

	<b>State of South Carolina</b>  Fixed Price Bid	Solicitation Number:	5400004141
		Date Issued:	04/04/2012
		Procurement Officer:	Chris Manos, CPPB
		Phone:	(803) 737-4917
		E-Mail Address:	CMANOS@mmo.sc.gov

DESCRIPTION: **STATEWIDE TERM CONTRACT FOR TESTING ADJUSTING & BALANCING SERVICES**  
 USING GOVERNMENTAL UNIT: **Statewide Term Contract**

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

SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL: <http://www.procurement.sc.gov>

SUBMIT OFFER BY (Opening Date/Time): **05/03/2012 11:00 A.M.** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **04/17/2012 5:00 P.M.** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: One (1) original and if submitting confidential information, then submit one (1) redacted copy.

CONFERENCE TYPE: <b>PRE PROPOSAL</b> DATE & TIME: <b>04/17/2012 10:00 A.M.</b>  <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" &amp; "Site Visit" provisions)</small>	LOCATION: <b>Capitol Center</b> <b>1201 Main Street</b> <b>6<sup>th</sup> Floor Conference Room</b> <b>Columbia SC 29201</b>
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<b>AWARD &amp; AMENDMENTS</b>	Award will be posted on <b>05/10/2012</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="http://www.procurement.sc.gov">http://www.procurement.sc.gov</a>
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Unless submitted on-line, you must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of sixty (60) calendar days after the Opening Date. (See "Signing Your Offer" and "Electronic Signature" provisions.)

<b>NAME OF OFFEROR</b>  <small>(full legal name of business submitting the offer)</small>		Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
<b>AUTHORIZED SIGNATURE</b>  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>		<b>TAXPAYER IDENTIFICATION NO.</b>  <small>(See "Taxpayer Identification Number" provision)</small>
<b>TITLE</b>  <small>(business title of person signing above)</small>		<b>STATE VENDOR NO.</b>  <small>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>
<b>PRINTED NAME</b>  <small>(printed name of person signing above)</small>	<b>DATE SIGNED</b>	<b>STATE OF INCORPORATION</b>  <small>(If you are a corporation, identify the state of incorporation.)</small>
<b>OFFEROR'S TYPE OF ENTITY: (Check one)</b> <span style="float: right;"><small>(See "Signing Your Offer" provision.)</small></span>  <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____ <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Corporation (tax-exempt) <input type="checkbox"/> Government entity (federal, state, or local)		

## PAGE TWO

(Return Page Two with Your Offer)

<b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)	<b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)
	Area Code - Number - Extension <span style="float: right;">Facsimile</span>
	E-mail Address

<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.) (See "Payment" clause)	<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)
<input type="checkbox"/> Payment Address same as Home Office Address <input type="checkbox"/> Payment Address same as Notice Address <b>(check only one)</b>	<input type="checkbox"/> Order Address same as Home Office Address <input type="checkbox"/> Order Address same as Notice Address <b>(check only one)</b>

**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						

<b>DISCOUNT FOR PROMPT PAYMENT</b> (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	____ Calendar Days (%)
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**PREFERENCES DO NOT APPLY TO THIS SOLICITATION**

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## **I. SCOPE OF SOLICITATION**

It is the intent of the Materials Management Office to establish a statewide term contract for multiple sources as a simplified means to purchase Testing, Adjusting and Balancing (TAB) services in specific quantities and employing methods as may be required by State agencies. This resulting contract will enable TAB consultants to be directly accessible by State agencies in a timely and cost effective manner.

The initial contract term is one (1) year with four (4) additional one (1) year options to renew.

For the purposes of this contract, the terms Consultant and Contractor shall be used interchangeably.

### **ACQUIRE SERVICES (JAN 2006)**

The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions. [01-1010-1]

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

Start date: 05/01/2012 End date: 04/30/2017. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period". [01-1040-1]

## **II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS**

### **DEFINITIONS (JAN 2006)**

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

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

BOARD means the South Carolina Budget & Control Board.

BUYER means the Procurement Officer.

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

CONTRACT See clause entitled Contract Documents & Order of Precedence.

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

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

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

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

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

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

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

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

YOU and YOUR means Offeror.

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

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

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

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

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

[02-2A003-1]

### **DEFINITIONS OF TERMS USED IN PART III, SCOPE OF WORK/SPECIFICATIONS**

“AABC” means the Associated Air Balance Council.

“Air Systems” mean systems that supply or exhaust air, including outside air, supply air, return air, exhaust air and relief air.

“ASHRAE” means the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc.

“Consultant” means the party with a direct contractual relationship with the Owner and primary responsibility for the performance of services that are the subject of a purchase order for testing, adjusting and/or balancing services.

“TAB Flow rate tolerance” means the allowable percentage variation, minus to plus, of actual flow rate from values required in the specifications.

“HVAC” means heating, ventilating, and air conditioning systems.

“Hydronic Systems” means systems that use water and/or glycol-water as the heat-transfer medium in heating and cooling. Hydronic Systems include chilled water, condenser water, heating hot water and glycol-water systems.

"Local public procurement unit" means any political subdivision or unit thereof which expends public funds for the procurement of supplies, services, or construction.

“NEBB” means the National Environmental Balancing Bureau.

