

**FRANCIS MARION UNIVERSITY**  
**Honors Learning Center Construction**  
**State Project No. H18-9574-SG**

Request for Qualifications  
To Provide  
Design-Build Services

December 17, 2018

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Francis Marion University (Owner)

Written Submittals of Qualifications to provide Design-Build Services for the construction of Project No. H18-9574-SG, FMU Honors Learning Center Construction

## **1. Introduction**

### **1.1. Purpose of Procurement**

**1.1.1.** Francis Marion University will undertake the design and construction of an Honors Learning Center (HLC) to be located on the University's main campus. The new HLC program/academic facility will have 15,000 SF and will include multi-purpose instructional classrooms, faculty offices and seminar/conference rooms for the FMU Honors Program, the McNair Center for Research and Service, FMU International Programs as well as for other university classes and associated spaces. The center will enhance teaching and learning for Francis Marion students and will assist the university in better meeting the needs of the Pee Dee Region and the state of South Carolina. The latest in security practices will be included in the scope to include card access and on-site cameras.

**1.1.2.** There will be a single solicitation and procurement of one Design-Build team to design and construct the HLC. Following selection of this one Design-Build team, Francis Marion University will enter into negotiations with the team for the design and construction of the HLC. Francis Marion University will manage this procurement as the Owner.

**1.1.3.** The solicitation is a Request for Proposal (RFP) that will comply with the guidelines of the South Carolina Consolidated Procurement Code & Regulations and the Manual for Planning and Execution of State Permanent Improvements - Part II.

**1.1.4.** Budgetary parameters provide a preliminary total project cost for design and construction at approximately \$3 million.

**1.1.5.** Construction substantial completion date will be July 31st, 2020. This is to allow adequate time to move-in and be prepared to execute the 2020 Fall Semester classes from this new facility. This should equate to approximately 15 months for design and construction from the date of Commencement established in the Notice to Proceed.

**1.1.6.** The delivery method for this project will be Design-Build (D-B). Selection of professional construction services will be by Qualifications-Based Selection (QBS) or "Technically Superior

Proposal” method. The South Carolina Consolidated Procurement Code adopted QBS as appropriate under state law for competitive sealed proposals: See §11-35-1530 in the Official Code of South Carolina. The owner chose, and The State Engineer approved, the Design-Build delivery method specifically to give it a single point of responsibility for design and construction. Moreover, the D-B delivery method allows concurrent design and construction activities. The Design-Builder, as the sole source responsible for design and construction services, will have a fiduciary role and responsibility to the Owner. The Design-Builder must act in the best interests of the Owner, using their best efforts to perform the project in an expeditious and cost-effective manner consistent with the Owner’s program of requirements and budget for both the design and construction of the project. The Design-Builder will be under contract to provide both design and construction services, including initiation, planning, design, and construction services necessary to deliver a completed facility, in a “turnkey” fashion, to the Owners for occupancy. The Design-Builder shall hold all design professional, trade contractor, and trade supplier contracts. The Design-Builder shall develop an overall project schedule, which will be a contractual obligation. In addition, the Design-Builder will be responsible for methods of construction and safety, as well as for the scheduling and coordination of the work of all construction and miscellaneous contracts required for completion of the project within its predetermined budget and schedule.

**1.1.7.** The Design-Builder will be responsible for comprehending the Owners’ project requirements that will be presented in the RFP provided to the Short Listed teams. The Design-Builder is responsible for accurately translating these requirements into a Basis of Design and incorporating all into complete construction documents. With these, the Design-Builder will deliver a finished facility to the satisfaction of the Owners’ project requirements which include a new +/- 15,000 square foot higher education leaning center. The one story facility will be located on approximately 1.0 acre of land on the north side of the Cauthen Educational Media Center on the main campus of Francis Marion University. The new HLC will include multi-purpose instructional classrooms, faculty offices and seminar/conference rooms for the FMU Honors Program, the McNair Center for Research and Service, FMU International Programs as well as for other university classes and associated spaces. The latest in security practices will be included in the scope to include card access and on-site cameras. The University does expect to seek a LEED certification for this facility. Energy efficiency, sustainability, and environment impact are all concerns of the University. At a minimum, the facility must comply with the SC Energy Act of 2009-2010, See Chapter 10, Title 6 of the South Carolina Code of Laws. Therefore, LEED practices and principals shall be used in the design and construction of this project and a LEED 3.0 NC scorecard shall be kept. The anticipated total budget for this project is \$3 million. The duration of design and construction will be approximately 15 months from the Date of Commencement established in the Notice to Proceed in order to have a substantial completion

and certificate of occupancy by July 31st, 2020. Fall 2020 classes are required to be conducted in the new facility.

## **1.2. Project Objectives**

**1.2.1.** The Design-Builder will be responsible for comprehending the Owners' Project Requirements, accurately translating those requirements into a Basis of Design, and incorporating all into complete construction documents. With these, the Design-Builder will deliver a finished facility in satisfaction of the Owners' Project Requirements.

