

 <b>UNIVERSITY OF SOUTH CAROLINA</b>	<b>REQUEST FOR PROPOSALS</b>	Solicitation Number: <b>USC-RFP-3055-CH</b>
		Date Issued: <b>February 15, 2017</b>
		Procurement Officer: <b>Caleisha Hayes</b>
		Phone: <b>803-777-4115</b>
		E-Mail Address: <a href="mailto:Caleisha@mailbox.sc.edu"><b>Caleisha@mailbox.sc.edu</b></a>
		Mailing Address: <b>1600 Hampton Street, Ste 606 Columbia, SC 29208</b>

DESCRIPTION: PROVIDE CONCESSIONS SERVICES FOR THE USC ATHLETICS DEPARTMENT

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:

**MAILING ADDRESS:**

University of South Carolina – Purchasing Department  
1600 Hampton Street, Suite 606  
Columbia SC 29208

**PHYSICAL ADDRESS:**

University of South Carolina – Purchasing Department  
1600 Hampton Street, Suite 606  
Columbia SC 29208

SUBMIT OFFER BY (Opening Date/Time): **March 10, 2017 at 3:00 PM (EST)** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **March 1, 2017 at 5:00 PM (EST)** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **One (1) Original and Six (6) Hardcopies marked "COPY" plus One (1) Electronic Copy of the Proposal on a USB Drive NOT EMAIL (Original Hardcopy Shall Prevail)**

CONFERENCE TYPE: **Mandatory Pre-Proposal Conference/  
Site Visit**

DATE & TIME: **February 28, 2017 at 10:00 AM**

(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)

LOCATION: **TBD**

**AWARD &  
AMENDMENTS**

Award will be posted on **4/21/2017**. The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <http://www.procurement.sc.gov>

You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

**NAME OF OFFEROR**

(full legal name of business submitting the offer)

Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.

**AUTHORIZED SIGNATURE**

(Person must be authorized to submit binding offer to contract on behalf of Offeror.)

**DATE SIGNED**

**TITLE**

(business title of person signing above)

**STATE VENDOR NO.**

(Register to Obtain S.C. Vendor No. at [www.procurement.sc.gov](http://www.procurement.sc.gov))

**PRINTED NAME**

(printed name of person signing above)

**STATE OF INCORPORATION**

(If you are a corporation, identify the state of incorporation.)

OFFEROR'S TYPE OF ENTITY: (Check one)

(See "Signing Your Offer" provision.)

Sole Proprietorship

Partnership

Other \_\_\_\_\_

Corporate entity (not tax-exempt)

Corporation (tax-exempt)

Government entity (federal, state, or local)

**PAGE TWO**

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

<p>HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business)</p>          	<p>NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)</p>          <p>Area Code - 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. [01-1005-1]

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

Start date: 07/01/2017 End date: 06/30/2027 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-Maximum Contract Period". [01-1040-1]

It is the intention of the University of South Carolina (USC) to solicit proposals from qualified vendors to provide Concessions Operations Services to the Athletics Department of the USC Columbia campus in accordance with all the requirements stated in this solicitation.

## **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]

**CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)**

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

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

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

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

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

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

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

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

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

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

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

[02-2A035-1]

## **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]

## **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: <https://procurement.sc.gov/iran-divestment> (.). 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 2004)**

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

#### **OPEN TRADE REPRESENTATION (JUN 2015)**

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

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

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

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

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

#### **PUBLIC OPENING (JAN 2004)**

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

#### **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/closings>.

[02-2A120-3]

#### **SUBMITTING A PAPER OFFER OR MODIFICATION**

Paper offers are required. When you 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]

### **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]

### **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 and does not have an office or place of business or a fiscal paying agent in the United States; (ii) Offeror is an agency or instrumentality of a state or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government.

#### **WITHDRAWAL OR CORRECTION OF OFFER (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

QUESTIONS MAY BE E-MAILED TO:

[Caleisha@mailbox.sc.edu](mailto:Caleisha@mailbox.sc.edu)

Be sure to reference “USC-RFP-3055-CH Questions” in the subject line.

#### **CONFERENCE – PRE-BID/PROPOSAL -- MANDATORY (FEB 2015)**

See Conference Pre-Bid/Proposal clause. Your failure to attend the conference shall result in rejection of your offer. Attendance will be evidenced by your representative's signature on the attendance roster. [R. 19-445.2042] [02-2B020-2]

#### **CONFERENCE – PRE-BID/PROPOSAL (JAN 2006)**

Pre-Bid/Proposal Conference Date and Time: February 28, 2017 at 10:00 a.m.

Location of Pre-Bid/Proposal Conference: To be provided

Due to the importance of all offerors having a clear understanding of the specifications and requirements of this solicitation, a conference of potential offerors will be held on the date specified on the cover page. Bring a copy of the solicitation with you. Any changes resulting from this conference will be noted in a written amendment to the solicitation. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State. The State assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does the State assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract. [02-2B025-1]

**Potential offerors must email Caleisha Hayes at [caleisha@mailbox.sc.edu](mailto:caleisha@mailbox.sc.edu) if you plan to attend the pre-proposal conference and indicate the number of company representatives that you will have. You will be given the location of the pre-proposal conference, along with any instructions (i.e. parking).**

#### **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 a 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.

[02-2B040-2]

#### **DESCRIPTIVE LITERATURE – LABELLING (JAN 2006)**

Include offeror's name on the cover of any specifications or descriptive literature submitted with your offer. [02-2B045-1]

#### **DISCUSSION WITH OFFERORS**

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

**ELECTRONIC COPIES – REQUIRED MEDIA AND FORMAT (MAR 2015):** In addition to your original offer, you must submit an electronic copy or copies on 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 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. 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. [02-2B070-2]

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

In competitive sealed proposals, neither the number or identity of offerors nor prices will be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(C)(1)] [02-2B110-2]

#### **LEGAL AGREEMENTS INCLUDED WITH BIDS 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 labelled “SAMPLE”. If Offeror's proposal is the highest ranked offer from the evaluation process for the solicitation, then the University will consider the legal documents pursuant to potential contract award that the Offeror included with its proposal and clearly labelled “SAMPLE”.

#### **SAMPLES OR DESCRIPTIVE LITERATURE**

Samples or descriptive literature should not be submitted unless expressly requested and regardless of any attempt by an offeror to condition its offer, unsolicited bid samples or descriptive literature which are submitted at offeror's risk will not be examined or tested, and will not be deemed to vary any of the provisions of the Request for Proposals.

**SITE VISIT (JAN 2006):** A site visit will be held at the following date, time and location. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State. The State assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does the State assume responsibility for any understanding reached or representation made

concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract. [02-2B165-1]

**Date & Start Time:** February 28, 2017 - Immediately following the pre-proposal conference

**Location:** To be provided

### **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. [03-3015-1]

#### **BACKGROUND**

The University of South Carolina, founded in 1801, is one of the oldest and most comprehensive universities in the United States. The Columbia campus is the flagship institution in the eight (8) campus public University of South Carolina system, located in a diverse and thriving metropolitan community of over 450,000 people. The University of South Carolina has experienced considerable growth with over 33,500 students enrolled at the Columbia campus, more than a third of whom are graduate students. Students from all states and over 130 foreign countries attend the University, with over 6,000 housed on campus. In addition, there are over 6,000 part-time and full-time faculty and staff at the University of South Carolina. The University has more than 300,000 alumni. The Gamecocks are a member of the National Collegiate Athletic Association (NCAA) and a member of the Southeastern Conference (SEC).

