



# State of South Carolina

Request for Proposal  
Exempt

Solicitation: 5400021756  
Date Issued: 08/02/2021  
Procurement Officer: ZACH YARBROUGH  
Phone: 803-896-0284  
E-Mail Address: [zyarbrough@mmo.sc.gov](mailto:zyarbrough@mmo.sc.gov)  
Mailing Address: SFAA, Div. of Procurement Services,  
1201 Main Street, Suite 600  
Columbia SC 29201

DESCRIPTION: **Property Reinsurance Broker**

USING GOVERNMENTAL UNIT: **State Fiscal Accountability Authority, Insurance Reserve Fund**

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

SUBMIT OFFER BY (Opening Date/Time): **09/10/2021 at 11:00 ET** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **08/17/2021 at 16:00 ET** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **One (1) on-line submission and One (1) Redacted Copy submitted online.**  
**Initial here if NO redacted copy is necessary** \_\_\_\_\_

CONFERENCE TYPE: **Pre-Proposal**  
DATE & TIME: **08/17/2021 at 10:00 ET**

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

LOCATION: **N/A (Virtual)**

AWARD &  
AMENDMENTS

Award will be posted on **10/25/2021**. The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <http://www.procurement.sc.gov>

You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of ninety (90) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

NAME OF OFFEROR

(full legal name of business submitting the offer)

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

AUTHORIZED SIGNATURE

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

DATE SIGNED

TITLE

(business title of person signing above)

STATE VENDOR NO.

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

PRINTED NAME

(printed name of person signing above)

STATE OF INCORPORATION

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

OFFEROR'S TYPE OF ENTITY: (Check one)

(See "Signing Your Offer" provision.)

Sole Proprietorship

Partnership

Other \_\_\_\_\_

Corporate entity (not tax-exempt)

Corporation (tax-exempt)

Government entity (federal, state, or local)

**PAGE TWO**

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

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

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

**ACKNOWLEDGMENT OF AMENDMENTS**  
 Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)

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

<p><b>DISCOUNT FOR PROMPT PAYMENT</b>                  (See "Discount for Prompt Payment" clause)</p>	<p>10 Calendar Days (%)</p>	<p>20 Calendar Days (%)</p>	<p>30 Calendar Days (%)</p>	<p>____ Calendar Days (%)</p>
---	-----------------------------	-----------------------------	-----------------------------	-------------------------------

**PREFERENCES – PREFERENCES DO NOT APPLY TO THIS SOLICITATION.**

## Table of Contents

<b>SECTION_I</b> .....	5
EXEMPT PROCUREMENT .....	5
ACQUIRE SERVICES (MODIFIED) .....	5
MAXIMUM CONTRACT PERIOD - ESTIMATED (MODIFIED) .....	6
<b>SECTION_IIA</b> .....	7
DEFINITIONS (MODIFIED) .....	7
AMENDMENTS TO SOLICITATION (JAN 2004) .....	7
AUTHORIZED AGENT (FEB 2015) .....	7
AWARD NOTIFICATION (NOV 2007) .....	7
BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004) .....	8
BID ACCEPTANCE PERIOD (JAN 2004) .....	8
BID IN ENGLISH and DOLLARS (JAN 2004) .....	8
AUTHORITY AS PROCUREMENT AGENT (MODIFIED) .....	8
CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008) .....	8
CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004) .....	9
DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (MAY 2011) .....	10
DISCLOSURE OF YOUR BID / PROPOSAL & SUBMITTING CONFIDENTIAL DATA (FEB 2021) .....	10
DEADLINE FOR SUBMISSION OF OFFER (JAN 2004) .....	10
DRUG FREE WORK PLACE CERTIFICATION (JAN 2004) .....	11
DUTY TO INQUIRE (JAN 2006) .....	11
ETHICS CERTIFICATE (MAY 2008) .....	11
OMIT TAXES FROM PRICE (JAN 2004) .....	11
PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015) .....	11
PUBLIC OPENING (JAN 2004) .....	11
QUESTIONS FROM OFFERORS (MODIFIED) .....	12
REJECTION/CANCELLATION (MODIFIED) .....	12
RESPONSIVENESS/IMPROPER OFFERS (JAN 2004) .....	12
SIGNING YOUR OFFER (JAN 2004) .....	12
STATE OFFICE CLOSINGS (JAN 2004) .....	13
SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004) .....	13
TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008) .....	13
VENDOR REGISTRATION MANDATORY (JAN 2006) .....	13
WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004) .....	14
<b>SECTION_IIB</b> .....	14
CONFERENCE - PRE-BID/PROPOSAL (MODIFIED) .....	15
CONTENTS OF OFFER (RFP) (MODIFIED).....	15
ELECTRONIC COPIES - REQUIRED MEDIA AND FORMAT (MODIFIED).....	15
ON-LINE BIDDING INSTRUCTIONS (MODIFIED) .....	16
OPENING PROPOSALS -- INFORMATION NOT DIVULGED (FEB 2015).....	16
PRESENTATIONS .....	16
<b>SECTION_III</b> .....	17
<b>SECTION_IV</b> .....	18
INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (MODIFIED) .....	18
INFORMATION FOR OFFERORS TO SUBMIT -- EVALUATION (MODIFIED) .....	18
MINORITY PARTICIPATION (JAN 2006) .....	19
SUBMITTING REDACTED OFFERS (MODIFIED) .....	20
<b>SECTION_V</b> .....	20
QUALIFICATION OF OFFEROR (JAN 2006) .....	21
QUALIFICATIONS -- REQUIRED INFORMATION (MODIFIED) .....	21
QUALIFICATIONS - SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2015).....	21
SUBCONTRACTOR -- IDENTIFICATION (JAN 2006) .....	22
<b>SECTION_VI</b> .....	22

