay no less than fifty percent (50%) of the publisher's then current suggested retail price. A lesser amount may be paid only if copies required for faculty orders are filled, or if the book is in unusually poor condition.

3.4.19.2 If the contractor does not have information as to the future use of a book or if the book will not be used in a following semester, or will shortly be replaced by a revision announced by the publisher, the contractor shall pay the price listed for the book in a textbook wholesale buying guide which the University and the contractor agree to use for this purpose.

#### 3.4.20 Retention of Used Books

The contractor shall make every possible effort to increase used book sales at the University by retaining used books purchased at the University, if required for the following semester, and by purchasing or acquiring used books from other bookstores and wholesalers, if necessary. Buyback from students should be given priority as the acquisition source of used textbooks.

#### 3.4.21 Used Book Purchasing Systems

The contractor shall use an automated system, approved by the University, for the purchase of used books from students, faculty, and others at the University. The purchase of books for resale to other book companies or wholesalers will be accounted for separately. The contractor must identify and differentiate between books purchased for future resale to USCA students and those books that will be resold to other bookstores or used book wholesalers. All sales to other bookstores and used textbook wholesalers must be recorded as contractor income and included in University bookstore gross sales.

#### 3.4.22 Copyright Clearances

The contractor shall provide a copyright clearance service for University faculty. No Course Packs/Class Notes will be sold in the University Bookstore without copyright permissions, as applicable.

#### 3.4.23 Posting of Policies

The contractor shall post in the Bookstore and on the University Bookstore web page, in a conspicuous manner, bookstore policies concerning refunds, buy-backs, exchanges, discounts, and price guarantees. New textbooks must be in new condition, and as a minimum, policies will provide that defective textbooks will be replaced at no cost. The contractor shall provide for a refund of purchases according to the University Bookstore's current refund policy, or according to an alternative policy, approved by the University, which is at least as flexible as the current refund policy of the University Bookstore. Current refund policy for textbooks requires them to be returned in original condition, no later than the first five (5) days of classes of major semesters, first three (3) days of classes for summer I and II and first two (2) days of classes for Maymester, with a sales receipt. General merchandise must be in re-saleable condition and accompanied by a sales receipt. All refunds will be issued in the same method of payment.

#### 3.4.24 Reference Inventory

The contractor shall maintain a high quality reference inventory that is current, relevant, and supportive of the curriculum and interests of the faculty, students, and staff of the University. The contractor must be sensitive to advice relative to the stocking of reference books suggested by University faculty members and/or researchers.

#### 3.4.25 Trade and General Book Inventory

The contractor must recognize the need for and maintain a scholarly, high quality, trade, and general book inventory to respond to the teaching, research, and educational needs of the University. The contractor must be sensitive to advice relative to the stocking of such books within the inventory suggested by the University. At a minimum, this should include:

3.4.25.1 A volume and high quality of scholarly and trade books is expected and anticipated to be maintained by the University Bookstore. Such inventory must reflect the active educational interests of not only the undergraduates, but also a graduate student body and faculty/staff engaged in the learning process.

3.4.25.2 The inventory must include a section highlighting USC/USCA authors.

3.4.25.3 A comfortable environment where visitors to be University can browse and peruse, including a comfortable reading area.

3.4.25.4 A quality magazine display section including a volume and quality of scholarly and technical magazines. Such inventory must reflect the active educational interest of not only the undergraduates, but also a graduate student body and faculty/staff engaged in the learning process.

#### 3.4.26 Hours of Operation

The contractor shall operate the University Bookstore at the Student Activities Center (SCA) on a schedule that will be convenient to students, faculty, staff and the University. The minimum store hours that are listed below are to be maintained until the University requests or approves other hours:

<u>Regular Hours</u>	<u>Summer Hours</u>
Monday-Thursday - 7:45 am-6:00 pm	Monday-Friday - 8:00 am-5:00 pm
Friday - 7:45 am-5:00 pm	Friday - 8:00 am-5:00 pm
Saturday - CLOSED	Saturday - CLOSED
Sunday – CLOSED	Sunday – CLOSED

As directed by the University, extended operating hours will be required during the first five (5) days of classes during the Fall and Spring semesters and may be required by the University to accommodate special events including, but not limited to weekend Admissions Tours & Open Houses, Housing Events, Homecoming Activities and other times requested by USCA Senior Administration. Changes in the operating hours described above must be approved by designated University official/officials.

#### 3.4.27 Faculty and Staff Discount

The contractor shall provide a minimum fifteen percent (15%) discount on sales of items other than textbooks for items sold to University departments to faculty and staff. **Current employee discount is twenty percent (20%).**

#### 3.4.28 Sales at Athletic Events

If the University should so request, the contractor shall cooperate with the University in conducting sales at athletic events with a percentage of such sales, as agreed upon by the contractor and the University, being paid to the University.

#### 3.4.29 Approval of Advertising

The contractor shall submit to the University, for its prior approval, all advertising to be done in any media. The contractor shall withdraw any advertising from any location or media if designated University official/officials should request.

#### 3.4.30 Prosecution of Criminal Activity

The contractor shall prosecute individuals for acts of property damage, theft of merchandise or money, or fraudulent acts against the Bookstore as the University should reasonably request. The contractor shall also cooperate in the University's prosecution of such individuals, if so requested.

