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GRANT GILLESPIE
EXECUTIVE DIRECTOR

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MATERIALS MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of: JNS Food LLC
File No.: 2024-111
Posting Date: October 13, 2023
Contracting Entity: South Carolina Department of Corrections
Solicitation No.: 5400025748
Description: Canned Goods

DIGEST

The Chief Procurement Officer (CPO) grants protest challenging the authority of the South Carolina Department of Corrections (DOC) to Amend an Intent to Award after posting. JNS Foods LLC's (JNS) protest is attached as Exhibit A.

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210. This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

The facts pertinent to this decision are:

- On August 15, 2023, DOC issued a solicitation seeking bids by line item to provide canned goods. [Exhibit B] The bidders were required to identify the brands they were bidding.

- On August 27, 2023, DOC posted a Notice of Intent to Award Contracts for canned goods. [Exhibit C] DOC awarded line item 3 for canned diced potatoes to JNS with two approved brand names, Seneca and Food Direct / JNS, a JNS private label product.
- On August 29, 2023, DOC posted an Amended Notice of Intent to Award, striking “Food Direct / JNS” from the list of acceptable brands for canned diced potatoes. [Exhibit D]
- On October 4, 2023, JNS protested DOC’s Amended Notice of Intent to Award.
- On October 5, 2023, DOC issued a second Amended Notice of Intent to Award terminating award to JNS [Exhibit E]

DISCUSSION

The South Carolina Code of Laws Section 11-35-1520(7) states:

Correction or Withdrawal of Bids; **Cancellation of Awards**. Correction or withdrawal of inadvertently erroneous bids before or after award, or **cancellation and re award of awards or contracts, after award** but before performance, **may be permitted in accordance with regulations promulgated by the board**. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, **all decisions** to permit the correction or withdrawal of bids, or to **cancel awards** or contracts, **after award but before performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency**. [emphasis supplied]

Pursuant to this statute, the state adopted Regulation 19-445.2085, which states in relevant part:

C. Cancellation Of Award Prior To Performance.

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, **if the Chief Procurement Officer determines** in writing that:

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;
- (3) The supplies, services, information technology, or construction being procured are no longer required;
- (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders’ plants;
- (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;

- (6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- (7) Administrative error of the purchasing agency discovered prior to performance, or
- (8) For other reasons, cancellation is clearly in the best interest of the State.
[emphasis supplied]

Per these provisions, only the appropriate Chief Procurement Officer may cancel an award or notification of an intent to award after it is issued. In this case, DOC's issuance of an Amended Notification of Intent to Award attempting to change the scope of the award was tantamount to canceling the previous award and issuing a new award, something that DOC lacks the authority to do on its own. Because DOC lacked authority to Amend the Notice of Intent to Award in the manner amended here, both the Amended Notice of Intent to Award and the Second Amended Notice of Intent to Award are void ab initio, and the original Notice of Intent to Award is still in effect.

DECISION

For the foregoing reason, the protest is affirmed.



John St. C. White
Chief Procurement Officer

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2023)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILING FEE: Pursuant to Proviso 111.1 of the 2023 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. *[The Request for Filing Fee Waiver form is attached to this Decision.]* If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

-
1. What is your/your company's monthly income? _____
 2. What are your/your company's monthly expenses? _____
 3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this
_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

Ian T. Duggan – Lawyer
803-404-6900
IanDuggan@callisontighe.com

VIA EMAIL, FACSIMILE, AND HAND DELIVERY

John St. C. White
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
Protest-mmo@mmo.state.sc.us
Facsimile: 803.737.0639

October 4, 2023

RE: **NOTICE OF INTENT TO PROTEST & PROTEST**
DOC Solicitation No.: 5400025748
Our File No.: 6883.003

Dear Mr. White:

I hope you are well. I write to you today on behalf of my client, JNS Foods, LLC, in connection with the Amended Notice of Intended Award for the South Carolina Department of Corrections (“DOC”) Solicitation Number 5400025748, Line No. 0003, regarding canned, diced potatoes.

This is a Notice of Protest and Protest under South Carolina Code Ann. § 11-35-4210, *et seq.* because JNS Foods “is aggrieved with the intended award” of this contract.

By way of background, the solicitation here required prospective bidders to identify what specific brand they would be offering to fulfill this contract requirement.

As such, in its bid, JNS Foods identified two brands: Seneca Foods and Food Direct/JNS – a JNS Foods “white” or “private” label product. Attached to JNS Foods’s bid submission was required nutritional and packaging material for both brands. At no point did DOC contact JNS Foods for clarification regarding the scope or nature of its bid.

The original intent to award published on September 27, 2023, accepted JNS Foods offer as submitted i.e., the provision of canned diced potatoes from **both** Seneca and Food Direct/JNS.

However, an amended intent to award published on September 29, 2023, struck from the award JNS Foods’ ability to provide Food Direct/JNS brand canned potatoes, as depicted below:

Line 3

Awarded to: JNS Foods, LLC
1401 N. University Drive, #602
Coral Springs, FL 33071
(954) 718-7958 Ext. 113
bidpricing@jnsfoods.com
Vendor #: 7000152851

Evaluated Amount: \$483,682.64
Awarded Amount: \$483,682.64
Total Potential Contract Amount: \$483,682.64

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0003	21,896	Case	\$22.09	\$483,682.64
Product Catg.: 39386 - Vegetables Canned (Incl. Canned Salads)				
Item Description: Potatoes, diced, Canned				
Tendering Text: Canned peeled cubed potatoes, US Grade B or better, sodium maximum 140 mg per serving or less, 6/#10 cans per case, drained weight 76 oz. or better.				
Estimated delivery dates: 952 cases on 10/12/23, 10/26/23, 11/2/23, 11/16/23, 11/30/23, 12/21/23, 1/11/24, 125/24, 2/8/24, 2/22/24, 3/7/24, 3/21/24, 4/4/24, 4/18/24, 5/2/24, 5/16/24, 5/30/24, 6/13/24, 6/27/24 and additional dates to be added at time of Purchase Order Release.				
BRAND AWARDED: Seneca Food Direct / JNS				

Subsequent correspondence with procurement officials with DOC confirms that DOC is unwilling to accept any non-Seneca Foods branded canned potatoes, despite the plain language of JNS Foods’s bid.