**1.2.2.** The Design-Builder will be responsible for pricing and value-engineering issues. Before construction begins, the University will ask the Design-Builder to commit to a Guaranteed Maximum Price (GMP) for all its design and construction services. The project may be broken into phases and a GMP may be obtained for each individual phase.

**1.2.3.** The Design-Builder shall competitively select all construction subcontracts and other work appropriate for competitive selection but is free to use qualification factors other than price of work to select construction subcontractors that will deliver the greatest value to the State of South Carolina and Francis Marion University.

**1.2.4.** In selecting a team, the Owners will emphasize experience of the team and of assigned personnel in providing like functions on projects of similar magnitude and complexity as the proposed project. Selection preference will be toward teams that have depths of knowledge and resources for similar higher education facilities design, for general contracting, for scheduling, contract coordination and compliance, and budget control, as well as familiarity with state laws, ordinances, and codes applicable to historic preservation and to Francis Marion University.

**1.2.5.** It is the responsibility of each submitter to examine the entire RFQ and 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 and reserves the right to ask for additional information from all parties that have submitted qualifications. Each team must describe experience if there are multiple firms proposed as one team. Please indicate, by firm, those qualifying as a minority firm.

**1.2.6.** Certified Minority Business Enterprises are encouraged to respond to this request.

**1.2.7.** The relatively short duration of time allowed for construction requires the Owners to make, as an important selection criterion, the ability of teams to place quality personnel on this job ready to work within an effective timeframe.

### **1.3. Project Assumptions**

**1.3.1.** The Owner does not desire to enter into “joint-venture” agreements with multiple teams. At the same time, the Owner recognizes that the Design-Build delivery method often involves partnerships between or among firms to combine design and construction management capabilities. In the event that two or more firms desire to establish a joint venture, it is expected that one firm shall become the Design-Build team leader with the remaining firms being consultants to it.

**1.3.2.** The Owner expects all parties to this project to work closely together and deal appropriately with project conditions to finish the job successfully. A spirit of cooperation and collaboration among professional construction services providers is of utmost importance to the University.

**1.3.3.** The Design-Builder will employ the designer of record (DOR). The DOR must personally ensure the integrity of all extensions of the designs and ensure that all equipment and materials meet the design criteria requirements. This is a D-B contractor function, not an owner function.

**1.3.4.** The Design-Builder, as a part of its design and its preconstruction services, will assist with developing a strategy for the best approach for the successful completion of the project. For example without limitation, the Design-Builder will provide guidance and assistance in the preparation of a schedule and a reliable cost estimate.

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

### **1.4. Definitions of Terms**

**1.4.1.** Whenever the terms “RFQ,” “RFP,” and “RFQ/RFP” are used, the reference is to this Request for Qualifications / Request for Proposals or portions thereof, together with any exhibits, attachments, or addenda it may contain.

**1.4.2.** Whenever the terms “shall,” “must,” or “is required” are used in the RFQ/RFP, the referenced task is a mandatory requirement of this RFQ/RFP. Failure to meet any mandatory requirement will be cause for rejection of a submittal.

**1.4.3.** Whenever the terms “can,” “may,” or “should” are used in the RFQ/RFP, the referenced specification is discretionary. Therefore, although the failure to provide any items so termed will not be cause for rejection, the Selection Committee may consider such failure in evaluating the submittal.

**1.4.4.** Whenever the terms “apparent successful” or “top-ranked” or “highest-ranking” team or offeror are used in this document, the reference is to the team that the Selection Committee ultimately judges to have submitted the case best satisfying the needs of the Owner in accordance with the RFQ/RFP. The selection of an apparent successful team does not necessarily mean the Selection Committee accepts all aspects of the team’s submittal or proposal.

**1.4.5.** Whenever the term “submittal” is used in the RFQ/RFP, the reference is to the response offered by a team in accordance with the RFQ/RFP. The initial submittal responds only to the RFQ portion of this document. Subsequently, only teams shortlisted based on their initial submittal will be invited to respond with technical proposal submittals to the RFP portion of this document.

**1.4.6.** Whenever the term “Selection Committee” is used in the RFQ/RFP, the reference is to the State representatives responsible for administering and conducting the evaluation and selection process of the RFQ/RFP.

**1.4.7.** “Design-Build” refers to the construction project delivery method in which, among other things, the Owner holds a single contract with a business entity that has responsibility both to design and to construct a project, and that holds the trade contracts.

**1.4.8.** “Design Professional” and “Designer of Record” both refer to the project's architect or design engineer, whose responsibilities generally include programming of the facility. Under the Design-Build delivery methodology, the Design Professional is an integral part of the Design-Builder entity under single contract with the Owner.

**1.4.9.** “Building Commissioning” refers to a formal and systematic process of documentation, adjustment, testing, verification, and training, focused on quality assurance and performed



specifically to ensure that the finished facility operates in accordance with the Owner’s documented project requirements and the construction documents.