AWARD CRITERIA -- PROPOSALS (MODIFIED) .....	23
AWARD TO ONE OFFEROR (JAN 2006) .....	23
DISCUSSIONS AND NEGOTIATIONS - OPTIONAL (FEB 2015) .....	23
EVALUATION FACTORS -- PROPOSALS (MODIFIED) .....	23
<b>SECTION_VIIA</b> .....	24
ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015) .....	24
BANKRUPTCY - GENERAL (FEB 2015) .....	24
CHOICE-OF-LAW (JAN 2006) .....	24
CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (MODIFIED) .....	24
DISCOUNT FOR PROMPT PAYMENT (JAN 2006) .....	24
DISPUTES (JAN 2006) .....	25
EFT INFORMATION (FEB 2021).....	25
EQUAL OPPORTUNITY (JAN 2006) .....	25
FALSE CLAIMS (JAN 2006) .....	25
FIXED PRICING REQUIRED (JAN 2006) .....	25
NO INDEMNITY OF DEFENSE (FEB 2015).....	25
NOTICE (JAN 2006) .....	26
OPEN TRADE (JUN 2015).....	26
PAYMENT and INTEREST (FEB 2021) .....	26
PUBLICITY (JAN 2006) .....	26
PURCHASE ORDERS (JAN 2006) .....	26
SURVIVAL OF OBLIGATIONS (JAN 2006) .....	26
TAXES (JAN 2006) .....	27
TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006) .....	27
THIRD PARTY BENEFICIARY (JAN 2006) .....	27
WAIVER (JAN 2006) .....	27
<b>SECTION_VIIB</b> .....	28
BROKER COMPENSATION .....	28
CHANGES (JAN 2006) .....	28
CONFERENCE -- PRE-PERFORMANCE (MODIFIED) .....	29
COMPLIANCE WITH LAWS (JAN 2006) .....	29
CONTRACTOR'S LIABILITY INSURANCE (MODIFIED) .....	29
CONTRACTOR PERSONNEL (JAN 2006) .....	30
CONTRACTOR'S OBLIGATION -- GENERAL (JAN 2006) .....	30
CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006).....	30
DEFAULT (JAN 2006) .....	30
EXPENSES .....	31
ILLEGAL IMMIGRATION (NOV. 2008) .....	31
INDEMNIFICATION -- THIRD PARTY CLAIMS (NOV 2011) .....	32
INTERMEDIARY CLAUSE .....	32
LICENSES AND PERMITS (JAN 2006) .....	32
OWNERSHIP OF DATA and MATERIALS (JAN 2006) .....	32
PRICE ADJUSTMENTS (JAN 2006) .....	32
PRICING DATA -- AUDIT -- INSPECTION (JAN 2006) .....	33
RELATIONSHIP OF THE PARTIES (JAN 2006) .....	33
RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015).....	33
TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006) .....	33
TERM OF CONTRACT -- OPTION TO RENEW (JAN 2006) .....	33
TERMINATION FOR CONVENIENCE (JAN 2006) .....	34
<b>SECTION_VIII</b> .....	35
<b>SECTION_IX</b> .....	36
NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING .....	36

## I. SCOPE OF SOLICITATION

**This Solicitation is exempt from the S.C. Procurement Code. The specific procedures of this Solicitation follow the Procurement Code as closely as possible excepting the time frames, appeals, and remedies. IRF reserves the right to waive or modify any procedure or rule set forth in this solicitation. This right to waive or modify governs the entire solicitation, including all amendments, negotiations, awards, or any other action.**

### EXEMPT PROCUREMENT

This selection is exempt from the Procurement Code pursuant to exemption 1982.08.24, adopted by the Budget and Control Board; now known as State Fiscal Accountability Authority; and it shall not be governed by the Procurement Code.

The specific procedures which govern this solicitation are set forth in the solicitation documents, and may be amended as necessary. Notwithstanding any other provision of this Solicitation, the State reserves the right to modify or excuse compliance with any aspect of the procurement process outlined herein.

Neither the Procurement Code procedures nor remedies apply to the competitive process, solicitation documents, or selection of a broker.

Notice of the competitive process will be posted on the website, [www.procurement.sc.gov](http://www.procurement.sc.gov); advertised in South Carolina Business Opportunity ["SCBO"]; and e-mailed to the businesses which have expressed interest in receiving notice of the solicitation. Any interested party may participate in the solicitation.

The selection will be final and not subject to protest, appeal, or suit. IRF must have a broker in place no later than November 1, 2021, to provide information necessary for analysis to approach the domestic and international markets with time sufficient to bind reinsurance by April 1, 2022.

Nothing in this competitive process waives the SFAA's or IRF's immunity from suit. No protest, appeal, or suit is available to contest the competitive process, the solicitation documents, or the selection of a broker.

