

# Procurement Compendium



## A Compendium of Standardized Clauses Commonly Used by Division of Procurement Services

**Version 2.0.2 (Interim Revision)  
(Released September 2017)**

**[These clauses have been tailored for use in procurements conducted pursuant to the South Carolina Consolidated Procurement Code by the Information Technology Management Office or the State Procurement Office.]**

This document does not create a binding procedure or create rights or obligations for or against the state. Rather, this document provides recommendations to assist state Procurement Officers in fulfilling their responsibilities.

## Summary of Changes

Version 2.0 incorporated all changes to Compendium clauses since publication of Version 1.1 in April 2014. It also added several appendices. Version 2.0.1 made several substantive revisions, revised and added appendices, and incorporated a number of editorial changes to correct grammar, punctuation and spelling errors. Clause changes can be reviewed in the Compendium Changes Log, which appears as Appendix Z. Appendix changes are noted in the Appendix Cross Reference table.

This Version 2.0.2 includes the following substantive changes:

1. Revised Clause No. 2A077-2, Iran Divestment Act - Certification (DEC 2015)
2. New Clause No. 2A083-1, Open Trade Representation (JUN 2015)
3. New Clause No. 2A097-1, Questions from Offerors - Amendment (JUN 2017)
4. Revised Clause No. 2A105-3, Responsiveness/Improper Offers (SEP 2017)
5. Revised Clause No. 4015-2, Minority Participation (DEC 2015)
6. Revised Clause No. 7A025-2, Disputes (SEP 2017)
7. Revised Clause No. 7B056-3, Contractor's Liability Insurance - General (SEP 2017)
8. Revised Clause No. 7B225-3, Statewide Term Contract (DEC 2015)
9. Revised Clause No. 7C010-3, Standard Purchase Order Clause Set (DEC 2015)
10. Revised Clause No. 9005-3, Nonresident Taxpayer Registration Affidavit Income Tax Withholding (JAN 2016), and updated Appendix D
11. New Appendix CC – "Drafting Solicitation Amendments For Q&A (JUL 2017)"

It also incorporates a number of editorial changes reflecting organizational changes provided for in the South Carolina Restructuring Act of 2014.

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## **BACKGROUND**

This document resulted from an effort to standardize our most commonly used provisions and clauses. The goal of the effort was to facilitate efficiency, quality control, and training.

The provisions and clauses appearing in this compendium have been approved for use by any Procurement Officer employed by the State Procurement Office or the Information Technology Management Office. THIS COMPENDIUM IS NOT A SUBSTITUTE FOR YOUR PROFESSIONAL JUDGMENT OR LEGAL ADVICE.

## **USER INFORMATION & INSTRUCTIONS**

Every solicitation issued by ITMO or SPO must include the following exactly as they appear in this document: the Cover Page, Page Two, the Instructions to Offerors – General Instructions, and the Terms and Conditions – General. In addition, every solicitation must be organized in accordance with the Uniform Solicitation Format (see below). Solicitations conducted under 11-35-1529 (reverse auction), -1550 (small purchase), -1560 (sole source), -1570 (emergency), & -1575 (procurements at auction) are exempt from these two requirements.

Except as provided above, Procurement Officers may alter any clause. However, Procurement Officers are encouraged to consult with a supervisor, Chief Procurement Officer, or legal counsel before altering any form, provision or clause.

All of the provisions and clauses in this document have a unique title. Many of them have a parenthetical date appearing immediately after the title, e.g., "AWARD NOTIFICATION (AUG 2004)." Any time any provision or clause is revised, a new date will be assigned. These conventions allow those familiar with them to avoid rereading every provision or clause each time it is encountered. ACCORDINGLY, DO NOT INCLUDE EITHER THE TITLE OR THE PARENTHETICAL DATE UNLESS YOU ARE USING THE TEXT EXACTLY AS IT APPEARS HEREIN! If you modify the text of a clause, delete the date from the clause title and replace it with the word "modified" in parenthesis. Also, delete the clause number from the end of the text. As an example:

Original Clause:

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]

Modified Clause:

OMIT TAXES FROM PRICE (MODIFIED): Unless you are bidding as a governmental entity, do not include any sales or use taxes in Your price that the State may be required to pay.

## **GUIDANCE**

Many of the provisions and clauses in this document are accompanied by guidance regarding when and how the provision or clause should be used. This guidance appears next to the relevant clause.

## UNIFORM SOLICITATION FORMAT

The following outline has been adopted by SPO and ITMO to standardize the organization of all solicitation documents used in procurements exceeding the small purchase threshold. Use of this format is mandatory.

- I. Scope of Solicitation
- II. Instructions to Offerors
  - A. General Instructions
  - B. Special Instructions
- III. Scope of Work / Specifications
- IV. Information for Offerors to Submit
- V. Qualifications
- VI. Award Criteria
- VII. Terms and Conditions
  - A. General
  - B. Special
- VIII. Bidding Schedule / Cost Proposal
- IX. Attachments to Solicitation

Each item in the outline must be used in the solicitation document as a header for the appropriate contents of the solicitation. The clauses in this document have been organized according to this outline. For example, clauses that should appear under the heading "VI. Award Criteria" will appear in Part 6 of this document.

## GUIDANCE ON THE UNIFORM SOLICITATION FORMAT

Most South Carolina state agencies use a computer system to automate critical back-office functions such as procurement, payroll, and employee leave. The software that drives this system was licensed from a company named SAP. The product is SAP's ERP software, which is SAP's enterprise resource planning package. "SCEIS" is an acronym for South Carolina Enterprise Information System, which is South Carolina's version of the SAP product. Document Builder is the subsystem of SCEIS that automates the solicitation-building process outlined in this document. Most references to SCEIS are references to the Document Builder subsystem.

### Cover Page

- (a) Header Block: This block identifies the chosen source selection method, e.g., Invitation for Bids, Request for Proposals, or Best Value Bid, and provides the Procurement Officer's name and contact information.
- (b) Description: This block provides a brief description of the solicitation. The description should mirror the description used in SCBO. Your description should be a brief phrase that accurately identifies the supply or service to be acquired. You can elaborate on the description in your Scope of Services section.
- (c) Using Governmental Unit: This block identifies the name of the agency for which the procurement is being conducted. If you have more than one agency, select one of the following two phrases, as appropriate:
  - "Statewide Term Contract"
  - "Multi-Agency (See Part I., Scope of Solicitation, for a complete list of Using Governmental Units)"

If "Multi-Agency" is selected, the Procurement Officer must include a complete list of Using Governmental Units in Part I, Scope of Solicitation.

- (d) **Submit Offer By:** This block provides the date and time selected for opening.
- (e) **Number of Copies to be Submitted:** This block identifies the number of copies an offeror should submit. Use one of the following choices from the dropdown menu in SCEIS. The Procurement Officer must insert a numeral for the “x” in either phrase.
  - (1) “One (1) original and (x) copies”
  - (2) “One (1) original and (x) copies (marked ‘copy’)”
  - (3) “One original in hard copy and (x) electronic copies (format specified herein)”
  - (4) “(x) identical electronic copies”
  - (5) “Upload one copy to the URL provided below”
- (f) **Questions Must be Received By:** This block identifies the date by which questions must be received. If you leave this blank, the Questions from Offerors provisions provide a default of five days prior to opening.
- (g) **Award & Amendment:** This block identifies the date that the award or notice of intent to award will be posted.
- (h) **Conference Type:** This block appears on the cover page of all procurements. If there is no conference, the phrase “None - Not Applicable” should be inserted next to “Conference Type”. In the rare circumstance that you input multiple dates into SCEIS for multiple conferences, you will, below the “Date and Time” line, insert the phrase “Additional Conferences Are Scheduled. See Part II.B.” For all conferences, SCEIS will also insert the address the Procurement Officer previously selected.
- (i) **Bid Acceptance Period:** Immediately above the signature block, the Cover Page includes the following phrase: “You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date.” The Procurement Officer should adjust the minimum as appropriate for the solicitation. If you are buying a commodity with a volatile price, 30 days may be too long. If you are doing a solutions based RFP for which price volatility is not an issue and you require 45 days just for the evaluation, 30 days may be too short. Thirty days is the default.
- (j) **Addresses:** This block only appears in the Cover Page used by MMO. This block identifies the address to which bids or proposals must be submitted if not submitted via SCEIS.

## Page Two

Page Two is a new standard second page to all solicitations. If you determine that preferences do not apply to the solicitation, include the phrase “PREFERENCES DO NOT APPLY” in red letter text at the end of both Preferences blocks.

### I. Scope of Solicitation

- (a) **Brief Description:** This section exists to provide a very brief introduction into the purpose of the solicitation. Ordinarily, the information provided in this section would be limited to a brief overview of the products or services to be acquired and which elaborates on the description appearing on the cover page. Often this information will be custom drafted.

Special Instructions on Statewide Term Contracts: The Procurement Officer must draft appropriate text for the “Scope” part of the solicitation that carefully defines the parameters of a statewide term contract. The clause entitled “Statewide Term Contract – Scope” provides that the scope of the statewide term contract is defined by the brief description included in this part of the solicitation.

- (b) **Maximum Contract Period:** You may include a Maximum Contract Period here; however, you should add a notation that the dates provided are proposed dates only. (A Maximum Contract Period is not appropriate for one-time buys.) To help you, assorted clauses are available on this point.

- (c) Budget Maximums: Budget maximums are discouraged. If a budget estimate or maximum is stated, that information would go here. To help you, assorted clauses are available on this point.

#### II.A. Instructions to Offerors – General Instructions

These clauses are used, as a group, in all competitive procurements involving a written solicitation. For acquisitions above the small purchase threshold, their use is mandatory. These clauses provide basic instructions to the vendor community regarding how to respond and how the process will be conducted. They provide a baseline set of procedures. Additions to or modifications of these baseline procedures are affected by adding provisions to the section labeled: II. Instructions to Offerors – B. Special Instructions.

**Definitions:** Learn the definitions. To facilitate clarity and consistency, the definitions in Part II.A., Instructions to Offerors – General Instructions, should be used, as appropriate, in all clauses you custom draft. In other clauses, do not substitute new terms for defined terms. For example, the terms “State,” “Using Governmental Unit,” and “Ordering Entity” have been defined. The name of a particular agency, say DOT, should not be substituted for the term “State.” Likewise, the term “agency” should not be used at all. Rather, use the term “State,” “Using Governmental Unit,” or “Ordering Entity” as appropriate.

#### II.B. Instructions to Offerors – Special Instructions

This section should be used to either add to or modify the baseline procedures established by the general instructions stated in the section labeled: II. Instructions to Offerors – A. General Instructions. The clauses in this category represent those clauses used frequently. The circumstances of any given procurement may warrant drafting a unique clause that differs from those available here.

**Mandatory Pre-Opening Conferences:** Requiring attendance at conferences prior to opening can substantially limit competition. In addition, mandatory attendance has limited benefits. First, offerors can be bound by the information they would acquire, whether or not they attend. Second, offerors can send a straw man - untrained staff that attends only to meet the requirement, but that does not benefit from attendance. Before a pre-opening conference can be made mandatory, the requirements of Regulation 19-445.2042 must be met. This requirement applies equally to a solicitation for competitive sealed proposals. R. 19-445.2095(H)(1).

#### III. Scope of Work / Specifications

- (a) This section should contain any specifications for a commodity that are not directly included in the bid schedule. This section should also contain the scope of work for a services contract. Some paragraphs, e.g., performance bonds, insurance, delivery, may be appropriately placed in either this section or the section labeled VII. Terms and Conditions – B. Special. Each Procurement Officer will have to exercise their professional judgment. If the specifications are very limited and contained completely within the Bidding Schedule, it may be appropriate to leave this section blank, except for a clause that states “See attached Bidding Schedule,” or as appropriate, “See attached Price Proposal Form.”
- (b) Frequently used clauses have been included in this category. However, these clauses are not appropriate for all situations.

#### IV. Information for Offerors to Submit

As appropriate, use this space to: (a) summarize and cross-reference to the other portions of this solicitation that call for offerors to submit documentation or information, (b) request information that will be used for evaluation, if that information has not been requested elsewhere, and (c) request information that does not fit appropriately in another section, e.g., information regarding minority subcontractors, or information on contractor’s use of off-shore subcontractors. To help you, assorted clauses are available on this point.

## V. Qualifications

Ordinarily, the Procurement Officer will include the basic clause entitled "Qualifications." If specific information or documents are required, the clause entitled "Qualifications – Required Information" should be used. If the solicitation will be establishing mandatory minimum requirements for experience or other qualifications, the Procurement Officer should use the clause labeled "Qualifications – Mandatory Minimum." Using this clause should be the exception, rather than the rule. Potentially, all three could be used.

Part 5, Qualifications, should NOT include post-award performance obligations. This area is only for requesting information or documentation that will be used to determine responsibility. For example, the following statement is a performance obligation that should appear in Part 3 (Scope of Work / Specifications), not a responsibility requirement for Part 5: "Contractor must maintain a service organization in Spartanburg adequate to service this contract."

Do not simply cross reference to Part 3 (Scope of Work / Specifications) or Part 4 (Information for Offerors to Submit)!

**Requesting References:** Consider the following statement: "References: Offeror shall provide the names and contact information of three businesses for which contractor has provided, during the last three years, similar services for at least one year." Assume the low bid is from a highly qualified firm that did not provide but two references. Must the bid be rejected? On one hand, the failure to provide references is a minor informality, which can be waived or corrected. Section 11-35-1520(13)(j) (identifying "failure of a bidder to furnish references" as a minor informality). On the other hand, failure to meet a mandatory minimum experience requirement requires rejection. When the two are drafted together, the confusion is obvious. You should not use a request for references to establish mandatory minimum qualifications. Use the recommended clauses in Part 5 to help avoid this problem.

**Pre-Award Responsibility Requirement v. Post-Award Performance Obligation:** Solicitations often fail to take this distinction into consideration. To illustrate, consider the following statement: "Qualifications: Offeror shall have no less than ten licensed nurses on staff." Taken alone, this requirement probably creates a pre-award responsibility criteria, not a post-award performance obligation. As written, the successful offeror could have ten licensed nurses on staff the day of award and fire three of them the next day. Moreover, by eliminating any offeror with less than ten licensed nurses on staff, the solicitation has restricted competition; a very qualified firm that recently lost one of its ten long-term nurses might be disqualified, while a new firm that just hired ten new graduates would qualify. Either way, the requirement has done nothing to guarantee that the firm will maintain that staffing level. In contrast, the solicitation could have said nothing about pre-award qualifications (opening competition), but could have created an enforceable performance obligation. For example, the solicitation could have stated that "At all times during the term of this contract, contractor shall employ no less than ten full-time, properly licensed, registered nurses."

Legal Commentary: Regarding the distinction between definitive responsibility criteria and contractual performance obligations, see *Hettich GmbH and Co.*, KG, B-224,267, 1986 WL 64262, at 2 (Comp. Gen. October 24, 1986) ("Definitive responsibility criteria are specific and objective standards, established by an agency for a particular procurement, for use in measuring an offeror's ability to perform the contract; these special standards establish a precondition to award. Definitive responsibility criteria limit the class of offerors to those meeting specified qualitative and quantitative qualifications that the agency determines are necessary for adequate contract performance. Thus, definitive responsibility criteria involve a bidder's eligibility for award and not its performance obligations under the contract. In a strikingly similar case, *Johnson Controls, Inc.*, B-200466, Feb. 20, 1981, 81-1 CPD 120, the solicitation required that service personnel employed by the successful contractor for the repair and maintenance of a highly complex energy management and control system "be certified by the manufacturer's representative to be qualified to maintain the completely installed ... system." We found that this provision did not constitute a definitive responsibility criterion. We stated that such provisions, which state how and by whom the work is to be accomplished, are performance requirements

and are to be distinguished from requirements which are preconditions of award.... In our view, the cited RFP provisions are merely part of the general specifications concerning performance (how and by whom the work is to be accomplished) and do not establish a precondition to award.”) (citations omitted).

**Experience of Staff v. Experience of Offeror:** Solicitations often state that offerors must meet certain minimum experience or qualification requirements. Applied literally, such statements are overbroad, unnecessarily restrict competition, and fail to consider the experience of the staff. For example, say John Doe has worked in Aiken for 25 years as the primary manager of ACME Janitorial Co.. He hired the janitors (many of whom come and go), acquired the supplies, and oversaw all operations. Mr. Doe moves to Columbia and opens his own business, Jan-Doe Cleaning, Inc. A requirement that offeror have 3 years experience might exclude Jan-Doe Cleaning, Inc., while allowing ACME Janitorial, Inc., which recently hired a new MBA with no management experience in the janitorial industry. In this scenario, the requirement did not serve its purpose – to acquire qualified vendors. Accordingly, if you create mandatory minimum qualifications, consider allowing an offeror to meet that requirement by relying on its staff.

Legal Commentary: Regarding the use of staff experience in determining responsibility, see *To the Nello L. Teer Company*, 1957 WL 1485, 36 Comp. Gen. 673, B- 130,910 (Comp.Gen. Mar 26, 1957) and *R. R. Mongeau Engineers, Inc.*, 1984 WL 44001, B- 213,330, 84-1 CPD P 333 (Comp.Gen., Mar 20, 1984) (We have recognized that an evaluation of a firm’s corporate experience need not be limited to the time from which the corporation began its legal existence. See *Harry Kahn Associates, Inc.*, supra. It is not improper for an agency to consider the experience of a predecessor firm or of a corporation’s principal officers which was obtained prior to the date the bidder was incorporated. In *Haughton Elevator Division, Reliance Electric Company*, supra, we held that experience gained by a corporation’s officers before the date of the firm’s incorporation could properly be considered by the contracting officer in making a determination whether the firm met an eligibility criterion which was similar to the eligibility criterion set forth in the present IFB.”) (citations omitted).

**Subcontractor’s Qualifications:** In determining whether an offeror is responsible, you may consider the qualifications of any applicable subcontractor identified in an offer. R. 19-445.2125(G).

Legal Commentary: See *Contra Costa Electric, Inc.*, 1981 WL 24308, B- 200,660, 81-1 CPD P 196 (Comp.Gen., Mar 16, 1981) (explaining that a prime contractor may meet an experience requirement by having previously performed the necessary work with its own organization or by using the subcontractors now proposed); *Hardie-Tynes Manufacturing Company*, 1990 WL 269557, 69 Comp. Gen. 359, B- 237,938, 90-1 CPD P 347 (Comp.Gen., Apr 02, 1990) (“The experience of a technically qualified subcontractor may be used to satisfy definitive responsibility criteria relating to experience for a prime contractor-bidder.”)

## VI. Award Criteria

- (a) This section should contain the criteria that will be used for determining award and the evaluation factors used in any evaluation. This section should not be used for requesting information or documentation.
- (b) Prior to drafting this section, you should **carefully** consider how the various possible responses will be evaluated.
- (c) IF YOU ASK FOR PRICING OR COST INFORMATION THAT WILL NOT BE USED EITHER TO DETERMINE THE LOW BID OR THE HIGHEST RANKED OFFEROR, STATE THAT FACT SPECIFICALLY. For example, if the price or cost of options on equipment is sought but will not be included in your evaluation, state something like “Option pricing will not be used to determine the lowest bidder. An offer may be rejected if option pricing is deemed unreasonable.”

## VII. A. Terms & Conditions - General

These clauses are used, as a group, in all competitive procurements involving a written solicitation. These clauses, which are applicable to all types of procurements, regardless of source selection method or item to be acquired, provide basic contract clauses regarding the contractor's *post-award performance obligations*. Additions to these baseline clauses should be included in the section labeled VII. B. Terms and Conditions - Special.

## VII. B. Terms & Conditions - Special

These clauses are used as needed. The Procurement Officer must exercise professional judgment when deciding to include one of the following clauses. Guidance specific to each clause is provided in the table below.

## VIII. Bid Schedule / Price-Business Proposal

- (a) If you have a bid schedule, place it here.
- (b) If you are including price as an initial evaluation criteria, request pricing information here.
- (c) If you seeking a business proposal (which includes pricing information, but not as a separate evaluation factor), request that business proposal here.
- (d) If you are not requesting any pricing information, include a statement that this section has been intentionally left blank.

## **ASSORTED GUIDANCE**

### Awards & Intent to Award

Every award or intent to award shall be titled either "Award" or "Statement of Award," even if the document is used to suspend, reinstate, cancel or terminate an award, contract, or solicitation.

Protest Rights: Section 11-35-1520(10) mandates that every award or intent to award must contain a statement of the bidders right to protest (unless the amount of the award is \$50,000 or less, Section 11-35-4210(1)(d)). Section 11-35-4210(8) mandates that every award or intent to award must contain the address of the appropriate Chief Procurement Officer.

Maximum Contract Period (Guidance For Contracts Other than a One Time Buy): As standard practice, a document labeled "Intent to Award" is issued for all contracts with a total or potential value of \$100,000 or more. As stated on its face, this document "becomes the official statement of award effective [on a date specified], unless otherwise suspended or canceled." For contracts with a total or potential value of less than \$100,000, a document labeled "Statement of Award" is issued. Once the official statement of award is effective, contract formation has occurred. However, the effective date of award may or may not coincide with the contract period (though it usually does). As provided in the clause entitled "Term of Contract – Effective Date / Initial Contract Period", the effective date of a contract is the first day of the Maximum Contract Period as specified on the final statement of award. Accordingly, you should specify the Maximum Contract Period on all award statements.

### Cancellation of Solicitation

Pre-Opening: If a solicitation is terminated prior to opening, notice of this action should be provided by issuing a final "amendment". [For SCEIS users: After a "no award" solicitation amendment is issued, you must return to both the requisition and solicitation header page, and change the "status" indicator from "active" to "no award". Failure to do so disrupts SCEIS's reporting capability.]

Post-Opening: Terminating a solicitation after opening requires a written determination that satisfies the requirements of Regulation 19-445.2065 (IFB) or Regulation 19-445.2097 (RFP), as applicable. If a solicitation is terminated after opening, notice of this action should be provided by issuing an award or intent to award statement (not a document labeled "No Award"). The statement should include both (a) the following subheading: "Notice of Cancellation of Solicitation," and (b) either a copy of the written

determination or notice that a written determination has been made and is available upon request. Clauses under the Award part of this compendium provide assorted appropriate clauses.

### Cancellation of Award

After an award or intent to award has been issued, it may be cancelled prior to the beginning of contract performance, but only in accordance with R. 19-445.2085(C). The cancellation must be justified by a written determination. Only a Chief Procurement Officer may order such a cancellation. If a procurement activity is terminated after posting of the intent to award, but prior to final award, the termination should be effectuated by re-posting your award statement, annotated with the appropriate clause to reflect its cancellation and including either the CPO's written determination under R. 19-445.2085(C) or a URL reflecting where it is posted. If the award is cancelled after it goes final (which will be extraordinarily rare), you need take no action in SCEIS. The CPO will issue a written order and send it to the awarded vendor.

### Referring to Web Sites / Uniform Resource Locators

In preparing your solicitation, do not reference information posted on the internet unless the web site is maintained by your organization and you have a procedure in place to ensure the availability of that information for the duration of the contract. This guidance does not address posting solicitation documents on the internet.

### Cost v. Price

When drafting your solicitation, be cognizant of the difference between cost and price. Cost is "actual expenses incurred in delivering a product, service, or construction; includes both direct and indirect costs, but does not include fee or profit for the vendor." In contrast, price is "the total amount, in money or other consideration, to be paid or charged for a commodity or service; normally includes all costs (direct labor, overhead, materials) and profit or fee." National Association of Governmental Purchasing, Inc., Dictionary of Purchasing Terms 22 & 62 (5th ed. 1998).

## **GUIDANCE ON STANDARD FORMS & APPENDICES**

The appendices have been reordered in this version. Appendices A through T are sample documents, presented in the same order they would appear during the procurement process. The list of user-selected clauses has been moved to the end of the Compendium for easy access. Other appendices have been renamed and there are several additions since version 1.2.

Appendices A, B, & C, Cover Pages (Online and paper bidding) and Page Two: For guidance on these appendices, please see the guidance above under the heading Guidance on the Uniform Solicitation Format.

Appendix D, Instructions for Non-Resident Taxpayer Registration & I-312: For guidance on this appendix, please see the instructions appearing in the form.

Appendix E, Offeror's Checklist: This form was drafted several years ago to help avoid defective bids and proposals. Use is optional.

Appendix F, Standard Equipment Agreement: Always use this form in conjunction with the clause in Part 2B entitled Lease Form – Questions. This form must be used as required by Regulation R.19.445.2152(B)(1) and in Section 11-35-2010(2).

Effective February 8, 2017, Division of Procurement Services awarded a statewide term contract for IT Equipment Leasing. The leasing contract includes a Master Equipment Lease Agreement. Information about Contract No. 4400015301, including links to the Master Equipment Lease Agreement and other documents, is available at <https://procurement.sc.gov/files/contracts/IT%20Leasing%20june%202022.pdf>(.)

Appendix G, Purchase Order Attachment – Acceptance of Orders 10% Below Statewide Term Contract Price: This form is part of all solicitations for statewide term contracts. Its use implements provisions of Section 11-35-310(35).

Appendix H, Service Provider Security Assessment Questionnaire: This form may be used in procurements involving significant risks of information security.

Appendix I, South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software - Single Agency: This form must be used in procurements requiring software license agreements for single agencies.

Appendix J, Software Table: This form is a companion to Appendix I.

Appendix K, Sample Low Bid Formulas: Usually, the results of a competitive sealed bid are determined by simply comparing a single price offered by each bidder. In some procurements, however, the “price” bid requires some formula or calculation. In conjunction with the clause entitled “Calculating the Low Bid”, several sample low bid formulas have been included to illustrate this concept. Those examples appear in Appendix K. Please also see the guidance above under the heading “VI. Award Criteria”.

Appendix L, Buyer Validation Report: Sample report generated by SCEIS that allows a buyer to print all the “variables” in a solicitation.

Appendix M, Bidder Validation Report: Sample report generated by SCEIS that allows a bidder to print his on-line submittal.

Appendix N is reserved for forms to document clarifications conducted pursuant to Sections 11-35-1520(8) and 11-35-1530(6) and Regulations 19-445.2080 and 19-445.2095(E). These materials are under development and will be published when completed and approved.

Appendix O, Discussions Forms

Appendix P, Record of Negotiations: Use of this form is mandatory. Sections 11-35-1520(10) and 11-35-1530(8) authorize certain negotiations. Use this form to memorialize any agreement regarding a change in either the state’s or the vendor’s contractual obligations.

Appendix Q, Record of Negotiations – Sample & Tips

Appendix R, Extension Notices and Instructions

Appendix S, Award Statement (samples): Use of these forms is required. A review of section 11-35-1520(10) suggests that, when applicable, the State will post two different documents: one giving notice of the State’s intention to award a contract and another giving notice that the State is or has awarded a contract. However, the statute does not require any particular form or wording. Rather, the statute requires only that notice of certain information is provided. As a matter of practice, the State ordinarily posts only one document for each procurement. For contracts with a value less than \$100,000, the State usually posts a document denominated as an “Award Statement” or a “Notice of Award”. These documents are normally signed by the responsible procurement officer and may constitute the State’s acceptance of a vendor’s offer. For contracts with a value of \$100,000 or more, the State usually posts a document denominated as a “Notice of Intent to Award”. The current form, which has been used for many years, explains that, eleven days after the date it is posted, the Notice of Intent to Award “becomes” an award and serves as notice of the award. Regardless of which document is posted, the protest period begins with its posting.

Appendix T, Change Order Form: Use of this form is mandatory. Use this form for all post-award modifications to a contract.

Appendix U, Instructions for Submitting Cost-Price Data (Table 15-2): For guidance on this appendix, please see the guidance that accompanies the clause entitled Pricing Data – Audit – Inspection.

Appendix V is reserved for SCEIS dialogs, showing the logic tree and clause selection dialogs. These materials are not yet complete. Currently, Appendix V includes a revised Outline for Clause Selection (JUN 2015) and a new **Compendium Dialog Outline – Main (JUN 2015)**.

Appendix W, Guaranty – Forms and Instructions.

Appendix X, Performance Bond – Forms and Instructions.

Appendix Y, Standard Purchase Order Clause Set.

Appendix Z, Compendium Change Log: This appendix is a table that identifies every change made to every clause since the Compendium was first issued.

Appendix AA, List of Compendium Clauses: This appendix contains a complete listing of all the clauses appearing in SCEIS. The clauses appear in the same order as they appear in both this compendium and in SCEIS.

Appendix BB, User-Selected Clauses: As discussed in the “Explanation of Columns” appearing in Appendix P, each clause in SCEIS has an Inclusion Attribute of either “Automatic,” “Dialog,” or “Manual.” Clauses having a manual inclusion attribute will not be included or excluded based on the Procurement Officer’s response to Document Builder’s Dialog. Rather, manual clauses will be included in a solicitation only if the procurement officer manually adds the clause to the solicitation.

Appendix CC, Drafting Solicitation Amendments for Q&A (JUL 2017): Includes guidance for drafting and for use of new Clause No. 2A097-1, Questions from Offerors - Amendment (JUN 2017).

#### **DISTRIBUTION OF THIS COMPENDIUM**

This compendium will be maintained jointly by the State Procurement Office and the Information Technology Management Office. The most current release will be posted and maintained on the internet at [www.procurement.sc.gov](http://www.procurement.sc.gov).

#### **VERSIONS OF AND REVISIONS TO THIS COMPENDIUM**

A unique version number will appear on the cover of each release of this compendium. The first number is the version number. The second number is the revision number. Versions will be updated by the intermittent release of interim revisions. Changes to clause text will be documented in Appendix Z, the Compendium Change Log.

Notice of Changes: Each time a new revision or version is issued, notice of the change will be posted at [www.procurement.sc.gov](http://www.procurement.sc.gov) and communicated through SCAGPO, SCBO, and CIO Customer Newsletter.

We welcome comments and suggestions for changes in the Compendium. If you believe an existing clause should be revised, or a new clause included, please call Keith McCook at (803) 734-1261.

# Table of Clauses (SEP 2017)

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## EXPLANATION OF COLUMNS

**Column 1 – SCEIS Clause #:** This column provides an **abbreviated** version of the SCEIS Clause Number, a unique designation used by SCEIS to identify the clause. The numbers in this column contain three pieces of information. The first number (and letter, if Part 2 or Part 7) indicates the part of the Uniform Solicitation Format in which the clause appears. The next three digits identify the clause itself, within the USF Part. The suffix, following the dash character, serves special purposes within SCEIS such as versioning or ordering of clauses. Thus, Clause No. 1005-1 appears in part 1 of the solicitation; Clause No. 7B100-2 appears in part 7B of the solicitation; and so forth.

**Column 2 – Text of Clause:** This column represents the actual contents of SCEIS. It includes the Title and the date the clause first appeared in SCEIS in that form. The bracketed number at the end of the clause text is **the full** SCEIS Clause Number. It also signals the end of the contract or solicitation provision.

TYPICAL CLAUSE FORMAT (MAR 2005): Each clause, in this format (including full title and date) will appear in this column. [01-1111-1]

By convention, a clause that appears in this format (with a parenthetical date and bracketed clause number) has not been altered or modified. **IF YOU MUST MAKE CHANGES TO THE TEXT OF A SCEIS CLAUSE, OR ADD ADDITIONAL LANGUAGE, YOU SHOULD NOT INCLUDE EITHER THE CLAUSE DATE OR NUMBER IN THE MODIFIED CLAUSE.**

**Column 3 – Guidance on Use:** This column contains guidance offered by management to the procurement staff regarding use of a clause.

<i>Clause #</i>	<i>Text</i>	<i>Guidance on Use</i>
	<b>PART 1</b>	
1001	I. SCOPE OF SOLICITATION	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
1005-1	ACQUIRE SERVICES & SUPPLIES / EQUIPMENT (JAN 2006): The purpose of this solicitation is to acquire services and supplies or equipment complying with the enclosed description and/or specifications and conditions. [01-1005-1]	This clause is a very generic clause and should be used only when the description itself is sufficient to identify the general scope of the acquisition. Its purpose is only to inform Offerors at the beginning of the solicitation that the procurement involves both services and supplies.
1010-1	ACQUIRE SERVICES (JAN 2006): The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions. [01-1010-1]	This clause is a very generic clause and should be used only when the description itself is sufficient to identify the general scope of the acquisition. Its purpose is only to inform Offerors at the beginning of the solicitation that the procurement involves services only.

Table of Clauses (SEP 2017)

<b>Clause #</b>	<b>Text</b>	<b>Guidance on Use</b>
1015-1	ACQUIRE SUPPLIES / EQUIPMENT (JAN 2006): The purpose of this solicitation is to establish a source or sources of supply for the purchase of new supplies and/or equipment as listed. [01-1015-1]	This clause is a very generic clause and should be used only when the description itself is sufficient to identify the general scope of the acquisition. Its purpose is only to inform Offerors at the beginning of the solicitation that the procurement involves supplies only.
1020-1	BUDGET – DESIRED RANGE (JAN 2006): The Using Governmental Unit seeks to incur costs in the following range: [01-1020-1]	Except in solutions based procurements, in which the scope of work is not concrete, use of this clause is discouraged. Use this clause to provide the vendors with an idea of the range the state is willing to spend.
1025-1	BUDGET ESTIMATE (JAN 2006): The estimated budget for this project is \$ Offers in excess of this amount may be considered. [01-1025-1]	Use of this clause is discouraged. In general, the state seeks to have Offerors price their work against the scope of services, not against the State’s budget.
1030-1	BUDGET MAXIMUM (JAN 2006): The funds available for this project are limited to \$ . If the price you offer exceeds this amount, your offer will be rejected as non-responsive. [01-1030-1]	Use of this clause is discouraged. In general, the state seeks to have Offerors price their work against the scope of services, not against the State’s budget. If an Offeror submits a price in excess off the stated maximum, the offer must be rejected as non-responsive.
1035-1	FUNDS NOT AVAILABLE (JAN 2006): The State’s obligation under this contract is contingent upon the availability of funds from which payment for contract purposes can be made. [01-1035-1]	Use of this clause is strongly discouraged. Use this clause only if the agency anticipates, but does not yet have, grant, appropriated, or other funds at the time the solicitation is issued.
1040-1	MAXIMUM CONTRACT PERIOD -- ESTIMATED (JAN 2006): Start date: End date: . Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled “Term of Contract - Effective Date/Initial Contract Period”. [01-1040-1]	At the time of solicitation, agencies never know when the contract will actually begin. Often, evaluation takes longer than anticipated. Government politics can have an influence. Lastly, protests can delay an award. Occasionally, these delays result in emergency extensions to an existing contract. Accordingly, the solicitation specifies the maximum contract period to indicate both a desired start date and the maximum time for the contract.
<b>PART 2A</b>		
2A001	II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
2A003-3	DEFINITIONS, CAPITALIZATION, AND HEADINGS (DEC 2015) CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.	Mandatory for all solicitations. This clause should be the first substantive clause in Part II.A.

Table of Clauses (SEP 2017)

Clause #	Text	Guidance on Use
	<p>AMENDMENT means a document issued to supplement the original solicitation document.</p> <p>AUTHORITY means the State Fiscal Accountability Authority or its successor in interest.</p> <p>BUSINESS means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity. [11-35-310(3)]</p> <p>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)]</p> <p>CONTRACT See clause entitled Contract Documents &amp; Order of Precedence.</p> <p>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)]</p> <p>CONTRACTOR means the Offeror receiving an award as a result of this solicitation.</p> <p>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.</p> <p>OFFER means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.</p> <p>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.</p> <p>PAGE TWO means the second page of the original solicitation, which is labeled Page Two.</p> <p>PROCUREMENT OFFICER means the person, or his successor, identified as such on either the Cover Page, an amendment, or an award notice.</p> <p>YOU and YOUR means Offeror.</p> <p>SOLICITATION means this document, including all its parts, attachments, and any Amendments.</p> <p>STATE means the Using Governmental Unit(s) identified on the Cover Page.</p> <p>SUBCONTRACTOR means any person you contract with to perform or provide any part of the work.</p> <p>US or WE means the using governmental unit.</p> <p>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."</p>	

Table of Clauses (SEP 2017)

Clause #	Text	Guidance on Use
	<p>WORK means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract. [02-2A003-3]</p>	
2A005-1	<p>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(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]</p>	<p>Mandatory for all solicitations and amendments. This clause instructs the vendors how to acknowledge receipt and agreement with solicitation amendments.</p>
2A007-1	<p>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]</p>	<p>Mandatory for all solicitations.</p>
2A010-2	<p>AWARD NOTIFICATION (FEB 2015) Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given. [02-2A010-2]</p>	<p>Mandatory for all solicitations.</p>
2A015-1	<p>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]</p>	<p>Mandatory for all solicitations.</p>
2A020-1	<p>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]</p>	<p>Mandatory for all solicitations.</p>
2A025-1	<p>BID IN ENGLISH &amp; 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]</p>	<p>Mandatory for all solicitations.</p>
2A030-3	<p>AUTHORITY AS PROCUREMENT AGENT (DEC 2015) The Procurement Officer is an employee of the Authority acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using</p>	<p>Mandatory for all solicitations conducted by the Division of Procurement Services.</p>

Table of Clauses (SEP 2017)

Clause #	Text	Guidance on Use
	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. [02-2A030-3]	
2A032-1	<p>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-</p> <p>(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—</p> <p>(i) Those prices;</p> <p>(ii) The intention to submit an offer; or</p> <p>(iii) The methods or factors used to calculate the prices offered.</p> <p>(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</p> <p>(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.</p> <p>(b) Each signature on the offer is considered to be a certification by the signatory that the signatory-</p> <p>(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</p> <p>(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];</p> <p>(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</p> <p>(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.</p> <p>(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]</p>	Mandatory for all solicitations.
2A035-1	CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)	Mandatory for all solicitations.

Clause #	Text	Guidance on Use
	<p>(a) (1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-</p> <p>(i) Offeror and/or any of its Principals-</p> <p>(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;</p> <p>(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</p> <p>(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.</p> <p>(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.</p> <p>(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).</p> <p>(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.</p> <p>(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offeror 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.</p> <p>(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.</p> <p>(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.</p> <p>[02-2A035-1]</p>	
2A040-2	CODE OF LAWS AVAILABLE (JAN 2006): The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:	Mandatory for all solicitations.

Table of Clauses (SEP 2017)

Clause #	Text	Guidance on Use
	<p><a href="http://www.scstatehouse.gov/code/statmast.php">http://www.scstatehouse.gov/code/statmast.php</a>                      The South Carolina Regulations are available at:  <a href="http://www.scstatehouse.gov/coderegs/statmast.php">http://www.scstatehouse.gov/coderegs/statmast.php</a>                      [02-2A040-2]</p>	
2A047-2	<p><b>DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015)</b>                      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]</p>	Mandatory for all solicitations.
2A050-1	<p><b>DEADLINE FOR SUBMISSION OF OFFER (JAN 2004):</b> Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental body's mail room which services that purchasing office prior to the opening. [R.19-445.2070(G)] [02-2A050-1]</p>	Mandatory for all solicitations.
2A065-1	<p><b>DRUG FREE WORK PLACE CERTIFICATION (JAN 2004):</b> 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]</p>	Mandatory for all solicitations.
2A070-2	<p><b>DUTY TO INQUIRE (FEB 2015)</b>                      Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors." [02-2A070-2]</p>	Mandatory for all solicitations.
2A075-2	<p><b>ETHICS CERTIFICATE (MAY 2008):</b> 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</p>	Mandatory for all solicitations.

Table of Clauses (SEP 2017)

Clause #	Text	Guidance on Use
	<p>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]</p>	
2A077-2	<p>IRAN DIVESTMENT ACT - CERTIFICATION (DEC 2015): (a) The Iran Divestment Act List is a list published by the Authority pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <a href="http://procurement.sc.gov/PS/PS-iran-divestment.phtm">http://procurement.sc.gov/PS/PS-iran-divestment.phtm</a> (.) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List. [02-2A077-2]</p>	<p>Mandatory for all solicitations over \$10,000. Required by the Iran Divestment Act of 2014, S.C. Code Ann. Sections 11-57-10, et seq.</p>
2A080-1	<p>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]</p>	<p>Mandatory for all solicitations.</p>
2A083-1	<p>OPEN TRADE REPRESENTATION (JUN 2015): By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2A083-1]</p>	<p>Required by Act No. 63 of 2015. Mandatory for all solicitations over \$10,000.</p>
2A085-1	<p>PROTESTS (JUN 2006): Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the</p>	<p>Mandatory for all solicitations.</p>

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	appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [Section 11-35-4210] [02-2A085-1]	
2A087-1	<p>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.</p> <p>(a) During the period between publication of the solicitation and final award, <b>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.</b> All communications must be solely with the Procurement Officer. [R. 19-445.2010]</p> <p>(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. <b>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.</b> [R. 19-445.2165] [02-2A087-1]</p>	Mandatory for all solicitations.
2A090-1	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]	Mandatory for all solicitations not conducted under 11-35-1550.
2A095-2	<p>QUESTIONS FROM OFFERORS (FEB 2015)</p> <p>(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." <b>We will not identify you in our answer to your question.</b> (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140] [02-2A095-2]</p>	Mandatory for all solicitations.
2A097-1	<p>QUESTIONS FROM OFFERORS - AMENDMENT (JUN 2017)</p> <p>THE SOLICITATION IS AMENDED AS PROVIDED HEREIN. INFORMATION OR CHANGES RESULTING FROM QUESTIONS WILL BE SHOWN IN A QUESTION-AND-ANSWER FORMAT. ALL QUESTIONS RECEIVED HAVE BEEN REPRINTED BELOW. THE "STATE'S RESPONSE" SHOULD BE READ WITHOUT REFERENCE TO THE QUESTIONS. THE QUESTIONS ARE INCLUDED SOLELY TO PROVIDE A</p>	Use for amendments to solicitations in response to questions from offerors. Must be manually inserted.

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	<p>CROSS-REFERENCE TO THE POTENTIAL OFFEROR THAT SUBMITTED THE QUESTION. QUESTIONS DO NOT FORM A PART OF THE CONTRACT; THE "STATE'S RESPONSE" DOES. ANY RESTATEMENT OF PART OR ALL OF AN EXISTING PROVISION OF THE SOLICITATION IN AN ANSWER DOES NOT MODIFY THE ORIGINAL PROVISION EXCEPT AS FOLLOWS: UNDERLINED TEXT IS ADDED TO THE ORIGINAL PROVISION. STRICKEN TEXT IS DELETED. [02-2A097-1]</p>	
2A100-1	<p>REJECTION/CANCELLATION (JAN 2004): The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 &amp; R.19-445.2065] [02-2A100-1]</p>	Mandatory for all solicitations.
2A105-2	<p>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.</p> <p>(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.</p> <p>(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)]</p> <p>(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].</p> <p>(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.</p> <p>(f) <b>Do not submit bid samples or descriptive literature unless expressly requested.</b> 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]</p>	Mandatory for all solicitations.

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2A115-1	SIGNING YOUR OFFER (JAN 2004): Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that is has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]	Mandatory for all solicitations.
2A120-3	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: <a href="http://www.scemd.org/planandprepare/disasters/severe-winter-weather">http://www.scemd.org/planandprepare/disasters/severe-winter-weather</a> [02-2A120-3]	Mandatory for all solicitations.
2A125-2	SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015) (An overview is available at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a> ) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other	Mandatory for all solicitations.

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	<p>text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-2]</p>	
2A130-2	<p>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]</p>	Mandatory for all solicitations.

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2A135-1	<p>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]</p>	Mandatory for all solicitations.
2A145-1	<p>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 <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a> 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 <a href="http://www.scbos.com/default.htm">http://www.scbos.com/default.htm</a>) [02-2A145-1]</p>	Mandatory for all solicitations.
2A150-1	<p>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]</p>	Mandatory for all solicitations.
<b>PART 2B</b>		
2B001	II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See

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		guidance on the Uniform Solicitation Format at the beginning of this document.
2B005-1	SECTION NOT APPLICABLE INTENTIONALLY OMITTED	Use this clause if you have no special instructions.
2B010-1	BID BOND (JAN 2006): Your offer must include either a bid bond issued by a surety or sureties licensed in South Carolina or a certified check. The amount of surety shall be five per cent (5%) of the total bid amount. This bid bond penalty may be expressed in terms of a percentage of the bid price or may be expressed in dollars and cents. If a certified check is submitted in lieu of a bid bond, it must be made payable to the Using Governmental Unit. [02-2B010-1]	Optional. You should consult with senior staff or legal counsel before requiring a bid bond. Bid bonds are ordinarily appropriate only for competitive sealed bids and fixed price bids of substantial importance to the State.
2B015-2	AUTHORITY APPROVAL REQUIRED (DEC 2015): Any award is subject to prior approval by the State Fiscal Accountability Authority. Regularly scheduled Authority meetings ordinarily occur pursuant to a published schedule. [02-2B015-2]	<p>Optional. Use of this clause should be limited to those situations where the law requires the Authority's approval for some aspect of the procurement AND that approval has not been given prior to issuance of the solicitation.</p> <p>Ordinarily, approval for the use of contracts in excess of seven years should be sought prior to issuance of the solicitation. See Section 11-35-2030(4).</p> <p>Regarding approval for contracts involving a lease of real property, contact the Department of Administration, Division of General Services.</p>
2B020-2	CONFERENCE -- PRE-BID/PROPOSAL -- MANDATORY (FEB 2015) See Conference Pre-Bid/Proposal clause. Your failure to attend the conference shall result in rejection of your offer. Attendance will be evidenced by your representative's signature on the attendance roster. [R. 19-445.2042] [02-2B020-2]	<p>Optional. Use of this clause is strongly discouraged. Mandatory conferences restrict competition, increase costs for vendors, and may result in losing a desired vendor. [Many times, an incumbent – believing that their on-site presence excuses their attendance – have been excluded from participating.]</p> <p>THE DECISION TO REQUIRE ATTENDANCE AT A MANDATORY PRE-BID CONFERENCE MUST BE SUPPORTED BY A WRITTEN DETERMINATION BY THE HEAD OF THE AGENCY OR HER DESIGNEE. R. 19-445.2042(C). THE DETERMINATION MUST BE MADE PART OF THE PROCUREMENT FILE.</p> <p>Do not publish the attendance roster in your amendments without approval of a supervisor. Doing so does not further any state goals and it helps vendors determine which competitors they are competing with, which does not help the state get the best offers. In the context of an RFP, consult R. 19-445.2010(D).</p>

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2B025-1	<p>CONFERENCE – PRE-BID/PROPOSAL (JAN 2006):                      Pre-Bid/Proposal Conference Date and Time:                      Location of Pre-Bid/Proposal Conference:                      Due to the importance of all offerors having a clear understanding of the specifications and requirements of this solicitation, a conference of potential offerors will be held on the date specified on the cover page. Bring a copy of the solicitation with you. Any changes resulting from this conference will be noted in a written amendment to the solicitation. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State. The State assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does the State assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract. [02-2B025-1]</p>	<p>Optional. Such conferences provide an opportunity for an interactive discussion regarding the State’s requirements and any issues the vendors may have.</p> <p>You should not agree to anything in such a conference. All answers should be memorialized in a written amendment.</p>
2B030-1	<p>CONTENTS OF OFFER (RFP) - SOLUTIONS BASED (JAN 2006): The following outline may be helpful in preparing your proposal. Your offer should address each of the areas outlined below (as applicable) and provide the information requested. As your offer will be evaluated based on the information you provide, failure to provide a complete and comprehensive presentation of your solution could negatively affect our evaluation of your offer.</p> <ol style="list-style-type: none"> <li>1. Executive Overview: Your offer should include a summary of the proposed solution that reflects your understanding of both the State’s needs and how your solution will satisfy those needs. Please explain your overall approach to the management of this effort, including a brief discussion of the total organization (structure and relationships among personnel and consultants/subcontractors).</li> <li>2. Technical Overview: Your offer should include a summary of the proposed technical solution with enough detail to demonstrate an understanding of the current environment and scope of the project</li> <li>3. Detailed explanation of proposed solution                         <ol style="list-style-type: none"> <li>3.1 Management                                 <ol style="list-style-type: none"> <li>3.1.1 Implementation schedule   <ol style="list-style-type: none"> <li>3.1.1.1 from contract formation to installation and acceptance</li> <li>3.1.1.2 installation, testing, and pilot, as appropriate</li> <li>3.1.1.3 detailed staffing deployment schedule</li> <li>3.1.1.4 milestones and deliverables</li> </ol> </li> <li>3.1.2 Project management practices, policies, and certifications</li> <li>3.1.3 Application development methodologies</li> <li>3.1.4 Subcontracting, outsourcing, offshore contribution (if any)</li> <li>3.1.5 Escalation policies, practices, and contacts</li> </ol> </li> </ol> </li> </ol>	<p>Use of this clause is mandatory for ITMO Procurement Officers conducting a solutions based procurement.</p>

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	<p>3.2 Technical. As appropriate, provide an explanation and/or information about the following, in detail:</p> <p>3.2.1 Functional capabilities of the proposed solution, including all performance capabilities, specifications and response times.</p> <p>3.2.2 Technical information about proposed solution, including technical specifications of any proposed equipment or services</p> <p>3.2.3 Software, if any, including manufacturer, functional capabilities, warranties, support levels, and documentation (any applicable license agreements and documents reflecting offeror's authority to include such software).</p> <p>3.2.4 Services included in the proposal and otherwise available</p> <p>3.2.5 Environmental requirements for the proposed solution.</p> <p>3.2.6 Software development plan, interfaces documentation, data synchronization, and replication plans, etc.</p> <p>3.2.7 Technical and operational manuals, by reference.</p> <p>3.3 Change Management. Who initiates change requests, what justifications and explanations are included, risks associated with change, approval process, etc.</p> <p>3.4 Installation and support.</p> <p>3.4.1 Installation -- provide detailed information on the installation requirements and schedule.</p> <p>3.4.2 Training -- explain any proposed training solution. Include plans for training new employees beyond the initial training cycle, employee readiness evaluations, training feedback, student-instructor ratios, duration of training, etc. Include plans for updating and maintaining training plans, system documentation, operational documentation, etc. For the duration of the implementation or term of the contract as appropriate. Include any other training solutions that are available.</p> <p>3.4.3 Support services including hardware and software maintenance include an explanation of any proposed support services including performance guarantees. Identify all proposed maintenance including a detailed explanation of response times. Include any forms or agreements.</p> <p>3.4.4 Data conversion requirements should include who is responsible for developing any data conversion programs, what the acceptable level of conversion, how many records are to be converted, who is responsible for entering any records that do not convert properly, etc.</p> <p>3.4.5 Service level agreements (SLA) with performance commitments. If appropriate, include industry standard response times and performance requirements for normal business processing and/or critical business processing as appropriate.</p> <p>3.4.6 Disaster recovery plans should be included, as appropriate.</p> <p>3.4.7 Back-up plans for proposed network, data, and systems outages and disruptions, if appropriate.</p> <p>3.4.8 Warranties -- include all functional, performance, and quality of workmanship warranties. Describe acceptable warranty performance specifications and warranty</p>	

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	<p>performance reporting to include number of calls, number and type of repairs and changes, etc.</p> <p>3.5 Intellectual property: explain the ownership rights to all proposed intellectual property.</p> <p>3.6 Staffing</p> <p>3.6.1 Contractor</p> <p>3.6.1.1 Key staff, their resumes, and areas of responsibility on this project</p> <p>3.6.1.2 Non-key staff, by number and areas of responsibility on this project</p> <p>3.6.1.3 State the number of state employees necessary and what training and skill levels are anticipated?</p> <p>3.6.2 Other -- are there any other staffing requirements?</p> <p>3.7 Business proposals</p> <p>3.7.1 Total cost of ownership -- provide anticipated cost of purchasing, owning, operating, maintaining, and supporting the proposed solution for the total potential term of the contract. Include a detailed accounting of the total cost of ownership.</p> <p>3.7.2 Risk analysis -- identify the internal and external factors could significantly impact the probability of completing this project on time and within budget</p> <p>3.7.3 Risk mitigation -- identify any actions that could be taken to mitigate the identified risks</p> <p>3.7.4 Risk sharing -- identify any opportunities for mutually beneficial risk sharing</p> <p>3.7.5 Performance incentives -- identify any opportunities for performance-based incentives</p> <p>3.7.6 Financing options -- identify any alternative financing options available to the state</p> <p>3.8 Offeror's Qualifications. Provide the information requested by the following provisions:</p> <p>Qualifications -- Required Information -- SB</p> <p>Subcontractor Identification</p> <p>[02-2B030-1]</p>	
2B040-2	<p>CONTENTS OF OFFER (RFP) (FEB 2015)</p> <p>(a) Offers should be complete and carefully worded and should convey all of the information requested.</p> <p>(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.</p> <p>(c) The contents of your offer must be divided into two parts, the technical proposal and the business proposal. Each part should be bound in a single volume.</p> <p>(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.</p>	<p>Use of this clause is mandatory for SPO and ITMO Procurement Officers conducting an RFP other than a solutions based procurement.</p>

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	[02-2B040-2]	
2B045-1	DESCRIPTIVE LITERATURE – LABELLING (JAN 2006): Include offeror’s name on the cover of any specifications or descriptive literature submitted with your offer. [02-2B045-1]	Optional.
2B050-1	DESCRIPTIVE LITERATURE – REQUIRED (JAN 2006): Your offer must include manufacturer’s latest literature showing complete product specifications. [02-2B050-1]	Optional.
2B055-1	CLARIFICATION (NOV 2007): Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]	Appropriate for all solicitations.
2B065-1	LEASE FORM-QUESTIONS (JAN 2006): Use of the attached standard equipment agreement (form 80-SC-EL-1, revised 7/1/88) is required by Regulation 19-445.2152. No other lease form shall be used. Offerors may propose modifications to this agreement prior to the deadline for submitting questions (see cover page). Any modifications accepted will be noted in an amendment. [02-2B065-1]	You must use this clause whenever you use the standard equipment agreement.
2B070-2	ELECTRONIC COPIES – REQUIRED MEDIA AND FORMAT (MAR 2015): In addition to your original offer, you must submit an electronic copy or copies on compact disk (CD), DVD, or USB drive. Submit the number of copies indicated on the cover page. Each copy should be on separate media. Your business and technical proposals must be on separate media. Every disk or USB drive must be labeled with the solicitation number and the offeror’s name, and specify whether its contents address technical proposal or business proposal. If multiple-disk sets are provided, each disk in the set must be appropriately identified as to its relationship to the set, e.g., 1 of 2. The electronic copy must be identical to the original offer. File format shall be compatible with Microsoft Office (version 2003 or later), or Adobe Acrobat or equivalent Portable Document Format (.pdf) viewer. The Procurement Officer must be able to view, search, copy and print electronic documents without a password. [02-2B070-2]	Use of this clause is mandatory for SPO and ITMO Procurement Officers conducting an RFP. Its use, where appropriate, is optional for other solicitations.
2B075-1	MAGNETIC MEDIA WITH DEMONSTRATION / PRESENTATION (JAN 2006): Compact discs included with your offer may include a demonstration of the proposed solution and/or a presentation of your offer. The following formats are acceptable: Power Point, .qt, .mpeg, .mpg, .miv, .asf, .asx, .ra, .ram, .rm, .rmm, .aif, .aifc., aiff, .mov, .avi, .au, .snd, or .wav formats. If you use another format, the compact disc must include a self-executing viewer or player, with instructions. [02-2B075-1]	Optional.
2B080-1	MAIL PICKUP (JAN 2006): The State Procurement Office picks up all mail from The US Postal Service once daily around 8:30 a.m. (excluding weekends and holidays). See provision entitled Deadline for Submission of Offer. [02-2B080-1]	Use this only if you provide Offerors with a post office box address for the submission of bids and proposals.