**1.4.10.** “Commissioning Provider” refers to the entity or person providing building commissioning services for a project.

**1.4.11.** “Owner’s Project Requirements” is a written document that details the functional requirements of a project and the expectations of how it will be used and operated.

**1.4.12.** “Qualifications Submittal” and “Initial Written Submittal” both refer to a team’s response to the RFQ.

**1.4.13.** “Technical Proposal” refers to a team’s response to the RFP.

**1.4.14.** “Qualifications-Based Selection” and “QBS” both refer to a procurement process for the selection of professional construction services for public projects. It is a competitive contract procurement process whereby consulting teams submit qualifications to a procuring entity (owner) who evaluates and selects the most qualified team, and then negotiates the project scope of work, schedule, budget, and consultant fee.

## **2. General Instructions**

### **2.1. Building Program**

#### **2.1.1. General**

The project will be designed and constructed to a level of quality and timeliness that reflects the long-term use of a state-owned facility.

**2.1.2. Owner / Design-Builder Contract.** The contract will be Actual Cost Plus a Fixed Fee not to exceed the Guaranteed Maximum Price (GMP). The project will be Open Book. All savings, including unused contingency, will be returned to the Owner. Contract documents will be based on those developed by the Engineers Joint Contract Documents Committee (EJCDC): EJCDC #D-525 – Standard Form of Agreement Between Owner and Design/Builder on the Basis of Cost-Plus and EJCDC #D-700 Standard General Conditions of the Contract Between Owner and Design/Builder as amended and agreed upon by the Office of the State Engineer and Francis Marion University.

## **2.2. Selection Process**

### **2.2.1. Request for Qualifications**

This document is a Request for Qualifications (RFQ). An interested team's initial response will be only to the RFQ portion of this document. Only if a team is subsequently shortlisted will it be invited to respond in a separate proposal to the Request for Proposal (RFP).

### **2.2.2. Selection Committee**

The selection of Design Build Team will be by a Selection Committee comprising representatives of the Office of State Engineer and Francis Marion University. The public's contact for information and clarification about the Project must be limited to the project manager, Mike Richey. All correspondence should be directed to him via email: [mrichey@fmarion.edu](mailto:mrichey@fmarion.edu) or phone: (843) 661-1104.

### **2.2.3 Duties of the Selection Committee:**

Members of the selection committee will perform the following activities:

- Develop qualification criteria to be used to make selection (RFQ)
- Solicit qualified teams and select a minimum of 3 teams to respond to the RFP
- Develop a RFP for the project
- Review submitted proposals
- Make a determination as to which team will be awarded the project

### **2.2.4 Solicitation Process:**

- Advertise Request for Qualifications
- Advertisement in South Carolina Business Opportunities (SCBO)
- State the submission requirements
- State the contract requirements
- List the evaluation criteria

### **2.2.5. Shortlisting, Proposals, Interviews**

Selection of the Design-Builder will be a multi-step process:

#### **a. Initial Written Submittal (Qualifications Statements)**

The Selection Committee will receive and review statements of qualifications and performance data in response to the RFQ. The Selection Committee will evaluate all teams first against a set of criteria, provided in Section 3 below, to determine which teams are most qualified and suited

for this particular project. Qualifications alone will narrow the field to a shortlist of at least three teams. The shortlisted teams will be invited to respond to the request for Proposal.

b. Written Proposals (Responses to Request for Proposal – this section provided for information only). Only teams shall prepare and submit written, but not priced, technical proposals that respond to the Request for Proposal. This written proposal will be evaluated by the Selection Committee against a set of criteria.

c. Interview & Final Evaluation (this section provided for information only) As part of the evaluation of the technical proposals, shortlisted teams will be invited to a formal interview to explain their proposal and to answer questions from the Selection Committee. From the evaluations of the written proposals, combined with the interview, the Selection Committee will rank the shortlisted teams in order of suitability and appropriateness for this project. The duration of the interview will be 60 minutes, the teams will have 40 minutes to present and that will be followed by a 20 minute question and answer period. The order in which the teams will be interviewed will be determined by a random draw.

#### **2.2.6. Price Proposals**

Each shortlisted team invited to interview shall prepare and deliver separate sealed price proposals to the Selection Committee chair at the time of the interview. After final ranking of the shortlisted teams following all interviews, the Selection Committee will open only the price proposal from the highest-ranked offeror. This price proposal will provide part of the basis for initial negotiations subsequently conducted with the highest-ranked offeror. If negotiations with the highest-ranked offeror are not successful, the Owner will then invite the second-ranked team to negotiate, and so on.

#### **2.3. Pre-proposal Conference**

There will be a pre-proposal conference for the shortlisted teams. Details about this pre-proposal conference will be posted to the following website, <http://www.fmarion.edu/about/constructionrenovation> at the appropriate time and based upon the Schedule of Events outlined in paragraph 2.6 of this document.

#### **2.4. Proposal Validity**

The act of submitting a proposal requires any shortlisted team to honor their proposal for a period of ninety 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 days of its initiation, the Owner may request the proposer submitting the next acceptable proposal to honor its proposal.