### ACQUIRE SERVICES (MODIFIED)

The State of South Carolina State Fiscal Accountability Authority's Insurance Reserve Fund (IRF) seeks an insurance broker to advise the IRF on methods of protecting the assets of the State and the values insured by the IRF from catastrophic loss including, but not limited to, risk transfer, catastrophe modeling, loss control, and any other suggested methods; and to manage placement of the property reinsurance program for the IRF in order to adequately protect IRF insureds against catastrophic loss. The IRF seeks a broker to provide insurance placement, advisory, and program-related services which will provide the same levels of services currently provided and same levels of protection currently in place, or increased service and protection which best meet the needs of the state. The current contract can be found at <https://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400008439>

This invitation is not an authorization to approach the insurance marketplace on behalf of the IRF. At this time, proposers are not authorized to approach insurers or other underwriting sources on behalf of the IRF. The IRF specifically requests that no insurance market contact be made on behalf of IRF, and that no market reservations or commitments be made for any purpose with respect to any insurance to be provided. Prospective brokers failing to comply with this condition may be subject to immediate disqualification.

IRF reserves the right to reject any and all proposals, to waive any informality, and to negotiate with the selected applicant prior to entering into any award of proposal. An award becomes a contractual obligation of the Offeror. Failure of the Offeror to accept any of the terms in this solicitation may result in the immediate cancellation of the award.

Effective Date Reinsurance Program must be in place: April 1, 2022

Broker Selection and Program Time Line

<u>Activity</u>	<u>Completion Dates</u>
Pre-proposal informational conference	08/17/2021
Receive written proposals	09/10/2021
Presentations	10/13/2021-10/14/2021
Offerors notified of Award. Release detailed information and supporting data to successful broker.	10/25/2021
Program structure negotiated by selected broker. IRF to work with broker as needed.	From selection until 04/01/21
Program filled, price agreement with IRF on total program costs, and coverage bound with Binders furnished to IRF	04/01/21

**MAXIMUM CONTRACT PERIOD – ESTIMATED (MODIFIED)**

**Start date: 10/25/2021 End date: 10/24/2028.** 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".

Stability of Program. IRF intends for the selected program to be stable for at least **seven (7) years**. Therefore, IRF expects to renew its contract with its broker, at the option of the IRF, each year until 2028.

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

**This Solicitation is exempt from the S.C. Procurement Code. The specific procedures of this Solicitation follow the Procurement Code as closely as possible excepting the time frames, appeals, and remedies. IRF reserves the right to waive or modify any procedure or rule set forth in this solicitation. This right to waive or modify governs the entire solicitation, including all amendments, negotiations, awards, or any other action.**

### **DEFINITIONS (MODIFIED)**

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

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

AUTHORITY means the State Fiscal Accountability Authority or its successor in interest.

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

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

CONTRACT See clause entitled Contract Documents & Order of Precedence.

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

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

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

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

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

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

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

YOU and YOUR means Offeror.

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

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

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

US or WE means the using governmental unit.

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

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

### **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]

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

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

### **AWARD NOTIFICATION (MODIFIED)**

Notice regarding any award or cancellation of award will be posted at the location specified on the Cover Page. Such notice will be sent to all Offerors responding to the Solicitation.

### **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]

### **AUTHORITY AS PROCUREMENT AGENT (MODIFIED)**

The Procurement Officer is an employee of the Authority acting on behalf of the Using Governmental Unit(s). Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Authority is not a party to such contracts, unless and to the extent that the Authority 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.

### **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]

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

You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either. [02-2A047-2]

## **DISCLOSURE OF YOUR BID / PROPOSAL & SUBMITTING CONFIDENTIAL DATA (FEBRUARY 2021)**

(a) According to Section 11-35-410, any person submitting a document in response or with regard to any solicitation or other request must “comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public.”

**IF YOU IDENTIFY YOUR ENTIRE RESPONSE AS EXEMPT FROM PUBLIC DISCLOSURE, OR IF YOU DO NOT SUBMIT A REDACTED COPY AS REQUIRED, THE STATE MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD.**

(b) By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page, or portion thereof, 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, or portion thereof, was redacted and conspicuously marked “Trade Secret” or “Confidential” or “Protected”, (2) agrees that any information not redacted and 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.

(c) If your offer includes any information that you claim is exempt from public disclosure, you must submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). Except for the information removed or concealed, the redacted copy must be identical to your original offer.

(d) Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If only portions of a page are subject to some protection, do not redact the entire page. The redacted copy must reflect the same pagination as the original and show the empty space from which information was redacted. The Procurement Officer must be able to view, search, copy and print the redacted copy without a password. 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.

(e) On the redacted copy, you must identify the basis of your claim by marking each redaction as follows: You must separately mark with the word “CONFIDENTIAL” every page, or portion thereof, that you redacted and claim as exempt from public disclosure because it is either (1) a trade secret as defined in Section 30-4-40(a)(1) of the Freedom of Information Act, or (2) privileged and confidential, as that phrase is used in Section 11-35-410. You must separately mark with the words “TRADE SECRET” every page, or portion thereof, that you redacted and claim as exempt from public disclosure as a trade secret pursuant to Section 39-8-20 of the Trade Secrets Act. You must separately mark with the word “PROTECTED” every page, or portion thereof, that you redacted and claim as exempt from public disclosure pursuant to 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.

