

	<b>Florence School District Five</b> <b>Request for Qualifications</b>	Solicitation #	<b>FSD5-2022-RFQ</b>
		Date Issued	<b>December 12, 2022</b>
		Procurement Official	<b>Adam W. Kennedy</b>
		Phone	<b>(843)386-2358</b>
		E-Mail Address	<b>akennedy@fsd5.org</b>

DESCRIPTION	Architect-Engineer Services for JHS Gym renovation
-------------	--

*The Term "Offer" Means Your "Bid" or "Proposal" or "Quotation"*

SUBMIT OFFER BY	<b>January 13, 2023 @ 4:00 PM</b>
QUESTIONS MUST BE RECEIVED BY	<b>January 6, 2023 @ 4:00 PM</b>
NUMBER OF COPIES TO BE SUBMITTED	<b>1 original and 4 copies marked "COPY"</b>

**Offers must be submitted in a sealed package. Solicitation number & Opening Date must appear on package exterior.**

SUBMIT YOUR SEALED OFFER TO:

<p align="center"> <b>Florence School District Five</b>  <b>ATTN: Adam W. Kennedy</b>  <b>P.O. Box 98</b>  <b>156 E. Marion Street</b>  <b>Johnsonville, SC 29555</b> </p>
--

CONFERENCE TYPE: Not Applicable DATE & TIME: (EST) As appropriate, see "Conferences – Pre-Bid/Proposal" & "Site Visit" provisions	LOCATION: Not Applicable
---	--------------------------

AWARD & AMENDMENTS	Intent to award will be posted by January 24, 2023 no later than 4:30 pm. The award, this solicitation and any amendments may be posted at the following web address: <a href="http://www.fsd5.org">http://www.fsd5.org</a>
--------------------	---

You **must** submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of **sixty (60) calendar days** after the Opening Date.

NAME OF OFFEROR: (Full legal name of business submitting the offer)		OFFERORS TYPE OF ENTITY: (Check one) <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Tax exempt corporate entity <input type="checkbox"/> Government entity (federal, state, or local) <input type="checkbox"/> Other _____  (See "Signing your Offer" provision)
AUTHORIZED SIGNATURE:  (Person signing must be authorized to submit binding offer to enter contract on behalf of offeror named above)		
TITLE		
PRINTED NAME:	DATE SIGNED	

Instructions regarding Offeror's name: Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror above. 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.

STATE OF INCORPORATION	
TAXPAYER IDENTIFICATION NO.	

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)						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; padding: 2px;">Phone</td> <td style="padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">Fax</td> <td style="padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">E-Mail</td> <td style="padding: 2px;"></td> </tr> </table>	Phone		Fax		E-Mail	
Phone							
Fax							
E-Mail							

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)		
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 2px;">ORDER FAX #</td> <td style="padding: 2px;"></td> </tr> </table>	ORDER FAX #	
ORDER FAX #			
<input type="checkbox"/> Payment Address Same as Home Office Address <input type="checkbox"/> Payment Address Same as Notice Address (check only one)	<input type="checkbox"/> Order Address Same as Home Office Address <input type="checkbox"/> Order Address Same as Notice Address (check only one)		

ACKNOWLEDGEMENT OF AMENDMENTS	Amendment #	Amendment Date	Amendment #	Amendment Date	Amendment #	Amendment Date
Offeror acknowledges receipt of amendments by indicating amendment number and its date of issue.  See "Amendments to Solicitation" Provision						
	Amendment #	Amendment Date	Amendment #	Amendment Date	Amendment #	Amendment Date

DISCOUNT FOR PROMPT PAYMENT	10 Calendar Days	20 Calendar Days	30 Calendar Days	_____ Calendar Days
	%	%	%	%

MINORITY PARTICIPATION	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Are You a South Carolina Certified Minority Vendor? (Yes or No):</td> <td style="padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">If Yes, South Carolina Certification #</td> <td style="padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">Are You a Non-SC Certified Minority Vendor? (Yes or No):</td> <td style="padding: 2px;"></td> </tr> </table>	Are You a South Carolina Certified Minority Vendor? (Yes or No):		If Yes, South Carolina Certification #		Are You a Non-SC Certified Minority Vendor? (Yes or No):	
Are You a South Carolina Certified Minority Vendor? (Yes or No):							
If Yes, South Carolina Certification #							
Are You a Non-SC Certified Minority Vendor? (Yes or No):							

**FOLLOWING ARE DEFINITIONS OF TERMS USED IN THE PROPOSAL INSTRUCTIONS. THESE DEFINITIONS ARE NOT ENTIRE, PLENARY, OR EXHAUSTIVE OF ALL TERMS USED. TERMS MAY BE DEFINED WHERE USED, IN THE DISTRICTS PROCUREMENT CODE, OR MAY BE SUBJECT TO NORMAL AND USUAL INTERPRETATION IN THE CONTEXT USED.**

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

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

BOARD means the Florence School District Five Board of Trustees.