#### 3.4.31 Customer Survey

To determine and ensure that superior customer service is being provided to the University, methods to assess customer service such as surveys, suggestion boxes, secret shoppers, user focus group meetings, etc., shall be agreed upon by designated University official/officials and the contractor.



#### 3.4.32 Book Signings

The contractor shall promote book signings and other academic and scholarly events in the Bookstore, or elsewhere on campus.

#### 3.4.33 Payment of Bills

The contractor must pay its bills to its suppliers in a timely manner and take advantage of discounts when earned.

#### 3.4.34 Risk of Merchandise Delivery

Delivery of merchandise to and from the Bookstore will be at the contractor's risk and expense.

#### 3.4.35 Non-Compete Clause

The contractor agrees for itself and for its parent corporation or any other subsidiary of its parent corporation not to own, operate or participate in the ownership of a bookstore business involved in selling or buying University required textbooks, emblems, clothing or other items containing University logos or insignia and other items related to the University's needs in competition with the University Bookstore, within a five (5) mile radius of the University, as measured from the Student Activities Center, without written University approval during the term of the contract and one year after its termination. Sales via e-commerce web sites either owned or contracted by the contractor are acceptable; however, there must be separate accountability of the sales to USCA students and such sales will be included as part of USCA Bookstore gross sales.

#### 3.4.36 Pre-packing of Books

Books and required supplies for pre-registered freshmen, upperclassmen, and transfer students will be pre-packaged and available to the purchaser prior to the beginning of classes, at no additional cost, when requested by the student. The contractor agrees to fully participate in the University summer orientation program to market this and other services offered. The contractor's marketing strategies and materials must be approved in advance of orientation by the University.

#### 3.4.37 Book Adoption Information

The contractor will provide book adoption information to current local off-campus bookstores in Aiken, South Carolina, at no cost.

#### 3.4.38 Adoption of Information Requests

Requests for textbook adoption information made to the contractor or to the University by internet or other booksellers will be handled in accordance with the SC Freedom of Information Act. When the contractor is directed by the University to provide such information, appropriate costs such as paper, copying, etc., will be charged to, and received from, the requestor prior to the information being provided by the contractor.

#### 3.4.39 PCI-DSS Compliance

The Contractor must agree and warrants that for the life of the contract, the software and services used for processing transactions shall be compliant with standards established by the PCI Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>). The contractor will provide evidence of current attestation of compliance signed by a PCI QSA (Quality Security Assessor) annually. Contractor agrees to indemnify and hold the University, its officers, employees, and agents, harmless for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any loss of University customer credit card or identity information

managed, retained or maintained by Contractor, including but not limited to fraudulent or unapproved use of such credit card or identity information.

### **3.5 Facilities and Equipment Requirements**

#### **3.5.1 Maintenance of Space**

The primary location of the current University Bookstore is in the Student Activities Center. This location must remain the primary sales location for all undergraduate and graduate course textbooks, unless the University approves a different location for the sale of textbooks. The space was completely renovated in the spring of 2008. The contractor will be required to maintain the space allocated for Bookstore operation in a first class state for the entire term of the contract. In addition to the requirement that the space be maintained throughout the contract in a first class state of repair and appearance, the contractor will replace the carpet and flooring at least every two years unless the University determines that replacement is not needed on this schedule. The University must approve the carpet that is selected for replacement and it must be of a quality level used in first class commercial space.

#### **3.5.2 Satellite Facilities**

There are currently no (0) locations that operate as satellite facilities to the main bookstore location in the SAC. Should additional locations be deemed necessary, terms will be consistent as under the new contract and hours will be mutually determined to best accommodate students, faculty and staff.

#### **3.5.3 Depreciation Fund**

In addition to carpet replacement, the contractor must deposit in an escrow account \$5,000 per year to be available for facility improvements and that will accumulate and carry forward with the next contract year if not fully expended in any year. USCA must approve any expenditure that will be credited against this annual required investment amount prior to the expenditure. If the accumulated amount is not fully expended at the termination of the contract, the remaining balance will be included in the commission payment for the last month of the contract.

#### **3.5.4 Storage Risks**

Storage of merchandise will be in the areas allocated for the Bookstore, or such other premises as the contractor chooses to use at the contractor's sole expense and risk.

#### **3.5.5 Cleaning of Space**

The contractor shall provide cleaning of carpet, floors, walls, fixtures, windows and equipments, etc., on a frequency which ensures the appearance of the University Bookstore is in first class condition at all times. The contractor will provide cleaning services to the Bookstore space within 24 hours of such cleaning being requested by the University.

#### **3.5.6 Use of University Equipment and Fixtures**

University equipment and fixtures currently used for the operation of the Bookstore will be available for use by the successful offeror, but will remain the property of the University.

#### **3.5.7 Signage**

The contractor shall provide all necessary signs including: signs at the entrance of the bookstore to identify the bookstore hours of operation, exit signs, and internal signs, but only after the prior approval of the University.

### 3.5.8 Additional Equipment and Fixtures

The contractor shall be responsible for providing such additional equipment and fixtures as may be necessary for the successful operation of the bookstore. The Bookstore space and fixtures, including all renovations and additions thereto, made by the contractor, shall be owned by the University, and the contractor shall not be reimbursed any part of the cost or expense incurred by it in renovation or re-fixturing the space.