#### **A. SCOPE OF WORK**

The University of South Carolina (“USC” or “University”) is seeking proposals from qualified vendors to provide concession services for the University of South Carolina Athletics Department (USCAD) for athletic and other events within its Athletic facilities located on the Columbia Campus. This Request for Proposal (RFP) will provide vendors with the information, requirements and instructions necessary to prepare a comprehensive proposal that will meet the needs of the USCAD.

#### **B. CONTRACT TERM**

The contract shall begin on July 1, 2017 and end on June 30, 2027. This is a ten-year contract with no renewal options. The maximum contract life is ten (10) years.

#### **C. SPECIFICATIONS**

1. The Agreement will provide for the exclusive rights and obligations for Concession sales at the following venues:
  - Williams Brice Stadium (Football), excludes Premium Areas and Suites
  - Colonial Life Arena (Basketball & Entertainment events, concerts, family shows), includes All Premium Areas, Suites, etc. Including merchandising rights for non-athletic events (Concerts and shows etc.)

- Founder Park (Baseball), includes all Suites and Premium Areas
- Beckham Field (Softball), includes all Suites and Premium Areas
- Track & Field
- Wheeler Beach Volleyball
- Carolina Tennis Center
- Stone Stadium (Soccer)
- Volleyball
- Blatt PE Center (Swimming & Diving)
- Onewood Farm (Equestrian)

See Section D. for complete Facilities Description listing

The Agreement will provide for the exclusive rights and obligations to operate concessions sales for the general seating areas and catering for the suites, and clubs, and merchandise sales for non-athletic events at the Colonial Life Arena, as outlined at the following venues:

- Williams Brice Stadium (Currently existing suites and premium areas/ catering are specifically excluded in this RFP)
  - Colonial Life Arena- (Including Merchandise for Non-Athletic Events)
    - Forty-One (41) suites
    - Four (4) Entertainment suites
    - McGuire Club (Premium Area)
  - Founder's Park (Baseball Stadium)
    - 1<sup>st</sup> Base Club (indoor/outdoor club seats)
    - 3<sup>rd</sup> Base Club (indoor/outdoor club seats)
    - Five (5) Suites
    - Press Box /Media Center
  - Beckham Field (Softball Stadium)
    - Five (5) Suites
    - Press Box /Media Center
2. The USCAD, all employees and the successful offeror's representatives and all related employees each declare and affirm that they will keep all terms of this RFP, all ensuing conversations, discussions, meetings, deliberations, negotiations, audits, etc., completely confidential until such time an agreement is executed. During this period neither party will disclose anything related to any person or entity, written or unwritten, without the express written consent of the other party. Upon execution of an agreement all responses, proposals and said agreement shall become a matter of Public Record.
  3. Sales of alcohol are included in this agreement for suites and premium areas for athletic events and all areas for nonathletic events (Concerts and shows at Colonial Life Arena, Williams Brice Stadium, etc.). Sales of alcohol in athletic venues for athletic events that are not considered suites and premium areas are specifically excluded from this agreement. If alcohol sales are allowed in the future, in non-premium areas, terms of such will be negotiated.
  4. Merchandise, souvenirs and any other non-consumables are included within this Agreement for non-athletic (concerts, family shows, etc.) events only.
  5. The University has exclusive rights agreements in place with suppliers to operate all food and

beverage, coin and debit operated, vending services on campus. The placement of any additional vending machines is prohibited.

6. The University is committed to providing healthy food options for all students and patrons in attendance at the Facilities.
7. Catering or other food services in the offices, locker rooms, back stage dressing rooms or in any area of the Facilities during non-events, other than designated foodservice spaces, are non-exclusive services and any related services are to be coordinated on an individually negotiated basis. The University reserves the right to utilize outside caterers and/or University departments for University hosting areas and special events, training table for student-athletes, and other hosting activities.
8. Non-ticketed events at the Facilities e.g., Team watch parties, internal athletic department events, are excluded.
9. The Agreement will be developed by the University's legal counsel and detail the standards of performance for the Concessionaire based on the Concessionaire's proposal, generally accepted Foodservices Agreement standards and the University's rules and regulations.
10. Concessionaire will provide the required investment in Leasehold Improvements, Smallwares, uniforms, POS systems, and inventory. (See **Appendix B**, "Food Service Assessment").
11. The University or its designee (e.g., Gamecock Sports Properties) has the exclusive rights to sell vending rights to suppliers and contractors and to retain any vendor placement fees. Any vendor under such an arrangement (bottled water, pizza, carbonated beverages, hot dogs, etc.) will be required to provide market pricing to the Concessionaire for related products or services.
12. The University shall retain the rights for any sponsorship of beverage cups or other materials used in the delivery of Foodservices. The University shall specify the design for souvenir beverage cups and Concessionaire will be responsible for all costs for the manufacture and acquisition of the cups from a licensed manufacturer.
13. Quality Control: Because the highest level of culinary quality and service is imperative for this Facility to be successful in its marketplace, Offeror must have sanitation and food operation management that complies with the University's inspections and requirements.

#### **D. FACILITIES DESCRIPTIONS**

##### **The Permanent Athletic Facilities include:**

##### **Williams Brice Stadium (Football):**

- Opened in 1934
- Seating capacity 80,250
- Seven Home Games and Spring Football Games
- Stadium Concerts

##### **Colonial Life Arena (Men's and Women's Basketball/ Other non-athletic events)**

- Opened in 2002



- Seating capacity of 17,800
- Host 16-18 Home Games for Men and Women and NCAA Tournament - When awarded

**Founders Park (Baseball):**

- Opened in 2009
- Seating Capacity 8,242
- NCAA Regional and Super Regional Host- When awarded

**Track Complex (Men’s and Women’s Track and Cross Country):**

- Opened in 2016
- Seating Capacity 2,200

**Carolina Softball Stadium at Beckham Field (Softball)**

- Opened in 2013
- Seating Capacity 1,277

**Wheeler Beach (Beach Volleyball):**

- Opened in 2014
- Five courts

**Eugene Stone Stadium (Men’s and Women’s Soccer):**

- Opened in 1996
- Seating capacity of 5,000

**Carolina Tennis Center (Men’s and Women’s Tennis):**

- Opened in 2012
- Seating Capacity 730
- No permanent concession stands

**Onewood Farm (Equestrian Center):**

- Opened in 2007
- Located in Blythewood, SC

**Carolina Natatorium at the Blatt PE Center (Men’s and Women’s Swimming)**

- 800 permanent seats with moveable seating to accommodate 400 additional spectators

**E. PERSONNEL**

1. Concessionaire shall employ the necessary personnel to conduct the operations at the Facilities in accordance with the terms and conditions of this RFP and the Agreement. All full-time, part-time, temporary, or volunteer employees, are required to have approved background checks as required by University and Athletics policy, and any charges incurred will be the sole responsibility of the Concessionaire.
2. All Concessionaire employees are employees of the Concessionaire and not the University. The Concessionaire shall at all times be an independent contractor, and the Agreement shall not in any way create or form a partnership or joint venture with the University. No agent, servant, or employee of the Concessionaire shall under any circumstances be deemed an agent, servant, or employee of the University.