“OSE” means the Office of the State Engineer established by South Carolina Code Section 11-35-830, as amended, or its successor in interest.

“Owner” means any Public Procurement Unit, which has submitted a purchase order to the Consultant for Testing, Adjusting, and Balancing services. By submitting a purchase order to the, a Public Procurement Unit manifests its intent to be and is bound by this Agreement.

"Political subdivision" means any county, municipality, school district, public service district, or special purpose district of the State.

"Public procurement unit" means any state public procurement unit or any local public procurement unit.

"State public procurement unit" means any purchasing agency of this State including any of the Chief Procurement Officers and their offices.

“TAB” means the process of Testing, Adjusting, and Balancing HVAC systems to meet specifications required.

#### **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: [www.procurement.sc.gov](http://www.procurement.sc.gov) (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]

#### **AWARD NOTIFICATION (NOV 2007)**

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

#### **BID/PROPOSAL AS OFFER TO CONTRACT (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 and 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]

## **BOARD AS PROCUREMENT AGENT (JAN 2004)**

(a) Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement. (b) Purchasing Liability. The Procurement Officer is an employee of the Board acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Board is not a party to such contracts, unless and to the extent that the board is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract. [02-2A030-1]

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

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

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

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

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

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

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

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

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

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

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

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1)

through (a)(3) of this certification.

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

#### **CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 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]

#### **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.htm>. The South Carolina Regulations are available at: <http://www.scstatehouse.gov/coderegs/statmast.htm> [02-2A040-1]

#### **COMPLETION OF FORMS/CORRECTION OF ERRORS (JAN 2006)**

All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.) [02-2A045-1]

## **DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (MAY 2011)**

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. [02-2A047-1]

## **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 bodies mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)] [02-2A050-1]

## **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 (JAN 2006)**

Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. [02-2A070-1]

## **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]

## **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]

## **PROTESTS (JUNE 2006)**

Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [Section 11-35-4210] [02-2A085-1]

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

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

## **QUESTIONS FROM OFFERORS (JAN 2004)**

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation, that unnecessarily or inappropriately limits full and open competition. [02-2A095-1]

All questions must be submitted in writing and received by Chris Manos no later than **04/17/2012 5:00 P.M.**

*Email is the preferred method for submitting questions with 'Questions: TESTING ADJUSTING & BALANCING SERVICES' as the subject of the email. Questions must be submitted in an easily copied format such as Word.*  
Email: [cmanos@mno.sc.gov](mailto:cmanos@mno.sc.gov)

## **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 (JAN 2004)**

(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.  
[02-2A105-1]

#### **RESTRICTIONS APPLICABLE TO OFFERORS (JAN 2004)**

Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, ***you agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials*** All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, ***you agree not to give anything to any Using Governmental Unit or its employees, agents or officials prior to award.*** [02-2A110-1]

#### **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 is 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/scgovweb/weather\\_alert.html](http://www.scemd.org/scgovweb/weather_alert.html) [02-2A120-1]

#### **SUBMITTING CONFIDENTIAL INFORMATION (AUG 2002)**

(An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document

regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-1]

#### **SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004)**

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

#### **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 (JAN 2004)**

(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. [02-2A140-1]

## **VENDOR REGISTRATION MANDATORY (JAN 2006)**

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

## **WITHDRAWAL OR CORRECTION OF OFFER (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

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

Pre-Bid/Proposal Conference Date and Time: **04/17/2012 10:00 A.M.**

Location of Pre-Bid/Proposal Conference:

**Capitol Center  
1201 Main Street  
6<sup>th</sup> Floor Conference Room  
Columbia SC 29201**

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]

### 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]

### MAIL PICKUP (JAN 2006)

The State Procurement Office picks up all mail from The US Postal Service once daily around 8:30 a.m. (excluding weekends and holidays). See provision entitled Deadline for Submission of Offer. [02-2B080-1]

### ON-LINE BIDDING INSTRUCTIONS (NOV 2007)

(a) Mandatory Registration: **For on-line bidding, you must register before you can submit an offer! See instructions in clause entitled "VENDOR REGISTRATION MANDATORY".**

(b) Steps for On-Line Bidding:

#1 The link provided on the solicitation's Cover Page will take you to our web based on-line bidding system, where you will enter and/or upload your offer.

#2 Follow the general user instructions posted at [www.procurement.sc.gov](http://www.procurement.sc.gov) under the heading "Submitting Offers On-Line". [02-2B105-1]

### **OFFERORS SHOULD NOT WAIT UNTIL THE OPENING DAY TO SUBMIT OFFERS ONLINE**

All Offerors desiring to respond to this solicitation should register and submit your response online. To respond online, you must follow the new South Carolina Enterprise Information System (SCEIS) vendor registration instructions found at the South Carolina Procurement Information Center website address of: <http://www.procurement.sc.gov>. Even if you are registered in the old procurement system, you must still register or update your information in the new SCEIS system. Once the registration process is complete, the system will generate a new SCEIS vendor user ID and password. The Offeror must keep this information current or you will not be able to submit future bids.