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2B085-1	OFFERING BY ITEM (JAN 2006): Offers may be submitted for one or more items. [02-2B085-1]	Optional.
2B090-1	OFFERING BY ITEM OR LOT (JAN 2006): Offers may be submitted for complete lots or for one or more items not within lots. Failure to offer on all items within a single lot will be reason for rejection. [02-2B090-1]	Optional.
2B095-1	OFFERING BY LOT (JAN 2006): Offers may be submitted for one or more complete lots. Failure to offer on all items within a lot will be reason for rejection. [02-2B095-1]	Optional.
2B105-2	<p>ON-LINE BIDDING INSTRUCTIONS (MAR 2015): (a) Mandatory Registration. <b>You must register before you can submit an offer on line!</b> See clause entitled "VENDOR REGISTRATION MANDATORY."</p> <p>(b) Steps for On-Line Bidding</p> <p>#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.</p> <p>#2 Follow the general user instructions posted at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a> under the heading "Submitting Offers."</p> <p>#3 Confirm your offer has a status of "submitted" by refreshing the "RFx and Auctions" screen.</p> <p><b>Only offers with a status of "submitted" have been received by the State. Offers with a status of "saved" have not been received.</b></p> <p>#4 Save or print a copy of your offer using the "Print Preview" button after your offer has been submitted.</p> <p>[02-2B105-2]</p>	Mandatory for all on-line solicitations.
2B110-2	<p>OPENING PROPOSALS -- INFORMATION NOT DIVULGED (FEB 2015)</p> <p>In competitive sealed proposals, neither the number or identity of offerors nor prices will be divulged at opening. [Section 11-35-1530 &amp; R. 19-445.2095(C)(1)] [02-2B110-2]</p>	<p>Regulation 19-445.2095(C)(1) provides: "Contents and the identity of competing offers shall not be disclosed during the process of opening by state personnel."</p> <p>However, use of this clause is optional.</p>
2B111-1	<p>PREFERENCES - A NOTICE TO VENDORS (SEP 2009): On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a> . ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES. [11-35-1524(E)(4)&amp;(6)] [02-2B111-1]</p>	
2B112-1	<p>PREFERENCES - SC/US END-PRODUCT (SEP 2009): Section 11-35-1524 provides a preference to vendors offering South Carolina end-products or US end-products, if</p>	

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	<p>those products are made, manufactured, or grown in SC or the US, respectively. An end-product is the tangible project identified for acquisition in this solicitation, including all component parts in final form and ready for the use intended. The terms "made," "manufactured," and "grown" are defined by Section 11-35-1524(A). By signing your offer and checking the appropriate space(s) provided and identified on the bid schedule, you certify that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law. Post award substitutions are prohibited. See "Substitutions Prohibited - End Product Preferences (Sep 2009)" provision. [02-2B112-1]</p>	
2B113A-1	<p>PREFERENCES - RESIDENT CONTRACTOR PREFERENCE (SEP 2009): To qualify for the RCP, you must maintain an office in this state. An office is a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must, at the time you submit your bid, directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and your total direct labor cost for those individuals to provide those services must exceed fifty percent of your total bid price. [11-35-1524(C)(1)(iii)] Upon request by the procurement officer, you must identify the persons domiciled in South Carolina that will perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, and documentation of the your labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and, potentially, for other enforcement action). [02-2B113A-1]</p>	

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2B113B-1	<p>PREFERENCES - RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009): To qualify for this preference, You must meet the following requirements. (1) You must -- at the time you submit your bid -- have a documented commitment from a single proposed first tier subcontractor to perform some portion of the services expressly required by the solicitation. (2) The subcontractor -- at the time you submit your bid -- must directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds, as applicable, either twenty percent for a 2% preference or forty percent of bidder's total bid price for a 4% preference. (3) You must identify the subcontractor that will perform the work, the work the subcontractor is to perform, and your factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement. [11-35-1524(D)] You can stack this preference, i.e., earn another 2% or 4% preference for each additional qualifying subcontractor, but the preference is capped. [11-35-1524(D)(4), (E)(7)] Upon request by the procurement officer, you must identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, the employer of those persons, your relationship with the employer, and documentation of the subcontractor's labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and, potentially, for other enforcement action). YOU WILL NOT RECEIVE THE PREFERENCE UNLESS YOU SPECIFY WHETHER YOUR ARE CLAIMING THE 2% OR 4% PREFERENCE AND YOU PROVIDE THE INFORMATION REQUIRED BY ITEM (3) ABOVE. [02-2B113B-1]</p>	
2B114-1	<p>PREFERENCES - RESIDENT VENDOR PREFERENCE (SEP 2009): To qualify for the RVP, you must maintain an office in this state. An office is a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must either: (1) maintain at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities for which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars [\$50,000] or the annual amount of the contract; or (2) be a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product being sold is either made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code). [02-2B114-1]</p>	

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2B115-1	PRICE AS DISCOUNT (JAN 2006): Your price must be in the form of a single percentage discount to apply to a catalog, price sheet, or price schedule as described. [02-2B115-1]	Optional.
2B120-1	PROTEST - CPO - ITMO ADDRESS (JUN 2006): Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing (a) by email to protest-itmo@itmo.sc.gov , (b) by facsimile at 803-737-0102 , or (c) by post or delivery to 1201 Main Street, Suite 601, Columbia, SC 29201. [02-2B120-1]	All solicitations must include the address of the appropriate chief Procurement Officer.
2B122-1	PROTEST - CPO - MMO ADDRESS (JUN 2006): Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to protest-mmo@mmo.state.sc.us , (b) by facsimile at 803-737-0639 , or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B122-1]	All solicitations must include the address of the appropriate chief Procurement Officer.
2B125-1	QUALIFIED PRODUCTS LIST (JAN 2006): Offer only products that are on the qualified products list. [02-2B125-1]	Optional.
2B130-1	SAMPLES (JAN 2006): Free samples may be required for testing and/or evaluation. If requested, your failure to provide a sample will result in rejection of your offer. You must send your sample to the Procurement Officer under separate cover, mark the solicitation number on the outside of the shipping carton, and tag each sample with your name and other pertinent information. The Procurement Officer must receive your samples prior to opening date. Send Sample To: Mark to attn of buyer listed on cover page. [02-2B130-1]	Optional.
2B135-1	SAMPLES - TESTING (JAN 2006): Free samples may be required for testing by an independent laboratory. If requested, your failure to provide a sample will result in rejection of your offer. Upon invoice, you agree to pay any reasonable cost incurred for this testing. Unless your sample is accompanied by a request for its return, your sample will not be returned. Your sample may be destroyed during testing. [02-2B135-1]	Optional.
2B140-1	SITE VISIT - BY APPOINTMENT (JAN 2006): Appointment for a site visit may be made by contacting: at [02-2B140-1]	Optional.
2B145-1	SITE VISIT – MANDATORY (JAN 2006): See Site Visit Clause. Your failure to attend site visit shall result in rejection of your offer. [02-2B145-1]	Optional. Use of this clause is strongly discouraged. Mandatory site visits restrict competition, increase costs for vendors, and may result in losing a desired vendor. [Many times, an incumbent – believing that their on-site presence excuses their attendance – have been excluded from participating.]

Clause #	Text	Guidance on Use
		<p>THE DECISION TO REQUIRE ATTENDANCE AT A MANDATORY PRE-BID CONFERENCE OR SITE VISIT MUST BE SUPPORTED BY A WRITTEN DETERMINATION BY THE HEAD OF THE AGENCY OR HER DESIGNEE. R. 19-445.2042(C). THE DETERMINATION MUST BE MADE PART OF THE PROCUREMENT FILE.</p> <p>Do not publish the attendance roster in your amendments without approval of a supervisor. Doing so does not further any state goals and it helps vendors determine which competitors they are competing with, which does not help the state get the best offers. In the context of an RFP, consult R. 19-445.2010(D).</p>
2B165-1	<p>SITE VISIT (JAN 2006): A site visit will be held at the following date, time and location. Your failure to attend will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State. The State assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available at the conference. Nor does the State assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.</p> <p>Date &amp; Start Time:                      Contact Person's Name: Contact's Phone Number:                      Location:                      [02-2B165-1]</p>	<p>Optional. Site visits provide an opportunity for vendors to acquire information best learned by seeing the site. It also provides an opportunity for an interactive discussion regarding the State's requirements and any issues the vendors may have.</p> <p>You should not agree to anything in a site visit. All answers should be memorialized in a written amendment.</p>
2B170-1	<p>UNIT PRICES REQUIRED (JAN 2006): Unit price to be shown for each item. [02-2B170-1]</p>	Optional.
<b>PART 3</b>		
3001	<p>III. SCOPE OF WORK/SPECIFICATIONS</p>	<p>Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.</p>
3003-1	<p>STATEMENT OF WORK (JUN 2007): Please see ATTACHMENT for STATEMENT OF WORK. [03-3003-1]</p>	<p>Include this item if the contractor's performance obligations appear in an attachment to the solicitation.</p>
3005-1	<p>See Bidding Schedule [03-3005-1]</p>	<p>Include this item if you have no specifications other than what appears in the bidding schedule.</p>
3015-1	<p>DELIVERY / PERFORMANCE LOCATION – PURCHASE ORDER (JAN 2006): After award, all deliveries shall be made and all services provided to the location specified by the Using Governmental Unit in its purchase order. [03-3015-1]</p>	<p>Optional. Cross-reference with provisions entitled "Purchase Order" and "Contract Documents &amp; Order of Precedence".</p>

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<b>Clause #</b>	<b>Text</b>	<b>Guidance on Use</b>
3020-1	DELIVERY / PERFORMANCE LOCATION – SPECIAL (JAN 2006): Contractor shall deliver to: . [Procurement Officer must identify a specific location, such as a shipping dock, building or room number, if a postal address is inadequate.] [03-3020-1]	Optional. Remember to fill in the address.
3030-1	DELIVERY / PERFORMANCE LOCATION - SPECIFIED (JAN 2006): After award, all deliveries shall be made and all services provided to the following address, unless otherwise specified: [03-3030-1]	Optional.
3035-1	DELIVERY COSTS – EXEMPTION (JAN 2006): For individual orders involving less than \$ , contractor shall ship these orders prepaid, add the shipping charges to the invoice as a separate charge and include in the invoice total for payment by Using Governmental Unit. [03-3035-1]	Optional. Remember to fill in the blank.
3037-1	DELIVERY DATE – 30 DAYS ARO (JAN 2006): Unless otherwise specified herein, all items shall be delivered no later than thirty days after contractor’s receipt of the purchase order. If the using governmental unit requests delivery sooner than the time specified, contractor may invoice the ordering entity any additional shipping charges approved by the ordering entity on the purchase order. [03-3037-1]	Optional. Cross-reference with provisions entitled “Purchase Order” and “Contract Documents & Order of Precedence”.
3038-1	DELIVERY DATE – PURCHASE ORDER (JAN 2006): All items shall be delivered within days after receipt of purchase order. [03-3038-1]	Optional. Remember to fill in the blank. Use this clause for situations in which the “30 days ARO” will not work. For example, perishable items, such as certain medical supplies or food, may need to be delivered within 24 hours after receipt of purchase order.
3040-1	DELIVERY DATE - SPECIFIED (JAN 2006): Delivery shall be made no later than . Contractor may request approval to deliver items prior to the delivery date. [03-3040-1]	Optional. Remember to fill in the blank.
3050-1	INSTALLATION (JAN 2006): Contractor shall install all items acquired pursuant to this contract as follows: [3-3050-1]	Optional. Remember to fill in the blank.
3055-1	OPERATIONAL MANUALS (JAN 2006): Unless otherwise specified, contractor shall provide one operational manual for each item acquired. [03-3055-1]	Optional.
3060-1	QUALITY – NEW (JAN 2006): All items must be new. [03-3060-1]	Optional.
3065-1	QUALITY – REFURBISHED (JAN 2006): Items may be refurbished. [03-3065-1]	Optional. Procurement officer should provide a commodity-specific definition of “refurbished” because the term may have very different meanings depending on the industry or commodity.
3070-1	QUALITY – USED (JAN 2006): Items may be used. [03-3070-1]	Optional.
3075-1	TECHNICAL SUPPORT – INCLUDED (JAN 2006): Upon request, contractor shall provide technical assistance or service. Such service shall be available within hours following request. [03-3075-1]	Optional. Use this clause only for procurements that involve very limited technical support. For procurements involving any significant degree of support, use a specially drafted clause.

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3080-1	TRAINING (JAN 2006): Upon request, contractor shall demonstrate equipment within days after delivery. [03-3080-1]	Optional. Use this clause only for procurements that involve very limited training. For procurements involving any significant degree of training, use a specially drafted clause.
<b>PART 4</b>		
4001	IV. INFORMATION FOR OFFERORS TO SUBMIT	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
4005-1	INFORMATION FOR OFFERORS TO SUBMIT - EVALUATION (JAN 2006): In addition to information requested elsewhere in this solicitation, offerors should submit the following information for purposes of evaluation: [04-4005-1]	<p>Optional. Use this clause to identify information that will be evaluated in determining the award and which has not been requested in some other part of the solicitation.</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>(a) Offeror's explanation regarding how the scope of work will be performed or specifications will be met,</li> <li>(b) Offeror's personnel,</li> <li>(c) Offeror's experience,</li> <li>(d) Offeror's internal operational procedures (e.g., disaster recover plan, maintenance schedules, training programs, human resource policies, staffing guides, etc.),</li> <li>(e) Documents published by Offeror (e.g., prospectus for publicly traded companies, cut sheets and product literature, white papers),</li> <li>(f) Test results (e.g., independent laboratory test results, benchmark results); and,</li> <li>(g) Offeror's management structure.</li> </ul> <p>Caution: If you are asking for information under this clause, it must be tied to an evaluation criteria specified in the Award part of your solicitation.</p>
4010-2	INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (MAR 2015): You shall submit a signed Cover Page and Page Two. <b>If you submit your offer electronically, you must upload an image of a signed Cover Page and Page Two.</b> Your offer should include all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in Part IX. Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis. [04-4010-2]	<p>Mandatory for all solicitations. If you request information that will <u>not</u> be used for evaluation and that is not requested elsewhere, list that information under this clause with a general statement requesting its submission, e.g., "Please submit the following information:"</p> <p>Do not make the request mandatory unless you intend to reject the offer for failure to include such information.</p>

Clause #	Text	Guidance on Use
4015-3	<p>MINORITY PARTICIPATION (DEC 2015):</p> <p>Is the bidder a South Carolina Certified Minority Business? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is the bidder a Minority Business certified by another governmental entity? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If so, please list the certifying governmental entity: _____</p> <p>Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor? _____</p> <p>Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>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? _____</p> <p>_____</p> <p>If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:</p> <p><input type="checkbox"/> Traditional minority</p> <p><input type="checkbox"/> Traditional minority, but female</p> <p><input type="checkbox"/> Women (Caucasian females)</p> <p><input type="checkbox"/> Hispanic minorities</p> <p><input type="checkbox"/> DOT referral (Traditional minority)</p> <p><input type="checkbox"/> DOT referral (Caucasian female)</p> <p><input type="checkbox"/> Temporary certification</p> <p><input type="checkbox"/> SBA 8 (a) certification referral</p> <p><input type="checkbox"/> Other minorities (Native American, Asian, etc.)</p> <p>(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)</p> <p>The Department of Administration, Division of Small and Minority Business Contracting and Certification, publishes a list of certified minority firms. The Minority Business Directory is available at the following URL:  <a href="http://osmba.sc.gov/directory.html">http://osmba.sc.gov/directory.html</a></p> <p>[04-4015-3]</p>	
4020-1	<p>OFFSHORE CONTRACTING (JAN 2006): Work that will be performed offshore by the Offeror and/or its subcontractors must be identified in the Offeror's response. For the purpose of this solicitation, offshore is defined as outside the 50 States and US territories. Offeror is to include an explanation for the following:</p> <p>(a) What type of work is being contracted offshore?</p> <p>_____</p> <p>(b) What percentage (%) of the total work is being contracted offshore?</p> <p>_____</p> <p>(c) What percentage (%) of the total value of the contract is being contracted offshore? _____</p>	

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	<p>(d) Provide a Service Level Agreement (SLA) demonstrating the arrangement between the off-shore contactor and the Offeror. <u>Attach Service Level Agreement to this document or paste here.</u> Data provided by the Offeror in regards to this clause is for information only and will not be used in the evaluation and determination of an award. [04-4020-1]</p>	
4025-1	<p>RECYCLED PRODUCT (JAN 2006): Offeror shall identify which product(s) is made out of or contains recycled materials. This information will be used for future research [ ] Yes [ ] No (Items: _____) If the above applies to more than one item, please indicate above. [04-4025-1]</p>	
4027-1	<p>SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE - REQUIRED (FEB 2015) [ASK QUESTIONS NOW: If you have a properly qualified third-party report or certification you believe we should accept in lieu of those identified in item (b), submit a question identifying same pursuant to the clause titled Questions from Offerors.] The Contractor must demonstrate that programs, policies and procedures are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used by contractor to process, store, transmit, and access all government information. In order for the State to accurately evaluate the strength and viability of the Contractor's security policies, procedures and practices related to confidentiality, integrity and availability, Offerors must submit with their offers a thorough and complete written response to the Service Provider Security Assessment Questionnaire ("Response to SPSAQ") attached to this Solicitation, which must address all applicable organizations and applicable information systems. The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. [04-4027-1]</p>	<p>This clause should be used with the Service Provider Security Representation clause (7B217). Consider for use in all services procurements which involve either contractor's computerized interface with state systems or contractor's direct possession of important agency or citizen data. Due to critical cross-references, you must also use both the Information Security - Definitions clause (7B104) and the Service Provider Security Assessment Questionnaire attachment (9025) if this clause is used.</p> <p>Agencies are cautioned that they should take steps to insure that the representations provided by an Offeror are applicable to the computerized infrastructure that will be used by Contractor to collect, manage, store, process or access government information.</p>
4030-2	<p>SUBMITTING REDACTED OFFERS (MAR 2015): If your offer includes any information that you marked as "Confidential," "Trade Secret," or "Protected" in accordance with the clause entitled "Submitting Confidential Information," you must also submit one complete copy of your offer from which you have removed or concealed such information ( the redacted copy). The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on magnetic media. (See clause entitled "Electronic Copies - Required Media and Format.") Except for the information removed or concealed, the redacted copy must be identical to your original offer, and the Procurement Officer must be able to view, search, copy and print the redacted copy without a password. [04-4030-2]</p>	
	<p><b>PART 5</b></p>	
5001	<p>V. QUALIFICATIONS</p>	<p>Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. You are strongly encouraged to study the general guidance on</p>

Clause #	Text	Guidance on Use
5005-2	<p>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) <b>Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability;</b> 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 <a href="http://procurement.sc.gov">procurement.sc.gov</a>, link to "Standard Clauses &amp; Provisions." [05-5005-2]</p>	<p>Part 5 (V. Qualifications) of the Uniform Solicitation Format at the beginning of this document.</p> <p>Mandatory. Include this paragraph in all procurements. This paragraph may be used in conjunction with any of the other paragraphs in Part 5.</p>
5010-2	<p>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:  <del>[TO BE COMPLETED BY PROCUREMENT OFFICER]</del>                      (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]</p>	<p>Optional.</p> <ol style="list-style-type: none"> <li>1. Use this clause to require that offerors meet certain mandatory minimum qualification requirements. When you write such requirements, make sure that (a) each requirement is very specific, (b) the decision regarding whether a vendor meets the requirement is an objective decision, one that does not involve the exercise of discretion or judgment, and (c) each requirement is mandatory. See the general guidance for Part 5.</li> <li>2. When you create mandatory minimum qualification requirements, you are establishing a special standard of responsibility. See R. 19-445.2125(F). Offerors that do not have the required qualifications must be deemed non-responsible.</li> <li>3. The imposition of special standards limits competition. Section 11-35-2730 prohibits unduly restrictive requirements. Be prepared to defend why your minimum qualifications are necessary.</li> <li>4. If an offeror relies on its staff, a predecessor firm, or a proposed subcontractor to meet a minimum requirement, see the guidance on Part 5 at the beginning of this compendium.</li> </ol>

Clause #	Text	Guidance on Use
5015-2	<p>QUALIFICATIONS – REQUIRED INFORMATION (MAR 2015): Submit the following information or documentation for you and for any subcontractor (at any tier level) that you identify pursuant to the clause titled Subcontractor – Identification. Err on the side of inclusion. You represent that the information provided is complete. (a) The general history and experience of the business in providing work of similar size and scope. (b) Information reflecting the current financial position. Include the most current financial statement and financial statements for the last two fiscal years. If the financial statements have been audited in accordance with the following requirements, provide the audited version of those statements. [Reference Statement of Financial Accounting Concepts No. 5 (FASB, December, 1984), as amended.] (c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) which have been performed. For each contract, describe how the supplies or services provided are similar to those requested by this solicitation, and how they differ. (d) A list of every business for which supplies or services substantially similar to those sought with this solicitation have been provided, at any time during the past three years. (e) A list of every South Carolina public body for which supplies or services have been provided at any time during the past three years, if any. (f) List of failed projects, suspensions, debarments, and significant litigation.</p> <p>[05-5015-2]</p>	<ol style="list-style-type: none"> <li>1. Use this clause to request any documentation or information you need to facilitate your determination of responsibility.</li> <li>2. Do not use this clause alone; it is intended to be used with the provision entitled Qualifications of Offeror.</li> <li>3. Subparagraph (c) asks for customer lists. The default is for three years. You may elect to ask for a longer or shorter time frame, as appropriate.</li> <li>4. If you find the standard requests to be inadequate, draft changes as appropriate. The following sample contents are provided for your convenience: <ul style="list-style-type: none"> <li>- A detailed, narrative statement providing adequate information to establish that you meet all the requirements established by the provision entitled Qualifications – Mandatory Minimum. Include all appropriate documentation.</li> <li>- A detailed, narrative statement explaining how offeror has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or firm commitments to obtain them, necessary to meet all contractual requirements of this solicitation.</li> <li>- A detailed, narrative statement listing [all] [the three most] [the three most recent] comparable contracts (including contact information) which you have performed and the general history and experience of your organization.</li> <li>- A list of every business for which offeror has performed, at any time during the past [one] year(s), services [somewhat] [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.</li> <li>- A list of every business [governmental entity] for which offeror has performed services or provided supplies in South Carolina at any time during the past [five] years. By submitting an offer, offeror represents that the list is complete.</li> </ul> </li> </ol>
5030-2	<p>SUBCONTRACTOR – IDENTIFICATION (FEB 2015): If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either (1) exceeds 10% of your cost, (2) involves access to any “government information,” as defined in the clause entitled “Information Security - Definitions,” if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the work which they are to</p>	<p>Optional. Use of this clause is mandatory if the solicitation includes the <b>Information Security</b> clause (7B104), and is encouraged for all procurements other than commodities.</p>

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	perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the state may contact and evaluate your proposed subcontractors. [05-5030-2]	
	<b>PART 6</b>	
6001	VI. AWARD CRITERIA	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document. In building this section, the following base clauses will serve as a starting point: 1. Award Criteria – Bids 2. Award Criteria – Fixed Price Bidding 3. Award Criteria – Proposals / Best Value Bids These clauses are intended to be used in conjunction with all other applicable clauses in this section.
6005-1	AWARD BY ITEM (JAN 2006): Award will be made by individual item. [06-6005-1]	Use this clause only in conjunction with the clause entitled AWARD CRITERIA – BIDS.
6010-1	AWARD BY ITEM OR LOT (JAN 2006): Award will be made by individual items and/or complete lot(s). [06-6010-1]	Use this clause only in conjunction with the clause entitled AWARD CRITERIA – BIDS.
6015-1	AWARD BY LOT (JAN 2006): Award will be made by complete lot(s). [06-6015-1]	Use this clause in conjunction with either of the following clauses, AWARD CRITERIA – BIDS, or AWARD CRITERIA – PROPOSALS / BEST VALUE.
6020-1	AWARD CRITERIA – BIDS (JAN 2006): Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]	Use this clause for all low bid IFBs. If appropriate, use this clause in conjunction with one of the following clauses: Award by Item, Award by Item or Lot, or Award by Lot. If the method for determining the low bid is not crystal clear, use in conjunction with the clause entitled CALCULATING THE LOW BID.
6023-1	AWARD CRITERIA – FIXED PRICE BIDDING (JAN 2006): Award will be made to all responsive and responsible Offerors. [06-6023-1]	Use this clause for all fixed price bids. If appropriate, use this clause in conjunction with the clause entitled Bids Received After Award – Fixed Price Bidding.
6025-1	AWARD CRITERIA – BEST VALUE BIDS (JAN 2006): Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State. [06-6025-1]	Use this clause in any best value bid. In a BVB, you must define the evaluation criteria. Accordingly, use this clause in conjunction with the evaluation clause entitled Evaluation Factors – Best Value Bids.

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6030-1	AWARD CRITERIA – PROPOSALS (JAN 2006): Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State. [06-6030-1]	Use this clause in any request for proposals. In a RFP, you must define the evaluation criteria. Accordingly, use this clause in conjunction with the evaluation clause entitled EVALUATION FACTORS -- PROPOSALS [06-6065-1].
6035-1	AWARD TO MULTIPLE OFFERORS (JAN 2006): Award may be made to more than one Offeror. [06-6035-1]	Use as appropriate.
6040-1	AWARD TO ONE OFFEROR (JAN 2006): Award will be made to one Offeror. [06-6040-1]	Use as appropriate.
6045-1	BIDS RECEIVED AFTER AWARD – FIXED PRICE BIDDING (JAN 2006): Offerors not responding to the initial solicitation may be added to the awarded vendors list provided the bidder furnishes evidence of responsibility and responsiveness to the State’s original fixed price bid as authorized by the solicitation. [06-6045-1]	Use as appropriate.
6050-1	CALCULATING THE LOW BID [06-6050-1]	If appropriate, you must develop a unique formula to determine the low bid. Examples: [1. In determining the low bid, the price of the lot alternate will be compared against the sum of the price of the individual lots.]
6055-1	CALCULATING THE LOW BID – MAINTENANCE (JAN 2006): In calculating the low bid, the price of your annual maintenance, less any included initial warranty period, will be considered. [06-6055-1]	
6057-1	COMPETITION FROM PUBLIC ENTITIES (JAN 2006): If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]	Include this provision if you have any expectation that a state agency will submit an offer.
6058-1	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]	Mandatory for all RFP solicitations, unless replaced with “Discussions and Negotiations - Required (FEB 2015),” Clause No. 06-6059-1.

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6059-1	<p><b>DISCUSSIONS AND NEGOTIATIONS – REQUIRED (FEB 2015)</b>                      No award will be made to an offeror until after negotiations have been conducted with that offeror. As provided in Section 11-35-1530, negotiations must begin with the highest ranking offeror; accordingly, submit your best terms from both a price and a technical standpoint. In addition, make sure your offer is responsive; the State will not evaluate or negotiate with a non-responsive offeror, and ordinarily, nonresponsive proposals will be rejected outright without prior notice. 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(l)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial offer, but only if your initial offer is responsive. If a satisfactory contract cannot be negotiated with the highest ranking offeror, the State may elect to conduct negotiations with other offerors. As provided in Section 11-35-1530(8) the State also may elect to make changes within the general scope of the request for proposals and provide all responsive offerors an opportunity to submit their best and final offers. Negotiations may involve both price and matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals. [06-6059-1]</p>	<p>Use this clause as an alternative to and replacement for “Discussions and Negotiations – Optional,” which is included in all RFPs by default. Use this clause only if the State is willing not to make any award until it has conducted meaningful, good faith negotiations with the offeror to which it intends to make an award. All discussions and negotiations must be conducted in accordance with Guidance &amp; Best Practices for Permissible Communications in a Competitive Sealed Proposal, Procurement Policy Statement 2008-2 (April 28, 2008).</p> <p><b>IF YOU USE THIS CLAUSE YOU MUST MANUALLY DELETE CLAUSE NO. 6058-1 FROM THE SOLICITATION!</b></p>
6060-1	<p><b>EVALUATION FACTORS – BEST VALUE BID (JAN 2006):</b> Offers will be evaluated using only the factors stated below. Numerical weightings are provided for each evaluation factor. All evaluation factors, other than cost (which must be at least 60%), will be considered prior to determining the effect of cost on the score for each offeror. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous. [06-6060-1]</p>	<p>By law, cost must be weighted at least 60%. Best value bid evaluation factors may include, but are not limited to, any of the following statutory factors:</p> <ul style="list-style-type: none"> <li>(a) operational costs that the State would incur if the bid is accepted;</li> <li>(b) quality of the product or service, or its technical competency;</li> <li>(c) reliability of delivery and implementation schedules;</li> <li>(d) maximum facilitation of data exchange and systems integration;</li> <li>(e) warranties, guarantees, and return policy;</li> <li>(f) vendor financial stability;</li> <li>(g) consistency of the proposed solution with the State’s planning documents and announced strategic program direction;</li> <li>(h) quality and effectiveness of business solution and approach;</li> <li>(i) industry and program experience;</li> <li>(j) prior record of vendor performance;</li> <li>(k) vendor expertise with engagement of similar scope and complexity;</li> <li>(l) extent and quality of the proposed participation and acceptance by all user groups;</li> <li>(m) proven development methodologies and tools; and</li> </ul>

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		(n) innovative use of current technologies and quality results.
6065-1	EVALUATION FACTORS – PROPOSALS (JAN 2006): Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous. [06-6065-1]	For any Competitive Sealed Proposal, the Procurement Officer must include the unique evaluation factors for this procurement. The request for proposals shall state the relative importance of the factors to be considered in evaluating proposals but shall not require a numerical weighting for each factor. Price may but need not be an evaluation factor.  If you have two or more factors with the same weight, that fact must be communicated to the offerors.
6075-1	UNIT PRICE GOVERNS (JAN 2006): In determining award, unit prices will govern over extended prices unless otherwise stated. [06-6075-1]	If Offerors are requested to provide both unit and extended prices, include this clause. If the Offeror miscalculates the extended price, unit price will govern.
<b>PART 7A</b>		
7A001	VII. TERMS AND CONDITIONS -- A. GENERAL	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
7A004-2	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]	Mandatory for all solicitations. Do not agree to an assignment without consulting with legal counsel or management.
7A005-2	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	Mandatory. For information technology procurements involving contractor access to government information,

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	<p>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]</p>	<p>use the Bankruptcy – Government Information clause (7B007).</p>
7A010-1	<p>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]</p>	<p>Mandatory. This clause must be included in every contract. This clause provides that the contract and disputes about it are governed by the laws of this state.</p>
7A015-2	<p>CONTRACT DOCUMENTS &amp; ORDER OF PRECEDENCE (FEB 2015)            (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation of clarifications [11-35-1520(8)] or discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the State's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.            (b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect.            (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-2]</p>	<p>Mandatory. This clause identifies those documents that form the contract. It also explains how to resolve any inconsistencies among the terms of those documents. Lastly, it explains that documents signed by agencies (using governmental units) are not enforceable.</p>
7A020-1	<p>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.</p>	<p>Mandatory. This clause dovetails with the Prompt Payment form appearing on Page Two.             If the agency can accommodate faster payments, you may wish to encourage potential Offerors to provide such discounts.</p>

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	<p>(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]</p>	
7A025-1	<p>DISPUTES (JAN 2006): (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the government regarding the Agreement is not a waiver of either the government's sovereign immunity or the government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]</p>	<p>Mandatory. Use in all contracts.</p> <p>This clause provides that any disputes will be resolved by the Chief Procurement Officer, a process required by law.</p> <p>This clause also provides how contractors will accept service of the papers required to initiate a law suit.</p>
7A030-1	<p>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]</p>	<p>When applicable, federal regulations require the inclusion of certain clauses in state contracts.</p> <p>(a) Regarding contracts involving federally assisted construction contracts, see (1) 41 C.F.R. Section 60-1.4; can be included by reference per Section 60-1.4(b)(1),(d); automatically included per Section 60-1.4(e); (2) 41 C.F.R. Section 60-4.2; automatically included per Section 60-4.9; (3) 41 C.F.R. Section 60-4.3; automatically included per Section 60-4.9.</p> <p>(b) Regarding requirements for Disabled Veterans, see 41 C.F.R. Section 60-250.5; can be included by reference per Section 60-250.5(d); automatically included per Section 60-250.5(e).</p>

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		<p>(c) Regarding requirements for Disabled Individuals, see 41 C.F.R. Section 60-741.5; can be included by reference per Section 741.5(d); automatically included per Section 60-741.5(e).</p> <p>(d) Legal office has notebook with CFR Title 41, Part 60, and the relevant provisions.</p>
7A035-1	<p>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]</p>	<p>Mandatory. This clause informs participants that criminal penalties may accompany any false claims made on the state.</p>
7A040-1	<p>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]</p>	<p>Mandatory. Use this clause in all solicitations, except in the very rare case of a cost reimbursement contract. Cost reimbursement contracts are defined in Section 11-35-1410(1) and governed by Section 11-35-2010.</p>
7A045-2	<p>NO INDEMNITY OR DEFENSE (FEB 2015) Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney’s fees to anyone for any reason. [07-7A045-2]</p>	<p>Mandatory. The SC Attorney General has repeatedly stated that the state cannot indemnify a vendor. This clause reflects that position.</p>
7A050-1	<p>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]</p>	<p>Mandatory. This clause applies only after award. Part (A) identifies those methods of services that the parties have agreed are adequate. Part (B) identifies the address to which the parties have agreed that notice may be sent.</p>
7A053-1	<p>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]</p>	<p>Required by Act No. 63 of 2015. Mandatory for all solicitations.</p>
7A055-3	<p>PAYMENT &amp; INTEREST (FEB 2015) (a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on “Page Two.” (c) Notwithstanding any other provision,</p>	<p>Mandatory.</p> <p>IMPORTANT NOTE. Partial payments are very appropriate for many types of contracts, especially service contracts. If payments will be made prior to full performance, the solicitation must explain the conditions upon which partial payment will be made. For example, a janitorial contract may provide that payments will be</p>

Clause #	Text	Guidance on Use
	<p>payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off. [07-7A055-3]</p>	<p>made on a monthly basis. Software development contracts might provide that payment will be made upon acceptance of certain intermediate deliverables or upon proof of a certain degree of project completion. In the absence of such a provision, this clause provides for payment upon completion.</p> <p>This clause allows the payment method to be dictated in the purchase order. However, <b>SINCE PROSPECTIVE CONTRACTORS USUALLY NEED TO KNOW THIS PRIOR TO SUBMITTING OFFERS, THIS ISSUE SHOULD BE ADDRESSED IN THE SOLICITATION.</b></p> <p>Cross Reference the Purchase Order clause.</p>
7A060-1	<p>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]</p>	<p>Mandatory. Seek permission of management before providing a contractor with written approval under this paragraph.</p>
7A065-1	<p>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]</p>	<p>Mandatory.</p> <p>Under this clause, purchase orders serve as a "notice to proceed". Ordinarily, the state cannot refuse to issue a purchase order once a contract has been awarded.</p> <p>While purchase orders may not be used to alter the solicitation, certain critical issues are addressed only in purchase orders. Cross reference should be made to the following clauses:</p> <ol style="list-style-type: none"> <li>1. Delivery Date – Purchase Order</li> <li>2. Delivery Date – 30 Days ARO</li> <li>3. Contract Documents &amp; Order of Precedence</li> <li>4. Payment &amp; Interest</li> <li>5. Definitions, Capitalization, and Headings</li> </ol>
7A072-1	<p>IRAN DIVESTMENT ACT – ONGOING OBLIGATIONS (JAN 2015): (a) You must notify the procurement officer immediately if, at any time during the contract term, you are added to the Iran Divestment Act List. (b) Consistent with Section 11-57-330(B), you shall not contract with any person to perform a part of the Work, if, at the time you</p>	<p>Mandatory. Required by the Iran Divestment Act of 2014, S.C. Code Ann. Sections 11-57-10, et seq.</p>

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	enter into the subcontract, that person is on the then-current version of the Iran Divestment Act List. [07-7A072-1]	
7A075-1	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]	Mandatory. The implications of this clause are illustrated by the following example. If the state buys a widget and a warranty for the widget, the warranty does not end simply because the remainder of the contract is terminated for convenience.
7A080-1	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]	Mandatory.  Dovetails with clause entitled "Omit Taxes from Price".  Clause makes state liable for paying the taxes applicable to sale, use, or delivery of products provided under the contract.
7A085-1	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]	Mandatory for any procurement in which a contractual obligation may extend beyond the end of the fiscal year in which the contract is entered.
7A090-1	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]	Mandatory. Include this clause unless the State intends that a direct beneficiary of the contractor's performance can sue the contractor to either enforce the contract or recover for breach. (A very, very rare occurrence!) The only contracts even eligible for such an approach would be contracts in which the Contractor was providing direct services to a group.
7A095-1	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]	This clause is intended to limit unintentional waivers of rights the state may have under a contract.

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	<b>PART 7B</b>	
7B001	VII. TERMS AND CONDITIONS -- B. SPECIAL	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
7B005-1	Section Not Applicable - Intentionally Omitted [07-7B005-1]	Include this clause if there are no special terms in your solicitation.
7B007-1	<p><b>BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015)</b></p> <p>(a) All government information (as defined in the clause herein entitled “Information Security - Definitions”) shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate.</p> <p>(b) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor’s possession in a format that can be readily utilized by the State.</p> <p>(c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information. [07-7B007-1]</p>	Consider for use in procurements which involve contractor access to or possession of important agency or citizen data. Due to the definitional cross reference in subsection (a), you must also include the Information Security - Definitions clause if this clause is used.
7B025-1	<p><b>CHANGES (JAN 2006):</b></p> <p>(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:</p> <p>(a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;</p> <p>(b) method of shipment or packing;</p> <p>(c) place of delivery;</p> <p>(d) description of services to be performed;</p> <p>(e) time of performance (i.e., hours of the day, days of the week, etc.); or,</p> <p>(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.</p> <p>(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</p>	<p>Use this only if the state may need the authority to order changes to the contract.</p> <p>The Price Adjustments Clause must be used in conjunction with this clause.</p> <p>If you are conducting a procurement for a very large services contract involving customized services and the potential for many post-award contract modifications (such as a large information technology project involving either software development or significant configuration of existing software), consider engaging legal counsel to draft a more thorough changes clause, such as that found in OSE’s standard modifications to Part 7 of the AIA A201 (1997).</p> <p>By definition, a Contract Modification is “a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of</p>

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	<p>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.</p> <p>(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.</p> <p>(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.</p> <p>[07-7B025-1]</p>	<p>the contract authorizes the Procurement Officer to order without the consent of the contractor.” Section 11-35-310(9).</p>
7B030-1	<p>CISG (JAN 2006): The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement. [07-7B030-1]</p>	<p>Recommended for all contracts for the sale of goods. In contracts involving an international sale of goods, the UN Convention on the International Sale of Goods (CISG) governs the rights of the parties and trumps local law such as the Uniform Commercial Code (UCC). CISG expressly allows parties to opt out of CISG. By doing so, the parties rights would be governed by the UCC. Include this clause any time your acquisition may involve a foreign vendor.</p>
7B035-1	<p>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]</p>	<p>Optional. This clause makes the contractor's compliance with applicable laws a contract performance obligation.</p>
7B040-1	<p>CONFERENCE – PRE-PERFORMANCE (JAN 2006): Unless waived by the Procurement Officer, a pre-performance conference between the contractor, state and Procurement Officer shall be held at a location selected by the state within 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.</p> <p>[07-7B040-1]</p>	<p>Optional.</p>
7B042-1	<p>CONTRACT DOCUMENTS &amp; ORDER OF PRECEDENCE–SOFTWARE LICENSING–SINGLE AGENCY (FEB 2015): Notwithstanding the clause entitled “Contract Documents &amp; Order of Precedence,” but as provided in the clause titled “Software Licensing Agreements–Single Solicitation,” any contract awarded pursuant to this solicitation shall not include a software licensing agreement. Further, the document titled <i>South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency</i>, which is</p>	

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	attached hereto as an exhibit, is offered as information only and does not form part of the contract. [07-7B042-1]	
7B045-1	CONTRACT LIMITATIONS (JAN 2006): No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment. [07-7B045-1]	Optional. This clause is recommended for all Indefinite Quantity Contracts, such as statewide term contracts.
7B056-2	<p>CONTRACTOR'S LIABILITY INSURANCE - GENERAL (FEB 2015)</p> <p>(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.</p> <p>(b) Coverage shall be at least as broad as:</p> <p>(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>	<p>This clause requires three types of insurance: Commercial General Liability, or CGL; Automobile Liability; and Workers Compensation/Employer's Liability. You should always include this clause if you anticipate the contractor will perform substantial services on state property or in a state building. If the contractor will have no presence, or insignificant presence, in the state, you may omit the requirements for Automobile Liability and Workers Compensation/Employer's Liability. If you are purchasing goods, especially products with the potential of harming the user or a third party, you should require CGL coverage. If the contract will be performed outside of the state and does not involve the purchase of goods, you may omit the clause entirely.</p> <p>Previous versions of the insurance provision attempted to define each type of coverage required under a CGL policy, which often led to vendor questions and negotiation over the specific language of the clause. This edition simply requires CGL coverage at least as broad as that provided under the most commonly-used policy form. The clause does not dictate the use of this form; rather, it defines the required coverage with reference to it. Given the generic types of coverage and the low limits of coverage stated, the insurance required should be readily available in most circumstances. However, if you become aware that the target vendor community will experience difficulty with this insurance requirement, appropriate adjustments may be necessary. Consult with your management.</p> <p>This clause is intended to cover routine goods and services contracts. There will always be contracts which are unusual or have unusual insurance requirements (examples: implosion of a building, a contract for medical</p>

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	<p>(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.</p> <p>(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.</p> <p>(g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.</p> <p>(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.</p> <p>(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.</p> <p>[07-7B056-2]</p>	<p>services for inmates, or a contract to handle hazardous waste). If you suspect your procurement may involve special insurance needs, consult with the appropriate subject matter experts (internal risk management staff, legal counsel, the Insurance Reserve Fund, or your general liability carrier, as appropriate).</p> <p>In the event you use this clause on a statewide term contract, the named insured should be as follows: State of South Carolina, including all public procurement units (S.C. Code Section 11-35-4610).</p>
7B058-1	<p><b>CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015)</b>  <b>[ASK QUESTIONS NOW: For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially-available insurance products. Any offeror having concerns with any specific requirements of this clause should communicate those concerns to the procurement officer well in advance of opening.]</b></p> <p>(a) Without limiting any other obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, a policy or policies of insurance against claims which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees, subcontractors or any other entity for which the contractor is legally responsible.</p>	<p>1. Risk Assessment &amp; Appropriate Policy Limits. Any contract involving vendor access or hosting of critical or confidential data should directly involve upper management of the using agency in the risk assessment and the decision regarding policy limits. Using the default policy limits is simply not appropriate. Any evaluation of the need for such coverage and appropriate policy limits will require a consideration of the type of services being acquired and the type of data involved. To illustrate, a cloud service provider which serves as a data repository for your customer data would present a major risk for data breach losses and potential litigation. Accordingly, the agency may wish to require limits of coverage significantly higher than the default. In contrast, if a</p>

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	<p>(b) Coverage must include claims for:</p> <p>(i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form;</p> <p>(ii) privacy risks, including (A) failure to properly handle, manage, store, dispose of, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss of, unauthorized access to, or disclosure of confidential information; and (C) any form of invasion, infringement or interference with rights of privacy, including breach of security/privacy laws or regulations;</p> <p>(iii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims – Disclosure Of Information" and "Information Use And Disclosure;" and</p> <p>(iv) errors, omissions, or negligent acts in the performance, by the contractor or by any entity for which the contractor is legally responsible, of professional services included in the work.</p> <p>(c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media and content offenses.</p> <p>(d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)</p> <p>(e) Coverage shall have limits no less than five million (\$5,000,000.00) dollars per occurrence and ten million (\$10,000,000.00) dollars aggregate.</p> <p>(f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.</p> <p>(g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims-made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.</p> <p>(h) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.</p> <p>(i) For any claims related to this contract, the insurance coverage required by this clause shall be primary insurance as respects the State, every applicable Using</p>	<p>contract for web development involves NO access to your data, the risk may be limited to any risk associated with the website's content. Do not focus on the contract value, and do not default to your contractor's existing policy limits. Rather, consider the risks involved in exposure of the data involved. The exposure can be quite significant. See below for a partial list of the types of losses potentially involved in a data breach.</p> <p>2. Sample Types of Losses from Data Breach</p> <p>a. Costs of forensic investigation of the breach, the data released/lost/damaged, and the potential parties affected.</p> <p>b. Costs (legal, public relations, call centers, websites, etc.)involved in preparation and distribution of notice and information regarding breach.</p> <p>c. Damage mitigation, including credit monitoring, ID theft protection &amp; rehabilitation services, etc.</p> <p>d. Legal defense costs and fees.</p> <p>e. Cost to respond to regulatory investigations and pay any regulatory fines.</p> <p>f. Costs to restore your damaged information assets (software apps, data, etc.)</p> <p>3. In determining the appropriate policy limits, do not consider the total, potential financial consequences of a breach; rather, consider what losses insurance will cover. In determining the appropriate policy limits, the using agency may wish to consider published information regarding average minimum and maximum per record, per event costs by industry. For example, Ponemon Institute, LLC, sponsored by IBM, publishes an annual white paper on this topic entitled "Cost of Data Breach Study for the US." The study is available at <a href="http://www.ibm.com/services/costofbreach">www.ibm.com/services/costofbreach</a>. (last visited Jan. 26, 2015)</p>

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	<p>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.</p> <p>(j) Prior to commencement of the work, the Contractor shall furnish the State with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including policy declarations and any endorsements required by this section, at any time.</p> <p>(k) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this clause are or will be changed, cancelled, or replaced.</p> <p>(l) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.</p> <p>(m) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. [07-7B058-1]</p>	
7B060-1	<p>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]</p>	<p>Recommended for any contract involving the presence of contractor's employees or subcontractors on property controlled by the state.</p>
7B065-1	<p>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]</p>	<p>Recommended for all contracts involving the provision of services.</p>

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Clause #	Text	Guidance on Use
7B067-1	<p>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]</p>	<p>If the state will provide the contractor with state-owned property during performance of the contract, include this clause.</p> <p>Cross-reference the Ownership of Data &amp; Materials clause.</p>
7B075-1	<p>DEFAULT (JAN 2006):</p> <p>(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:</p> <p>(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;</p> <p>(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or</p> <p>(iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>	<p>Optional. Use this clause for clauses with an expected value in excess of \$100,000. [An amount should be specified. FYI - \$100,000 is the small acquisition threshold for the federal acquisition regulations – Part 13.] For contracts below this threshold, use the Short Version.</p> <p>A “termination for cause,” “termination for default,” or “Default” clause is NOT essential. Under the common law, parties can terminate a contract without such a clause. Nevertheless, a Default clause does have benefits.</p>

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Clause #	Text	Guidance on Use
	<p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>[07-7B075-1]</p>	
7B080-2	<p>DEFAULT – SHORT FORM (FEB 2015)</p> <p>The state may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any material contract terms and conditions, or fails to provide the state, upon request, with adequate assurances of future performance. In the event of termination for cause, the state shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the state for any and all rights and remedies provided by law. If it is determined that the state improperly terminated this contract for default, such termination shall be deemed a termination for convenience.</p> <p>[07-7B080-2]</p>	<p>Optional. Use this clause for clauses with an expected value of \$100,000 or less. [An amount should be specified. FYI - \$100,000 is the small acquisition threshold for the federal acquisition regulations – Part 13.] For contracts above this threshold, use the standard Default clause.</p>
7B085-1	<p>DISPOSAL OF PACKAGING (JAN 2006): Contractor shall dispose of all wrappings, crating, and other disposable materials pertaining to this contract at the end of each working day and upon completion of installation. [07-7B085-1]</p>	<p>Recommended for any contract involving inside delivery, setup, or installation.</p>

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Clause #	Text	Guidance on Use
7B090-1	ESTIMATED QUANTITY - PURCHASES FROM OTHER SOURCES (JAN 2006): The state may bid separately any unusual requirements or large quantities of supplies covered by this contract. [07-7B090-1]	Include only in Indefinite Quantity Contracts, such as statewide term contracts.
7B095-1	ESTIMATED QUANTITY - UNKNOWN (JAN 2006): The total quantity of purchases of any individual item on the contract is not known. The State does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information. [07-7B095-1]	Include in all Indefinite Quantity Contracts, such as statewide term contracts.
7B097-1	ILLEGAL IMMIGRATION (NOV 2008): (An overview is available at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a> ) 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]	
7B100-2	INDEMNIFICATION-THIRD PARTY CLAIMS – GENERAL (NOV 2011): Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive	Optional. This clause may be used in any procurement and should be included if contractor's personnel will be on the State's property.