3. The Concessionaire shall be solely responsible for all employees and their actions and/or payment of salaries and other remuneration. The successful Offeror must comply with all applicable wage and hour laws, all applicable equal employment/affirmative action requirements of Federal, state and local laws and regulations.
4. While on University property, all employees are required to comply with appropriate University policies and will conduct themselves in a manner that will not discredit the University. The University of South Carolina Policies can be found at: <http://www.sc.edu/policies/>.
5. Accurate records must be kept of the names, addresses and other legal identification of those to whom badges are issued to assure proper identification and legal working status of employees at any time required by the University or any other proper agency. Upon request by the University, the Concessionaire shall immediately dismiss from the Facilities, any employee deemed unsuitable for any reason by the University. Any employee so dismissed shall never again be employed at the Facility without the prior written consent of the University.
6. The University shall approve Concessionaire's proposed on-site Management throughout the term of the Agreement. Concessionaire's on-site Management shall have no job-related responsibilities at other venues and must have a full-time office at the University. If the University requests a replacement for the on-site Management or any of the staff, Concessionaire shall have five (5) days to provide a temporary replacement approved by the University, and fifteen (15) days to provide the University with at least three (3) resumes of suitable candidates for such purpose.
7. Concessionaire must conduct regularly scheduled training sessions, as approved by the University, throughout the year, for all personnel. At a minimum, the training will consist of Customer Service and Skills Training for each Position. Service employees must attend mandatory orientation training specific to the University. No employee will be allowed to serve the public until at least a minimum of two (2) hours of training, including orientation, have been completed.
8. Concessionaire's employees and volunteers shall at all times be neatly and cleanly uniformed in University-approved uniforms and must meet grooming guidelines and appearance standards prescribed for such position.
9. Concessionaire's use of subcontractors (including merchandise vendors at the Colonial Life Arena) must be approved by the University in advance of any agreement made between the Concessionaire and the subcontractor.

## **F. QUALITY OF SERVICES AND PRODUCTS**

1. Concessionaire shall conduct all of its operations in a first-class, professional, businesslike, and efficient manner consistent with a premier University.
2. Suppliers, portions and brands used by the Concessionaire are subject to the University's approval, which will not be unreasonably held, and at no time will Concessionaire offer an exclusive to any supplier without the prior written approval of the University.
3. The University shall decide any and all questions which may arise as to the acceptability of

services rendered, number of service areas required, levels of staffing by area, prices, portions, products, manner of performance, questions which arise as to the interpretation of the terms and conditions of this RFP, and all questions as to the acceptable fulfillment of the Agreement.

4. The University has granted Exclusive Pouring Rights to its Multi Media Rights holder under a separate agreement and the Concessionaire will be required to comply with the terms of such agreement throughout the contract term.
5. All foods, drinks, beverages, confectionery, refreshments, and the like, sold or kept for sale, shall be of first quality, wholesome, and pure and shall conform in all respects to the federal, state, municipal, and University food and other laws, ordinances, and regulations. No imitation, adulterated, or misbranded article shall be sold or kept for sale, and all product kept on hand shall be stored and handled with due regard for sanitation. Leftover perishable products shall not be sold at any time.
6. It is the intention of the University to encourage and promote to the maximum extent practicable the purchase of "State Products," This includes agricultural food products and commodities produced, grown or raised in State. The successful Offeror may be required to submit reports detailing all local purchases made in a given time period.
7. The University strives to create an optimal environment for the health and well-being of their students, faculty, staff, and guests, while being conscious of price, quality, and service standards. Menus presented should complement current athletic facilities' food offerings and support the University's initiative to provide healthy food options.
8. All products kept for sale shall be subject to inspection and approved by the University. Rejected product shall be immediately removed from the Facilities and shall not be returned for sale.
9. It is the intent of the University to utilize Branded Products and serving items, whenever it is in the best interest of the University.
10. Club and Suite Sales will utilize high quality disposable plates, cutlery and cups.
11. Catering Sales may require permanent Smallwares, dishes, glassware and place settings, furnished by Concessionaire.
12. Concessionaire is encouraged to work with local not-for-profit organizations, such as food banks to reduce product waste.
13. Concessionaire is encouraged to provide a sustainability plan.
14. The University requires the Concessionaire to identify local products and vendors to utilize throughout the Facilities, whenever appropriate.
15. The Concessionaire is responsible for complying with all recycling rules, regulations and laws of the University, the State of South Carolina, and/or appropriate governmental bodies.

## G. OPERATING REQUIREMENTS

1. The successful Offeror shall pay all excise tax and retails sales and other taxes imposed and all fees for permits/certificates, licenses, approvals, and renewals thereof required to conduct its operations/services.
2. The successful Offeror must provide copies of all federal, state and local permits/certificates/licenses necessary to perform the business upon execution of an agreement. This includes any alcohol permits required to serve in all facilities.
3. The Offeror acknowledges that the Agreement will not grant to the successful Offeror any express or implied rights to use the name "University of South Carolina" or any of its licensed names or marks for any purpose. The successful Offeror shall not use the name "The University of South Carolina" or any of its licensed names or marks for any other purpose, other than for internal communications or to identify its campus operations, without the University's prior written consent.
4. The successful Offeror is required to comply with all aspects of the U.S. FDA (Food and Drug Administration) Food Code 2013, and any subsequent revisions, which pertain to its employees, services and operations on campus.
5. The University's expectations are that the Concessionaire shall maintain a high quality program to assure: safe temperature control of products, first-in, first-out principles are used; product shelf life and expiration of all products served and used are properly monitored; correct products and quantities are selected and delivered at the correct price and temperature; products are free of damage; product discrepancies and complaints are resolved and corrective action is initiated; customer satisfaction is monitored; supplier/FDA initiated food recalls are promptly responded to; and salvaged products are not used. It is critical to the University that the successful Offeror establish relationships with suppliers who have a record of conforming to specifications, requirements and delivery schedules, a record of reasonable and cooperative behavior, commitment to customer satisfaction and an overall business-like concern for the interests and success of the customer.
6. The University shall decide any and all questions which may arise as to the acceptability of services rendered, levels of staffing, and manner of performance, questions which arise as to the interpretation of the conditions and specifications, and all questions as to acceptable fulfillment of Agreement.
7. No off-site or sub-contracted sales are permitted from the Facility unless approved by the University.
8. At the termination of Concessionaire's Agreement, Concessionaire will assign all Catering contracts and Catering deposits, for events that are scheduled to occur after the effective date of termination, to the succeeding Concessionaire.
9. Any signage is subject to pre-approval by the University prior to placement.
10. The Concessionaire will be required to provide or modify operations upon the request of any Licensee, when it has been approved by the University, as in the best interest of the University or is necessary to comply with the terms of the contract between the University and said Licensee, provided that none of Concessionaire's equipment is utilized when Concessionaire is excluded from selling.