## **2.5. Scope of Work Overview**

The Design-Builder's services shall conform to recognized standards of professional practice. The contract will outline the scope of work. The work shall include a Schematic Phase, a Design Development Phase, and a Construction Phase. Duties during these phases will include, but not be limited to activities mentioned in this solicitation.

**2.5.1.** During the Schematic Phase, the Design-Builder will consult with the Owner's team to establish the Owner's Project Requirements, which shall be a written document.

**2.5.2.** During the Design Development Phase, the Design-Builder will take full professional responsibility, through its Designer of Record, to create construction documents that satisfy the Owner's Project Requirements. The Design-Builder will provide cost estimates and cost evaluation, value engineering recommendations, design analysis, constructability reviews, and technical input on methods of construction, materials, details, bidding formats, and types of separate bidding packages. At an appropriate point in the project and subject to contractual negotiations, the Design-Builder shall issue a guaranteed maximum price (GMP) backed by a surety bond. Project shall be constructed within this GMP. To the extent professionally responsible, the Design-Builder will overlap the Design Development and Construction Phases when components are conducive to early construction starts. The Design-Builder shall also develop and maintain a master project schedule.

**2.5.3.** During the construction phase, which includes any previously awarded early bid packages; Design-Builder will be responsible for the following things, without limitation:

- methods of construction
- safety programs
- general conditions
- prequalification of potential subcontractors
- procurement of all work
- certification of work-in-place
- monthly payment requests
- coordination and scheduling of all work of all construction contracts and miscellaneous contracts required for the completion of the project within the predetermined budget and schedule

**2.5.4.** Design-Builder shall assist the Owner, the Owner's Project Manager, and Owner's

Commissioning Provider in management and administration of the project, except that the Owner at all times shall retain complete control of project funds and disbursements.

## 2.6. Schedule of Events

The following Schedule of Events represents the Owner’s best estimate of the schedule that will be followed. The Owner reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the Schedule of Events shall be posted to the website defined in the South Carolina Business Opportunities advertisement.

EVENT	DATE	TIME
1. Advertisement in SCBO	12/21/18	-----
2. Deadline for written questions and clarifications regarding the RFQ	01/11/19	4:00PM
3. Owner to post responses to questions and clarifications regarding the RFQ	01/18/19	4:00PM
4. Deadline for submission of Qualifications	02/01/19	4:00PM
5. Owner completes qualification evaluation and post short listed teams to the web	02/15/19	4:00PM
6. Owner to post the RFP to the web	02/18/19	4:00PM
7. Owner conducts a pre-proposal conference for shortlisted Teams	02/21/19	4:00PM
8. Deadline for written questions and clarification on RFP	02/28/19	4:00PM
9. Owner to post responses to questions and clarifications regarding the RFP	03/07/19	4:00PM
10. Deadline for shortlisted teams to submit detailed proposals	04/09/19	4:00PM
11. Owners interview shortlisted teams	04/17/19	9:00AM

## 3. Initial Written Submittal—Qualifications Submission Format and Requirements (Response to Request for Qualifications or “RFQ”)

### 3.1. Physical Submittal

Ten (10) 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. 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 by means of printing on them. Submitters are encouraged to follow in their responses the sequence of the Initial Written Submittal outlined here. Responses should

be concise, clear, and relevant. Submitter's cost incurred in responding to this RFQ is submitter's alone and the Owner does not accept liability for any such costs.

**3.1.1.** Responses are limited to twenty (20) standard (8½" x 11") pages (may be fewer) using a minimum of a 10-point font. The pages of the qualification submittals 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. Placing multiple tabs on a single page is perfectly acceptable. If more than one item in the table of contents can be started on the same page, you may do so and place all corresponding tabs on that page. Any affidavits, certifications, or signed statements called for may be included in an appendix and will not count toward the page limit.

**3.1.2.** Submittals of qualifications will be accepted until 4:00 PM on February 01, 2019 as advertised in SCBO. This is a team deadline. The Owners are not responsible for the proper or timely delivery of submittals. Failure to meet the deadline for 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 whatsoever. Each team is solely responsible for the accuracy and completeness of its submittal. Errors and omissions may constitute grounds for rejection.

**3.1.3.** The Owner intends to limit the cost that submitters incur to respond to this solicitation. Therefore, submitters are encouraged to be brief and succinct. Thick volumes of background and general marketing material are not desired. A team should highlight instead its responsiveness to the evaluation criteria. If there are multiple teams proposed as one team, each component team should describe its own relevant qualifications.

**3.1.4.** Teams should deliver their submittals in a sealed package. The name and address of the team should appear on the outside of the package, and the package should reference the project; i.e., "RFQ for Design-Build Services, Honors Learning Center, State Project #H18-9574-SG."