For these reasons, JNS Foods asserts that the notice of intended award, as amended, is unlawful because it compels JNS Foods to provide a single brand of canned potatoes when its bid plainly and clearly identified its offer to provide canned potatoes from two different brands. As such, the amended notice of intent should be struck and the original notice of intent should be restored. In the alternative, this solicitation should be rebid.

Thank you for your consideration—I look forward to addressing your additional questions or concerns.

Very truly yours,

CALLISON TIGHE & ROBINSON, LLC

Ian T. Duggan


ITD

Michael B. Spicer
Chief Procurement Officer for
Information Technology
1201 Main Street, Suite 600
Columbia, SC 29201

Ruthie H. Bishop, CPPB
Division Director of Procurement
4530 Broad River Road
Columbia, SC 29210
Bishop.Ruthie@doc.sc.gov

Eliot Meiseles
President
JNS Foods, LLC

Exhibit B

	<h2 style="margin: 0;">State of South Carolina</h2> <h3 style="margin: 0;">Invitation For Bid</h3>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Solicitation:</td> <td>5400025748</td> </tr> <tr> <td>Date Issued:</td> <td>8/15/2023</td> </tr> <tr> <td>Procurement Officer:</td> <td>Monica Briseno</td> </tr> <tr> <td>Phone:</td> <td>803-896-6619</td> </tr> <tr> <td>E-Mail Address:</td> <td>Briseno.monica@doc.sc.gov</td> </tr> <tr> <td>Mailing Address:</td> <td>SC Department of Corrections Attn: Purchasing Branch</td> </tr> <tr> <td>Procurement Director:</td> <td>Ruthie Bishop, CPPB</td> </tr> </table>	Solicitation:	5400025748	Date Issued:	8/15/2023	Procurement Officer:	Monica Briseno	Phone:	803-896-6619	E-Mail Address:	Briseno.monica@doc.sc.gov	Mailing Address:	SC Department of Corrections Attn: Purchasing Branch	Procurement Director:	Ruthie Bishop, CPPB
Solicitation:	5400025748															
Date Issued:	8/15/2023															
Procurement Officer:	Monica Briseno															
Phone:	803-896-6619															
E-Mail Address:	Briseno.monica@doc.sc.gov															
Mailing Address:	SC Department of Corrections Attn: Purchasing Branch															
Procurement Director:	Ruthie Bishop, CPPB															

DESCRIPTION: **Canned Goods**

USING GOVERNMENTAL UNIT: **The SCDC Food Service Main Warehouse**

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: SC Department of Corrections Attn: Purchasing Branch 4530 Broad River Road Columbia SC 29210	PHYSICAL ADDRESS: SC Department of Corrections Attn: Purchasing Branch 4530 Broad River Road Columbia SC 29210

SUBMIT OFFER BY (Opening Date/Time): **9/12/2023 1:00 PM** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **8/24/2023 10:00 AM** (See "Questions From Offerors" provision)

THIS SOLICITATION IS OPEN FOR BRAND SUBMISSIONS.

BRAND OFFERING – STATE BRAND YOU ARE OFFERING IN THE BIDDING SCHEDULE AND INCLUDE MANUFACTURERS CUT SHEET WITH SIZE AND NUTRITIONAL INFORMATION – PACKAGING MUST BE PER SPECIFICATIONS STATED IN THE BIDDING SCHEDULE.

CONFERENCE TYPE: Not Applicable DATE & TIME: (As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)	LOCATION: Not Applicable
AWARD & AMENDMENTS	Award will be posted on 9/19/2023 . 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)
PRINTED NAME (printed name of person signing above)	STATE OF INCORPORATION (If you are a corporation, identify the state of incorporation.)
OFFEROR'S TYPE OF ENTITY: (Check one) (See "Signing Your Offer" provision.) ___ Sole Proprietorship ___ Partnership ___ Other _____ ___ Corporate entity (not tax-exempt) ___ Corporation (tax-exempt) ___ Government entity (federal, state, or local)	

PAGE TWO

(Return Page Two with Your Offer)

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

PAYMENT ADDRESS (Address to which payments will be sent.) (See "Payment" clause)	ORDER ADDRESS (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 (check only one)	_____ Order Address same as Home Office Address _____ Order Address same as Notice Address (check only one)

ACKNOWLEDGMENT OF AMENDMENTS Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)							
Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

DISCOUNT FOR PROMPT PAYMENT (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 . **ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES.** [11-35-1524(E)(4)&(6)]

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

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

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I. SCOPE OF SOLICITATION

ACQUIRE SUPPLIES / EQUIPMENT (JAN 2006)

The purpose of this solicitation is to establish a source or sources of supply for the purchase of Can Goods for the SCDC Food Service Warehouse as listed. [01-1015-1]

MAXIMUM CONTRACT PERIOD - ESTIMATED (JAN 2006)

This contract will run from the date specified in the notice of award until June 30th, 2024, with no option to renew. All delivery dates listed herein are estimates only and will be specified in the purchase order(s).

Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period". [01-1040-1]

II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS

DEFINITIONS, 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.

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

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

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

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

CONTRACT See clause entitled Contract Documents & Order of Precedence.

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

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

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

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

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

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

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

YOU and YOUR means Offeror.

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

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

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

US or WE means the using governmental unit.