(f) In determining whether to release documents, the State will detrimentally rely on your redaction and marking of documents, as required by these bidding instructions, as being either “Confidential” or “Trade Secret” or “Protected”. By submitting a response, you agree to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney’s fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that you have redacted or marked as “Confidential” or “Trade Secret” or “Protected”. (All references to S.C. Code of Laws.) [02-2A125-3]

## **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]

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

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

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

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

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

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

## QUESTIONS FROM OFFERORS (MODIFIED)

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." We will not identify you in our answer to your question.

All questions must be submitted in writing and received by the Procurement Officer for this solicitation no later than **the date and time listed on the Cover Page 1.**

Email is the preferred method for submitting questions to the procurement officer, Title the "Subject Line" of your email, "**Questions 5400021756**". Questions must be submitted in an easily copied format such as MS Word.

Please do not place your questions in tables.

Email: [zyarbrough@mmo.sc.gov](mailto:zyarbrough@mmo.sc.gov)

## REJECTION/CANCELLATION (MODIFIED)

The State may cancel this solicitation in whole or in part. The State reserves the right to reject all submittals and not proceed with selection of a broker for any reason. Preparation of bid costs cannot be recovered in the event the State does not proceed with the selection of a broker.

## RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(f) **Do not submit bid samples or descriptive literature unless expressly requested.** Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D).  
[02-2A105-2]

## SIGNING YOUR OFFER (JAN 2004)

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

#### **STATE OFFICE CLOSINGS (JAN 2004)**

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <http://scemd.org/index.php/department/response/severe-winter-weather> [02-2A120-2]

#### **SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015)**

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

#### **TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)**

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

#### **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 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

**This Solicitation is exempt from the S.C. Procurement Code. The specific procedures of this Solicitation follow the Procurement Code as closely as possible excepting the time frames, appeals, and remedies. IRF reserves the right to waive or modify any procedure or rule set forth in this solicitation. This right to waive or modify governs the entire solicitation, including all amendments, negotiations, awards, or any other action.**

### CONFERENCE - PRE-BID/PROPOSAL (MODIFIED)

Pre-Bid/Proposal Conference Date and Time: **As listed on Cover Page 1**  
Location of Pre-Bid/Proposal Conference: **Tele-Conference**

A limited number of ports are available to attend via tele-conference. **If you'd like to attend via tele-conference, email the Procurement Officer for dial-in instructions no later than 08/16/2021 at 16:00 ET.** Ports will be available on a first-come first-serve basis.

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.

**All conference attendees should read the proposal and develop their questions in preparation for the conference. The pace of the conference will NOT afford individuals enough time to complete an initial review of the document during the conference.**

### CONTENTS OF OFFER (RFP) (MODIFIED)

- (a) Offers should be complete and carefully worded and should convey all of the information requested.
- (b) Offers should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
- (c) The contents of your offer must be divided into two parts, the technical proposal and the business proposal. Each part should be uploaded separately in SCEIS.
- (d) If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

### ELECTRONIC COPIES - REQUIRED MEDIA AND FORMAT (MODIFIED)

UNLESS SPECIFICALLY INSTRUCTED OTHERWISE IN THE SOLICITATION, you should submit your offer or modification in accordance with the clause titled "ON-LINE BIDDING INSTRUCTIONS." If you must submit an electronic copy other than using SCEIS, the following instructions apply. An electronic copy or copies must be submitted on USB drive. Submit the number of copies indicated on the cover page. Each copy should be on separate media. Your business and technical proposals must be on separate media. Every disk or USB drive must be labeled with the solicitation number and the offeror's name, and specify whether its contents address the technical proposal or business proposal. If multiple-disk sets are provided, each disk in the set must be appropriately identified as to its relationship to the set, e.g., 1 of 2. The electronic copy must be identical to the original offer. File format shall be compatible with Microsoft Office (version 2003 or later), or Adobe Acrobat or equivalent Portable Document Format (.pdf) viewer. The Procurement Officer must be able to view, search, copy and print electronic documents without a password. Submit your electronic copies to the following address: State Fiscal Accountability Authority, 1201 Main Street, Suite 600, Columbia SC 29201.

## ON-LINE BIDDING INSTRUCTIONS (MODIFIED)

(a) Mandatory Registration. You must register before you can submit an offer online! See 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."
3. Confirm your offer has a status of "submitted" by refreshing the "RFx and Auctions" screen.  
**Only offers with a status of "submitted" have been received by the State.**  
**Offers with a status of "saved" have not been received.**
4. Save or print a copy of your offer using the "Print Preview" button after your offer has been submitted.
  - i. Contact the SCEIS Service Desk at 803-896-0001 (select option 2 for SCEIS help) or
  - ii. Submit a SCEIS Service Desk Vendor Ticket Form: <http://www.sceis.sc.gov/vendorrequests/>

**IT IS EXTREMELY IMPORTANT THAT YOU DO NOT WAIT UNTIL THE LAST MINUTE TO ENTER YOUR SUBMISSION. REGISTRATION FOR NEW CONTRACTORS CAN TAKE UP TO THREE (3) DAYS.**

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

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

## PRESENTATIONS

Up to the top four (4) highest ranked Offerors Phase One (I) evaluations will be required to give a live presentation of their proposal to clarify or verify the contents and the representations made therein.