### 3.5.9 POS Terminals

The contractor must provide POS terminals able to conduct sales using cash, credit cards, debit cards and the CarolinaCard. Throughout the contract, POS equipment and operators must be provided in sufficient quantity to maintain a wait in line of 8 minutes or less during Fall and Spring Rush and less than 3 minutes during other times of the year.

### 3.5.10 Routine Renovations

The contractor will pay for routine renovations to space, such as movement of electrical outlets and telephone and data jacks, and movement of fixtures, signage, etc. within the store, for the convenience of the contractor.

### 3.5.11 Ownership of Fixtures

Any fixture purchased and installed in the Bookstore will become the property of the University at the conclusion of the contract.

### 3.5.12 Major Structural Repairs

The University will be responsible for any major structural repairs to the space used by the contractor, provided that such repairs are not required as a result of the actions of the contractor, its agents or employees. If such repairs are required as a result of the actions of the contractor, its agents or employees, the cost of repairs shall be paid by the contractor. Such repairs, either by the University, or by an independent contractor, will be made as determined by USCA.

### 3.5.13 Preventative Maintenance and Equipment Repair

Preventive maintenance and repair of equipment and fixtures will be at the contractor's own cost and expense.

### 3.5.14 Utility Costs

The Contractor will pay, on an annual basis, \$25,000 for utilities, including electricity, water, sewage, heat, and air conditioning. The contractor will keep energy consumption at a minimum and shall comply with energy conservation practices and policies of the University. The University shall not guarantee uninterrupted utility service, but shall be diligent in restoring service following any interruptions.

### 3.5.15 Contractor Support Responsibilities

The contractor will pay for all required computer services, pest control, trash removal, and janitorial service. The University shall not guarantee uninterrupted computer services, but shall be diligent in restoring service following any interruptions.

### 3.5.16 Telephone Service

The University will provide the contractor with access to its telephone service; but, the contractor shall be responsible for all costs associated with such service including installation, monthly equipment charges, and local and long distance charges. The contractor shall reimburse the University for any costs incurred by it on behalf of the contractor in the provision

of access to telephone service. The University will not be liable to the contractor for its failure to provide the services described herein, if such failure is due to causes beyond the control of the University.

#### 3.5.17 Parking Facilities

Agents and employees of the contractor working in the bookstore will be authorized to use parking facilities utilized by University employees under the policies and fees of the University and will be expected to comply with such fees and policies.

#### 3.5.18 Insurance Requirement

The contractor will be responsible for property and casualty insurance covering the contractor's merchandise, equipment, and other personal property in the bookstore. The University will be responsible for property and casualty insurance, under the University's policies, covering bookstore space and fixtures and equipment owned by the University.

#### 3.5.19 Store Security

The contractor shall provide security for the bookstore. The contractor shall cooperate with the University's Chief of Campus Police and with other designated University officials in the provision of security for the bookstore. The contractor shall be responsible for providing and maintaining intrusion alarms and other security systems deemed necessary by the contractor for the space used for the bookstore operation. The contractor shall control the distribution of keys and access to the bookstore space and shall provide keys to authorized University personnel to include, but not be limited to, University Police and Campus Operations. The University will provide effective support to the Contractor in an effort to assure the security of the Bookstore; provided, however, it is understood and agreed that the internal security of the Bookstore shall remain the sole responsibility of the Contractor. If the measures taken by the University for the resolution of any external security problem are insufficient, Contractor shall have the right to discuss with the University administration.

#### 3.5.20 Vehicles

The contractor will provide such motor vehicles as necessary to support the normal functions of a Bookstore and will be responsible for fuel, oil, repairs, maintenance, parking permits, and insurance as required by South Carolina law. It is the responsibility of the contractor to ensure only licensed drivers operate motor vehicles.

#### 3.5.21 Campus Mail Services

The University will provide on-campus interoffice mail service at no cost to the contractor. Bookstore marketing materials and other mailings using the US Postal Service will be at the contractor's expense.

### **3.6 Personnel Requirements**

#### 3.6.1 Adequacy

The contractor is to provide sufficient personnel to ensure efficient and courteous service to all patrons, and must have adequately trained relief personnel available to substitute in the absence of regular employees. All staff shall be employees of the contractor, who shall be solely responsible for the payment of their wages and benefits.

#### 3.6.2 Student and Other Employees

The contractor is encouraged to employ University students, when possible. Existing student and other employees are to be given first consideration for continued employment with the contractor.

### 3.6.3 Employment Policies

The contractor shall comply with the requirements of the Fair Labor Standards Act and all other Federal and State laws and regulations. All material relating to personnel policies and procedures of the Bookstore must be available for review by the University.

### 3.6.4 Equal Opportunity and Affirmative Action

The University is committed to Equal Opportunity and Affirmative Action. The contractor must pledge to comply with Equal Opportunity Laws and that it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, age, physical ability, or marital status.