**3.1.5.** Submit qualifications document to the following address:

Francis Marion University  
Attn: Mike Richey  
PO Box 100547  
Florence, SC 29502

**3.1.6.** Proposers shall only contact the Francis Marion Project Manager listed below to answer the questions relating to the RFQ. All questions must be submitted in writing via e-mail to the following:

Mike Richey, Project Manager:

email: [mrichey@fmarion.edu](mailto:mrichey@fmarion.edu)

PH: (843) 661-1104

The questions should arrive in the project managers Inbox not later than 4:00 PM on January 11, 2019

### **3.2. Initial Written Submittal Prerequisite Criteria**

Teams must meet the criteria in the bullet points immediately below. Teams that do not meet these criteria are automatically disqualified for further evaluation.

- Builder MUST have a safety Experience Modification Rate average of less than 1.5 over the last three years.
- Team MUST have bonding capacity to provide a payment and performance bond for total cost of work.
- Team MUST be able to obtain a Builder's Risk Insurance Policy to cover the entire cost of construction.
- Team MUST have a current Errors and Omissions Insurance Policy.
- Team MUST have a current Contractor's Public Liability Insurance Policy, and must be insurable in the following amounts: Bodily injury, including death—limits of \$1 million for each incident; Property damage—limits of \$1 million for each incident and \$2 million for the aggregate of operations. (The Owner reserves the right to require additional limits and coverage in the final contract.)

In order to be deemed eligible for evaluation, the submitting team must create, officially sign, and place in its submittal a signed statement that contains the following declarations:

- We certify that our building team has a safety Experience Modification Rate average of less than 1.5 over the last three years.
- We certify that our team has sufficient bonding capacity to provide a payment and performance bond for total cost of work.
- We certify that our team can obtain a Builder's Risk Insurance Policy to cover the entire cost of construction.
- We certify that our team has an Errors and Omissions Insurance Policy.
- We certify that our team has a current Contractor's Public Liability Insurance Policy, and our team is insurable in the following amounts: Bodily injury, including death—

limits of \$1 million for each incident; Property damage—limits of \$1 million for each incident and \$2 million for the aggregate of operations.

Such signed statement may be placed in an appendix and will not count toward your page limit.

**3.3. Initial Written Submittal Evaluation** - factors from the RFQ will be the basis for selecting teams pre-qualified to submit a proposal for this project. The RFQ factors are ranked by importance.

**3.3.1. Evaluative Criteria** – The Selection Committee will evaluate the submittals uniformly based upon the criteria listed in the table below. The Owners have listed each major category of criteria in order of importance. The services being sought under this RFQ are considered professional in nature. Consequently, the evaluation of submittals will be based upon consideration of the demonstrated qualifications and capabilities of the offerors.

Major Category	Criteria
Depth of Resources/Personnel Capability with Relevant Experience Value = 30)(3*Eval. Score)	<ul style="list-style-type: none"> <li>• Depth of resources with experience and ability, qualified and available for Architect / (Point Engineer / Design Professional role</li> <li>• Depth of resources with experience and ability, qualified and available for Project Superintendent role</li> <li>• Depth of resources with experience and ability, qualified and available for Design-Builder Preconstruction Services Manager role</li> <li>• Depth of resources with experience and ability, qualified and available for Design-Builder Project Manager role</li> <li>• Depth of resources with experience and ability, qualified and available for Project Executive role</li> <li>• Specific personnel experience with higher education design &amp; construction</li> </ul>
Team’s relevant project experience POINT VALUE = 25)(2.5*ES)	<ul style="list-style-type: none"> <li>• Team’s experience with similar projects (higher education classroom facilities)</li> </ul>



- Team’s experience with pre-design and programming services
- Team’s experience with preconstruction and construction services
- Team’s experience on State projects
- Team’s litigation record

Responsiveness of Submittal  
(POINT VALUE = 20)(2\*ES)

- Extent to which the instructions in the RFQ were followed
- Accuracy in reflecting the project’s assumptions and requirements

Financial Information  
(POINT VALUE = 15)(1.5\*ES)

- Team’s financial stability

Statement of Why the Team  
Should be Selected  
(POINT VALUE = 10)

- Team’s unique ability to provide Design-Build services, herein described

**3.4. Contents of RFQ:**

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

**3.4.1.** Statement of Interest. Briefly, tell why your team is interested in this project.

**3.4.2.** Team Description

**3.4.3.** Basic company information

- a. Company name
- b. Address & Zip code
- c. email address & Name of primary contact
- d. Telephone number
- e. Number of years in business

**3.4.4.** Form of ownership, including state of residency or incorporation

**3.4.5.** Succinctly describe the history and growth of your team(s).

**3.4.6.** Regarding litigation with owners, subcontractors, and design professionals, list any active or pending litigation and explain.

**3.4.7.** Other than that just listed, has the team been involved in any relevant litigation in the past five years? Explain.

**3.4.8.** List and briefly describe projects that your team has completed in the past three years that also required design-build services and were valued at or above \$3,000,000.

**3.4.9.** Has the team ever failed to complete any work awarded to it or has it been removed from any project awarded to the team? Explain.