Clause #	Text	Guidance on Use
	<p>termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B100-2]</p>	
7B102-1	<p><b>INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015)</b></p> <p>(a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter "action") of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.</p> <p>(b) Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractor's ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitees attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.</p> <p>(c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the</p>	<p>Consider for use in all services procurements which involve contractor access to or possession of important agency or citizen data. Due to critical cross-references and interlocking obligations, you also must include the Information Security - Definitions and Information Use and Disclosure clauses if this clause is used.</p>

Table of Clauses (SEP 2017)

Clause #	Text	Guidance on Use
	<p>contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.                      (d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B102-1]</p>	
7B103-1	<p>INDEMNIFICATION - INTELLECTUAL PROPERTY (JAN 2006): (a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. [07-7B103-1]</p>	<p>Optional. Ordinarily, this clause need not be used for an acquisition of goods only (an acquisition covered by the UCC), as long as you do not allow the contractor to insert any limitation of damages, remedy, or warranty disclaimers. Otherwise, this clause should be widely used in all contracts.</p> <p>This clause should also be used for acquisitions of goods involving detailed design specifications, such as school bus procurements.</p>
7B104-1	<p>INFORMATION SECURITY - DEFINITIONS (FEB 2015)                      The following definitions are used in those clauses that cross reference this clause.</p>	<p>Use this clause any time you use a clause that references these definitions.</p>

Clause #	Text	Guidance on Use
	<p><b>Compromise</b> means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term “compromise” includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract.</p> <p><b>Data</b> means a subset of information in an electronic format that allows it to be retrieved or transmitted.</p> <p><b>Government information</b> means information (i) provided to Contractor by, or generated by Contractor for, the using governmental unit, or (ii) acquired or accessed by Contractor as a result of performing the Work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web-based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information.</p> <p><b>Information</b> means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.</p> <p><b>Information system</b> means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.</p> <p><b>Public information</b> means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request.</p> <p><b>Software</b> means any computer program accessed or used by the Using Governmental Unit or a third party pursuant to or as a result of this contract.</p> <p><b>Third party</b> means any person or entity other than the Using Governmental Unit, the Contractor, or any subcontractors at any tier.</p> <p><b>Unrestricted information</b> means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor’s performance of the work.</p> <p><b>Web-based service</b> means a service accessed over the Internet and acquired, accessed, or used by the using governmental unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services.</p> <p>[07-7B104-1]</p>	
7B105-1	INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)	Consider for use in all procurements which involve contractor access to or possession of important agency

Clause #	Text	Guidance on Use
	<p>(a) <i>Definitions.</i> The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. In addition, as used in this clause—</p> <p><b>Clearing</b> means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods.</p> <p><b>Intrusion</b> means an unauthorized act of bypassing the security mechanisms of a system.</p> <p><b>Media</b> means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, portable hard drives, “thumb” drives, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system.</p> <p><b>Safeguarding</b> means measures or controls that are prescribed to protect information.</p> <p><b>Voice</b> means all oral information regardless of transmission protocol.</p> <p>(b) <i>Safeguarding Information.</i> Without limiting any other legal or contractual obligations, contractor shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality and integrity of the government information in its possession. In addition, contractor shall apply security controls when the contractor reasonably determines that safeguarding requirements, in addition to those identified in paragraph (c) of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability.</p> <p>(c) <i>Safeguarding requirements and procedures.</i> Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure:</p> <p>(1) <u>Protecting information on public computers or Web sites:</u> Do not process government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Government information shall not be posted on Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts).</p> <p>(2) <u>Transmitting electronic information.</u> Transmit email, text messages, blogs, and similar communications that contain government information using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.</p>	<p>or citizen data. The requirements reflected herein are minimal and should not be relied upon as a default. In compliance with internal agency policies governing information security, each agency must determine for itself whether the services acquired from the contractor warrant the imposition of additional controls by contract. Agencies should be aware that commercial providers of commodity-type services typically organize their business models and services around the concept of shared resources and devices for a broad and diverse customer base. Therefore, unless an organization obtains fully dedicated services from a commercial service provider, there may be a need for greater reliance on compensating security controls by the agency to provide the necessary protections for the information system that relies on those external services. <b>Internal agency assessments of risk and risk mitigation activities are necessary to address this situation.</b></p>

Clause #	Text	Guidance on Use
	<p>(3) <u>Transmitting voice and fax information</u>. Transmit government information via voice and fax only when the sender has a reasonable assurance that access is limited to authorized recipients.</p> <p>(4) <u>Physical and electronic barriers</u>. Protect government information by at least one physical and one electronic barrier (e.g., locked container or room, login and password) when not under direct individual control.</p> <p>(5) <u>Sanitization</u>. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800–88, Guidelines for Media Sanitization, at <a href="http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf">http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf</a>.</p> <p>(6) <u>Intrusion protection</u>. Provide at a minimum the following protections against intrusions and compromise:</p> <p>(i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware.</p> <p>(ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.</p> <p>(7) <u>Transfer limitations</u>. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause.</p> <p>(d) <u>Subcontracts</u>. Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information.</p> <p>(e) <u>Other contractual requirements regarding the safeguarding of information</u>. This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems.</p> <p>[07-7B105-1]</p>	
7B106-1	<p>INFORMATION SECURITY – LOCATION OF DATA (FEB 2015)</p> <p>Notwithstanding any other provisions, contractor is prohibited from processing, storing, transmitting, or accessing government information, as defined in the clause titled Information Security - Definitions, outside the continental United States. For clarity, this obligation is a material requirement of this contract and applies to subcontractors at any tier. [07-7B106-1]</p>	<p>Consider for use in procurements where Contractor will have important agency or citizen data hosted in Contractor’s computer systems. Given the common use of data centers located around the globe and the cost of hosting all data in the continental US, Using Agencies should be aware that this requirement will increase costs and may limit competition. These factors should be weighed against the risk of exposing the data to laws and social forces in other countries, particularly where the using agency will trust the contractor with data classified as Confidential or Restricted under the State’s <a href="#">Data Classification Schema</a>.</p>

Clause #	Text	Guidance on Use
		<p>Due to critical cross-references, you must also use the <b>Information Security - Definitions</b> clause if this clause is used. Ordinarily, you would not use this clause without also including the <b>Information Use and Disclosure</b> clause. You should also consider inclusion of the <b>Offshore Contracting Prohibited</b> clause.</p>
7B108-1	<p><b>INFORMATION USE AND DISCLOSURE (FEB 2015)</b>            Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor's use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be broadly interpreted to effectuate this intent. Every obligation in this clause is material. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information.</p> <p>(a) <i>Definitions.</i> The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.</p> <p>(b) <i>Legal mandates.</i> Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide using governmental unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law.</p> <p>(c) <i>Flow down.</i> Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for, and shall impose by agreement the requirements of this clause on, any other person or entity that contractor authorizes to take action related to government information.</p> <p>(d) <i>Collecting Information.</i> Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work.</p> <p>(e) <i>Rights, Disclosure and Use.</i> Except as otherwise expressly provided in this solicitation, Contractor agrees NOT to either (1) use or disclose government information, or (2) retain government information after termination or expiration of this contract. Contractor acquires no rights in any government information except the limited rights to use, disclose and retain the government information in accordance with the terms of this solicitation. To the extent reasonably necessary to perform the work, Contractor may: (i) use (including access, process, transmit, and store) and maintain the government information itself; and (ii) disclose government information to</p>	<p>Consider for use in all services procurements which involve contractor access to or possession of important agency or citizen data. Due to critical cross-references, you must also use the <b>Information Security - Definitions</b> and <b>Information Use and Disclosure – Standards</b> clauses if this clause is used. Ordinarily, you would not use this clause without also including the <b>Indemnification – Third Party Claims – Disclosure of Information</b> clauses.</p>

Clause #	Text	Guidance on Use
	<p>persons having a need-to-know (e.g., subcontractors). Before disclosing government information to a subcontractor or third party, Contractor shall give the using governmental unit detailed written notice of both the reason for disclosure and the identity and location of the recipient. The notice shall be provided no later than fifteen (15) business days in advance of the disclosure.</p> <p>(f) <i>Return.</i> Notwithstanding the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to the using governmental unit (or destroy, at the using governmental unit's option) all government information in its possession as and upon written request of using governmental unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information).</p> <p>(g) <i>Privacy Policy &amp; Applicable Laws.</i> Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards.</p> <p>(h) <i>Actions Following Disclosure.</i> Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on the using governmental unit, and (5) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper us.</p>	

Clause #	Text	Guidance on Use
	<p>Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.</p> <p>(i) <i>Survival &amp; Remedy</i>. All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause. [07-7B108-1]</p>	
7B110-1	<p>INFORMATION USE AND DISCLOSURE – STANDARDS (FEB 2015)</p> <p>To the extent applicable:</p> <p>(a) Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. Section 1-11-490.</p> <p>(b) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of government information, as defined herein, and Contractor agrees that the Using Governmental Unit is not a licensee.</p> <p>(c) The South Carolina Family Privacy Protection Act of 2002, S.C. Code Ann. Sections 30-2-10, et seq.</p> <p>(d) Personal Identifying Information Privacy Protection, S.C. Code Ann. Sections 30-2-310 et seq.</p> <p>(e) Data Breach Notification, 2014 Act No. 286, Section 117.117, as revised in any future annual appropriations act. [07-7B110-1]</p>	<p>Consider for use in all services procurements which involve contractor access to or possession of important agency or citizen data. Due to critical cross-references, you also must use both the <b>Information Security - Definitions</b> and <b>Information Use and Disclosure</b> clauses, if this clause is used. <b>PRIOR TO INCLUDING THIS CLAUSE IN ANY SOLICITATION THE PROCUREMENT OFFICER IS STRONGLY CAUTIONED TO CONSULT WITH THE USING AGENCY TO DETERMINE IF ANY SPECIFIC LEGAL STANDARDS SHOULD BE ADDED TO OR REMOVED FROM THIS CLAUSE.</b></p> <p>Other standards which may be applicable include, but are not limited to, the following:</p> <ol style="list-style-type: none"> <li>(1) FISMA: Federal Information Security Management Act, 44 U.S.C. Sections 3541, et seq.</li> <li>(2) HIPAA: Health Insurance Portability and Accountability Act of 1996) and HITECH (Health Information Technology for Economic and Clinical Health Act of 2009); Privacy Rule at 45 C.F.R. 160 &amp; 164</li> <li>(3) FERPA: Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g</li> <li>(4) GLB: Gramm–Leach–Bliley Act; Financial Privacy Rule codified at 15 U.S.C. Sections 6801–6809</li> <li>(5) IRS Publication 1075</li> <li>(6) IRC Section 6103(p)(4) (26 U.S.C. Section 6103(p)(4))</li> <li>(7) FCRA: Fair Credit Reporting Act, 15 U.S.C. Sections 1681 et seq.</li> <li>(8) FACT Act: Fair and Accurate Credit Transactions Act, PL 108-159 (2003) (Disposal Rule at 16 CFR Part 682)</li> </ol>

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		<p>(9) FTC: Regulations promulgated by the Federal Trade Commission collectively known as the “Red Flags Rule,” found at 16 CFR 681</p> <p>(10) CJIS: Criminal Justice Information Services Security Policy, published by Federal Bureau of Investigation, U.S. Department of Justice; current version 5.1 (July 13, 2012)</p> <p>(11) PCI DSS (Payment Card Industry Data Security Standard): the current version of PCI DSS published on the PCI SSC (PCI Security Standards Council) website</p>
7B115-1	<p>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]</p>	<p>Use for service contracts if you expect some licensing or permitting requirement to apply to the contractor’s performance obligations.</p>
7B120-1	<p>MATERIAL AND WORKMANSHIP (JAN 2006): Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. [07-7B120-1]</p>	<p>Ordinarily, this clause should be used in all procurements involving the acquisition of any equipment or other material. It does not apply to acquisitions for used supplies.</p>
7B122-1	<p>OFFSHORE CONTRACTING PROHIBITED (FEB 2015) No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States. [07-7B122-1]</p>	<p>Consider for use in all ITMO services procurements which involve contractor access to or possession of important agency or citizen data. Ordinarily, this clause would be included in contracts acquiring software as a service and other hosted services. Given the common use of data and call centers located around the globe and the cost of hosting all data in the continental US, Using Agencies should be aware that this requirement will increase costs and may limit competition. These factors should be weighed against the risk of exposing the data to laws and social forces in other countries, particularly where the using agency will trust the contractor with data classified as Confidential or Restricted under the State’s Data Classification Schema. You may also consider inclusion of the <b>Information Security – Data Location</b> clause.</p>
7B125-1	<p>OWNERSHIP OF DATA &amp; 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]</p>	<p>Cross-reference the Contractor’s Use of State Property clause.</p>
7B130-1	<p>PACK SIZE - BUNDLING (JAN 2006): You may bundle units differently than called for by the bidding schedule provided your offer explains how you bundle units. [07-7B130-1]</p>	<p>Optional. As needed.</p>

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7B135-1	PACKAGING (JAN 2006): Alternate packaging will be given consideration. [07-7B135-1]	Optional. As needed.
7B140-1	PALLETIZING (JAN 2006): Palletized products must be furnished on hardwood pallets. [07-7B140-1]	Optional. As needed.
7B145-1	PARTIAL SHIPMENTS (JAN 2006): No partial shipments on any item will be accepted. [07-7B145-1]	Optional. As needed.
7B150-1	<p>PERFORMANCE BOND REQUIRED – ITMO (JAN 2006): As a condition of the execution of the contract, the contractor shall supply a performance bond; certificate of deposit; cash; an unconditional, irrevocable, standby letters of credit; or marketable securities, or provide other financial arrangements whereby funds are pledged to the benefit of the State, are not under the control of the contractor, are payable to the State upon written demand to the holder of the security, and are subject to the direction of the State if any of the circumstances set forth in sub-sections below occur. This security will protect, indemnify, and save harmless the State from all costs and damages by reason of the contractor’s default, breach, or failure to satisfactorily complete any of the following terms:</p> <p>Payment to all entities, individuals, and the like furnishing of labor or materials in connection with this contract; and/or</p> <p>The successful execution of the final implementation plan, including satisfactorily meeting the performance or test requirements on the dates specified in the final implementation plan and the acceptance requirements and/or</p> <p>Full and satisfactory performance of the ongoing obligations contained in this RFP, any amendments and any subsequent contract between the State and the contractor. In the event of any condition of breach or other circumstance, such as those set forth above, attributable to the contractor, the State shall have the right to draw against the security such sums as are necessary to make the State whole, to secure and compensate the State for substituted services or other forms of relief made necessary by the breach. Nothing herein shall be construed to mean that the security provided for herein is exclusive or constitutes any limitation or restriction on any remedies to which the State may be entitled.</p> <p>The security shall be for the benefit of the State, payable only to the State at its discretion pursuant to the terms of this section, shall be in the face amount of the contract and shall be non-exclusive and in addition to all other remedies available to the State under this RFP or the contract, or by law.</p> <p>The contractor shall establish the security not later than ten (10) days after execution of the contract, and failure to satisfy this requirement will void the contract.</p> <p>Any interest or other income resulting from the security shall become and remain the property and possession of the contractor and shall be payable to the contractor.</p> <p>The contractor may request a reduction in the security on an annual basis, no earlier than twelve (12) months after the first anniversary date of acceptance of the service, and the State’s consideration of such request shall take into account performance, and likelihood of the need for future protection provided by the security to the State.</p>	Consult with management and/or legal counsel.

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7B155-1	<p>[07-7B150-1]</p> <p>PERFORMANCE BOND REQUIRED (JAN 2006): Within ten (10) days after award, contractor shall provide a performance bond in the full amount of the contract sum, issued by a surety company licensed in South Carolina, with an “A” minimum rating of performance as stated in the most current publication of “Best’s key rating guide, property liability” which shall show a financial strength rating of at least five (5) times the contract amount. Each bond must be accompanied by a “power of attorney” authorizing the attorney-in-fact to bind the surety and certified to include the date of the performance bond. [07-7B155-1]</p>	<p>Consult with management and/or legal counsel.</p>
7B160-1	<p>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):</p> <ul style="list-style-type: none"> <li>(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;</li> <li>(b) by unit prices specified in the Contract or subsequently agreed upon;</li> <li>(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;</li> <li>(d) in such other manner as the parties may mutually agree; or,</li> <li>(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.</li> </ul> <p>(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.</p> <p>[07-7B160-1]</p>	<p>Mandatory for any solicitation if either (a) the solicitation includes a changes clause, or (b) the potential value exceeds \$100,000.</p> <p>Any adjustment to the price after final award must be made in accordance with the terms of this clause.</p>

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7B165-1	<p>PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY (JAN 2006): Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase. [07-7B165-1]</p>	<p>Use of this clause must be accompanied by another clause which specifies how price increase will be evaluated, e.g., against some commercially published index, like PPI or CPI, or pursuant to data submitted by the contractor.</p> <p>This clause does not apply, and should not be used, when the price fluctuates because price was bid as either a percentage discount off a published catalog price or a function of some price, cost, or industry index.</p>
7B170-1	<p>PRICE ADJUSTMENTS – LIMITED BY CPI “ALL ITEMS” (JAN 2006): Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), “all items” for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at <a href="http://www.bls.gov">www.bls.gov</a> [07-7B170-1]</p>	<p>In multi-term contracts, vendors often seek price increases due to increase costs. If such requests are justified, this clause provides guidance on how much the price may be adjusted. Cross reference the Price Adjustments clause.</p>
7B175-1	<p>PRICE ADJUSTMENTS – LIMITED BY CPI “OTHER GOODS &amp; SERVICES” (JAN 2006): Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), “Other Goods &amp; Services” for services, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at <a href="http://www.bls.gov">www.bls.gov</a> [07-7B175-1]</p>	<p>In multi-term contracts, vendors often seek price increases due to increase costs. If such requests are justified, this clause provides guidance on how much the price may be adjusted. Cross reference the Price Adjustments clause.</p>
7B180-1	<p>PRICE ADJUSTMENTS – LIMITED BY PPI (JAN 2006): Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Producer Price Indexes (PPI) for the applicable commodity, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at <a href="http://www.bls.gov">www.bls.gov</a> (.) [07-7B180-1]</p>	<p>In multi-term contracts, vendors often seek price increases due to increase costs. If such requests are justified, this clause provides guidance on how much the price may be adjusted. Cross reference the Price Adjustments clause.</p>
7B185-1	<p>PRICING DATA – AUDIT – INSPECTION (JAN 2006): [Clause Included Pursuant to Section 11-35-1830, - 2210, &amp; -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</p>	<ol style="list-style-type: none"> <li>1. Mandatory for contracts with a total potential value in excess of \$100,000.</li> <li>2. Why to Request Cost or Pricing Data: Procurement officers have a basic responsibility for evaluating the reasonableness of an offer’s price. For most procurements, this evaluation is facilitated by adequate</li> </ol>

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	<p>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]</p>	<p>price competition. However, in sole source procurements, many RFPs, and all change orders, little or no true price competition exists. Regardless of the reason, cost or pricing data provides the information needed to perform that evaluation. In addition, such data can be <u>exceedingly</u> valuable when developing a negotiation position (say, when negotiating on an RFP, sole source, or change order). Essentially, this data allows you to determine the offeror’s / contractor’s actual cost and profit margin prior to completing negotiations over what to pay. Private firms would welcome the opportunity to get such data. Take advantage of it!</p> <p>3. When to Request Cost or Pricing Data: You should request cost or pricing data when, and only when, Section 11-35-1830 requires its submission. As reflected in this clause, we do not ask for such information pursuant to this clause if either (a) the total contract price does not exceed \$500,000, [\$1,000,000 / \$2,000,000] or (b) the value of a contract change does not exceed \$100,000. Generally, request this information prior to awarding on an RFP, sole source, change order, or contract modification.</p> <p>4. CFR References. Portions of the CFR may be accessed at:  <a href="http://www.gpoaccess.gov/cfr/index.html">www.gpoaccess.gov/cfr/index.html</a></p> <p>5. Table 15-2, Instructions for Submitting Cost-Price Data (from 48 C.F.R. Section 15.408 (2004)), is reprinted in an appendix to this compendium.</p> <p>6. 48 C.F.R. Section 2.101: Cost or pricing data (10 U.S.C. 2306a(h)(1) and 41 U.S.C. 254b) means all facts that, as of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 48 CFR 15.406–2. Cost or pricing data are factual, not judgmental; and are verifiable. While they</p>

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		<p>do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as—</p> <ol style="list-style-type: none"> <li>(1) Vendor quotations;</li> <li>(2) Nonrecurring costs;</li> <li>(3) Information on changes in production methods and in production or purchasing volume;</li> <li>(4) Data supporting projections of business prospects and objectives and related operations costs;</li> <li>(5) Unit-cost trends such as those associated with labor efficiency;</li> <li>(6) Make-or-buy decisions;</li> <li>(7) Estimated resources to attain business goals; and</li> <li>(8) Information on management decisions that could have a significant bearing on costs.</li> </ol> <p>7. Certificate Modified for State Context:</p> <p><b>CERTIFICATE OF CURRENT COST OR PRICING DATA</b></p> <p>This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined by 48 C.F.R. 2.101) submitted, either actually or by specific identification in writing, to the Procurement Officer in support of _____* are accurate, complete, and current as of _____**.</p> <p>Firm _____</p> <p>Signature _____</p> <p>Name _____</p> <p>Title _____</p> <p>Date *** _____</p> <p>* Insert information to identify the solicitation and/or change order.</p> <p>**Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the</p>

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		<p>parties that is as close as practicable to the date of agreement on price.                      *** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.                      (END OF CERTIFICATE)</p>
7B190-1	<p>PRINTING MANUAL (JAN 2006): The South Carolina Government Printing Services manual, dated January 1, 1998, governs both the procurement and any resulting contract and is hereby incorporated by reference. You are responsible for obtaining a copy of the manual. This manual is available at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a> [07-7B190-1]</p>	<p>Include this clause in all procurements for printing services.</p>
7B200-1	<p>PURCHASING CARD (JAN 2006): Contractor agrees to accept payment by the South Carolina Purchasing Card for no extra charge. The Purchasing Card is issued by Visa. The purchasing card allows state agencies to make authorized purchases from a vendor without the requirement to issue a purchase order. [07-7B200-1]</p>	<p>Use only in procurements for supplies unless approved by your supervisor.</p>
7B205-1	<p>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]</p>	<p>Recommended for most services contracts.                       Occasionally, the state retains a contractor that acts in a manner that suggests that the state has authorized the vendor to act on its behalf, when in fact, the vendor is acting on its own behalf. For example, an advertising firm might acquire film production services to develop a TV ad for the state. The film production company might mistakenly believe that the vendor is acquiring its services for the state rather than for the vendor. This clause makes clear that the vendor does not have authority to act as an agent, or enter into a contract for the state.</p>
7B210-1	<p>RELATIONSHIP OF USING GOVERNMENTAL UNITS (JAN 2006): Each Using Governmental Unit's obligations and liabilities are independent of every other Using Governmental Unit's obligations and liabilities. No Using Governmental Unit shall be responsible for any other Using Governmental Unit's act or failure to act. [07-7B210-1]</p>	<p>Include in all statewide and multi-agency contracts!</p>
7B212-1	<p>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</p>	<p>1. Recent experience reflects that some businesses are using their public contracts to either sell additional services to or acquire additional data from those they interact with while performing the work. The most common scenario involves a contract in which citizens or state employees are interacting with the government or the contractor over the internet via a computer-based service provided by the contractor. In some instances,</p>

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	<p>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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>[07-7B212-1]</p>	<p>contractors are requiring citizens and/or state employees to enter into a contract with the vendor as a condition of accessing the service the agency contracted the vendor to provide. This clause is intended to forbid such activity.</p> <p>2. If you are acquiring an off-the-shelf service, the following additional paragraph may be one that helps potential vendors to find practical ways to accommodate this requirement:</p> <p>(d) Notwithstanding item (a) above, contractor may require or invite a citizen or public employee to provide consent or agree to an end user contract, privacy policy, or other terms of use (collectively referred to hereinafter as “terms of use”) if every person presented with terms of use during performance of the work will also be presented with a statement to the effect that, notwithstanding anything in those terms of use to the contrary, the terms of use apply only to the extent [Option 1: “they are not inconsistent with this contract. Without limiting the generality of the foregoing, terms of use may not address dispute resolution, choice of forum, choice of law, limitations of liability, remedies, or use of government information (as defined in the Information Use and Disclosure clause) by Contractor or those for whom it is responsible (e.g., subcontractors).” Option 2: “they do not add to, remove from, or modify this contract.”</p>
7B215-1	<p><b>SOFTWARE LICENSES (JAN 2006):</b></p> <p>Proprietary Software: Proprietary software is non-custom written, non-made for hire computer software supplied by the contractor and documentation used to describe, maintain and use the software.</p> <p>License: The State is hereby granted a non-exclusive, fully paid perpetual license to use the proprietary software acquired hereunder.</p> <p>Title: Title to any proprietary software provided by the Contractor to the State will remain with the Contractor.</p> <p>Trade Secrets: The State agrees that the proprietary software is a trade secret of the contractor. The State agrees to take reasonable precautions to protect the trade secret nature of the proprietary software and to prevent its disclosure to unauthorized personnel. The license herein granted cannot be transferred, assigned, or made available by the State for use by any other individual, firm, partnership, or legal entity not affiliated, associated, or connected with the State without the prior expressed written consent of the contractor, which consent will not be unreasonably withheld.</p>	<p>For use only by ITMO!</p>

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	<p>Such transfer shall also be conditioned upon the execution by the transferee of a written declaration agreeing to be bound by the terms and conditions of confidentiality provided for in this section.</p> <p>Source Code: Source code includes files used by assembly, basic, c or other language compatibles to produce object modules for linkage into applications programs. The source code media will contain source code, files for compiling and linking software, and any other files and documentation available in machine-readable form to facilitate compiling and linking the code.</p> <p>In the event the contractor, at any point during the continued installation and operation of the products acquired under this contract, discontinues the conduct of business, or for any reason fails to continue to support its proprietary software, it will either make provision for the continued support under the same terms and conditions or provide the State with a copy of the source code for said proprietary software, at no expense to the State.</p> <p>Export Control: The State acknowledges that the products acquired hereunder may be licensable by the U. S. Government. It further acknowledges that a valid export license must be obtained from the Department of Commerce prior to export of said products.</p> <p>Customized Software: Customized software is made-for-hire, custom written and customer specific software or customizations to proprietary software developed for the State by contractor and documentation used to describe, maintain and use the software.</p> <p>Title: Title to the customized software vests in the State as set forth herein. Contractor shall thereafter have no right, title or interest in any customized software. As herein used, title includes providing to the State all intellectual elements of the customized software including, but not limited to, developmental work product, notes, object and source codes, documentation, and any other items which would aid the State in understanding, using, maintaining, and enhancing said customized software.</p> <p>Software Tools: The contractor shall provide to the State, simultaneous with its initial installation, and any subsequent enhancements, upgrades, fixes, etc., software tools (including, but not limited to compilers, editors, etc.) that the State would require to maintain or enhance the customized software. The price for said tools and the cost to train State personnel to maintain and/or to enhance the customized software shall be noted separately and included in the contractor's cost proposal submitted to the State in response to the State's solicitation.</p> <p>Escrow for Source Code: In the event the contractor at any point during the continued installation and operation of the software herein acquired discontinues the conduct of business or for any other reason fails to continue to support the software, the state shall be provided a copy of the source code for said software within thirty days at no expense to the State.</p>	

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	<p>For the effective term of this contract, contractor will provide, to a mutually agreed upon escrow agent in the United States, the most recent version of the source code on magnetic media.</p> <p>Proprietary source code shall be deposited into the escrow account within fifteen (15) days of the initiation of the contract, or any major update, non-customized enhancement, version or release of said licensed software.</p> <p>The source code may be accessed only upon the following conditions:</p> <ul style="list-style-type: none"> <li>a. Contractor refuses to provide software maintenance, bug fixes, upgrades, updates and/or enhancement services under the terms set forth in this contract or as generally provided similarly situated customers; or</li> <li>b. Contractor ceases to do business or exist as a valid business entity, as evidenced by an adjudication of bankruptcy or other definitive measure of cessation of operations.</li> </ul> <p>With regards to proprietary software, the State may not sell, assign lease, or otherwise provide said source code(s) to any other person or entity, regardless of modification, without the express written consent of contractor, its successors, and assigns. [07-7B215-1]</p>	
7B217-1	<p><b>SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015)</b></p> <p>The following obligations are subordinate to any other contract clause to the extent the other clause specifically provides for enhanced safeguarding of government information, applicable information systems, or applicable organizations. Offeror (i) warrants that the work will be performed, and any applicable information system (as defined in the clause titled "Information Security - Definitions") will be established and maintained in substantial conformity with the information provided in Offeror's Response to SPSAQ; (ii) agrees to provide the Using Governmental Unit with prompt notice of any material variation in operations from that reflected in the Response to SPSAQ; and (iii) agrees to comply with all other obligations involving either information security or information use and disclosure imposed by the contract, notwithstanding any inconsistent statement in Offeror's Response to SPSAQ. To the extent Offeror's Response to SPSAQ does not conform to any other contractual requirements, the Using Agency's lack of objection does not constitute a waiver [07-7B217-1]</p>	<p>This clause should be used with the Service Provider Security Assessment Questionnaire - Required clause (4027). Consider for use in all services procurements which involve either contractor's computerized interface with state systems or contractor's direct possession of important agency or citizen data. Due to critical cross-references, you must also use both the Information Security - Definitions clause (7B104) and the Service Provider Security Assessment Questionnaire attachment (9025) if this clause is used.</p> <p>Agencies are cautioned that they should take steps to insure that the representations provided by an Offeror are applicable to the computerized infrastructure that will be used by Contractor to collect, manage, store, process or access government information.</p>
7B220-1	<p><b>SHIPPING / RISK OF LOSS (JAN 2006): F.O.B. Destination.</b> Destination is the shipping dock of the Using Governmental Units' designated receiving site, or other location, as specified herein. (See Delivery clause) [07-7B220-1]</p>	<p>This clause should be used in contracts for the acquisition of goods. This clause makes the Contractor solely responsible for all transportation costs involved in getting the items acquired to the destination point. This clause also makes the Contractor responsible for any loss or damage to the item acquired prior to the time the item is properly delivered to the destination point. In a transaction for the sale of goods (i.e., a transaction covered by the Uniform Commercial Code), the title to any item acquired vests in the State once the seller</p>

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		<p>properly delivers conforming goods. Once title vests, the State has an insurable interest. If the solicitation does not address shipping costs (i.e., no “Shipping / Risk of Loss” clause is included), risk of loss may be addressed in a separate clause: “Unless the loss or damage is caused by Contractor, State accepts the risk of loss upon taking physical possession.”</p>
7B223-2	<p><b>SOFTWARE LICENSING AGREEMENTS FOR STATEWIDE TERM CONTRACTS (FEB 2015)</b>                      (a) Definitions. As used in this paragraph, these terms are defined as follows: “Software” means any computer program identified by the solicitation. “Licensor” means an entity that owns the intellectual property rights for an item of Software or has the authority to license or sublicense the Software directly to the state. “Software licensing agreement” means any agreement, regardless of how designated, pertaining to the intellectual property rights for or the right to use any Software, including, but not limited to, any such agreement proposed prior to or after award, including without limitation any such agreement that either is affixed to (e.g., shrink-wrap), imbedded in (e.g., click-wrap), or in any way accompanies the Software upon delivery.                      (b) Separate Agreement for License and Services. This contract will address all Work (excluding the right to use the Software) and all terms regarding pricing, payment, and delivery of all Software. An independent Software Licensing Agreement has already been entered between the state and each applicable Licensor for all Software identified herein. Pursuant to this contract, the state intends to pay contractor in order to acquire license rights from Licensor under terms governed by the applicable Software Licensing Agreement. <b>ACCORDINGLY, YOU MUST NOT SUBMIT ANY SOFTWARE LICENSING AGREEMENTS WITH YOUR OFFER.</b>                      (c) Political Subdivisions. You agree not to fulfill an order or provide any software to a local public procurement unit (see “Statewide Term Contract” provision) unless and until you have first presented to the unit a copy of the “Enrollment Agreement for South Carolina Public Entities” (Exhibit A of the COTS Piggyback), for execution, and if signed, delivered a copy to the applicable Licensor. For each Licensor, a unique version of the Enrollment Agreement for South Carolina Public Entities form is attached. This requirement does not apply to software licensed by a Licensor not identified on the list attached and entitled Enrollment Agreement Applicability List.                      [07-07B223-2]</p>	<ul style="list-style-type: none"> <li>- For use only for Statewide Term Contracts acquiring brand-name software and only if all software to be acquired is covered by a pre-existing statewide software licensing agreement such as the COTS Piggyback.</li> <li>- For every item of software to be acquired, determine whether the COTS Piggyback for the applicable Licensor included an Enrollment Agreement for South Carolina Public Entities. If it did, identify the software in your Enrollment Agreement Applicability List.</li> <li>- FOR ALL LICENSORS IDENTIFIED IN YOUR ENROLLMENT AGREEMENT APPLICABILITY LIST, MAKE SURE TO ATTACH THAT LICENSOR'S UNIQUE ENROLLMENT AGREEMENT, WHICH SHOULD APPEAR AS AN ATTACHMENT TO THAT LICENSOR'S COTS PIGGYBACK.</li> </ul>
7B224-1	<p><b>SOFTWARE LICENSING AGREEMENTS—SINGLE SOLICITATION (FEB 2015)</b>                      (a) Definitions. As used in this clause, these terms are defined as follows: “Commercial Off-The-Shelf (COTS) Software” means software used with no customization and for which source code is not made available to licensees.</p>	<ol style="list-style-type: none"> <li>1. Only for use with an RFP. Do not use in any type of bid.</li> <li>2. If you use this clause, you must (a) include the clause titled “Contract Documents &amp; Order of Precedence—Software Licensing—Single Agency (FEB 2015),” and (b) attach both the Single Agency version of</li> </ol>

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	<p>“Configuration” means any customer-specific modification to software that does not require changes to the software’s source code, such as rules-based, rules engine based, or parameter driven modifications to configure the software.</p> <p>“Customization” means any customer-specific modification to software that requires changes to the software’s source code.</p> <p>“Firmware” means software sold or licensed only in conjunction with machines, designed for execution only on a machine with which it is provided, designed only for machines other than a dedicated computer, and embedded into or installed on the machine by the machine’s manufacturer or seller.</p> <p>“Licensor” means an entity that owns the intellectual property rights for an item of software or has the authority to license or sublicense the software directly to the using governmental unit.</p> <p>“Piggyback” means the document attached to this solicitation and entitled <i>South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency</i>, which serves as South Carolina’s standard amendment to a licensor’s standard software licensing agreement (regardless of how denominated, e.g., master software licensing agreement, end user license agreement) for COTS. [Note: While the piggyback is generally indicative of what the State finds acceptable, terms in a Licensor’s standard software licensing agreement may need to be negotiated.]</p> <p>“Software” means a combination of computer instructions and data definitions that enable computer hardware to perform computational or control functions, excluding firmware.</p> <p>“Software licensing agreement” means any agreement, regardless of how designated, that defines the intellectual property rights for, or the rights to use, any software product. A software licensing agreement must address only terms directly associated with licensing the right to use the software and must not address any of the work governed by the contract or any services (other than warranty services regarding the software code or associated documentation).</p> <p>“Software maintenance” means the process of modifying software after delivery to correct faults, improve performance or other attributes, or adapt to a changed environment. (Reference ISO/IEC 14764:2006, as amended or superseded.) Software maintenance does not include any customization or configuration.</p> <p>“Software product” means any COTS which you propose to provide pursuant to the contract.</p> <p>“Source code” means computer instructions and data definitions expressed in a form suitable for input into an assembler, compiler or other translator.</p> <p>(b) Contract and Software Licensing Agreement are Separate. The State seeks to establish related but independent agreements, one with each applicable licensor of COTS and one with the contractor - regardless of whether the licensor and the contractor are the same or different entities. As provided in the clause titled “Bid / Proposal As Offer To Contract,” a contract between the State and the contractor</p>	<p>the Piggyback and the “Software Table” to the solicitation as exhibits.</p> <p>3. For every software product identified in the highest-ranked offeror’s proposal, you must determine whether the State needs to have a negotiated software licensing agreement executed with pen-and-ink. For each such agreement, you must have the software licensing agreement executed prior to posting an intent to award. (Do not attach a Software Licensing Agreement to a Record of Negotiations.) You may request a copy of the vendor’s standard form software licensing agreement from either the contractor or the licensor. You should confirm that the licensor has been provided a copy of the piggyback. Any negotiations regarding a software licensing agreement should be conducted under the same general rules applicable to negotiations conducted pursuant to Section 11-35-1530.</p> <p>4. Use the single agency piggyback only for COTS. Its use is not appropriate for licensing modifiable off-the-shelf software (MOTS), which – as used here – includes software that involves either (a) a source code license, or (b) any modification to the software that requires changes to the software’s source code. The piggyback is not appropriate for any type of services (e.g., customization or configuration) other than warranty services regarding software code or documentation. As used above, the concept of software maintenance does not include any customer-specific software support services.</p> <p>5. If the acquisition involves limited custom software acquired to facilitate use of COTS (e.g., interface, as defined in IEEE Std 610.12-1990), you might consider whether the solicitation can be drafted to provide that such custom software will be acquired under a clause such as Software Licenses, Clause No. 7B215-1.</p> <p>6. Bankruptcy                      Prior to issuing a solicitation, and no later than negotiations, an agency may wish to consider the implications of bankruptcy by the licensor of any software to be acquired that is expensive and mission-critical. Some bankruptcy-related risks can be addressed in the procurement contract, but some must be addressed in</p>

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	<p>results from an award made pursuant to this solicitation. In contrast, the State’s acceptance of your offer does not serve as the State’s acceptance of any software licensing agreement; rather, software licensing agreements must be separately executed in order to be binding, regardless of whether the license to use the software will be granted by you or a third party. The contract, as defined in the clause titled “Definitions,” will address all work (excluding the use rights for any software product) and all terms regarding pricing, payment, and delivery of any software product. Accordingly, the State intends to pay contractor in order to acquire license rights for any software product, but the license rights will be governed by a software licensing agreement with the licensor.</p> <p>(c) <b>Critical Instructions.</b> (1) Your offer must identify each software product you propose to provide, identify the licensor, and explain which of the following licensing models apply: (i) you intend to license (or sublicense) the item directly to the State, or (ii) you intend to “resell” or distribute the item to the State (with licensing handled directly with the third-party licensor). You should use the Software Table attached to this solicitation to assist you in providing this information. <b>(2) Your offer must NOT include any software licensing agreements; however, for any software product identified in your offer, you must submit a software licensing agreement upon request of the procurement officer.</b> You must be prepared to provide any requested software licensing agreement within one business day of receiving a request. (3) Regardless of your licensing model, your price must include the cost of providing every software product you propose to provide to the State and those terms will form part of the contract.</p> <p>(d) Pre-Condition of Award. If the work you are offering to perform is dependent upon the licensing of a software product by the State and the State is unsuccessful in negotiating an acceptable software licensing agreement for any software product for which it finds such an agreement necessary, your offer will be rejected. To facilitate the timely and successful negotiation of a software licensing agreement deemed necessary by the State, the State may ask you, after opening but prior to award, to acquire from the licensor an executed copy of the piggyback. You should communicate with the licensors for any major or critical software product well in advance of submitting a proposal, and licensors should be informed that few changes will be made to the piggyback. [The State already has, and continues to enter into, standing, statewide, licensing agreements for a variety of computer programs. Without limiting any of the above requirements, an applicable agreement may already exist for one or more items of COTS you have identified.] [07-7B224-1]</p>	<p>the software licensing agreement. To that end, the following may be of interest:</p> <p>In broad, general terms, the bankruptcy code allows a bankrupt business to avoid its unperformed contractual obligations by “rejecting” executory contracts, i.e., contracts that have not been fully performed on both sides. In 1985, the Fourth Circuit Court of Appeals held that a technology license could be rejected unilaterally by a licensor, thus eliminating the licensee’s right to use the intellectual property. <i>Lubrizol Enter., Inc. v. Richmond Meal Finishers, Inc.</i>, 756 F.2d 1043 (4th Cir. 1985). In response, Congress enacted the Intellectual Property Bankruptcy Protection Act of 1988, which appears in section 365(n) of the U.S. Bankruptcy Code. Section 365(n) was enacted to ensure that an intellectual property licensee would not be denied the benefit of its bargain with the licensor following the licensor’s bankruptcy. It prevents a bankrupt licensor from rejecting licensing agreements and depriving a licensee of the intellectual property rights it acquired in the licensing contract, and does so by validating and making self-enforcing any agreement which the parties may have regarding access to the intellectual property prior to the bankruptcy.</p> <p>Section 365(n) provides the non-debtor licensee two options when the debtor-licensor rejects the license contract. First the licensee can treat the contract as terminated if rejection of the contract would constitute a breach of the agreement were the licensor is not in bankruptcy. Under this option, the licensee may assert a claim against the licensor’s bankruptcy estate for damages, but it might forfeit all right to continue use of the intellectual property. Second, the licensee can retain its right to use the license to the intellectual property for the contract period, and “any period for which such contract may be extended by the licensee as of right under applicable non-bankruptcy law.” While a licensee cannot force the licensor to specifically perform any of its contractual obligations, it can maintain its right to continue using the intellectual property. So, for example, the licensee may no longer acquire any maintenance (patches, fixes, and updates), but can continue using the software. To take advantage of Section 365(n) licensees</p>

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		<p>need to address this issue in its license agreement. We do so in Piggyback paragraph 12.2, particularly the last sentence which provides the State with the option of using the software for either the original term of the authorized EULA or a period of five years after the licensor seeks to reject the software license. The concept is to prevent the State from an immediately loss of the right to use the intellectual property as a result of the licensor’s business failure. To date, we have not agreed to any modifications to this clause.</p> <p>Section 365(n) provides that, if the licensee chooses to retain its rights under the license notwithstanding its rejection by the debtor, “then on the written request of the licensee the trustee shall – (A) to the extent provided in such contract . . . provide to the licensee any intellectual property (including such embodiment) held by the trustee . . .” (Also see additional language in 365(n).) We lack internal expertise in bankruptcy, but this may well provide a means by which the licensee – despite bankruptcy and despite the debtor’s efforts to reject the lease – can force the bankruptcy trustee to honor a source code escrow agreement, provided one has been negotiated into the contract. Accordingly, the procurement officer may wish to discuss this option with the using agency on the front end. Having the source code and a license to use it may be a valuable parachute for expensive, mission-critical software that would be challenging to replace.</p> <p>Along the same lines, and according to at least one article, a licensee that elects to retain its rights under a rejected IP license should be aware that a later sale of the debtor’s assets free and clear of interests and liens under section 363(f) can extinguish the licensee’s rights. (This risk exists even if the license is not rejected.) The interplay between 265(n) and 363(f) is unclear, and case law is limited, but agencies acquiring expensive mission-critical software should consider negotiating for rights beyond the five year – such as a separate escrow agreement that, if the licensee acquires the source code under 365(n), provides the licensee a perpetual right to use that source code. For a case addressing the topic, and reaching a good outcome for the licensee, see In re</p>

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		<p>Dynamic Tooling Systems, Inc., 349 B.R. 847 (Bkrtcy. D. Kan. 2006) at <a href="http://chapter11cases.com/2012/07/01/in-re-dynamic-tooling-systems-inc-349-br-847-bankr-court-d-kansas-2006/">http://chapter11cases.com/2012/07/01/in-re-dynamic-tooling-systems-inc-349-br-847-bankr-court-d-kansas-2006/</a></p>
7B225-3	<p>STATEWIDE TERM CONTRACT (DEC 2015)</p> <p>(a) With this solicitation, the state seeks to establish a term contract (as defined in Section 11-35-310(35)) available for use by all South Carolina public procurement units (as defined in Section 11-35-4610(5)). Use by state governmental bodies (as defined in Section 11-35-310(18)), which includes most state agencies, is mandatory except under limited circumstances, as provided in Section 11-35-310(35). See clause entitled “Acceptance of Offers 10% Below Price” in Part VII.B. of this solicitation. Use by local public procurement units is optional. Section 11-35-4610 defines local public procurement units to include any political subdivision, or unit thereof, which expends public funds. Section 11-35-310(23) defines the term political subdivision as all counties, municipalities, school districts, public service or special purpose districts.</p> <p>(b) The State shall be entitled to audit the books and records of you and any subcontractor to the extent that such books and records relate to the performance of the work. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer.</p> <p>(c) As used herein, “additional contract terms” means additional terms not otherwise allowed by the “Purchase Orders” clause. Notwithstanding the “Purchase Orders” clause, a purchase order may include additional contract terms but only if and to the extent necessary (i) to comply with a requirement directly related to the work and imposed on the Using Governmental Unit either by law or as a condition of using state or federal assistance, grant, or contract funds, or (ii) for the Using Governmental Unit to impose organizational, operational, or technical security measures designed to protect the integrity, availability, or confidentiality of the Using Governmental Unit’s data. Contractor may decline to honor a purchase order including additional contract terms.</p> <p>(d) If the contractor is suspended or debarred pursuant to Section 11-35-4220, the State may, without prejudice to any other remedy available to the State, take any one or more of the following actions: (1) order the contractor to not accept any further orders under the contract until the suspension or debarment has been lifted; (2) terminate this contract; (3) order the contractor to not accept any further orders under any other statewide term contract; or (4) terminate the contractor’s award of any other statewide term contract. [07-7B225-3]</p>	<p>Include this base clause in all statewide term contracts.</p> <p>Whenever this clause is used, you must also use the clause entitled “Statewide Term Contract - Acceptance of Offers 10% Below Price.”</p>
7B227-1	<p>STATEWIDE TERM CONTRACT - ACCEPTANCE OF OFFERS 10% BELOW PRICE (NOV 2012): Pursuant to Section 11-35-310(35), the state may purchase</p>	<p>This clause should be used in conjunction with clause 7B225. Use of clause 7B227 should be accompanied by</p>

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	<p>items available on this contract from a third party (an “alternate vendor”) if the alternate vendor offers a price that is at least ten percent less than the price established by this contract and, after being offered an opportunity, you decline to meet the alternate vendor’s price. With regard to the items acquired, the alternate vendor must agree to be bound by all the terms and conditions of this contract. All acquisition pursuant to this clause must be documented by the procurement officer using the attached form. [07-7B227-1]</p>	<p>the Purchase Order Attachment, identified as clause 9020. Include this clause in all, and only in, statewide term contracts. This clause reflects the rule created by Section 11-35-310(35), in the definition of “term contract”.</p>
7B230-1	<p>STATEWIDE TERM CONTRACT – SCOPE (JAN 2006): The scope of this contract is limited by the Bidding Schedule / Cost Proposals and by the description included in Part I, Scope of Solicitation. Sales of supplies or services not within the scope of this contract are prohibited. See clause entitled Contract Limitations. [07-7B230-1]</p>	<p>See guidance on Part 1.</p>
7B235-1	<p>STORAGE OF MATERIALS (JAN 2006): Absent approval of the using governmental unit, Contractor shall not store items on the premises of the using governmental unit prior to the time set for installation. [07-7B235-1]</p>	<p>Optional. Use as appropriate.</p>
7B236-1	<p>SUBSTITUTIONS PROHIBITED - END PRODUCT PREFERENCES (SEP 2009): If you receive the award as a result of the South Carolina end product or United States end product preference, you may not substitute a nonqualifying end product for a qualified end product. If you violate this provision, the State may terminate your contract for cause and you may be debarred. In addition, you shall pay to the State an amount equal to twice the difference between the price paid by the State and your evaluated price for the item for which you delivered a substitute. [11-35-1534(B)(4)] [07-7B236-1]</p>	
7B237-1	<p>SUBCONTRACTOR SUBSTITUTION PROHIBITED - RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009): If you receive an award as a result of the subcontractor preference, you may not substitute any business for the subcontractor upon which you relied to qualify for the preference, unless first approved in writing by the procurement officer. If you violate this provision, the State may terminate your contract for cause and you may be debarred. In addition, the procurement officer may require you to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder, unless the substituted subcontractor qualifies for the preference. [11-35-1524(D)(5)(c)] [07-7B237-1]</p>	
7B240-1	<p>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 years, months, days from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]</p>	<p>By default, the clause sets the initial term at one year. You should modify this number as appropriate.</p> <p>Vending Facilities: Procurement Officers are reminded that the Commission for the Blind has an option to operate any vending facility operated on state land (certain exclusions apply). At least 90 days prior to the expiration of the initial contract term, consult with your management regarding agency compliance with Title 43, Chapter 26. See particularly Section 43-26-60(c) &amp; (e).</p>

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7B245-2	TERM OF CONTRACT – OPTION TO RENEW (JAN 2015): (a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of year(s), month(s), and day(s), unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. (b) Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio. [07-7B245-2]	Optional. Use as appropriate.
7B250-1	TERM OF CONTRACT – TERMINATION BY CONTRACTOR (JAN 2006): Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least days prior to the expiration of the then current term. [07-7B250-1]	Optional. Use as appropriate. For larger, or more complex contracts, use a longer time period than 90 days.
7B255-1	TERMINATION FOR CONVENIENCE – INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (JAN 2006): Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination. [07-7B255-1]	Include this clause in all Indefinite Quantity Contracts (including multi-agency and statewide term). Do not use this clause without also using one of the other two termination-for-convenience clauses.
7B260-1	TERMINATION FOR CONVENIENCE – SHORT FORM (JAN 2006): The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. In such a termination, 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. Upon such termination, the contractor shall (a) stop work to the extent specified, (b) terminate any subcontracts as they relate to the terminated work, and (c) be paid the following amounts without duplication, subject to the other terms of this contract: (i) contract prices for supplies or services accepted under the contract, (ii) costs incurred in performing the terminated portion of the work, and (iii) any other reasonable costs that the contractor can demonstrate to the satisfaction of the State, using its standard record keeping system, have resulted from the termination. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided. As a condition of payment, contractor shall submit within three months of the effective date of the termination a claim specifying the amounts due because of the termination. The absence of an appropriate termination for convenience clause in any subcontract shall not increase the obligation of the state beyond what it would have been had the subcontract contained such a clause. [07-7B260-1]	Optional. Ordinarily, this clause should be used for contracts with an expected value of \$100,000 or less. See general guidance under Termination for Convenience (JAN 2006).
7B265-1	TERMINATION FOR CONVENIENCE (JAN 2006): (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the	Use the provision entitled Termination for Convenience – Short Form (JAN 2006) for contracts with an expected value of \$100,000 or less. Use this clause for contracts in excess of that value.

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	<p>contractor specifying the part of the contract terminated and when termination becomes effective.</p> <p>(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.</p> <p>(3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in a accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.</p> <p>(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.</p> <p>(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;</p> <p>(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:</p> <p>(i) contract prices for supplies or services accepted under the contract;</p>	<p>Comments: (1) The contractual right to terminate for convenience may not be exercised in bad faith. S.C. Code Ann. Section 11-35-30 (requiring good faith in the performance of all contractual obligations). (2) Section 11-35-4310 states "(b) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded." If a contract is terminated by the CPO or Panel, the termination should be effectuated by exercising any termination right granted by contract.</p>

Clause #	Text	Guidance on Use
	<p>(ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;</p> <p>(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;</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>[07-7B265-1]</p>	
7B275-1	<p>WARRANTY – ONE YEAR (JAN 2006): Contractor warrants all items acquired shall conform to all contractor's representations, the requirements of this contract, and all published documentation. [07-7B275-1]</p>	Optional. Use as appropriate.
7B280-1	<p>WARRANTY – STANDARD (JAN 2006): Contractor must provide the manufacturer's standard written warranty upon delivery of product. Contractor warrants that manufacturer will honor the standard written warranty provided. [07-7B280-1]</p>	Optional. Use as appropriate.
7B285-1	<p>YEAR 2000 WARRANTY (JAN 2006): Contractor represents and warrants that the equipment is designed to be used prior to, during, and after the calendar year 2000 A.D., and that the equipment will operate during each such time period without error relating to date data, specifically including any error relating to, or the product of, date data which represents or references different centuries or more than one century. [07-7B285-1]</p>	Optional. Use as appropriate.
<b>PART 7C- MISCELLANEOUS CLAUSES</b>		
7C005-1	<p>BLANKET PURCHASE AGREEMENTS (NOV 2007):</p> <p>(a) Pursuant to S.C. Regulation 19-445.2100(B), this purchase order establishes a blanket purchase agreement to facilitate filling repetitive needs for small quantities of miscellaneous supplies or services. Contractor shall furnish the supplies or services described herein in general terms, if and when requested by authorized personnel during the specified period and within the stipulated aggregate amount, if any. The State is obligated only to the extent of authorized calls actually placed against this blanket purchase agreement. Only those individuals expressly identified herein, by organizational component, and within any dollar limitations identified herein, may</p>	

Clause #	Text	Guidance on Use
	<p>place calls under the agreement. Calls against this blanket purchase agreement generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed. Acceptance of supplies, services, or information technology shall be indicated by signature and date on the appropriate form by authorized personnel after verification and notation of any exceptions. This agreement shall be issued for a period of no longer than 12 months.</p> <p>(b) All shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information: (1) name of supplier; (2) blanket purchase agreement number; (3) date of call; (4) call number; (5) itemized list of supplies or services furnished; (6) quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and (7) date of delivery or shipment.</p> <p>The State shall choose one of the following statements:</p> <p>___ A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets.</p> <p>___ An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets.</p> <p>___ When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure should not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method.</p> <p>[07-7C005-1]</p>	
7C010-3	STANDARD PURCHASE ORDER CLAUSE SET (DEC 2015)	See Appendix.
	<b>PART 8</b>	
8001	VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL	Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.
8002-1	BIDDING SCHEDULE (NOV 2007): Insert Bid Invitation Line Item Schedule here	
8005-1	SECTION NOT APPLICABLE -- INTENTIONALLY OMITTED [08-8005-1]	This should only be used if no price or cost information is sought.