### 3.6.5 Bookstore Management

The University must approve assignment of the contractor's Bookstore Manager and Textbook Manager. Subsequent changes in these assignments are to be made by the contractor only after prior consultation with and approval of the University. The person identified by the contractor to manage the Bookstore must have at least two years of experience with consistently increasing revenues in the management of university bookstores of the size and complexity as the one located at USCA. This person must be outgoing, a proven merchandiser, a good communicator, a proven leader, and must have exhibited the ability to deal effectively with University students, faculty, and staff. A Bachelor's degree or equivalent is required and masters preferred.

#### 3.6.6.A Manager Replacement

The University reserves the right to request replacement of the Bookstore Manager and any department manager of the contractor for actions considered to be not in the best interests of the University. Such a request will be taken only after consultation between contractor and designated University officials.

#### 3.6.6.B Current Staffing Employment Opportunities

Contractor must give first consideration for employment opportunities at the Bookstore to present Bookstore staff working for the University, who must be employed on a fair trial basis at levels of compensation and benefits as close as possible to their present statuses, within the contractor's wage salary and benefits systems for a minimum of six (6) months. Additional consideration will be given for longer periods, if so offered. If current personnel are not selected for employment, notice must be given to the University prior to the effective date of the contractual agreement resulting from this solicitation. In no event shall any present Bookstore employee be given less than sixty (60) days' notice of termination.

#### 6.6.7 Performance Evaluation

Designated University official/officials will participate in the annual performance evaluation of the Bookstore Manager.

#### 3.6.8 Conduct

The contractor's employees must strictly adhere to campus regulations regarding personal behavior and all other rules and regulations of the University.

### **3.7 Marketing Requirements**

The contractor's Marketing Plan must be developed in conjunction with and approved by the University. A copy of all ads, flyers, brochures or other materials to be distributed or posted outside of the Bookstore space, including Internet marketing concepts, will be provided to the University for approval prior to distribution. In addition, the University reserves the right to approve and request modifications to in-store signage. Marketing should include as a minimum, products available, services offered, pricing specials, Internet web site address, and information about key service personnel and store hours. The contractor will pay all costs associated with design, development, and printing of promotional brochures, banners, signs, and corporate web page development, etc. Designated employees of the contractor will be allowed access to update the University Bookstore web site, upon request.

### **3.8 Purchase of Merchandise and Inventory of Equipment at Contract Termination**

By the contract termination date, the contractor will remove from the University premises any POS and office equipment owned by the contractor and all merchandise not purchased by the University or the succeeding contractor. If the contractor should fail to remove such property from the University's premises, the University may move such property into storage and charge the contractor for the costs of such move and storage. If the property is not removed from storage for which the University is responsible for a period of 60 days after the contract termination, title to the property will pass to the University. The University will have no liability to the contractor for any property lost or damaged as a result of such move or storage.

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

**INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (MAR 2015):** You shall submit a signed Cover Page and Page Two. Your offer should include all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in Part IX.

Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis. [04-4010-2]

**SUBMITTING REDACTED OFFERS (MAR 2015):** If your offer includes any information that you marked as "Confidential", "Trade Secret", or "Protected", in accordance with the clause entitled "Submitting Confidential Information", you must also submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). 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 "Electronic Copies – Required Media and Format.") Except for the information removed or concealed, the redacted copy must be identical to your original offer, and the Procurement Officer must be able to view, search, copy and print the redacted copy without a password. [04-4030-2]

**INFORMATION FOR OFFERORS TO SUBMIT – EVALUATION (JAN 2006):** In addition to information requested elsewhere in this solicitation, offerors should submit the following information for purposes of evaluation:

**PROPOSAL CONTENTS**

Offerors shall submit all information and documents required here or elsewhere in the solicitation. To be considered for award, all proposals must include, at a minimum, the following information. Responses should provide the details required and not just a statement of compliance. Offerors should restate each of the items listed below and provide their response to that item immediately thereafter. All information should be presented in the listed order:

- A. Offeror shall provide a description of its general background, experience, and qualifications to operate the USC Aiken Bookstore. Information on relevant experience must be provided, including the total number of contracted bookstore operations at all university campuses, total sales volume for the most recent academic year by university location, and other information believed to demonstrate qualifications. Also include a listing of all university accounts with annual sales of up to \$5 million.
- B. Offeror shall provide an organizational chart showing the management structure of the offeror at the district/regional and corporate levels with a description of the qualifications and credentials of upper level management. Provide a plan for the management and staffing of the USC Aiken Bookstore. Describe the qualifications and credentials of the proposed contract management staff for the USC Aiken Bookstore. Provide a plan for the hiring of temporary employees.
- C. Offeror shall provide a list of five (5) university references where the offeror is currently operating bookstores on campuses similar in size to the student population of the USCA campus. References must include name and location of university, size of student body, dates of service, total annual sales for each of the last five years of operations, and the university contact person's name, telephone number and email address.
- D. Offeror shall provide a list of all university accounts that have been cancelled in the past five (5) years. Include name and location of university, size of student body, dates of service, and reason for cancelation along with the university contact person's name, telephone number and email address.
- E. Offeror shall provide its most current, certified year-end balance sheet and income statement, and any other documentation necessary to demonstrate its capability to perform the agreement resulting from this solicitation, without assistance from any outside source(s). Offerors must also provide a copy of its latest Dun and Bradstreet Business Information Report.
- F. Offeror must provide a description of internal management systems proposed for use at USCA in the following areas:
  - 1. Inventory controls for textbooks
  - 2. Inventory controls for trade books
  - 3. Inventory controls for general merchandise
  - 4. Control of cash and refunds
  - 5. Customer service and customer service training.
  - 6. Internal audit