**OFFERORS ENCOUNTERING REGISTRATION PROBLEMS SHOULD CONTACT:**

DSIT Help Desk (803) 896-0001 Select Option 1 then Option 2  
Monday – Friday 8:00 AM – 4:30 PM EST

Other vendor instructions found at <http://www.procurement.sc.gov/> include:

- [Vendor Registration Guide](#)
- [How do I Respond to A Solicitation](#) - Interactive Document

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**NUMBER OF COPIES**

Offerors will need to follow these instructions carefully when responding to the solicitation online.

1. The original solicitation response should be submitted online and is the official response. Online offers will be considered signed/executed offers meeting the standards stated in Section II.A, clause entitled “Signing Your Offer.” If you are submitting confidential information, then submit a redacted copy of your response as one additional document.
2. All bidders must attach all documents, including additional requested documents to their response in the online system. These documents can be attached under the “**My Notes**” tab of the online solicitation main page.

NOTE: Documents should not be attached individually online but together as one document only.

**Offerors may submit a hard copy as their official response instead of the online bid to the address below if necessary.**

All copies requested must be delivered no later than the date and time specified on the cover page of the solicitation as amended to the following address:

**SC Budget & Control Board, Procurement Services Division**  
**Materials Management Office**  
**Attention: *Chris Manos***  
**Attention: *5400004141***  
**1201 Main Street, Suite 600**  
**Columbia, SC 29201**

**If you prefer to use the US Post Office, then use PO Box 101103 instead of the street address and use 29211 for the zip code.**

**Offeror Verification of Submitted Responses**

After submitting an online response to a solicitation, Offeror may validate their submission with the following steps:

1. Go back to the initial screen
2. Select Start by clicking the Start button
3. Bid Submitted will appear in the Bid Status Column as seen below



You may want to print this page for your records.

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

Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

(a) by email to [protest-mmo@mmo.sc.gov](mailto:protest-mmo@mmo.sc.gov) ,

(b) by facsimile at 803-737-0639 , or

(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B122-1]

### **III. SCOPE OF WORK/SPECIFICATIONS**

#### **SEE BIDDING SCHEDULE**

See Bidding Schedule [03-3005-1]

#### **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]

TAB consists of work elements as are included, but not limited to, items listed in the specification. Ancillary work not specifically listed but incidental to TAB may be included, subject to compliance with these specifications and at an agreed upon cost to the Agency.

#### **WORK TO BE PERFORMED**

Needs that may be fulfilled by this contract are as follows:

- Measurement and verification of HVAC system performance, with required reports
- Restoration of HVAC systems to original, as built, performance parameters
- Rebalance HVAC systems to accommodate new requirements, due to:
  - reconfiguration of existing space,
  - change in use of space,
  - replacement of existing equipment,
  - updating outside air requirements,
  - updating control sequences,
  - changing exhaust systems,
  - small, in-house, or IDC projects involving HVAC
  - periodic mandated performance certification,
  - other ancillary work
- Measurement of Vibration
- Measurement of Sound

#### **COSTS**

Bases for the TAB services fees will be a combination of:

TAB worker hours

Expenses incurred:

- Travel and or per diem
- Specialized equipment rental (lifts or scaffolding)
- Unspecified miscellaneous work (negotiated hourly rate) not to exceed 10% of total cost
- Materials (belts, sheaves, etc)

Contractors must agree to pricing limits for hourly rates for TAB Manager/Supervisor, TAB Technician, TAB Technician Assistant, and Clerical as follows. Adjustments may be made at contract renewal.

TAB MRGR: \$/Hr. 85  
TAB Tech: \$/Hr. 65  
TAB Tech Asst: \$/Hr. 45  
Clerical: \$/Hr. 45

## **TYPICAL SEQUENCE**

The TAB Consultant will respond to the representative of a qualified Agency requesting TAB service, to determine a preliminary scope of work including;

- purpose of work (desired outcome);
- expected duration of work;
- types and quantity of HVAC system components involved;
- type of control system involved;
- availability of documentation for the HVAC system;
- type areas being served;
- accessibility issues;
- status of systems readiness (state of repair).

Once these and any other TAB issues have been addressed, the contractor may provide a budget estimate and expected duration for TAB work.

If the Agency opts to continue (note that the Agency may contact other TAB consultants prior to issuing a PO), the TAB consultant will then:

- coordinate a site visit to refine the scope of work if required, and
- establish contact with Agency personnel who will provide access to the work areas as needed
- determine needs for HVAC controls personnel and data as needed
- coordinate with fire and safety personnel as needed, and
- determine occupancy requirements during TAB work with the project manager or designee

TAB work will not interfere with or violate Agency requirements.

Once the work environment and equipment is adequately familiar to the contractor and the Agency representative has effected the necessary coordination and is in agreement with the cost and scope of work then the contractor may proceed once the work order is processed.

## **REIMBURSABLE EXPENSES:**

Reimbursable Expenses are travel, lodging and meal expenses related to requested TAB services. Lodging and meal expenses shall only be reimbursed when the site of inspection is more than 100 miles of travel from the closer of the service provider's home or office. Mileage shall be calculated from the Consultant's office to the site of work and back. If the Consultant has more than one office, mileage shall be calculated using the office nearest to the site of work. Mileage, lodging and meal compensation shall be at rates established by the State of South Carolina for State Employees. Where service provider(s) or technician(s) perform multiple services or tests during the same trip, Owner shall reimburse Consultant for the mileage of only one trip.