BUSINESS means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

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

CONTRACT See clause entitled Contract Documents & Order of Precedence.

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

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

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

DISTRICT means Florence School District Five.

OFFER means the bid or proposal submitted in response to 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.

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

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

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

YOU and YOUR means Offeror.

## **GENERAL BID INSTRUCTIONS, TERMS AND CONDITIONS**

### **1. INSTRUCTIONS TO OFFERORS:**

- A. Qualifications shall be publicly received at the date and time indicated on PAGE 1.
- B. Late Qualifications shall not be considered for award.
- C. The District shall not accept responsibility for unidentified Qualifications.
- D. The District shall not accept oral, emailed, or FAXED Proposals.

### **2. TAXES:** South Carolina Sales Tax shall be shown as a separate entry on the bid total, if applicable at 7%.

3. **AMBIGUOUS QUALIFICATIONS:** Qualifications, which are uncertain as to terms,
4. **OFFERORS QUALIFICATIONS:** Qualifications shall be considered only from Offerors who are regularly established in the business called for, and who in the judgment of the District, are financially responsible and able to show evidence of their reliability, ability (to render prompt and satisfactory service in the volume required by this solicitation), experience, equipment, facilities, and personnel directly employed or supervised.
5. **ACKNOWLEDGEMENT OF AMENDMENT(S):**
  - A. Offerors shall acknowledge receipt of all amendment(s) either by signing and returning one copy of the amendment or by acknowledging the change on the bid form.
  - B. It is the Offeror's responsibility to determine whether they have received any or all amendment(s)
6. **AFFIRMATIVE ACTION:** The successful Offeror shall take affirmative action in complying with all Federal, State, and local requirements concerning fair treatment of all employees/applicants, without regard or discrimination by reasons of race, color, sex, religion, national origin, and physical handicap.
7. **WITHDRAWAL OF QUALIFICATIONS:** Any Offeror may withdraw his proposal prior to the closing time scheduled for the receipt of Qualifications. All requests to withdraw Qualifications must be submitted in writing and must document the fact that the acceptance of the bid will cause the Offeror substantial loss.
8. **ASSIGNMENT:** No contract may be assigned, sublet, or transferred without the written consent of the Procurement Official.
9. **SUBMISSION OF DATA:** Each Offeror, upon request, shall submit evidence of liability insurance, Workmen's Compensation, and any other data released to this solicitation, to satisfy the requirements of the solicitation and the execution of a contract.
10. **PROPRIETARY INFORMATION:** Unless otherwise required by law, and until the public opening of the Qualifications, all information, materials and other documents submitted by a respondent shall not be released or made available to any person or entity except District representatives assisting in this procurement process. Unless required by law, proprietary or financial information submitted to the District by a respondent will not be disclosed if the respondent visibly marks each part of the Qualification that the respondent considers confidential, financial or proprietary information with the word "CONFIDENTIAL."

## **1. INTRODUCTION**

### **1.1 Purpose of Procurement**

- 1.1.1 Florence School District Five, hereinafter referred to as the "District" or "Owner", is requesting qualification statements from qualified firms, hereinafter referred to as "Respondents or Offerors", to provide Architect-Engineer Services for the design and construction of new flooring and bleachers in the gym. Licensed consulting firms shall be experienced in providing architect-engineering services necessary for the preparation of preliminary plans, right of way plans, landscape plans, final construction plans and construction administration for the proposed renovation.
- 1.1.2 It is the intent and purpose of the District that this solicitation permits competition. It is the responsibility of the Respondents to advise the District if any language, specifications, or requirements, or any combination thereof, inadvertently limits the competition in this solicitation to a single source.
- 1.1.3 It is the intent and purpose of this solicitation to give equal consideration to all Offers. Evaluations of each submission will factor expertise, experience, capabilities, and references into consideration of award.