**3.4.10.** Give three references to which your company has provided professional services of a nature and quality similar to those described herein. This reference information should include

- a. short paragraph describing the service(s) provided, together with the following:
- b. The name of the organization to which the services were provided
- c. Project location
- d. Dates during which services were performed
- e. Brief description of project
- f. A current contact name, together with organizational title, at the team
- g. The contact's current address and telephone number

**3.4.11.** List five major trade contractor references (company, contact, and telephone number).

**3.4.12.** Provide a statement of disclosure, which will allow the Owner to evaluate possible conflicts of interest. (This disclosure requirement is not about giving the Owner permission regarding our contacting your references. It is about revealing relationships that your company might have with persons not of your company who are directly involved in the decision-making regarding this project.) If your company has no conflicts of interest, your statement should affirm that as fact, and you may do so succinctly.

### **3.4.13. Office Submitting Qualifications**

If the team has multiple offices, the qualification statement should include information about the parent company and branch office separately. Identify the office from which project will be managed and that office's proximity to the project site. Parent company (or general office) financial information as totals will be acceptable IF "parent" (or "general office") means that it is financially responsible for the liabilities of the branch office. If the parent company is not so

responsible, meaning that its financial resources are not available to the office that will perform the contract, it will be misleading to the Owner to offer the financials of any office other than the one with the prospect of a contract with the Owner.

#### **3.4.14. Financial Responsibility**

- a. List your total annual billings for each of the past three calendar years. If forming a partnership, list separately by team.
- b. List the contact persons, addresses, and telephone numbers for your insurance carrier and agent.
- c. List the contact persons, addresses, and telephone numbers for the team's bonding company and agent.
- d. What percentage of your team's work has been negotiated during the past three years?
- e. Supply team's Current Ratio (Current Assets / Current Liabilities) experience for the last five years, with a signed statement. Such signed statement may be placed in an appendix and will not count toward your page limit.

#### **3.4.15. Personnel Capability**

Provide general information about the team's personnel resources, including classifications and numbers of employees and the locations and staffing of relevant offices. Provide list of qualified and available personnel resources, identifying experience and ability for key personnel. The key personnel, at a minimum, are the proposed Designer of Record, supporting project architects and engineers, project superintendent, Design-Builder's project manager, project director, estimator, preconstruction manager, and the executive in charge. At this stage, teams may list more than one person qualified and available for the proposed project.

#### **3.4.16. Relevant Project Experience of the Designer**

Relevant project experience refers especially to higher education facilities similar to this project. The most relevant experience will be on other Design-Build projects as designer. Describe no more than six and no fewer than four projects in order of most relevant to least relevant that demonstrate the team's capabilities to provide design services on the project at hand. For each project, the following information should be provided:

- a. Project name
- b. Project location
- c. Dates during which services were performed

- d. Physical description
- e. Brief description of project
- f. Services performed as Designer
- g. Statement of performance versus owner expectations in the areas of cost, quality, and schedule
- h. Owner reference

#### **3.4.17. Relevant Project Experience of the Builder**

Relevant project experience includes similar building type and delivery method relevant to the type of project to be constructed using the Design-Build delivery method or performing as a general contractor on similar types and sizes of projects. Describe no more than six and no fewer than four projects in order of most relevant to least relevant that demonstrate the team's capabilities to perform the project at hand. For each project, the following information should be provided:

- a. Project name
- b. Project location
- c. Dates during which services were performed
- d. Physical description
- e. Brief description of project
- f. Services performed as Builder
- g. Statement of performance versus owner expectations in the areas of cost, quality, and schedule
- h. Owner reference

#### **3.4.18. Safety Information**

Provide a letter on the letterhead of the building team's insurance company stating the Workers Compensation Experience Modification Rate (EMR) for the past three years. This letter may be placed in the appendix and not count toward the page limit.

#### **3.4.19. Statement of Why the Proposing Team Should Be Selected**

This section provides each team the opportunity to provide specific information that differentiates them from others in the competition. This statement is limited to two pages of the allowed total.

**4. Offeror Representations: By submitting a proposal the offeror represents that:**

**4.1. Disclosure of Conflicts of Interest or Unfair Competitive Advantage (2011):** You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. Without limitation, an unfair competitive advantage exists where a contractor competing for award possesses either proprietary information that was obtained from a government official without proper authorization or source selection information (as defined in Regulation 19-445.2010(C)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract. 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.

**4.2. Certification of Independent Price Determination: 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 process 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 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 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 offer, 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 the 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];

(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 bidder must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

#### **4.3. 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 bid, 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 bids; 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 periods preceding this bid, 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 position).

**(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 State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

**4.4. 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 Caroline 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 8-13-1342, 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.