## **PROGRESS PAYMENT**

Owner shall pay Consultant as the work progresses, but not more than once each month after the date of Notice to Proceed and only upon receipt of an invoice containing sufficient detail to justify the amount of payment requested.

## CONSULTANT DUTIES

### GENERAL

Consultant acknowledges and accepts the relationship of trust and confidence between the State and the Consultant by this Agreement. Consultant further acknowledges the reliance that the Owner may place on its skill and judgment. Consultant covenants to furnish its best skill and judgment and to cooperate with the Owner. Consultant shall perform all services in accordance with the applicable best practices and technical standards.

Consultant shall designate a representative authorized to act on behalf of the Consultant in all matters related to the Consultant's performance under this Agreement. This representative is to be an AABC certified Test, Adjust and Balance Engineer (TBE) or a NEBB certified professional in Testing Adjusting and Balancing. Consultant shall not replace the designated representative without prior approval of the procurement officer.

Consultant shall have, prior to accepting a purchase order for TAB services, copies of all standards applicable to the performance of the specific TAB services required by the purchase order.

Consultant shall be entitled to rely on the accuracy of information furnished by an Owner, provided that the Consultant shall review all such information and shall give prompt and timely notice to the Owner of deficiencies or inconsistencies in the information furnished.

### DISCIPLINE AND COMPETENCE

Consultant shall perform its responsibilities in a competent manner and as expeditiously as possible. The Consultant shall enforce strict discipline and good order among the Consultant's employees, its sub-consultants, agents, representatives and other persons performing under this Agreement. Consultant shall not permit employment of unfit persons or persons not certified and skilled in tasks assigned to them. Consultant and sub-consultants shall always conduct themselves in a workmanlike and courteous manner. Methods of intimidation, anger, or other unacceptable conduct will be grounds for termination of this Agreement or debarment of the offending individual from working on state projects at the discretion of the procurement officer.

### TAB SERVICES

a. Consultant shall be certified by either AABC or NEBB to perform TAB service for HVAC, water balancing and sound and vibration testing (measurement only) of equipment and systems. Consultant shall perform in accordance with the requirements and standards of the TAB agency under which the Consultant is certified. Consultant shall maintain certification for the duration of the contract. If Consultant ceases to be certified, the Consultant shall immediately notify the procurement officer and cease providing TAB services under this contract.

b. All technicians performing actual TAB work shall be certified by AABC or NEBB and work directly under an AABC certified TBE or a NEBB certified Professional. The Consultant shall maintain records that verify the certifications of its technicians used for services. These records will be available for review by the State at anytime during the life of the contract and for one (1) year thereafter.

c. All TAB services shall be provided under the supervision of a TAB specialist. The TAB specialist shall be an or AABC certified Testing and Balancing Engineer or NEBB Certified Professional. The TAB specialist shall sign and stamp the TAB reports that bear the seal of the TAB standard. The reports shall be accompanied by report forms and schematic drawings required by the TAB standard, AABC or NEBB. The TAB specialist will follow all TAB work through to satisfactory completion. Following approval of the TAB final report, the TAB specialist shall permanently mark the setting of all HVAC adjustment devices, including valves, splitters, and dampers, so that the Owner can restore the adjustment if disturbed. TAB specialist shall identify and permanently and legibly mark locations of duct test ports. If the ductwork has exterior insulation, the TAB specialist shall make the test port identification on the exterior side of the insulation.

d. Test equipment and instruments shall meet the accuracy/calibration requirements of the instrument manufacturer and those established by AABC National Standards or by the NEBB Procedural Standards for Testing, Adjusting and Balancing of Environmental Systems. The Consultant must maintain calibration history of the instruments to be used for test and balance purposes.

e. Before starting TAB work pursuant to a purchase order, the Consultant shall obtain from the owner applicable construction and design documents and approved construction submittals for HVAC equipment and control systems as may be available. shall plan and perform TAB services and prepare and submit required reports as provided in applicable AABC or NEBB publications and ASHRAE Handbook “HVAC Applications”, 2011 Edition.

f. TAB flow rate tolerances - The following tolerances are allowed:

1. Air handling unit and all other fans, cubic meters/min (cubic feet per minute): Minus 0 percent to plus 10 percent.
2. Air terminal units (maximum values): Minus 10 percent to plus 10 percent.
3. Minimum outside air: 0 percent to plus 10 percent.
4. Individual room air outlets and inlets, and air flow rates not mentioned above: Minus 10 percent to plus 10 percent.
5. Heating hot water pumps and hot water coils: Minus 5 percent to plus 5 10 percent.
6. Chilled water and condenser water pumps: Minus 0 percent to plus 5 10 percent.
7. Chilled water coils: Minus 0 percent to plus 10 percent.