11. University shall have the final approval on what suppliers, prices, portions and brands are used, and at no time will Concessionaire offer an exclusive to any supplier.
12. The University, or its third party rights holder, may sell advertising and sponsorship packages for the Facilities. Therefore, the University reserves the final right of approval of Concessionaire's sources of product supply. This includes but is not limited to items such as food and beverage products, printing companies, exterminators, florists, cleaners, laundries, insurance vendors, business machine and office supply vendors. The Concessionaire, however, will not be required to purchase from suppliers whose level of quality, service, and/or prices, are not competitive with the marketplace. Concessionaire retains no advertising rights in this Agreement.
13. The Concessionaire must procure and keep in force during the entire period of the contract all permits and licenses required by all laws and regulations of the State of South Carolina, County of Richland, and city of Columbia.
14. Concessionaire shall collect and promptly disburse all taxes required by federal, state and local authorities, and shall pay any applicable taxes relating to Concessionaire sales, operations, Equipment, or inventory, as a Direct Operating Cost.
15. Concessionaire shall provide and pay for all the necessary equipment in order to accept credit cards and mobile payments at all point of sales locations. This includes portable and permanent Concession stands, and for all Club, Catering, and Suite billing.
16. Concessionaire will be required to support and participate in the student card program (CarolinaCard) and accept payments from the card. Concessionaire should consider providing incentives to the student for use of the card.
17. Concessionaire and its employees shall at all times comply with all applicable laws, rules, regulations and orders of the Federal Government, the State of South Carolina, the County of Richland, and the City of Columbia and also shall abide by all policies, executive orders, rules, regulations and directives prescribed by the University.
18. Nothing herein contained shall be held to limit or qualify the right of the University to a free and unobstructed use, occupation and control of the Facilities and ingress and egress for itself, its Licensees and the public.
19. Representatives of the University shall have the right to enter upon and have access to all spaces occupied by the Concessionaire during the time events are in operation and all times when Concessionaire employees are present.
20. Concessionaire must provide printed Catering menus approved by the University, utilizing the University's logos, used exclusively for the Facilities, in sufficient quantities for use by University's and the Concessionaire's marketing staffs.
21. The Concessionaire shall set up Equipment and Smallwares for all Concessionaire events. Concessionaire shall be responsible for setting up and tearing down all portable Equipment, including any work tables, if any, supplied by the University.
22. The location of all Concessionaire areas, whether temporary, portable or permanent shall be designated by the University. The Concessionaire shall acquire no right to any location once

assigned and the University reserves the right to require the Concessionaire to move such operations and Equipment to facilitate the needs of events.

23. Any charges to the Athletic Department for Foodservice shall be agreed upon in advance.
24. Concessionaire acknowledges and agrees that all data collected in their point of sales systems will be jointly owned by the University and the Concessionaire. Upon request, Concessionaire will provide the University with a direct data feed or periodic download of all data and transaction information for University's use.
25. Concessionaire's Management will be required to attend specific University event planning meetings, as determined at the University's sole discretion, including without limitation:
  - a) Weekly Event Review Meeting
  - b) Management Team Meeting

## **H. RECORDKEEPING AND ACCOUNTABILITY**

1. Concessionaire shall maintain all accounting and personnel records during the term of the Agreement for the Facilities in a format approved by the University at the on-site office. These records shall be available for audit by the University at any time throughout the term of the Agreement at the on-site office. Records and their retention must be maintained in accordance with University record keeping policies and procedures, both during and beyond the term of any Agreement.
2. Concessionaire shall maintain a preliminary sales report by 12 noon on the next business day following each event. Concessionaire shall maintain, in a format directed by the University, a written summary of each event within 72 hours of that event, indicating where appropriate, customer pricing, guarantees, sales by location, total inventory sales, total register sales, and cash overages and shortages. Concessionaire shall keep the corresponding deposit ticket and credit card transmission reports to all daily sales reports. Documents must be available for audit at all times during the term of the Agreement.
3. Concessionaire shall maintain a separate commercial bank account at a bank approved by the University for all sales deposits.
4. Cash shortages of inventory sales may not be deducted from Gross Receipts.
5. Bad debts, unless University required Concessionaire to extend credit, may not be deducted from Gross Receipts.
6. An independent certified audit of the Concessionaire's Gross Receipts and operations, by an accounting firm approved by the University, must be submitted no later than ninety (90) days after the end of each Agreement Year as a Direct Operating Cost.
7. The University shall have the right to make a special audit by auditors selected by the University, of the books and records required to be made and preserved. If such audit shall show a deficiency in payments by the Concessionaire for any Accounting Period covered, in excess of one percent (1%) of the amount thereof, the amount owed and the Late Fees from the date the error took place and the cost of the audit, shall be paid promptly by Concessionaire to the University.
8. Concessionaire and the University shall inventory all Equipment, Leasehold Improvements, uniforms and Smallwares on an annual basis to determine what replacements and repairs are required, and to adjust the depreciation schedule accordingly.

9. Concessionaire shall maintain all sales tax licenses and operating and alcohol service permits necessary for the Foodservices.
10. Concessionaire shall collect and promptly disburse all taxes required by federal, state, and local authorities, and shall pay any and all applicable taxes relating to their operations, employees, Equipment, inventory or permits.

## **I. SANITATION AND EQUIPMENT MAINTENANCE**

1. Concessionaire must, in accordance with all applicable laws, ordinances, rules, and regulations, maintain all assigned areas of the Facilities, including the space within a 25-foot radius of each area, including, but not limited to, kitchens, concession stands, buffets, pantries, condiment stands, storage and prep areas in a clean, sanitary, and orderly fashion.
2. Concessionaire will be billed for adequate pest control licensed by the state and approved by the University for each assigned area.
3. Concessionaire must have a HACCP (Hazardous and Critical Control Point) plan governing all its operations, in place prior to commencing operations. Please submit a copy of the HACCP plan you have in place currently as part of your proposal. All employees must be trained to comply with all elements of the HACCP plan at all times.
4. Concessionaire is responsible for maintaining all grease traps, exhaust hoods, exhaust ductwork and roof fans and the regularly scheduled cleaning of both. Concessionaire is responsible for ensuring the safe and effective removal of yellow grease from the Athletic Facilities and furthermore ensure that it is disposed of in accordance with all Federal, State of South Carolina, Richland County and the City of Columbia regulations.
5. Concessionaire shall maintain University-approved, par levels of all Equipment, Leasehold Improvements, uniforms and Smallwares.
6. Concessionaire shall maintain all Equipment, Leasehold Improvements, uniforms and Smallwares used in performance of its duties, including rolling stock, in a good state of repair, including maintenance or repair necessitated by ordinary wear and tear.
7. Should replacement be necessary, as determined by the University and Concessionaire, mutually, then the Concessionaire shall pay for the replacement.
8. Concessionaire is responsible for the cleanliness and sanitation of all food equipment used in the performance of its duties. Concessionaire shall pay for all preventative maintenance plans for all Foodservice Equipment required and approved by the University.
9. The University may require the use of their in-house maintenance staff for the repairs and maintenance, if it is in the University's best interest and the Concessionaire will pay for any reasonable expenses.