## **2. METHOD OF PROCUREMENT**

### **2.1 Selection Process**

- 2.1.1 This document is a Request for Qualifications (RFQ). The responses will be evaluated and at least three firms will be selected for interviews. After the interviews, the Selection Committee will rank the top three firms. Negotiations will then commence with the highest ranked firm.
- 2.1.2 The selection of professional service providers will be made by a Selection Committee which will consist of representatives determined to be qualified to make an informed decision as to the most competent and qualified firm for the project.
- 2.1.3 Selection of the firm will be a multi-step process:
  - a. Written Submittal – The Selection Committee will receive and review statements of qualifications and performance data as well as additional information requested in response to the RFQ. The Selection Committee will evaluate all firms against a set of criteria, provided in Section 4.4 below, to determine those firms most qualified and suited for this particular project. Qualifications alone will narrow the field to a short list of at least three of the top ranked firms.
  - b. Interview and Final Evaluation – As part of the evaluation of the responses, the top ranked firms will be invited to a formal interview to explain their qualifications and visions orally and to answer questions from the Selection Committee. From the evaluation of the written qualifications, combined with the interview, the Selection Committee will rank the shortlisted firms in order of suitability and appropriateness for the present project.
- 2.1.4 Any submitted proposal shall remain valid for ninety (90) days after the proposal due date or until the owner executes a contract, whichever is sooner. In the event the selected proposer fails to perform and/or the contract is terminated within forty-five (45) days of its initiation, the Owner may request the proposer submitting the next acceptable proposal to honor its proposal.

## 2.2 Project Assignment

- 2.2.1 Services on this project shall be provided under the terms and conditions of this contract agreement. Any terms and conditions stated in any project-specific letter of understanding that replaces, amend, deletes, or adds to the terms and conditions of this contract agreement shall not be binding even if signed by a District employee. The letter of understanding shall only serve to state an understanding of the scope of work assigned to the Principal.
- 2.2.2 Upon agreement of the District and Principal to the scope of work and fees as negotiated for this project, work shall not commence until the Principal receives a properly executed contract and Purchase Order from the District.
- 2.2.3 Contract for the project will be negotiated with the selected Architect-Engineer firm. All fees for contracted design consultant services will be negotiated with the highest ranked Offeror for the project, after the interviews have been conducted and approval has been granted by the Board but prior to a contract being awarded.

**Note: Cost is not a factor in the ranking of firms to provide services herein. Do not include any reference to consult cost in the RFQ response.**

## 3. GENERAL SCOPE OF SERVICES

### 3.1 Project Objectives

- 3.1.1 The District is seeking a licensed firm experienced in providing architect-engineering and design services necessary for the preparation of site development plans, preliminary plans, right of way plans, and final construction plans for the gym renovation. The goal of this RFQ is to select one firm to perform the described services for the District. Project services shall include preparation of drawings and other documents illustrating the means for substantially meeting the programmatic needs established by the Owner, and working with the Owner to meet the estimated construction cost. Design documents and drawings must comply with all applicable program elements, building and zoning codes, environmental requirements, SC Dept of Education's Office of Schools and Facilities Construction Guide, project solicitation, bid opening and shall include provisions for any required permits and variances.
- 3.1.2 Requested services include but are not limited to: site design, project management, field surveys, environmental studies and documentation, permitting, hydrology/hydraulic design, water and sewer design, geotechnical services, hazardous materials survey, subsurface utility engineering, utility coordination, and construction plan modification and construction administration. The project team should be capable of providing all services outlined above.
- 3.1.3 In selecting a firm, the Owner will emphasize the experience of the firm and assigned personnel in working on school projects including providing functions of similar magnitude and complexity as the proposed project. Selection preference will be toward firms that have depths of knowledge and resources for contract coordination, compliance, and familiarity with state laws, ordinances, and codes applicable to the Owner.
- 3.1.4 It is the responsibility of each submitter to examine the complete Request for Qualifications ("RFQ"), seek clarification in writing and review its submittal for accuracy before submitting their qualifications. Once submission deadlines have passed, all submissions will be final. The Owner may request clarification from any individual submitter relative to their submission.

3.1.5 Certified Minority Business Enterprises are encouraged to respond to this request for qualifications

**3.2 Project Assumptions**

3.2.1 The Owner does not desire to enter into “joint-venture” agreements with multiple firms.

3.2.2 The Owner intends to contract with one (1) firm.

3.2.3 It is the sincere intention of the Owner to make every effort to be fair and equitable in its dealings with all candidates for selection.