Table of Clauses (SEP 2017)

Clause #	Text	Guidance on Use
8010-1	<p>BUSINESS PROPOSAL (JAN 2006): Offerors are to submit a Business Proposal as a separate document from the Technical Proposal. The Business Proposal may include the following considerations:</p> <p>(a) Total Cost of Ownership -- What is the anticipated cost of purchasing, owning, leasing, operating, maintaining, and/or supporting the proposed solution for the total potential term of the contract? Provide a detailed accounting.</p> <p>(b) Risk Analysis -- What internal or external factors could significantly impact the probability of completing this project on time and within budget?</p> <p>(c) Risk Mitigation -- What actions can be taken to mitigate the identified risks?</p> <p>(d) Risk Sharing -- Are there opportunities for mutually beneficial risk sharing?</p> <p>(e) Performance Incentives -- Are there opportunities for performance-based incentives?</p> <p>(f) Financing Options -- Are there alternative financing options available to the State? [08-8010-1]</p>	Use as appropriate in RFPs.
8015-1	PRICE PROPOSAL (JAN 2006): Notwithstanding any other instructions herein, you shall submit the following price information as a separate document: [08-8015-1]	Use as appropriate in RFPs.
<b>PART 9</b>		
9001	IX. ATTACHMENTS TO SOLICITATION	<p>Mandatory. Include this header at the beginning of the appropriate part of the Uniform Solicitation Format. See guidance on the Uniform Solicitation Format at the beginning of this document.</p> <p>Current Attachments appear in the Appendix of this Compendium.</p>
9002-1	LIST OF ATTACHMENTS [09-9002-1] The following documents are attached to this solicitation:	Use this clause to identify attachments to the solicitation.
9005-3	NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING	See Appendix.
9010-1	OFFEROR'S CHECKLIST (JUN 2007)	See Appendix.
9020-2	PURCHASE ORDER ATTACHMENT - ACCEPTANCE OF OFFERS 10% BELOW STATEWIDE TERM CONTRACT PRICE	See Appendix.
9025-1	SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE (FEB 2015)	You must attach the Service Provider Security Assessment Questionnaire if your solicitation includes the <b>Service Provider Security Assessment Questionnaire - Required (4027)</b> and <b>Service Provider Security Representation (7B217)</b> clauses.
9030-1	SOUTH CAROLINA STANDARD AMENDMENT TO END USER LICENSE AGREEMENTS FOR COMMERCIAL OFF-THE-SHELF SOFTWARE - SINGLE AGENCY (FEB 2015): Please see the attached form titled "South Carolina Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software - Single Agency ." [09-9030-1]	You must attach the South Carolina Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software - Single Agency if your solicitation includes the <b>Software Licensing Agreements—Single Solicitation (7B224)</b> clause.

Table of Clauses (SEP 2017)

Clause #	Text	Guidance on Use
9035-1	SOFTWARE TABLE (FEB 2015): See attached form titled "Software Table." [09-9035-1]	You must attach the Software Table if your solicitation includes the <b>Software Licensing Agreements–Single Solicitation</b> (7B224) clause.
<b>Award Statement Clauses</b>		
A140-1	The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective , . Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.	Standard language of notice of intent to award a contract.
A150-1	The State awards the contract(s) noted below. This document is the final Statement of Award, effective , . Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.	Statement of award.
A160-1	Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.	Use this clause if the contractor should delay beginning work until receipt of a purchase order or other notice to proceed.
A205-1	THE INTENT TO AWARD IS CANCELLED. CPO'S WRITTEN DETERMINATION INCLUDED.	<p>If a procurement activity is terminated after posting of the intent to award, but prior to final award, the termination should be effectuated by re-posting your award statement, annotated with this clause to reflect its cancellation. Include the CPO's written determination under R. 19-445.2085(C).</p> <p>If the procurement activity is terminated after the award has gone final, the award need not be cancelled. The matter is one of contract administration.</p>
A210-1	THE INTENT TO AWARD IS CANCELLED. REFERENCE CHIEF PROCUREMENT OFFICER'S PROTEST DECISION.	Use for awards terminated pursuant to a decision issued by a CPO or Panel to cancel.
A215-1	AWARD - ONE RESPONSE RECEIVED: IN ACCORDANCE WITH SC PROCUREMENT CODE 11-35-1520(10) AWARD, "WHEN ONLY ONE RESPONSE IS RECEIVED, THE NOTICE OF INTENT TO AWARD AND THE DELAY OF AWARD MAY BE WAIVED."	Use when only one response received.
A220-1	NO AWARD IS MADE ON ITEM(S): . AWARD TO BE MADE AT A LATER DATE.	Use if not awarding all items at one time.
A230-1	RESIDENT VENDOR PREFERENCE (AS DEFINED IN SECTION 11-35-1524) HAS BEEN APPLIED IN THIS AWARD.	Add to indicate the award was determined by the preference.
A235-1	SOUTH CAROLINA / UNITED STATES MADE, MANUFACTURED OR GROWN PREFERENCE (AS DEFINED IN SECTION 11-35-1524) HAS BEEN APPLIED IN THIS AWARD.	Add to indicate the award was determined by the preference.
A240-1	SUSPENSION NOTICE	Use this when the award process is suspended under 11-35-4210(7).

Table of Clauses (SEP 2017)

Clause #	Text	Guidance on Use
	PROTEST: IN RESPONSE TO A PROTEST, THE INTENT TO AWARD IS HEREBY SUSPENDED PENDING THE ADMINISTRATIVE REVIEW BY THE CHIEF PROCUREMENT OFFICER.	
A250-1	CERTIFICATES OF INSURANCE COVERAGE TO BE FURNISHED PRIOR TO COMMENCEMENT OF SERVICES UNDER CONTRACT.	This clause is nothing more than a reminder to the contractor to provide the certificate prior to performance.
A260-1	NO OFFERS RECEIVED MET SOLICITATION REQUIREMENTS.	Use if all offers are non-responsive.
A265-1	NO AWARD IS MADE ON ITEM(S): . FUNDS HAVE EXPIRED.	Use if funds expired. Requires written determination under R. 19-445.2065.
A270-1	NO AWARD IS MADE ON ITEM(S): . NO LONGER REQUIRED.	After opening, requires written determination under R. 19-445.2065(b).
A275-1	NO AWARD IS MADE ON ITEM(S): . NO BIDS RECIEVED.	Use if no bids received.
A280-1	NO AWARD-NO AWARD IS MADE ON ITEM(S): . PRICE IS CONSIDERED EXCESSIVE.	Requires written determination of price unreasonableness under either R. 19-445.2065(b)(6) or 19-445.2070(d).
A285-1	NO AWARD IS MADE ON ITEM(S): . WILL BE RE-SOLICITED WITH REVISED SPECIFICATIONS.	Requires written determination under R. 19-445.2065(b).
A290-1	OFFERS FOR ITEMS, , AT PRICES LOWER THAN THAT OF AWARD ARE NON-RESPONSIVE AS THEY DID NOT MEET THE SOLICITATION REQUIREMENTS.	Optional Note: This note may be used to inform one or more unsuccessful low Offerors that they were non-responsive or non-responsible. Use is optional.
A300-2	Additional time is necessary to complete the procurement process; accordingly, the date for posting the award notice is extended indefinitely. We will give every offeror prior notice before posting the actual award notice. Prior notice will be made by posting a Notice of Revised Award Posting Date at least two business days before posting the actual award notice. The Notice of Revised Posting Date will be posted at the location specified in the solicitation for posting awards. In addition, a Notice of Revised Award Posting Date will be emailed to each offeror at the email address provided during vendor registration. (Reference Regulation 19-445.2090(B) and clause titled Award Notification.)	Use when additional time is required to evaluate offers. Procurement Officers should consult Regulations 19-445.2065(C) and -2097(C).
A305-1	Unless otherwise noted, award will be posted on [date]. The Notice will be posted on our website at www.procurement.sc.gov. (Reference Regulation 19-445.2090(B) and clause titled Award Notification.)	
A400-1	Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]	
A410-2	PROTEST - CPO ADDRESS - ITMO: Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing (a) by email to protest-itmo@itmo.sc.gov , (b) by facsimile at 803-737-0102 , or	

Table of Clauses (SEP 2017)

<b>Clause #</b>	<b>Text</b>	<b>Guidance on Use</b>
A420-1	<p>(c) by post or delivery to 1201 Main Street, Suite 601, Columbia, SC 29201</p> <p>PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing</p> <p>(a) by email to protest-mmo@mmo.sc.gov ,</p> <p>(b) by facsimile at 803-737-0639 , or</p> <p>(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.</p>	

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# Appendices – September 2017

Users should check [procurement.sc.gov](http://procurement.sc.gov) regularly for updates to these appendices.

<b>App.</b>	<b>Title</b>	<b>Version Date/ (Clause Date)</b>	<b>Clause No.</b>	<b>Page</b>
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I	South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software - Single Agency	(FEB 2015)	9030-1	I-1
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K	Sample Low Bid Formulas	February 2006	---	K-1
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R	Extension Notices & Instructions	(MAR 2015)	SCEIS Generated	R-1
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U	Instructions for Submitting Cost-Price Data	February 2002	FAR Pt. 15, Table 15-2	U-1
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W	Guaranty – Forms & Instructions	March 2015	Web only/No SCEIS	W-1
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Z	Compendium Change Log	SEP 2017	---	Z-1
AA	List of Compendium Clauses	SEP 2017	---	AA-1
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\* Programmatically generated by DocBuilder based on dialog/user input

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Appendix A  
Cover Page – Online Only (MAR 2015)



# State of South Carolina

[SOLICITATION TYPE]

Solicitation Number:  
Date Issued:  
Procurement Officer:  
Phone:  
E-Mail Address:  
Mailing Address:

DESCRIPTION:

USING GOVERNMENTAL UNIT:

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

SUBMIT OFFER BY (Opening Date/Time): [date / time] (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: [date / time] (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: [to be completed]

CONFERENCE TYPE: **Not Applicable**  
DATE & TIME:

LOCATION: **Not Applicable**

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

AWARD &  
AMENDMENTS

Award will be posted on **01/14/2015**. The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <http://www.procurement.sc.gov>

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

NAME OF OFFEROR

(full legal name of business submitting the offer)

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

AUTHORIZED SIGNATURE

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

DATE SIGNED

TITLE

(business title of person signing above)

STATE VENDOR NO.

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

PRINTED NAME

(printed name of person signing above)

STATE OF INCORPORATION

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

OFFEROR'S TYPE OF ENTITY: (Check one)

(See "Signing Your Offer" provision.)

Sole Proprietorship       Partnership       Other \_\_\_\_\_

Corporate entity (not tax-exempt)       Corporation (tax-exempt)       Government entity (federal, state, or local)

Appendix B  
Cover Page – Paper Only (MAR 2015)



# State of South Carolina

[SOLICITATION TYPE]

Solicitation Number:  
Date Issued:  
Procurement Officer:  
Phone:  
E-Mail Address:  
Mailing Address:

DESCRIPTION:

USING GOVERNMENTAL UNIT:

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

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

MAILING ADDRESS:

B&CB, Div. of Procurement Services  
1201 Main Street, Suite 600  
Columbia SC 29201

PHYSICAL ADDRESS:

B&CB, Div. of Procurement Services  
1201 Main Street, Suite 600  
Columbia SC 29201

SUBMIT OFFER BY (Opening Date/Time): [date / time]

(See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: [date / time]

(See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: [to be completed]

CONFERENCE TYPE: **Not Applicable**  
DATE & TIME:

LOCATION: **Not Applicable**

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

AWARD &  
AMENDMENTS

Award will be posted on **01/14/2015**. The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <http://www.procurement.sc.gov>

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

NAME OF OFFEROR

(full legal name of business submitting the offer)

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

AUTHORIZED SIGNATURE

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

DATE SIGNED

TITLE

(business title of person signing above)

STATE VENDOR NO.

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

PRINTED NAME

(printed name of person signing above)

STATE OF INCORPORATION

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

OFFEROR'S TYPE OF ENTITY: (Check one)

(See "Signing Your Offer" provision.)

Sole Proprietorship

Partnership

Other \_\_\_\_\_

Corporate entity (not tax-exempt)

Corporation (tax-exempt)

Government entity (federal, state, or local)

Appendix C  
Page Two (SEP 2009)

**PAGE TWO**

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

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

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

<b>ACKNOWLEDGMENT OF AMENDMENTS</b> 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

<b>DISCOUNT FOR PROMPT PAYMENT</b> (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____ Calendar Days (%)
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**PREFERENCES - A NOTICE TO VENDORS (SEP. 2009):** On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at [www.procurement.sc.gov/preferences](http://www.procurement.sc.gov/preferences) . ***ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES.*** [11-35-1524(E)(4)&(6)] **PREFERENCES DO NOT APPLY**

**PREFERENCES - ADDRESS AND PHONE OF IN-STATE OFFICE:** Please provide the address and phone number for your in-state office in the space provided below. An in-state office is necessary to claim either the Resident Vendor Preference (11-35-1524(C)(1)(i)&(ii)) or the Resident Contractor Preference (11-35-1524(C)(1)(iii)). Accordingly, you must provide this information to qualify for the preference. An in-state office is not required, but can be beneficial, if you are claiming the Resident Subcontractor Preference (11-35-1524(D)). **PREFERENCES DO NOT APPLY**

\_\_\_\_\_ In-State Office Address same as Home Office Address  
 \_\_\_\_\_ In-State Office Address same as Notice Address **(check only one)**

# Appendix D

## Instructions for Non-Resident Taxpayer Registration

### **NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING**

#### **IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

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

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

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

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For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: <https://dor.sc.gov>

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This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-896-1420.

[https://dor.sc.gov/forms-site/Forms/I312\\_05182015.pdf](https://dor.sc.gov/forms-site/Forms/I312_05182015.pdf)

[09-9005-3]

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# Appendix E

## Offeror's Checklist

# OFFEROR'S CHECKLIST

## AVOID COMMON BID/PROPOSAL MISTAKES

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

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

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

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Appendix F  
Standard Equipment Agreement

**STATE OF SOUTH CAROLINA  
STANDARD EQUIPMENT AGREEMENT**

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between \_\_\_\_\_  
whose address is \_\_\_\_\_

(Lessor) and \_\_\_\_\_, an agency of the State of South Carolina (Lessee).

If this Agreement is entered into as a result of a solicitation, in the event of an inconsistency between provisions of this Agreement and other terms of the solicitation, the inconsistency shall be resolved by giving precedence to the terms and conditions of the solicitation. This Agreement is entered into in connection with solicitation or contract number \_\_\_\_\_.

Lessor hereby leases to Lessee the equipment described on the attached Exhibit A, upon the following terms:

- 1. **TERM OF LEASE**  
The term of this Agreement shall commence on the date of acceptance by Lessee and shall continue for a period of \_\_\_\_\_ unless sooner terminated by either party as provided herein. The initial term and renewal term cannot exceed a total of five (5) years.
- 2. **RENTAL**  
Lessee agrees to pay rental of: (1) \_\_\_\_\_ Dollars per \_\_\_\_\_ during the term of this Agreement, or (2) the amounts and upon the conditions stated in the Schedule of Payments attached as Exhibit B. The first rental payment shall be due and payable on the day after the date of acceptance by Lessee. Subsequent payments shall be due on the \_\_\_\_\_ day of each \_\_\_\_\_ thereafter. South Carolina sales or use taxes shall be stated separately.
- 3. **DELIVERY**  
Delivery shall be not later than \_\_\_\_\_ from date hereof, time being of the essence. Delivery costs shall be borne by \_\_\_\_\_, and such costs shall not exceed \_\_\_\_\_.
- 4. **INSTALLATION**  
Lessor shall install the equipment at a suitable location designated by Lessee. Installation costs shall be borne by \_\_\_\_\_, and such costs shall not exceed \_\_\_\_\_.
- 5. **ACCEPTANCE**  
Upon delivery and installation of the equipment at \_\_\_\_\_, Lessee shall test and inspect it, and if in good working order, accept the equipment and acknowledge the acceptance in writing. The date of acceptance shall be the date upon which Lessee acknowledges in writing that the equipment is installed and operating properly.
- 6. **MAINTENANCE**  
Lessee shall use the equipment in a careful and proper manner in compliance with its intended use. Lessor shall at its expense maintain each item of equipment in good mechanical condition and working order. Lessee shall not be responsible for normal wear and tear resulting from the use thereof.  
OR  
Maintenance shall be as stated on the attached Exhibit C.
- 7. **INSPECTION**  
Lessor shall have the right, upon reasonable prior notice to Lessee and during Lessee's normal working hours, to inspect the equipment and observe its use at the premises of Lessee.
- 8. **TITLE**  
The equipment shall at all times remain the property of Lessor and Lessee shall have no right, title, or interest therein except as expressly set forth in this Agreement.
- 9. **GOVERNING LAW**  
This Agreement shall be governed in all respects by the laws of the State of South Carolina.
- 10. **HOLD HARMLESS**  
Lessor shall indemnify and save Lessee harmless from any and all liability, damages, expenses, causes of action, suits, claims or judgments arising from injury to person or property resulting from delivery or transportation of equipment caused by the negligence of Lessor, his agents or servants, and Lessor shall at its own expense, defend any and all suits which may be brought against Lessee, either alone or in conjunction with others, upon any such liability or claim or claims.
- 11. **JURISDICTION**  
Lessor acknowledges that it is subject to the jurisdiction and process of the State of South Carolina as to all matters and disputes arising pursuant to the Agreement and the performance thereof, including any questions as to liability for taxes, licenses, or fees levied by the State or its political subdivisions. Lessor agrees to execute any and all agreements necessary to accomplish this provision.
- 12. **DEFAULT**  
Upon the failure of Lessee to make any payment when due, or upon the failure of Lessee to perform any other obligations imposed upon it by this Agreement and upon the continuance of such failure after the receipt of thirty (30) days written notice thereof from Lessor, Lessee shall be deemed to be in default and Lessor shall have the right to terminate this Agreement.  
Upon the failure of Lessor to perform any obligation imposed upon it by this Agreement, and upon the continuance of such failure after receipt of \_\_\_\_\_ days written notice thereof from Lessee, Lessor shall be deemed to be in default and Lessee shall have the right to terminate this Agreement.

**TERMINATION**

- (a) This Agreement may be terminated by Lessee’s giving thirty (30) days prior written notice of such termination to Lessor. Lessee shall negotiate reasonable termination costs, if applicable.
- (b) Upon the termination of this Agreement as a result of a default by Lessor, Lessee shall be entitled to proceed by appropriate court action to enforce specific performance of this Agreement, to recover damages for breach, or to take such other action as may be permitted by law.

14. **NON-APPROPRIATION CLAUSE**

Notwithstanding any other provisions of this Agreement, the parties agree that the rental is payable by Lessee from appropriations, grants, and monies from the State Legislature and other governmental entities. In the event sufficient appropriation, grants, and monies are not made available to Lessee to pay this rent for any fiscal year, this Agreement shall terminate without further obligation of Lessee. In such event, the chief executive officer of Lessee shall certify to Lessor that sufficient funds have not been made available to Lessee to meet the obligations of this Agreement; and such certification shall be conclusive upon the parties.

15. **RENEWAL**

Lessee may, at its option by giving written notice to Lessor not less than thirty (30) days prior to the expiration of the initial term, renew this Agreement for an additional term of \_\_\_\_\_ upon the same terms and conditions as this Agreement , provided that the initial term and the renewal term cannot exceed a total of five (5) years.

16. **NOTICES**

All notices and other communications made or required to be given under this Agreement shall be made in writing and mailed to the other party at its address as set forth herein or at such address as the party may provide from time to time.

Lessor’s address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Lessee’s address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. **ASSIGNMENT**

Lessor may, with the prior approval of Lessee, assign its right to receive payment of rent hereunder, provided that such assignments shall not relieve Lessor of its responsibility to perform any duty imposed herein.

18. **RELOCATION**

In the event Lessee desires to relocate the equipment within its offices or elsewhere in South Carolina State Government, Lessor will submit a price quotation not to exceed Lessor’s cost for the move or will prepare equipment to be moved by other mutually acceptable means.

19. **PATENTS INDEMNITY**

Lessor shall defend, at its own expense, any action brought against Lessee to the extent that it is based on a claim that the equipment supplies by lessor infringes a United States Patent, and Lessor will pay any costs and will indemnify Lessee for all expenses which are attributable to any such claim including any award of damages against Lessee, provided Lessee gives Lessor prompt notice in writing of such claim, and further provided Lessor shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

Should the equipment become, or in Lessor’s opinion be likely to become, the subject of a claim or infringement of a United States Patent, Lessee shall permit Lessor, at its option and expense, either to procure for Lessee the right to continue using the equipment, to replace or modify the same so that they become non-infringing, or to discontinue the use of the equipment and accept its return.

Lessor shall have no liability to Lessee with respect to any claim of patent infringement which is based upon the combination of equipment supplied hereunder with equipment or devices not supplied by Lessor.

The foregoing states the entire liability of Lessor with respect to infringement of patents by the equipment.

20. **PAYMENTS**

All payments due pursuant to this Agreement are solely the responsibility of the agency designated Lessee; the Office of General Services has no liability with respect to payments or breaches.

21. **ENTIRE AGREEMENT**

This Agreement, attached exhibits hereto, and the solicitation documents, if any, constitute the entire Agreement between the parties and shall not be amended, altered or changed except after prior written approval from the Office of General Services, in compliance with the S.C. Consolidated Procurement Code, and by written agreement, signed by the parties.

Accepted and executed the date stated above.

LESSOR:

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

LESSEE:

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

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Appendix G  
Purchase Order Attachment – Acceptance of Orders  
10% Below Statewide Term Contract Price

## Purchase Order Attachment

### Acceptance of Offers 10% Below Statewide Term Contract Price

*Instructions: If an agency purchases any item available on the Term Contract identified below from a business (an Alternate Vendor) other than the Term Contract Contractor and the total price of the purchase order exceeds \$500, then the procurement officer making the purchase must attach this form to the purchase order issued to the Alternate Vendor. The agency procurement officer must complete the following four blanks: the number and description of the applicable Term Contract, the number of the agency's Purchase Order, and the name of Term Contract Contractor that you offered an opportunity to match.*

Term Contract Solicitation No.	Term Contract Description
Term Contract Contractor	Purchase Order No.

#### Agreement

By signing this document, Alternate Vendor is entering into a contract with the agency named above regarding the items referenced on Purchase Order identified above. Regarding the items acquired with the Purchase Order, Alternate Vendor agrees to be bound by all the terms and conditions of the Term Contract Solicitation identified above. Alternate Vendor has received and read a copy of the Term Contract Solicitation identified above. The Purchase Order may be used to elect only those options expressly allowed in the Term Contract Solicitation. Possible options might include quantity, item, delivery date, and payment method. Any contract resulting from this Purchase Order is limited to the documents identified in the clause entitled Contract Documents & Order of Precedence.

NAME OF ALTERNATE VENDOR <small>(full legal name of business entering this contract)</small>	STATE VENDOR NO. <small>(Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a>)</small>
AUTHORIZED SIGNATURE <small>(person authorized to enter binding contract on behalf of Alternate Vendor)</small>	TITLE <small>(business title of person signing)</small>
PRINTED NAME <small>(printed name of person signing above)</small>	DATE SIGNED

#### Certification of Compliance

I certify as follows: (1) every item acquired with the Purchase Order is priced at least ten percent less than the Term Contract price for the same item; (2) the Term Contract Contractor identified above declined to meet the prices stated on the Purchase Order after being offered a reasonable opportunity to meet the price stated on the Purchase Order; and, (3) this purchase complies with Section 11-35-310(35), which is reprinted below.

AUTHORIZED SIGNATURE <small>(procurement officer authorized to issue purchase order and sign certification)</small>	TITLE <small>(business title of person signing)</small>
PRINTED NAME <small>(printed name of person signing above)</small>	DATE SIGNED

Section 11-35-310(35) of the South Carolina Code of Laws reads as follows: "“Term contract” means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. As provided in the solicitation, if a public procurement unit is offered the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multi term contract as provided in Section 11-35-2030."

----- PURCHASE ORDER ATTACHMENT (APR 2015) -----

# Appendix H

## Service Provider Security Assessment Questionnaire

### SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE

Instructions: (1) Attach additional pages or documents as appropriate and make sure answers cross reference to the questions below. (2) As used in this Questionnaire, the phrase "government information" shall have the meaning defined in the clause titled "Information Security." (3) This Questionnaire must be read in conjunction with both of the following two clauses (a) Service Provider Security Assessment Questionnaire – Required, and (b) Service Provider Security Representation.

1. Describe your policies and procedures that ensure access to government information is limited to only those of your employees and contractors who require access to perform your proposed services.
2. Describe your disaster recovery and business continuity plans.
3. What safeguards and practices do you have in place to vet your employees and contractors who will have access to government information?
4. Describe and explain your security policies and procedures as they relate to your use of your contractors and next-tier sub -contractors.
5. List any reports or certifications that you have from properly accredited third-parties that demonstrate that adequate security controls and assurance requirements are in place to adequately provide for the confidentiality, integrity, and availability of the information systems used to process, store, transmit, and access all government information. (For example, an ISO/IEC 27001 compliance certificate, an AICPA SOC 2 (Type 2) report, or perhaps an AICPA SOC 3 report (i.e., a SysTrust or WebTrust seal)). For each certification, describe the scope of the assessment performed. Will these reports / certifications remain in place for the duration of the contract? Will you provide the state with most recent and future versions of the applicable compliance certificate / audit report?
6. Describe the policies, procedures and practices you have in place to provide for the physical security of your data centers and other sites where government information will be hosted, accessed or maintained.
7. Will government information be encrypted at rest? Will government information be encrypted when transmitted? Will government information be encrypted during data backups, and on backup media? Please elaborate.

Appendix H, cont'd

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8. Describe safeguards that are in place to prevent unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of government information.
  
9. What controls are in place to detect security breaches? What system and network activity do you log? How long do you maintain these audit logs?
  
10. How will government information be managed after contract termination? Will government information provided to the Contractor be deleted or destroyed? When will this occur?
  
11. Describe your incident response policies and practices.
  
12. Identify any third party which will host or have access to government information.

Offeror's response to this questionnaire includes any other information submitted with its offer regarding information or data security.

SIGNATURE OF PERSON AUTHORIZED TO REPRESENT THE ACCURACY OF THIS INFORMATION ON BEHALF OF CONTRACTOR:

By: \_\_\_\_\_  
(authorized signature)

Its: \_\_\_\_\_  
(printed name of person signing above)

\_\_\_\_\_  
(title of person signing above)

Date: \_\_\_\_\_

# Appendix I

## South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software - Single Agency

[Licensor's name]  
 [mm/dd/yyyy to mm/dd/yyyy]

SOUTH CAROLINA STANDARD AMENDMENT  
 TO  
 END USER LICENSE AGREEMENTS  
 FOR  
 COMMERCIAL OFF-THE-SHELF SOFTWARE  
 ----  
 SINGLE AGENCY

This Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") between [Company Name], a corporation organized and existing under the laws of [State], and having its principal office at [address] (hereinafter referred to as "Licensor") and [Agency Name], an instrumentality of the State of South Carolina (hereinafter referred to as "Licensee." Licensor and Licensee may also be referred to in this Agreement collectively as the "Parties."

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents.

<b>Solicitation Description:</b> _____	<b>Solicitation No.:</b> _____
<b>LICENSOR</b>	<b>INFORMATION TECHNOLOGY MANAGEMENT OFFICE</b> , acting on behalf of Licensee.
_____	_____
<b>By:</b>	<b>By:</b>
<b>Its:</b>	<b>Its:</b>

### Recitals

This document is being used in conjunction with a solicitation issued for a government procurement being conducted for Licensee; nevertheless, the Parties intend for this document (including any attachments) to memorialize a contractual relationship related to but independent of any contractual relationship entered into by an award issued pursuant to that solicitation.

### Agreement

For the reasons recited above, and in consideration of the mutual covenants contained herein, the Parties agree as follows:

### Definitions

**Agreement** means this South Carolina Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software, not including any EULA or other attachments.

**Authorized EULA** means any EULAs attached as Exhibit "C", but does not include any document referenced or incorporated therein unless attached to this Agreement. Licensor warrants that every Authorized EULA is an unmodified copy of Licensor's standard form agreement.

**Distributor** means the generic category of entities authorized by Licensor, if any, that participate in the distribution chain between Licensor and Licensee, including, but not limited to, value added resellers (VARs), original equipment manufacturers (OEMs), distributors, dealers, independent sales organizations (ISOs), resellers, and retail outlets.

**Distributor Contract** means a contract between a Licensee and a Distributor by which Licensee can acquire licenses of the Software. Nothing in this agreement constitutes a representation or obligation that Licensor has made or will make its Software available through a Distributor.

**Documentation** means all materials supplied, directly or indirectly, to Licensees by Licensor, by any means or media that explain or facilitate the use of the Software, which may include, without limitation, any materials that describe the functional, operational, and/or performance capabilities of the Software; training materials; user, operator, system administration, technical, support, and other manuals or instructions; flow charts, and logic diagrams. Licensor warrants that the Documentation does and will continue to accurately describe the functional and operational characteristics of the Software. Licensor warrants that the Documentation will be contemporaneously updated to reflect any changes made to the Software.

**End User License Agreement ("EULA")** means any license agreement or other commercial agreement, regardless of how designated, pertaining to the right to use any Software, including, but not limited to, any such agreement proposed prior to or after execution of this Agreement, and including without limitation any such agreement that either is affixed to (e.g., shrinkwrap), imbedded in (e.g., clickwrap), or in any way accompanies the Software upon delivery. The term "EULA" does not include this Agreement. The term "EULA" does not include any contract awarded by or on behalf of a Licensee as a result of a formal solicitation (e.g., invitation for bids or request for proposals) issued by or on behalf of a licensee. The term "EULA" does not include a contract to the extent it governs software maintenance as defined in ISO/IEC 14764:2006.

**ITMO** means the Information Technology Management Office established by South Carolina Code Section 11-35-820, as amended, or its successor in interest. Pursuant to Section 11-35-510 of the South Carolina Code of Laws, ITMO is authorized to act as the statutory procurement agent for every South Carolina Governmental Body (as defined by S.C. Code Ann. § 11-35-310(18), as amended) covered by the South Carolina Consolidated Procurement Code. Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of Licensees. ITMO is not a party to this Agreement. Notwithstanding any other provision, ITMO bears no liability for any party's losses arising out of or relating in any way to this Agreement.

**Ordering and Confirming Documents** means those documents exchanged between a Licensee and the Licensor to memorialize the number and configuration of licenses ordered and provided, whether exchanged directly with Licensor or indirectly through a Distributor. By way of example, ordering documents may include a purchase order or other instrument submitted by Licensee, and confirming documents may include a software key or license-specific identifying information, an invoice, or another document submitted by Licensor.

**Prior Agreement** means a written agreement that was negotiated, signed using pen and paper, and executed by an authorized representative of a Licensee prior to the Effective Date of this Agreement.

**Procurement Contract** means any contract awarded pursuant to the Solicitation identified above by reference to its Solicitation Number and Solicitation Description.

**Software** means any computer program referenced on Exhibit "B", including any future service packs, maintenance updates, patches, fixes, or like modifications to the computer program by whatever name provided by Licensor, if any. In addition, Exhibit B excludes any computer program not identified in the Procurement Contract. For clarity, Exhibit B excludes all services, including without limitation, so-called "software-as-a-service" and "cloud services," application services, etc., even if included therein.

## Attachments

Exhibit A – [RESERVED ]  
Exhibit B – Software List  
Exhibit C - Authorized EULAs

### 1. RELATIONSHIP BETWEEN THIS AGREEMENT AND THE AUTHORIZED EULAs.

1.1 Agreement to Authorized EULAs. Subject to the provisions of this Agreement, Licensee agrees to the terms and conditions of the Authorized EULAs. Any EULA that is not an Authorized EULA is void and of no effect. Licensor represents that every EULA applicable to the computer programs referenced on Exhibit "B" has been attached to Exhibit "C" as an Authorized EULA.

1.2 Primacy of Agreement. The terms of this Agreement shall be given full effect prior to the application of any term in the Authorized EULAs. To the extent of any inconsistency or conflict, the terms of this Agreement take precedence over any similar terms in any Authorized EULAs. To the extent an Authorized EULA provides Licensee with options or rights in addition to or beyond those available under this Agreement, nothing in this Agreement is intended to limit Licensee's exercise of such options or rights.

1.3 Entire Agreement. Within the scope of this Agreement, as defined in Paragraph 2, this Agreement, Exhibit "B" (the Software List), and the Authorized EULAs constitute the entire agreement between the Parties and supersede all other prior or contemporaneous agreements, representations, or discussions, whether oral or written. This Agreement and the Authorized EULAs shall apply notwithstanding any conflicting or additional provisions in Ordering or Confirming Documents.

### 2. LIMITED SCOPE OF AGREEMENT.

2.1 This Agreement and the Authorized EULAs apply only to the use and licensing of Software by Licensee. All terms in an Authorized EULA regarding services (other than warranty services) are void.

2.2 Neither this Agreement nor an Authorized EULA authorize any Licensee to pay any funds directly to Licensor. All terms in a EULA regarding pricing, payment, interest, and delivery are void. This Agreement and the Authorized EULAs are independent of, and do not form a part of a Procurement Contract. Ordering and Confirming Documents may not be issued pursuant to an Authorized EULA, but must be issued pursuant to a Procurement Contract. Ordering and Confirming Documents form a part of this Agreement and the Authorized EULAs but only to the extent they memorialize the number of, configuration of, and prices paid for licenses ordered and provided. Ordering and Confirming Documents may not supplement, alter, or modify any provision of this Agreement or an Authorized EULA.

2.3 Subject to the limits of item 2.1, this Agreement and the Authorized EULAs apply to all licenses of Software licensed from Licensor by a Licensee during the term of this Agreement, whether acquired directly from Licensor or indirectly through a Distributor.

### 3. TERM OF AGREEMENT.

3.1 With regard to the licensure of any particular copy of Software, the terms of this Agreement and the Authorized EULAs shall continue to apply to that license notwithstanding the expiration of this Agreement.

3.2 This Agreement shall be in effect for seven years from the Effective Date. Expiration of this Agreement does not terminate any particular license of Software.

### 4. LICENSE GRANT.

4.1 Any rights granted by Licensor to Licensee in an Authorized EULA are in addition to any rights granted by this Paragraph 4. Licensor agrees that Licensee shall have the rights that are set forth in items 4.2, 4.3, 4.4, and 4.5 below.

4.2 For each license acquired, the Software may be:

4.2.1 Used or copied for use in or with the computer or computers for which it was acquired, including without limitation use at any of Licensee's installations to which such computer or computers may be transferred;

4.2.2 Used or copied for use in or with a backup computer if any computer for which it was acquired is inoperative;

4.2.3 Reproduced for safekeeping (archives) or backup purposes;

4.2.4 Modified, adapted, or combined with other computer programs ~~or computer data bases~~; however, a Licensee may not reverse engineer, decompile or disassemble the Software except to the extent necessary to create interfaces to, or allow inter-operability with, other computer programs or computer data bases;

4.2.5 Disclosed to and used by support service contractors or their subcontractors for the benefit of the Licensee, subject to the restrictions set forth in this Agreement; and,

4.2.6 Used or copied for use in or transferred to a replacement computer.

4.3 Notwithstanding any other provision, Licensee's fair use rights (17 U.S.C. § 107) are not limited in any way.

## **5. INTELLECTUAL PROPERTY INFRINGEMENT.**

5.1 As used in this Paragraph 5, these terms are defined as follows: "Acquired Item(s)" means the rights, Software, or services, if any, furnished under this Agreement or any Authorized EULA. "Affiliate" means any business connected with or related to Licensor. "Indemnitee" means Licensee, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. "IP Right(s)" means a copyright, patent, trademark, trade secret, or any other proprietary right.

5.2 In the event of any claim by any third party against an Indemnitee asserting or involving an IP Right which concerns any Acquired Item(s), Licensor shall defend Indemnitee, at its expense, against all actions, proceedings or claims of any nature and shall, without limitation, indemnify Indemnitee for and against any loss, cost, expense, attorneys' fees and expenses (including inside counsel), or liability, resulting from or related to such claim, whether or not such claim is successful.

5.3 Indemnitee must notify Licensor in writing within a reasonable period of time after Indemnitee first receives written notice of any such claim or action. Indemnitee's failure to provide or delay in providing such notice will relieve Licensor of its obligations under this Paragraph 5 only if and to the extent that such delay or failure materially prejudices Licensor's ability to defend such claim. Indemnitee must reasonably cooperate with Licensor's defense of such claims or suits and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow Licensor sole control of the defense, so long as the defense is diligently and capably prosecuted. Licensee may participate in Licensor's defense of any action. Except for an injunction limited to requiring the cessation of use of an Acquired Item that is the subject of a claim, Licensor may not, without Licensee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened claim or action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened claim or action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise

adversely affect an Indemnitee. Licensee's consent is necessary for any settlement that requires Licensee to part with any right or make any payment or subjects Licensee to any injunction, except for an injunction requiring cessation of use of an Acquired Item that is the subject of the claim.

5.4 In the event an injunction, order, or agreement shall be obtained against Licensee's use of any Acquired Item, Licensor shall, without in any way limiting its other obligations under this Agreement and at its sole expense: (a) use good faith, diligent efforts to procure for Licensee the right to continue to use, and to have used, the Acquired Item, and if such remedy is commercially impracticable, to then (b) replace or modify the Acquired Item so that it becomes non-infringing but only if the modification or replacement does not materially adversely affect the functionality of the Acquired Item or its use by Licensee. In the event that both of these remedies are commercially impracticable, Licensor may require that Licensee stop using the Acquired Item, refund to Licensee an amount equal to all money paid by Licensee therefore, and take all steps necessary to have any Indemnitees released from any further liability.

5.5 Licensor's obligations under this Paragraph 5 do not apply to a claim to the extent (a) that the claim is caused by a modification of Software made by Licensee; (b) that the claim is caused by Licensee's use of a superseded release of Software if the infringement would have been avoided by Licensee's timely implementation of an update or upgrade previously provided to Licensee, but only if such update or upgrade (1) was provided by Licensor at no cost or as part of either maintenance or a previous purchase by Licensee, and (2) does not materially adversely affect the functionality of the Acquired Item or its use by Licensee; (c) that the claim is caused by Licensee combining the Software with another computer program or hardware unless such combinations are recommended by the Documentation or otherwise suggested by Licensor or its Affiliates; (d) that the claim is caused by Licensee reverse engineering, decompiling, or disassembling Software; (e) that the claim arises from Licensee's use of any Software that is open source or freeware, but only if the open source or freeware is not incorporated or combined by Licensor in Software provided by Licensor; (f) that the claim is caused (1) by modifications made to the Software by Licensor or its Affiliates in accordance with a detailed, exact statement of specifications furnished by Licensee unless Licensor or its Affiliates knew or should have known that compliance with the Licensee's specifications would infringe an IP right, or (2) by compliance by Licensor or its Affiliates with specifications furnished by Licensee if Licensee knowingly relied on a third party's product to develop the specifications provided to Licensor or its Affiliates and failed to identify such product to Licensor.

5.6 Notwithstanding any other provision, Licensor's obligations pursuant to this Paragraph 5 are without any limitation whatsoever. Licensor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

5.7 Paragraph 5 states Licensee's exclusive remedy for third party damages claims asserting a violation or infringement of the third party's intellectual property rights.

## **6. LIMITATION OF RECOVERY.**

6.1 Limitation of Damages – Licensor. Except as provided in Paragraph 5 (Intellectual Property Infringement), Paragraph 7.1 (Right to Audit; Misuse of Data), and Paragraph 14.22 (Privacy), Licensor's liability for damages, if any, for any cause whatsoever, and regardless of the form of action, shall in no event exceed an amount equal to twice the cumulative fees paid or payable by Licensee to license the Software. The foregoing limitation applies to the exclusion of any other limitation or exclusion of the remedies available against Licensor, the liability of Licensor, or the damages recoverable from Licensor.

6.2 Limitation of Damages - Licensee. Except as provided in Paragraph 7.2 (Audit Remedy; Exclusivity), Licensee's liability for damages, if any, for any cause whatsoever, and regardless of the form of action, shall in no event exceed an amount equal to twice the cumulative fees paid or payable by Licensee to license Software. Licensee's total liability for any obligation arising under any clause imposing any duty of confidentiality or non-disclosure shall not exceed an amount equal to fifty thousand dollars. The foregoing limitations do not apply to a loss incurred by Licensor to the extent the loss results because

Licensee has created a derivative work from, reverse assembled, reverse compiled, or otherwise reduced to human readable form the Software without Licensor's prior written consent. Nothing herein shall be construed to waive any clause regarding the availability or appropriation of funds, sovereign immunity, or any other immunity, restriction, or limitation on recovery provided by law.

## **7. AUDIT.**

7.1 Right to Audit; Misuse of Data. Licensor has the right to audit Licensee at Licensor's expense. Licensor shall conduct an audit and use the information obtained in an audit only to enforce Licensor's rights under, and to determine whether Licensee is in compliance with, the terms of this Agreement and any Authorized EULAs. Any audit will be subject to a confidentiality obligation and will take place upon not fewer than 30 days notice, during Licensee's normal business hours, and in a manner that does not interfere unreasonably with Licensee's operations. Licensor's sole audit right regarding Licensee is provided by this Paragraph 7. Notwithstanding any other provision, Licensor's liability for intentional breach of its obligation regarding the use of information obtained in an audit is without any limitation whatsoever.

7.2 Audit Remedy; Exclusivity. If an audit reveals or Licensor otherwise discovers unlicensed use of Software by Licensee, Licensee shall either (a) promptly order and pay for sufficient licenses to permit all Software usage discovered and pay Licensor the difference between (i) the license fees that Licensee should have paid for such Software, based upon actual usage, and (ii) the actual license fees that Licensee paid for the software, based upon the actual usage level for which such Software was licensed, or (b) immediately terminate any unlicensed use of Software and pay any applicable license fees for any noncompliance discovered. If a Distributor Contract exists, Licensee may order licenses from, and pay license fees to, a Distributor at a price established by a Distributor Contract. If Licensee's unlicensed use of the Software would be within the scope of license rights granted by this Agreement and the Authorized EULAs but for Licensee's failure to acquire an adequate number of licenses or an available license, Licensor's exclusive remedy for the unlicensed use shall be the remedy provided by this item 7.2. If Licensee fails to execute either option within a reasonable time, the foregoing remedy will not be considered exclusive.

7.3 Licensor's right to conduct an audit is limited by any applicable statutory or regulatory limitations on access to public records.

**8. LICENSEE'S RECORDS.** For each license of Software acquired pursuant to this Agreement, Licensee agrees to retain records of that license for one year beyond the duration of that license, provided that Licensee has no obligation to retain records of a license beyond one year after Licensee ceases to retain a copy of the Software to which a license applies. Licensor may access Licensee's records as provided in the South Carolina Freedom of Information Act and any other applicable law. Except as stated in this Agreement, Licensor agrees that Licensee has no obligation to retain any records.

**9. CONFIDENTIALITY & NONDISCLOSURE.** This Agreement and the Authorized EULAs are subject to public disclosure. All provisions of an Authorized EULA regarding confidentiality or nondisclosure are subject to the South Carolina Freedom of Information Act and other applicable laws. Any duty of confidentiality or nondisclosure established by an Authorized EULA applies only to Software and Documentation that has been conspicuously marked with the words confidential, proprietary, or trade secret.

**10. TERMINATION.** Licensor may not terminate either this Agreement or the Authorized EULAs in the absence of a breach by Licensee that would, under the common law, be material. Any termination by Licensor must be preceded by adequate notice and opportunity to cure. If Licensor exercises any termination rights under any Authorized EULA, Licensee may, in addition to any rights provided in the Authorized EULAs, continue using software pursuant to this Agreement and the Authorized EULAs for a period of six months in order to allow Licensee to convert from the use of Software, unless Licensee has violated the restrictions in paragraph 4.2.4. During the conversion period, and to the extent applicable

Licensee shall pay any applicable, previously unpaid license fees at the price last available from Licensor to Licensee prior to termination or, at Licensee's option, at the price established by an applicable Distributor Contract, if any.

**11.WARRANTIES.** The warranties provided in this Paragraph 11 are in addition to any other warranties provided in the Authorized EULAs. Licensor warrants (a) that every item of Software, without unauthorized modification, will perform substantially in accordance with the Documentation applicable to the Software for a period of 365 days from the date the item of Software is installed by Licensee, (b) that Licensor has all necessary right and authority to license the Software and to grant the licenses provided hereunder, and (c) that there is currently no actual or threatened legal action against Licensor by any third party based on an alleged violation of an intellectual or proprietary property right that has not been disclosed to ITMO and that could adversely affect Licensor's ability to license the use of the Software. Licensor agrees that it will not electronically repossess, trigger any lock, or use any device capable of halting operations or erasing or altering data or programs with regard to any Software that it has licensed to Licensee.

**12.BANKRUPTCY.**

12.1 Notice of Insolvency. Licensor shall provide ITMO and Licensee with written notice immediately upon the filing by Licensor of a petition in bankruptcy or insolvency or upon any other proceeding or action by or against Licensor under the relevant law on insolvency or bankruptcy, or after the making by Licensor of any assignment or attempted assignment for the benefit of creditors or upon or after the institution of any proceedings for the liquidation or winding up of Licensor's business or for the termination of its corporate charter.

12.2 Rejection of Executory License. The Parties agree that the Software is "intellectual property" as defined in Section § 101(35A) of the U.S. Bankruptcy Code. Upon the filing by Licensor of a petition in bankruptcy or insolvency or upon any other proceeding or action by or against the Licensor under the relevant law on insolvency or bankruptcy, this Agreement and the Authorized EULAs shall be governed by Section 365(n) of the U.S. Bankruptcy Code. If any person seeks to reject this Agreement or the Authorized EULAs pursuant to bankruptcy law, Licensee shall have the option of using the Software for either the original term of the Authorized EULAs or a period of five years after rejection is requested.

**13.RIGHTS TO SOFTWARE OR DATABASE DEVELOPED BY LICENSEE.** Nothing in this Agreement or any Authorized EULA shall be construed to give Licensor any rights with regard to computer programs developed by Licensee, regardless of whether or not such programs are connected to or embedded in Software or are functionally similar, in whole or part, to Software. Nothing in this paragraph grants a Licensee any rights to Licensor's intellectual property or to any derivative works.

**14.GENERAL**

14.1 Choice of Law & Choice of Forum. Both the rights and obligations of the Parties and this Agreement and any EULA, as well as any dispute, claim, or controversy arising out of or relating to this Agreement or any EULA, shall, in all respects, be established, interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, without regard to any provision governing conflicts of law. All disputes, claims, or controversies arising out of or in any way relating to this Agreement or any EULA 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.

14.2 Sovereign Immunity. Title 11, Chapter 35, Article 17 constitutes a limited statutory waiver of sovereign immunity. Notwithstanding paragraph 14.1, Licensor agrees that neither this Agreement, any Authorized EULAs, nor any act by either ITMO or Licensee regarding this Agreement or any EULA is a waiver of either their sovereign immunity or their immunity under the Eleventh Amendment of the United States Constitution.

14.3 Subject to Applicable Law. This Agreement is entered into pursuant to the South Carolina Consolidated Procurement Code (Title 11, Chapter 35 of the South Carolina Code of Laws.) As a public entity, all of Licensee's obligations are subject to any applicable laws.

14.4 Alternative Dispute Resolution. No method of mandatory alternative dispute resolution shall apply to any dispute, claim, or controversy arising out of or relating to this Agreement or the Authorized EULAs.

14.5 CISG / UCITA. Neither the UN Convention on the International Sale of Goods nor the Uniform Computer Information Transactions Act (nor any non-uniform version) shall apply to this Agreement or the Authorized EULAs.

14.6 ITMO Participation In Contract Disputes. Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of Licensees. Accordingly, ITMO is not a party to this Agreement and need not be joined as a party to any dispute that may arise out of this Agreement. With regard to this Agreement, the officers, agents and employees of ITMO are acting solely in their official capacity and need not be joined as a party to any dispute that may arise out of this Agreement.

14.7 Notices. In addition to any other obligations the parties may have regarding notice, all **notices or other communications regarding termination, material breach, modification, or audit of this Agreement, an Authorized EULA, or a license covered by either shall be copied to ITMO at the following address.**

Information Technology Management Office  
Procurement Services Division  
State Budget & Control Board  
1201 Main Street, Suite 600  
Columbia, SC 29201

14.8 Third Party Beneficiary. This Agreement and the Authorized EULAs are 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 Agreement or the Authorized EULAs as a third party beneficiary or otherwise.

14.9 Assignment. Except as set forth below, neither party may assign or transfer this Agreement, the Authorized EULAs, or any rights regarding either, without the prior written consent of ITMO. Reference S.C. Code Ann. Regs § 19-445.2180. Such consent shall not be unreasonably withheld. Any attempted assignment, delegation or transfer in derogation of this Paragraph shall be null and void.

14.9.1 This Agreement and the Authorized EULAs, and any rights regarding either, may be assigned to an affiliate of the Licensor, or to successors-in-interest of substantially all the assets of the Licensor, if the assignee expressly assumes the Licensor's obligations under the assigned agreement. Licensor must give Licensee reasonable prior notice of any assignment. As used in this item, affiliate means a legal entity that controls, is controlled by, or is under common control with Licensor.

14.9.2 If Licensee is reorganized such that certain operations or functions are transferred from Licensee to a different public procurement unit, then in connection with such reorganization, a Licensee may, upon written notice to Licensor, transfer licenses to another public procurement unit provided that the transferee is performing some substantially similar business and/or operational functions as the original Licensee. Both entities shall execute such paperwork as Licensor may reasonably require.

14.10 Interpretation. Any question of interpretation or construction shall not be resolved by any rule providing for interpretation or construction against the party who causes the uncertainty to exist or against the drafters of this Agreement.

14.11 Headings. The headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of this Agreement.

14.12 Publicity. Licensor agrees not to refer to Licensees in such a manner as to state or imply that either Licensor or its Software is endorsed or preferred by Licensee, the State of South Carolina, or any unit of either. The foregoing shall not prohibit the Licensor from identifying a Licensee as a customer in a customer list.

14.13 Relationship Among Public Entities. Each Licensee's obligations and liabilities are independent of every other Licensee's obligations and liabilities. Termination of one Licensee does not constitute grounds for termination of a different Licensee.

14.14 Language of Agreement & Notices. The language of this Agreement is English. If translated into another language, this English version of the Agreement shall be controlling. All notices required or permitted to be given hereunder shall be written in the English language.

14.15 Survival of Obligations. The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this Agreement shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Intellectual Property Infringement, Limitation of Recovery, Audit, Bankruptcy, and General.

14.16 Waiver & Modification. No waiver of any default by either party shall act as a waiver of a subsequent or different default. The provisions of this Agreement and the Authorized EULAs may not be modified or waived except by another agreement in writing executed by an authorized representative of Licensee and an authorized representative of Licensor.

14.17 Anti-Indemnification & Anti-Representation. Any provision in the Authorized EULAs is void to the extent it imposes an obligation upon ITMO or a Licensee that would properly be characterized as an indemnity. Licensee makes no representations or warranties to Licensor, and any language to the contrary is void.

14.18 Statute of Limitations. Any provision in the Authorized EULAs is void to the extent that it modifies the statute of limitations or alters the time period within which an action must be brought.

14.19 Non-appropriations. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

14.20 Attorneys' Fees. Except as otherwise provided in this Agreement, each party waives any claim it may have to recover attorneys' fees from any other party.

14.21 Users. A Licensee has no liability for any acts or omissions of any person that Licensee allows to use the Software, unless such acts or omissions are within the scope of that person's employment or have been properly authorized by Licensee.