- G. Offeror shall provide information about their automated point of sale (POS) system for recording, verifying, and reporting sales. Provide a brief description of automated system features. Also, indicate any back-up system or procedures that can be utilized in case the system is temporarily inoperative. Indicate compatibility of POS system with the University's CarolinaCard system.
- H. Offeror shall provide information about their access to, and sale of, used textbooks.
1. Describe access to used textbooks.
  2. Provide the average of used textbook vs. new textbook sales of the five (5) University references in PART SEVEN, C above.
  3. The average of used books purchased through buyback from students as a percentage of total used books purchased for the five (5) University references mentioned in PART SEVEN, C. above, if available.
  4. Identify the specific textbook wholesale buying guide recommended for use when determining buy back value of textbooks not being used at USCA the following semester.
- I. Offeror must describe any undergraduate student educational employment assistance programs they might utilize at USCA. Describe training programs the offeror intends to use for all employees of the Bookstore, including temporary employees.
- J. Offeror shall indicate the policies/programs/procedures proposed for use in the following Bookstore functions or areas:
1. Textbook Buy-back
  2. Refunds
  3. Special orders - Texts and Trade
  4. Special orders - Caps & Gowns, and Invitations
  5. Stocking of all required course books
  6. Process for securing textbook adoptions, i.e., titles, ISBNs, publishers, and required textbook quantities, from faculty members each semester. Capabilities of electronic book adoption processes must be described.
  7. Process for securing additional books when books are sold out during the semester rush period. Please see 4.4.10 for requirement of overnight delivery of additional books when the shortage has resulted from a failure of the Bookstore operator to accurately determine the appropriate number of books to be ordered.
  8. Handling late textbook requests and orders
  9. Charges, if any, and policies for accepting and cashing checks
  10. Charges, if any, and policies for returned checks
  11. Textbook pricing and price guarantee policy for USCA



12. General book selections

K. Offeror shall submit a financial proposal for a seven (7) year contract term as follows:

A guaranteed annual amount of \$125,000 in commission to the University for Year 1 must be offered. This guaranteed amount is the minimum commission that will be paid to the University annually under the contract even if the calculation of commission based upon the percentage of gross sales offered does not reach that amount. This amount will be increased annually from the \$125,000 amount by the factor of the annual increase in the Producer Price Index for Book Publishers: Textbooks.

In addition to offering an annual guaranteed amount of commission to be paid to the University, the offeror must offer a single, constant (not graduated based upon gross revenues) percent of annual gross sales, less applicable sales tax. Multiple percentage rates for gross store sales are not acceptable and will be considered non-responsive. In addition to in-store sales, annual gross sales will include textbook and general merchandise sales made over the internet via the offeror's corporate web site, or a contracted site, less any applicable sales tax, which can be attributable to USCA students, faculty, staff, or alumni. Also included are sales to other bookstores and used book wholesalers of textbooks purchased from USCA students, and not used to satisfy USCA course requirements. Gross sales are defined as all sales at all Bookstore locations with the only deductions from the total sales figure being transactions that are voided, transactions that are refunded, sales subject to standard discounts such as those to departments, faculty and staff that are provided by contract, uncollected sales due to purchaser not paying a bill, and sales tax. Uncollected sales do not include fees paid to financial institutions for credit card usage or fees paid to the CarolinaCard office.

The Financial Proposal will be made utilizing the form provided in Attachment 3.

L. Offeror shall offer an annual enhancement package to the University to include, but not be limited to, student book scholarships, promotional merchandise, Chancellor discretionary merchandise fund to be used as gifts to university friends/guests, etc. Current annual enhancements provided by the Bookstore include; \$13,500 designated to USCA Athletics, \$1,000 to general scholarships and approximately \$1,000 in miscellaneous donations.

M. Offeror must describe their marketing approach. Proposal should include the scope of the annual marketing plan (due by May 30 each year), budget allocation for marketing, and how the offeror proposes to increase services and sales. Include as a minimum a description of marketing approach to Freshmen and Transfer Students at Summer orientation.

N. Offeror shall provide a contract implementation and transition plan, with target and event dates for commencement of the offeror's Bookstore operation.

**MINORITY PARTICIPATION (JAN 2006)**

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

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

If so, please list the certifying governmental entity: \_\_\_\_\_

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

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

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

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor?  Yes  NO

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

- Traditional minority
- Traditional minority, but female
- Women (Caucasian females)
- Hispanic minorities
- DOT referral (Traditional minority)
- DOT referral (Caucasian female)
- Temporary certification
- SBA 8 (a) certification referral
- Other minorities (Native American, Asian, etc.)