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

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

[02-2A003-3]

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]

AUTHORIZED AGENT (FEB 2015)

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

AWARD NOTIFICATION (FEB 2015)

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

BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)

By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed. [02-2A015-1]

BID ACCEPTANCE PERIOD (JAN 2004)

In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. [02-2A020-1]

BID IN ENGLISH and DOLLARS (JAN 2004)

Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)

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

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

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

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

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

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

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

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

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

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

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

[02-2A035-1]

CODE OF LAWS AVAILABLE (JAN 2006)

The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:

<http://www.scstatehouse.gov/code/statmast.php>

The South Carolina Regulations are available at:

<http://www.scstatehouse.gov/coderegs/statmast.php>

[02-2A040-2]

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

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

DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)

Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental body's mail room which services that purchasing office prior to the opening.

[R.19-445.2070(G)] [02-2A050-1]

DRUG FREE WORK PLACE CERTIFICATION (JAN 2004)

By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]

DUTY TO INQUIRE (FEB 2015)

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

ETHICS CERTIFICATE (MAY 2008)

By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding

gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]

OMIT TAXES FROM PRICE (JAN 2004)

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

OPEN TRADE REPRESENTATION (JUN 2015)

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

PROTESTS (MAY 2019)

If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest a solicitation, you must submit a protest within fifteen days of the date the applicable solicitation document is issued. To protest an award, you must (i) submit notice of your intent to protest within seven business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided. [02-2A085-2]

PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)

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

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

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

PUBLIC OPENING (JAN 2004)

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

QUESTIONS FROM OFFERORS (FEB 2015)

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any

communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." **We will not identify you in our answer to your question.** (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140] [02-2A095-2]

ALL QUESTIONS MUST BE SENT IN WRITING VIA EMAIL TO THE BUYER; briseno.monica@doc.sc.gov

REJECTION/CANCELLATION (JAN 2004)

The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]

RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)

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

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

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

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

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

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

SIGNING YOUR OFFER (JAN 2004)

Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in

the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

STATE OFFICE CLOSINGS (JAN 2004)

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <https://scemd.org/closings/> [02-2A120-3]

DISCLOSURE OF YOUR BID / PROPOSAL and SUBMITTING CONFIDENTIAL DATA (FEB 2021)

(a) According to Section 11-35-410, any person submitting a document in response or with regard to any solicitation or other request must "comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public." **IF YOU IDENTIFY YOUR ENTIRE RESPONSE AS EXEMPT FROM PUBLIC DISCLOSURE, OR IF YOU DO NOT SUBMIT A REDACTED COPY AS REQUIRED, THE STATE MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD.** (b) By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page, or portion thereof, of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page, or portion thereof, was redacted and conspicuously marked "Trade Secret" or "Confidential" or "Protected", (2) agrees that any information not redacted and marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. (c) If your offer includes any information that you claim is exempt from public disclosure, you must submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). Except for the information removed or concealed, the redacted copy must be identical to your original offer. (d) Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If only portions of a page are subject to some protection, do not redact the entire page. The redacted copy must reflect the same pagination as the original and show the empty space from which information was redacted. The Procurement Officer must be able to view, search, copy and print the redacted copy without a password. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. (e) On the redacted copy, you must identify the basis of your claim by marking each redaction as follows: You must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that you redacted and claim as exempt from public disclosure because it is either (1) a trade secret as defined in Section 30-4-40(a)(1) of the Freedom of Information Act, or (2) privileged and confidential, as that phrase is used in Section 11-35-410. You must separately mark with the words "TRADE SECRET" every page, or portion thereof, that you redacted and claim as exempt from public disclosure as a trade secret pursuant to Section 39-8-20 of the Trade Secrets Act. You must separately mark with the word "PROTECTED" every page, or portion thereof, that you redacted and claim as exempt from public disclosure pursuant to Section 11-35- 1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. (f) In determining whether to release documents, the State will detrimentally rely on your redaction and marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "Protected". By submitting a response, you agree to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that you have redacted or marked as "Confidential" or "Trade Secret" or "Protected". (All references to S.C. Code of Laws.) [02-2A125-3]

SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015)

Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification in accordance with the clause titled "ON-LINE BIDDING INSTRUCTIONS." ~~Paper offers are discouraged.~~ If you must submit a paper offer or modification the following instructions apply. (a) All prices and notations should be printed in ink or typewritten. Errors

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

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

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

VENDOR REGISTRATION MANDATORY (JAN 2006)

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

WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)

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

II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS

DESCRIPTIVE LITERATURE -- LABELLING (JAN 2006)

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

DESCRIPTIVE LITERATURE -- REQUIRED (JAN 2006)

The bidder shall clearly and specifically identify the product being offered and enclose one copy of complete details, descriptive literature, illustration, catalog cuts and specifications with the bid to enable SCDC to determine if the product offered meets the requirements of the solicitation.

Your failure to provide descriptive literature may result in rejection of your offer. Failure to provide the literature results in a delay of processing the award.

modified [02-2B050-1]

OFFERING BY ITEM (JAN 2006)

Offers may be submitted for one or more items. [02-2B085-1]

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. **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)] [02-2B111-1]

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 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]

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]

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]

UNIT PRICES REQUIRED (JAN 2006)

Unit price to be shown for each item. [02-2B170-1]

**III. SCOPE OF WORK/SPECIFICATIONS
SEE BIDDING SCHEDULE**

THIS SOLICITATION IS OPEN FOR BRAND SUBMISSIONS.

BRAND OFFERING—STATE BRAND YOU ARE OFFERING IN THE BIDDING SCHEDULE AND INCLUDE MANUFACTURERS CUT SHEET WITH SIZE AND NUTRITIONAL INFORMATION – PACKAGING MUST BE PER SPECIFICATIONS STATED IN THE BIDDING SCHEDULE.