Consultants shall follow ASHRAE Handbook “HVAC Applications Chapter 38”, 2011 Edition, as a guide for flow rate tolerances not set forth above.

g. As required by the Owner, the Consultant shall adjust systems for energy efficient operation. If required by the Owner, the Consultant, upon beginning fieldwork, shall demonstrate TAB procedures and results for air distribution systems (including fans, terminal units) in rooms selected by the Owner and also for hydronic systems (pumps and coils) selected by the Owner.

h. The following publications form a part of the Consultant’s performance specifications:

1. AABC certified Consultant:
  - i. ASHRAE Handbook “HVAC Applications”, 2011 Edition, Chapter 38- Testing, Adjusting, and Balancing
  - ii. AABC National Standards for Total System Balance

- iii. Sheet Metal and Air Conditioning s National Association (SMACNA) “HVAC SYSTEMS - Testing, Adjusting and Balancing”, 2002 Edition.

2. NEBB certified Consultant:

- i. ASHRAE Handbook “HVAC Applications”, 2011 Edition, Chapter 38- Testing, Adjusting, and Balancing
- ii. NEBB Standards:
  - Procedural Standards for Testing, Adjusting, Balancing of Environmental Systems
  - Procedural Standards for the Measurement of Sound and Vibration
  - Procedural Standards for Whole Building Systems - Commissioning of New Construction
- iii. Sheet Metal and Air Conditioning s National Association (SMACNA) “HVAC SYSTEMS - Testing, Adjusting and Balancing”, 2002 Edition.

If the Consultant is certified by both AABC and NEBB, the Consultant shall follow the standards agreed on by the owner.

i. Procedures:

1. General: During TAB, all related system components shall be in full operation. Consultant shall check fan and pump rotation, motor loads and equipment vibration as necessary before proceeding with TAB. Consultant shall set controls and/or block off parts of distribution systems to simulate design operation of variable volume air or water systems for test and balance work. Consultant shall coordinate TAB procedures with Controls for new and existing systems.
2. Air Balance and Equipment Test: As required by the purchase order, Consultant shall Test, Adjust, and Balance air handling units, fans, terminal units, fan coil units, room diffusers, outlets, inlets, and computer room air conditioning (AC) units. Consultant shall:
  - i. Artificially load air filters by partial blanking to produce air pressure drop of manufacturer’s recommended pressure drop;
  - ii. Adjust fan speeds to provide design airflow. Provide sizing for V-belt drives, including fixed pitch pulley requirements to the installing;
  - iii. Test and balance systems in all specified modes of operation, including variable volume, economizer, and fire emergency modes;
  - iv. Verify that dampers and other controls function properly;
  - v. For variable air volume (VAV) systems:
    - a. Coordinate TAB, including system volumetric controls;
    - b. Check and readjust Air Terminal Unit (ATU) flow rates as necessary (maximum and minimum flow rates for air terminal units (ATU) are factory set):
      1. Balance air distribution from ATU on full cooling maximum scheduled cubic feet per minute CFM; (cubic meters per minute)
      2. Reset room thermostats and check ATU operation from maximum to minimum cooling, to the heating mode, and back to cooling;
      3. Record and report the heating coil leaving air temperature when the ATU is in the maximum heating mode;
      4. Record and report outdoor air flow rates under all operating conditions (the test shall demonstrate that the minimum outdoor air ventilation rate remains constant under all operating conditions); and

5. Adjust operating pressure control setpoint to maintain the design flow to each space with the lowest allowable setpoint;
  - iv. Record final measurements for air handling equipment on appropriate performance data sheets.
3. Water Balance and Equipment Test: As required by purchase order, Consultant shall Test, Adjust, and Balance circulating pumps, convertors, coils, coolers, and condensers. shall:
- i. Adjust flow rates for equipment;
  - ii. Set coils and evaporators to values on as built drawings;
  - iii. For primary-secondary (variable volume) systems, coordinate TAB with Controls to verify water flow at maximum flow and then verify that variable flow controls function as designed;
  - iv. Record final measurements for hydronic equipment on appropriate performance data sheets. Include entering and leaving water temperatures for heating and cooling coils, and for convertors. Include entering and leaving air temperatures (DB/WB for cooling coils) for air handling units and reheat coils. Make air and water temperature measurements at the same time.
4. Vibration Testing: As required by purchase order, Consultant shall perform vibration measurements for all rotating HVAC equipment of 373 watts (1/2 horsepower) and larger, including centrifugal/screw compressors, cooling towers, pumps, fans and motors. Consultant shall record initial measurements for each unit of equipment on test forms and submit a report to the Owner. Where vibration readings exceed the allowable tolerance the Consultant shall notify the Owner.
5. Sound Testing: As required by purchase order, Consultant shall perform and record sound measurements as follows:
- Take readings in required rooms as required by purchase order; and
  - Provide cooling tower sound measurements.
- Consultant shall take measurements with a calibrated sound level meter and octave band analyzer of the accuracy required by AABC or NEBB. Sound reference levels, formulas, and coefficients shall be according to ASHRAE Handbook, "HVAC Applications", 2011 Edition, Chapter 48 – Noise and Vibration Control. Consultant shall notify Owner where measured sound levels exceed specified levels. Consultant shall determine compliance with specifications as follows:
- i. When sound pressure levels are specified:
    - a. Reduce the background noise as much as possible by shutting off unrelated audible equipment.
    - b. Measure octave band sound pressure levels with specified equipment "off."
    - c. Measure octave band sound pressure levels with specified equipment "on."
    - d. Use the DIFFERENCE in corresponding readings to determine the sound pressure due to equipment.