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

## V. Qualifications

**QUALIFICATION OF OFFEROR (MAR 2015):** (1) To be eligible for award, you must have the capability in all aspects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. (2) You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection. (3) Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability; however, we may elect to consider any security, e.g., letter of credit, performance bond, parent-company corporate guaranty, that you offer to provide instructions and forms to help assure acceptability are posted on [procurement.sc.gov](http://procurement.sc.gov), link to "Standard Clauses & Provisions." [05-5005-2]

**QUALIFICATIONS – REQUIRED INFORMATION (MAR 2015):** Submit the following information or documentation for you and for any subcontractor (at any tier level) that you identify pursuant to the clause titled Subcontractor – Identification. Err on the side of inclusion. You represent that the information provided is complete. (a) The general history and experience of the business in providing work of similar size and scope. (b) Information reflecting the current financial position. Include the most current financial statement and financial statements for the last two fiscal years. If the financial statements have been audited in accordance with the following requirements, provide the audited version of those statements. [Reference Statement of Financial Accounting Concepts No. 5 (FASB, December, 1984), as amended.] (c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) which have been performed. For each contract, describe how the supplies or services provided are similar to those requested by this solicitation, and how they differ. (d) A list of every business for which supplies or services substantially similar to those sought with this solicitation have been provided, at any time during the past three years. (e) A list of every South Carolina public body for which supplies or services have

been provided at any time during the past three years, if any. (f) List of failed projects, suspensions, debarments, and significant litigation. [05-5015-2]

#### 5.1 Qualifications of Offerors

The offeror must demonstrate that they possess the following qualifications:

5.1.1 Experience of at least five (5) years in successfully managing and operating at least 5 university bookstores under contract of similar in size and mission to USCA.

5.1.2 Financial strength deemed acceptable by the University in its sole judgment.

**SUBCONTRACTOR – IDENTIFICATION (FEB 2015):** If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either (1) exceeds 10% of your cost, (2) involves access to any “government information,” as defined in the clause entitled “Information Security - Definitions,” if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the work which they are to perform. Identify potential subcontractors by

## VI. Award Criteria

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

**AWARD TO ONE OFFEROR (JAN 2006):** Award will be made to one Offeror.

**EVALUATION FACTORS – PROPOSALS (JAN 2006):** 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. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous.

- A. Financial Proposal - Commission rate offered to the University listed in Attachment 3.
- B. Qualifications and experience of the offeror in the educational market, and reputation with current clients. Offeror’s financial capability to perform bookstore operation as required herein.
- C. The completeness and suitability of the offeror’s proposed solution to meet the needs of the Scope of Work.
- D. Proposed Management Team – Strength of proposed Bookstore Manager and Textbook Manager as well as Marketing Approach.
- E. Annual Enhancement Package – As described in Attachment 7

**(Offeror MUST Provide Fee Schedule sealed and separate from the balance of its proposal response)**

**DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (FEB 2015):** Submit your best terms from a price and 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

without prior notice. 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. [11-35-1530(6); R.19-445-2095(I)]. If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. 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). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [06-6058-1]

**UNIT PRICE GOVERNS (JAN 2006):** In determining award, unit prices will govern over extended prices unless otherwise stated.

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

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

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

### **BANKRUPTCY - GENERAL (FEB 2015)**

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

**CHOICE-OF-LAW (JAN 2006):** The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]

## **CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (FEB 2015)**

(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) the solicitation, as amended, (3) documentation of clarifications [11-35-1520(8)] or discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the state's final acceptance (a/k/a "award"), and (6) 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 (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed 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. [07-7A015-2]

## **DISCOUNT FOR PROMPT PAYMENT (JAN 2006):**

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

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day. [07-7A020-1]

**DISPUTES (JAN 2006):** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]

**EQUAL OPPORTUNITY (JAN 2006):** Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to

Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference. [07-7A030-1]

**FALSE CLAIMS (JAN 2006):** According to the S.C. Code of Laws Section 16-13-240, “a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty” of a crime. [07-7A035-1]

**FIXED PRICING REQUIRED (JAN 2006):** Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor’s price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award. [07-7A040-1]

**IRAN DIVESTMENT ACT – ONGOING OBLIGATIONS (JAN 2015):** (a) You must notify the procurement officer immediately if, at any time during the contract term, you are added to the Iran Divestment Act List. (b) Consistent with Section 11-57-330(B), you shall not contract with any person to perform a part of the Work, if, at the time you enter into the subcontract, that person is on the then-current version of the Iran Divestment Act List. [07-7A072-1]

**NO INDEMNITY OR DEFENSE (FEB 2015)**

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

**OPEN TRADE (JUN 2015):** During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [07-7A053-1]

**NOTICE (JAN 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. [07-7A050-1]

**PAYMENT & INTEREST (FEB 2015)**

(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on “Page Two.” (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent

each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off. [07-7A055-3]

**PUBLICITY (JAN 2006):** Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer. [07-7A060-1]

**PURCHASE ORDERS (JAN 2006):** Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

**SURVIVAL OF OBLIGATIONS (JAN 2006):** The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]

**TAXES (JAN 2006):** Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]

**TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006):** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term. [07-7A085-1]

**THIRD PARTY BENEFICIARY (JAN 2006):** This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise. [07-7A090-1]

**WAIVER (JAN 2006):** The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

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

### **BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015)**

(a) All government information (as defined in the clause herein entitled “Information Security - Definitions”) shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate.

(b) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by the State.

(c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information. [07-7B007-1]

**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.



### **CHANGES (JAN 2006):**

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

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

Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

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

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

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

### **CONTRACTOR'S LIABILITY INSURANCE - GENERAL (FEB 2015)**

(a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.