- a. Presentations are preferred to be held in person but may be held virtually at the Offeror's discretion. If the Offeror chooses to present in person, they are responsible for providing all equipment and materials necessary to conduct Presentations. The time allotted per individual Offeror shall not exceed one and one half (1.5) hour, which shall include 30 minutes to be allocated for panel questions and Offeror's answers.
- b. Note that **10/12/2021-10/13/2021** are tentatively scheduled for the live presentations. Offerors should reserve those dates. Successful offerors will be notified as quickly as possible to schedule specific dates and times.
- c. The activities of the Offeror should be limited to a live presentation of the Offeror's written proposal and the presentation outline provided. Evaluators may ask questions pertaining to the Offeror. The Offeror's answers are restricted to statements of facts. Offerors will not be allowed or permitted to introduce new information unless expressly requested by the Evaluators. Negotiation is not permitted at this stage in the procurement process and an Offeror may not change its proposal. The Offeror may be required to document an answer if such a written clarification is determined to be in the best interest of the State. The live presentation should be conducted in a straightforward manner in order to secure a clear and meaningful understanding of the Offeror's proposal.
- d. The Offeror will be required to demonstrate how their proposal meets the requirements of solicitation,
- e. The live presentation is designed to satisfy the evaluation panel's need for clarification and understanding of the information that was provided in the Offeror's written proposal. Therefore, the Offeror may neither ask questions nor receive preliminary assessments on its proposal from the members of the panel. Attendees at the live presentation session must include the key members of the Offeror's proposed management team who will be directly involved in the delivery of the services requested to the state.
- f. The Presentation script will be provided upon scheduling of presentation.



### III. SCOPE OF WORK/SPECIFICATIONS

**This Solicitation is exempt from the S.C. Procurement Code. The specific procedures of this Solicitation follow the Procurement Code as closely as possible excepting the time frames, appeals, and remedies. IRF reserves the right to waive or modify any procedure or rule set forth in this solicitation. This right to waive or modify governs the entire solicitation, including all amendments, negotiations, awards, or any other action.**

The State of South Carolina State Fiscal Accountability Authority Insurance Reserve Fund (IRF) seeks an insurance broker to advise the IRF on methods of protecting the assets of the State and the values insured by the IRF from catastrophic loss including, but not limited to, risk transfer, catastrophe modeling, loss control and any other suggested methods; and to manage placement of the property reinsurance program for the IRF in order to adequately protect IRF insureds against catastrophic loss. The IRF seeks a broker to provide insurance placement, advisory, and program-related services which will provide the same levels of services currently provided and same levels of protection currently in place, or increased service and protection which best meet the needs of the state.

This invitation is not an authorization to approach the insurance marketplace on behalf of the IRF. At this time, proposers are not authorized to approach insurers or other underwriting sources on behalf of the IRF. The IRF specifically requests that no insurance market contact be made on behalf of IRF, and that no market reservations or commitments be made for any purpose with respect to any insurance to be provided. Prospective brokers failing to comply with this condition may be subject to immediate disqualification.

#### Current reinsurance program and exposures to be covered

South Carolina is exposed to risk of catastrophic loss caused by either hurricane or earthquake, or both. Either event could produce widespread losses which exceed the IRF's assets. The IRF currently insures in excess of \$40 billion total insured value of property owned by governmental entities in South Carolina. Coverage is all risk and includes real property, contents, inland marine, data processing, and business interruption. Reinsurance coverage will be 100% following form to the IRF coverage, to include wind, flood, and earthquake. In addition, IRF requires coverage for terrorism.

The expiring program is indicative of IRF's willingness to participate in primary loss. IRF is willing to entertain various other viable alternatives and various other program structures that provide secure coverage at fair cost. IRF currently purchases a \$500 million property reinsurance program including coverage for the perils of wind, flood, and earthquake. In addition, the program provides \$150 million coverage for terrorism losses.

Under the current program IRF assumes a \$10 million self-insured retention for the first event during a policy year, a \$15 million self-insured retention in the aggregate, both with a \$1 million self-insured retention for subsequent events. As a result, under the current program IRF would be responsible for a maximum of \$10 million for the first event and a maximum of \$11 million total in the event of more than one event.

Immediately following the broker selection, IRF will make available to the Contractor full details of its exposures, its financial structure, loss history and any additional pertinent data requested. From the time of selection through March 30, 2022 the Contractor shall craft recommended programs, secure markets for the programs, and present written proposals for cost, coverage terms, and broker services to IRF. Program will be bound effective April 1, 2022.

IRF expects delivery of binders by April 1, 2022 or before. All carriers must be financially secure, as rated AM Best at A- or better (class 7 or higher financial size category) or other equivalent rating.

The Contractor should carefully consider services they can provide. IRF highly values Broker Services and expects considerable services, such as:

- Loss control inspections at a level acceptable to IRF, or better
- Catastrophic claims handling coordination
- Cat Modeling (RMS and AIR) and advice to data collection
- Advice on terms, limits, program structure, and risk transfer
- Other services the broker believes will be valuable

## IV. INFORMATION FOR OFFERORS TO SUBMIT

**This Solicitation is exempt from the S.C. Procurement Code. The specific procedures of this Solicitation follow the Procurement Code as closely as possible excepting the time frames, appeals, and remedies. IRF reserves the right to waive or modify any procedure or rule set forth in this solicitation. This right to waive or modify governs the entire solicitation, including all amendments, negotiations, awards, or any other action.**

### INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (MODIFIED)

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.