14.22 Privacy. As used in this paragraph, the term 'data' means any information regarding any person or entity other than a Licensee that is gathered or acquired as a result of the Software licensed by Licensee being used. Except to the extent fully disclosed in writing (e.g., a privacy policy or the Documentation) prior to execution of this Agreement, Licensor represents that Software will not provide any entity other than Licensor with any data. Notwithstanding anything to the contrary, Licensor agrees (i) not to use or retain data for any purpose other than performing this contract, except to the extent that using or retaining state data is incidental to contract administration, such as financial, administrative, cost or pricing, and (ii) not to sell, trade, or release data. Upon request, Licensor shall provide written confirmation of compliance with this clause. Licensor agrees that Licensee has no adequate remedy at

law for a violation of Licensor's obligations under this paragraph. Notwithstanding any other provision, Licensor's liability for breach of its obligation under this paragraph is without any limitation whatsoever. [09-9030-1]

--- end of Piggyback ---

EXHIBIT B  
SOFTWARE LIST

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# Appendix K

## Sample Low Bid Formulas

Note: The five examples provided in this Appendix L are just that, examples to illustrate a concept. The examples provided may have some defect and their inclusion here does not reflect any official approval for the use of these formulas or methods of determining a low bidder.

### **EXAMPLE #1 – Weighted Value**

#### **EVALUATION**

The State will use the following process in the evaluation and determination of an award:

1. An award will be made to the responsive and responsible bidder for each lot that offers the highest weighted value discount for all items listed in the Bidding Schedule. All categories in each lot that are being bid must be completely filled in or the bid will be considered non-responsive.

2. In addition, the State will make additional awards to responsive and responsible bidders that offer an average weighted value discount that is 5% or less than the base price of the lowest bidder stated in paragraph (a) above.

#### **3. Sample Vendor A Response**

**BIDDING SCHEDULE****Brand ABC**  
**(Bid only as specified)**

<b>Category</b>	<b>Discount Off of Manufacture List Price</b>		<b>Weighted Value</b>	<b>Total</b>
<b>LCD Projectors</b>				
Micro Portables (6 pounds or less)	45%	X	20%	= <u>9</u>
Ultra Portables (6 pounds – 12 pounds)	55%	X	25%	= <u>13.75</u>
Portables (12 – 20 pounds)	40%	X	35%	= <u>14</u>
Accessories	30%	X	20%	= <u>6</u>
		Total	100	= <u>42.75</u>
		Total		<u>45.74</u>

## BIDDING SCHEDULE

### LOT A: Dukane (Bid only as specified)

Category	Discount Off of Manufacture List Price	Weighted Value	Total
<b>LCD Projectors</b>			
Micro Portables (6 pounds or less)	X	20%	= _____
Ultra Portables (6 pounds – 12 pounds)	X	25%	= _____
Portables (12 – 20 pounds)	X	35%	= _____
Accessories	X	20%	= _____
	Total	100	= _____
	Total		= _____

\*The weights shown above will be applied by the State in the evaluation of bid responses to determine the lowest price.

**EXAMPLE #2 – Weighted Value**

**LOT B: ESRI**

**The following software products are indicative of ESRI's product line that may be initially placed on the contract(s) by the State at the beginning of the term contract(s):**

- Arcview (current version/release)
- Arcview Upgrade (current version/release)
- Arcview Spatial Analyst Ext for WIN 95, NT (current version/release)
- Arcview Spatial Analyst Ext 12 Mon. SPRT FOR WIN 95 (current version/release)
- Arcview Ntwrk Analyst Ext for WIN 95, NT (current version/release)
- Arcview Ntwrk Analyst Ext 12 Mon. SPRT FOR WIN 95 (current version/release)
- Arcpress for Arcview GIS for WIN 3.X, 95, NT (current version/release)
- ArcView Concurrent User License (current version/release)
- ArcGIS 3D Analyst Concurrent User Package (current version/release)
- ArcGIS StreetMap USA Concurrent Use License (current version/release)
- ArcGIS Geostatistical Analyst Concurrent Use Package (current version/release)
- ArcGIS Spatial Analyst Concurrent Use Package (current version/release)

**BIDDING SCHEDULE**

**ESRI = Brand**

**(Bid only as specified)**

CATEGORY

DISCOUNT OFF OF ESRI ESTIMATED  
RETAIL PRICE/LIST PRICE

License Only

\_\_\_\_\_

Software Upgrade

\_\_\_\_\_

Software Media

\_\_\_\_\_

Software Documentation

\_\_\_\_\_

Full Package Product\Shrink-Wrap Product

\_\_\_\_\_

**EVALUATION OF LOT B (ESRI)**

The State will evaluate bids for Lot B (ESRI) by calculating the total weighted discount for the five categories (using the weighted averages below for each category) and then add the total weighted discounts up for ESRI to determine the total score for each bidder.

<u>CATEGORY</u>	<u>WEIGHTED AVERAGE</u>
<b>Software License Only</b>	<b>35%</b>
<b>Software Upgrade</b>	<b>30%</b>
<b>Software Media</b>	<b>19%</b>
<b>Documentation</b>	<b>8%</b>
<b>Full Package ("Shrink-Wrap") Product</b>	<b>8%</b>

**SAMPLE BID:**

CATEGORY

DISCOUNT OFF OF ESRI'S  
ESTIMATED RETAIL PRICE/LIST  
PRICE

**Software License Only**

**10%**

**Software Upgrade**

**5%**

**Software Media**

**5%**

**Documentation**

**3%**

**Full Package ("Shrink-Wrap") Product**

**5%**

Sample Evaluation

<u>CATEGORY</u>	<u>WEIGHTED AVERAGE)</u>	<u>DISCOUNT OFF OF ESRI's ESTIMATED RETAIL PRICE/LIST PRICE</u>					
<b>Software License Only</b>	35%	10%	=	.35	x	10	3.50
<b>Software Upgrade</b>	30%	5%	=	.30	x	5	1.50
<b>Software Media</b>	19%	5%	=	.19	x	5	0.95
<b>Documentation</b>	8%	3%	=	.08	x	3	0.24
<b>Full Package ("Shrink-Wrap) Product</b>	8%	5%	=	.08	x	5	0.40
				<b>Total</b>			6.59

From the evaluation process, the State will award contract(s) to the responsive and responsible bidder with the highest total score for Lot B (ESRI) and responsive and responsible bidders whose total scores are within five percent (5%) of the highest total score for Lot B (ESRI).

**EXAMPLE #3 – Fixed Price**

**BIDDING SCHEDULE**

(Reference Novell Master License Agreement (MLA) # 127510-M5Z440)

**DEADLINE FOR QUESTIONS: CLOSE OF BUSINESS ON JULY 22, 2004**

Email questions to Debbie Lemmon @ dlemmon@cio.sc.gov

**IMPORTANT**

**THE REFERENCE PRICE IS THE MAXIMUM PRICE THE STATE WILL PAY FOR THE PRODUCTS (RETAIL PRICE LESS PERCENTAGE (%) OFF OF RETAIL)**

**NOTE: BIDDERS MUST BID AT OR BELOW THE REFERENCE PRICE.**

**BIDDERS MUST COMPLETE BIDDER'S PRICE BID NON-ED AND BIDDER'S PRICE BID EDUCATIONAL IN ORDER TO BE CONSIDERED.**

<b>MANUFACTURER/BIDDER'S PRODUCT BID</b>	<b>REFERENCE PRICE: THE MAXIMUM THE STATE WILL PAY:</b>	<b>BIDDER'S PRICE BID NON-ED</b>
EDUCATIONAL		
Novell Master License Agreement ____%	RETAIL PRICE LESS 42%	%
Softwre License/Maintenance		
Novell Master License Agreement ____%	RETAIL PRICE LESS 10%	%
Premium Technical Support		
Novell Master License Agreement ____%	RETAIL PRICE LESS 10%	%
Documentation (Self Study Material)		

(All associated cost must be included in the contract price)

**NOTE: MEDIA IS NOT DISCOUNTED BUT IS FREE WITH AN ORDER OF \$5K OR MORE.**

**Contract Product Lines**

All vendors submitting a bid must be able to sell to the State the entire product line on contract. The following services are not included:

- Installation
- Implementation
- Consulting Services
- Training

**Premium Technical Support**

All premium technical support will be performed directly from Novell but purchase orders can be submitted to approved reseller that has been awarded a contract as a result of this solicitation.

**Performance to Contract**

Performance of the contract awarded to a Novell Approved Reseller(s) is contingent upon Novell Approved Reseller(s) approved to be added to the Novell Master License Agreement (MLA) # 127510-M5Z440.

**EXAMPLE #4 – Unit Cost Development**

**VIII. Revised Bidding Schedule / Cost Proposal**

**REVISED BID SCHEDULE – ITEM 1**

Item	Commodity / Service	Quantity	Unit Of Measure	Unit Price	Extended Price
1	9529310100	229,900	HOUR		

**Description: Contract Labor Services for B&CB – Item 1.**

This item computes hourly rate for employees who are ineligible for Hospitalization insurance or who elect not to purchase Hospitalization insurance.

Contractor must offer eligible employees (a) Hospitalization coverage; (b) Supplemental policy options; (c) Life Insurance; (d) Credit Union membership and privileges. This item assures that employees who do not participate in Hospitalization insurance, but would be eligible to participate in Life insurance and Credit Union membership and privileges.

FOR THE PURPOSE OF AN AWARD IT IS ESTIMATED THAT 229,900 HOURS WILL BE REQUIRED ANNUALLY FOR EMPLOYEES WHO DO NOT PARTICIPATE IN HOSPITALIZATION INSURANCE.

**BIDDERS MUST IDENTIFY:**

HOURLY RATE..... \$ 6.00

OVERHEAD..... \_\_\_\_\_%

PROFIT..... \_\_\_\_\_%

**TOTAL HOURLY COST**..... \$\_\_\_\_\_

FOR THE PURPOSE OF EVALUATING BIDS FOR AN AWARD THE HOURLY RATE IS \$6.00. BIDDERS MUST APPLY THE SAME OVERHEAD AND PROFIT PERCENTAGES ACCORDINGLY AND ENTER THEIR **TOTAL HOURLY COST** UNDER UNIT PRICE.

**REVISED BID SCHEDULE – ITEM 2**

Item	Commodity / Service	Quantity	Unit Of Measure	Unit Price	Extended Price
2	9529310100	57,475	HOUR		
<p><b>Description: Contract Labor Services for B&amp;CB –ITEM 2</b></p> <p>This item computes hourly rate for insurance eligible employees who elect Hospitalization coverage through a duly licensed carrier or financial institution with the employee contributing a maximum of \$93.46 per month of the total premium for single coverage. Insurance eligible employees must work at least 30 hours per week and be employed by contractor at least 60 days.</p> <p>Employees are also eligible to participate in (a) Supplemental policy options; (b) Life Insurance; (c) Credit Union membership and privileges.</p> <p>FOR THE PURPOSE OF AN AWARD IT IS ESTIMATED THAT 57,475 HOURS WILL BE REQUIRED ANNUALLY FOR <b>EMPLOYEES ELECTING INSURANCE.</b></p>					

**BIDDERS MUST IDENTIFY:**

HOURLY RATE..... \$ 6.00

OVERHEAD..... \_\_\_\_\_%

PROFIT..... \_\_\_\_\_%

**TOTAL HOURLY COST**..... \$\_\_\_\_\_

FOR THE PURPOSE OF EVALUATING BIDS FOR AN AWARD THE HOURLY RATE IS \$6.00. BIDDERS MUST APPLY THE SAME OVERHEAD AND PROFIT PERCENTAGES ACCORDINGLY AND ENTER THEIR **TOTAL HOURLY COST** UNDER UNIT PRICE.

**FOR INFORMATION PURPOSES:** THE FOLLOWING ARE THE MINIMUM PAY RATES EACH EMPLOYEE IS TO BE PAID BY CONTRACTOR PER CLASSIFICATION. BIDDERS MUST SUPPLY THE SAME OVERHEAD AND PROFIT PERCENTAGES TO ALL GENERAL SERVICES DIVISION ESTABLISHED HOURLY RATES.

**EXAMPLE #5 – Unit Price Weighting**

Bid for Sedan, Police S./S., Intermediate, 4 Door - Dodge Charger

**III. Scope of Work / Specifications**

Specifications

Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and successful bidder will be held responsible therefor. Deviations must be explained in detail on separate attached sheet(s). (TCP093)

The specification section will consist of the following format for each vehicle:

1. Worksheet for calculating “Unit Price” and “Extended Price”
2. Vehicle Specifications
3. Vehicle Questionnaire

**Offerors are to post the “Base Price”, “Extended Price”, “Manufacturer”, and “Model” information to Section VIII (“Bidding Schedule Summary”).**



# Appendix L Buyer Validation Report



## State of South Carolina

### Invitation For Bid

Version: 6

Bid invitation number: 5400008381  
Description: Vehicles - Law Enforcement  
Resp purch group: 502  
Buyer name: [REDACTED]  
Buyer email: [REDACTED]  
Buyer phone: [REDACTED]  
Valid From: 11/01/2014  
Valid To: 10/31/2016  
Estimated award date: 10/17/2014  
SCBO catg: Equipment

#### Bid invitation rules

Bid invitation currency: USD - United States Dollar  
Bidding procedure: Public bid invitation  
Requested price information: Normal price  
Timezone: EST  
End date/time: 10/08/2014 13:00:00

Bids required for all items? No  
Display weighting to bidders? No

Bid may be changed? Yes  
Bidder can add items? No

#### Header tendering text

open for 5 office use only

#### Header attachments

Description	Internal
Solicitation	X
Responses Report	X
Reviewers Check List	X
Solicitation	X
QUESTIONNAIRE-VEHICLE 2014	
IFB # 5400008381	
SCBO Advertisement	X
Amendment # 1 - 8381	
Amendment # 2 - 8381	

#### Header attributes

The vendor has read the terms and conditions of this solicitation. This offer is in accordance with all of the terms and conditions of this solicitation.

The bidder has read and understands all amendments.

BIDDER CERTIFIES THAT THEY ARE CURRENT WITH ALL ADMIN FEE REPORTING AND PAYMENTS FOR CURRENT AND

**Invitation For Bid**

Version: 6

Bid invitation number: 5400008381

Description: Vehicles - Law Enforcement

PREVIOUSLY HELD STATEWIDE TERM CONTRACTS.

THE BIDDER CERTIFIES THAT ALL VEHICLES BID INCLUDE ALL STANDARD AND FACTORY INSTALLED ITEMS AS SPECIFIED.

**Item Schedule****Item: 1****Law Enforcement Touring Motorcycle**

Item Category: Material

Product Category: 07156 - Motorcycles

Target Quantity of Bid Invitation: 10.00 each

Price Unit Per: 1 each

**Item tendering text**

Law Enforcement Touring Motorcycle (BMW R1200 RT-P)

**Item Attributes**

Are you entering a bid for this line item? If so, then all remaining attribute questions must be answered. Failure to respond to any attribute question may result in your bid being determined non-responsive.

Questionnaire - Make

Questionnaire - Model to Include Model Number

Questionnaire - Series

Questionnaire - Year

QUESTIONNAIRE - STANDARD FACTORY COLORS EXTERIOR

QUESTIONNAIRE - DAYS ARO

DEDUCT - HEATED SEAT

DEDUCT - CRUISE CONTROL

DEDUCT - TIRE PRESSURE MONITOR

DEDUCT - WEATHER PROTECTION

DEDUCTS - TOTAL OF ALL DEDUCTS

DEDUCTS - TOTAL DEDUCTS X 0.25

EVALUATED AMOUNT - (BASE PRICE) PLUS (TOTAL ADDS X 0.25) MINUS (TOTAL DEDUCTS X 0.25)

**Item: 2****Sedan, Intermediate, Front Wheel Drive,**

# Invitation For Bid

Version: 6

Bid invitation number: 5400008381

Description: Vehicles - Law Enforcement

Item Category: Material

Product Category: 07105 - Automobiles Police and Security Equipped

Target Quantity of Bid Invitation: 80.00 each

Price Unit Per: 1 each

**Item tendering text**

Sedan, Intermediate, Front Wheel Drive, Pursuit Package(ChevroletImpala)

**Item Attributes**

Are you entering a bid for this line item? If so, then all remaining attribute questions must be answered. Failure to respond to any attribute question may result in your bid being determined non-responsive.

Questionnaire - Make

Questionnaire - Model to Include Model Number

Questionnaire - Series

Questionnaire - Year

QUESTIONNAIRE - STANDARD FACTORY COLORS EXTERIOR

QUESTIONNAIRE - STANDARD FACTORY COLORS - INTERIOR

QUESTIONNAIRE - DAYS ARO

ADD - FLOOR COVERING - HD RUBBER, BLACK

ADD - ROOF WIRING (8 or 10 wire)

ADD - SPOT LIGHT (DOOR MOUNTED LEFT HAND)

ADD - VINYL REAR SEAT (CLOTH FRONT SEAT)

ADDS - TOTAL OF ALL ADDS

ADDS - TOTAL ADDS X 0.25

DEDUCT - AUXILIARY POWER CONNECTION - STANDARD STATE SPEC

DEDUCT - AUXILIARY POWER OUTLET-STANDARD STATE SPEC

DEDUCT - CLOTH BUCKET SEATS

DEDUCT - MAP LIGHT (HEADER MOUNTED)

DEDUCT - POWER WINDOWS

DEDUCTS - TOTAL OF ALL DEDUCTS

DEDUCTS - TOTAL DEDUCTS X 0.25

[Report truncated]

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# Appendix M Bidder Validation Report



## State of South Carolina

### Bid

Status: 5500036119 Bid Accepted

Created: 10/07/2014 14:23:00 EST

JASON [REDACTED]

Last upd: 10/17/2014 13:52:36 EST

### Bidder

[REDACTED] RD

GREENVILLE SC 29607

### Invitation For Bid

Version: 4

Bid invitation number: 5400008381

Description: Vehicles - Law Enforcement

Buyer name: [REDACTED]

Buyer email: [REDACTED]

Buyer phone: [REDACTED]

Valid From: 11/01/2014

Valid To: 10/31/2016

Estimated award date: 10/17/2014

SCBO catg: Equipment

### Bid invitation rules

Bidding procedure: Public bid invitation

Requested price information: Normal price

Timezone: EST

End date/time: 10/08/2014 13:00:00 EST

Bids required for all items? No

Bid may be changed? Yes

Bidder can add items? No

### Bid Basic Data

Target Value Bid: 242,481.70 (United States Dollar)

Terms of Payment: net 30 days

Currency: USD United States Dollar

### Information from purchaser - header attachment(s)

Description

IFB # 5400008381

QUESTIONNAIRE-VEHICLE 2014

Amendment # 1 - 8381

Amendment # 2 - 8381

### Header attributes

The vendor has read the terms and conditions of this solicitation. This offer is in accordance with all of the terms and conditions of this solicitation.

Bidder Response: Y

The bidder has read and understands all amendments.

Bidder Response: Y

BIDDER CERTIFIES THAT THEY ARE CURRENT WITH ALL ADMIN FEE REPORTING AND PAYMENTS FOR CURRENT AND PREVIOUSLY HELD STATEWIDE TERM CONTRACTS.

Bidder Response: Y

THE BIDDER CERTIFIES THAT ALL VEHICLES BID INCLUDE ALL STANDARD AND FACTORY INSTALLED ITEMS AS SPECIFIED.

**Invitation For Bid**

Version: 4

Bid invitation number: 5400008381

Description: Vehicles - Law Enforcement

Bidder Response: Y

**Bid details****Item: 1****Law Enforcement Touring Motorcycle**

Item Category: Material

Product Category: 07156 - Motorcycles

Target Quantity of Bid Invitation: 10.00 each

Price: 24,248.17 (United States Dollar) Per 1 each

Target Value Bid: 242,481.70 (United States Dollar)

**Information from purchaser - Item tendering text**

Law Enforcement Touring Motorcycle [REDACTED]

**Item attributes**

Are you entering a bid for this line item? If so, then all remaining attribute questions must be answered. Failure to respond to any attribute question may result in your bid being determined non-responsive.

Bidder Response: Y

**Questionnaire - Make**

Bidder Response: [REDACTED]

**Questionnaire - Model to Include Model Number**

Bidder Response: [REDACTED]

**Questionnaire - Series**

Bidder Response: [REDACTED]

**Questionnaire - Year**

Bidder Response: 2015

**QUESTIONNAIRE - STANDARD FACTORY COLORS EXTERIOR**

Bidder Response: Night Black Alpine White

Comments: Standard color

**QUESTIONNAIRE - DAYS ARO**

Bidder Response: 90

Comments: Based on availability

**DEDUCT - HEATED SEAT**

Bidder Response: 159.09 (United States Dollar)

Comments: Item is standard, removing from motorcycle makes it a special order. ARO would be based on manufacturer build times.

**DEDUCT - CRUISE CONTROL**

Bidder Response: 350.00 (United States Dollar)

**Invitation For Bid**

Version: 4

Bid invitation number: 5400008381

Description: Vehicles - Law Enforcement

Comments: Item is standard, removing from motorcycle makes it a special order. ARO would be based on manufacturer build times

**DEDUCT - TIRE PRESSURE MONITOR**

Bidder Response: 250.00 (United States Dollar)

Comments: Item is standard, removing from motorcycle makes it a special order. ARO would be based on manufacturer build times

**DEDUCT - WEATHER PROTECTION**

Bidder Response: 247.73 (United States Dollar)

Comments: Item is standard, removing from motorcycle makes it a special order. ARO would be based on manufacturer build times

**DEDUCTS - TOTAL OF ALL DEDUCTS**

Bidder Response: 1,006.82 (United States Dollar)

**DEDUCTS - TOTAL DEDUCTS X 0.25**

Bidder Response: 1,258.25 (United States Dollar)

**EVALUATED AMOUNT - (BASE PRICE) PLUS (TOTAL ADDS X 0.25) MINUS (TOTAL DEDUCTS X 0.25)**

Bidder Response: 22,989.92 (United States Dollar)

**Item: 2****Sedan, Intermediate, Front Wheel Drive,**

Item Category: Material

Product Category: 07105 - Automobiles Police and Security Equipped

Target Quantity of Bid Invitation: 80.00 each

**Information from purchaser - Item tendering text**

Sedan, Intermediate, Front Wheel Drive, Pursuit Package(ChevroletImpala)

**Item attributes**

Are you entering a bid for this line item? If so, then all remaining attribute questions must be answered. Failure to respond to any attribute question may result in your bid being determined non-responsive.

Bidder Response: N

**Questionnaire - Make**

Bidder Response:

**Questionnaire - Model to Include Model Number**

Bidder Response:

**Questionnaire - Series**

Bidder Response:

**Questionnaire - Year**

Bidder Response:

# Invitation For Bid

Version: 4

Bid invitation number: 5400008381

Description: Vehicles - Law Enforcement

QUESTIONNAIRE - STANDARD FACTORY COLORS EXTERIOR

Bidder Response:

QUESTIONNAIRE - STANDARD FACTORY COLORS - INTERIOR

Bidder Response:

QUESTIONNAIRE - DAYS ARO

Bidder Response:

ADD - FLOOR COVERING - HD RUBBER, BLACK

Bidder Response:

ADD - ROOF WIRING (8 or 10 wire)

Bidder Response:

ADD - SPOT LIGHT (DOOR MOUNTED LEFT HAND)

Bidder Response:

ADD - VINYL REAR SEAT (CLOTH FRONT SEAT)

Bidder Response:

ADDS - TOTAL OF ALL ADDS

Bidder Response:

ADDS - TOTAL ADDS X 0.25

Bidder Response:

DEDUCT - AUXILIARY POWER CONNECTION - STANDARD STATE SPEC

Bidder Response:

DEDUCT - AUXILIARY POWER OUTLET-STANDARD STATE SPEC

Bidder Response:

DEDUCT - CLOTH BUCKET SEATS

Bidder Response:

DEDUCT - MAP LIGHT (HEADER MOUNTED)

Bidder Response:

DEDUCT - POWER WINDOWS

Bidder Response:

DEDUCTS - TOTAL OF ALL DEDUCTS

Bidder Response:

DEDUCTS - TOTAL DEDUCTS X 0.25

Bidder Response:

EVALUATED AMOUNT - (BASE PRICE) PLUS (TOTAL ADDS X 0.25) MINUS (TOTAL DEDUCTS X 0.25)

Appendix N  
Clarification Forms (Reserved)

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# Appendix O

## Discussions Forms

The form letter and attachment that follow may be used in competitive sealed proposals to document discussions conducted pursuant to S.C. Code Ann. § 11-35-1530(6) and Reg. 19-445.2095(I). Comprehensive guidance regarding communications after opening can be found in Procurement Policy Statement No. 2008-2, available at:

[http://procurement.sc.gov/webfiles/MMO\\_POL\\_GD/Discussions\\_Web\\_Package.pdf](http://procurement.sc.gov/webfiles/MMO_POL_GD/Discussions_Web_Package.pdf)

You are strongly encouraged to review the training materials associated with this subject, available at:

[http://procurement.sc.gov/webfiles/MMO\\_POL\\_GD/Training - Classifying Proposals - Discussions %28final\\_080425%29.pdf](http://procurement.sc.gov/webfiles/MMO_POL_GD/Training_-_Classifying_Proposals_-_Discussions_%28final_080425%29.pdf)

The clause titled "DISCUSSIONS & NEGOTIATIONS (NOV 2007)" has been retired. In its place, buyers should select one of two new clauses depending on whether negotiations will be optional or required. The new clauses appear in Part VI of the USF and are titled "DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (FEB 2015)," Clause No. 06-6058-1; and "DISCUSSIONS AND NEGOTIATIONS – REQUIRED (FEB 2015)," Clause No. 06-6059-1.

[Date]

TRANSMITTED VIA FACSIMILE: (999) 999-9999  
CERTIFIED U.S. MAIL # *(insert certified mail number)* [if applicable<sup>1</sup>]

*[send to offeror at address appearing on cover page]*

Re: URGENT NOTICE - **Response Due by [date].**  
Request for Proposal Revisions  
RFP # **X**

Dear *[person signing proposal cover page]*:

As the procurement officer for the above referenced RFP, I am writing to conduct discussions regarding your business' proposal. As contemplated in the Request for Proposals, the State has elected to conduct discussions pursuant to South Carolina Code Section 11-35-1530(6) and Regulation 19-445.2095(I). Under these laws, discussions are conducted with all offerors submitting proposals initially classified, for discussion purposes, as either acceptable or potentially acceptable. Your proposal has been classified as *[acceptable/potentially acceptable.]*

The authority to conduct discussions is strictly limited. First, discussions involve only a limited exchange of information. They are not and cannot constitute negotiations.

Second, all discussions must be controlled by the procurement officer. Accordingly, please do not communicate with any other state employees regarding these discussions without my express prior approval and my direct participation.

Third, these discussions involve an opportunity for you to submit cost or price, technical, or other revisions to your proposal. However, the law allows such revisions "only to the extent such revisions are necessary to resolve any matter raised in writing by the procurement officer during discussions." Accordingly, you must ensure that any revisions submitted are strictly limited to only those revisions necessary to resolve the concerns raised in this letter. Please see the attached list of concerns. Unauthorized revisions or additional unsolicited responses may result in rejection of your revisions and consideration of only your initial proposal.

Fourth, revisions must be timely received. **Any revisions must be received by me no later than [date]. Late proposal revisions will not be considered.**

Please contact me if you have any questions.

Sincerely,

*[name]*  
Procurement Manager

*[Instructions to Procurement Officer: If a proposal is acceptable, you may have no need to send any letter. A letter is not needed unless you intend to authorize a proposal revision. All italicized text requires your attention]*

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<sup>1</sup> For very large or very high profile procurements, the added security of sending your letter certified mail may be worth the cost. Ordinarily, the expense is not needed. If you elect to use email, make sure you have proof of receipt. Unlike mail deposited with the U.S. Post Office, the law does not include a presumption that email is properly delivered.

[Date]

Matters for Discussion  
[date / same as letter]  
RFP # [number]  
Concerns regarding Proposal of [name of offeror]

A. We have identified the following deficiencies in your proposal that will result in rejection as non-responsive unless corrected. You may address these deficiencies by submitting revisions to any aspect of your proposal, but only to the extent such revisions are *necessary* to resolve the deficiency identified.

1. x
2. x

B. We have identified the following uncertainties in your proposal that could render your proposal non-responsive. You may address these uncertainties by submitting revisions to any aspect of your proposal, but only to the extent such revisions are *necessary* to resolve the uncertainty identified.

1. x
2. x

C. We suspect that your proposal includes the following mistakes. If a mistake was made, you may correct the mistake by submitting revisions to any aspect of your proposal, but only to the extent such revisions are *necessary* to resolve the mistake identified. If no mistake was made, please confirm that no mistake was made.

1. x
2. x

[Instruction to procurement Officer:]

1. For any area with no concerns, state "None"
2. For each item, identify the exact language in the proposal to which the concern is addressed.
3. For items identified as uncertainties, explain the reason for the uncertainty.
4. For items identified as mistakes, identify the language in the proposal that lead someone to suspect a mistake and why.

*This page is intentionally blank.*

Appendix P  
Record of Negotiations (MAR 2015)



# Appendix Q

## Records of Negotiations – Samples and Tips

### Tips for Assembling & Executing a Record of Negotiations

#### Cost or Pricing Data

- Determine whether submission is required. If not, procurement officer to initial statement of inapplicability below certificate before execution of RON.

#### Substantive

- Never attach any standard form contract to the RON, particularly a vendor's standard form contract!
- Unless inapplicable, use the following wording from the RON Sample. *This language is crafted to preserve the order of precedence established by the Contract Documents & Order of Precedence clause.*

1. Unless modified by this Record of Negotiations, Offeror reaffirms its agreement to be bound by the terms of the Solicitation notwithstanding anything to the contrary in its offer. Except as provided herein, all terms and conditions of the Offer and the Solicitation remain unchanged.

2. The document titled Exhibit A - Record of Negotiation – Negotiated Changes to Proposal is attached hereto and incorporated by reference. Exhibit A and Offeror's Proposal shall be read to be consistent and complimentary. Any conflict among these two documents shall be resolved by giving priority to Exhibit A.

3. The document titled Exhibit B - Record of Negotiation - Negotiated Changes to Solicitation is attached hereto and incorporated by reference. Exhibit B and the Solicitation shall be read to be consistent and complimentary. Any conflict between Exhibit B and the Solicitation shall be resolved by giving priority to Exhibit B.

4. Any conflict between Exhibit A and the Solicitation, as modified by Exhibit B, shall be resolved by giving priority to the Solicitation, as modified by Exhibit B.

- Label every attachment / exhibit to the RON with a name and number. If needed for clarity, also include a notation at the top of the attachment / exhibit explaining the document with which it is associated.
- All negotiated changes to the Proposal must be documented in one document and labeled:  
**Exhibit A - Record of Negotiation – Negotiated Changes to Proposal**
- All negotiated changes to the Solicitation must be documented in one document and labeled:  
**Exhibit B – Record of Negotiations – Negotiated Changes to Solicitation**

#### Execution

- Initial every page. Have Offeror do same. Then, post Intent to Award.

#### Optional / Editorial

- After assembling all your documents, use a PDF program to merge all the documents in order. Then, add a header along these lines to the top corner of each page: January 1, 2000 RON Page x of y

	<b>State of South Carolina</b>  <b>RECORD OF NEGOTIATIONS</b>	<b>Solicitation Number:</b> xxxxxxxxxx <b>Procurement Officer:</b> Buyer Jones <b>Phone:</b> 803.123.4567 <b>E-Mail Address:</b> xxxxxx@mimo.sc.gov <b>Address:</b> 1201 Main St., Ste 600 Columbia, SC 29201
		(This area is blank in the original image)

**CONTRACT DESCRIPTION:** Widgets

**USING GOVERNMENTAL UNIT:** South Carolina Agency of Efficiency

**OFFEROR'S NAME AND ADDRESS:** [Product Development Corporation](#)  
 9999 Main Street  
 Big City, State 999999

**IMPORTANT NOTICE:**

Offeror is required to sign this document and return \_\_\_\_\_ copies to the procurement officer named above by the following date: \_\_\_\_\_.

<b>DESCRIPTION OF NEGOTIATED CHANGES:</b> (attach additional pages if necessary)	
1. Unless modified by this Record of Negotiations, Offeror reaffirms its agreement to be bound by the terms of the Solicitation notwithstanding anything to the contrary in its offer. Except as provided herein, all terms and conditions of the Offer and the Solicitation remain unchanged.	
2. The document titled Exhibit A - Record of Negotiation – Negotiated Changes to Proposal is attached hereto and incorporated by reference. Exhibit A and <a href="#">Product Development Corporation's</a> Proposal shall be read to be consistent and complimentary. Any conflict among these two documents shall be resolved by giving priority to Exhibit A.	
3. The document titled Exhibit B - Record of Negotiation - Negotiated Changes to Solicitation is attached hereto and incorporated by reference. Exhibit B and the Solicitation shall be read to be consistent and complimentary. Any conflict between Exhibit B and the Solicitation shall be resolved by giving priority to Exhibit B.	
4. Any conflict between Exhibit A and the Solicitation, as modified by Exhibit B, shall be resolved by giving priority to the Solicitation, as modified by Exhibit B.	
<b>OFFEROR'S CERTIFICATE OF CURRENT COST OR PRICING DATA:</b> The Offeror certifies that, to the best of its knowledge and belief, the cost or pricing data (as defined by 48 C.F.R. 2.101) submitted, either actually or by specific identification in writing, by the Offeror to the Procurement Officer in support of the proposed contract are accurate, complete, and current as of the date this record of negotiations is signed. [ <i>Procurement Officer must initial here _____ if Certificate inapplicable to this Record of Negotiations</i> ] (See "Pricing Data – Audit – Inspection" provision.) (Reference § 11-35-1830 & R. 19-445.2120)	
<b>SIGNATURE OF PERSON AUTHORIZED TO SUBMIT BINDING OFFER TO ENTER A CONTRACT ON BEHALF OF OFFEROR:</b>  By: _____ (authorized signature)  _____ (printed name of person signing above)  Its: _____ (title of person signing above)  Date: _____	<b>SIGNATURE OF PERSON AUTHORIZED TO APPROVE NEGOTIATED MODIFICATIONS ON BEHALF OF USING GOVERNMENTAL UNIT:</b>  By: _____ (authorized signature)  _____ (printed name of person signing above)  Its: _____ (title of person signing above)  Date: _____

RECORD OF NEGOTIATIONS (MAR 2015)

# Appendix R

## Extension Notices & Instructions

### INSTRUCTIONS FOR EXTENSION NOTICES

Regulation 19-445.2090(B) provides as follows:

The procurement officer shall issue the notice of intent to award or award on the date specified in the solicitation, unless the procurement officer determines, and gives notice, that a longer review time is necessary. The procurement officer shall give notice of a time extension to each bidder by posting it at the location identified in the solicitation.

The clause titled Award Notification (Mar 2015) provides, in part, as follows:

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

Consistent with the regulation and our bidding instructions, you must give notice of a time extension if you will not be issuing the applicable award notice on the date specified in the last solicitation amendment. Such notice must be posted at the location identified in the solicitation and on or before the date specified in the last solicitation. In providing such notice, use the following forms, both of which are attached:

1. **Notice of Extension of Award #1**, which provides as follows:

Additional time is necessary to complete the procurement process; accordingly, the date for posting the award notice is extended indefinitely. We will give every offeror prior notice before posting the actual award notice. Prior notice will be made by posting a Notice of Revised Award Posting Date at least two business days before posting the actual award notice. The Notice of Revised Posting Date will be posted at the location specified in the solicitation for posting awards. In addition, a Notice of Revised Award Posting Date will be emailed to each offeror at the email address provided during vendor registration. (Reference Regulation 19-445.2090(B) and clause titled Award Notification.)

2. **Notice of Revised Award Posting Date**, which provides as follows:

Unless otherwise noted, award will be posted on [date]. The Notice will be posted on our website at [www.procurement.sc.gov](http://www.procurement.sc.gov). (Reference Regulation 19-445.2090(B) and clause titled Award Notification.)

Except in extreme cases, no solicitation should involve more than two extension notices, the first Extension of Award Posting #1, followed by the Notice of Award Posting. If additional extension notices are necessary, issue an Extension of Award Posting, designated sequentially - #2, #3, etc.

Note:

1. The textual contents of the Notice of Extension of Award are taken from Clause No. A300-2.
2. The textual contents of the Notice of Revised Award Posting Date are taken from Clause No. A305-1.

	<p style="text-align: center;"><b>State of South Carolina</b></p> <p style="text-align: center;"><b>NOTICE OF EXTENSION OF AWARD # 1</b></p>	<p><b>Solicitation Number:</b> Procurement Officer: Date: Phone: E-Mail Address: Address:</p>	
---	--	---	--

DESCRIPTION:

USING GOVERNMENTAL UNIT:

Additional time is necessary to complete the procurement process; accordingly, the date for posting the award notice is extended indefinitely. We will give every offeror prior notice before posting the actual award notice. Prior notice will be made by posting a Notice of Revised Award Posting Date at least two business days before posting the actual award notice. The Notice of Revised Posting Date will be posted at the location specified in the solicitation for posting awards. In addition, a Notice of Revised Award Posting Date will be emailed to each offeror at the email address provided during vendor registration. (Reference Regulation 19-445.2090(B) and clause titled Award Notification.)

[signature]  
Procurement Manager

	<p style="text-align: center;"><b>State of South Carolina</b></p> <p style="text-align: center;"><b>NOTICE OF REVISED AWARD POSTING DATE</b></p>	<p><b>Solicitation Number:</b> Procurement Officer: Date: Phone: E-Mail Address: Address:</p>	
---	--	---	--

DESCRIPTION:

USING GOVERNMENTAL UNIT:

Unless otherwise noted, award will be posted on [date]. The Notice will be posted on our website at [www.procurement.sc.gov](http://www.procurement.sc.gov). (Reference Regulation 19-445.2090(B) and clause titled Award Notification.)

[signature]

Procurement Manager

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# Appendix S

## Award Statement – Samples and Instructions

### **INSTRUCTIONS FOR AWARD STATEMENTS**

General guidance regarding award notices appears in Assorted Guidance section at the beginning of the Compendium.

All clauses for award-related notices appear as clauses in the Compendium's Table of Clauses. These clauses start with "A" and are listed after the clauses for Part IX, Attachments to Solicitation. Please use the clauses as they appear in the Compendium.

STATE OF SOUTH CAROLINA  
B&CB, DIV. OF PROCUREMENT SERVICES, ITMO  
1201 MAIN STREET, SUITE 601  
COLUMBIA SC 29201

Must reflect actual date posted.

**Intent to Award**  
Posting Date: September 19, 2014

**Solicitation:** 540000 [REDACTED]  
**Description:** Statewide Education Assessment – Grades 3-11  
**Agency:** Department of Education

[Clause # A140-1]

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **08:00:00, September 30, 2014**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

[Clause # A160-1]

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

[Clause # A400-1]

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

[Clause # A410-1]

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

- (a) by email to [protest-itmo@itmo.sc.gov](mailto:protest-itmo@itmo.sc.gov),
- (b) by facsimile at 803-737-0102, or
- (c) by post or delivery to 1201 Main Street, Suite 601, Columbia, SC 29201.

**Contract Number:** 440000 [REDACTED]  
**Awarded To:** [REDACTED]  
IOWA CITY, IA [REDACTED]

**Total Potential Value:** \$ 58, 434,000  
**Maximum Contract Period:** September 30, 2014 through September 29, 2019

Maximum Contract Period must not exceed period provided in solicitation.

<b>Description</b>	
Year 1 Assessment Cost	- \$10,100,000.00
Year 2 Assessment Cost	- \$10,505,000.00
Year 3 Assessment Cost	- \$11,698,000.00
Year 4 Assessment Cost	- \$12,809,000.00
Year 5 Assessment Cost	- \$13,322,000.00

The price agreed to has contractual significance. The Total Potential Value, as noted on the award notices, has no contractual significance and is not a contract maximum. Overstating the Total Potential Value tends to create more problems than it solves.

**Procurement Officer**  
[REDACTED]

STATE OF SOUTH CAROLINA  
B&CB, DIV. OF PROCUREMENT SERVICES, ITMO  
1201 MAIN STREET, SUITE 601  
COLUMBIA SC 29201

**Notice Regarding Award**  
Posting Date: September 30, 2014

**Solicitation:** 540000 [REDACTED]  
**Description:** Education Assessment  
**Agency:** SC Department of Education Admin

**SUSPENSION NOTICE** [Clause # A240-1]

PROTEST: IN RESPONSE TO A PROTEST, THE INTENT TO AWARD IS HEREBY  
SUSPENDED PENDING THE ADMINISTRATIVE REVIEW BY THE CHIEF PROCUREMENT  
OFFICER.

**Contract Number:** 440000 [REDACTED]  
**Awarded To:** [REDACTED]  
IOWA CITY IA [REDACTED]

**Total Potential Value:** \$ 58,434,000.00  
**Maximum Contract Period:** September 30, 2014 through September 29, 2019

Item	Description	Unit Price	Total
00001	Year 1 Assessment Cost	\$ 10,100,000.00	\$ 10,100,000.00
00002	Year 2 Assessment Cost	\$ 10,505,000.00	\$ 10,505,000.00
00003	Year 3 Assessment Cost	\$ 11,698,000.00	\$ 11,698,000.00
00004	Year 4 Assessment Cost	\$ 12,809,000.00	\$ 12,809,000.00
00005	Year 5 Assessment Cost	\$ 13,322,000.00	\$ 13,322,000.00

**Procurement Officer**  
[REDACTED]

Because the "stay" imposed by 11-35-4210(7) is automatic, no suspension notice is legally necessary. Nevertheless, posting such a notice is an efficient means of giving notice to those that may have an interest in the protest process. It also dovetails with language on the Intent to Award notice to the effect that the Intent to Award will become the final award statement unless suspended or canceled; accordingly, the "suspension" documents the fact that the award will not be going "final."



STATE OF SOUTH CAROLINA  
B&CB, DIV. OF PROCUREMENT SERVICES, ITMO  
1201 MAIN STREET, SUITE 601  
COLUMBIA SC 29201

When "reinstating" an award previously issued as an intent to award, the so-called "reinstatement" should be issued after the protest period has expired and issued as a Statement of Award that sets the date for contract formation.

**Statement of Award**  
Posting Date: September 30, 2014

**Solicitation:** 540000 [REDACTED]  
**Description:** Education Assessment  
**Agency:** SC Department of Education Admin

[Clause # A150-1]

The State awards the contract(s) noted below. This document is the final Statement of Award, effective **4:00 P.M., November 1, 2014**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

[Clause # A160-1]

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

**Contract Number:** 440000 [REDACTED]  
**Awarded To:** [REDACTED]  
IOWA CITY IA [REDACTED]

**Total Potential Value:** \$ 58,434,000.00  
**Maximum Contract Period:** September 30, 2014 through September 29, 2019

Item	Description	Unit Price	Total
00001	Year 1 Assessment Cost	\$ 10,100,000.00	\$ 10,100,000.00
00002	Year 2 Assessment Cost	\$ 10,505,000.00	\$ 10,505,000.00
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00004	Year 4 Assessment Cost	\$ 12,809,000.00	\$ 12,809,000.00
00005	Year 5 Assessment Cost	\$ 13,322,000.00	\$ 13,322,000.00

**Procurement Officer**  
[REDACTED]

This "reinstatement" is issued as a Statement of Award only because the intended awardee has not changed. Had the protest leading to the suspension resulted in award to a different vendor, and Intent to Award would have been required.

Appendix T  
Change Order Form (MAR 2015)



# State of South Carolina

Change Order #x

Contract Number :  
Procurement Officer :  
Phone :  
E-Mail Address :  
Address :

DESCRIPTION:

USING GOVERNMENTAL UNIT:

CONTRACTOR'S NAME AND ADDRESS:

TYPE OF CHANGE:

- Change to Contract Scope of Work
- Change to Contract Pricing Pursuant to Existing Contract Clause.  
Clause Name \_\_\_\_\_ . Clause No. \_\_\_\_\_
- Administrative Change to Contract (such as changes in paying office, name of Agency Contract Administrator, etc.)
- Other Change

### IMPORTANT NOTICE:

Change Order: Contractor is required to sign this document and return \_\_\_\_\_ copies to the procurement officer named above by the following date: \_\_\_\_\_.

Contract Modification: Contractor is required to acknowledge receipt of this document in writing by the following date: \_\_\_\_\_. Contractor does not indicate agreement with change simply by acknowledging receipt.

DESCRIPTION OF CHANGE / MODIFICATION:

Except as provided herein, all terms and conditions of the Contract referenced above remain unchanged and in full force and effect.

CONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA: The Contractor certifies that, to the best of its knowledge and belief, the cost or pricing data (as defined by 48 C.F.R. 2.101) submitted, either actually or by specific identification in writing, by the Contractor to the Procurement Officer in support of this change order are accurate, complete, and current as of the date this change order is signed. [*Procurement Officer must initial here \_\_\_\_\_ if Certificate inapplicable to this Change Order*]

(See "Pricing Data – Audit – Inspection" provision.) (Reference § 11-35-1830 & R. 19-445.2120)

SIGNATURE OF PERSON AUTHORIZED TO EXECUTE THIS CHANGE ORDER & CERTIFICATE ON BEHALF OF CONTRACTOR:

By: \_\_\_\_\_  
(authorized signature)

\_\_\_\_\_  
(printed name of person signing above)

Its: \_\_\_\_\_  
(title of person signing above)

Date: \_\_\_\_\_

SIGNATURE OF PERSON AUTHORIZED TO EXECUTE / ISSUE THIS CHANGE ORDER / CONTRACT MODIFICATION ON BEHALF OF USING GOVERNMENTAL UNIT:

By: \_\_\_\_\_  
(authorized signature)

\_\_\_\_\_  
(printed name of person signing above)

Its: \_\_\_\_\_  
(title of person signing above)

Date: \_\_\_\_\_

# Appendix U

## Instructions for Submitting Cost-Price Data

This document provides instructions for preparing a contract pricing proposal when cost or pricing data are required.

Note 1: There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later information comes into your possession, it should be submitted promptly to the Contracting Officer in a manner that clearly shows how the information relates to the offeror's price proposal. The requirement for submission of cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

Note 2: By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual information (regardless of form or whether the information is specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

### I. General Instructions

#### A. You must provide the following information on the first page of your pricing proposal:

- (1) Solicitation, contract, and/or modification number;
- (2) Name and address of offeror;
- (3) Name and telephone number of point of contact;
- (4) Name of contract administration office (if available);
- (5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpriced order, or other);
- (6) Proposed cost; profit or fee; and total;
- (7) Whether you will require the use of Government property in the performance of the contract, and, if so, what property;
- (8) Whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS (other than a noncompliance that the cognizant Federal agency official has determined to have an immaterial cost impact), and, if yes, an explanation; whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with your established estimating and accounting principles and procedures and FAR Part 31, Cost Principles, and, if not, an explanation;
- (9) The following statement: This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.403-5(b)(1) and Table 15-2. By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.
- (10) Date of submission; and
- (11) Name, title, and signature of authorized representative.

#### B. In submitting your proposal, you must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, you must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.

- C. As part of the specific information required, you must submit, with your proposal, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined at FAR 2.101). You must clearly identify on your cover sheet that cost or pricing data are included as part of the proposal. In addition, you must submit with your proposal any information reasonably required to explain your estimating process, including--
  - (1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
  - (2) The nature and amount of any contingencies included in the proposed price.
- D. You must show the relationship between contract line item prices and the total contract price. You must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the "Formats for Submission of Line Item Summaries" section of this table. You must furnish supporting breakdowns for each cost element, consistent with your cost accounting system.
- E. When more than one contract line item is proposed, you must also provide summary total amounts covering all line items for each element of cost.
- F. Whenever you have incurred costs for work performed before submission of a proposal, you must identify those costs in your cost/price proposal.
- G. If you have reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.
- H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal, you must, under the conditions stated in FAR 15.406-2, submit a Certificate of Current Cost or Pricing Data.

## II. Cost Elements

Depending on your system, you must provide breakdowns for the following basic cost elements, as applicable:

- A. Materials and services. Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold in FAR 15.403-4. Submit the subcontractor cost or pricing data as part of your own cost or pricing data as required in paragraph IIA(2) of this table. These requirements also apply to all subcontractors if required to submit cost or pricing data.
  - (1) Adequate Price Competition. Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding, or expected to exceed, the appropriate threshold set forth at FAR 15.403-4 priced on the basis of adequate price competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see FAR 31.205-26(e)).
  - (2) All Other. Obtain cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding the threshold set forth in FAR 15.403-4 and not otherwise exempt, in accordance with FAR 15.403-1(b) (i.e., adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either \$10,000,000 or more, or both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price. The Contracting Officer may require you to submit cost or pricing data in support of proposals in lower amounts. Subcontractor cost or pricing data must be accurate, complete and

current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or pricing data and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's cost or pricing data is required as described in this paragraph, it must be included along with your own cost or pricing data submission, as part of your own cost or pricing data. You must also submit any other cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

- B. Direct Labor. Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.
- C. Indirect Costs. Indicate how you have computed and applied your indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.
- D. Other Costs. List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.
- E. Royalties. If royalties exceed \$1,500, you must provide the following information on a separate page for each separate royalty or license fee:
  - (1) Name and address of licensor.
  - (2) Date of license agreement.
  - (3) Patent numbers.
  - (4) Patent application serial numbers, or other basis on which the royalty is payable.
  - (5) Brief description (including any part or model numbers of each contract item or component on which the royalty is payable).
  - (6) Percentage or dollar rate of royalty per unit.
  - (7) Unit price of contract item.
  - (8) Number of units.
  - (9) Total dollar amount of royalties.
  - (10) If specifically requested by the Contracting Officer, a copy of the current license agreement and identification of applicable claims of specific patents (see FAR 27.204 and 31.205-37).
- F. Facilities Capital Cost of Money. When you elect to claim facilities capital cost of money as an allowable cost, you must submit Form CASB-CMF and show the calculation of the proposed amount (see FAR 31.205-10).

### III. Formats for Submission of Line Item Summaries

#### A. New Contracts (Including Letter Contracts)

Column #1 – Cost elements  
Column #2 – Proposed contract estimate – total cost  
Column #3 – Proposed contract estimate – unit cost  
Column #4 - Reference

#### Column and Instruction

- (1) Enter appropriate cost elements.
- (2) Enter those necessary and reasonable costs that, in your judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (e.g., under a letter contract), describe them on an attached supporting page. When preproduction

or startup costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them.

- (3) Optional, unless required by the Contracting Officer.
- (4) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

#### B. Change Orders, Modifications, and Claims

Column #1 – Cost elements  
Column #2 - Estimated cost of all work deleted  
Column #3 - Cost of deleted work already performed  
Column #4 - Net cost to be deleted  
Column #5 – Cost of work added  
Column #6 – Net cost of change  
Column #7 – Reference

##### Column and Instruction

- (1) Enter appropriate cost elements.
- (2) Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.
- (3) Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from your accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if you desire to retain these items or any portion of them, indicate the amount offered for them.
- (4) Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4).
- (5) Enter your estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached supporting schedule.
- (6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses.
- (7) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

#### C. Price Revision/Redetermination

Column #1 – cutoff date  
Column #2 – Number of units completed  
Column #3 – Number of Units to be completed  
Column #4 – Contract amount  
Column #5 – Redetermination proposal amount  
Column #6 – Difference  
Column #7 – Cost elements  
Column #8 – Incurred cost - preproduction  
Column #9 – Incurred cost – completed units  
Column #10 – Incurred cost – work in process  
Column #11 – Total incurred cost  
Column #12 – Estimated cost to complete  
Column #13 – Estimated total cost  
Column #14 – Reference  
(Use as applicable).

##### Column and Instruction

- (1) Enter the cutoff date required by the contract, if applicable.