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

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

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

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

(c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

(f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced.

(g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

(h) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. [07-7B056-2]

### **CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015)**

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

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

insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible.

(b) Coverage must include claims for:

(i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;

(ii) privacy risks, including (A) failure to properly handle, manage, store, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations;

(iii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims – Disclosure Of Information" and "Information Use And Disclosure;" and

(iv) errors, omissions, or negligent acts in the performance, by the contractor or by any entity for which the contractor is legally responsible, of professional services included in the work.

(c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media and content offenses.

(d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)

(e) Coverage shall have limits no less than five million (\$5,000,000.00) dollars per occurrence and ten million (\$10,000,000.00) dollars aggregate.

(f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.

(g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims-made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.

(h) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.

(i) For any claims related to this contract, the insurance coverage required by this clause shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(j) Prior to commencement of the work, the Contractor shall furnish the State with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including policy declarations and any endorsements required by this section, at any time.

(k) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the

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

(l) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

(m) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

**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.

**CONFERENCE – PRE-PERFORMANCE:** Unless waived by the Procurement Officer, a pre-performance conference between the contractor, state and Procurement Officer shall be held at a location selected by the state within ten (10) days after final award, and prior to commencement of work under the contract. The responsibilities of all parties involved will be discussed to assure a meeting of the minds of all concerned. The successful contractor or his duly authorized representative shall be required to attend at contractor's expense.

**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.

**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]

**INDEMNIFICATION-THIRD PARTY CLAIMS – GENERAL (NOV 2011):** Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys’ fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee’s negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor’s obligations hereunder are in no way limited by any protection afforded under workers’ compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties’ agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, “Indemnitees” means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

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

(a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter “action”) of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.

(b) Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractor's ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitee's attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.

(c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

(d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B102-1]

**INDEMNIFICATION - INTELLECTUAL PROPERTY (JAN 2006):** (a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this

agreement. “Specification(s)” means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor’s obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

#### **INFORMATION SECURITY – DEFINITIONS (FEB 2015)**

**The following definitions are used in those clauses that cross reference this clause.**

**Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term “compromise” includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract.**

**Data means a subset of information in an electronic format that allows it to be retrieved or transmitted.**

**Government information means information (i) provided to Contractor by, or generated by Contractor for, the using governmental unit, or (ii) acquired or accessed by Contractor as a result of performing the Work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web-based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information.**

**Information means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.**

**Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.**

**Public information means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public.**

**Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request.**

**Software means any computer program accessed or used by the Using Governmental Unit or a third party pursuant to or as a result of this contract.**

**Third party means any person or entity other than the Using Governmental Unit, the Contractor, or any subcontractors at any tier.**

**Unrestricted information means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor’s performance of the work.**

**Web-based service means a service accessed over the Internet and acquired, accessed, or used by the using governmental unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services. [07-7B104-1]**

#### **INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)**

(a) *Definitions.* The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. In addition, as used in this clause—

**Clearing** means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods.



**Intrusion** means an unauthorized act of bypassing the security mechanisms of a system.

**Media** means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system.

**Safeguarding** means measures or controls that are prescribed to protect information.

**Voice** means all oral information regardless of transmission protocol.

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

(c) *Safeguarding requirements and procedures.* Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure:

(1) Protecting information on public computers or Web sites. Do not process government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Government information shall not be posted on Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts).

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

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

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

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

(6) Intrusion protection. Provide at a minimum the following protections against intrusions and compromise:

(i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware.

(ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.

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

(d) *Subcontracts.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information.

(e) *Other contractual requirements regarding the safeguarding of information.* This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems.

#### **INFORMATION SECURITY – LOCATION OF DATA (FEB 2015)**

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

#### **INFORMATION USE AND DISCLOSURE (FEB 2015)**

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

(a) *Definitions.* The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.

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

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

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

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

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

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

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

(i) *Survival & Remedy*. All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause. [07-7B108-1]

#### **INFORMATION USE AND DISCLOSURE – STANDARDS (FEB 2015)**

To the extent applicable:

(a) Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. Section 1-11-490.

(b) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of government information, as defined herein, and Contractor agrees that the Using Governmental Unit is not a licensee.

(c) The South Carolina Family Privacy Protection Act of 2002, S.C. Code Ann. Sections 30-2-10, et seq.

(d) Personal Identifying Information Privacy Protection, S.C. Code Ann. Sections 30-2-310 et seq.

(e) Data Breach Notification, 2014 Act No. 286, Section 117.117, as revised in any future annual appropriations act.

**INTELLECTUAL PROPERTY INFRINGEMENT (JAN 2006): (a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions,**

proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. [07-7B105-1]

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

**MATERIAL AND WORKMANSHIP:** Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be of the most suitable grade for the purpose intended.

**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 PPI (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 Producer Price Indexes (PPI) for the applicable commodity, 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) [07-7B180-1].

**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.

**RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015)**

(a) Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government pursuant to this contract (hereinafter “applicable services”) or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter “terms of use”) not previously approved in writing by the procurement officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect.

(b) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the procurement officer) any additional products or services not required by the contract.

(c) Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work.

(d) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the state liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction.