1. Pears, Diced, Canned
2. Applesauce, Canned
3. Potatoes, Diced, Canned
4. Greens, Kale, Chopped, Canned

See Bidding Schedule [03-3005-1]

DELIVERY/PERFORMANCE LOCATION -- SPECIFIED (JAN 2006)

After award, all deliveries shall be made and all services provided to the following address, unless otherwise specified:

Attention Tony Kelly
SCDC Food Service Warehouse
4422 Broad River Rd.
Columbia, SC 29210

DELIVERY APPOINTMENT NOTE: CALL ISIAH YOUNG AT 803-896-2025 FOR DELIVERY APPOINTMENT DELIVERY DOCUMENTS AND INVOICES MUST REFLECT P.O. NUMBER. ITEMS WILL BE PALLETIZED AND DELIVERED AS INDICATED IN SPECIFICATIONS

All Deliveries must be Palletized and Shrink Wrapped - Large Deliveries must be palletized with exchange of pallets.

Must be Full Truckloads - All Documentation must reflect the SCDC Purchase Order Number.

[03-3030-1]

DELIVERY DATE – LISTED IN PURCHASE ORDER (Estimated Dates in Solicitation)

Unless otherwise specified herein, all items shall be delivered no later than **the dates listed in 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. Items must be delivered on or before the dates stated within the bidding schedule and/or PO. If no dates are listed in bidding schedule you must refer to the bid Delivery Date requirement above. SCDC will accept partial shipments. However, SCDC must receive all items by the delivery date.

DELIVERY DATE DEFAULT

Items must be delivered on or before the dates stated on the purchase order(s). Vendors who fail to deliver by 1:00PM on the required delivery date will be considered in default. Vendor will have (10) days to cure. If vendor fails to deliver once the cure period is over, SCDC will quote the quantity in default on the open market. A Purchase Order will be issued to the alternate vendor to deliver the product. SCDC will issue the default Vendor an invoice for the difference in price.

You will be deemed a NON-RESPONSIBLE BIDDER for all future bids until the invoice(s) issued for the items purchased on the open market is PAID IN FULL

QUALITY -- NEW (JAN 2006)

All items must be new. [03-3060-1]

IV. INFORMATION FOR OFFERORS TO SUBMIT

INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (MAR 2015)

You shall submit a signed Cover Page and Page Two. If you submit your offer electronically, you must upload an image of a signed Cover Page and Page Two. Your offer should include all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in Part IX. Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis. [04-4010-2]

MINORITY PARTICIPATION (DEC 2015)

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

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

If so, please list the certifying governmental entity: _____

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

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

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

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

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

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

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

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:
<http://osmba.sc.gov/directory.html> [04-4015-3]

V. QUALIFICATIONS

QUALIFICATIONS OF OFFEROR (MAR 2015)

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

VI. AWARD CRITERIA

AWARD BY ITEM (JAN 2006)

Award will be made by individual item. [06-6005-1]

AWARD CRITERIA -- BIDS (JAN 2006)

Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]

CALCULATING THE LOW BID

Each Line-Item **Extended Price** is the sum of the **Quantity** multiplied by **Unit Price**. [06-6050-1]

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]

UNIT PRICE GOVERNS (JAN 2006)

In determining award, unit prices will govern over extended prices unless otherwise stated. [06-6075-1]

VII. TERMS AND CONDITIONS -- A. GENERAL

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

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

BANKRUPTCY - GENERAL (FEB 2015)

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

CHOICE-OF-LAW (JAN 2006)

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

CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (FEB 2015)

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation of clarifications [11-35-1520(8)] or discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the State's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-2]

DISCOUNT FOR PROMPT PAYMENT (JAN 2006)

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

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

DISPUTES (JAN 2006)

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

EFT INFORMATION (FEB 2021)

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

EQUAL OPPORTUNITY (JAN 2006)

Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference. [07-7A030-1]

FALSE CLAIMS (JAN 2006)

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

FIXED PRICING REQUIRED (JAN 2006)

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

NO INDEMNITY OR DEFENSE (FEB 2015)

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

NOTICE (JAN 2006)

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

OPEN TRADE (JUN 2015)

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

PAYMENT and INTEREST (FEB 2021)

(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government.

(b) Unless otherwise provided herein, including the purchase order, payment will be made by electronic funds transfer (EFT). See clause titled " EFT Information."

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

[
PUBLICITY (JAN 2006)

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

PURCHASE ORDERS (JAN 2006)

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

SURVIVAL OF OBLIGATIONS (JAN 2006)

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

TAXES (JAN 2006)

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

TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)

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

THIRD PARTY BENEFICIARY (JAN 2006)

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

WAIVER (JAN 2006)

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

VII. TERMS AND CONDITIONS -- B. SPECIAL

CHANGES (JAN 2006)

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

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

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

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

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

[07-7B025-1]

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]

DEFAULT (JAN 2006)

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

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

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

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

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

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

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

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

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

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

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

[07-7B075-1]

LIMITATION OF LIABILITY -- SINGLE AGENCY (MAY 2020)

(1) Contractor's liability for damages to the Using Governmental Unit shall not exceed [*a dollar amount*].

(2) The parties waive claims against each other for (i) exemplary or punitive damages and (ii) special or consequential damages.

(3) The foregoing limitations shall not apply: (a) to claims for physical damage to real or tangible personal property, (b) to claims regarding bodily injury, sickness, disease or death, (c) to claims arising from reckless or intentional misconduct, (d) to amounts due or obligations under a clause (regardless of how named) providing for liquidated damages, or if such a clause is ruled unenforceable as a penalty, (e) to amounts due or obligations under the following clauses, if included: (i) Indemnification-Third Party Claims-General, (ii) Indemnification-Third Party Claims-Disclosure of Information, (iii)

Indemnification-Intellectual Property, (iv) Information Security Safeguarding Requirements, (v) Information Security-Location of Data, (vi) Information Use and Disclosure Standards, or (vii) Service Provider Security Representations; (f) to amounts due or obligations under a clause imposing a duty to defend or indemnify, or (g) to any loss or claim to the extent the loss or claim is covered by a policy of insurance maintained, or required by this contract to be maintained, by contractor.