**3.3 SCHEDULE OF KEY EVENTS**

<b>EVENT</b>	<b>DATE</b>	
Advertisement in SCBO & Issue Date	December 12, 2023	
Deadline for Questions	January 6, 2023 @ 4:00 PM, EST	
Response to Questions (Amendment Issued)	January 9, 2023	Anticipated
Due Date & Time	January 13, 2023 @ 4:00 PM, EST	
Selection Committee Short List Announced	January 16, 2023	Anticipated
Interviews	January 19, 2023	Anticipated
Board Approval	January 23, 2023	Anticipated
Notice of Intent to Award	January 24, 2023	Anticipated

**4. WRITTEN SUBMITTAL FORMAT**

**4.1 Qualifications Submission Format and Requirements**

4.1.1 One original and 4 copies of the information shall be submitted. Each submittal shall be identical and include a transmittal letter. The transmittal letter (or cover letter) will not count toward the page limit (specified in Section 4.1.2). The table of contents sheet and the tab sheets also do not count toward the page limit. The covers of bound documents do not count and should not be used to convey your response to the RFQ using printing on them. Submitters are encouraged to follow their responses in the sequence of the Submittal outlined here. Responses should be concise, clear, and relevant. When responding to the requests provided elsewhere in the submittal, submitters may insert reference information at the specific location where the answer is to be provided. Submitters cost incurred in responding to this RFQ is the submitter’s alone, and the Owner does not accept liability for any such cost.

4.1.2 The RFQ response must be submitted by the date and time listed in this RFQ. The response shall contain no more than thirty (30) double sided pages, excluding appendices. Minimum font size shall be 12-point. The pages of submittal must be numbered. A table of contents, with corresponding tabs in the body of the submittal must be included as well to identify each section. Any affidavits, certifications, or signed statements call for in the RFQ may be included in an appendix and will not count toward the page limit.

4.1.3 Submittals of qualifications will be accepted until the time and date shown on the Cover Page of this RFQ. This is a firm deadline. The Owner is not responsible for the proper or timely delivery of submittals. Failure to meet the deadline for the receipt of submittals will result in rejection of the submittal. Submittals received after the deadline will not be considered whether delayed in transit

or for any other cause. Each firm is responsible for the accuracy and completeness of its submittal. Errors and omissions may constitute grounds for rejection.

- 4.1.4 If there are multiple firms proposed as one team, each component firm should describe its relevant qualifications.
- 4.1.5 Firms should deliver their submittals in a sealed package. The name and address of the firm should appear on the outside of the package, and the package should reference the project; i.e., "RFQ for Architect & Engineer Services – JHS Gym Renovation"
- 4.1.6 Submit qualification documents to the following address:  
**Adam W. Kennedy**  
**Chief Operations Officer**  
**P.O. Box 98**  
**156 East Marion Street**  
**Johnsonville, SC 29555**
- 4.1.7 Except for submissions of questions, discussed further below, proposers shall not contact any members or employees of the Owner regarding any aspect of this procurement until after the award of the contract. Contact with these persons could be grounds for elimination from the competition. Questions must be submitted in writing via email to:  
**Adam W. Kennedy**  
**Email: [akennedy@fsd5.org](mailto:akennedy@fsd5.org)**
- 4.1.8 All questions that have been submitted in writing before the deadline, will be compiled and answered in writing by an amendment. The amendment will be posted to the District's website.

#### **4.2 Written Submittal Prerequisite Criteria**

Firms must meet the criteria in the bullet points below. Firms that do not meet the criteria are automatically disqualified for further evaluation:

- Firm **MUST** have design Errors and Omission Insurance with a minimum policy limit of 2 million dollars
- Respond to Evaluation Criteria in Requested Format.
- Firms must submit Federal Standard Form 330. Form 330 may be placed in an appendix and will not count toward your page limit.