**4.5. Restrictions Applicable to Offerors and Gifts:** Violation of these restrictions may result in disqualification of your bid, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, offeror agrees not to discuss this procurements activity in any way with the Owner or its employees, agents or officials. All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, offeror agrees not to give anything to the Owner, any affiliated organizations, or the employees, agents or officials of either, prior to award. (c) Offeror acknowledges that the policy of the State is that a governmental body should not accept or solicit a gift, directly or indirectly, from a donor if the governmental body has reason to believe that donor has or is seeking to obtain contractual or other business or financial relationships with the governmental body. Regulation 19-445.2165 (C) broadly defines the term donor.

**4.6. Nonresident Taxpayer Registration Affidavit Income Tax Withholding (Important Tax Notice – Nonresidents Only):** Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirements 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.

For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Departments of Revenue at 803-898-5383 or visit the Department’s website at: [www.sctax.org](http://www.sctax.org)

This notice is for information purposes only. This Owner does not administer as has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue,



Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898-5383.

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: [HTTP://WWW.SCTAX.ORG/FORMS+AND+INSTRUCTIONS/WITHHOLDING/DEFAULT.HTM](http://WWW.SCTAX.ORG/FORMS+AND+INSTRUCTIONS/WITHHOLDING/DEFAULT.HTM)

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

- (1) agrees to the public disclosure every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, & documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED",
- (2) agrees that any information not marked, as required by these bidding instructions as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, &
- (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents the State detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED".

By submitting a response, Offeror agrees to defend, indemnify & hold harmless the State of South Carolina, its officers & employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED".

**4.8. Solicitation Information From Sources Other Than Official Source:** South Carolina Business Opportunities (SCBO) is the official state government publications for State of South Carolina solicitations. Any information on State agency solicitations obtained from any other source is unofficial and any reliance placed on such information is at the offeror's sole risk and is without recourse under South Carolina Consolidated Procurement Code.

**4.9. Tax Credit for Subcontracting with Minority Teams:** Pursuant to Section 12-6-3350, taxpayers, who utilize certified minority subcontractors, may take a tax credit equal to 4% of the payment they make to said subcontractors. The payment claimed must be based on work performed directly for a South Carolina state contract. The credit is limited to a maximum of fifty thousand dollars annually. The taxpayer is eligible to claim the credit for 10 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 then consecutive taxable years, the taxpayer is no longer eligible for the credit. 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. Taxpayers must maintain evidence of work performed for a State contract by the minority subcontractor. 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. The subcontractor must be certified as to the criteria of a "Minority Team" by the Governor's Office of Small and Minority Business Assistance (OSMBA). Certificates are issued to subcontractors upon successful completion of the certification process. 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. Reference: SC §11-35-5010 – Definition for Minority Subcontractor & SC §11-35-5230 (B) – Regulations for Negotiating with State Minority Teams.

**4.10. Clarification (NOV 2007):** Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offeror who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer.

Clarification may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080]

**4.11. Discussion and Negotiations (NOV 2007):** Submit your best terms from a cost or price and from a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussion, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected without any discussion, negotiations, or prior notice. Ordinarily, nonresponsive proposal will be rejected outright. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are submitted, the State may elect to consider only your unrevised initial proposal. [11-35-1530(6); R.19-445.2095(1)] The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal.

**4.12. Economic Conflict of Interest (2011):** A contractor shall not have or exercise any official responsibility regarding a public contract in which the contractor, or a business with which he is associated, has an economic interest. A person working for contractor shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If contractor is asked by any person to violate, or does violate, either of these restrictions, contractor shall immediately communicate such information to the procurement officer. The state may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in Section 8-13-100.

**4.13. Illegal Immigration:** Contractor certifies and agrees that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to Contractor and its subcontractors or sub-subcontractors; or (b) that Contractor and its 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." Contractor agrees to include in any contracts with its subcontractors language requiring its subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring

the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov))

**4.14. Drug-Free Workplace:** The Contractor certifies to the Owner that Contractor will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

**4.15. 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.

**4.16. Non-Indemnification:** Any term or condition is void to the extent it requires the State to indemnify anyone. It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations. (§ 11-9-20) It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year. (§ 11-1-40)

**4.17. Claims and Dispute Resolution:**

**(A) DUTY OF COOPERATION:**

(1) Contractor and Owner are fully committed to working with each other throughout the Project to avoid or minimize claims. To further this goal, Contractor and Owner agree to communicate regularly with each other at all times notifying one another as soon as reasonably possible of any issue that if not addressed may cause loss, delay, and/or disruption of the Work. If claims do arise, Contractor and Owner each commit to resolving such claims in an amicable, professional, and expeditious manner to avoid unnecessary losses, delays, and disruptions to the Work.

(2) In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

## **(B) RESOLUTION OF DISPUTES**

(1) If a claim is not resolved pursuant to Section (A) above to the satisfaction of either party, both parties shall attempt to resolve the dispute at the field level through discussions between Contractor's Representative and Owner's Representative. If a dispute cannot be resolved through Contractor's Representative and Owner's Representative, then the Contractor's Senior Representative and the Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than twenty-one days after such a request is made, to attempt to resolve such dispute. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute. The meetings required by this Section are a condition precedent to resolution pursuant to Section (B)(2).