### INFORMATION FOR OFFERORS TO SUBMIT -- EVALUATION (MODIFIED)

PLEASE NOTE THAT IF TERMS AND CONDITIONS ARE OBJECTED OR QUALIFIED, OR OFFEROR INCLUDES ADDITIONAL TERMS AND CONDITIONS TO BE CONSIDERED, THE OFFER MAY BE DEEMED NON-RESPONSIVE AND WILL BE ELIMINATED FROM FURTHER CONSIDERATION.

IF YOU QUALIFY YOUR OFFER WITH A STATEMENT SUCH AS, "THIS IS NOT AN OFFER", THE OFFER WILL BE DEEMED "NON-RESPONSIVE" AND REMOVED.

In addition to information requested elsewhere in this solicitation, offerors should submit the following information for purposes of evaluation. Offerors should state each item and respond directly to each:

#### **Response Format:**

#### Technical Proposal:

1. Cover letter including the company name, address, and the name, telephone number, and e-mail address of the person representing the company on this solicitation.
  - i. Include a Table of Contents
2. Company background
  - i. Response to SECTION V, QUALIFICATIONS – REQUIRED INFORMATION (MAR 2015) and SECTION V, QUALIFICATIONS – SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2015)
  - ii. A written summary of the company's history and a description of its experience performing the services required for both large organizations and governmental entities.
  - iii. A list of all corporate offices and indicate which office will service this account.
  - iv. Identify one key executive who will be the contact for the Director of the IRF in the event a problem occurs with the program.
  - v. A written description of your firm, including any parent, affiliated or subsidiary company, and any business partners. Provide an organization chart of your firm and describe the relationship between each component of your firm.
  - vi. Disclose in detail anything that may create a conflict or appearance of a conflict of interest.
  - vii. Disclose whether, within the last five years, your organization or an officer or principal has been involved in any business litigation or other legal proceedings. If so, please provide an explanation and indicate the current status or disposition.
  - viii. A description of the level and duration of coverage of professional liability insurance your firm carries.

List the insurance carrier(s) supplying coverage.

- ix. A full biography for each firm employee who will be assigned to this account.
- x. A list of all current clients covered by the individual(s) who will cover this account.
- xi. A description of your firm's experience with other government organizations.
- xii. A list of relevant major insurance carriers likely to match IRF's needs in order of your priority. Demonstrate your firm's relationship with these insurers (i.e., premium volumes, other accounts, or other information).

3. References

- i. The name and address of at least one client who has hired your firm for similar services as detailed in this Broker Selection Process during the past five years, including the name, title, and telephone number of the contact person.
- ii. The name and address of any client who has terminated your relationship for performing similar services as detailed in this Broker Selection Process during the past five years and the reasons for doing so. Please include the name, title, and telephone number of the contact person.

- 4. Any additional information to further describe the qualifications and experience of broker.
- 5. Capacity and ability to service IRF needs and successfully fill the program.
- 6. Services the Broker expects to provide.
- 7. E&O Insurance and claims filed under E&O Insurance within the past five (5) years.
- 8. Any additional services Broker may provide.
- 9. Cost. Please quote commission which under no circumstances will exceed 5%. Commission should not be included in the Technical Proposal. Submit your commission as a separate document.
- 10. Attachments:
  - a. Solicitation Cover Page One & Two (with acknowledgement of amendments if applicable)
  - b. Minority Participation
  - c. Subcontractor Identification (if applicable)

Business (Price) Proposal

The Business Proposal shall be separate from the Technical Proposal. No pricing information shall be included in the Technical Proposal. Offerors shall provide their proposed Commission rate which shall not exceed 5%.

**MINORITY PARTICIPATION (JAN 2006)**

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

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

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

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

If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor? \_\_\_\_\_

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

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

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

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

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

For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL: <http://www.govoepp.state.sc.us/osmba/>  
[04-4015-1]

#### **SUBMITTING REDACTED OFFERS (MODIFIED)**

If your offer includes any information that you marked as "Confidential," "Trade Secret," or "Protected" in accordance with the clause entitled "Submitting Confidential Information," you must also submit one complete copy of your offer from which you have removed or concealed such information ( the redacted copy). The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted. Except for the information removed or concealed, the redacted copy must be identical to your original offer, and the Procurement Officer must be able to view, search, copy and print the redacted copy without a password.

## V. QUALIFICATIONS

**This Solicitation is exempt from the S.C. Procurement Code. The specific procedures of this Solicitation follow the Procurement Code as closely as possible excepting the time frames, appeals, and remedies. IRF reserves the right to waive or modify any procedure or rule set forth in this solicitation. This right to waive or modify governs the entire solicitation, including all amendments, negotiations, awards, or any other action.**

### QUALIFICATIONS OF OFFEROR (MAR 2015)

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

### QUALIFICATIONS -- REQUIRED INFORMATION (MODIFIED)

In order to evaluate your responsibility, offeror shall submit the following information or documentation for the offeror and any subcontractor, if the value of subcontractor's portion of the work exceeds 10% of your price (if in doubt, provide the information):