## **J. UTILITIES**

1. The University shall pay for the usage of HVAC, electricity, gas, and water service for the Concessionaire's operation. Concessionaire will utilize prudent energy management.
2. The cost of telephone, Internet service, computers and any related services or support, provided by a vendor and approved by the University, shall be the responsibility of the Concessionaire.

3. The Concessionaire will be responsible for bringing their trash and garbage from all Concessionaire areas to the designated dumpster or recycling areas. The removal of the dumpster and recyclables from the Facility will be paid for by the University.
4. The Concessionaire will be responsible for breakdown and recycling of all cardboard boxes.
5. The cost to repair or replace any utility service or lines due to Concessionaire's negligence shall be the Concessionaire's expense. Drainage and sewage lines within the concession stands are the responsibility of the Concessionaire and shall be self-maintained by the Concessionaire and shall be maintained to the satisfaction of the University. Concessionaire shall take all precautionary measures necessary to assure that grease is not discharged into the sewers.
6. The Concessionaire is responsible for complying with all recycling rules, regulations and laws of the University and/or appropriate governmental bodies.
7. The University shall not be liable or responsible for any failure to furnish services, such as electricity, gas, water, or drainage service, which failure is caused or brought about in any manner by strike, act of God or other work stoppage, federal, state, or local government action, the breakdown or failure of apparatus, equipment, or machinery employed in its supply of said services, any temporary stoppage for the repair, improvement, or enlargement thereof, or any act or condition beyond its reasonable control. Further, the University shall not be liable or responsible for any consequential economic or property loss or damage caused or brought about by any such occurrence.
8. The University shall not be responsible for any goods, merchandise or Equipment stored at the Facilities nor will it be responsible for damage resulting from a power failure, flood, fire, explosion and/or other causes.

## **K. FINANCIAL PROPOSAL**

1. This Agreement will be a Commission Agreement with a minimum annual guarantee. The Offeror will propose their Financial Terms in Exhibit A **or** Exhibit A-1, based on sales assumptions provided, in order to compare each proposal in the best interest of the Athletics Department. The proposed commissions paid to the University and the Capital Investment in Leasehold improvements (Exhibit C) will be considered in determining the value of the contract to the University Athletics Department. Please note that a minimum leasehold improvement of \$2 Million is required for Williams Brice Stadium in year one (1) of the new contract. **(See Appendix B for the Williams Brice Stadium Food Assessment report)**
2. The Agreement will be a Commission based agreement with a guaranteed annual minimum. In the Commission Agreement, the Concessionaire will pay a monthly Commission based on the minimum guarantee (1/12<sup>th</sup>). Gross Receipts from Concession Sales, Suite Sales, Club Sales, Catering Sales, and Subcontractor Income will be determined based on a commission rate. The Concessionaire will have merchandise rights for non-athletic events at the Colonial Life Arena (ie. Concerts and show merchandise). Some promoters retain merchandising and concession rights by contract and these will be excluded based on the event. All of these percentages will be specified by the Offeror in Exhibit A or Exhibit A-1. In the event that the commissioned based amount of gross sales does exceed the minimum guaranteed amount, the Concessionaire will be required to compensate the University the amount over the minimum guaranteed amount on an annual basis.
3. If this Agreement is terminated prior to the natural end of the agreement other than through default by the Concessionaire, the University will purchase or cause to be purchased the



Concessionaire's approved investment at then book value. The Concessionaire will amortize their investment as follows and will ensure that there is no book value of any initial investment at the natural end of the Agreement:

- a) Equipment and POS systems – Straight-line method, not to exceed length of agreement.
  - b) Leasehold Improvements – Straight-line method, not to exceed length of agreement.
  - c) Uniforms and Smallwares - 60 months, straight-line method, not to exceed length of agreement.
4. The Concessionaire will provide all working capital and inventory necessary to effectively manage the Foodservices.
  5. The Concessionaire will prepare a Commission Statement, in a format directed by the University, for each Accounting Period and submit same with the Commissions payment no later than twenty (20) days following the close of the preceding Accounting Period. This statement will show each venues Gross Sales and expenditures categorized as agreed upon, and will show total for all venues.

The Concessionaire shall charge food and beverage service to the University Athletics Department at an agreed upon rate to be determined.

6. The USCAD is tax exempt. An Exemption Certificate will be provided upon request.

## **L. EVALUATION PROCESS**

1. Offerors must limit all contact, whether verbal or written, pertaining to the RFP to the Procurement Officer for the duration of this proposal process. Offerors should not contact any officials of the University or the Athletics Department, except as outlined in this Solicitation. Offerors are advised that unauthorized contact with officials, related parties or advisors of the University may result in elimination of the potential offeror from this RFP process.
2. A mandatory pre-proposal meeting will be held on February 28, 2017 at 10:00 AM. A tour of the Facilities will be part of the meeting.
3. Before submitting a proposal, each Offeror shall make all investigations and examinations necessary to ascertain conditions and requirements affecting operation of the proposed services. Failure to make such investigations and examinations shall not relieve the successful Offeror from the obligation to comply, in every detail, with all provisions and requirements, nor shall it be a basis for any claim whatsoever for alteration in any term of or payment required by an Agreement.

Should an Offeror find discrepancies or ambiguities in, or omissions from the proposal documents, or should the Offeror be in doubt as to their meaning, Offeror shall at once and in any event, not later than the Deadline for Questions specified in this RFP, submit to the University a written request for interpretation or correction thereof. The potential offeror will be responsible for its prompt delivery. Any interpretation or correction of the RFP will be made only by written Amendments to all persons who have attended the pre-proposal conference. No allowance will be made after proposals are received for oversight, omission, error, or mistake by Offeror.

**All Proposals will be considered the Offeror's best and final offer.**

4. **Oral Presentation:** Following receipt of written proposals, the University may thereafter select those Offerors which, after preliminary scoring of the written proposals by the Selection Committee, qualify as finalists and request those Offerors to make oral presentations to the Review Committee.

This provides an opportunity for the Offeror to clarify or elaborate on the proposal, particularly with respect to the creative proposals that may be made in responding to Section IV. below. This is a fact-finding and explanation session only and does not include negotiation. The University will schedule the time and location of these presentations and notify each finalist.

In addition to the discussion of creative proposals, the presentations will focus on the general manager proposed for this location. The proposed general manager must attend the oral presentation and elaborate on their experience and qualifications to serve in the position that they are proposed to have at this account.