#### **4.3 Submittal Format**

The qualification submittal should contain the following information in the following order:

- 4.3.1 **Introduction** – Provide an executive summary highlighting the major points of the submittal. This section provides each firm the opportunity to provide specific information that differentiates them from others in the competition. (two page maximum)
- 4.3.2 **Basic Company Information**
  - a. Company name
  - b. Address and zip code
  - c. E-mail address and name of primary contact
  - d. Telephone number of primary contact
  - e. Number of years in business
- 4.3.3 **Principal and Project Teams Experience**



- Experience with projects of similar scope, construction type and complexity. Experience shall focus on school construction and renovation projects with demanding schedules demonstrating the team's success and experience with project types listed in this solicitation.
- Experience in various construction delivery methods; i.e., CM/GC at risk, low bid, multi-prime, etc.
- Experience with unique approaches, creativity in designs and site adaptation, integration of the newest technologies. Examples may be provided.
- Demonstrated sensitivity to flexible and economical designs without sacrificing quality, aesthetics or functionality.
- Experience in meeting design timelines and construction schedules with clearly established and proven methods for maintain the construction budget.
- Demonstrated ability of the Principal and project team members to successfully represent the owner without the involvement of a construction management firm during design and/or construction.
- Firms should identify major sub-consultants involved in past projects. Only list sub-consultants that actually and materially contributed o the work of the project.

#### 4.3.4 **Principal's Past and Current Performance**

Indicate services performed for similar projects in the past five (5) years. Demonstrated successful performance shall include, but not limited to:

- Quality, completeness, and timeliness of designs, drawings, specifications, bid documents, pay apps, etc.
- Project management of the design process
- Quality control of Construction Documents
- Responsiveness to RFI's, Change Order Request, etc.
- Knowledge and compliance with state and local, and OSF requirements
- Quality of project monitoring and contract administration
- Ability to work in a team environment to effectively motivate contractor to successfully meet project requirements for quality, schedule, and budget.
- Timeliness in reviewing shop drawings and completing project closeout.
- List any active or pending litigation with owners, subcontractors, and design professionals along with explanations.
- Other than the litigation listed above, has the firm been involved in any other relevant litigation in the past five years? If yes, explain
- Has the firm ever failed to complete any work awarded to it or has it been removed from any project awarded to the firm? If yes, explain
- Include any letters of recommendation

Provide at least three (3) references of clients for whom the firm has provided similar construction services. Give dates and other particulars of the jobs, contact persons and telephone numbers.

#### 4.3.5 **Ability and Capability of Key Staff & Consultants**

- Size of firm, number of partners, number of clerical staff and range of services offered in house.
- Qualifications of partners and key staff with emphasis on school and public construction
- Qualifications of all key project team members particularly with projects of similar scope and complexity.
- Reputation and professional standing in engineering field, honors, memberships in local councils and AIA.
- Qualifications of key consultants identified in the Official Proposal Form

#### 4.3.6 **Accessibility**

- Accessibility of firm to the District. Identify location of the closest office in or near the District
- Accessibility of consultants to the District. Identify location of consultant offices.

#### 4.3.7 **Financial Responsibility**

- List your total annual billings for each of the past three calendar years.
- List contact persons, addresses, and telephone numbers for your insurance carrier agent.
- What percentage of your firm's work has been negotiated during the past three years?

#### 4.3.8 **Current/Projected Workload**

- Firm's current workload and time frames for completion
- Firm's pending contracts and potential time frames for completion
- Demonstrated commitment to the Owner of key projected personnel and clerical staff

### 4.4 **Evaluation Criteria**

As required by the District's approved Procurement Code, evaluation of the short listed firms will be based on the following criteria:

1. Past Performance
2. Ability of Professional Personnel
3. Demonstrated ability to meet time and budget requirements
4. Location and knowledge of the locality of the project if the application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project.
5. Current, recent and projected workloads of the firm.
6. Creativity and insight related to the project
7. Related experience on similar projects
8. Volume of work awarded by the District to the person or firm during the previous five years, with the objective of effectuating an equitable distribution of contracts by the District among qualified firms including Minority Business Enterprises certified by the South Carolina Office of Small Minority Business Assistance and firm that have not had previous District work.
9. Any other special qualifications required pursuant to the solicitation of the District.

## 5. **CONSIDERATIONS**

### 5.1 **Qualifications Based Selection**

Final Selection of the Architect-Engineering firm for this project shall be made using a qualifications-based selection. In accordance with the District's Procurement Code, the submittals will be reviewed, evaluated and ranked by the District Selection Committee. After evaluation and ranking, the District Selection Committee shall hold interviews with at least three (3) of the top ranked firms. After the interviews are held, the District Selection Committee will evaluate and rank their selection in priority order. The District will then negotiate a contract with the top ranked firm. If the Agency is unable to negotiate an acceptable contract with that firm, the Agency must terminate those negotiations formally and negotiate with the second highest ranked firm.