DIFFERENCE:	0	1	2	3	4	5 to 9	10 or More
FACTOR:	10	7	4	3	2	1	0

Sound pressure level due to equipment equals sound pressure level with equipment "on" minus FACTOR.

- e. Plot octave bands of sound pressure level due to equipment for typical rooms on a graph that also shows noise criteria (NC) curves.
- ii. When sound power levels are specified:
  - a. Perform steps (i)(a) thru (i)(d). above.
  - b. For indoor equipment: Determine room attenuating effect, i.e., difference between sound power level and sound pressure level. Determined sound power level will be the sum of sound pressure level due to equipment plus the room attenuating effect.
  - c. For outdoor equipment: Use directivity factor and distance from noise source to determine distance factor, i.e., difference between sound power level and sound pressure level. Measured sound power level will be the sum of sound pressure level due to equipment plus the distance factor. Use 10 meters (30 feet) for sound level location.
- iii. Where sound pressure levels are specified in terms of dB(A), measure sound levels using the "A" scale of meter. Single value readings will be used instead of octave band analysis.

j. Reports

1. System Review Report: Consultant shall report deficiencies that would prevent the HVAC systems from effectively operating in accordance with the required sequence of operation or prevent the effective and accurate TAB for an HVAC system. The Consultant shall provide a report individually listing each deficiency and the corresponding recommended corrective action necessary for proper system operation.
2. System Inspection Report: When required by purchase order, Consultant shall inspect HVAC systems, equipment and installation for conformance with available equipment and design data and Verify that diffusers, register, ducts, piping, and other system components are sized properly and are correctly routed. Consultant shall issue a report on results of inspection using a checklist format developed by AABC or NEBB, supplemented by narrative comments explaining specific deficiencies and recommended corrective actions as appropriate.
3. Duct Air Leakage Test Report: When required by purchase order, Consultant shall witness and document duct leakage test and submit reports in accordance with and on AABC or NEBB standards and forms.
4. System Readiness Report: In coordination with the Owner, the Consultant shall measure existing air and water flow rates associated with existing systems utilized to serve areas as indicated on construction drawings and available design data. Consultant shall inspect each System to ensure that it is complete including installation and operation of controls. Consultant shall verify that all items such as ductwork and piping, ports, terminals, connectors, etc., that are required for TAB, are installed. Consultant shall submit a report of findings including all deficiencies to the Owner.
5. TAB Reports: Consultant shall provide raw data immediately in writing to the Owner if there is a problem in achieving intended results before submitting a formal report. If, during verification, over 10 percent of readings in the report fall outside the acceptable range, the

TAB report shall be considered invalid and all TAB work provided for in the purchase order shall be repeated and re-submitted for approval at no additional cost to the owner.

k. Repairs: Consultant shall seal all penetrations through ductwork and ductwork insulation to prevent air leaks and maintain the vapor barrier integrity. Consultant shall seal holes drilled in ductwork for test purposes using plastic plugs manufactured for such use. Consultant shall repair insulation removed or damaged by TAB work using as approved by the Owner and comparable to materials and methods as existing adjacent work

## **MISCELANEOUS**

a. Safety: The Consultant shall ensure that all employees and Sub-Consultants are aware of and comply with safety requirements including applicable federal and state OSHA standards before arriving on site. 's employees and Sub-Consultants shall wear appropriate OSHA required personal protection equipment at all times during the performance of the work.

b. Site Access: The Consultant and the Consultant's sub-consultants shall comply with any project site-specific security clearance requirements. When entering or on the site of the project, the Consultant and its employees and sub-consultants, upon request, shall show proper identification to the construction.

This contract does not extend to the services performed by Architects, Engineers, surveyors, etc. and cannot be used to engage professional services.

## IV. INFORMATION FOR OFFERORS TO SUBMIT

### INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (JAN 2006)

Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations. [04-4010-1]

1. Completed Cover Page and Page Two
2. Proof of certification for each employee classification who will be performing services
3. Proof of Contractor's Liability Insurance
4. Completed Bid Schedule if offering a lower price than the maximum price allowed.

### 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]

## **V. QUALIFICATIONS**

### **QUALIFICATION OF OFFEROR (JAN 2006)**

To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810. [05-5005-1]

### **SUBCONTRACTOR -- IDENTIFICATION (JAN 2006)**

If you intend to subcontract with another business for any portion of the work and that portion exceeds 10% of your price, your offer must identify that business and the portion of work which they are to perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the state may evaluate your proposed subcontractors. [05-5030-1]

## **VI. AWARD CRITERIA**

### **AWARD CRITERIA -- FIXED PRICE BIDDING (JAN 2006)**

Award will be made to all responsive and responsible Offerors. [06-6023-1]

### **BIDS RECEIVED AFTER AWARD -- FIXED PRICE BIDDING (MODIFIED)**

Offerors not responding to the initial solicitation may be added to the awarded vendors list provided the bidder furnishes evidence of responsibility and responsiveness to the state's original request for proposal as authorized by the solicitation.

Bids received after the initial awards will be reviewed and awarded approximately every six months, if requirements above have been met. However, the State will review bids and process awards at their discretion.