(4) The absence in any subcontract of a similar clause limiting contractor's liability shall not effectively increase the obligation of the Using Governmental Unit beyond what it would have been had the subcontract contained such a clause.

(5) The Using Governmental Unit's liability for damages, if any, shall in no event exceed [*a dollar amount*]. Nothing herein shall be construed to waive any law or clause regarding the availability or appropriation of funds, sovereign immunity, or any other immunity, restriction, or limitation on payment or recovery provided by law.

(6) The State of South Carolina's total liability for any obligation under any clause imposing any duty of confidentiality or non-disclosure shall not exceed an amount equal to fifty thousand dollars. [07-7B117-1]

PRICE ADJUSTMENTS (JAN 2006)

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

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the Contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or,

(e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

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

[07-7B160-1]

PRICING DATA -- AUDIT -- INSPECTION (JAN 2006)

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

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]

SHIPPING / RISK OF LOSS (JAN 2006)

F.O.B. Destination. 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]

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]

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

This contract will run from the date specified in the notice of award until June 30th, 2024, with no option to renew. All delivery dates listed herein are estimates only and will be specified in the purchase order(s). Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

TERMINATION FOR CONVENIENCE (JAN 2006)

- (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.
- (2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- (3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.
- (4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.
(b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;
(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:
 - (i) contract prices for supplies or services accepted under the contract;
 - (ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;
 - (iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;
 - (iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.
(d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.
- (5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the State's right to require the termination of a subcontract, or (ii) increase the obligation of the State beyond what it would have been if the subcontract had contained an appropriate clause.
[07-7B265-1]

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

BIDDING SCHEDULE (NOV 2007)

THIS SOLICITATION IS OPEN FOR BRAND SUBMISSIONS.

BRAND OFFERING—STATE BRAND YOU ARE OFFERING IN THE BIDDING SCHEDULE AND INCLUDE MANUFACTURERS CUT SHEET WITH SIZE AND NUTRITIONAL INFORMATION – PACKAGING MUST BE PER SPECIFICATIONS STATED IN THE BIDDING SCHEDULE.

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	20,944	Case		
Product Catg.: 39354 - Fruits Canned Processed and Preserved				
Item Description: Pears, Diced, Canned				
Tendering Text: Pears Diced, Bartlett, in fruit concentrate, US Grade A, 6/#10 cans per case				
Estimated delivery dates: 952 cases on 10/10/23, 10/24/23, 11/7/23, 11/21/23, 12/5/23, 12/19/23, 1/2/24, 1/16/24, 1/30/24, 2/6/24, 2/20/24, 3/7/24, 3/14/24, 4/9/24, 4/23/24, 5/7/24, 5/21/24, 6/4/24, 6/26/24 and additional dates to be added at time of Purchase Order Release.				
Internal Item Number: 1				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
TO SUBMIT A BRAND FOR REVIEW YOU MUST STATE THE BRAND NAME - YOU ALSO ARE REQUIRED TO INCLUDE THE MANUFACTURERS CUT SHEET WHICH INCLUDES SIZE AND NUTRITIONAL CONTENT - PACKAGING MUST BE AS STATED IN SOLICITATION	Mandatory	No	STATE BRAND BEING OFFERED:	
US End-Product Pref. Section 11-35-1524, (B)(1). Select US End Product if product is made, manufactured or grown in the US. Select No, if not claiming a preference.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Vendor Preference? See the SC Procurement Code, Section 11-35-1524(C)(1)(I)&(II) and Section IIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
SC End-Product Pref. Section 11-35-1524 (B)(2). Select SC End Product Preference if product is made, manufactured or grown in SC. Select No, if not claiming a preference.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0002	18,088	Case		
Product Catg.: 39354 - Fruits Canned Processed and Preserved				
Item Description: Applesauce, Canned				
Tendering Text: Applesauce, natural, unsweetened, regular applesauce, US Grade A, CFR 145 110 USDA grading for canned applesauce, 6/#10 cans per case				
Estimated delivery dates: 952 cases on 10/18/23, 11/1/23, 11/29/23, 12/13/23, 12/27/23, 1/24/24, 2/7/24, 2/21/24, 3/6/24, 3/20/24, 4/3 /24, 4/17/24, 5/1/24, 5/15/24, 5/29/24, 6/13/24 and additional dates to be added at time of Purchase Order Release.				
Internal Item Number: 2				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
TO SUBMIT A BRAND FOR REVIEW YOU MUST STATE THE BRAND NAME - YOU ALSO ARE REQUIRED TO INCLUDE THE MANUFACTURERS CUT SHEET WHICH INCLUDES SIZE AND NUTRITIONAL CONTENT - PACKAGING MUST BE AS STATED IN SOLICITATION	Mandatory	No	STATE BRAND BEING OFFERED:	
US End-Product Pref. Section 11-35-1524, (B)(1). Select US End Product if product is made, manufactured or grown in the US. Select No, if not claiming a preference.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Vendor Preference? See the SC Procurement Code, Section 11-35-1524(C)(1)(I)&(II) and Section IIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
SC End-Product Pref. Section 11-35-1524 (B)(2). Select SC End Product Preference if product is made, manufactured or grown in SC. Select No, if not claiming a preference.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0003	21,896	Case		
Product Catg.: 39386 - Vegetables Canned (Incl. Canned Salads)				
Item Description: Potatoes, diced, Canned				
Tendering Text: Canned peeled cubed potatoes, US Grade B or better, sodium maximum 140 mg per serving or less, 6/#10 cans per case, drained weight 76 oz. or better.				
Estimated delivery dates: 952 cases on 10/12/23, 10/26/23, 11/2/23, 11/16/23, 11/30/23, 12/21/23, 1/11/24, 125/24, 2/8/24, 2/22/24, 3/7/24, 3/21/24, 4/4/24, 4/18/24, 5/2/24, 5/16/24, 5/30/24, 6/13/24, 6/27/24 and additional dates to be added at time of Purchase Order Release.				
Internal Item Number: 3				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
TO SUBMIT A BRAND FOR REVIEW YOU MUST STATE THE BRAND NAME - YOU ALSO ARE REQUIRED TO INCLUDE THE MANUFACTURERS CUT SHEET WHICH INCLUDES SIZE AND NUTRITIONAL CONTENT - PACKAGING MUST BE AS STATED IN SOLICITATION	Mandatory	No	STATE BRAND BEING OFFERED:	
US End-Product Pref. Section 11-35-1524, (B)(1). Select US End Product if product is made, manufactured or grown in the US. Select No, if not claiming a preference.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Vendor Preference? See the SC Procurement Code, Section 11-35-1524(C)(1)(I)&(II) and Section IIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
SC End-Product Pref. Section 11-35-1524 (B)(2). Select SC End Product Preference if product is made, manufactured or grown in SC. Select No, if not claiming a preference.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0004	2,856	Case		
Product Catg.: 39386 - Vegetables Canned (Incl. Canned Salads)				
Item Description: Greens, Kale, Chopped, Canned				
Tendering Text: Green Kale Canned, chopped, US Grade B or Better, sodium maximum 140 mg or less per serving, 6/#10 cans per case, 58 oz or better drained weight.				
Estimated delivery dates: 952 cases on 2/15/24, 4/11/24, 6/5/24				
Internal Item Number: 4				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
TO SUBMIT A BRAND FOR REVIEW YOU MUST STATE THE BRAND NAME - YOU ALSO ARE REQUIRED TO INCLUDE THE MANUFACTURERS CUT SHEET WHICH INCLUDES SIZE AND NUTRITIONAL CONTENT - PACKAGING MUST BE AS STATED IN SOLICITATION	Mandatory	No	STATE BRAND BEING OFFERED:	
US End-Product Pref. Section 11-35-1524, (B)(1). Select US End Product if product is made, manufactured or grown in the US. Select No, if not claiming a preference.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Are you requesting the SC Resident Vendor Preference? See the SC Procurement Code, Section 11-35-1524(C)(1)(I)&(II) and Section IIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc/preferences	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
SC End-Product Pref. Section 11-35-1524 (B)(2). Select SC End Product Preference if product is made, manufactured or grown in SC. Select No, if not claiming a preference.	Mandatory	No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