5. Negotiations will begin with the Offeror whose proposal scores the highest number of points on the criteria stated below. If a successful contract cannot be negotiated with the highest ranking Offeror, the University may terminate negotiations with the highest ranked Offeror and begin negotiations with the next ranked offeror. This progression will be repeated until a successful contract is negotiated.
6. **Estimated Schedule:** The following is a tentative schedule for this RFP. The University reserves the right to change the schedule at any time for any reason.

Activity	Date/Time
Mandatory Pre-Proposal Conference	February 28, 2017 at 10:00 am
Questions Due to University	March 1, 2017 at 5:00 pm
Sealed Proposals Due	March 10, 2017 at 3:00 pm
Oral Presentations (On Campus)	Week of April 3, 2017 (tentatively)
Negotiations	March-April, 2017
Award of Contract	April 21, 2017

## M. EVALUATION CRITERIA

Offerors are advised that the University intends to select the Concessionaire that the University determines is the most responsive and responsible and will provide the University with the highest quality products, efficient services and highest revenues. The University makes no representations of any kind that an award will be made as a result of this RFP.

Proposals will be evaluated using the following criteria:

1. Comprehensive proposal for providing high quality concessions services
  - a) Offeror will be evaluated on the Creativity reflected in the proposal for unique operational plans, staffing plan, point of sale areas, menu, personnel training, uniforms, and related marketing and promotional ideas.
  - b) Offeror’s utilization of data to increase sales and per caps to assist the University in driving attendance.
  - c) Offerors concern for food safety and commitment to safe food handling practices.

2. Proposed Management Team for the Account: The experience, training, and past performance of those persons designated by the Offeror as proposed management personnel.
3. Financial Proposal
  - a) Overall strength of the financial plan, including Offeror's financial return to the University.
  - b) The quality and scope of the Offeror's Capital investment.
  - c) Offeror's financial condition, including ability to provide required performance bond and capital investments.
4. Qualifications and Experience of Offeror in providing all services encompassed by the RFP
  - a) Experience with similar projects
  - b) The Offeror's performance at other facilities
  - c) Offeror's general reputation for performance and service.

University reserves the right, at its discretion:

- a) To reject proposals that contain omissions or otherwise fail to comply with these specifications.
- b) To reject proposals that are not accompanied by proper proposal bond or deposit.
- c) To reject all proposals when the University reasonably determines that such a procedure would be in the best interest of the University.
- d) To waive technical or insubstantial irregularities in the proposal of any Offeror, when not shown to have resulted in any unfair advantage to any Offeror.
- e) To reject proposals that contain any conditions and/or contingencies which, in the University's judgment, make the proposal indefinite or incomplete.
- f) To operate all or part of the Foodservices themselves.

## **N. BONDS/INSURANCE**

1. Concessionaire shall not commence any work under the Agreement until they have obtained all of the prescribed insurance and bonds, and such insurance and bonds have been approved by the University.
2. Performance Bond: The provisions of this paragraph shall survive the expiration or early termination of this Agreement. During the Agreement, Concessionaire shall maintain a performance bond in the amount of five hundred thousand dollars (\$500,000) payable to the University, in the event of default by the Concessionaire.
3. Required Insurance: During the term of the Agreement, the following insurance coverage shall be kept in full force and effect continually and may be increased to meet the then current needs of the Facility. These expenses and costs shall be a Direct Operating Cost.
  - a) Commercial General Liability Insurance (including contractual, products and liquor liability) with minimum limits of \$1,000,000 per occurrence, and \$3,000,000 in the aggregate. The insurance must protect the Concessionaire and University from claims for personal injury (including bodily injury and death) and property damage which may arise from or in connection with the performance of Concessionaire's services hereunder or from

or out of any negligent act or omission of Concessionaire, its officers, directors, agents or employees. Limit requirements may be met by combining primary and excess/umbrella policies if necessary.

- b) Blanket Employee Dishonesty with minimum limits of \$500,000 per occurrence. This coverage shall be extended to provide coverage to funds and/or property held by the Concessionaire on behalf of the University.
  - c) Employer's Liability Insurance with minimum limits of \$1,000,000 per occurrence.
  - d) Personal Property Insurance providing All Risk Coverage on a replacement basis for the appropriate limit to cover all Concessionaire's personal property to include furniture, fixtures, equipment, inventory and any other personal property of the Concessionaire.
  - e) Umbrella or Excess Liability: Additional \$10,000,000. Coverage is to apply to excess of Comprehensive General, Employer's, Alcoholic Beverage and Automobile Liability policies.
4. All such insurance required in above shall be with companies and on forms acceptable to the University and shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to the University. All insurance shall be primary and not contributory. All insurance shall be written by companies with a BEST Guide rating of A- and Policyholders' surplus: USD \$50 million. Certificates of insurance shall be furnished to the University, naming the University as additional insured and contain a waiver of subrogation on an annual basis. The additional insured requirement does not apply to Workers' Compensation, Property or Blanket Employee Dishonesty.
  5. Not later than thirty (30) days prior to the date on which coverage is to be provided hereunder, the Concessionaire shall furnish to the University a certificate evidencing the required coverage.
  6. Mutual Waiver of Subrogation: Neither the University nor the Concessionaire shall be liable to the other party hereto or to any insurance company (by way of subrogation or otherwise) insuring the other party hereto for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income covered by Property Insurance.

## **O. DEFAULT**

The Agreement shall contain appropriate provisions defining events of default by the Concessionaire including, but not limited to, the following:

1. In the event that the Concessionaire shall fail to perform, keep and observe any of the terms, covenants and conditions of the Agreement to be performed, kept or observed, such as failing to pay the correct amount of moneys due the University, the University shall give the Concessionaire written notice of such default. In the event such default is not remedied or steps taken to remedy default to the satisfaction and approval of the University within fifteen (15) days of receipt of such notice by the Concessionaire, the Concessionaire may be declared in default, and all of their rights under the Agreement shall terminate. At the direction of the University, the Concessionaire shall vacate the Facility and shall have no right to further operate under the Agreement.

2. In the event that the Concessionaire shall fail to correct any potentially hazardous condition, the University shall give written notice of such default. In the event such default is not remedied to the satisfaction and approval of the University within twenty-four (24) hours of receipt of such notice by the Concessionaire, the Concessionaire may be declared in default, and all of their rights under the Agreement shall terminate.
3. Should the Concessionaire be placed into bankruptcy either voluntarily or by the courts, or should the Concessionaire become financially insolvent and unable to perform its duties under the Agreement, the University may immediately place the Concessionaire in default, terminate the Agreement, and assume the Concessionaire operation of the Facilities under the Agreement.
4. Should the Concessionaire fail to obtain or maintain the necessary licenses and permits.
5. If the Concessionaire allows a lien to be placed on the Facilities for any work approved by or administered by the Concessionaire.

## **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]

### **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:

[04-4005-1]

### **PROPOSAL CONTENTS**

This RFP is designed to encourage the Offeror to exhibit the greatest amount of creativity in maximizing the University's service levels to its customers and revenues to the University.

The expense of developing and presenting the proposal is the sole expense of the Offeror, regardless of the results of the subsequent selection process of Concessionaire.

All Proposals will be considered the Offerors best and final offer.