- (a) Include a brief history of the offeror's experience in providing work of similar size and scope.
- (b) Your most current financial statement, financial statements for your last two fiscal years, and information reflecting your current financial position. If you have audited financial statements meeting these requirements, you must provide those statements. [Reference Statement of Concepts No. 5 (FASB, December, 1984)]
- (c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) which you have performed and the general history and experience of your organization.
- (d) A list of every business for which offeror has performed, at any time during the past three year(s), services substantially similar to those sought with this solicitation. Err on the side of inclusion; by submitting an offer, offeror represents that the list is complete.
- (e) List of failed projects, suspensions, debarments, and significant litigation.
- (f) Offerors must furnish evidence of its ability to provide broker services in accord with the terms and conditions of these specifications and in accord with a program of the magnitude of that required for the State of South Carolina. The IRF will accept as evidence other programs which, within the past five years, have obtained reinsurance in the amount of \$400,000,000 (governmental programs preferred) when such programs have been successfully completed or "filled" with no holes or gaps in coverage, no internal limits on wind, flood, or earthquake insurance, and with any other limitation noted. The IRF reserves the right to make the final determination as to the proposer's ability to provide the products or services requested herein.

### QUALIFICATIONS - SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2015)

(a) This section establishes special standards of responsibility. **UNLESS YOU POSSESS THE FOLLOWING MANDATORY MINIMUM QUALIFICATIONS, DO NOT SUBMIT AN OFFER:**

**1. Offeror must have five (5) years of experience providing services as listed in Section III. Offeror's experience may be substituted with the experience of the Offeror's key Executive.**

(b) Provide a detailed, narrative statement with adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation. If you intend for us to consider the qualifications of your key personnel, predecessor business(es), or subcontractor(s), explain the relationship between you and such person or entity. [R. 19-445.2125(F)][05-5010-2]

## **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**

**This Solicitation is exempt from the S.C. Procurement Code. The specific procedures of this Solicitation follow the Procurement Code as closely as possible excepting the time frames, appeals, and remedies. IRF reserves the right to waive or modify any procedure or rule set forth in this solicitation. This right to waive or modify governs the entire solicitation, including all amendments, negotiations, awards, or any other action.**

### **AWARD CRITERIA -- PROPOSALS (MODIFIED)**

Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State.

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

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

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

Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [06-6058-1]

### **EVALUATION FACTORS -- PROPOSALS (MODIFIED)**

Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance by Phase, with the first factor being the most important. The IRF reserves the right to use a Selection Panel to assist in making its final decision.

#### Phase 1 – Proposal Evaluation

1. Qualifications and experience of broker
2. Capacity and ability to service IRF needs and successfully fill the program
3. Services the broker expects to provide (including CAT modeling, loss control inspections and services)
4. Commission
5. Any additional services broker may provide or recommend

After the evaluation of the Phase I, the scores will be totaled and ranked. Presentations may be requested from up to four (4) highest ranking Offerors after the Phase I evaluations. See Section IIB, PRESENTATIONS.

#### Phase 2 - Presentations

1. Qualifications and experience of broker
2. Capacity and ability to service IRF needs and successfully fill the program
3. Services the broker expects to provide (including CAT modeling, loss control inspections and services)
4. Commission
5. Any additional services broker may provide or recommend

Once Phase 2 evaluations are complete, Offerors who participated in presentations will be ranked from the most advantageous to the least advantageous.

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

**This Solicitation is exempt from the S.C. Procurement Code. The specific procedures of this Solicitation follow the Procurement Code as closely as possible excepting the time frames, appeals, and remedies. IRF reserves the right to waive or modify any procedure or rule set forth in this solicitation. This right to waive or modify governs the entire solicitation, including all amendments, negotiations, awards, or any other action.**

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

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

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

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

### **CHOICE-OF-LAW (JAN 2006)**

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

### **CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (MODIFIED)**

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the State's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. (d) The agreement shall constitute the entire contract between the parties and provides no guarantee of profit, directly or indirectly, from the reinsurer to the ceding entity or from the ceding entity to the reinsurer.

### **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]

#### **EFT INFORMATION (FEB 2021)**

The Contractor must furnish to the State Treasurer's Office information necessary for making a payment by electronic funds transfer (EFT). You may do this by completing STO Form 4 and filing it with the STO. Additional information is available at the STO's website at <https://treasurer.sc.gov> (.). The Contractor is responsible for the currency, accuracy and completeness of the EFT information. Updating EFT information may not be used to accomplish an assignment of the right to payment, does not alter the terms and conditions of this contract, and is not a substitute for a properly executed contractual document. [07-7A027-1]

#### **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]

#### **NO INDEMNITY OF DEFENSE (FEB 2015)**

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

#### **NOTICE (JAN 2006)**

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

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

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

#### **PAYMENT and INTEREST (FEB 2021)**

(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by electronic funds transfer (EFT). See clause titled "EFT Information." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off. [07-7A055-4]

#### **PUBLICITY (JAN 2006)**

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

#### **PURCHASE ORDERS (JAN 2006)**

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

#### **SURVIVAL OF OBLIGATIONS (JAN 2006)**

The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or

expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]

#### **TAXES (JAN 2006)**

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

#### **TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)**

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

#### **THIRD PARTY BENEFICIARY (JAN 2006)**

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

#### **WAIVER (JAN 2006)**

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

## **VII. TERMS AND CONDITIONS -- B. SPECIAL**

**This Solicitation is exempt from the S.C. Procurement Code. The specific procedures of this Solicitation follow the Procurement Code as closely as possible excepting the time frames, appeals, and remedies. IRF reserves the right to waive or modify any procedure or rule set forth in this solicitation. This right to waive or modify governs the entire solicitation, including all amendments, negotiations, awards, or any other action.**

### **BROKER COMPENSATION**

IRF intends for the selected program to be stable for at least seven (7) years. Therefore, IRF expects to renew its contract with Contractor, at the option of the IRF, each year until 2028. The Contractor's commission will be capped at 5% and in no event will exceed 5%. Any earned commission in excess of the five percent (5%) cap will be returned to the IRF.