## 5.2 Additional Conditions

- 5.2.1 The Owner reserves the right to reject any or all submittals received. The Owner is not obligated to request clarifications or additional information but may do so at its discretion. The Owner reserves the right to extend the deadline for submittals or alter the schedule of events, as they deem necessary.
- 5.2.2 Non-Collusion: In submitting its qualification information, the proposer affirms that, in connection with its submittal, the firm has not either directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free and open competition; and that, to the best of its knowledge and belief, the contents of its submittal have not been communicated by the firm or by any of the firm's employees or agents to any person who is not an employee or agent of the firm or of the surety on any bond furnished with the submittal and will not be communicated to any person who is not an employee or agent of the bidder or of said surety prior to the official opening of the submittal, and, to the extent that its submittal includes the participation of subcontractors or teaming partners, those subcontractors and teaming partners have not participated in any collusive activities as described above.
- 5.2.3 Confidentiality of Documents: Upon receipt of a submittal by the Owner, the proposal shall become the property of the Owner without compensation to the proponent for disposition or usage by the Owner at its discretion. Subject to the provisions of the Freedom of Information Act, the details of the submittal documents will remain confidential until final award.
- 5.2.4 Costs to Prepare Responses: The Owner assumes no responsibility or obligation to the respondents and will make no payment for any costs associated with the preparation or submission of qualification information.
- 5.2.5 The Owner reserves the right to check references of proposed personnel on the project team and to request substitutions of personnel if it deems such action in the Owners' best interests. Moreover, the Owner reserves the right to check any reference that it may become aware of in addition to the references given by the proposer.
- 5.2.6 Equal Employment Opportunity: During the performance of this Contract, the firm agrees as follows: The firm will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, place of birth, or physical handicap. The firm must have a history of being non-discriminating and will not discriminate on the basis of race, creed, color, sex, or national origin in any of its employment practices, or procurement practices with respect to the workforce of the firm, or procurement services in connection with this project. An affirmative action plan must be maintained for both workforce and procurement practices.
- 5.2.7 Florence School District Five encourages the use of Certified MBEs/DBEs in all of its projects. If any MBES and/or DBEs are included in your proposed services, please identify them. Also, if you have any unique experience working with MBEs and or DBEs previously, please describe them. The District embraces diversity in all aspects of its function, including use of minority businesses, vendors, or contractors in construction projects.
- 5.2.8 It is a specific requirement that the selected firm certify that it operates a drug-free workplace and that it will remain that way throughout the duration of the project to satisfy South Carolina Statute 44-107-30.

## 6. INTERVIEW INFORMATION

### 6.1 Interview Format

- 6.1.1 The time allotted to each firm for the presentation and interview will not exceed 45 minutes (30 minutes for presentation, 15 minutes for questions). The format of the firm's presentation during the interview session is at the discretion of the firm. All members of the Selection Committee will be present during the formal interview.
- 6.1.2 Please limit the number of representatives of the Design team to no more than six people. Include at least the Principal Designer, representatives of the engineering consultants, and those with whom the Owner will interact with regularly.
- 6.1.3 Firms must address any questions, before the interview, to the procurement office. Firms must not contact any other members of the Selection Committee before or after the interview until after a contract is executed.

### 6.2 Additional Information and Provisions

- 6.2.1 The Owner reserves the right to withdraw this RFQ or to reject any and all submittals at any time and cancel the project if, in the sole discretion of the Owner, continuation is deemed not to be in the best interest of the District.
- 6.2.2 In addition to the Owner's general right to reject all submittals, a submittal may be rejected if the submittal contains false or misleading statements or references that, in the sole judgment of the Selection Committee, do not support an attribute or condition contended by the firm and, in the sole judgment of the Selection Committee, such statements were intended to mislead the Selection Committee in its evaluation of the submittal.
- 6.2.3 The Selection Committee's identification of an apparent successful firm does not necessarily mean the Selection Committee accepts all aspects of the firm's submittal.
- 6.2.4 The Selection Committee reserves the right in its sole discretion to waive minor irregularities.
- 6.2.5 All submittals, together with any supporting material submitted by the firm, become the property of the Owner and may be retained, destroyed, or otherwise disposed of at the convenience of the Owner. All submittals, if kept by the Owner, become a matter of public record when final negotiations are completed.
- 6.2.6 By providing a submittal, each firm agrees not to request access to another firm's submittals until after a contract has been executed.
- 6.2.7 By providing a submittal, each firm agrees that the Owner will have the right to use any or all ideas or concepts presented in any submittal without restriction and without compensation to the firm.
- 6.2.8 **CRIMINAL BACKGROUND CHECK:** All companies, including but not limited to, design professionals, vendors, suppliers, consultants, general contractors of any trade, and their subcontractors, that bring one or more of its employees to any District facility in order to fulfill the terms of this agreement, must conduct a criminal background check on said employee(s) prior to bringing or sending the employee(s) to the District campus or other District property. Contractor agrees that any employee with a criminal history that the contractor reasonably believes poses a