**To be considered for award, all proposals should include, at a minimum, the following information. Responses must follow the order provided below to facilitate efficient evaluation of the responses. It is critical that responses to the RFP are consistent to ensure accuracy in the University's review process.**

#### **A. TECHNICAL PROPOSAL**

1. Submittal Letter – The letter must clearly identify the individual authorized to sign contracts on behalf of the Offeror and must contain a statement that this proposal and the financial terms proposed therein shall remain firm for a period of 180 days from the receipt of the proposals.
2. A brief history of your company.
3. Project Team Background & Information
  - a) List of Corporate Officers: Provide a list of the Concessionaire's corporate officers and their experience in the industry.
  - b) A resume including client references of the experience, education, and performance record in the Concessionaire business of proposed full-time general manager for the Facilities for whom the University will have the right of approval. Offeror must have their general manager at any oral presentation required by the University for selection

of the Concessionaire. The general manager candidate may be interviewed privately prior to the Offeror's presentation.

4. The University strives to create an optimal environment for the health and well-being of their students, faculty, staff, and guests, while being conscious of price, quality, and service standards. Menus presented should complement current athletic facilities' food offerings and support the University's initiative to provide healthy food options. Please provide a brief description of your current concepts, menus, portions, prices, and service levels. Please highlight all "healthy" dining options that your company offers.

- a) Proposed menus and pricing for all Concessionaire services at the University, showing portion sizes and proposed selling prices in 2017 dollars. Pricing must be competitive with similar facilities in the region.

5. Customer Experience: Please provide a description of concepts or mechanisms that would enhance the customer experience at the University's athletic venues while maximizing Gross Receipts.
6. Creative Design Concepts: Offerors should indicate their proposed design concepts for the Concessionaire areas. Offerors should include any equipment, decor or uniform literature or brochures and any other information that indicates their unique approach to this project.

Offeror should include conceptual plans and past experiences with providing in-venue premium services (in seat service, club seating concessions, etc.) that may be provided in premium areas at Colonial Life Arena, Founders Park, and any future club seating at Williams Brice Stadium.

7. Technology: Offeror shall indicate how they will utilize technology to improve service and quality of their operations. Offeror shall indicate where credit/debit cards and student cards will be accepted and the nature of any POS system investment. Any wireless systems installed on campus must be PCI compliant. Electronic systems are subject to Pre-Approval by the University Technology Services (UTS) and or any other authority deemed appropriate by the University or USCAD.
8. Branded and other Subcontracted Products: Describe how Branded Products and local Subcontractors should be handled and how they will impact Gross Receipts and Commissions. Detail other Facilities where Concessionaire uses Branded Products and/or local Subcontractors and any unique financial arrangements with these Brands and Subcontractors.
9. References and Qualifications
  - a) Offeror should submit any information which documents successful and reliable experience in providing same or similar essential contractual services and describe its qualifications that it will utilize to perform the services if awarded contract.
  - b) List of Clients: A list of other clients similar to the University that Offeror serves or has served in the past five (5) years. Please provide detailed information, e.g., name, address,

and telephone number of the Client, contact name, length of time, size of Client, number and type of events, annual sales and attendance. Indicate what services are provided, i.e., Catering, Foodservices, etc.

- c) Provide a list of all accounts that your firm has lost in the last five (5) years, along with a customer contact name, telephone number and email address for those persons most knowledgeable about your firm's performance on the account. Include a brief explanation of why your firm lost the account.

THE UNIVERSITY RESERVES THE RIGHT TO CONTACT BIDDER'S REFERENCES.

#### 10. Personnel

- a) Organizational Plan: An organizational chart showing all full-time and hourly positions. Include a copy of the employee training manual, employee handbook, and drug-use policy.
- b) Detailed staffing ratios for typical events at the University, including a sellout football game and a sellout basketball game. Include back-of-the-house and front-of-the-house employees for all areas, i.e., kitchen, commissary, pantries, Concession stands, etc. Describe the use of hawkers and other non-stationary efforts to increase sales.
- c) Describe uniform and required dress for employees and volunteers/not-for-profit groups.
- d) Describe how volunteer/not-for-profit groups will be solicited and organized for work.
- e) Training Programs: Describe all of Offeror's available training programs including Offerors' current Customer Service Training Programs that are regularly used at other accounts. Include all specific training programs and manual for Not-For-Profit Group Labor.

11. Event Information Recaps: Provide samples of event information recaps, daily and monthly statements, etc. that will be furnished to the University during the term of this Agreement. Include forms from computerized cash registers.

#### B. BUSINESS PROPOSAL

1. Completed Exhibits A or A-1 (But not both!) : Proposed Financial Offer
2. Completed Exhibit B: Concessionaire's Projected Sales for the first three years.
3. Completed Exhibit C: Capital Improvements.
  - a) Investment Costs: A detailed schedule of the capital investment Offeror commits to make for the Concessionaire facilities at the University including specific improvement, cost (amount of investment), and date when the improvement will be made. **(See the provided Williams Brice Stadium Food Service Assessment report, at Appendix B, performed by Gensler for additional information on the current conditions of the space, equipment, and locations of the concession stands)**

Exhibits A through D are included with this solicitation in a PDF format. The Excel file will be emailed to potential Offerors following the pre-proposal conference.



**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? \_\_\_\_\_

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

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

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

Traditional minority

Traditional minority, but female

Women (Caucasian females)

Hispanic minorities

DOT referral (Traditional minority)

DOT referral (Caucasian female)

Temporary certification

SBA 8 (a) certification referral

Other minorities (Native American, Asian, etc.)

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

For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL: <http://www.govoepp.state.sc.us/osmba/>

[04-4015-1]

**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]

## V. Qualifications

### **QUALIFICATION OF OFFEROR (MAR 2015)**

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

**NOTE: The University reserves the right to contact Offeror’s references.**

### **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]

### **SUBCONTRACTOR – IDENTIFICATION (FEB 2015)**

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

## **VI. Award Criteria**

### **AWARD CRITERIA – PROPOSALS (JAN 2006)**

Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State. [06-6030-1]

### **AWARD TO ONE OFFEROR (JAN 2006)**

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

### **EVALUATION FACTORS – PROPOSALS (JAN 2006)**

Responsive Offers will be evaluated using only the factors stated **in Section III. M. above**. 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.

### **DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (FEB 2015)**

Submit your best terms from both 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]

## **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]

**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]

### **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]

### **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]

## **CHANGES (JAN 2006)**

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

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

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

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

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

[07-7B025-1]

## **COMPLIANCE WITH LAWS (JAN 2006)**

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

## **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]

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

#### **ADDITIONAL INSURANCE**

See Sub-Section N. "Bonds/Insurance" for additional insurance requirements. During the contract term, 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.

#### **CONTRACTOR PERSONNEL (JAN 2006)**

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

## **CONTRACTOR'S OBLIGATION – GENERAL (JAN 2006)**

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

## **CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006)**

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

## **DEFAULT (JAN 2006)**

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

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or
- (iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

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

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

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

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

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

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

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

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

[07-7B075-1]

**ESTIMATED QUANTITY - UNKNOWN (JAN 2006):** The total quantity of purchases of any individual item on the contract is not known. The State does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information. [07-7B095-1]

**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. [07-7B100-2]

#### **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. [07-7B103-1]

#### **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. [07-7B105-1]

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

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

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

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

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

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

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

Public information means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request.