IX. ATTACHMENTS TO SOLICITATION

IMPORTANT TAX NOTICE - NONRESIDENTS ONLY

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

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

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

For information about other withholding requirements (e.g., employee withholding), contact the South Carolina Department of Revenue at 1-844-898-8542 or visit the Department's website at: **dor.sc.gov**

This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration and withholding tax questions should be directed to the South Carolina Department of Revenue at 1-844-898-8542. Additional contact information can be found by visiting the Department's website at dor.sc.gov

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

[09-9005-5]

BIDDER'S CHECKLIST

AVOID COMMON BIDDING MISTAKES

Review this checklist prior to submitting your bid.

If you fail to follow this checklist, you risk having your bid 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 TO MAKE SURE YOUR BID 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 HEADING ENTITLED: FOIA BIDDING INSTRUCTIONS, SUBMITTING CONFIDENTIAL INFORMATION. DO NOT MARK YOUR ENTIRE BID 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 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 INCLUDES THE NUMBER OF COPIES REQUESTED.

CHECK TO ENSURE YOUR BID INCLUDES EVERYTHING REQUESTED!

CHECK AGAIN TO ENSURE YOUR BID 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 CONFERENCE OR A QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS! PLEASE SEE BIDDING INSTRUCTIONS AND ANY PROVISIONS REGARDING PRE-BID CONFERENCES.

This checklist is included only as a reminder to help bidders 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.



South Carolina Department of Corrections
4530 Broad River Road
Columbia, SC 29210

Bidder's right to protest as listed in section 11-35-4210 in the South Carolina Consolidated Procurement Code applies to this award. THIS IS A STATEMENT OF INTENT TO AWARD A CONTRACT AND BECOMES THE OFFICIAL STATEMENT OF AWARD ON 10/7/2023. MAY BE FILED WITH:

Chief Procurement Officer -Materials Management Office -1201 Main Street, Suite 600 -Columbia, SC 29201
 Facsimile: 803-737-0639
 E-mail: protest-mmo@mmo.state.sc.us

Intent to Award

Posting Date: 09/27/2023

Initial Contract Dates: 10/09/2023 - 06/30/2024
Potential Contract Dates: 10/09/2023 - 06/30/2024
Total Potential Contract Amount: \$1,440,290.32

Solicitation : 5400025748
Issue Date : 08/17/2023
Opening Date: 09/12/2023
Description : Canned Goods

Lines 1 & 2

Awarded to: Robbins Sales Co. Inc.
 P.O. Box 251
 Syosset, NY 11791
 (516) 364-7200
spencer@robbinssales.com
 Vendor #: 7000154701

Evaluated Amount: \$874,926.08
Awarded Amount: \$874,926.08
Total Potential Contract Amount: \$874,926.08

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	20,944	Case	\$23.88	\$500,142.72
Product Catg.: 39354 - Fruits Canned Processed and Preserved				
Item Description: Pears, Diced, Canned				
Tendering Text: Pears Diced, Bartlett, in fruit concentrate, US Grade A, 6/#10 cans per case				
Estimated delivery dates: 952 cases on 10/10/23, 10/24/23, 11/7/23, 11/21/23, 12/5/23, 12/19/23, 1/2/24, 1/16/24, 1/30/24, 2/6/24, 2/20/24, 3/7/24, 3/14/24, 4/9/24, 4/23/24, 5/7/24, 5/21/24, 6/4/24, 6/26/24 and additional dates to be added at time of Purchase Order Release.				
BRAND AWARDED: Port Royal Premium				