threat to property or persons will not be brought or sent to the any District facility. The Contractor agrees to impose this same criminal background check requirement on all subcontractors, vendors, suppliers, or consultants, used to fulfill its responsibilities under this agreement. The Contractor shall be responsible for all costs associated with these requirements. The District reserves the right to verify compliance by contractor upon request. Information collected for verification is controlled by the Federal Fair Credit Reporting Act. Individuals believed by the District to pose a threat must leave the District property immediately and the Contractor may be prohibited from future awards without permission of the Procurement Officer. All workers shall at all times wear a visible identification badge with photo ID that contains their name and the name of their employer.

## **TERMS AND CONDITIONS**

**AMENDMENTS TO SOLICITATION:** (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of amendments: <http://www.fsd5.org>. (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 Offeror received the amendment. (c) If this Solicitation is amended, then all terms and conditions which are not modified remain unchanged.

**ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE:**

(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.

**AWARD NOTIFICATION:** 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 Offeror's responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given.

**BANKRUPTCY:** (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 District. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all District 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 District upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

## **CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:**

- (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 non-responsible.
- (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 District, the Procurement Officer may terminate the contract resulting from this solicitation for default. [02-2A035-1]  
Check for federal and state disbarments at [www.sam.gov](http://www.sam.gov) and <http://procurement.sc.gov/PS/legal/PS-legal-suspend-debar.phtm>.

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

**CIVIL RIGHTS PROVISIONS:** The contractor providing services under this Invitation to Bid must comply with the provisions of the Civil Rights Act of 1964, as amended. The contractor must comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with contractor's performance of work under this contract, contractor agrees not to discriminate against any employee(s) or applicant(s) for employment because of race, color, national origin, sex, age, or disability. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. To file a complaint, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free at

(866) 632-9992. Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at 800-877-8339; or 800-845-6136 (Spanish). USDA is an equal opportunity provider and employer.

**CODE OF LAWS AVAILABLE:** Florence School District Five Procurement Code is available at: [www.fsd5.org](http://www.fsd5.org).

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

**DEADLINE FOR SUBMISSION OF OFFER:** Any offer received after the Procurement Officer of the District 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 District's mail room prior to opening.

**DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE:** 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 District 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.

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

**DISTRICT OFFICE CLOSINGS:** If an emergency or unanticipated event interrupts normal District processes so that offers cannot be received at the District 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 District processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If District offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <http://www.fsd5.org/>

**DRUG FREE WORK PLACE CERTIFICATION:** 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.

**DUTY TO INQUIRE:** 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 District's attention. See clause entitled "Questions from Offerors." [02-2A070-2]

**ETHICS CERTIFICATE:** 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 District 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.

**EQUAL OPPORTUNITY:** 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.

**FALSE CLAIMS:** According to the S.C. Code of Laws § 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.

**NO INDEMNITY OR DEFENSE:** Any term or condition is void to the extent it requires the District to indemnify, defend, or pay attorney's fees to anyone for any reason.

**NOTICE:** (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 District 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.



**OPEN TRADE REPRESENTATION:** By submitting an Offer, Offeror represents that the Offeror is not currently engaged in the boycott of a person or entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined SC Code Section 11-35-5300.

**PAYMENT FOR GOODS AND SERVICES:** Payment for goods and services received by the District shall be processed in accordance with the District Procurement Code. A purchase order will be issued and must be referenced on all invoices presented for payment.

**PROCUREMENT AUTHORITY:** (a) All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement. (b) Purchasing Liability. The Procurement Officer is an employee of Florence School District Five acting on behalf of the District pursuant to their Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and Florence School District Five.

**PROHIBITED COMMUNICATIONS AND DONATIONS:** 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 District 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 District during the period beginning eighteen months prior to the Opening Date.**

**PROTESTS:** Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the Chief Procurement Officer within the time provided.