The failure of a specific offeror to receive business, once it has been added to the awarded vendors' list, shall not be grounds for a contract controversy under Section 11-35-4230.

### **COMPETITION FROM PUBLIC ENTITIES (JAN 2006)**

If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]

## **VII. TERMS AND CONDITIONS -- A. GENERAL**

### **ASSIGNMENT (JAN 2006)**

No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer. [07-7A004-1]

### **BANKRUPTCY (JAN 2006)**

(a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-1]

### **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 and ORDER OF PRECEDENCE (JAN 2006)**

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-1]

### **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 State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [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]

## **NON-INDEMNIFICATION (JAN 2006)**

Any term or condition is void to the extent it requires the State to indemnify anyone. [07-7A045-1]

## **NOTICE (JAN 2006)**

(A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

## **PAYMENT and INTEREST (MAY 2011)**

(a) Unless otherwise provided in this Solicitation, 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. (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, 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. (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. [07-7A055-2]

## **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]

## **SETOFF (JAN 2006)**

The state shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the state with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. [07-7A070-1]

## **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**

### **ACCEPTANCE OF OFFERS 10% BELOW PRICE (JAN 2006)**

If the state is offered the exact same item on the exact same terms and conditions as those provided under this contract by a vendor other than the contractor (the "alternate vendor") for a price that is at least ten percent less than the contract price, the state may purchase those items from the alternate vendor if the contractor does not agree to meet the offered price. Any acquisition pursuant to this clause must be documented by the Procurement Officer in sufficient detail to satisfy the requirements of an external audit. [07-7B010-1]

### **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 (JAN 2006)**

(1) Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in South Carolina such insurance as will protect the contractor from the types of claims set forth below which may arise out of or result from the contractor's operations under the contract and for which the contractor may be legally liable, whether such operations be by the contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the contractor's employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the contractor's employees; (d) claims for damages insured by usual personal injury liability coverage; (e) claims for damages, other than to the work itself, because of injury to or

destruction of tangible property, including loss of use resulting therefrom; (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; (g) claims for bodily injury or property damage arising out of completed operations; and (h) claims involving contractual liability insurance applicable to the Contractor's obligations under the provision entitled Indemnification -- Third Party Claims.

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

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

**COMMERCIAL GENERAL LIABILITY:**

General Aggregate (per project) \$1,000,000

Products/Completed Operations \$1,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

Fire Damage (Any one fire) \$ 50,000

Medical Expense (Any one person) \$ 5,000

**BUSINESS AUTO LIABILITY (including All Owned, Nonowned, and Hired Vehicles):**

Combined Single Limit \$1,000,000

OR

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

**WORKER'S COMPENSATION:**

State Statutory

Employers Liability \$100,000 Per Acc.

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

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

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

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

[07-7B055-1]

## **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]

## 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]

## **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 (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]

## **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]

## **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]

## **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]

## **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]

## **RELATIONSHIP OF USING GOVERNMENTAL UNITS (JAN 2006)**

Each Using Governmental Unit's obligations and liabilities are independent of every other Using Governmental Unit's obligations and liabilities. No Using Governmental Unit shall be responsible for any other Using Governmental Unit's act or failure to act. [07-7B210-1]

## **STATEWIDE TERM CONTRACT (JAN 2006)**

With this solicitation, the state seeks to establish a term contract (as defined in Section 11-35-310(35)) available for use by all South Carolina public procurement units (as defined in Section 11-35-4610(5)). Use by state governmental bodies (as defined in Section 11-35-310(18)), which includes most state agencies, is mandatory except under limited circumstances, as provided in Section 11-35-310(35). See clause entitled "Acceptance of Offers 10% Below Price" in Part VII.B. of this solicitation. Use by local public procurement units is optional. Section 11-35-4610 defines local public procurement units to include any political subdivision, or unit thereof, which expends public funds. Section 11-35-310(23) defines the term political subdivision as all counties, municipalities, school districts, public service or special purpose districts. The State shall be entitled to audit the books and records of you and any subcontractor to the extent that such books and records relate to the performance of the work. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer. [07-7B225-1]

## **STATEWIDE TERM CONTRACT -- SCOPE (JAN 2006)**

The scope of this contract is limited by the Bidding Schedule / Cost Proposals and by the description included in Part I, Scope of Solicitation. Sales of supplies or services not within the scope of this contract are prohibited. See clause entitled Contract Limitations. [07-7B230-1]

## FEE FOR ADMINISTRATIVE SERVICES – SPO (OCT 2007)

**As provided herein, a public procurement unit, by participating in this contract, owes the Materials Management Office (MMO) a Fee for administrative services.** A public procurement unit shall pay the Fee directly to Contractor as a part of the contract price. Contractor is responsible for collecting this Fee from participating public procurement units (state and local) and paying the Fee to MMO. The price stated in any offeror's bid or proposal shall include all amounts necessary for Contractor to meet this obligation. Contractor shall factor the Fee into its contract pricing and shall not separately itemize or invoice for the Fee.