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0002	18,088	Case	\$20.72	\$374,783.36
Product Catg.: 39354 - Fruits Canned Processed and Preserved				
Item Description: Applesauce, Canned				
Tendering Text: Applesauce, natural, unsweetened, regular applesauce, US Grade A, CFR 145 110 USDA grading for canned applesauce, 6/#10 cans per case (USDA Certificate)				
Estimated delivery dates: 952 cases on 10/18/23, 11/1/23, 11/29/23, 12/13/23, 12/27/23, 1/24/24, 2/7/24, 2/21/24, 3/6/24, 3/20/24, 4/3 /24, 4/17/24, 5/1/24, 5/15/24, 5/29/24, 6/13/24 and additional dates to be added at time of Purchase Order Release.				
BRAND AWARDED: Port Royal Premium				

Line 3

Awarded to: JNS Foods, LLC
1401 N. University Drive, #602
Coral Springs, FL 33071
(954) 718-7958 Ext. 113
bidpricing@insfoods.com
Vendor #: 7000152851

Evaluated Amount: \$483,682.64
Awarded Amount: \$483,682.64
Total Potential Contract Amount: \$483,682.64

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0003	21,896	Case	\$22.09	\$483,682.64
Product Catg.: 39386 - Vegetables Canned (Incl. Canned Salads)				
Item Description: Potatoes, diced, Canned				
Tendering Text: Canned peeled cubed potatoes, US Grade B or better, sodium maximum 140 mg per serving or less, 6/#10 cans per case, drained weight 76 oz. or better.				
Estimated delivery dates: 952 cases on 10/12/23, 10/26/23, 11/2/23, 11/16/23, 11/30/23, 12/21/23, 1/11/24, 125/24, 2/8/24, 2/22/24, 3/7/24, 3/21/24, 4/4/24, 4/18/24, 5/2/24, 5/16/24, 5/30/24, 6/13/24, 6/27/24 and additional dates to be added at time of Purchase Order Release.				
BRAND AWARDED: Seneca Food Direct / JNS				

Line 4

Awarded to: McCall Farms, Inc.
6615 South Irby Street
Effingham, SC 29541
(843) 468-2029 Ext. 1099
HPoston@mccallfarms.com
Vendor #: 7000025428

Evaluated Amount: \$81,681.60
Awarded Amount: \$81,681.60
Total Potential Contract Amount: \$81,681.60

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0004	2,856	Case	\$28.60	\$81,681.60
Product Catg.: 39386 - Vegetables Canned (Incl. Canned Salads)				
Item Description: Greens, Kale, Chopped, Canned				
Tendering Text: Green Kale Canned, chopped, US Grade B or Better, sodium maximum 140 mg or less per serving, 6/#10 cans per case, 58 oz or better drained weight.				
Estimated delivery dates: 952 cases on 2/15/24, 4/11/24, 6/5/24				
BRAND AWARDED: Margaret Holmes 11222				

Buyer: Monica Briseno
Director of Purchasing: Ruthie H. Bishop, CPPB



South Carolina Department of Corrections
 4530 Broad River Road
 Columbia, SC 29210

Bidder's right to protest as listed in section 11-35-4210 in the South Carolina Consolidated Procurement Code applies to this award. THIS IS A STATEMENT OF INTENT TO AWARD A CONTRACT AND BECOMES THE OFFICIAL STATEMENT OF AWARD ON 10/7/2023. MAY BE FILED WITH:

Chief Procurement Officer -Materials Management Office -1201 Main Street, Suite 600 -Columbia, SC 29201
 Facsimile: 803-737-0639
 E-mail: protest-mmo@mmo.state.sc.us

***Amended Intent – Statement of Award**
9/29/2023

Intent to Award
Posting Date: 09/27/2023

*Removing Food Direct / JNS as that was inadvertently added since that was the vendor's name.

Initial Contract Dates: 10/09/2023 - 06/30/2024
Potential Contract Dates: 10/09/2023 - 06/30/2024
Total Potential Contract Amount: \$1,440,290.32

Solicitation : 5400025748
Issue Date : 08/17/2023
Opening Date: 09/12/2023
Description : Canned Goods

Lines 1 & 2

Awarded to: Robbins Sales Co. Inc.
P.O. Box 251
Syosset, NY 11791
(516) 364-7200
spencer@robbinssales.com
Vendor #: 7000154701

Evaluated Amount: \$874,926.08
Awarded Amount: \$874,926.08
Total Potential Contract Amount: \$874,926.08

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
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Tendering Text: Pears Diced, Bartlett, in fruit concentrate, US Grade A, 6/#10 cans per case				
Estimated delivery dates: 952 cases on 10/10/23, 10/24/23, 11/7/23, 11/21/23, 12/5/23, 12/19/23, 1/2/24, 1/16/24, 1/30/24, 2/6/24, 2/20/24, 3/7/24, 3/14/24, 4/9/24, 4/23/24, 5/7/24, 5/21/24, 6/4/24, 6/26/24 and additional dates to be added at time of Purchase Order Release.				
BRAND AWARDED: Port Royal Premium				

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
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BRAND AWARDED: Port Royal Premium				

Line 3

Awarded to: JNS Foods, LLC
1401 N. University Drive, #602
Coral Springs, FL 33071
(954) 718-7958 Ext. 113
bidpricing@jnsfoods.com
Vendor #: 7000152851

Evaluated Amount: \$483,682.64
Awarded Amount: \$483,682.64
Total Potential Contract Amount: \$483,682.64

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
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Product Catg.: 39386 - Vegetables Canned (Incl. Canned Salads)				
Item Description: Potatoes, diced, Canned				
Tendering Text: Canned peeled cubed potatoes, US Grade B or better, sodium maximum 140 mg per serving or less, 6/#10 cans per case, drained weight 76 oz. or better.				
Estimated delivery dates: 952 cases on 10/12/23, 10/26/23, 11/2/23, 11/16/23, 11/30/23, 12/21/23, 1/11/24, 125/24, 2/8/24, 2/22/24, 3/7/24, 3/21/24, 4/4/24, 4/18/24, 5/2/24, 5/16/24, 5/30/24, 6/13/24, 6/27/24 and additional dates to be added at time of Purchase Order Release.				
BRAND AWARDED: Seneca Food Direct / JNS				