(2) If after meeting in accordance with the provisions of Section (B)(1), the Senior Representatives determine that the dispute cannot be resolved on terms satisfactory to both the Contractor and the Owner, then either party may submit the dispute by written request to South Carolina's Chief Procurement Officer for Construction (CPOC). Except as otherwise provided in this Article, all claims or controversies relating to the Contract 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 State regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution.

(3) If any party seeks resolution to a dispute pursuant to Section (B)(2), the parties shall participate in non-binding mediation to resolve the claim. If the claim is governed by Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws as amended and the amount in controversy is \$100,000.00 or less, the CPOC shall appoint a mediator, otherwise, the mediation shall be conducted by an impartial mediator selected by mutual agreement of the parties, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.

(4) Without relieving any party from the other requirements of this Article, either party may initiate proceedings in the appropriate forum prior to initiating or completing the procedures required by Sections (A) and (B)(1) if such action is necessary to preserve a claim by avoiding the application of any applicable statutory period of limitation or repose.

(5) SERVICE OF PROCESS - Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any claims, claims, or controversies relating to the Contract; 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 for the Contractor's Senior Representative 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.

#### **4.18. Pricing Data and Audit:**

**(1)** Cost or Pricing Data - Upon request of the Owner or Architect, Contractor shall submit cost or pricing data prior to execution of a Modification which exceeds \$100,000. Contractor shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date prior to the date of pricing the Modification. Contractor's price, including profit, shall be adjusted to exclude any significant sums by which such price was increased because Contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the parties. Notwithstanding Subparagraph 9.10.4, such adjustments may be made after final payment to the Contractor.

**(2)** Cost or pricing data means all facts that, as of the date specified by the parties, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.

**(3)** Records Retention - As used in Section 7.6, the term "records" means any books or records that relate to cost or pricing data that Contractor is required to submit pursuant

to Section 7.6.1. Contractor shall maintain records for three years from the date of final payment, or longer if requested by the chief procurement officer. The Owner may audit Contractor's records at reasonable times and places.

**4.19. Intellectual Property Indemnity:** Without limitation and notwithstanding any other provision in this agreement, Design-Builder shall, upon receipt of notification, defend and indemnify the Indemnities against all actions, proceedings or claims of any nature (and for all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving Intellectual Property (IP) rights related to the Instruments of Service. Design-Builder's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Design-Builder's compliance with a detailed, exact statement of particulars (such as a statement prescribing materials, dimensions, and quality of work) furnished by the State unless Design-Builder knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Design-Builder's compliance with a detailed, exact statement of particulars furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Design-Builder and failed to identify such product to Design-Builder. State must reasonably cooperate with Design-Builder's defense of such claims or suits and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, may allow Design-Builder sole control of the defense, so long as the defense is diligently and capably prosecuted. State may participate in the defense of any action. Design-Builder's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. "IP rights" means any rights protected by the laws governing patents, copyrights, trademarks, trade secrets, or any other proprietary rights. As used in this paragraph, "Indemnities" means the State (including its instrumentalities, agencies, departments, boards, and political subdivisions), the contractor, the subcontractors at all tiers, and the officers, agents and employees of all the forgoing.

Furthermore the Offeror agrees to the following:

**4.20. Withdrawal of REF/RFP:** The Owner reserves the right to withdraw this RFQ/RFP 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 State.

**4.21. Rejection of Submittals:** 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 team and, in the sole judgment of the Selection Committee, such

statements were intended to mislead the Selection Committee in its evaluation of the submittal.

**4.22. Proposal Acceptance:** The Selection Committee's identification of an apparent successful team does not necessarily mean the Selection Committee accepts all aspects of the team's submittal or proposal.

**4.23. Minor Irregularities and Rejection of Submittals:** The Selection Committee reserves the right in its sole discretion to waive minor irregularities and to reject any or all submittals.

**4.24. Use of Proposals:** All submittals, together with any supporting material submitted by the team, become the property of the Owner and may be retained, destroyed, or otherwise disposed of at the convenience of the Owner. All submittals, if retained by the Owner, become a matter of public record when final negotiations are completed except, however, that unopened fee proposal envelopes will be returned unopened to the shortlisted teams not selected. The submittal received from the selected team will become part of the agreement reached by the Owners and the team.

**4.25. FOIA Request:** Access to another team's submittals, after a contract award, is limited to the information that is subject to a FOIA request.

**4.26. Use of Ideas or Concepts:** By providing a submittal, each team agrees that Francis Marion University will have the right to use any or all ideas or concepts presented in any submittal without restriction and without compensation to the team.

**4.27. Costs to Prepare Proposals:** The Owners assume no responsibility or obligation to the respondents and will make no payment for any costs associated with the preparation or submission of proposals.

**4.28. References:** The Owners reserve the right to check references of proposed personnel on the project team and to request substitutions if it deems such action in the Owners' best interests.

[End of Request for Qualifications]