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

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

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

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

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

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

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

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

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

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

the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law.

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

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

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

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

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

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

(i) *Survival & Remedy.* All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the

using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause. [07-7B108-1]

### **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. [07-7B110-1]

### **LICENSES AND PERMITS (JAN 2006)**

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

### **MATERIAL AND WORKMANSHIP (JAN 2006)**

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

### **OWNERSHIP OF DATA & MATERIALS (JAN 2006)**

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

### **PRICE ADJUSTMENTS (JAN 2006)**

- (1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):
  - (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (b) by unit prices specified in the Contract or subsequently agreed upon;
  - (c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;
  - (d) in such other manner as the parties may mutually agree; or,
  - (e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.



(2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830.  
[07-7B160-1]

**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. [07-7B165-1]

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

**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.

#### **RELATIONSHIP OF THE PARTIES (JAN 2006)**

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

#### **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. [07-7B240-1]

#### **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 be 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 accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.
- (4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.
  - (b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;
  - (c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:
    - (i) contract prices for supplies or services accepted under the contract;
    - (ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;
    - (iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;
    - (iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.
  - (d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

(5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause. [07-7B265-1]

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

**PLEASE REFER TO ITEM B. BUSINESS PROPOSAL UNDER THE PROPOSAL CONTENTS SUBSECTION OF SECTION IV. INFORMATION FOR OFFERORS TO SUBMIT OF THE SOLICITATION.**

## **IX. ATTACHMENTS TO SOLICITATION**

1. Important Tax Notice – Nonresidents Only
2. State of SC Department of Revenue Nonresident Taxpayer Registration Affidavit Income Tax Withholding (I-312)
3. Offeror's Checklist

**IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

If Corporate officer state title:

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

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

# OFFEROR'S CHECKLIST

## *AVOID COMMON BID/PROPOSAL MISTAKES*

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

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

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



## APPENDIX A. DEFINITIONS

1. "Accounting Period" shall refer to the Concessionaire's four or five week fiscal periods of which there must be twelve within each calendar year.
2. "Agreement" shall refer to the contract executed between the Concessionaire and the University of South Carolina Athletics Department, in accordance with these specifications and the Concessionaire's proposal submitted and accepted by the University, all of which will be incorporated into the Agreement.
3. "Contract Year" shall refer to the period between July 1 through June 30 for the length of the agreed upon terms or contract.
4. "Branded Products" shall refer to those Concessionaire items which are advertised, marketed and sold as part of a franchise or license agreement and with respect to which Concessionaire is required to pay royalty fees and/or shared advertising costs to the franchiser in consideration of the right to sell such items in the Facilities.
5. "Commission" shall refer to the applicable percentage commission rate paid to the University based on Gross Receipts of a particular category (e.g., Concession Sales, Club Sales, etc.).
6. "Concession Sales" shall refer to all sales of Concessionaire sold from permanent or portable concession stands or roving vendors to individual customers.
7. "Concessionaire" shall refer to that party selected by the University to provide the services set forth herein.
8. "Direct Operating Costs" are the actual out-of-pocket costs of the Foodservice and Merchandise operations incurred at the University and paid for by the Concessionaire. These costs include the actual expense of the product including corporate rebates, on-site payroll, payroll taxes, fringe benefits and other operating expenses, such as repairs and maintenance, credit card expenses, cleaning and office supplies. Direct Operating Costs do not include any corporate overhead, corporate administrative expenses, corporate allocations or Late Fees unless approved in writing by the University.
9. "Equipment" shall refer to all furniture and machinery, except Smallwares and Leasehold Improvements, used for the receiving, storing, transportation, preparation, merchandising, selling and accounting of product, excluding the POS system. Equipment shall not be affixed to the building except by electrical or gas connections.
10. "Event" shall refer to any public ticketed sporting, entertainment or other performance or activity at the Facilities.
11. "Facilities" shall refer to the intercollegiate athletic venues. See Section V above.
12. "Foodservices" shall refer to food and beverage sales and operations at the Facilities, whether Branded Products, Concession Sales, Club Sales, Suites Sales, and/or Catering Sales.
13. "Food Products" means all food and beverages, and shall include without limitation, alcoholic beverages (where permitted), candy and confections.
14. "Food Service Premises" means all areas, improvements, fixtures and trade fixtures upon the Facility's premises which are or may in the future be used in connection with the operation of the Food Services, including adequate storage and office space. In Williams Brice Stadium, Food Services Premises shall mean only those areas within the

Stadium traditionally used for the sale of Concessions and will specifically exclude premium areas for football games only.

15. "Gross Receipts" shall refer to the total amount of money, gratuities, service and rental charges received or charged by the Concessionaire, any agent, any employee or any Subcontractor of the Concessionaire for all sales, cash or credit (whether collected or not), made as a result of the service rights granted under the Agreement, excluding only applicable federal, state, or local sales taxes. No other deductions of any kind may be taken from Gross Receipts, including shortages, bad debts (unless credit was requested by the University), or credit card fees.
16. "Late Fee" is the charge assessed to any payments due the University from the Concessionaire after the specified date in the Agreement. Late Fees shall be pro-rated daily based on an annual rate of eighteen percent (18%).
17. "Leasehold Improvements" shall refer to all Equipment, fixtures, furnishings, finishes and construction affixed to the building, by more than an electrical or gas connection. Amortization of which will be required to be over the life of the remaining contract as to have zero book value at the end of the contract.
18. "Non-Event" shall refer to any private non-ticketed functions at the Facilities.
19. "Pre-opening Expense" shall refer to the Direct Operating Costs incurred by the Concessionaire between execution of the Agreement and the first Accounting Period with Gross Receipts.
20. "Offeror" shall refer to any person or entity submitting a proposal to provide the services as defined by and in accordance with this Request for Proposal.
21. "Licensee" shall refer to any person or entity that may from time to time enter into any agreement for the use of the Facilities for a particular purpose.
22. "Smallwares" shall refer to the serviceware, utensils, crockery, glassware, dishware and cutlery used in the Concessionaire operation.
23. "Specifications" shall refer to this Request for Proposals.
24. "Subcontractor Gross Sales" shall refer to the gross sales of subcontractors to individual customers.
25. "Subcontractor Income" shall refer to the commission or royalty income received by the Concessionaire from subcontractors.
26. "Suite Sales" shall refer to all food and beverage sales originating in private suites.
27. "University" shall refer to the University of South Carolina or its Athletic Department. After the award of this contract, all correspondence should be addressed to:

Jeff Tallant/ Chief Financial Officer  
University of South Carolina Athletics  
1304 Heyward Street  
Columbia, SC 29208

**APPENDIX B.**

**SEE THE ATTACHED “WILLIAMS-BRICE STADIUM FOOD SERVICE ASSESSMENT”  
REPORT**