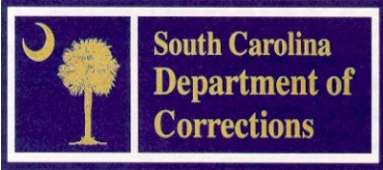
Line 4

Awarded to: McCall Farms, Inc.
6615 South Irby Street
Effingham, SC 29541
(843) 468-2029 Ext. 1099
HPoston@mccallfarms.com
Vendor #: 7000025428

Evaluated Amount: \$81,681.60
Awarded Amount: \$81,681.60
Total Potential Contract Amount: \$81,681.60

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0004	2,856	Case	\$28.60	\$81,681.60
Product Catg.: 39386 - Vegetables Canned (Incl. Canned Salads)				
Item Description: Greens, Kale, Chopped, Canned				
Tendering Text: Green Kale Canned, chopped, US Grade B or Better, sodium maximum 140 mg or less per serving, 6/#10 cans per case, 58 oz or better drained weight.				
Estimated delivery dates: 952 cases on 2/15/24, 4/11/24, 6/5/24				
BRAND AWARDED: Margaret Holmes 11222				

Buyer: Monica Briseno
Director of Purchasing: Ruthie H. Bishop, CPPB



South Carolina Department of Corrections
4530 Broad River Road
Columbia, SC 29210

Bidder's right to protest as listed in section 11-35-4210 in the South Carolina Consolidated Procurement Code applies to this award. THIS IS A STATEMENT OF INTENT TO AWARD A CONTRACT AND BECOMES THE OFFICIAL STATEMENT OF AWARD ON 10/7/2023. MAY BE FILED WITH:

Chief Procurement Officer -Materials Management Office -1201 Main Street, Suite 600 -Columbia, SC 29201
Facsimile: 803-737-0639

E-mail: protest-mmo@mmo.state.sc.us

** Amended Intent to Award 2
10/05/2023

*Amended Intent to Award
9/29/2023

Intent to Award
Posting Date: 09/27/2023

*Terminated Line 003 Potatoes
*Removing Food Direct / JNS as that was inadvertently added since that was the vendor's name.

Initial Contract Dates: 10/09/2023 - 06/30/2024
Potential Contract Dates: 10/09/2023 - 06/30/2024
Total Potential Contract Amount: \$1,440,290.32
Total Potential Contract Amount: \$956,607.68

Solicitation : 5400025748
Issue Date : 08/17/2023
Opening Date: 09/12/2023
Description : Canned Goods

Lines 1 & 2
Awarded to: Robbins Sales Co. Inc.
P.O. Box 251 -Syosset, NY 11791 -(516) 364-7200 -
spencer@robbinssales.com - Vendor #: 7000154701

Evaluated Amount: \$874,926.08
Awarded Amount: \$874,926.08
Total Potential Contract Amount: \$874,926.08

Table with 5 columns: Line Number, Quantity, Unit of Measure, Unit Price, Extended Price. Row 1: 0001, 20,944, Case, \$23.88, \$500,142.72. Includes product description: Pears, Diced, Canned and tendering text: Pears Diced, Bartlett, in fruit concentrate, US Grade A, 6/#10 cans per case.

0002	18,088	Case	\$20.72	\$374,783.36
Product Catg.: 39354 - Fruits Canned Processed and Preserved				
Item Description: Applesauce, Canned				
Tendering Text: Applesauce, natural, unsweetened, regular applesauce, US Grade A, CFR 145 110 USDA grading for canned applesauce, 6/#10 cans per case (USDA Certificate)				
Estimated delivery dates: 952 cases on 10/18/23, 11/1/23, 11/29/23, 12/13/23, 12/27/23, 1/24/24, 2/7/24, 2/21/24, 3/6/24, 3/20/24, 4/3 /24, 4/17/24, 5/1/24, 5/15/24, 5/29/24, 6/13/24 and additional dates to be added at time of Purchase Order Release.				
BRAND AWARDED: Port Royal Premium				

Line 3 - Terminated

Awarded to: ~~_____~~ **JNS Foods, LLC**
1401 N. University Drive, #602
Coral Springs, FL 33074
(954) 718-7958 Ext. 113
bidpricing@jnsfoods.com
Vendor #: ~~7000152851~~

Evaluated Amount: ~~\$483,682.64~~
Awarded Amount: ~~\$483,682.64~~
Total Potential Contract Amount: ~~\$483,682.64~~

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0003	21,896	Case	\$22.09	\$483,682.64
Product Catg.: 39386 - Vegetables Canned (Incl. Canned Salads)				
Item Description: Potatoes, diced, Canned				
Tendering Text: Canned peeled cubed potatoes, US Grade B or better, sodium maximum 140 mg per serving or less, 6/#10 cans per case, drained weight 76 oz. or better.				
Estimated delivery dates: 952 cases on 10/12/23, 10/26/23, 11/2/23, 11/16/23, 11/30/23, 12/21/23, 1/11/24, 125/24, 2/8/24, 2/22/24, 3/7/24, 3/21/24, 4/4/24, 4/18/24, 5/2/24, 5/16/24, 5/30/24, 6/13/24, 6/27/24 and additional dates to be added at time of Purchase Order Release.				
BRAND AWARDED: Seneca Food Direct / JNS				

Line 4

Awarded to: **McCall Farms, Inc.**
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HPoston@mccallfarms.com
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BRAND AWARDED: Margaret Holmes 11222				

Buyer: Monica Briseno
Director of Purchasing: Ruthie H. Bishop, CPPB