**PROTEST ADDRESS:** Any protest must be addressed to the Chief Operations Officer, Florence School District Five, and submitted in writing:

(a) by email to [akennedy@fsd5.org](mailto:akennedy@fsd5.org)

(b) by post delivery to Florence School District Five, 156 E. Marion Street,  
Johnsonville, SC 29555

**PUBLIC OPENING:** Offers will be publicly opened at the date / time and at the location identified on the Cover Page, or last Amendment, whichever is applicable.

**PUBLICITY:** Contractor shall not publish any comments or quotes by District employees, or include the District in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

**PURCHASE ORDERS:** Contractor shall not perform any work prior to the receipt of a purchase order from the District. The District 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.

**QUALIFICATION OF OFFEROR:** To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the District's standards of responsibility and information from any other source may be considered. An Offeror must, upon request of the District furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award.

**QUESTIONS FROM OFFERORS:** (a) Any prospective Offeror desiring an explanation or interpretation of the Solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Label any communication regarding your questions with the name of the Procurement Officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [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 District 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.

**The preferred method for submitting questions is by email to [akennedy@fsd5.org](mailto:akennedy@fsd5.org).**

**REJECTION/CANCELLATION:** The District may cancel this solicitation in whole or in part. The District may reject any or all proposals in whole or in part.

**RESPONSIVENESS / IMPROPER OFFERS:**

- (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 District 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.
- (d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price.
- (e) Unbalanced Bidding. The District 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 District 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.

**SIGNING YOUR OFFER:** 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 venture 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.

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

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

**SURVIVAL OF OBLIGATIONS:** 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.

**SWMBE PARTICIPATION:** Florence School District Five encourages SWMBE businesses to participate in the Solicitation process. All business conducted with SWMBE businesses certified by the South Carolina Governor's Office of Small and Minority Business Assistance is recorded in an annual report submitted to the Board of Trustees. In order to be included in this report, you must submit a copy of your certificate with your bid.

**TAXPAYER IDENTIFICATION NUMBER:**

(a) If Offeror is owned or controlled by a common parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent.

(b) Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member. "Taxpayer Identification Number (TIN)." As used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(c) If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether (i) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States; (ii) Offeror is an agency or instrumentality of a state or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government.

**TERMINATION DUE TO UNAVAILABILITY OF FUNDS:** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

**THIRD PARTY BENEFICIARY:** 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.

**WAIVER:** The District 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 District's rights under this Contract. Any waiver must be in writing.

**WITHDRAWAL OR CORRECTION OF OFFER:** 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]

#### **CHANGES:**

(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 District 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.

**COMPLIANCE WITH LAWS:** During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

### **CONTRACTOR'S LIABILITY INSURANCE - GENERAL**

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

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

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

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

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

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

(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(e) Prior to commencement of the work, the Contractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

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

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

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

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

**CONTRACTOR PERSONNEL:** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

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

**CONTRACTOR'S USE OF DISTRICT PROPERTY:** Upon termination of the contract for any reason, the District shall have the right, upon demand, to obtain access to, and possession of, all District properties, including, but not limited to, current copies of all District application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the District without the District's written consent, except to the extent necessary to carry out the work.

**DEFAULT:** The District may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the contractor fails to comply with any material contract terms and conditions, or fails to provide the District, upon request, with adequate assurances of future performance. In the event of termination for cause, the District shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the District for any and all rights and remedies provided by law. If it is determined that the District improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

**ILLEGAL IMMIGRATION:** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractor's language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractor's language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

**INDEMNIFICATION-THIRD PARTY CLAIMS – GENERAL:** Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

**LICENSES AND PERMITS:** During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the District, State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

**PRICE ADJUSTMENTS:** (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

**RECORD RETENTION AND RIGHT TO AUDIT:** The District has the right to audit the books and records of the contractor as they pertain to this contract, both independent of, and pursuant to, the District Procurement Code. Such books and records shall be maintained for a period of three (3) years from the date of final payment under the contract.

**RELATIONSHIP OF THE PARTIES:** Neither party is an employee, agent, partner, or joint venture of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

**TERMINATION FOR CONVENIENCE:** (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the District. 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 District. 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 District 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 District 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 an accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the District 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 District, 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 District's right to require the termination of a subcontract, or (ii) increase the obligation of the District beyond what it would have been if the subcontract had contained an appropriate clause.