[07-7B212-1]

**TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006):**

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 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 2015):**

(a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of one year, unless contractor receives notice that the 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. (b) Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will void ab initio. [07-7B245-2]

**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 a 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 THE COST ITEM OF THE PROPOSAL CONTENTS SUBSECTION IN SECTION IV. INFORMATION FOR OFFERORS TO SUBMIT OF THE SOLICITATION.**

## **IX. ATTACHMENTS TO SOLICITATION**

- 1. IMPORTANT TAX NOTICE – NONRESIDENTS**
- 2. STATE OF SOUTH CAROLINA DEPARTMENT OF REVENUE, FORM I-312**
- 3. OFEROR’S CHECKLIST**
- 4. ATTACHMENTS 1 - 8**

### **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.

# ATTACHMENT 1

## APPROXIMATE SALES BY DEPARTMENT FOR THE USC AIKEN BOOKSTORE JULY 2014 THRU JUNE 2015

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<u>Department</u>	<u>Sales</u>
New Textbooks	\$ 907,485
Used Textbooks	\$ 170,009
School Supplies	\$ 83,592
School Spirit Clothing	\$ 55,820
Gift Items	\$ 29,968
Convenience	\$ 20,351
Miscellaneous	<u>\$ 42,232</u>
Total	\$1,309,457

## **ATTACHMENT 2**

### **CarolinaCard Activity**

#### **Total CarolinaCash Deposits – USC Aiken**

CarolinaCash deposits for the past three (3) years have been approximately \$85,000 annually with annual growth.

#### **Bookstore Sales using CarolinaCash**

**FY12-13: \$31,185**

**FY13-14: \$30,871**

**FY14-15: \$24,126**

# ATTACHMENT 3

## Proposal A - USC Aiken Bookstore

Offeror must respond based on the requirements listed in **Section 1**

7 Year Term.  
Commission rate on which the  
University will be compensated  
for sales at the Bookstore as  
fully described in **Section 1** of  
the RFP \_\_\_\_\_ %  
Commission Rate  
(Must be at least 11%)

Name of Offeror: \_\_\_\_\_

Authorized Person and Title: \_\_\_\_\_  
(Print Name and Title)

Authorized Signature: \_\_\_\_\_

# ATTACHMENT 4

**(Minimum Guarantee for Aiken Campus)  
Sign & Return Attachment with Offeror's Response**

BY SUBMITTING A PROPOSAL THE OFFEROR AGREES THAT IF THE ANNUAL REVENUES DERIVED FROM THE CONTRACTED COMMISSION RATE DO NOT MEET OR EXCEED \$125,000 FOR CONTRACT YEAR ONE, AND AS INCREASED FOR EACH SUBSEQUENT YEAR OF THE CONTRACT BY THE PRODUCER PRICE INDEX FOR BOOK PUBLISHERS: COLLEGE TEXTBOOKS, THE OFFEROR WILL REMIT TO THE UNIVERSITY BY ELECTRONIC FUND TRANSFER WITHIN THIRTY DAYS OF THE LAST MONTH OF THE CONTRACT YEAR THE DIFFERENCE BETWEEN THE COMMISSION REVENUES AND THE APPLICABLE GUARANTEE AMOUNT FOR THAT CONTRACT YEAR.

Name of Offeror:

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Authorized Person and Title:

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(Print Name and Title)

Authorized Signature:

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# ATTACHMENT 5

## Sign & Return Attachment with Offeror's Response

BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO MAKE \$5,000 AVAILABLE FOR RENOVATIONS TO THE UPFITTING AND DÉCOR OF THE BOOKSTORE, AS APPROVED AND DIRECTED BY THE UNIVERSITY AND AS FULLY DESCRIBED IN SECTION 1 - ITEM #4.5.3 OF THE RFP. THIS INVESTMENT IS IN ADDITION TO THE REQUIREMENT FOR CARPET AND FLOORING REPLACEMENT EVERY TWO (2) YEARS.

Name of Offeror:

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Authorized Person and Title:

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(Print Name and Title)

Authorized Signature:

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# ATTACHMENT 6

## Sign & Return Attachment with Offeror's Response

BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO PAY \$25,000 ANNUALLY FOR UTILITIES, INCLUDING ELECTRICITY, WATER, SEWAGE, HEAT AND AIR CONDITIONING AS FULLY DESCRIBED IN SECTION 1 - ITEM #4.5.14 OF THE RFP.

Name of Offeror:

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Authorized Person and Title:

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(Print Name and Title)

Authorized Signature:

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# ATTACHMENT 7

## Sign & Return Attachment with Offeror's Response

BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO PROVIDE AN ITEMIZED SCHEDULED ANNUAL ENHANCEMENT PACKAGE TO THE UNIVERSITY DESCRIBED IN SECTION 1 – PART 7-PROPOSAL CONTENTS, ITEM L THE RFP.

Name of Offeror:

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Authorized Person and Title:

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(Print Name and Title)

Authorized Signature:

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**ATTACHMENT 8**  
**Sign & Return Attachment with Offeror's Response**

By submitting a proposal, offeror agrees to sign a contract incorporating each item verbatim as contained in the RFP.

Name of Offeror: \_\_\_\_\_

Authorized Person and Title: \_\_\_\_\_  
(Print Name and Title)

Authorized Signature: \_\_\_\_\_

# 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.