- (2) Enter the number of units completed during the period for which experienced costs of production are being submitted.
- (3) Enter the number of units remaining to be completed under the contract.
- (4) Enter the cumulative contract amount.
- (5) Enter your redetermination proposal amount.
- (6) Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parentheses. Column (4) minus Column (5) equals Column (6).
- (7) Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price-incentive and fixed-price-redeterminable arrangements should be net of the fair market value of such inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.
- (8) Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from your books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from your records, enter in this column your best estimates. Explain the basis for each estimate and how the costs are charged on your accounting records (e.g., included in production costs as direct engineering labor, charged to manufacturing overhead). Also show how the costs would be allocated to the units at their various stages of contract completion.
- (9) Enter in Column (9) the production costs from your books and records (exclusive of preproduction costs reported in Column (8)) of the units completed as of the cutoff date.
- (10) Enter in Column (10) the costs of work in process as determined from your records or inventories at the cutoff date. When the amounts for work in process are not available in your records but reliable estimates for them can be made, enter the estimated amounts in Column (10) and enter in Column (9) the differences between the total incurred costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, etc. Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which your proposal relates.
- (11) Enter total incurred costs (Total of Columns (8), (9), and (10)).
- (12) Enter those necessary and reasonable costs that in your judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which your proposal relates.
- (13) Enter total estimated cost (Total of Columns (11) and (12)).
- (14) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

[62 FR 51230, Sept. 30, 1997, as amended at 63 FR 58596, Oct. 30, 1998; 66 FR 2129, Jan. 10, 2001; 67 FR 6115, Feb. 8, 2002]

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# Appendix V

## SCEIS Dialog and Logic

### Outline for Clause Selection (June 2015)

SCOPE: This Outline applies to the clauses published as version 2.0.1 of the Compendium. This Outline is not a substitute for a working knowledge of each clause's guidance. All these clauses have been placed into production in SCEIS as of June 8, 2015.

1. Whether to include the following clauses depends on your answers to the following questions. For the foreseeable future, these questions will not appear in Document Builder; you must conduct this analysis and include the clauses manually.
  - a. Does the acquisition include either a significant component of information technology or contractor access to government information? If yes, include these clauses.
    - i. 07-7B104-1, Information Security - Definitions (Feb 2015)
    - ii. 07-7B105-1, Information Security - Safeguarding Requirements (Feb 2015)
    - iii. 07-7B108-1, Information Use and Disclosure (Feb 2015)
  - b. Does the acquisition involve contractor access to sensitive or confidential information (e.g., computer security plans, student records, protected health information, or personally identifying information)? If yes, include these clauses. (Document procurement file regarding agency approval of clause 7B110.)
    - i. 04-4027-1, Service Provider Security Assessment Questionnaire - Required (Feb 2015)
    - ii. 07-7B007-1, Bankruptcy - Government Information (Feb 2015)
    - iii. 07-7B058-1, Contractor's Liability Insurance - Information Security and Privacy (Feb 2015)
    - iv. 07-7B102-1, Indemnification - Third Party Claims - Disclosure of Information (Feb 2015)
    - v. 07-7B110-1, Information Use and Disclosure - Standards (Feb 2015)
    - vi. 07-7B217-1, Service Provider Security Representation (Feb 2015)
    - vii. 09-9025-1, Service Provider Security Assessment Questionnaire (Feb 2015)
  - c. When using clauses called for by item b above, you should consider - in conjunction with the using agency - whether to include these clauses, which will not be addressed in the Documents Builder dialog.
    - i. 07-7B106-1, Information Security - Location of Data (Feb 2015)
    - ii. 07-7B122-1, Offshore Contracting Prohibited (Feb 2015)
  - d. Does the acquisition involve wide-spread, computerized, web-based interaction directly between the contractor and either public employees, citizens, or population groups receiving services (e.g., students, patients, inmates)? If yes, include this clause. As a practical matter, use of this clause may necessitate negotiations.
    - i. 07-7B212-1, Restrictions on Presenting Terms of Use or Offering Additional Services (Feb 2015) (replacing 07-7B195-1, Privacy – Web Services (Jan 2006))
2. Software Licensing. The following clauses facilitate the licensing of software and should be used only with the assistance of senior procurement staff at the information technology management office. For the foreseeable future, these questions will not appear in Document Builder; you must conduct this analysis and include the clauses manually.
  - a. 07-7B042-1, Contract Documents & Order of Precedence-Software Licensing-Single Agency (Feb 2015)
  - b. 07-7B223-2, Software Licensing Agreements for Statewide Term Contracts (Feb 2015)
  - c. 07-7B224-1, Software Licensing Agreements - Single Solicitation (Feb 2015)
  - d. 09-9030-1, South Carolina Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software - Single Agency.
  - e. 09-9035-1, Software Table

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**Compendium Dialog Outline – Main (June 2015)**

## Outline Key

ALL CAPS	First-tier of outline on Document Builder screen / Dialog topics
Blue	Questions appearing in SCEIS Dialog
<b>Black</b>	Answers available for selection in SCEIS Dialog
Green	Indicates need for clicking the “refresh” button
Note:	Notes regarding underlying logic or operation of SCEIS
Red	Fill-in; you must enter the required data for the clause to work
Endnotes	At various points, entries in the SCEIS Dialog are accompanied by a Reference Icon. Each endnote provides the text that would show if you selected the reference icon.

## I. SOURCE SELECTION

A. What is your Document Selection?<sup>1</sup>1. **IFB (Competitive Sealed Bidding)**

- a. 02-2B055 – Clarification (NOV 2007)
- b. 02-2B170 – Unit Prices Required (JAN 2006)
- c. 03-3005 – See Bidding Schedule (No Date)
- d. 06-6020 – Award Criteria – Bids (JAN 2006)
- e. 06-6050 – Calculating the Low Bid (No Date)

2. **RFP (Competitive Sealed Proposal)<sup>2</sup> Refresh if selected**

- a. For All RFPs (Note: not an item to be selected; indicates clauses automatically included for RFPs)
  - i. 02-2B035 – Contents of Offer (RFP) – ITMO (JAN 2006)
    - (1) (Note: included only if ITMO conducting the procurement)
  - ii. 04-4030 – Submitting Redacted Offers (FEB 2007)
- b. **Traditional**
  - i. 02-2B040 – Contents of Offer (RFP) – SPO (JAN 2006)
  - ii. 02-2B110 – Opening Proposals – Prices Not Divulged (JAN 2006)
  - iii. 04-4005 – Information for Offeror to Submit – Evaluation (JAN 2006)
    - (1) **Fill-in: Enter the evaluation factors in the open text field**
  - iv. 06-6030 – Award Criteria – Proposals (JAN 2006)
    - (1) **Fill-in: Enter the evaluation factors in the open text field**
  - v. 06-6065 – Evaluation Factors – Proposals (JAN 2006)

<sup>1</sup> Each radio button reflects a source selection method allowed by the procurement code. Your selection should reflect the source selection method you intend to use. Your selection MUST match the document selection made when you started Document Builder. If you need to change source selection methods, you MUST start over and choose a different Document Selection.

<sup>2</sup> Each radio button reflects a type of RFP, but both are conducted pursuant to Section 11-35-1530. In a Traditional RFP, the solicitation’s specifications will be fairly detailed. In a Solutions Based RFP, the solicitation will define a problem for the contractor to solve, rather than providing extensive specifications. The Solutions Based approach is only for expert users.

Reverse Auction – this option is available only for entities with a specially designed electronic bidding engine.

- (1) **Fill-in: Enter the evaluation factors in the open text field**
  - vi. 08-8015 – Price Proposal (JAN 2006)
    - (1) **Fill-in: Enter the evaluation factors in the open text field**
  - c. Solutions Based**
    - i. 02-2B030 – Contents of Offer (RFP) – Solutions Based (JAN 2006)
    - ii. 02-2B110 – Opening Proposals – Prices Not Divulged (JAN 2006)
    - iii. 06-6030 – Award Criteria – Proposals (JAN 2006)
    - iv. 06-6065 – Evaluation Factors – Proposals (JAN 2006)
    - v. 08-8010 – Business Proposal (JAN 2006)
  - 3. BVB (Competitive Best Value Bidding) Refresh if selected**
    - a. 02-2B055 – Clarification (NOV 2007)
    - b. 02-2B170 – Unit Prices Required (JAN 2006)
    - c. 06-6025 – Award Criteria – Best Value Bids (JAN 2006)
    - d. 06-6050 – Calculating the Low Bid (No Date)
    - e. 06-6060 – Evaluation Factors – Best Value Bid (JAN 2006)
      - i. **Fill-in: Enter the evaluation factors in the open text field**
  - 4. FPB (Competitive Fixed Price Bidding)**
    - a. 02-2B055 – Clarification (NOV 2007)
    - b. 03-3005 – See Bidding Schedule (No Date)
    - c. 06-6023 – Award Criteria – Fixed Price Bidding (JAN 2006)
    - d. 06-6045 – Bids Received After Award – Fixed Price Bidding (JAN 2006)
  - 5. RAUC (Reverse Auction/Competitive On-line Bidding)**
    - a. 02-2B170 – Unit Prices Required (JAN 2006)
    - b. 03-3005 – See Bidding Schedule (No Date)
- II. OFFICE CONDUCTING PROCUREMENT
  - A. **What entity is conducting the Procurement?**
    - 1. Information Technology Office**
      - a. 02-2B120 – Protest CPO – ITMO Address (JUNE 2006)
      - b. 04-4020 – Offshore Contracting (JAN 2006)
    - 2. State Procurement Office**
      - a. 02-2B080 – Mail Pickup (JAN 2006)
      - b. 02-2B122 – Protest CPO – MMO Address (JAN 2006)
      - c. 09-9010 – Offeror’s Checklist
    - 3. Agency (Refresh if Selected).**
      - a. **Who is the Relevant CPO?**
        - i. CPO – ITMO**
          - (1) 02-2B120 – Protest CPO – ITMO Address (JUNE 2006)
        - ii. CPO – MMO**
          - (1) 02-2B122 – Protest CPO – MMO Address (JUNE 2006)
        - iii. Not applicable**
          - (1) No Clause Selected
- III. ACQUISITION TYPE

A. What are you acquiring?<sup>3</sup>

**1. Supplies**

- a. 01-1015 – Acquire Supplies (JAN 2006)
- b. 02-2B111 – Preferences – A Notice to Vendors (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- c. 02-2B112 – Preferences – SC/US End-Product (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- d. 02-2B114 – Preferences – Resident Vendor Preference (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- e. 03-3025 – Delivery Date – 30 Days ARO (JAN 2006)
- f. 03-3060 – Quality – New (JAN 2006)
- g. 06-6075 – Unit Price Governs (JAN 2006)
- h. 07-7B030 – CISG (JAN 2006)
- i. 07-7B200 – Purchasing Card (JAN 2006)
- j. 07-7B220 – Shipping/Risk of Loss (JAN 2006)
- k. 07-7B236 – Substitutions Prohibited – End Product Preferences (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP

**2. Services**

- a. 01-1010 – Acquire Services (JAN 2006)
- b. 02-2B111 – Preferences – A Notice to Vendors (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- c. 02-2B113A – Preferences – Resident Contractor Preference (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- d. 02-2B113B – Preferences – Resident Subcontractor Preference (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- e. 05-5030 – Subcontractor – Identification (FEB 2013)
- f. 07-7B035 – Compliance with Laws (JAN 2006)
- g. 07-7B060 – Contractor Personnel (JAN 2006)
- h. 07-7B065 – Contractor's Obligation – General (JAN 2006)
- i. 07-7B097 – Illegal Immigration (NOV 2007)
- j. 07-7B115 – Licenses and Permits (JAN 2006)
- k. 07-7B205 – Relationship of the Parties (JAN 2006)
- l. 07-7B237 – Subcontractor Substitution Prohibited – Resident Subcontractor Preference (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- m. 07-7B285 – Year 2000 Warranty (JAN 2006)
  - i. Note: Included only if ITMO conducting the procurement

**3. Supplies & Services**

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<sup>3</sup> Many procurements, if not all, involve some combination of both supplies and services. Select supplies if you are acquiring primarily supplies, even if the procurement involves some minor services, e.g., delivery, set-up, simple install. Select services if you are acquiring primarily services, even if the procurement involves the use of or the minor provisions of supplies, e.g., replacement parts, consumables. Select Supplies & Services if your procurement involves substantial aspects of both.

- a. 01-1005 – Acquire Services & Supplies (JAN 2006)
- b. 02-2B111 – Preferences – A Notice to Vendors (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- c. 02-2B112 – Preferences – SC/US End-Product (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- d. 02-2B113A – Preferences – Resident Contractor Preference (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- e. 02-2B113B – Preferences – Resident Subcontractor Preference (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- f. 02-2B114 – Preferences – Resident Vendor Preference (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- g. 03-3025 – Delivery Date – 30 Days ARO (JAN 2006)
- h. 03-3060 – Quality – New (JAN 2006)
- i. 05-5030 – Subcontractor Identification (FEB 2013)
- j. 06-6075 – Unit Price Governs (JAN 2006)
- k. 07-7B030 – CISG (JAN 2006)
- l. 07-7B035 – Compliance with Laws (JAN 2006)
- m. 07-7B060 – Contractor Personnel (JAN 2006)
- n. 07-7B065 – Contractor’s Obligation – General (JAN 2006)
- o. 07-7B097 – Illegal Immigration (JAN 2006)
- p. 07-7B105 – Intellectual Property Infringement (JAN 2006)
- q. 07-7B115 – Licenses and Permits (JAN 2006)
- r. 07-7B120 – Material and Workmanship (JAN 2006)
- s. 07-7B205 – Relationship of the Parties (JAN 2006)
- t. 07-7B220 – Shipping/Risk of Loss (JAN 2006)
- u. 07-7B236 – Substitutions Prohibited – End Product Preferences (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- v. 07-7B237 – Subcontractor Substitution Prohibited – Resident Subcontractor Preference (if Document Selection is NOT RFP) (SEP 2009)
  - i. Note: included only if Document Selection is NOT RFP
- w. 07-7B285 – Year 2000 Warranty (JAN 2006)
  - i. Note: included only if ITMO is conducting procurement.

IV. WHAT DO YOU REASONABLY ANTICIPATE WILL BE THE MAXIMUM DOLLAR VALUE OF A PURCHASE ORDER?

A. [Maximum dollar value](#)<sup>4</sup>

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<sup>4</sup> Select the appropriate radio button based upon the dollar value of the largest single purchase order you expect will be issued on any contract resulting from the solicitation. The dollar values provided are offered only as a short-hand guide. Your decision should be based on an understanding of the clauses included, or not included, based on your selection.

Each radio button will add a different set of clauses to your solicitation. The button for “Lesser than \$100,000” will add only the short versions of the state’s standard clauses for Default and Termination for Convenience. The button “Greater than \$100,000” will add the longer versions of these two clauses, as well as clauses regarding Changes, Price Adjustments, and Pricing Data-Audit-Inspection. For additional information, please consult the Compendium, which is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)

1. **Single Purchase Order Lesser Than \$100,000**
  - a. 07-7B080 – Default (Short Form) (JAN 2006)
  - b. 07-7B260 – Termination for Convenience (Short Form) (JAN 2006)
2. **Single Purchase Order Greater Than \$100,000**
  - a. 07-7B025 – Changes (JAN 2006)
  - b. 07-7B075 – Default (JAN 2006)
  - c. 07-7B160 – Price Adjustments (JAN 2006)
  - d. 07-7B185 – Pricing Data – Audit – Inspection (JAN 2006)
  - e. 07-7B265 – Termination for Convenience (JAN 2006)

V. DURATION OF CONTRACT

A. Does this contract have a fixed duration/end date?<sup>5</sup>

1. **Yes**
  - a. 01-1040 – Maximum Contract Period – Estimated (JAN 2006)
    - i. **Fill-In: Enter the estimated date for both the Contract Start Date and the Contract End Date**
  - b. 07-7B240 – Term of Contract – Effective Date/Initial Contract Period (JAN 2006)<sup>6</sup>
    - i. **Fill-In: Enter the duration of the Initial Term / Initial Contract Period by selecting the Number of Years (1-30), Number of Months (1-12), and the Number of Days (1-365)**
2. **No**
  - a. No Clauses Included

B. Does this Contract contain any renewal options?<sup>7</sup>

1. **Yes**
  - a. 07-7B245 – Term of Contract – Option to Renew (JAN 2015)
    - i. **Fill-In: Enter the duration of each Renewal Term by selecting the Number of Years (1-30), Number of Months (1-12), and the Number of Days (1-365)**

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<sup>5</sup> If you are making a one-time purchase, select NO. Otherwise, select YES and specify the estimated start and end dates for your contract in the blanks below. Remember, any dates provided are only an estimate. The actual start date will depend on when you post notice regarding the award. Please refer to your contract clauses regarding Term of Contract

<sup>6</sup> Select the applicable number of years, months, and/or days that define the duration of the initial contract term.

DO NOT select your contract term based on administrative convenience. Rather, you should choose an initial contract term that will promote adequate competition and enable vendors to offer the state reasonable price terms. Prior to issuing the solicitation, you should have some idea how long the initial contract term should be in order to allow vendors to amortize up-front capital costs over the full initial term and still provide competitive pricing.

Vending Facilities: Procurement Officers are reminded that the Commission for the Blind has an option to operate any vending facility operated on state land (certain exclusions apply). At least 90 days prior to the expiration of the initial contract term, consult with your management regarding agency compliance with Title 43, Chapter 26. See particularly Section 43-26-60(c) & (e).

<sup>7</sup> Select the applicable number of years, months, and/or days that define the duration of each renewal term.

According to the standard clause regarding renewal options, the contract will expire no later than the last date stated on the final statement of award. Accordingly, depending on how you define your initial and renewal terms, your last renewal term may not be as long as the first. For additional information, read the clause entitled Term of Contract – Option to Renew.

- 2. **No**
  - a. No Clauses Included

C. Will contractor have the option to terminate prior to the renewal of any optional terms?<sup>8</sup>

- 1. **Yes**
  - a. 07-7B250 – Term of Contract – Termination by Contractor (JAN 2006)
    - i. **Fill-In: Enter the number of days within which the Contractor must give notice of its decision not to allow for renewal.**<sup>9</sup>
- 2. **No**
  - a. No Clauses Included

VI. INDEFINITE QUANTITY OF SUPPLIES OR INDEFINITE DELIVERY OF SERVICES

A. Is the contract for an indefinite quantity of supplies or indefinite delivery of services?<sup>10</sup>

- 1. **Yes**
  - a. 07-7B045 – Contract Limitations (JAN 2006)
  - b. 07-7B090 – Estimated Quantity – Purchases from Other Sources (JAN 2006)
  - c. 07-7B095 – Estimated Quantity – Unknown (JAN 2006)
  - d. 07-7B255 – Termination for Convenience – Indefinite Delivery/Indefinite Quantity Contracts (JAN 2006)
- 2. **No**
  - a. No Clauses Included

VII. NUMBER OF USING AGENCIES

A. How many using agencies will be authorized to use the contract?<sup>11</sup>

- 1. **Single Agency Contract (Click Refresh)**
  - a. 03-3030 – Delivery/Performance Location – Specified (JAN 2006)
    - i. **Fill-In: Enter address for delivery and performance**
- 2. **Multi-Agency Contract**
  - a. 03-3015 – Delivery Performance Location – Purchase Order (JAN 2006)
  - b. 07-7B210 – Relationship of Using Governmental Units (JAN 2006)
- 3. **Statewide Contract (SPO/ITMO Only)**
  - a. 03-3015 – Delivery Performance Location – Purchase Order (JAN 2006)
  - b. 07-7B010 – Acceptance of Offers 10% Below Price (JAN 2006)
  - c. 07-7B050 – Contract Reporting Requirements (AUG 2012)
    - i. Note: included only if ITMO conducting the procurement
  - d. 07-7B210 – Relationship of Using Governmental Units (JAN 2006)
  - e. 07-7B225 – Statewide Term Contract (JAN 2006)

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<sup>8</sup> Choose YES only if contractor may terminate the contract prior to any contract renewals – after giving notice to the state. Otherwise, choose NO. (This option is not routinely included in state contracts.)

<sup>9</sup> Ordinarily, the state requires contractor to provide notice of its option to terminate a full 90 days prior to the end of the then-current term. The complexity or re-procurement lead time for some contracts may justify a longer notice period. You should not allow a notice period less than 30 days.

<sup>10</sup> Ordinarily, choose NO. If you anticipate a single purchase order, choose NO. Choose YES only if you are establishing a contract for repeated acquisitions of supplies or services, i.e., the indefinite delivery of supplies or the indefinite performance of services.

<sup>11</sup> The State Procurement Office and Information Technology Management Office are the only offices authorized to establish term contracts (a/k/a statewide contracts).

- f. 07-7B227 – Statewide Term Contract – Acceptance of Offers 10% Below Price (NOV 2012)
- g. 07-7B230 – Statewide Term Contract – Scope (JAN 2006)

VIII. SERVICES PERFORMED ON STATE PROPERTY

A. Will the contractor perform substantial services on government property?<sup>12</sup>

- 1. **Yes**
  - a. 07-7B056 – Contractor’s Liability Insurance (MAR 2013)
  - b. 07-7B100 – Indemnification – Third Party Claims (JAN 2006)
- 2. **No**
  - a. No Clauses Included

IX. HARMFUL PRODUCT

A. Is the solicitation for purchase of potentially harmful products (goods)?<sup>13</sup>

- 1. **Yes**
  - a. 07-7B056 – Contractor’s Liability Insurance (MAR 2013)
  - b. 07-7B100 – Indemnification – Third Party Claims (JAN 2006)
- 2. **No**
  - a. No Clauses Included

X. HOW WILL AWARD BE MADE

A. Select one of the following<sup>14</sup>

- 1. **To only one offeror**
  - a. 06-6040 – Award to One Offeror (JAN 2006)
- 2. **By Line item**
  - a. 02-2B085 – Offering by Item (JAN 2006)
  - b. 06-6005 – Award by Item (JAN 2006)
- 3. **By Lot**

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<sup>12</sup> Choose YES if contractor will perform substantial services on government property and you believe those services create potential liability for the state. Ordinarily, basic delivery, setup, or demonstrations do not qualify as “substantial” It depends on how much risk is involved.

Choosing YES will include the standard clause for Contractor’s Liability Insurance and Indemnification – Third Party Claims. As these clauses increase the contractor’s risk, and thus the contractor’s cost of performance, you should add these clauses only when appropriate. They result in higher contract prices for the using governmental entity.

<sup>13</sup> Choose YES if you are buying products which could injure people or property if they are misused or if they malfunction. Most sellers carry liability insurance, including “products/completed operations,” that provides coverage for claims for bodily injury or death, or damage to tangible property.

Choosing YES will include the standard clauses for Contractors Liability Insurance and Indemnification Third Party Claims. As these clauses increase the contractor’s risk, and thus the contractor’s cost of performance, you should add these clauses only when appropriate. They may result in higher contract prices for the using governmental entity.

<sup>14</sup> Ordinarily, a lot is a grouping of line items in the solicitation. In constructing your solicitation, you can elect to award each line item or lot separately, or you can elect to award all items or lots to a single vendor.

If you choose “Both Item and/or Lot,” you MUST explain a method of calculating the low bidder that will determine – without discretion – whether the award will be made based on item or lot. For example, if you have 4 items grouped into one lot, you might specify that bidders can offer two prices for each item – one price for award by item and one price for award by lot. You might then specify that award will be made on a lot or item basis depending on which will result in the lowest overall price to the state, i.e., by comparing the sum of low bids for each item with the lowest lot bid.

- a. 02-2B095 – Offering by Lot (JAN 2006)
  - b. 06-6015 – Award by Lot (JAN 2006)
  - 4. Both Item and/or Lot**
    - a. 02-2B090 – Offering by Item or Lot (JAN 2006)
    - b. 06-6010 – Award by Item or Lot (JAN 2006)
  - 5. Not Applicable**
    - a. No Clauses Included
- XI. ON-LINE PROCUREMENT
- A. [Are you conducting the procurement on-line?](#)<sup>15</sup>
    - 1. Yes**
      - a. 02-2B105 – On-line Bidding Instructions (JAN 2006)
    - 2. No**
      - a. No Clauses Included
- XII. BLANK PARTS OF THE UNIFORM SOLICITATION FORMAT
- A. [Were any Parts of the Uniform Solicitation Format left blank?](#)<sup>16</sup> (Click Refresh if responding Yes).
    - 1. II Instructions to Offerors – B Special?**<sup>17</sup>
      - a. 02-2B005 – Section Not Applicable – Intentionally Omitted (No Date)
    - 2. VII. Terms and Conditions – B Special?**<sup>18</sup>
      - a. 07-7B005 – Not Applicable – Intentionally Omitted (JAN 2006)
    - 3. VIII. Bidding Schedule/Price-business Proposal?**<sup>19</sup>
      - a. 08-8005 – Section Not Applicable – Intentionally Omitted
- XIII. ATTACHMENTS
- A. [Are you attaching a statement of work?](#)<sup>20</sup>
    - 1. Yes**
      - a. 03-3003 – Statement Of Work (June 2007)
    - 2. No**
      - a. No Clauses Included
  - B. [Are you attaching other documents?](#)<sup>21</sup> (Click 'Refresh' if responding 'Yes' to this question.)
    - 1. Yes**
      - a. 09-9002 – List of Attachments (No Date)

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<sup>15</sup> As used here, “on-line” means that the transaction has been conducted electronically, i.e., the vendor has responded to a solicitation by logging on to a state website and entering information. Choose “on-line” only if you have such a system and are using it for the procurement at issue.

<sup>16</sup> Select YES if you are leaving any sections of the Uniform Solicitation Format blank. You will then be asked which sections you are leaving blank.

<sup>17</sup> Select YES if no special bidding instructions will be included in the solicitation. Special bidding instructions can be included based on the choices you make during your completion of the Document Builder questions or by direct edits you make. Usually there are special bidding instructions.

<sup>18</sup> Select YES if no special terms or conditions will be included in the solicitation. Special terms and conditions can be included based on the choices you make during your completion of the Document Builder questions or by direct edits you make. Usually there are special terms and conditions.

<sup>19</sup> Select YES if ONLY if no price or cost information is sought.

<sup>20</sup> If you are attaching a statement of work to your solicitation, select YES to include a cross reference in “III. Scope of Work / Specifications” to the attached statement of work.

<sup>21</sup> Select YES if you are attaching any documents.

i. **Fill-In: Enter the name and reference for each attachment.**

**2. No**

a. No Clauses Included

XIV. PRE-BID/PROPOSAL CONFERENCE

A. **Is there a need to conduct a pre-bid/proposal conference?**<sup>22</sup> (Click Refresh if responding Yes)

**1. Yes**

a. 02-2B025 – Conference – Pre-Bid/Proposal (JAN 2006)

i. **Fill-In: Enter the date, time, and location for the Pre-Bid/Proposal Conference**

**2. No**

a. No Clauses Included

XV. ON-SITE VISIT

A. **Is there a need for a site visit?** (Click Refresh if responding Yes)

**1. Yes**

a. 02-2B140 – Site Visit – By Appointment (JAN 2006)

b. 02-2B165 – Site Visit (JAN 2006)

i. **Fill-in: Enter both the date, time, location for the site visit, as well as the name and phone number of the person to be contacted for appointments**

**2. No**

a. No Clauses Included

XVI. DESCRIPTIVE LITERATURE

A. **Is descriptive literature necessary to evaluate required characteristics of the items acquired?**<sup>23</sup>

**1. Yes**

a. 02-2B045 – Descriptive Literature – Labelling (JAN 2006)

b. 02-2B050 – Descriptive Literature – Required (JAN 2006)

**2. No**

a. No Clauses Included

XVII. ARE SAMPLES NECESSARY

A. **Are samples necessary to evaluate required characteristics of the items acquired?**<sup>24</sup> (Click Refresh if samples required)

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<sup>22</sup> Conferences held after issuance of the solicitation and prior to opening must be conducted “long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their” offers. Regulation 19-445.2042 & 19-445.2095(H)(1). MANDATORY PRE-BID / PRE-PROPOSAL CONFERENCES ARE STRONGLY DISCOURAGED AS ANTI-COMPETITIVE AND UNNECESSARY.

<sup>23</sup> Choose YES only if you are requesting that bidders submit descriptive literature regarding the products bid. “‘Descriptive literature’ means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item which enables the State to consider whether the item meets its needs.” R. 19-445.2077(A). “[D]escriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.” R. 19-445.2077(C).

<sup>24</sup> Choose YES only if you are requesting that bidders submit bid samples regarding the products bid. “‘Bid sample’ means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.” R. 19-445.2077(B). “‘Bid samples . . . may be required when it is necessary to evaluate required characteristics of the items bid.’” R. 19-445.2077(C).

If you require bid samples, it is essential that the solicitation explain exactly how the samples will be evaluated. Section 11-35-1520(6) provides as follows: “The invitation for bids must set forth the evaluation criteria to be used. Criteria must not be used in bid evaluation that are not in the invitation for bids.” Regulation 19-

1. **Yes**
  - a. 02-2B130 – Samples (JAN 2006)
  - b. 02-2B135 – Samples – Testing (JAN 2006)
    - i. **Fill-in: Enter address to which samples should be sent**
2. **No**
  - a. No Clauses Included

XVIII. STANDARD EQUIPMENT AGREEMENT

A. **Do the regulations require that you use the Standard Equipment Agreement?**<sup>25</sup>

1. **Yes**
  - a. 02-2B065 – Lease Form – Questions (JAN 2006)
2. **No**
  - a. No Clauses Included

XIX. PRINTING SERVICES

A. **Are you acquiring printing services?**<sup>26</sup>

1. **Yes**
  - a. 07-7B190 – Printing Manual (JAN 2006)
2. **No**
  - a. No Clauses Included

XX. ASSORTED ADDITIONAL PERFORMANCE REQUIREMENTS AND OBLIGATIONS

A. **Does free shipping require a minimum order dollar value?**<sup>27</sup> (Click Refresh if responding yes)

1. **Yes**
  - a. 03-3035 – Delivery Costs – Exemption (JAN 2006)
    - i. **Fill-in: Enter the minimum dollar value for free shipping**
2. **No**
  - a. No Clauses Included

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445.2030(2) provides as follows: “The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include the following, as applicable: (2) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description . . .” Any inspection or acceptance requirements you plan to apply to a bid sample must be expressly stated.

<sup>25</sup> Choose YES if you will be using the Standard Equipment Agreement. Remember to add this form to the list of attachments. A copy of the Standard Equipment Agreement is posted at [procurement.sc.gov](http://procurement.sc.gov)

Regulation 19-445.2152(B)(1) provides as follows: “(1) The State of South Carolina Standard Equipment Agreement will be used in all cases unless modifications are approved by the designated board officer or his designee. A purchasing agency may enter into an agreement for the rental of equipment without using the Standard Equipment Agreement when the agreement has a total potential value of fifteen thousand dollars or less or the agreement does not exceed ninety days in duration.”

<sup>26</sup> Choose YES if you are acquiring printing services. A clause will be included that references the South Carolina Government Printing Services manual, which is available on the web at [www.procurement.sc.gov](http://www.procurement.sc.gov)

<sup>27</sup> If YES, you must state what the minimum dollar value is within the solicitation. **USE OF THIS CLAUSE IS HIGHLY RECOMMENDED FOR INDEFINITE DELIVERY CONTRACTS!**

Most solicitations request a fixed price that includes delivery (all shipping costs). Addition of this clause can result in a lower overall cost to the state. Without this clause, the delivery costs for a single order could cost the vendor more than the price of the item delivered. If no minimum order value is set, the vendor must increase the overall contract prices to cover the risk of numerous, small dollar-value orders. That risk is minimized if you establish a reasonable minimum order dollar value to qualify for free shipping.

Consult with several anticipated bidders to determine a reasonable minimum order dollar value.

B. Will you specify a delivery date by PO (rather than 30 days ARO)?<sup>28</sup>

1. **Yes**
  - a. 03-3045 – Delivery Date – Purchase Order (JAN 2006)
2. **No**
  - a. No Clauses Included

C. Is installation required? (Click Refresh if responding yes)

1. **Yes**
  - a. 03-3050 – Installation (JAN 2006)
    - i. **Fill-in: Enter the appropriate details regarding installation**<sup>29</sup>
2. **No**
  - a. No Clauses Included

D. Do you need a user manual for each item acquired?

1. **Yes**
  - a. 03-3055 – Operational Manuals (JAN 2006)
2. **No**
  - a. No Clauses Included

E. Do you need basic technical support provided? (Click Refresh if responding yes)

1. **Yes**
  - a. 03-3075 – Technical Support – Included (JAN 2006)
    - i. **Fill-in: Enter the response time and details for technical support**<sup>30</sup>
2. **No**
  - a. No Clauses Included

F. Do you need a demonstration regarding the use of the equipment?<sup>31</sup> (Click Refresh if responding yes)

1. **Yes**
  - a. 03-3080 – Training (JAN 2006)

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<sup>28</sup> Choose YES if you will specify an exact delivery date in each purchase order, rather than require delivery within 30 days of issuing the PO. [If you need a uniform delivery period shorter than 30 days ARO, use the following clause: DELIVERY DATE – Purchase Order 30-3045-1.]

Generally, this clause is applicable only to indefinite delivery contracts.

In order to allow vendors to realistically price delivery, the standard clauses generally call for contractors to deliver within 30 days After Receipt of Order. Requiring different delivery terms increases costs and makes bidding the lowest fixed price more difficult. Notwithstanding the upward impact on price, agencies occasionally need the ability to specify a specific delivery date in the purchase order.

<sup>29</sup> You must provide details regarding the installation. For example, explain when, where, details regarding the location, any obstacles or challenges the install may involve, and any other topic you can think of. You should consider requiring a pre-opening site visit in your special bidding instructions.

<sup>30</sup> You must provide details regarding the support. For example, explain when, notice given, duration the support must be offered, how the support will be performed (on-site, by phone, by computer), exactly what aspects of performance will be supported, what locations will be supported, how many users will be able to access the support, and any other topic you can think of.

<sup>31</sup> You must provide details regarding the demonstration / training. For example, explain when, notice given, duration and extent of the demonstration, location, topics, language, and any other topic you can think of. Explain who will provide any necessary facilities and media to facilitate the demonstration, e.g., internet connection, projectors, etc.



1. **Yes**
    - a. 05-5010 – Qualifications – Mandatory Minimum (JAN 2006)
      - i. **Fill-in: Enter the minimum qualifications**
  2. **No**
    - a. No Clauses Included
- XXII. USE OF STATE OWNED PROPERTY
- A. Will the State be providing the contractor with state-owned property during performance of the contract?<sup>36</sup>
1. **Yes**
    - a. 07-7B067 – Contractor’s Use of State Property (JAN 2006)
    - b. 07-7B125 – Ownership of Data & Materials (JAN 2006)
  2. **No**
    - a. No Clauses Included
- XXIII. PRICE ADJUSTMENT
- A. Will Contractor be authorized to demand price adjustments after the initial term?<sup>37</sup>
1. **Yes**
    - a. 07-7B165 – Price Adjustment Limited – After Initial Term Only (JAN 2006)
  2. **No**
    - a. No Clauses Included
- B. Are price adjustments authorized and limited to some index?<sup>38</sup>
1. **Supplies related to Consumer Price Index**
    - a. Yes
      - i. 07-7B180 – Price Adjustments – Limited by PPI (JAN 2006)
    - b. No

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discretion or judgment, and (c) each requirement is mandatory. See the general guidance for Part 5 of the Compendium.

2. When you create mandatory minimum qualification requirements, you are establishing a special standard of responsibility. Offerors that do not have the required qualifications must be deemed non-responsible.

3. The imposition of special standards limits competition. Section 11-35-2710 prohibits unduly restrictive requirements. Be prepared to defend why your minimum qualifications are necessary.

4. If an offeror relies on its staff, a predecessor firm, or a proposed subcontractor to meet a minimum requirement, see the guidance on Part 5 at the beginning of this compendium. Also See Regulation 19-445.2125(G).

<sup>36</sup> Choose YES if the agency will be providing the contractor with either personal property or information (existing records, data compilations, etc.) during the performance of the contract. Two clauses will be included: Contractor’s Use of State Property and Ownership of Data & Materials.

<sup>37</sup> Without the addition of price adjustment clauses, contractors are required to maintain their pricing for the entire duration of a contract. In some contracts, particularly multi-year indefinite delivery contracts involving optional renewal terms, it MAY be appropriate to allow the contractor, after giving the state notice, to end the contract if the contractor requests a price increase and the request is denied.

<sup>38</sup> Once a contractor has a firm obligation to deliver a commodity to the state for a fixed price, the procurement officer would not be justified in simply excusing that performance obligation and “giving” the contractor an unauthorized price increase. If you anticipate the need to grant price increases during the contract, you should include a clause that authorizes such increases and sets some parameters on what price increases may be granted. These clauses offer several possible approaches to this issue.

These three clauses are tied to the Bureau of Labor Statistics, which may be found at [www.bls.gov](http://www.bls.gov). These clauses are only appropriate for indefinite delivery contracts

- i. No Clauses Included
- 2. Services related to Consumer Price Index**
  - a. Yes
    - i. 07-7B175 – Price Adjustments – Limited by CPI – “Other Goods & Services” (JAN 2006)
  - b. No
    - i. No Clauses Included
- 3. Supplies & Services related Consumer Price Index**
  - a. Yes
    - i. 07-7B170 – Price Adjustments – Limited by CPI “All Items” (JAN 2006)
  - b. No
    - i. No Clauses Included
- 4. Not Applicable**
  - a. No Clauses Included

XXIV. DOCUMENT VARIABLES

A. Document Variables

- 1. Solicitation Number**
  - a. Fill-in
- 2. Solicitation Document Amendment Number**
  - a. Fill-in
- 3. Solicitation Description**
  - a. Fill-in
- 4. Solicitation Type Description**
  - a. Fill-in
- 5. Issue Date**
  - a. Fill-in
- 6. Buyer Name**
  - a. Fill-in
- 7. Buyer Work Phone**
  - a. Fill-in
- 8. Buyer E-mail address**
  - a. Fill-in
- 9. Bid End Date**
  - a. Fill-in
- 10. Questions Received by Date**
  - a. Fill-in
- 11. Questions Received by time**
  - a. Fill-in
- 12. Number of Copies to be returned**
  - a. Fill-in
- 13. Governmental Unit**
  - a. Fill-in
- 14. Estimated Award Posting Date**
  - a. Fill-in

# Appendix W

## Guaranty – Forms & Instructions

### GUARANTY

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### INSTRUCTIONS AND GUIDELINES FOR COMPLETION AND USE

(Version dated February 2015)

Introduction: Before contracting with a business, agencies must determine them financially responsible. Many businesses use complex structures, e.g., multi-tiered wholly-owned subsidiaries. Sometimes, one of our potential vendors is a subordinate business that lacks capitalization and independent resources. On their own, such subordinate businesses may well be non-responsible. In order to assist vendors in relying on the resources of parent entities for purposes of responsibility, agencies may elect to consider the financial resources of a parent business, but only if the parent is unconditionally responsible for the obligations of the actual offeror. This guaranty and the accompanying instructions are designed to facilitate such reliance, but to do so within the limited resources agencies can dedicate to transactional costs.

#### A. Documentation That Must Accompany Guaranty

We do not accept a Guaranty unless accompanied by proof of authority to execute a Guaranty. Why? Because agreeing to guaranty the performance of a separate business is usually NOT an act for “apparently carrying on in the ordinary course of business” of the kind carried on by the guarantor. In other words, it is an extraordinary action that may require an extraordinary delegation of authority from whomever ultimately controls the guarantor – say, a corporate board of directors, all the general partners of a partnership, etc. To address this concern, we impose the following requirement.

1. Guaranty by Corporation. If the Guarantor is a corporation, you must acquire the following documents:

a. An original, signed, and witnessed certificate from the corporate secretary certifying (i) the incumbency and authority of the individuals who sign the guaranty on behalf of the corporation, and (ii) the authenticity of the corporate board resolution referenced below (see **Exhibit 1** for sample).

b. An original, signed opinion letter, on corporate letterhead, from the guarantor’s corporate counsel confirming, among other things, the corporate authority and delegated responsibility to execute the guaranty (see **Exhibit 2** for sample).

c. A copy of a resolution of the corporation’s board of directors authorizing the guaranty and reciting its relationship to corporate purposes (see **Exhibit 3** for sample).

2. Guaranty by Non-corporation. If the Guarantor is any other type of business form (e.g., a partnership, limited partnership, professional corporation, limited liability company), you must acquire an original letter, on firm letterhead, from a lawyer licensed in the jurisdiction in which the guarantor was established (see item B.3 below). The letter must provide a written opinion to the effect that the guaranty is properly executed. Again, why? An improperly executed guaranty may be worthless. Not all states impose identical requirements regarding business forms, and these rules can be complex. For example, in South Carolina, a guaranty issued by a limited

liability company should be signed by every member of the LLC, or accompanied by proof that all members of the LLC authorized the member signing to execute the guaranty. (§ 33-44-301). A similar approach is advisable for member-managed LLCs. (§ 33-44-1005(a)). Same approach for partnerships; all partners must sign. (§ 33-41-310). Accordingly, this requirement for an opinion letter is not excusable.

**B. Completion of Guaranty**

1. “[DATE]” should be replaced with a calendar date that is the same as or precedes the date identified on the Cover Page of the Solicitation for “SUBMIT OFFER BY (Opening Date/Time).”

2. “[GUARANTOR]” should be replaced with the full legal name of the business agreeing to guaranty the contractor’s obligations.

3. “[GUARANTOR\_STATE\_INC]” should be replace with the full name of the state in which the Guarantor was established. For example, a business incorporated in Texas would identify Texas, even if its principle place of business is Ohio. A partnership formed and recorded in Georgia would identify Georgia, even if its principle place of business is Idaho.

4. “[GUARANTOR\_STATE\_PRINPLC]” should be replaced with the full name of the state in which the Guarantor has its principle place of business.

5. “[GUARANTOR’S TIN]” should be replaced with the Guarantor’s Taxpayer Identification Number.

6. “[GUARANTY\_BIZ\_FORM]” should identify the Guarantor’s business form. For example, partnership, corporation, LLC. Identifying the Guarantor as a division or subsidiary of some other entity is unacceptable.

7. “[SOLICITATION\_NO]” should be replaced with the number identified as the “Solicitation Number” on the Cover Page of the Solicitation. Likewise, every occurrence of “[SOLICITATION\_DESCRIPTION]” should be replace with the phrase identified as the “DESCRIPTION” on the Cover Page of the solicitation to which the Contractor has submitted an Offer.

8. “[CONTRACTOR]” should be replaced with the name appearing in the box identified as “NAME OF OFFEROR” on the signed version of the Cover Page submitted with the Contractor’s bid or proposal.

9. “[CONTRACTOR\_STATE]” should be replace with the full name of the state in which the Contractor was established. For example, a business incorporated in Texas would identify Texas, even if its principle place of business is Ohio. A partnership formed and recorded in Georgia would identify Georgia, even if its principle place of business is Idaho. *The state identified here must match the state identified in the box labeled as STATE OF INCORPORATION on the signed version of the Cover Page submitted with the Contractor’s bid or proposal, unless the box is blank. If they do not match, there is a problem.*

10. “[CONTRACTOR\_BIZ\_FORM]” should identify the Guarantor’s business form. For example, partnership, corporation, LLC. If the Guarantor is identified solely as a division or subsidiary of some other entity, the Guaranty is probably unacceptable. *The business form identified here must match the business form identified in the box labeled as OFFEROR’S TYPE OF ENTITY” on the signed version of the Cover Page submitted with the Contractor’s bid or proposal. If they do not match, there is a problem.*

11. “[GUARANTOR\_CONTRACTOR\_BIZ\_RELATIONSHIP]” should explain the relationship between these two entities – an important piece of information to the overall context. For example, is the Guarantor a parent company that owns all or a part of the Contractor? Are the Guarantor and Contractor sister companies wholly-owned by some third-party parent company? Does the Guarantor have some other relationship that would indicate the interest of the Guarantor and its level of knowledge regarding the Contractor? For example, will the Guarantor be providing the Contractor with any resources (facilities, capital, personnel, intellectual property rights, etc.) that will be used by Contractor to perform the contract? Will the Contractor be paying the Guarantor for such resources? This ties in with the significance of showing the Guarantor is receiving real economic benefit from inducing the State to enter an agreement with the Contractor.

12. “[USING GOVERNMENTAL UNITS]” should be replaced with the exact same text appearing on the Cover Page of the Solicitation next to the words “Using Governmental Unit”.

13. “[NOTICE ADDRESS]” should be replaced with the address provided by Guarantor for notices related to the Guaranty.

**C. Procurement Officer’s Due Diligence**

1. Prior to award, review every single word of the Guaranty to confirm that (i) no modifications were made to the form, and (ii) the form was completed as required by these instructions. You cannot accept a guaranty executed after issuance of the notice of intent to award as it creates doubt as to the consideration for the guaranty.

2. One of the Recitations provides that the State intends for the Solicitation to result in the execution of one or more contracts, including any purchase orders issued against such contracts and any associated contracts contemplated or allowed by the Solicitation. Many variations are possible. Some solicitations result in a single contract with a single government entity. Some solicitations result in contracts with every government entity that issues a purchase order against a master agreement. Solicitations of either type may involve additional associated contracts between the government entity and the contractor, such as a software license, equipment lease, or nondisclosure agreement. To the extent this Guaranty extends to Contractor’s obligations under such agreements, the Guaranty will be clearer if such agreements are referenced with greater specificity.

3. Take steps to determine the financial responsibility of the Guarantor.

a. Consider a review of multiple resources such as financial statements (particularly audited statements), Dunn & Bradstreet, a general internet search, and for a publicly traded company, filings with the Securities and Exchange Commission. For a smaller business, look at court filings in a county or counties in which they operate or live

(e.g., Richland County 5<sup>th</sup> Judicial Circuit Public Index at <http://www5.rcgov.us/SCJDWEB/PublicIndex/PISearch.aspx>)

b. Necessarily, this process involves taking steps to confirm the identity of the Guarantor. To assist with this inquiry, the Recitals & Representations should include the Guarantor's taxpayer identification number. The opening paragraph should identify the Guarantor's business model (corporation, LLC, partnership, etc.)

c. If Guarantor's TIN matches the Contractor's TIN, *find out why*.

#### **D. Resources Notes**

1. The recitals provide that Guarantor will receive a significant economic benefit of reasonably equivalent value. If the Guarantor does not receive reasonably equivalent value and later files bankruptcy, the bankruptcy trustee may seek to avoid the obligation. See discussion above about the recital of the relationship between guarantor and contractor.

2. The State will not agree to modifications of the guaranty form. To illustrate:

a. The scope of the guaranty cannot be limited to obligations arising out of the contract because much of the liability the state may incur could arise from other than the contract. Examples would include personal injury or property damage occurring while the contractor is on-premises, liability arising from a claim by the State for fraudulent inducement or conversion.

b. The waivers cannot be removed because it might mean that the Guarantor could assert any counter-claim or set-off the Contractor might have as a defense to enforcement of the Guaranty. For one, this would allow the Guarantor to litigate in circuit court, and perhaps before a jury, a claim that the General Assembly specified could be heard only by the CPO under 11-35-4230. For another, the counter-claim or set-off may bear no relationship to the contract covered by this guaranty and could be the result of artful drafting of irrelevant defenses designed to avoid the guaranty obligation.

c. The requirement that Guarantor's obligations remain even if the Contractor's Obligations are released or discharged will not be removed. If the Contractor's obligations to the State are discharged in bankruptcy, the State would need to proceed against the Guarantor.

#### **E. Research Notes**

1. Generally – Revisiting the 24 Defenses of the Guarantor – 24 Years Later, 28 No. 1 *Practical Real Estate Lawyer* 9 (January 2012); Robert A. Feldman and Raymond T. Nimmer, *Drafting Effective Contracts: A Practitioner's Guide* (Wolters Kluwer, 2<sup>nd</sup> ed. 2014). For a discussion of why a surety's performance bond is better than a guaranty, see *General Motors Acceptance Corp. v. Daniels*, 492 A.2d 1306 (Md. 1985).

2. Waiver of Jury Trial - *Wachovia Bank, Nat. Ass'n v. Blackburn*, 755 S.E.2d 437 (S.C. 2014) (waiver of jury trial for counter claims); *Unisys Corp. v. S.C. Budget & Control Bd.*

*Div. of Gen. Servs.*, 346 S.C. 158, 170, 551 S.E.2d 263, 270 (2001) (“The right to a jury trial does not apply to actions against the sovereign that were not recognized in 1868.”).

3. Estoppel Certificate – “A point which counsel might easily fail to note is the fact that there is authority to the effect that an agreement not to plead the statute of limitations is itself subject to the applicable statutory limitation period.” 43 A.L.R.3d 756 (1972).

4. Procurement & Responsibility – Regulation 19-445.2125(C)(3) provides that “[t]he prospective contractor may demonstrate the availability of necessary *financing*, equipment, facilities, expertise, and personnel by submitting upon request: . . . (3) *a documented commitment from*, or explicit arrangement with, a satisfactory source to provide the necessary item.”

5. Annotation:

Recital ¶ 4 & 5 – Feldman § 9.02[A][1], 9.04[A][1]-[4]

¶ 1(a)(1) & 2(a) – Feldman § 9.03[A]

¶ 1(a)(2) & 2(j) – Feldman § 9.01[B][2]

¶ 2(a) & (b) – Feldman § 8.03[A],[C],[F][1]; 8.04[G] {also see ¶ 1(a)(1)}

¶ 2(i) – Feldman § 8.02[D]&[E]; 8.04[A][2], [B] (2012)

¶ 2(d) – Feldman § 8.04[C]

¶ 3(e) – Feldman § 9.06[A][2][c]; 9.06[B][3]

¶ 3(k) & 2(b) – Feldman § 9.10[A][3]

¶ 3(m) – Feldman § 9.10[A][5]

¶ 3(d) – Feldman § 9.10[A][6]

**THIS GUARANTY MUST BE EXECUTED PRIOR TO ISSUANCE OF A NOTICE OF INTENT TO AWARD.**

**GUARANTY**

THIS GUARANTY is made and entered into as of [DATE], by [GUARANTOR], a [GUARANTOR\_STATE\_INC] [GUARANTY\_BIZ\_FORM] (“Guarantor”), in favor of the Using Governmental Unit(s).

**Recitals & Representations**

1. [GUARANTOR\_STATE\_PRINPLC] is [GUARANTOR]’s principal place of business. [GUARANTOR’S TIN] is [GUARANTOR]’s Taxpayer Identification Number.

2. Previously, the Using Governmental Unit solicited offers to contract by issuing Solicitation No. [SOLICITATION\_NO] entitled [SOLICITATION\_DESCRIPTION] (hereinafter the “Solicitation”). With the Solicitation, the Using Governmental Unit seeks to award a Contract (defined below).

3. By submitting a bid or proposal in response to the Solicitation, [CONTRACTOR], a [CONTRACTOR\_STATE] [CONTRACTOR\_BIZ\_FORM] (“Contractor”), seeks to enter into a Contract with the Using Governmental Unit.

4. [GUARANTOR\_CONTRACTOR\_BIZ\_RELATIONSHIP]

5. If the Using Governmental Unit enters into a Contract with Contractor, Guarantor will receive a significant economic benefit of reasonably equivalent value by virtue of its relationship with Contractor; accordingly, Guarantor seeks to induce Using Governmental Unit to enter into a Contract with Contractor. Guarantor acknowledges that Using Governmental Unit would not have awarded the Contract to Contractor but for this Guaranty.

In consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in reliance on the foregoing, the materiality of which is hereby acknowledged, the parties hereto agree as follows:

**Agreement**

1. General

a. Definitions.

i. As used herein, the term “Contract” collectively refers to all the contractual agreements arising out of or resulting from the Solicitation, including without limitation, any purchase orders issued against such agreements and any associated agreements contemplated by or related to the Solicitation, and further includes any modifications, extensions, amendments and renewals of the foregoing, or substitutions thereof.

ii. As used herein, the term “Contractor” includes any of Contractor’s successors or assigns.

iii. As used herein, the term “Using Governmental Unit” means the following entity or entities of government: [USING GOVERNMENTAL UNITS].<sup>1</sup>

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<sup>1</sup> [Add the following at the end of item #2 only if the contract is a statewide term contract: The term “Using Governmental Unit” may be defined to mean “Statewide Term Contract” or “State Term Contract” or “Statewide Contract,” and if so defined, these terms mean any governmental entity that submits a purchase order that is accepted by Contractor pursuant to the Contract. If the term “Using Governmental Unit” is defined to mean more than one entity (e.g., multiple entities are listed or the term “Statewide Contract” is used), this Guaranty extends and applies to each entity separately, the same as if a distinct guaranty had been separately executed with each individual entity. Guarantor’s obligations to each entity are

b. Headings. The headings contained in this Guaranty are inserted for convenience only and will not affect the meaning or interpretation of this Guaranty.

c. Interpretation. Any question of interpretation or construction shall not be resolved by any rule providing for interpretation or construction against the party who causes the uncertainty to exist or against the drafters of this Guaranty.

d. Representation & Warranty. Guarantor represents and warrants to the Using Governmental Unit that the Recitals are true, accurate and complete, and that this Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

2. Guaranty.

a. Guaranty; Scope; Contractor's Obligation Defined. As an inducement to, and in consideration of, Using Governmental Unit's entry into a Contract with Contractor, Guarantor absolutely, unconditionally and irrevocably guaranties, without notice or demand, the full and timely payment and performance of any debt, liability or obligation of Contractor, howsoever arising, which Contractor presently or hereafter may have to the Using Governmental Unit arising out of or related to the Contract or the Contractor's performance of the Contract (collectively "Contractor's Obligations").

b. Unconditional; No Right to Require Failure of Collection; Limited Right to Require Action Against Primary Debtor; Waiver of Contractor's Counterclaims. This guaranty is a guaranty of payment and performance and not of collection. Except as otherwise provided herein, Using Governmental Unit may not proceed against Guarantor without first acquiring, from either the Chief Procurement Officer, the South Carolina Procurement Review Panel or a court, an order allowing Using Governmental Unit to recover from Contractor. The foregoing order shall be conclusive evidence of the amount and validity of Contractor's Obligations. Guarantor waives any right to assert any defense, counterclaim, affirmative defense, or set-off of the Contractor. Without limiting the generality of the foregoing, Guarantor will not assert, plead or enforce against Using Governmental Unit any defense of waiver, release, statute of limitations, res judicata, or illegality. This guaranty will be binding and enforceable against Guarantor without regard to the enforceability or validity of the Contract, the obligation it evidences, or any fact which would constitute a legal or equitable defense or discharge of a guarantor. This Guaranty in no way alters the respective obligations, rights, defenses, setoffs, counterclaims, or privileges of the Contractor. Notwithstanding anything to the contrary in this paragraph, Using Governmental Unit may proceed against Guarantor without first having recourse to the Contractor or pursuing any other right or remedy if and upon the filing by Contractor or Guarantor of a petition in bankruptcy or insolvency or upon the initiation of any other proceeding or action by or against Contractor or Guarantor under the relevant law on insolvency or bankruptcy, or after the making by Contractor or Guarantor of any assignment or attempted assignment for the benefit of creditors or upon or after the institution of any proceedings for the liquidation or winding up of Contractor's or Guarantor's business or for the termination of either's corporate charter.

c. Waiver of Notice of Acceptance, Transactions, Default, and Other. Guarantor waives any right to notice of acceptance of this guaranty; notice of any modification, extension, renewal or substitution of the Contract; notice of default by Contractors; and any other notice, whether similar or dissimilar to the foregoing.

d. No Duty to Avoid Impairment of Recourse. Any of the Contractor's Obligations may be compromised, settled, released, discharged, renewed, extended, altered, waived, exchanged, modified, substituted, or otherwise dealt with in such a manner as Using Governmental Unit sees fit and such action shall not affect Guarantor's liability. Without limiting the foregoing, Guarantor acknowledges that the Contract inherently involves significant potential for modification, consents to any such future modification, and expressly waives any defense arising out of any modification.

e. No Right to Rely on Surety Status. Guarantor does not have surety status and waives any surety defenses.

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independent of its obligations to every other entity. Each entity's rights, obligations and liabilities are independent of every other entity's rights, obligations, and liabilities.]

f. **Waiver of Discharge, No Right to Rely on Debtor's Defenses, and Counterclaims.** Guarantor waives all rights to assert any discharge, defense, counterclaim, or set-off with respect to this guaranty, including but not limited to, any which might arise out of a failure to disclose any present or future information to Guarantor concerning the risks of this guaranty, the release by Using Governmental Unit of Contractor, or the Using Governmental Unit's nonperformance.

g. **No Rights Under Contract.** Guarantor denies any status or right as a third-party beneficiary of the Contract and waives any right to enforce the Contract.

h. **Duty to Disclose, Notice of Acceptance, and Waiver.** Guarantor is completely familiar with Contractor, its financial and business affairs, and all its dealings with Using Governmental Unit. Guarantor will look solely to Contractor for notice that a Contract has been awarded. Guarantor will obtain all information it deems necessary or advisable concerning Contractor or which might otherwise bear on the guaranty directly from Contractor or other sources with regard to all risks involved in the entry into and continuation of the coverage of this guaranty. Guarantor waives all rights which it has now, or in the future may have, to any disclosure by Using Governmental Unit.

i. **Bankruptcy, Merger, or Change of Control in Guarantor or Contractor.** Without limitation, Guarantor agrees that the obligations of Guarantor pursuant to this Guaranty shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by any of the following (whether or not Guarantor shall have any knowledge thereof): (a) any dissolution of or any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to Contractor or Guarantor, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding; (b) any merger or consolidation of Contractor or Guarantor, as applicable, into or with any person, or any sale, lease or transfer of any of the assets of Contractor or Guarantor, as applicable, to any other person; or (c) any change in the ownership of the capital stock of Contractor or Guarantor, as applicable, or any change in the relationship between Contractor or Guarantor, or any termination of any such relationship. In addition, if Contractor or Guarantor is a partnership, the obligations of all partners shall remain in full force and effect even if there are changes in the members of the partnership, and the guaranty shall, as applicable, extend to or apply with respect to the partnership both before and after any changes.

3. **Miscellaneous.**

a. **Substitute Performance.** The Using Governmental Unit has no obligation to accept substitute performance and may elect to recover only payment from the Guarantor.

b. **Duty to Provide Information.** The Using Governmental Unit may request information from Guarantor in order to evaluate Guarantor's financial circumstances. Upon request, Guarantor shall cooperate with this effort and respond promptly to any such request. If Guarantor provides the Using Governmental Unit with any information it believes is exempt from public disclosure pursuant to the South Carolina Freedom of Information Act, Guarantor shall so designate such information. The Using Governmental Unit accepts no liability for the disclosure of information provided by Guarantor.

c. **Choice-of-Law.** The Guaranty, any action, suit or proceeding relating to the Guaranty, 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.

d. **Choice-of-Forum.** Any action, suit or proceeding relating to the Guaranty shall be resolved exclusively in the Court of Common Pleas for Richland County, State of South Carolina. Guarantor agrees that any act by the Using Governmental Unit regarding the Guaranty is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution.

e. **Waiver of Right to Jury Trial.** To the extent permitted by law, Guarantor knowingly, voluntarily, and intentionally waives any right to a trial by jury in respect of any litigation based on, arising out of, under or in connection with this Guaranty or any agreement contemplated to be executed in connection with this Guaranty (e.g., the Contract), or any course of conduct, course of dealing, statements, or actions of any party with respect hereto.

f. Costs and Attorney Fees. Guarantor shall reimburse Using Governmental Unit for all costs and expenses, including attorneys' fees, reasonably incurred in enforcing the Using Governmental Unit's rights under this Guaranty.

g. No Third Party Benefits. Nothing in this Guaranty is intended, and it shall not be construed, to confer any rights or benefits upon any person other than the Using Governmental Unit and no other third party shall have any rights or remedies hereunder.

h. Notice To Guarantor. All notices and other communications to Guarantor under this Guaranty shall be sufficiently given for all purposes hereunder if in writing and: (i) delivered personally; or (ii) sent by documented overnight delivery service, in each case, to the following: [NOTICE ADDRESS] or to such other address and/or to the attention of such other person as Guarantor may designate by written notice to the Using Governmental Unit.

i. Notice to Government. As long as the Contract is in effect, any notice or other communication to Using Governmental Unit regarding this Guaranty may be provided solely to the following address or, if another address is designated by written notice to the Guarantor, solely to the address most recently designated. In order to be effective, any notice to the Using Governmental Unit must identify the Solicitation by name and number. If the Contract is not in effect, notice must be given directly to Using Governmental Unit.

Division of Procurement Services  
State Fiscal Accountability Authority  
1201 Main Street, Suite 600  
Columbia, SC 29201

j. Binding Effect; Assignment. This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that no party hereto may assign its rights or delegate its obligations under this Guaranty without the express written consent of the other party hereto.

k. Estoppel Certificate. Guarantor shall, within ten days after Using Governmental Unit's request, deliver to Using Governmental Unit a certificate, in form and substance reasonably satisfactory to Using Governmental Unit, confirming that Guarantor will not assert any defense to enforcement of the Guaranty based upon the expiration of any statute of limitations. Failure to deliver a certificate constitutes a default.

l. Amendment; No Waiver. This Guaranty may not be modified or amended except by an instrument in writing signed by the party against whom enforcement of any such modification or amendment is sought. Any party hereto may, only by an instrument in writing, waive compliance by the other party hereto with any term or provision of this Guaranty. The waiver by any party hereto of a breach of any term or provision of this Guaranty shall not be construed as a waiver of any subsequent breach.

m. Integration. This guaranty is a completely integrated guaranty. Notwithstanding any contrary term, there are no oral or written conditions precedent or concurrent to the effectiveness of this guaranty. There are no terms or conditions other than those in this writing. This writing supersedes all prior or contemporaneous terms, conditions, and representations

IN WITNESS WHEREOF, Guarantor has set its hand and seal hereto as of the date above written.

[GUARANTOR]

By: \_\_\_\_\_ L.S.  
(signature)  
Name: \_\_\_\_\_  
(typed/printed name of person signing above)  
Its: \_\_\_\_\_  
(title / position of person signing above, e.g., president)

**Exhibit List**

Exhibit 1 – Certificate of Corporate Secretary

Sample of certificate from the corporate secretary certifying (i) the authenticity of the corporate board resolution and corporate by-laws referenced, and (ii) the incumbency and authority of the individuals who sign on behalf of the corporation.

Exhibit 2 – Opinion Letter of Corporate Counsel

Sample opinion of corporate counsel.

Exhibit 3 – Board of Director's Corporate Resolution of Authorization

Sample of a resolution of the corporation's board of directors authorizing the guaranty and reciting its relationship to corporate purposes.

For a non-corporate guaranty, these forms are inapplicable. Reference paragraph A.2. of the instructions.

**Exhibit 1 – Certificate of Corporate Secretary**

[Please complete this form in accordance with the accompanying Instructions and Guidelines for Completion and Use (Version dated February 2015).]

**CERTIFICATE OF SECRETARY of [GUARANTOR], a [GUARANTOR\_STATE\_INC] corporation**

I, the undersigned, *[name of corporate secretary]*, Secretary of [GUARANTOR], a [GUARANTOR\_STATE\_INC] corporation (“Corporation”), certify the following:

1. Attached to this Certificate as Attachment #1 is a correct copy of resolutions adopted by the board of directors of Corporation at its meeting held on *[date]*, at which a quorum was present and acting throughout. These resolutions have not been revoked, modified, amended, or rescinded, and are still in effect.

2. As of the date of this Certificate, the persons whose names appear on Attachment #2 hereto are the elected and qualified officers of Corporation occupying the offices set forth opposite their respective names, who are authorized by the board of directors of Corporation to execute documents on behalf of Corporation, and the signatures set forth above their respective names are their genuine signatures.

I have so certified this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Secretary

WITNESS

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the Company, and that appearing above is the true signature of \_\_\_\_\_, the Secretary of the Company.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

**Exhibit 2 – Opinion Letter of Corporate Counsel**

[Please complete this form in accordance with the accompanying Instructions and Guidelines for Completion and Use (Version dated February 2015).]

[LETTERHEAD OF COMPANY'S COUNSEL]

\_\_\_\_\_,20\_\_

To: STATE

Re: CONTRACTOR

Ladies and Gentlemen:

We are of the opinion that:

1. The [GUARANTOR] is a corporation duly incorporated, validly existing and in good standing under the laws of the State of [GUARANTOR\_STATE\_INC], with corporate powers adequate for the execution, delivery and performance of the Guaranty regarding Solicitation No. [SOLICITATION\_NO] entitled [SOLICITATION\_DESCRIPTION].
2. All corporate proceedings required to be taken to authorize the execution and performance of this guaranty, including without limitation, a resolution by [GUARANTOR]'s Board of Directors authorizing this guaranty, have been taken.
3. The Guaranty has been duly authorized and executed by the [GUARANTOR], constitutes the legal, valid and binding obligation of the [GUARANTOR], and is enforceable against the Company in accordance with its terms.
4. The execution, delivery, and performance of the Guaranty does not, and will not, result in any violation of, be in conflict with, constitute a default under, give rise to any obligation to redeem securities under, or result in the creation of a lien or encumbrance under, any term or provision of (i) any court order or any presently existing federal or [GUARANTOR\_STATE\_INC] law, statute, ordinance, or governmental regulation, (ii) [GUARANTOR]'s Articles or Certificate of Incorporation or By-laws, (iii) the general corporation law of the State of [GUARANTOR\_STATE\_INC\_INCORPORATION] or (d) any license, judgment, decree, order, agreement, indenture, deed, lease or other instrument known to us that is applicable to it.

Very truly yours,

[Name of Counsel]

**Exhibit 3 – Board of Director’s Corporate Resolution of Authorization**

[Please complete this form in accordance with the accompanying Instructions and Guidelines for Completion and Use (Version dated February 2015).]

**Attachment #1 to Certificate of Corporate Secretary**

**RESOLUTION OF BOARD OF DIRECTORS OF [GUARANTOR], a [GUARANTOR\_STATE\_INC] corporation (“Corporation”)**

*[key language below]*

*[recitals reflecting guaranty’s relationship to corporate purposes]*

Therefore, it is resolved that the form, terms, and provisions of the Guaranty to be executed concurrently with the execution of the Guaranty have been reviewed by the directors of Corporation and are approved; and

It is further resolved, that any of the following officers of Corporation are authorized, on behalf of Corporation, to execute the Guaranty:

*[names and titles of officers authorized to bind the guarantor]; and*

[GUARANTOR]

\_\_\_\_\_

[Name]

\_\_\_\_\_

[Name]

\_\_\_\_\_

[Name]

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# Appendix X

## Performance Bond – Forms & Instructions

### PERFORMANCE BOND INSTRUCTIONS (FEB 2015)

1. Introduction
  - a. Procurement Services Division has posted two distinct performance bond forms. One is an indemnity bond. The other is a completion bond. The nature and use of each, as envisioned by the Division, is outlined below. We believe each should be generally acceptable to the surety industry, but they have not been market-tested as of the date these forms were posted. Please note that we are unaware of any surety-industry standard, non-construction, performance bond forms.
2. Which Bond Form
  - a. Completion Bond
    - i. Use: This form is for use when the agency's solicitation requires every offeror to agree to provide a performance bond as part of its contract performance.
    - ii. Defined: "A bond given by a surety to ensure the timely performance of a contract." Black's Law Dictionary (9<sup>th</sup> ed. 2009)
    - iii. Note: The completion bond form is loosely fashioned after the standard AIA 312, which is a standard in the construction industry.
  - b. Indemnity Bond
    - i. Use: This form is for use by offerors to bolster their "financial responsibility" when the solicitation does not require each offeror to provide a performance bond.
    - ii. Nature: A bond to reimburse the holder for any loss caused by the contractor's conduct.
3. Evaluating Bonds
  - a. To confirm acceptability of any Performance Bond, the Procurement Officer should study the following publication, which is posted on the Division's website with the Performance Bond forms and instructions: [Bid, Payment, and Performance Bonds - What They Are, How They Work, and a Checklist of What You Need \(December 2009\)](#)
4. Completing the Form
  - a. Contractor
    - i. The name given for Contractor on the Performance Bond must match the name given for Name of Offeror, as it appears on the signed Cover Page that You submitted with Your Offer.
  - b. Surety
    - i. The full legal name of the Surety.
    - i. The surety company must be licensed in South Carolina, with an "A" minimum rating of performance as stated in the most current publication of "Best's Key Rating Guide, Property Liability" which shall show a financial strength rating of at least five (5) times the contract amount.<sup>1</sup>
  - c. Agency
    - i. The name given for Agency must match the name given for the Using Governmental Unit, as it appears on the Cover Page.
    - ii. If the Using Governmental Unit is "Statewide Term Contract" or "MultiAgency," consult legal counsel before issuing the solicitation or before offering to supply a bond.
  - d. Sum of the Bond

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<sup>1</sup> Compare to Regulation 19-445.2145(M)(2)(c) ("Operations period performance bond shall be in a form to be specified in the Manual for Planning and Execution of State Permanent Improvement, Part II. Each bond shall be issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the bond amount.")

- i. Indemnity Bond Submitted for Responsibility Determination
  1. This category applies only to a Performance Bond submitted by an Offeror in response to the provision titled Qualifications of Offeror (Feb 2015), not to a Bond submitted in response to a requirement of the Solicitation.
  2. Offeror's proposal should state its offer to provide a Performance Bond upon award and should also state the sum of the bond being offered. In determining responsibility, the Procurement Officer may consider the Sum of the Bond in determining responsibility. For maximum benefit, the Sum of the Bond, or Penal Sum, should equal the total contract price (i.e., the potential value) of the contract. The Procurement Officer should refuse any surety not licensed to operate in South Carolina. The Procurement Officer should also consider the financial condition of the Surety; to be acceptable, the surety should have at least an "A" rating of performance, as stated in the most current publication of "Best Key Rating Guide, Property Liability," and show a financial strength rating of at least five times the bond amount.
- ii. Bond Required by Solicitation
  1. This category applies only if the Solicitation makes the Performance Bond a contractual performance obligation.
  2. The Sum of the Bond must equal the contract value of the contract solicited by the IFB or RFP. Typically, the Sum of the Bond will be an amount equal to the total potential price of the award, or more specifically, the total contract price offered by the offeror.
  3. Agencies should be mindful that contract amendments that increase the contract sum do not increase the Sum of the Bond.
- e. State Solicitation & Contract No.
  - i. State Solicitation Name - should match the "Description" appearing on the Cover Page of the Solicitation giving rise to the contract subject to the surety bond.
  - ii. State Solicitation Number – should match the "Solicitation Number" appearing on the Cover Page of the Solicitation giving rise to the contract subject to the surety bond.
  - iii. State Contract No. – should match the "contract number" appearing on the final statement of award for the contract subject to the surety bond.
- f. Bond Number
  - i. A number provided by the Surety to identify the Bond.
5. Statewide Term & Multi-Agency Contracts
  - c. Not for use with Statewide Term Contracts, as the Agency and applicable scope of work cannot be sufficiently defined. For Multi-Agency, every agency must be listed by name on the Bond form as an agency.

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that *(Insert full name or legal title and address of Contractor)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Hereinafter referred to as “**Contractor**”, and *(Insert full name and address of principal place of business of Surety)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Hereinafter called the “**surety**”, are jointly and severally held and firmly bound unto *(Insert full name and address of Agency)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

hereinafter referred to as “**Agency**”, or its successors or assigns, in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), being the **Penal Sum** of the bond. For payment of the penal sum, the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The Condition of this obligation is that Contractor and Agency have entered into an agreement dated \_\_\_\_\_ and identified by one or more of the following:

State Solicitation Name: \_\_\_\_\_  
State Solicitation No.: \_\_\_\_\_  
State Contract No. \_\_\_\_\_

Which agreement is by reference made a part hereof, and is hereinafter referred to as the **Contract**.

1. If Contractor shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of the Contract during the original term thereof, and any extensions thereof which may be granted by the Agency, with or without notice to the Surety, and if the Contractor shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Agency from all costs and damages which it may suffer by reason of failure to do so, including without limitation attorneys' and consultants' fees, and shall

reimburse and repay the Agency all outlay and expense which the Agency without limitation, may incur in making good any failure to perform, then this obligation shall be void, otherwise to remain in full force and effect.

\* \* \* \* \*

2. Surety, for the value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to work to be performed thereunder or the specifications accompanying same shall in any way affect its obligation on this bond, and it does hereby waive notice of

any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

3. This bond, any dispute relating to this bond, 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.

4. All disputes relating to this bond 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. Surety may join in any proceeding brought under the Contract and shall be bound by the results thereof. Surety agrees that any act by either the Agency or the State of South Carolina regarding this bond is not a waiver of either the Agency's or the State of South

Carolina' sovereign immunity or immunity under the Eleventh Amendment of the U.S. Constitution.

5. Agency and Surety consent that any process necessary or proper for the initiation or continuation of any administrative proceedings relating to this bond may be served by certified mail addressed to the address shown on the signature page. Process is deemed complete upon deposit in the United States mail. Notice to the Surety, the Agency or the Contractor shall be mailed or delivered to the address shown on the signature page. Notice shall be deemed to have been made upon deposit with the United States Postal Service or upon actual delivery if delivery is made by hand.

6. In the event of Surety's default on its obligations under this bond, Agency may recover from the Surety all costs, including reasonable attorney's fees, incurred in enforcing the bond or collecting any amounts due Agency.

**IN WITNESS WHEREOF**, Surety and Contractor, intending to be legally bound hereby, subject to the terms stated herein, do each cause this Performance Bond to be duly signed and sealed on its behalf by its authorized officer, agent or representative.

DATED this \_\_\_\_ day of \_\_\_\_, 2\_\_\_\_ BOND NUMBER \_\_\_\_\_  
*(shall be no earlier than date of contract formation, usually date of the final Statement of Award)*

CONTRACTOR

SURETY

By: \_\_\_\_\_  
(Seal)

By: \_\_\_\_\_  
(Seal)

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**(Power of Attorney MUST be attached.)**

Witness: \_\_\_\_\_ Witness: \_\_\_\_\_  
*(Additional Signatures, if any, appear on attached page)*

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that *(Insert full name or legal title and address of Contractor)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Hereinafter referred to as "**Contractor**", and *(Insert full name and address of principal place of business of Surety)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Hereinafter called the "**surety**", are jointly and severally held and firmly bound unto *(Insert full name and address of Agency)*

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

hereinafter referred to as "**Agency**", or its successors or assigns, in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), being the **Sum of the bond** to which payment to be well and truly made, the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, Contractor and Agency have entered into an agreement dated \_\_\_\_\_ and identified by one or more of the following:

State Solicitation Name: \_\_\_\_\_  
State Solicitation No.: \_\_\_\_\_  
State Contract No. \_\_\_\_\_

Which agreement is by reference made a part hereof, and is hereinafter referred to as the **Contract**.

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Agency for the full and faithful performance of the Contract, which is incorporated herein by reference.

2. If the Contractor performs the Contract, the Surety and the Contractor have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

3. The Surety's obligation to fulfill its duties under this Bond shall arise after:

3.1 The Agency has notified the Contractor and the Surety at the above address that the Agency is considering declaring a Contractor Default and has requested a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the Agency, the

Contractor and the Surety agree, the Contractor may be allowed additional time to perform the Contract, but such an agreement shall not waive the Agency's right, if any, to subsequently declare a Contractor Default and formally terminate the Contractor's right to complete the Contract; or

3.2 The Agency has declared a Contractor Default and formally terminated the Contractor's right to complete the Contract.

4. The Surety shall, within fifteen days after receipt of notice of the Agency's declaration of a Contractor Default, and at the Surety's sole expense, take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Agency, to perform and complete the Contract; or

4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Agency (reference S.C. Code Ann. § 11-35-1810) for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the Agency and the contractor selected with the Agency's concurrence, to be secured with a performance bond equivalent to the Bond issued on the Contract and executed by a surety meeting the Agency's requirements, and pay to the Agency the amount of damages as described in paragraph 7 in excess of the Balance of the Contract Sum incurred by the Agency resulting from a Contractor Default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and:

4.4.1 After investigation, determine the amount for which it may be liable to the Agency and, within sixty days of waiving its rights under this paragraph, tender payment thereof to the Agency; or

4.4.2 Deny liability in whole or in part and notify the Agency, citing to and explaining all reasons therefore.

5. Provided Surety has proceeded under paragraphs 4.1, 4.2, or 4.3, the Agency shall pay the Balance of the Contract Sum, when due, to either:

5.1 Surety in accordance with the terms of the Contract; or

5.2 Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

5.3 The Balance of the Contract Sum due either the Surety or another contractor shall be reduced by the amount of damages as described in paragraph 7.

6. If the Surety does not proceed expeditiously as provided in paragraph 4, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of written notice from the Agency to the Surety demanding that the Surety perform its obligations under this Bond, and the Agency shall be entitled to enforce any remedy available to the Agency.

6.1 If the Surety proceeds as provided in paragraph 4.4, and the Agency refuses the payment tendered or the Surety has denied liability, in whole or in part, then without further notice the Agency shall be entitled to enforce any remedy available to the Agency.

7. After the Agency has terminated the Contractor's right to complete the Contract, and if

the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Agency shall be those of the Contractor under the Contract, and the responsibilities of the Agency to the Surety shall those of the Agency under the Contract. To the limit of the amount of this Bond, but subject to commitment by the Agency of the Balance of the Contract Sum to mitigation of costs and damages on the Contract, the Surety is obligated to the Agency for:

7.1 The responsibilities of the Contractor for correction of defective Work and completion of the Contract; and

7.2 Additional legal, design, and delay costs resulting from a Contractor Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and

7.3 Damages caused by delayed performance or non-performance by the Contractor.

8. The Surety shall not be liable to the Agency or others for obligations of the Contractor that are unrelated to the Contract, and the Balance of the Contract Sum shall not be reduced or set-off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Agency or its heirs, executors, administrators, or successors.

9. Definitions

9.1 Balance of the Contract Sum means the total amount payable by the Agency to the Contractor under the Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts to be received by the Agency in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.

9.2 Contractor Default means a failure of the Contractor, which has neither been remedied nor waived in writing by the authorized Agency representative, to perform the Contract or otherwise to comply with the terms of the Contract.

9.3 Work shall have the meaning that term is given by the Contract.

\* \* \* \* \*

10. Surety, for the value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to work to be performed thereunder or the specifications accompanying same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension

of time, alteration or addition to the terms of the contract or to the work or to the specifications.

11. This bond, any dispute relating to this bond, 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.

12. All disputes relating to this bond 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. Surety may join in any proceeding brought under the Contract and shall be bound by the results thereof. Surety agrees that any act by either the Agency or the State of South Carolina regarding this bond is not a waiver of either the Agency's or the State of South Carolina's sovereign

immunity or immunity under the Eleventh Amendment of the U.S. Constitution.

13. Agency and Surety consent that any process necessary or proper for the initiation or continuation of any administrative proceedings relating to this bond may be served by certified mail addressed to the address shown on the signature page. Process is deemed complete upon deposit with the United States Postal Service. Notice to the Surety, the Agency or the Contractor shall be mailed or delivered to the address shown on the signature page. Notice shall be deemed to have been made upon deposit with the United States Postal Service or upon actual delivery if delivery is made by hand.

14. In the event of Surety's default on its obligations under this bond, Agency may recover from the Surety all costs, including reasonable attorney's fees, expenses and costs, incurred in enforcing the bond or collecting any amounts due Agency.

**IN WITNESS WHEREOF**, Surety and Contractor, intending to be legally bound hereby, subject to the terms stated herein, do each cause this Performance Bond to be duly signed and sealed on its behalf by its authorized officer, agent or representative.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_, BOND NUMBER \_\_\_\_\_  
*(shall be no earlier than date of contract formation, usually date of the final Statement of Award)*

CONTRACTOR

SURETY

By: \_\_\_\_\_  
(Seal)

By: \_\_\_\_\_  
(Seal)

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

**(Power of Attorney MUST be attached.)**

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

*(Additional Signatures, if any, appear on attached page)*

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# Appendix Y

## Standard Purchase Order Clause Set (DEC 2015)

### SOUTH CAROLINA PURCHASE ORDER CLAUSE SET (DEC 2015)

**AGREEMENT** means any transaction or agreement arising out of, relating to, or contemplated by the relationship of which this purchase order forms a part. The terms and conditions of this document (including the attached purchase order) shall apply notwithstanding any additional or different terms and conditions in any invoice or other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice, confirmation, or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

**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 restricts transfers by operation of law.

**CHOICE-OF-LAW:** 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. The UN Convention on the International Sale of Goods shall not apply to this agreement.

**CONTRACTOR:** means the business entering the contract of which this purchase order forms a part.

**CONTRACTOR PERSONNEL:** You shall enforce strict discipline and good order among your employees and other persons carrying out the Work. You shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**CONTRACTOR'S USE OF STATE PROPERTY:** 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 you. You 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.

**CONTRACTOR'S OBLIGATION - GENERAL:** You 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. You must act as the prime contractor and assume full responsibility for any subcontractor's performance. You 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.

**DELIVERY / PERFORMANCE LOCATION:** F.O.B. Destination. Destination is the shipping dock of the State's designated receiving site, or other location, as specified herein. All services shall be provided at the location specified herein.

**DISPUTES:** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. (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 addressed to Contractor at the address provided on the last invoice received by State from Contractor 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.

**DRUG FREE WORK PLACE CERTIFICATION:** You certify that you 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.

**ILLEGAL IMMIGRATION:** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By accepting this purchase order, 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. 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.

**IRAN DIVESTMENT ACT - CERTIFICATION:** (a) The Iran Divestment Act List is a list published pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at [procurement.sc.gov](http://procurement.sc.gov)(.) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By accepting this purchase order, you certify

that, as of the date you accept, you are not on the then-current version of the Iran Divestment Act List.

**ETHICS CERTIFICATE:** By accepting this purchase order, you certify that you have and will comply with, and have 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 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.

**INDEMNIFICATION-THIRD PARTY CLAIMS - GENERAL (NOV 2011):** Without limitation, 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 a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

**LICENSES AND PERMITS:** You are 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 of South Carolina, county, city or other government entity or unit to accomplish the Work.

**MATERIAL AND WORKMANSHIP:** Unless otherwise specifically provided in the purchase order, all equipment, material, and articles incorporated in the Work are to be new and of the most suitable grade for the purpose intended.

**NO INDEMNITY OR DEFENSE (FEB 2015):** Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason.

**OWNERSHIP OF DATA & MATERIALS:** All data, material and documentation prepared for the State pursuant to this Agreement shall belong exclusively to the State.

**PAYMENT & INTEREST:** (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. (b) Unless otherwise agreed, payment will be made by check mailed to the address appearing on the purchase order form. (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.

**PROCUREMENT OFFICER** means the person executing this purchase order or the State's procurement director.

**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.

**STATE** means the governmental unit identified in the purchase order.

**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 therefore. 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.

**YOU and YOUR** means Contractor.

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

[07-07C010-3

# Appendix Z

## Compendium Change Log (SEP 2017)

### EXPLANATION OF COLUMNS

**Column 1 –Date:** Date the change became effective in SCEIS. Date format is YYYYMMDD. There are banner rows for each year.

**Column 2 – SCEIS Clause Number:** This column provides an abbreviated version of the SCEIS Clause Number, a unique designation used by SCEIS to identify the clause. The numbers in this column contain three pieces of information. The first number (and letter, if Part 2 or Part 7) indicates the part of the Uniform Solicitation Format in which the clause appears. The next three digits identify the clause itself, within the USF Part. The suffix, following the dash character, serves special purposes within SCEIS such as versioning or ordering of clauses. Thus, Clause No. 1005-1 appears in part 1 of the solicitation; Clause No. 7B100-2 appears in part 7B of the solicitation; and so forth.

**Columns 3 and 4 – Delete/Add:** Identifies changes by Clause Title and (Date).

**Column 5 – Explanation:** This column contains a brief description of the change. Where appropriate, there is a cross-reference to other clause(s) related to the change.

**Column 6 – Comments:** Additional information about the change.

<i>Date</i>	<i>Number</i>	<i>Delete</i>	<i>Add</i>	<i>Explanation</i>	<i>Comments</i>
2017					
20170907	9020-2		PURCHASE ORDER ATTACHMENT - ACCEPTANCE OF OFFERS 10% BELOW STATEWIDE TERM CONTRACT PRICE (APR 2015)	Collects State Vendor No. vice federal TIN	
20170907	9020-1	PURCHASE ORDER ATTACHMENT - ACCEPTANCE OF OFFERS 10% BELOW STATEWIDE TERM CONTRACT PRICE (NOV 2012)		Superseded by 0920-2	
20170630	2A097-1		QUESTIONS FROM OFFERORS - AMENDMENT (JUN 2017)	For amendments responding to vendor questions	

## Appendix Z, cont'd

<i>Date</i>	<i>Number</i>	<i>Delete</i>	<i>Add</i>	<i>Explanation</i>	<i>Comments</i>
2016					
20160121	3090-3		ADMINISTRATIVE SERVICES FEE - COLLECTION AND REPORTING (JAN 2016)	Revised minimum reporting amount in paragraph (b)	
20160121	3090-2	ADMINISTRATIVE SERVICES FEE - COLLECTION AND REPORTING (JUN 2015)		Superseded by 3090-3	
20160104	9005-3		NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING	Corrected URL for DOR links	
20160104	9005-2	NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING		Superseded by 9005-3	
20160104	7C010-3		STANDARD PURCHASE ORDER CLAUSE SET (DEC 2015)	Revised to delete reference to Budget & Control Board	
20160104	7C010-2	STANDARD PURCHASE ORDER CLAUSE SET (MAR 2015)		Superseded by 7C010-3	
20160104	7B225-3		STATEWIDE TERM CONTRACT (DEC 2015)	Added paragraph (d) RE remedies for violation	
20160104	7B225-2	STATEWIDE TERM CONTRACT (FEB 2015)		Superseded by 7B225-3	
20160104	4015-3		MINORITY PARTICIPATION (DEC 2015)	Revised to reflect reorganization of Department of Administration, Division of Small and Minority Business Contracting and Certification pursuant to Restructuring Act of 2014	
20160104	4015-2	MINORITY PARTICIPATION (JAN 2006)		Superseded by 4015-3	
20160104	3045-1	DELIVERY DATE -- PURCHASE ORDER (JAN 2006)		Clause renumbered to appear in alphabetical order	No change to clause text or date
20160104	3038-1		DELIVERY DATE -- PURCHASE ORDER (JAN 2006)	Clause renumbered to appear in alphabetical order	No change to clause text or date
20160104	3037-1		DELIVERY DATE -- 30 DAYS ARO (JAN 2006)	Clause renumbered to appear in alphabetical order	No change to clause text or date
20160104	3025-1	DELIVERY DATE -- 30 DAYS ARO (JAN 2006)		Clause renumbered to appear in alphabetical order	No change to clause text or date

## Appendix Z, cont'd

<i>Date</i>	<i>Number</i>	<i>Delete</i>	<i>Add</i>	<i>Explanation</i>	<i>Comments</i>
20160104	2B015-2		AUTHORITY APPROVAL REQUIRED (DEC 2015)	Revised to substitute SFAA for Budget & Control Board	
20160104	2B015-1	BOARD APPROVAL REQUIRED (JAN 2006)		Superseded by 2B015-2	
20160104	2A077-2		IRAN DIVESTMENT ACT - CERTIFICATION (DEC 2015)	Revised to substitute SFAA for Budget & Control Board	
20160104	2A077-1	IRAN DIVESTMENT ACT - CERTIFICATION (JAN 2015)		Superseded by 2A077-2	
20160104	2A030-3		AUTHORITY AS PROCUREMENT AGENT (DEC 2015)	Revised to substitute SFAA for Budget & Control Board	
20160104	2A030-2	BOARD AS PROCUREMENT AGENT (FEB 2015)		Superseded by 2A030-3	
20160104	2A003-3		DEFINITIONS, CAPITALIZATION, AND HEADINGS (DEC 2015)	Revised to substitute SFAA for Budget & Control Board	
20160104	2A003-2	DEFINITIONS, CAPITALIZATION, AND HEADINGS (FEB 2015)		Superseded by 2A003-3	
<b>2015</b>					
20150820	7A053-1		OPEN TRADE (JUN 2015)	Required by § 11-35-5300 (2015 Act. No. 63, § 1)	
20150820	2A083-1		OPEN TRADE REPRESENTATION (JUN 2015)	Required by § 11-35-5300 (2015 Act. No. 63, § 1)	
20150622	3090-2		ADMINISTRATIVE SERVICES FEE – CALCULATION –SPO (JUN 2015)	Editorial revisions to Clause No. 3090-1	
20150622	3090-1	ADMINISTRATIVE SERVICES FEE – CALCULATION –SPO (JUN 2015)		Superseded by 3090-2	
20150612	3099-1		ADMINISTRATIVE SERVICES FEE – CALCULATION – PER PAGE PRINTERS (JUN 2015)	With Clause No. 3090-1, supersedes clause titled “Fee for Administrative Services (AUG 2014)	
20150612	3098-1		ADMINISTRATIVE SERVICES FEE – CALCULATION – PER PAGE COPIERS (JUN 2015)	With Clause No. 3090-1, supersedes clause titled “Fee for Administrative Services (AUG 2014)	

Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20150612	3097-1		ADMINISTRATIVE SERVICES FEE – CALCULATION – FUEL (JUN 2015)	With Clause No. 3090-1, supersedes clause titled “Fee for Administrative Services (AUG 2014)	
20150612	3096-1		ADMINISTRATIVE SERVICES FEE – CALCULATION –SPO (JUN 2015)	With Clause No. 3090-1, supersedes clause titled “Fee for Administrative Services (AUG 2014)	
20150612	3095-1		ADMINISTRATIVE SERVICES FEE – CALCULATION –ITMO (JUN 2015)	With Clause No. 3090-1, supersedes clause titled “Fee for Administrative Services (AUG 2014)	
20150612	3090-1		ADMINISTRATIVE SERVICES FEE – COLLECTION AND REPORTING (JUN 2015)	Supersedes clause titled “Fee for Administrative Services (AUG 2014)	
20150612		FEE FOR ADMINISTRATIVE SERVICES (AUG 2014)		Superseded by 3090-1 and sub-clauses	Restructured for Document Builder
20150612	7B015-1	ADMINISTRATIVE FEE -- ITMO (JAN 2006)			Previously retired; now deleted from SCEIS
20150612	7B020-1	FEE FOR ADMINISTRATIVE SERVICES -- RECEIPTS - SPO (OCT 2007)			Previously retired; now deleted from SCEIS
20150612	7B020-1	FEE FOR ADMINISTRATIVE SERVICES - RECEIPTS - SPO (OCT 2007)			Previously retired; now deleted from SCEIS
20150612	7B050-2	CONTRACT REPORTING REQUIREMENTS (AUG 2012): INFORMATION TECHNOLOGY MANAGEMENT OFFICE (ITMO) MONTHLY REPORTING REQUIREMENTS			Previously retired; now deleted from SCEIS
20150605	2A105-2		RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)	Revised clause	Added language required by Reg. 19-445.2077(D)
20150605	2A105-1	RESPONSIVENESS/IMPROPER OFFERS (JAN 2004)		Retired and superseded by 2A105-2	
20150605	9020-2		PURCHASE ORDER ATTACHMENT - ACCEPTANCE OF OFFERS 10% BELOW STATEWIDE	Revised form	Deleted requirement for FEIN

Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
			TERM CONTRACT PRICE (APR 2015)		
20150605	9020-1	PURCHASE ORDER ATTACHMENT - ACCEPTANCE OF OFFERS 10% BELOW STATEWIDE TERM CONTRACT PRICE		Retired and superseded by 9020-2	
20150420	A305-1		[Notice of posting award]	New clause	See Compendium guidance RE extension notices
20150420	A225-1	[Reinstatement Notice]		Not necessary	See Compendium guidance RE award statements
20150420	7C010-2		STANDARD PURCHASE ORDER CLAUSE SET (MAR 2015)	Supersedes Nov 2007 version	
20150420	7C010-1	STANDARD PURCHASE ORDER CLAUSE SET (NOV 2007)		Retired and superseded by 7C010-2	
20150420	5015-2		QUALIFICATIONS – REQUIRED INFORMATION (MAR 2015)	Supersedes Jan 2006 version	
20150420	5015-1	QUALIFICATIONS – REQUIRED INFORMATION (JAN 2006)		Retired and superseded by 5015-2	
20150420	5010-2		QUALIFICATIONS - SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2015)	Supersedes Jan 2006 version	Rewritten
20150420	5010-1	QUALIFICATIONS – MANDATORY MINIMUM (JAN 2006)		Retired and superseded by 5010-2	
20150420	5005-2		QUALIFICATION OF OFFEROR (MAR 2015)	Supersedes Jan 2006 version	Included language RE corporate subsidiaries
20150420	5005-1	QUALIFICATION OF OFFEROR (JAN 2006)		Retired and superseded by 5005-2	
20150420	4030-2		SUBMITTING REDACTED OFFERS (MAR 2015)	Supersedes Feb 2007 version	
20150420	4030-1	SUBMITTING REDACTED OFFERS (FEB 2007)		Retired and superseded by 4030-2	
20150420	4010-2		INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (MAR 2015)	Supersedes Jan 2006 version	Revised to replace “pages 3 and 4”

Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20150420	4010-1	INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (JAN 2006)		Retired and superseded by 4010-2	
20150420	2B105-2		ON-LINE BIDDING INSTRUCTIONS (MAR 2015)	Supersedes Nov 2007 version	To replace “pages 3 and 4”
20150420	2B105-1	ON-LINE BIDDING INSTRUCTIONS (NOV 2007)		Retired and superseded by 2B105-2	
20150420	2B070-2		ELECTRONIC COPIES – REQUIRED MEDIA AND FORMAT (MAR 2015)	Supersedes Jan 2006 version	
20150420	2B070-1	MAGNETIC MEDIA– REQUIRED FORMAT (JAN 2006):		Retired and superseded by 2B070-2	
20150420	2A130-2		SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015)	Supersedes Jan 2004 version	To replace “pages 3 and 4”
20150420	2A130-1	SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004)		Retired and superseded by 2A130-2	
20150420	2A045-1	COMPLETION OF FORMS / CORRECTION OF ERRORS (JAN 2006)		Deleted; substance moved to new clause 2A130-2	
20150203	9035-1		SOFTWARE TABLE (FEB 2015)	New	Form to be attached if clause no. 7B224-1 is used
20150203	9030-1		SOUTH CAROLINA STANDARD AMENDMENT TO END USER LICENSE AGREEMENTS FOR COMMERCIAL OFF-THE-SHELF SOFTWARE - SINGLE AGENCY (FEB 2015)	New	Form to be attached if clause no. 7B224-1 is used
20150203	9025-1		SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE (FEB 2015)	New	Form to be attached if clause nos. 4027-1 and 7B217-1 are used
20150203	7C010-2		STANDARD PURCHASE ORDER CLAUSE SET (FEB 2015)	Supersedes Nov 2007 version	Added Iran Divestment Act and Illegal Immigration clauses
20150203	7C010-1	STANDARD PURCHASE ORDER CLAUSE SET (NOV 2007)		Retired and superseded by 7C010-2	
20150203	7B225-2		STATEWIDE TERM CONTRACT (FEB 2015)	Supersedes Jan 2006 version	

Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20150203	7B225-1	STATEWIDE TERM CONTRACT (JAN 2006)		Retired and superseded by 7B225-2	
20150203	7B224-1		SOFTWARE LICENSING AGREEMENTS--SINGLE SOLICITATION (FEB 2015)	New clause	
20150203	7B223-2		SOFTWARE LICENSING AGREEMENTS FOR STATEWIDE TERM CONTRACTS (FEB 2015)	Supersedes Sep 2008 version	
20150203	7B223-1	SOFTWARE LICENSING AGREEMENTS FOR COTS (SEP 2008)		Retired and superseded by 7B223-2	
20150203	7B217-1		SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015)	New clause	
20150203	7B212-1		RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015)	New clause	
20150203	7B195-1	PRIVACY -- WEB SERVICES (JAN 2006)		Retired	
20150203	7B122-1		OFFSHORE CONTRACTING PROHIBITED (FEB 2015)	New clause	
20150203	7B110-1		INFORMATION USE AND DISCLOSURE -- STANDARDS (FEB 2015)	New clause	
20150203	7B108-1		INFORMATION USE AND DISCLOSURE (FEB 2015)	New clause	
20150203	7B106-1		INFORMATION SECURITY -- LOCATION OF DATA (FEB 2015)	New clause	
20150203	7B105-1		INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)	New clause	Basic data security provisions
20150203	7B104-1		INFORMATION SECURITY - DEFINITIONS (FEB 2015)	New clause	Definitional foundation for all information security clauses
20150203	7B103-1		INDEMNIFICATION- INTELLECTUAL PROPERTY (FEB 2006)	Clause renumbered from 7B105-1; no changes to text or guidance	

Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20150203	7B102-1		INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015)	New clause	For use in contracts with contractor access to sensitive information
20150203	7B100-2		INDEMNIFICATION – THIRD PARTY CLAIMS –GENERAL (NOV 2011)	Title changed; no changes to text or guidance	
20150203	7B080-2		DEFAULT – SHORT FORM (FEB 2015)	Supersedes Jan 2006 version	Clarifies requirement of materiality
20150203	7B080-1	DEFAULT – SHORT FORM (JAN 2006)		Retired and superseded by 7B080-2	
20150203	7B058-1		CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015)	New clause	Consider for use with information security clauses
20150203	7B056-2		CONTRACTOR'S LIABILITY INSURANCE – GENERAL (FEB 2015)	Supersedes Mar 2013 version	Changed title; correct paragraph numbering
20150203	7B056-1	CONTRACTOR'S LIABILITY INSURANCE (MAR 2013)		Retired and superseded by 7B080-2	
20150203	7B042-1		CONTRACT DOCUMENTS & ORDER OF PRECEDENCE– SOFTWARE LICENSING– SINGLE AGENCY (FEB 2015)	New clause	Use if solicitation includes clause 7B224-1
20150203	7B007-1		BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015)	New clause	Optional; for use with information security clauses
20150203	7A070-1	SETOFF (JAN 2006)		Retired; portion incorporated into clause 7A055-3	
20150203	7A055-3		PAYMENT & INTEREST (FEB 2015)	Supersedes May 2011 version	Provides default payment method by check mailed to address on “page two;” incorporates part of former setoff provision
20150203	7A055-2	PAYMENT & INTEREST (MAY 2011)		Retired and superseded by 7A055-3	
20150203	7A045-2		NO INDEMNITY OR DEFENSE (FEB 2015)	Supersedes Jan 2006 version	
20150203	7A045-1	NON-INDEMNIFICATION (JAN 2006)		Retired and superseded by 7A045-2	

Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20150203	7A015-2		CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (FEB 2015)	Supersedes Jan 2006 version	
20150203	7A015-1	CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (JAN 2006)		Retired and superseded by 7A015-2	
20150203	7A005-2		BANKRUPTCY – GENERAL (FEB 2015)	Supersedes 7A005-1	
20150203	7A005-1	BANKRUPTCY (JAN 2006)		Retired and superseded by 7A005-2	
20150203	7A004-2		ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015)	Supersedes 7A004-1	
20150203	7A004-1	ASSIGNMENT (JAN 2006)		Retired and superseded by 7A004-2	
20150203	6059-1		DISCUSSIONS AND NEGOTIATIONS – REQUIRED (FEB 2015)	New clause for optional use in RFPs	May be used in place of clause 6058-1
20150203	6058-1		DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (FEB 2015)	New clause, mandatory for use in RFPs unless replaced with 6059-1	
20150203	5030-2		SUBCONTRACTOR – IDENTIFICATION (FEB 2015)	Supersedes 5030-1	Mandatory for use with Information Security provisions
20150203	5030-1	SUBCONTRACTOR – IDENTIFICATION (JAN 2006)		Retired and superseded by 5030-2	
20150203	4027-1		SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE - REQUIRED (FEB 2015)	New clause	To be used with clause 7B217 and attachment 9025
20150203	2B110-2		OPENING PROPOSALS – INFORMATION NOT DIVULGED (FEB 2015)	Supersedes 2B110-1	
20150203	2B110-1	OPENING PROPOSALS – PRICES NOT DIVULGED (JAN 2006)		Retired and superseded by 2B110-2	
20150203	2B060-1	DISCUSSIONS AND NEGOTIATIONS (NOV 2007)		Retired and superseded by 6058-1 or 6059-1	
20150203	2B040-2		CONTENTS OF OFFER (RFP) (FEB 2015)	Supersedes Jan 2006 version AND 2B035-1	
20150203	2B040-1	CONTENTS OF OFFER (RFP) – SPO (JAN 2006)		Retired and superseded by 2B040-2	

## Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20150203	2B035-1	CONTENTS OF OFFER (RFP) – ITMO (JAN 2006)		Retired and superseded by 2B040-2	
20150203	2B020-2		CONFERENCE – PRE-BID/PROPOSAL – MANDATORY (FEB 2015)	Supersedes Jan 2006 version	
20150203	2B020-1	CONFERENCE – PRE-BID/PROPOSAL – MANDATORY (JAN 2006)		Retired and superseded by 2B020-2	
20150203	2A125-2		SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015)	Supersedes Aug 2002 version	Revised last sentence to make clear indemnity runs to all State agencies
20150203	2A125-1	SUBMITTING CONFIDENTIAL INFORMATION (AUG 2002)		Retired and superseded by 2A125-2	
20150203	2A110-1		RESTRICTIONS APPLICABLE TO OFFERORS (FEB 2004)	Retired and superseded by 2A087-1	
20150203	2A095-2		QUESTIONS FROM OFFERORS (FEB 2015)	Supersedes Jan 2004 version	Changes date by which questions must be submitted
20150203	2A095-1	QUESTIONS FROM OFFERORS (JAN 2004)		Retired and superseded by 2A095-2	
20150203	2A087-1		PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)	New clause; replaces 2A110-1 (Jan 2004)	
20150203	2A070-2		DUTY TO INQUIRE (FEB 2015)	Supersedes Jan 2004 version	Revised to provide that an ambiguity will be interpreted as requiring greater quantity or better quality
20150203	2A070-1	DUTY TO INQUIRE (JAN 2004)		Retired and superseded by 2A070-2	
20150203	2A047-2		DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015)	Supersedes May 2011 version	
20150203	2A047-1	DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (MAY 2011)		Retired and superseded by 2A047-2	
20150203	2A030-2		BOARD AS PROCUREMENT AGENT (FEB 2015)	Supersedes Jan 2004 version	Removed section explaining authority of procurement officer, which is in new clause 2A007-1
20150203	2A030-1	BOARD AS PROCUREMENT AGENT (JAN 2004)		Retired and superseded by 2A030-2	

Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20150203	2A010-2		AWARD NOTIFICATION (FEB 2015)	Supersedes Nov 2007 version	
20150203	2A010-1	AWARD NOTIFICATION (NOV 2007)		Retired and superseded by 2A010-2	
20150203	2A007-1		AUTHORIZED AGENT (FEB 2015)	New clause	Formerly part of clause 2A030-1
20150203	2A003-2		DEFINITIONS (FEB 2015)	Supersedes Jan 2006 version	Deletes "Buyer" and "Ordering Entity;" revises "Contract Modification," "Procurement Officer," "Subcontractor," and "Work."
20150203	2A003-1	DEFINITIONS (JAN 2006)		Retired and superseded by 2A003-2	
20150203	1025 1040 2A005 2A050 2A085 2A120 2B005 2B020 2B025 2B030 2B110 2B120 2B122 2B145 2B165 3003 4005 4030 6025 6060 7A025 7B155 7B205 7B255 7C005 A275			As part of the release of version 2.0 of the Compendium, a number of non-substantive editorial changes or corrections were made to existing clauses and/or their guidance.	
20150105	7B245-2		TERM OF CONTRACT – OPTION TO RENEW (FEB 2015)	Required by Iran Divestment Act of 2014	

## Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20150105	7B245-1	TERM OF CONTRACT – OPTION TO RENEW (JAN 2006)		Retired and superseded by 7B245-2	
20150105	7A072-1		IRAN DIVESTMENT ACT – ONGOING OBLIGATIONS – (JAN 2015)	Required by Iran Divestment Act of 2014	
20150105	2A077-1		IRAN DIVESTMENT ACT - CERTIFICATION (JAN 2015)	Required by Iran Divestment Act of 2014	
<b>2014</b>					
201408xx			FEE FOR ADMINISTRATIVE SERVICES (AUG 2014)	Uniform clause for ITMO and SPO	Five options; not added to SCEIS
201408xx	7B015-1	ADMINISTRATIVE FEE -- ITMO (JAN 2006)		Retired and superseded by Aug 2014 uniform version	Not deleted from SCEIS
201408xx	7B020-1	FEE FOR ADMINISTRATIVE SERVICES -- RECEIPTS - SPO (OCT 2007)		Retired and superseded by Aug 2014 uniform version	Not deleted from SCEIS
201408xx	7B020-1	FEE FOR ADMINISTRATIVE SERVICES - RECEIPTS - SPO (OCT 2007)		Retired and superseded by Aug 2014 uniform version	Not deleted from SCEIS
201408xx	7B050-2	CONTRACT REPORTING REQUIREMENTS (AUG 2012): INFORMATION TECHNOLOGY MANAGEMENT OFFICE (ITMO) MONTHLY REPORTING REQUIREMENTS		Retired and superseded by Aug 2014 uniform version	Not deleted from SCEIS
<b>2013</b>					
201307xx	A410-1	PROTEST - CPO ADDRESS – ITMO (JAN 2008)		Retired and superseded by Jul 2013 version	
201307xx	A410-2		PROTEST - CPO ADDRESS – ITMO (JUL 2013)	Supersedes Jan 2008 version	Changed ITMO Protest Address to Suite 601 (vice 430), 1201 Main St.; clause number not changed
20130114	7B055-1	CONTRACTOR'S LIABILITY INSURANCE (JAN 2006)		Retired and superseded by 7B056-1	Clause marked "expired"
20130114	7B056-1		CONTRACTOR'S LIABILITY INSURANCE (MAR 2013)	Supersedes 7B055-1	Revised to reflect changes in insurance industry
<b>2012</b>					
20121114	7B010-1	ACCEPTANCE OF OFFERS 10% BELOW PRICE (JAN 2006)		Retired and superseded by 7B227-1	Clause marked "expired"

Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20121114	7B227-1		STATEWIDE TERM CONTRACT - ACCEPTANCE OF OFFERS 10% BELOW PRICE (NOV 2012)	Supersedes 7B010-1	Implements the Purchase Order Attachment (0920)
20121114	9020-1		PURCHASE ORDER ATTACHMENT - ACCEPTANCE OF OFFERS 10% BELOW STATEWIDE TERM CONTRACT PRICE		New form to facilitate compliance with the statutory rules governing acceptance of offers 10% below statewide term contract price
20121012	2A040-1	CODE OF LAWS AVAILABLE (JAN 2006)		Retired and superseded by new clause 2A040-2	Clause marked "expired"
20121012	2A040-2		CODE OF LAWS AVAILABLE (JAN 2006)	Supersedes 2006 version	Changed URL link to Code and Regulations; date in title unchanged
20121012	2A120-1	STATE OFFICE CLOSINGS (JAN 2004)		Retired and superseded by new clause 2A120-2	Clause marked "expired"
20121012	2A120-2		STATE OFFICE CLOSINGS (JAN 2004)	Supersedes 2004 version	Changed URL link to State severe weather alert page; date in title unchanged
20120814	7B050-1	CONTRACT REPORTING REQUIREMENTS (JAN 2006)		Retired and superseded by new clause 7B050-2	Clause marked "expired"
20120814	7B050-2		CONTRACT REPORTING REQUIREMENTS (AUG 2012): Information Technology Management Office (ITMO) Monthly Reporting Requirements	Supersedes 2006 version	
<b>2011</b>					
20111122	7B100-1	INDEMNIFICATION-THIRD PARTY CLAIMS (JAN 2006)		Superseded November 2011 by clause 7B100-2	Clause marked "expired"
20111122	7B100-2		INDEMNIFICATION-THIRD PARTY CLAIMS (NOV 2011)	Supersedes January 2006 clause 7B100-1	
20110601	2A047-1		DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (MAY 2011)	New clause	
20110601	7A055-1	PAYMENT (JAN 2006)		Superseded May 2011 by clause 07A055-2	Clause marked "expired"
20110601	7A055-2		PAYMENT & INTEREST (MAY 2011)	Supersedes January 2006 clause 07A055-1	
<b>2009</b>					

Appendix Z, cont'd

<i>Date</i>	<i>Number</i>	<i>Delete</i>	<i>Add</i>	<i>Explanation</i>	<i>Comments</i>
20090901	2B111-1		PREFERENCES - A NOTICE TO VENDORS (SEP 2009)	New clause	
20090901	2B112-1		PREFERENCES - SC/US END-PRODUCT (SEP 2009)	New clause	
20090901	2B113A-1		PREFERENCES - RESIDENT CONTRACTOR PREFERENCE (SEP 2009)	New clause	
20090901	2B113B-1		PREFERENCES - RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009)	New clause	
20090901	2B114-1		PREFERENCES - RESIDENT VENDOR PREFERENCE (SEP 2009)	New clause	
20090901	7B236-1		SUBSTITUTIONS PROHIBITED - END PRODUCT PREFERENCES (SEP 2009)	New clause	
20090901	7B237-1		SUBCONTRACTOR SUBSTITUTION PROHIBITED - RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009)	New clause	
<b>2008</b>					
20081201	7B097-1		ILLEGAL IMMIGRATION (NOV 2008)	New clause	
20081118	01-001-1 01-005-1 01-010-1 01-012-1	MMO Cover Page CIO Cover Page CIO Cover Page-Online Agency Cover Page		Separate cover page forms superseded by single form no. 01-000-1	
20081118	01-000-1		Cover Page	Supersedes separate cover page forms; DocBuilder designates purchasing entity based on answer file	
20080825	7B223-1		SOFTWARE LICENSING AGREEMENTS FOR COTS (SEPT 2008)	For State term contracts (multiple agencies) only	Need clause for single-agency EULAs
20080717	2A032-1		CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)	New clause	
20080708	6070-1	NEGOTIATIONS (JAN 2006)		Deleted	Clause marked "expired"

Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20080501	2A075-1	ETHICS ACT (JAN 2004)		Superseded May 2008 by clause 2A075-2	
	2A075-2		ETHICS CERTIFICATE (MAY 2008)	Supersedes January 2004 clause 2A075-1	
20080117	A100-2	(Protest Address-MMO)		Superseded January 2008 by A420-1	
20080117	A420-1		(Protest Address-MMO)	Component of standard award statement; supersedes A100-2	
20080117	A100-3	(Protest Address-ITMO)		Superseded January 2008 by A410-1	
20080117	A410-1		(Protest Address-ITMO)	Component of standard award statement; supersedes A100-3	
20080117	A100-1 A110-3 A130-1 A140-1 A150-1 A160-1  A300-1 A400-1		(State of South Carolina) (Statement of Award) (Posting Date) Notice Of Intent To Award Final Statement of Award (No Work Prior to Purchase Order) Review Period Extension Protest Notice	Components of standard award statement	
20080115	2A135-1	TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2004)		Superseded January 2008 by clause 2A135-1	Clause <i>not</i> marked "expired"
20080115	2A135-1		TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)	Supersedes January 2004 clause 2A135-1	Clause number not changed
<b>2007</b>					
20071105	2A010-1	AWARD NOTIFICATION (JUN 2006)		Superseded November 2007 by clause 2A010-1	Legacy clause language deleted
20071105	2A010-1		AWARD NOTIFICATION (NOV 2007)	Supersedes June 2006 clause 2A010-1	Clause number not changed
20071105	2B055-1	DISCUSSIONS WITH BIDDERS (JAN 2006)		Superseded November 2007 by clause 2B055-1	Clause marked "expired"
20071105	2B055-1		CLARIFICATION (NOV 2007)	Supersedes January 2006 clause 2B055-1	Clause number not changed
20071105	2B060-1	DISCUSSIONS WITH OFFERORS (JAN 2006)		Superseded November 2007 by clause 2B060-1	Clause marked "expired"
20071105	2B060-1		DISCUSSIONS & NEGOTIATIONS (NOV 2007)	Supersedes January 2006 clause 2B060-1	Clause number not changed

## Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20071105	2B105-1	ON-LINE BIDDING INSTRUCTIONS (JAN 2006)		Superseded November 2007 by clause 2B105-1	Clause <i>not</i> marked "expired"
20071105	2B105-1		ON-LINE BIDDING INSTRUCTIONS (NOV 2007)	Supersedes January 2006 clause 2B105-1	Clause number not changed
20071016	7C005-1		BLANKET PURCHASE AGREEMENTS (NOV 2007)	New clause	
20071016	7C010-1		STANDARD PURCHASE ORDER CLAUSE SET (NOV 2007)	New clause; imported into Purchase Order if buyer selects	
20071015	1115-1 1120-1 1125-1 1130-1 1135-1 1140-1		Contract Header Contract Parties and Date Contract Recitals Contract Agreement Contract-Signatures Contract Boilerplate	New clause/form: Custom Contract Form elements	
20071001	7B020-1	FEE FOR ADMINISTRATIVE SERVICES -- SPO (JAN 2006)		Superseded October 2007 by clause 7B020-1	Clause <i>not</i> marked "expired;" fee of one (1%) percent
	7B020-1		FEE FOR ADMINISTRATIVE SERVICES - RECEIPTS - SPO (OCT 2007)	Supersedes January 2006 clause 7B020-1	Clause number not changed; fee of three-quarter (3/4 %) percent
20070810	9002-1		LIST OF ATTACHMENTS	New clause/form	
20070726			[AW-PO-SEC1-FORMS] [AW-PO-SEC2-CLAUSE] [AW-PO-SEC3-BLANK] [AW-PO-SEC3-FOOTER]	New clause/form: Purchase Order Form elements	
20070701	015-1	Page Two		Superseded June 2007 by forms nos. 01-015-1	
	015-1		Page Two	Current version, non-editable	
20070629	015-1		Page Two	Current version, editable	
20070614	3003-1		STATEMENT OF WORK (JUNE 2007)	New clause/form	
20070614	9005-1		NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING	Existing clause added to SCEIS database; replaced separate attachment	
20070614	STD EQ AGREEMENT		Standard Equipment Agreement	Full text of Standard Equipment Agreement	
20070614	9010-1		OFFEROR'S CHECKLIST (JUN 2007)	Existing clause added to SCEIS database; replaced separate attachment	

## Appendix Z, cont'd

<i>Date</i>	<i>Number</i>	<i>Delete</i>	<i>Add</i>	<i>Explanation</i>	<i>Comments</i>
20070614	A005	Cancellation of Award-CPO Order attached		Superseded by A205-1	
20070614	A205-1		Cancellation of Award-CPO Order attached	Supersedes A005	
20070614	A010	Cancellation of Award-Reference CPO Order		Superseded by A210-1	
20070614	A210-1		Cancellation of Award-Reference CPO Order	Supersedes A010	
20070614	A015	Award to single response		Superseded by A215-1	
20070614	A215-1		Award to single response	Supersedes A015	
20070614	A020	No award on some item(s)		Superseded by A220-1	
20070614	A220-1		No award on some item(s)	Supersedes A020	
20070614	A025	Reinstatement Notice		Superseded by A225-1	
20070614	A225-1		Reinstatement Notice	Supersedes A025	
20070614	A030	Resident Vendor Preference Applied		Superseded by A230-1	
20070614	A230-1		Resident Vendor Preference Applied	Supersedes A030	
20070614	A035	SC/US Made Preference Applied		Superseded by A235-1	
20070614	A235-1		SC/US Made Preference Applied	Supersedes A035	
20070614	A040	Suspension Notice		Superseded by A240-1	
20070614	A240-1		Suspension Notice	Supersedes A040	
20070614	A050	Certificate of Insurance Reminder		Superseded by A250-1	
20070614	A250-1		Certificate of Insurance Reminder	Supersedes A050	
20070614	A055	Maximum Contract Period		Incorporated into Award Statement	
20070614	A060	All Offers Non-Responsive		Superseded by A260-1	
20070614	A260-1		All Offers Non-Responsive	Supersedes A060	
20070614	A065	No Award-Funds Expired		Superseded by A265-1	
20070614	A265-1		No Award-Funds Expired	Supersedes A065	
20070614	A070	No Award-R.19-445.2065(b)		Superseded by A270-1	
20070614	A270-1		No Award-R.19-445.2065(b)	Supersedes A070	
20070614	A075	No Bids Received		Superseded by A275-1	
20070614	A275-1		No Bids Received	Supersedes A075	
20070614	A080	No Award-Price Excessive		Superseded by A280-1	
20070614	A280-1		No Award-Price Unreasonable	Supersedes A080	

## Appendix Z, cont'd

<b>Date</b>	<b>Number</b>	<b>Delete</b>	<b>Add</b>	<b>Explanation</b>	<b>Comments</b>
20070614	A085	No Award-Revise/Resolicit-R. 19-445.2065(B)		Superseded by A285-1	
20070614	A285-1		No Award-Revise/Resolicit-R. 19-445.2065(B)	Supersedes A085	
20070614	A090	Notice to Non-Responsive Offeror		Superseded by A290-1	
20070614	A290-1		Notice to Non-Responsive Offeror	Supersedes A090	
20070614	A095	Solicitation Cancelled- Reference to 2065 Determination		Omitted from June 2007 revisions	
20070511	8002-1		BIDDING SCHEDULE (NOV 2007)	New form	
20070201	4030-1		SUBMITTING REDACTED OFFERS (FEB 2007)	New clause	
<b>2006</b>					
20060614	9015-1		STANDARD EQUIPMENT AGREEMENT	Refers to separate terms to be attached to PO	
20060606	2A085-1	PROTESTS (JUNE 2004)		Superseded June 2006 by clause 2A085-1	Clause <i>not</i> marked "expired"
20060606	2A085-1		PROTESTS (JUNE 2006)	Supersedes June 2004 clause 2A085-1	Clause number not changed
20060601	2A003-1		DEFINITIONS (JAN 2006)	Renumbered from 2A055-1	
20060601	2B122-1	PROTEST -- CPO - MMO ADDRESS (JAN 2006)		Address change only	Clause <i>not</i> marked "expired"
20060601	2B122-2		PROTEST -- CPO - MMO ADDRESS (JUN 2006)	Changed address information to include email address and fax	

# Appendix AA

## List of Compendium Clauses (SEP 2017)

### EXPLANATION OF COLUMNS

**Column 1 – Clause #:** This column provides an abbreviated version of the SCEIS Clause Number, a unique designation used by SCEIS to identify the clause. The numbers in this column contain three pieces of information. The first number (and letter, if Part 2 or Part 7) indicates the part of the Uniform Solicitation Format in which the clause appears. The next three digits identify the clause itself, within the USF Part. The suffix, following the dash character, serves special purposes within SCEIS such as versioning or ordering of clauses. Thus, Clause No. 1005-1 appears in part 1 of the solicitation; Clause No. 7B100-2 appears in part 7B of the solicitation; and so forth.

**Column 2 – Title and (Date):** This column contains the Clause Title and Clause Date, as they appear in SCEIS. Unless modified, this is verbatim the information that will print in each solicitation that SCEIS generates.

**Column 3 – SCEIS:** For each clause, this column contains one of three possible “Inclusion Attributes:” “Automatic,” “Dialog,” or “Manual.” SCEIS selects clauses in three ways. Some are automatically inserted, like USF part headers and required boilerplate language. Automatic clauses may also be included based on whether you are generating an invitation for bids or an RFP; or whether the contract is solicited by SPO, ITMO, or a using agency. Dialog clauses are included by logic, depending on the answers the procurement officer gives to questions in the SCEIS dialog. Finally, Manual clauses are only included if manually selected by the procurement officers. Those three categories are indicated by “Automatic,” “Dialog,” or “Manual,” respectively, in the SCEIS column. For a list of only those clauses which are not included and must be added manually, refer to Appendix R – User-Selected Clauses.

<i>Clause #</i>	<i>Title and (Date)</i>	<i>SCEIS</i>
1001	<b>I. SCOPE OF SOLICITATION</b>	Automatic
1005-1	ACQUIRE SERVICES & SUPPLIES / EQUIPMENT (JAN 2006)	Dialog
1010-1	ACQUIRE SERVICES (JAN 2006)	Dialog
1015-1	ACQUIRE SUPPLIES / EQUIPMENT (JAN 2006)	Dialog
1020-1	BUDGET – DESIRED RANGE (JAN 2006)	Manual
1025-1	BUDGET ESTIMATE (JAN 2006)	Dialog
1030-1	BUDGET MAXIMUM (JAN 2006)	Dialog
1035-1	FUNDS NOT AVAILABLE (JAN 2006)	Manual
1040-1	MAXIMUM CONTRACT PERIOD -- ESTIMATED (JAN 2006)	Dialog
2A001	<b>II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS</b>	Automatic
2A003-2	DEFINITIONS, CAPITALIZATION, AND HEADINGS (DEC 2015)	Automatic
2A005-1	AMENDMENTS TO SOLICITATION (JAN 2004)	Automatic
2A007-1	AUTHORIZED AGENT (FEB 2015)	Automatic
2A010-2	AWARD NOTIFICATION (FEB 2015)	Automatic
2A015-1	BID / PROPOSAL AS OFFER TO CONTRACT (JAN 2004)	Automatic
2A020-1	BID ACCEPTANCE PERIOD (JAN 2004)	Automatic
2A025-1	BID IN ENGLISH & DOLLARS (JAN 2004)	Automatic

<b>Clause #</b>	<b>Title and (Date)</b>	<b>SCEIS</b>
2A030-3	AUTHORITY AS PROCUREMENT AGENT (DEC 2015)	Automatic
2A032-1	CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)	Automatic
2A035-1	CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)	Automatic
2A040-2	CODE OF LAWS AVAILABLE (JAN 2006)	Automatic
2A047-2	DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015)	Automatic
2A050-1	DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)	Automatic
2A065-1	DRUG FREE WORK PLACE CERTIFICATION (JAN 2004)	Automatic
2A070-2	DUTY TO INQUIRE (FEB 2015)	Automatic
2A075-2	ETHICS CERTIFICATE (MAY 2008)	Automatic
2A077-2	IRAN DIVESTMENT ACT - CERTIFICATION (DEC 2015)	Automatic
2A080-1	OMIT TAXES FROM PRICE (JAN 2004)	Automatic
2A083-1	OPEN TRADE REPRESENTATION (JUN 2015)	Automatic
2A085-1	PROTESTS (JUNE 2006)	Automatic
2A087-1	PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)	Automatic
2A090-1	PUBLIC OPENING (JAN 2004)	Automatic
2A095-2	QUESTIONS FROM OFFERORS (FEB 2015)	Automatic
2A097-1	QUESTIONS FROM OFFERORS - AMENDMENT (JUN 2017)	Manual
2A100-1	REJECTION/CANCELLATION (JAN 2004)	Automatic
2A105-2	RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)	Automatic
2A115-1	SIGNING YOUR OFFER (JAN 2004)	Automatic
2A120-3	STATE OFFICE CLOSINGS (JAN 2004)	Automatic
2A125-2	SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015)	Automatic
2A130-2	SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015)	Automatic
2A135-1	TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)	Automatic
2A145-1	VENDOR REGISTRATION MANDATORY (JAN 2006)	Automatic
2A150-1	WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)	Automatic
<b>2B001</b>	<b>II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS</b>	Automatic
2B005-1	SECTION NOT APPLICABLE INTENTIONALLY OMITTED	Dialog
2B010-1	BID BOND (JAN 2006)	Manual
2B015-2	AUTHORITY APPROVAL REQUIRED (DEC 2015)	Manual
2B020-2	CONFERENCE – PRE-BID/PROPOSAL – MANDATORY (FEB 2015)	Manual
2B025-1	CONFERENCE – PRE-BID/PROPOSAL (JAN 2006)	Dialog
2B030-1	CONTENTS OF OFFER - RFP - Solutions Based (JAN 2006)	Dialog
2B040-2	CONTENTS OF OFFER (RFP) (FEB 2015)	Dialog
2B045-1	DESCRIPTIVE LITERATURE – LABELLING (JAN 2006)	Dialog
2B050-1	DESCRIPTIVE LITERATURE – REQUIRED (JAN 2006)	Dialog
2B055-1	CLARIFICATION (NOV 2007)	Dialog
2B065-1	LEASE FORM-QUESTIONS (JAN 2006)	Dialog
2B070-2	ELECTRONIC COPIES – REQUIRED MEDIA AND FORMAT (MAR 2015)	Dialog

<b>Clause #</b>	<b>Title and (Date)</b>	<b>SCEIS</b>
2B075-1	MAGNETIC MEDIA WITH DEMONSTRATION / PRESENTATION (JAN 2006)	Manual
2B080-1	MAIL PICKUP (JAN 2006)	Dialog
2B085-1	OFFERING BY ITEM (JAN 2006)	Dialog
2B090-1	OFFERING BY ITEM OR LOT (JAN 2006)	Dialog
2B095-1	OFFERING BY LOT (JAN 2006)	Dialog
2B105-2	ON-LINE BIDDING INSTRUCTIONS (MAR 2015)	Dialog
2B110-2	OPENING PROPOSALS – INFORMATION NOT DIVULGED (FEB 2015)	Dialog
2B111-1	PREFERENCES - A NOTICE TO VENDORS (SEP 2009)	Dialog
2B112-1	PREFERENCES - SC/US END-PRODUCT (SEP 2009)	Dialog
2B113A-1	PREFERENCES - RESIDENT CONTRACTOR PREFERENCE (SEP 2009)	Dialog
2B113B-1	PREFERENCES - RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009)	Dialog
2B114-1	PREFERENCES - RESIDENT VENDOR PREFERENCE (SEP 2009)	Dialog
2B115-1	PRICE AS DISCOUNT (JAN 2006)	Manual
2B120-1	PROTEST - CPO - ITMO ADDRESS (JUN 2006)	Dialog
2B122-1	PROTEST - CPO - MMO ADDRESS (JUN 2006)	Dialog
2B125-1	QUALIFIED PRODUCTS LIST (JAN 2006)	Manual
2B130-1	SAMPLES (JAN 2006)	Dialog
2B135-1	SAMPLES-TESTING (JAN 2006)	Dialog
2B140-1	SITE VISIT - BY APPOINTMENT (JAN 2006)	Dialog
2B145-1	SITE VISIT – MANDATORY (JAN 2006)	Dialog
2B165-1	SITE VISIT (JAN 2006)	Dialog
2B170-1	UNIT PRICES REQUIRED (JAN 2006)	Dialog
<b>3001</b>	<b>III. SCOPE OF WORK/SPECIFICATIONS</b>	<b>Automatic</b>
3003-1	STATEMENT OF WORK (June 2007)	Dialog
3005-1	SEE BIDDING SCHEDULE	Dialog
3015-1	DELIVERY / PERFORMANCE LOCATION – PURCHASE ORDER (JAN 2006)	Dialog
3020-1	DELIVERY / PERFORMANCE LOCATION – SPECIAL (JAN 2006)	Manual
3030-1	DELIVERY / PERFORMANCE LOCATION - SPECIFIED (JAN 2006)	Dialog
3035-1	DELIVERY COSTS – EXEMPTION (JAN 2006)	Dialog
3037-1	DELIVERY DATE – 30 DAYS ARO (JAN 2006)	Dialog
3038-1	DELIVERY DATE – PURCHASE ORDER (JAN 2006)	Dialog
3040-1	DELIVERY DATE - SPECIFIED (JAN 2006)	Manual
3050-1	INSTALLATION (JAN 2006)	Dialog
3055-1	OPERATIONAL MANUALS (JAN 2006)	Dialog
3060-1	QUALITY – NEW (JAN 2006)	Dialog
3065-1	QUALITY – REFURBISHED (JAN 2006)	Manual
3070-1	QUALITY – USED (JAN 2006)	Manual
3075-1	TECHNICAL SUPPORT – INCLUDED (JAN 2006)	Dialog
3080-1	TRAINING (JAN 2006)	Dialog

<b>Clause #</b>	<b>Title and (Date)</b>	<b>SCEIS</b>
4001	<b>IV. INFORMATION FOR OFFERORS TO SUBMIT</b>	Automatic
4005-1	INFORMATION FOR OFFERORS TO SUBMIT - EVALUATION (JAN 2006)	Dialog
4010-2	INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (MAR 2015)	Automatic
4015-3	MINORITY PARTICIPATION (DEC 2015)	Automatic
4020-1	OFFSHORE CONTRACTING (JAN 2006)	Dialog
4025-1	RECYCLED PRODUCT (JAN 2006)	Manual
4027-1	SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE - REQUIRED (FEB 2015)	Manual
4030-2	SUBMITTING REDACTED OFFERS (MAR 2015)	Dialog
5001	<b>V. QUALIFICATIONS</b>	Automatic
5005-2	QUALIFICATIONS OF OFFEROR (MAR 2015)	Automatic
5010-2	QUALIFICATIONS – SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2015)	Dialog
5015-2	QUALIFICATIONS – REQUIRED INFORMATION (MAR 2015)	Dialog
5030-2	SUBCONTRACTOR – IDENTIFICATION (FEB 2015)	Dialog
6001	<b>VI. AWARD CRITERIA</b>	Automatic
6005-1	AWARD BY ITEM (JAN 2006)	Dialog
6010-1	AWARD BY ITEM OR LOT (JAN 2006)	Dialog
6015-1	AWARD BY LOT (JAN 2006)	Dialog
6020-1	AWARD CRITERIA – BIDS (JAN 2006)	Dialog
6023-1	AWARD CRITERIA – FIXED PRICE BIDDING (JAN 2006)	Dialog
6025-1	AWARD CRITERIA – BEST VALUE BIDS (JAN 2006)	Dialog
6030-1	AWARD CRITERIA – PROPOSALS (JAN 2006)	Dialog
6035-1	AWARD TO MULTIPLE OFFERORS (JAN 2006)	Manual
6040-1	AWARD TO ONE OFFEROR (JAN 2006)	Dialog
6045-1	BIDS RECEIVED AFTER AWARD – FIXED PRICE BIDDING (JAN 2006)	Dialog
6050-1	CALCULATING THE LOW BID	Dialog
6055-1	CALCULATING THE LOW BID – MAINTENANCE (JAN 2006)	Manual
6057-1	COMPETITION FROM PUBLIC ENTITIES (JAN 2006)	Automatic
6058-1	DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (FEB 2015)	Dialog
6059-1	DISCUSSIONS AND NEGOTIATIONS – REQUIRED (FEB 2015)	Manual
6060-1	EVALUATION FACTORS – BEST VALUE BID (JAN 2006)	Dialog
6065-1	EVALUATION FACTORS – PROPOSALS (JAN 2006)	Dialog
6075-1	UNIT PRICE GOVERNS (JAN 2006)	Dialog
7A001	<b>VII. TERMS AND CONDITIONS -- A. GENERAL</b>	Automatic
7A004-2	ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015)	Automatic
7A005-2	BANKRUPTCY – GENERAL (FEB 2015)	Automatic
7A010-1	CHOICE-OF-LAW (JAN 2006)	Automatic
7A015-2	CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (FEB 2015)	Automatic
7A020-1	DISCOUNT FOR PROMPT PAYMENT (JAN 2006)	Automatic
7A025-1	DISPUTES (JAN 2006)	Automatic

<b>Clause #</b>	<b>Title and (Date)</b>	<b>SCEIS</b>
7A030-1	EQUAL OPPORTUNITY (JAN 2006)	Automatic
7A035-1	FALSE CLAIMS (JAN 2006)	Automatic
7A040-1	FIXED PRICING REQUIRED (JAN 2006)	Automatic
7A045-2	NO INDEMNITY OR DEFENSE (FEB 2015)	Automatic
7A050-1	NOTICE (JAN 2006)	Automatic
7A053-1	OPEN TRADE (JUN 2015)	Automatic
7A055-3	PAYMENT & INTEREST (FEB 2015)	Automatic
7A060-1	PUBLICITY (JAN 2006)	Automatic
7A065-1	PURCHASE ORDERS (JAN 2006)	Automatic
7A072-1	IRAN DIVESTMENT ACT – ONGOING OBLIGATIONS – (JAN 2015)	Automatic
7A075-1	SURVIVAL OF OBLIGATIONS (JAN 2006)	Automatic
7A080-1	TAXES (JAN 2006)	Automatic
7A085-1	TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)	Automatic
7A090-1	THIRD PARTY BENEFICIARY (JAN 2006)	Automatic
7A095-1	WAIVER (JAN 2006)	Automatic
<b>7B001</b>	<b>VII. TERMS AND CONDITIONS -- B. SPECIAL</b>	<b>Automatic</b>
7B005-1	SECTION NOT APPLICABLE - INTENTIONALLY OMITTED	Dialog
7B007-1	BANKRUPTCY - GOVERNMENT INFORMATION (FEB 2015)	Manual
7B025-1	CHANGES (JAN 2006)	Dialog
7B030-1	CISG (JAN 2006)	Dialog
7B035-1	COMPLIANCE WITH LAWS (JAN 2006)	Dialog
7B040-1	CONFERENCE – PRE-PERFORMANCE (JAN 2006)	Dialog
7B042-1	CONTRACT DOCUMENTS & ORDER OF PRECEDENCE-SOFTWARE LICENSING-SINGLE AGENCY (FEB 2015)	Manual
7B045-1	CONTRACT LIMITATIONS (JAN 2006)	Dialog
7B056-2	CONTRACTOR'S LIABILITY INSURANCE – GENERAL (FEB 2015)	Dialog
7B058-1	CONTRACTOR'S LIABILITY INSURANCE - INFORMATION SECURITY AND PRIVACY (FEB 2015)	Manual
7B060-1	CONTRACTOR PERSONNEL (JAN 2006)	Dialog
7B065-1	CONTRACTOR'S OBLIGATION – GENERAL (JAN 2006)	Dialog
7B067-1	CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006)	Dialog
7B075-1	DEFAULT (JAN 2006)	Dialog
7B080-2	DEFAULT – SHORT FORM (FEB 2015)	Dialog
7B085-1	DISPOSAL OF PACKAGING (JAN 2006)	Dialog
7B090-1	ESTIMATED QUANTITY - PURCHASES FROM OTHER SOURCES (JAN 2006)	Dialog
7B095-1	ESTIMATED QUANTITY - UNKNOWN (JAN 2006)	Dialog
7B097-1	ILLEGAL IMMIGRATION (NOV 2008)	Dialog
7B100-2	INDEMNIFICATION-THIRD PARTY CLAIMS – GENERAL (NOV 2011)	Dialog
7B102-1	INDEMNIFICATION - THIRD PARTY CLAIMS - DISCLOSURE OF INFORMATION (FEB 2015)	Manual
7B103-1	INDEMNIFICATION - INTELLECTUAL PROPERTY (JAN 2006)	Dialog
7B104-1	INFORMATION SECURITY - DEFINITIONS (FEB 2015)	Manual

## Appendix AA, cont'd

<b>Clause #</b>	<b>Title and (Date)</b>	<b>SCEIS</b>
7B105-1	INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)	Manual
7B106-1	INFORMATION SECURITY - LOCATION OF DATA (FEB 2015)	Manual
7B108-1	INFORMATION USE AND DISCLOSURE (FEB 2015)	Manual
7B110-1	INFORMATION USE AND DISCLOSURE - STANDARDS (FEB 2015)	Manual
7B115-1	LICENSES AND PERMITS (JAN 2006)	Dialog
7B120-1	MATERIAL AND WORKMANSHIP (JAN 2006)	Dialog
7B122-1	OFFSHORE CONTRACTING PROHIBITED (FEB 2015)	Manual
7B125-1	OWNERSHIP OF DATA & MATERIALS (JAN 2006)	Dialog
7B130-1	PACK SIZE - BUNDLING (JAN 2006)	Manual
7B135-1	PACKAGING (JAN 2006)	Manual
7B140-1	PALLETIZING (JAN 2006)	Manual
7B145-1	PARTIAL SHIPMENTS (JAN 2006)	Manual
7B150-1	PERFORMANCE BOND REQUIRED – ITMO (JAN 2006)	Manual
7B155-1	PERFORMANCE BOND REQUIRED (JAN 2006)	Manual
7B160-1	PRICE ADJUSTMENTS (JAN 2006)	Dialog
7B165-1	PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY (JAN 2006)	Dialog
7B170-1	PRICE ADJUSTMENTS – LIMITED BY CPI “ALL ITEMS” (JAN 2006)	Dialog
7B175-1	PRICE ADJUSTMENTS – LIMITED BY CPI “OTHER GOODS & SERVICES” (JAN 2006)	Dialog
7B180-1	PRICE ADJUSTMENTS – LIMITED BY PPI (JAN 2006)	Dialog
7B185-1	PRICING DATA – AUDIT – INSPECTION (JAN 2006)	Dialog
7B190-1	PRINTING MANUAL (JAN 2006)	Dialog
7B200-1	PURCHASING CARD (JAN 2006)	Dialog
7B205-1	RELATIONSHIP OF THE PARTIES (JAN 2006)	Dialog
7B210-1	RELATIONSHIP OF USING GOVERNMENTAL UNITS (JAN 2006)	Dialog
7B212-1	RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015)	Manual
7B215-1	SOFTWARE LICENSES (JAN 2006)	Manual
7B217-1	SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015)	Manual
7B220-1	SHIPPING / RISK OF LOSS (JAN 2006)	Dialog
7B223-2	SOFTWARE LICENSING AGREEMENTS FOR STATEWIDE TERM CONTRACTS (FEB 2015)	Manual
7B224-1	SOFTWARE LICENSING AGREEMENTS–SINGLE SOLICITATION (FEB 2015)	Manual
7B225-3	STATEWIDE TERM CONTRACT (DEC 2015)	Dialog
7B227-1	STATEWIDE TERM CONTRACT - ACCEPTANCE OF OFFERS 10% BELOW PRICE (NOV 2012)	Dialog
7B230-1	STATEWIDE TERM CONTRACT – SCOPE (JAN 2006)	Dialog
7B235-1	STORAGE OF MATERIALS (JAN 2006)	Manual
7B236-1	SUBSTITUTIONS PROHIBITED - END PRODUCT PREFERENCES (SEP 2009)	Dialog
7B237-1	SUBCONTRACTOR SUBSTITUTION PROHIBITED-RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009)	Dialog
7B240-1	TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006)	Dialog
7B245-2	TERM OF CONTRACT – OPTION TO RENEW (JAN 2015)	Dialog
7B250-1	TERM OF CONTRACT – TERMINATION BY CONTRACTOR (JAN 2006)	Dialog

<b>Clause #</b>	<b>Title and (Date)</b>	<b>SCEIS</b>
7B255-1	TERMINATION FOR CONVENIENCE – INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (JAN 2006)	Dialog
7B260-1	TERMINATION FOR CONVENIENCE – SHORT FORM (JAN 2006)	Dialog
7B265-1	TERMINATION FOR CONVENIENCE (JAN 2006)	Dialog
7B275-1	WARRANTY – ONE YEAR (JAN 2006)	Dialog
7B280-1	WARRANTY – STANDARD (JAN 2006)	Dialog
7B285-1	YEAR 2000 WARRANTY (JAN 2006)	Dialog
<b>Miscellaneous Clauses/Sets</b>		
7C005-1	BLANKET PURCHASE AGREEMENTS (NOV 2007)	Dialog
7C010-3	STANDARD PURCHASE ORDER CLAUSE SET (DEC 2015)	Dialog
8001	<b>VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL</b>	Automatic
8002-1	BIDDING SCHEDULE (NOV 2007)	Dialog
8005-1	SECTION NOT APPLICABLE -- INTENTIONALLY OMITTED	Dialog
8010-1	BUSINESS PROPOSAL (JAN 2006)	Dialog
8015-1	PRICE PROPOSAL (JAN 2006)	Dialog
9001	<b>IX. ATTACHMENTS TO SOLICITATION</b>	Automatic
9002-1	ATTACHMENTS LIST	Dialog
9005-1	NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING	Automatic
9010-1	OFFEROR'S CHECKLIST (JUN 2007)	Dialog
9020-2	PURCHASE ORDER ATTACHMENT - ACCEPTANCE OF OFFERS 10% BELOW STATEWIDE TERM CONTRACT PRICE (APR 2015)	Dialog
9025-1	SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE (FEB 2015)	Manual
9030-1	SOUTH CAROLINA STANDARD AMENDMENT TO END USER LICENSE AGREEMENTS FOR COMMERCIAL OFF-THE-SHELF SOFTWARE - SINGLE AGENCY (FEB 2015)	Manual
9035-1	SOFTWARE TABLE (FEB 2015)	Manual
<b>Award Statement Clauses</b>		
A140-1	INTENT TO AWARD (JAN 2008)	Dialog
A150-1	AWARD STATEMENT (JAN 2008)	Dialog
A160-1	NO WORK PRIOR TO PURCHASE ORDER (JAN 2008)	Dialog
A205-1	AWARD CANCELLED - DETERMINATION (JUN 2007)	Dialog
A210-1	AWARD CANCELLED - PROTEST DECISION (JUN 2007)	Dialog
A215-1	AWARD - ONE RESPONSE RECEIVED (JUN 2007)	Dialog
A220-1	AWARD – PARTIAL ONLY (JUN 2007)	Dialog
A230-1	AWARD - RVP (JUN 2007)	Dialog
A235-1	AWARD – SC/US MADE (JUN 2007)	Dialog
A240-1	SUSPENSION NOTICE (JUN 2007)	Dialog
A250-1	CERTIFICATES OF INSURANCE (JUN 2007)	Dialog
A260-1	NO AWARD – ALL OFFERS NON-RESPONSIVE (JUN 2007)	Dialog
A265-1	NO AWARD - FUNDS HAVE EXPIRED (JUN 2007)	Dialog
A270-1	NO AWARD - NO LONGER REQUIRED (JUN 2007)	Dialog

## Appendix AA, cont'd

<b>Clause #</b>	<b>Title and (Date)</b>	<b>SCEIS</b>
A275-1	NO AWARD - NO BIDS RECEIVED (JUN 2007)	Dialog
A280-1	NO AWARD - PRICE EXCESSIVE (JUN 2007)	Dialog
A285-1	NO AWARD - RE-SOLICIT WITH REVISED SPECIFICATIONS. (JUN 2007)	Dialog
A290-1	NON-RESPONSIVE LOW OFFER(S) (JUN 2007)	Dialog
A300-2	[Extension Notice] (MAR 2015)	Dialog
A305-1	[Notice of posting] MAR 2015()	Dialog
A400-1	STATEMENT OF PROTEST RIGHTS (JAN 2008)	Dialog
A410-2	PROTEST - CPO ADDRESS - ITMO (JAN 2008)	Dialog
A420-1	PROTEST - CPO ADDRESS - MMO (JAN 2008)	Dialog

# Appendix BB

## User-Selected Clauses (SEP 2017)

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The following clauses are not selected by dialog nor inserted automatically by SCEIS. They must be manually selected by the procurement officer.

<b>Clause #</b>	<b>Title and (Date)</b>
1020-1	BUDGET – DESIRED RANGE (JAN 2006)
1035-1	FUNDS NOT AVAILABLE (JAN 2006)
2A097-1	QUESTIONS FROM OFFERORS - AMENDMENT (JUN 2017)
2B010-1	BID BOND (JAN 2006)
2B015-2	AUTHORITY APPROVAL REQUIRED (DEC 2015)
2B020-2	CONFERENCE – PRE-BID/PROPOSAL – MANDATORY (FEB 2015)
2B070-2	ELECTRONIC COPIES – REQUIRED MEDIA AND FORMAT (MAR 2015)
2B075-1	MAGNETIC MEDIA WITH DEMONSTRATION / PRESENTATION (JAN 2006)
2B115-1	PRICE AS DISCOUNT (JAN 2006)
2B125-1	QUALIFIED PRODUCTS LIST (JAN 2006)
3020-1	DELIVERY / PERFORMANCE LOCATION – SPECIAL (JAN 2006)
3040-1	DELIVERY DATE - SPECIFIED (JAN 2006)
3065-1	QUALITY – REFURBISHED (JAN 2006)
3070-1	QUALITY – USED (JAN 2006)
4025-1	RECYCLED PRODUCT (JAN 2006)
4027-1	SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE - REQUIRED (FEB 2015)
6035-1	AWARD TO MULTIPLE OFFERORS (JAN 2006)
6055-1	CALCULATING THE LOW BID – MAINTENANCE (JAN 2006)
6058-1	DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (FEB 2015)
6059-1	DISCUSSIONS AND NEGOTIATIONS – REQUIRED (FEB 2015)
7B007-1	BANKRUPTCY - GOVERNMENT INFORMATION (FEB 2015)
7B042-1	CONTRACT DOCUMENTS & ORDER OF PRECEDENCE-SOFTWARE LICENSING-SINGLE AGENCY (FEB 2015)
7B058-1	CONTRACTOR'S LIABILITY INSURANCE - INFORMATION SECURITY AND PRIVACY (FEB 2015)
7B102-1	INDEMNIFICATION - THIRD PARTY CLAIMS - DISCLOSURE OF INFORMATION (FEB 2015)
7B104-1	INFORMATION SECURITY - DEFINITIONS (FEB 2015)
7B105-1	INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)
7B106-1	INFORMATION SECURITY - LOCATION OF DATA (FEB 2015)
7B108-1	INFORMATION USE AND DISCLOSURE (FEB 2015)
7B110-1	INFORMATION USE AND DISCLOSURE - STANDARDS (FEB 2015)
7B122-1	OFFSHORE CONTRACTING PROHIBITED (FEB 2015)
7B130-1	PACK SIZE - BUNDLING (JAN 2006)

Appendix BB, cont'd

<b>Clause #</b>	<b>Title and (Date)</b>
7B135-1	PACKAGING (JAN 2006)
7B140-1	PALLETIZING (JAN 2006)
7B145-1	PARTIAL SHIPMENTS (JAN 2006)
7B150-1	PERFORMANCE BOND REQUIRED – ITMO (JAN 2006)
7B155-1	PERFORMANCE BOND REQUIRED (JAN 2006)
7B212-1	RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015)
7B215-1	SOFTWARE LICENSES (JAN 2006)
7B217-1	SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015)
7B223-2	SOFTWARE LICENSING AGREEMENTS FOR STATEWIDE TERM CONTRACTS (FEB 2015)
7B224-1	SOFTWARE LICENSING AGREEMENTS–SINGLE SOLICITATION (FEB 2015)
7B235-1	STORAGE OF MATERIALS (JAN 2006)
9025-1	SERVICE PROVIDER SECURITY ASSESSMENT QUESTIONNAIRE (FEB 2015)
9030-1	SOUTH CAROLINA STANDARD AMENDMENT TO END USER LICENSE AGREEMENTS FOR COMMERCIAL OFF-THE-SHELF SOFTWARE - SINGLE AGENCY (FEB 2015)
9035-1	SOFTWARE TABLE (FEB 2015)

# Appendix CC

## Drafting Solicitation Amendments for Q&A (JUL 2017)

### DRAFTING SOLICITATION AMENDMENTS

#### For Amendments that Publish Agency Answers to Vendor Questions Using a Q&A Format

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#### Tips for Avoiding Problems

Issued July 2017

#### INTRODUCTION

A solicitation, including every amendment, is a contract document. Aside from the law, a solicitation is also the controlling set of instructions regarding the procurement process. While the original solicitation is usually drafted with care, amendments are often drafted under pressure – circumstances that may increase the likelihood of error. More importantly, amendments are often drafted in response to vendor questions – not from whole cloth. Stated differently, they are not drafted as an integrated whole – as a contract or solicitation would be drafted in the first instance; rather, they are drafted piecemeal – question by question; questions selected by the vendor, not the agency. Lastly, solicitation amendments that answer vendor questions are often responding to defective questions. A vendor’s question may include a false premise, an incorrect statement of fact, or a significant omission. Likewise, a vendor’s question may be ambiguous, i.e., capable of more than one reasonable interpretation. The two fundamental problems with amending solicitations in a question-and-answer format – piecemeal drafting and including defective questions– can be avoided only by very careful drafting. The following suggestions are offered to assist procurement officers in doing just that.

#### SUGGESTIONS

1. **New Instructions.** Include the following in each amendment:

THE SOLICITATION IS AMENDED AS PROVIDED HEREIN. INFORMATION OR CHANGES RESULTING FROM QUESTIONS WILL BE SHOWN IN A QUESTION-AND-ANSWER FORMAT. ALL QUESTIONS RECEIVED HAVE BEEN REPRINTED BELOW. THE “STATE’S RESPONSE” SHOULD BE READ WITHOUT REFERENCE TO THE QUESTIONS. THE QUESTIONS ARE INCLUDED SOLELY TO PROVIDE A CROSS-REFERENCE TO THE POTENTIAL OFFEROR THAT SUBMITTED THE QUESTION. QUESTIONS DO NOT FORM A PART OF THE CONTRACT; THE “STATE’S RESPONSE” DOES. ANY RESTATEMENT OF PART OR ALL OF AN EXISTING PROVISION OF THE SOLICITATION IN AN ANSWER DOES NOT MODIFY THE ORIGINAL PROVISION EXCEPT AS FOLLOWS: UNDERLINED TEXT IS ADDED TO THE ORIGINAL PROVISION. STRICKEN TEXT IS DELETED.

Of course, such language only helps if you draft each answer so it can be read, and fully understood, and connected with the original solicitation *without the need to read the question*. See suggestion number 2 below.

2. **Stand-Alone Answers.** Draft the State's Response so it can be read independent of the question. In other words, re-read every State's Response; if you cannot understand it without re-reading the question, then you need to re-write it.

3. **Q&A Format.** Use the following format for the Q&A:

**Question:** Lorem ipsum dolor sit amet, consectetur adipiscing elit. Fusce massa ex, mollis id venenatis et, cursus et purus?

**State's Response:** Duis non dapibus eros. Aliquam suscipit dictum est non varius. Proin lacinia ullamcorper imperdiet.

4. **No Change.** Unless the State's Response is intended to change something in the original solicitation, begin the State's Response with "No Change." To illustrate, the following would be circumstances in which the State's Response begins with "No Change."

Examples:

- a. The question requests factual information not previously published and the answer provides the information.
- b. The question inquires about a point the solicitation clearly addresses but was apparently misunderstood or missed by the vendor inquiring. Answer cross-references to numerous provisions in the original solicitation.

5. **Say It Once.** Do not re-word something that has already been said. Invariably, re-wording a statement will introduce problematic ambiguity. If the point was well stated in the original solicitation, do not republish the statement; rather, refer back to the original statement. For example, if the vendor's question inquires about the duration of the contract, do not state the contract's duration. Instead, reference or quote the language in the original solicitation that answers the question. If the original solicitation was ambiguous, then change the solicitation by expressly amending the original language.

Examples:

**Question 1:** What is the duration of the contract's first term?

**State's Response:** No change. In Solicitation Section VIIB, Terms and Conditions – Special, the clause titled Term of Contract – Effective Date / Initial Contract Period provides that "The initial term of this agreement is 1 year, 0 months, 0 days from the effective date."

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**Question 2:** What is the duration of the contract's first term?

**State's Response:** The solicitation is modified as follows:

~~CONTRACT TERM. This is a five year contract with two options to renew, effective upon award.~~

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

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 1 year, 0 months, 0 days from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

TERM OF CONTRACT -- OPTION TO RENEW

At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of 1 year if Contractor receives notice that the state elects 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.

6. **Modifying the Original Solicitation.** If the State's Response will modify a portion of the original solicitation, quote as much of the original solicitation as necessary to provide context. Underline any added language. ~~Strike out~~ any language deleted. You should exercise care in quoting the original solicitation, but the risk of an inadvertent error in quoting should be minimized by the following instructions, which are printed above in suggestion number 1: "ANY RESTATEMENT OF PART OR ALL OF AN EXISTING PROVISION OF THE SOLICITATION IN AN ANSWER DOES NOT MODIFY THE ORIGINAL PROVISION *EXCEPT AS FOLLOWS*: UNDERLINED TEXT IS ADDED TO THE ORIGINAL PROVISION. STRICKEN TEXT IS DELETED." In other words, if you quote language and it isn't shown as a change, no change was made.

Example:

**Question 10:** The FPB states the following on page 22:

*Section 4.9.8 Limitation - Scope "...A contractor shall not provide any pre-existing software, any hardware, or any services other than those identified in Part VIII, Bidding Schedule..."*

We have a suite of software which has benefited many South Carolina agencies, bringing consistent, high quality, tested functionality at minimum cost. Is there a vehicle for specifying and bidding proprietary software to be included in the solution, for example a security module?

**State's Response:** Paragraph 4.9.8 of the solicitation is amended as follows: 'The scope of this solicitation is limited to the acquisition of professional services to either (a) to enhance or re-write proprietary and/or pre-existing, installed software applications, either MOTS or custom software, or (b) to design and develop small custom software applications. A contractor shall not provide ~~any pre-existing software~~, any hardware, or any services other than those identified in Part VIII, Bidding Schedule, of this Solicitation, or any pre-existing software. If as part of the solution identified during any module, a COTS solution or MOTS solution is identified and approved, the UGU must either acquire said software by using a current State Term Contract or by issuing a bid outside of this framework. The cost of the software must be included in the total accumulated cost and recorded in the VM software.'

7. **Say It Once – In the Amendment.** Many vendors will ask similar questions. Do not repeat the answer or vary the answer. Invariably, re-answering a question will introduce problematic ambiguity. If the point was well stated in a previous answer, do not re-answer the question; rather, refer back to the original answer. If additional information is required to answer the new question, refer back to the original answer, then supplement.

8. **Changes Independent of Vendor Questions.** If the amendment makes changes to the original solicitation that do not result from, or are not responsive to, vendor questions, start the amendment with a section labeled “Revision Unrelated to Questions” and include all such changes in that part.

9. **Explaining the Solicitation.** Contracts are not always easy to read. Sales staff quickly reviewing a lengthy solicitation may fail to see how all the parts connect. Some questions are a product of such quick reviews and may be answered simply by quoting relevant contract language.

Examples:

**Question 5:** Does the \$10 million budget include the personal identity protection product only or does it include business credit monitoring, notification services, reporting, and call center support?

**State’s Response:** No change. As provided in the Fixed Pricing Required clause in Section VIIA, “Any pricing provided by Contractor shall include all costs for performing the Work associated with that price.” As defined in Section II, “WORK means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations under the Contract.”

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**Question 16:** We would like clarification on page 17, item one under Customer Service it states “During the first four (4) months of the contract, Contractor must have resources available before and after normal business hours (8:30 am-5:30 pm Eastern Time) and on weekends to assist, in a timely manner, eligible persons in the activation process and to answer questions concerning the Taxpayer Services. What time frame is requested when it refers to before and after? Do you have a certain time period you want Customer Service to be available after normal business hours?”

**State’s Response:** No change. In Section III, under the heading Services Requested, Customer Services, the solicitation provides as follows: “1. During the first four (4) months of the contract, Contractor must have resources available before and after normal business hours (8:30 am-5:00pm Eastern Time) and on weekends to assist, in a timely manner, eligible persons in the activation process and to answer questions concerning the Taxpayer Services.” The Solicitation does not mandate the exact extended hours – hours “before and after normal business hours . . . and on weekends” – that resources must be available. In response to paragraph II. E.1.a of Section IV in the solicitation, Offerors should outline the extended hours they are offering to provide.

10. **Providing “Unnecessary” Information.** Vendors will occasionally request information that should not be included in the contract, and thus, should not be included in the solicitation. For example, a solicitation to replace a boiler or roof-top HVAC may request the building’s as-built drawings or

inspection reports. While the agency may have such information, it may be very dated or the agency may be unwilling to vouch for its accuracy. Venders may also request information that is irrelevant to the solicitation. Usually, not responding is not an option. Two options are possible.

First, the agency could ignore the question for purposes of the solicitation amendment (e.g., not publish the question) and simply send the information directly to the offeror. In other words, treat the request as a FOIA request, i.e., a written request for public records. This approach only works if the information is irrelevant to the solicitation; otherwise, the information must be addressed in the solicitation – consistent with the Questions From Offerors clause, which provides as follows: “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.*”

If the information is addressed in the solicitation, it can be provided in one of two ways; the procurement officer can make it available upon request or include the information in the solicitation itself. Either way, the State’s Response should make clear that the information or documents do not form part of the contract and that Using Governmental Unit disclaims the accuracy of the information. Because such “disclaimers” are not always enforced by the courts, the better approach may be to explain in the solicitation that the information is available outside of the acquisition process (e.g., downloadable from a separate URL, via mail, via email, for pickup) and why the information is not being included in the solicitation (e.g., irrelevant, inaccurate, dated, incomplete, all-of-the-above).

11. **Miscellaneous.** Consistent with Regulation 19.445.2010, review the questions and answers to insure that neither indicated the identity of any offeror.

12. **Alternative – Amendment Totally Restates the Amended Solicitation – Particularly for Bids.** Occasionally you may find that the degree of change is so substantial that the better approach is to simply issue an amendment that restates the entire original solicitation, as amended. As with any amendment, consider whether you are providing sufficient the time between publication of the amendment and the opening date for prospective offerors to react to the revised information. In an amendment that totally restates the solicitation, including – above Section 1 – introductory language such as that provided below should assist the vendors in identifying any changes.

IMPORTANT NOTICE: The state has opted to issue a total restatement of the entire solicitation, as amended. This approach has been selected in an effort to ensure the clarity of the contract documents during both the acquisition and contract administration phases of this procurement. Prospective bidders should discard the original solicitation document and use only this document when preparing their offer.

In an effort to assist your review of the amendment, we have endeavored to identify changes with yellow highlighting. Despite our best efforts, there is a chance that a change has not been identified. You are cautioned not to rely on our highlighting to identify all changes.

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