Costs associated with Broker Services including commissions to wholesaler broker/intermediaries, catastrophe modeling, loss control expenses, etc. are to be included in and paid for by the commission received by the Broker for the State's policy. IRF will not pay travel expenses or express mail or other administrative expenses of the Broker.

Contractor will identify any wholesale broker/intermediaries which will be used by the Contractor. Compensation for any wholesale broker/intermediary must be included in the commission and no additional compensation will be paid to any wholesale broker/intermediary. IRF reserves the right to approve all personnel, wholesale broker/intermediary, or any other sub-consultants utilized in this project.

Payment to the Contractor is expected to be made simultaneously with the payment of the premium.

The IRF reserves the right to reduce the commission otherwise due to the Contractor in the event the program is not completely filled or in the event limits are placed on wind, flood, or earthquake exposure, or for any other "hole" which leaves the State of South Carolina unprotected by insurance. The reduction in the commission will be in the same proportion to the amount of the program that is left unfilled or limited; internal limits on wind, flood, or earthquake exposure constitute a "hole" and will result in the reduction of compensation payable to the broker.

In the event that the program is not completely filled or in the event limits are placed on wind, flood, or earthquake exposure, or for any other "hole" in the program, the IRF reserves the right to engage the services of another broker or reinsurer to complete the program; reserves the right use the partially filled program; and reserves the right to discontinue the services of the broker selected pursuant to this contract. In the event of dissatisfaction or termination of the Contractor, IRF reserves the right to engage services of another broker or reinsurer competing under this solicitation to complete the remaining portion of the seven (7) years.

### **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]

## **CONFERENCE -- PRE-PERFORMANCE (MODIFIED)**

If requested by the Procurement Officer or UGU, a pre-performance conference between the contractor, state and Procurement Officer shall be held virtually or at a location selected by the state within five (5) days after final award, and prior to commencement of work under the contract. The responsibilities of all parties involved will be discussed to assure a meeting of the minds of all concerned. The successful contractor or his duly authorized representative shall be required to attend at contractor's expense.

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

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

## **CONTRACTOR'S LIABILITY INSURANCE - GENERAL (MODIFIED)**

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

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

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

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

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

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

(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it. (e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require

complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

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

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

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

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

[07-7B056-2]

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

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

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

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

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

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

### **DEFAULT (JAN 2006)**

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

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

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

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

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

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

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

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

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

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

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

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.[07-7B075-1]

## **EXPENSES**

The provision above labeled 'Fixed Pricing Required' provides that "Any pricing provided by contractor shall include all costs for performing the work associated with that price." The clause above labeled "Contractor's Obligation -- General" provides that "The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, as well as all travel expenses, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work." Consistent with these provisions, no costs or expenses will be reimbursed. Your unit price must include all costs and expenses, including without limitation, benefits, insurance, and any travel expenses involved in performing services at the location specified in the Purchase Order. Notwithstanding the foregoing, a Contractor may be reimbursed for travel expenses, in accordance with the State of SC travel regulations, if agreed upon in advance by a UGU in the Purchase Order, and may only be authorized if the UGU needs to have contractor's worker attend a meeting or provide services at a location other than the designated workplace.

## **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, cancellation, 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]

### **INTERMEDIARY CLAUSE**

The Contractor will be recognized as the intermediary negotiating subsequent reinsurance for all business herein. All communications (including but not limited to notices, statements, premium, return premium, commissions, taxes, losses, loss adjustment expense, salvages and loss settlements) relating thereto shall be transmitted to the IRF or Reinsurer through the Contractor. Payments by IRF to the Contractor shall be deemed to constitute payment to the Reinsurer. Payments by the Reinsurer to Contractor shall be deemed to constitute payment to the IRF only to the extent that such payments are actually received by the IRF.

### **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]

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

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

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

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

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the Contract or subsequently agreed upon;
- (c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;
- (d) in such other manner as the parties may mutually agree; or,
- (e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the



provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

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

[07-7B160-1]

#### **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]

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

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

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

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

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

[07-7B212-1]

#### **TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006)**

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 1years, 0months, 0days 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 (FEB 2021)**

At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of 1year(s), 0month(s), and 0day(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. [07-7B245-3]

#### **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**

**This Solicitation is exempt from the S.C. Procurement Code. The specific procedures of this Solicitation follow the Procurement Code as closely as possible excepting the time frames, appeals, and remedies. IRF reserves the right to waive or modify any procedure or rule set forth in this solicitation. This right to waive or modify governs the entire solicitation, including all amendments, negotiations, awards, or any other action.**

**INTENTIONALLY OMITTED**

## 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.

---

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.

---

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)

---

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]