(a) **For each Payment Period, Contractor shall pay to MMO a Fee equal to .75% of the total dollar amount (excluding sales taxes & adjusted for credits or refunds) received from any public procurement unit by Contractor pursuant to this Agreement. As used in this clause, the term "Payment Period" means each full calendar quarter (Jan. -- Mar., Apr. -- Jun., Jul. -- Sep., and Oct. -- Dec.) and any periods less than a full calendar quarter during the term of this Agreement.** Payment for each Payment Period must be received on or before the last day of the month immediately following the end of the Payment Period (Example: Payment for the quarterly "Payment Period" of Jan. - Mar. 2004 is due on or before April 30, 2004). Payments are to be mailed to: Materials Management Office, Attn: Contract Admin. Fee, 1201 Main Street, Suite 600, Columbia, S.C., 29201. Payments shall be made to the order of the Materials Management Office. If the amount due for a Payment Period is less than \$10.00, no payment is required.

(b) Contractor shall submit a Usage Report for each Payment Period, even if no payment is due for the Payment Period. The Usage Report shall include any information requested by MMO to verify the amount due. At a minimum, each Usage Report shall reflect the following information for the applicable Payment Period: contractor's name, contract number, contract description, Payment Period/quarter, Total Dollar Value of Invoice Payments Received (excluding sales taxes and showing any adjustments for credits or refunds), Total Number of Units (if practicable), and the number, date, and amount of Contractor's check to MMO. The MMO procurement officer may require the Contractor to provide a separate, more detailed usage report. Should this be necessary, the procurement officer will work directly with the contractor to determine the appropriate content and format of the separate report. Separate reports may be required on a quarterly basis.

(c) During the term of this Agreement and for a period of three years thereafter, MMO, its auditors, or other authorized representatives shall be afforded access at reasonable times to Contractor's accounting records in order to audit all records relating to goods sold or work performed pursuant to this Agreement. If such an audit indicates that Contractor has materially underpaid MMO, then Contractor shall remit the underpayment and reimburse MMO for all costs of the audit.

(d) All amounts that become payable by the Contractor to MMO under this Agreement shall bear simple interest from the date due until paid unless paid within 30 calendar days of becoming due. The interest rate shall be the highest prime rate (as published in The Wall Street Journal) plus 2% per annum (unless a higher rate is provided by law, but in no event be greater than the maximum interest rate permitted by law), shall be variable, and shall be adjusted effective at the close of business on the day of any change in the prime rate.

(e) In the event the Contractor fails to make any payment when due, Contractor shall be liable to MMO for all expenses, court costs, and attorneys' fees (including inside counsel) incurred in enforcing the terms and conditions of this Agreement.

(f) Failure to pay any amount due pursuant to this clause may result in the Contractor's debarment pursuant to Section 11-35-4220 of the South Carolina Code of Laws, as amended.

(g) For purposes of this clause, MMO is intended as a third-party beneficiary of this Agreement. The phrase "public procurement unit" is defined by Section 11-35-4610(5) of the South Carolina Code of Laws, as amended.

**NOTICE: The administrative fee created by this clause is calculated against receipts. After a contract has been awarded, contractor may elect to calculate the administrative fee against sales. To effect this election, a change order must be executed. The change order will substitute a different administrative fee clause for this one. The alternate clause is available for review upon request and may be found at [www.ogs.state.sc.us/DDP/terms/](http://www.ogs.state.sc.us/DDP/terms/). Any election must be made within thirty (30) days of final award. If you wish to make this election, contact the procurement officer identified on the cover page of this solicitation.**

## **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 1 year, 0 months, 0 days 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 2006)**

At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of 1 year(s), 0 month(s), and 0 day(s), 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. [07-7B245-1]

## **TERM OF CONTRACT -- TERMINATION BY CONTRACTOR (JAN 2006)**

Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least 90 days prior to the expiration of the then current term. [07-7B250-1]

## **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**

**BIDDING SCHEDULE (NOV 2007)**

**Offeror must provide Unit Price if offering a lower price than the maximum price for any item.**

Item	Quantity	Unit of Measure	Unit Price	
1	1.000	Hours		
<b>Product Catg.: 91036 - Heating, Air Conditioning, and Ventilation Maintenance and Repair Services</b>				
<b>Item Description:</b> TAB Manager/ Maximum Price \$85.00				

Item	Quantity	Unit of Measure	Unit Price	
2	1.000	Hours		
<b>Product Catg.: 91036 - Heating, Air Conditioning, and Ventilation Maintenance and Repair Services</b>				
<b>Item Description:</b> TAB Technician/ Maximum Price \$65				

Item	Quantity	Unit of Measure	Unit Price	
3	1.000	Hours		
<b>Product Catg.: 91036 - Heating, Air Conditioning, and Ventilation Maintenance and Repair Services</b>				
<b>Item Description:</b> TAB Tech Assistant/ Maximum Price \$45				

Item	Quantity	Unit of Measure	Unit Price	
4	1.000	Hours		
<b>Product Catg.: 91036 - Heating, Air Conditioning, and Ventilation Maintenance and Repair Services</b>				
<b>Item Description:</b> Clerical/ Maximum Price \$45				

## IX. ATTACHMENTS TO SOLICITATION

### NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING

#### 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 803-896-1420.

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT:

<http://www.sctax.org/Forms+and+Instructions/withholding/default.htm>

[09-9005-1]

## OFFEROR'S CHECKLIST (JUN 2007)

### 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.

[09-9010-1]