

State Project No. H18-9574-SG

**Request to Short-listed
Firms Only**

**Request for
Proposals and
Interview**

To provide

**Design-Build
Services**

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1. Preliminary Considerations

1.1. Owner's Design Requirements and Considerations. This information is incorporated into the RFP as Exhibit C.

1.2. Technically Superior Proposal Final selection of the Design-Build firm for this project shall be made using the Technically Superior Proposal method. After the technical proposals, the interview and the price proposal from each Offeror have been evaluated, based on the criteria established in paragraph 2.2.1., the ranking of the short-listed firms will be determined. The price proposal will provide part of the basis for the 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 firm to negotiate, and so on. Once the successful firm and the Contract Price are agreed upon and after the protest period is over, the Owner will award a Design/Build services contract.

1.2.1. The price proposals are to include the total cost of the project including fees, design, overhead, profit, and construction cost. The price proposal may be conveyed in the form of a stipulated lump sum price. The proposal price may become the Contracted Price, or negotiations may occur that would result in a Contracted Price that is different from the proposed price. Any cost savings between the proposed lump sum price and the Contracted Price will accrue to the Owner. Once a contract is signed, any revisions to the Contract Price are to be based on cost reductions only, unless the Owner modifies the scope of work. Any savings as a result of "value engineering," final design pricing from vendors and subcontractors, etc. will result in a shared savings between the Owner and the Design/Build firm. The percentage of that sharing between the Owner and the Design/Build firm will be negotiated prior to entering a contract.

1.2.2. According to South Carolina Code of Laws Section 11-35-1830, the Offeror "shall certify that to the best of his knowledge or belief, the cost or pricing data submitted is accurate, complete and current". Each short-listed firm that submits a price proposal shall, by its submission, acknowledge this requirement.

1.2.3. CLARIFICATION (NOV 2007): Pursuant to §Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with Offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [South Carolina Code of Laws Section 11-35-1520(8); South Carolina Code of Regulations Chapter 19-445.2080.]

1.2.4. DISCUSSIONS & 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 discussions, negotiations, or prior notice. Ordinarily, non-responsive proposals 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(I)] 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.

2. Written Technical Proposal—Submission Format and Requirements (Response to Request for Proposal or "RFP")

2.1. Physical Submittal The short-listed firms are asked to submit proposals describing their ideas and approach to the present project. The format shall be according to the order listed below.

2.1.1. Ten (10) copies of the proposal shall be submitted. Each submittal set shall be identical and include a transmittal (cover) letter. The transmittal letter will not count toward the page limit. Responses should be concise, clear, and relevant. Submitter's cost incurred in responding to this RFP is submitter's alone. The Owner does not accept liability for any such costs.

2.1.2. Responses are limited to eighty (80) printed pages (may be fewer) using a minimum of a 10-point font. Submitted document shall be 8½" x 11" in surface area, not including its binder. If, however, the proposer needs a larger area on several pages to illustrate design ideas, it is acceptable to include larger paper (11" x 17") that is folded into the 8½" x 11" submittal. Pages should be numbered consecutively. A table of contents, with corresponding tabs in the body of the proposal, must be included as well to identify each section. Placing multiple tabs on the same page is perfectly acceptable. If more than one item in the table of contents can be started on a single 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. Responses exceeding the 80 page minimum will not be viewed favorably by the Selection Committee.

2.1.3. The deadline for submissions to the RFP is April 9, 2019, by 4:00 PM EST. This is a firm deadline. The Owner is 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 firm is solely responsible for the accuracy and completeness of its submittal. Errors and omissions may constitute grounds for rejection.

2.1.4. A firm should deliver its technical proposal 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., "RFP for Design/Build Services, Honors Learning Center, State Project No. H18-9574-SG." **Do not include your price proposal in the submission.**

2.1.5. Submit technical proposal only (no price proposal) to the following address:

Benjamin Blanks, Jr., Project Manager
Francis Marion University
4822 East Palmetto Street
Florence, SC 29506

2.1.6. A pre-proposal conference for the RFP will be conducted on February 21, 2019 at 2:10 PM EST. The pre-proposal will be held in the Founders Hall Room 108A. As part of the pre-proposal conference, a site visit will be conducted for the short-listed firms. Separate site visits for individual firms will **not** be conducted.

2.1.7. Short-listed firms shall only contact the Francis Marion Project Manager listed below to answer questions related to this RFP. All questions must be submitted in writing via e-mail to the following:

Benjamin Blanks, Jr., Project Manager
E-mail: benjamin.blanks@fmarion.edu

All questions should arrive in the project manager's Inbox no later than 4:00 PM EST, February 28, 2019. This is a firm deadline. The questions and the Owner's responses will be posted to the Francis Marion website at <https://www.fmarion.edu/facilitiesmanagement/> no later than 4:00 PM EST, March 7, 2019. Firms must **not** contact any Selection Committee members prior to the interview and until after a contract is executed.

2.1.8. The Owner intends to limit the cost that proposers incur to respond to this solicitation. Therefore, proposers are encouraged to be brief and succinct. By this time on the selection process, the Owner will have firms' qualifications statements. Therefore, firms should devote most of their allotted space in the written proposal, and time in the interview presentation, to their creative ideas and special qualifications

pertinent to the present project. Thick volumes of background and general marketing material are not desired. Instead, a firm should highlight its responsiveness to the evaluation criteria and its understanding of this project's requirements and the Owner's goals. If there are multiple firms proposed as one team, each component firm should describe its own relevant experience.

2.2. Evaluation of Short-listed Firms.

2.2.1. Evaluative Criteria – The Selection Committee will evaluate the content of the written technical proposal, the interview and the price proposal based upon the criteria listed in the table below. Each major category of criteria is listed in order of importance. The evaluation of each firm will be based upon consideration of the demonstrated qualifications and the capabilities of the proposers. Absent modification by addendum, factors to be considered in the evaluation will be limited to the following:

Major Category	Criteria Summaries
Demonstrated Compliance with the Design Requirements	<ul style="list-style-type: none"> • Design-Builder's interpretation of the supplied conceptual design and programming information, particularly pertaining to: <ul style="list-style-type: none"> * Building Design Guidelines * Building Design and Function * Design Functionality
Offeror Qualifications	<ul style="list-style-type: none"> • Specific experience of the proposed project team on similar projects utilizing the Design/Build project delivery method, including specific details on the predesign, design, preconstruction, and construction phase services provided.
Financial Capacity	<ul style="list-style-type: none"> • The Design/Build firms financial stability
Project Schedule	<ul style="list-style-type: none"> • The Design/Build firms should demonstrate their ability to meet the projects schedule.
Price Proposal	<ul style="list-style-type: none"> • The Design/Build firm's price deviation from the construction budget of \$2.9 million. • The Design/Build firm's price relative to the scope of work described in the RFP • The Design/Build firm's price for features, accents, improvements beyond the scope described in the RFP
Depth of Resources and Personnel Capability with Relevant Experience	<ul style="list-style-type: none"> • Depth of resources with experience and ability of the Architects/Engineers/Consultants in the professional design role • Depth of resources with experience and ability of the Builder to include: Project Manager, Superintendent, Cost Estimator, Scheduler, Project Executive, etc.
Responsiveness of Submittal	<ul style="list-style-type: none"> • Extent to which the Design/Build firm followed the requirements of the RFP
References	<ul style="list-style-type: none"> • Quality of the Design/Build firm's references • The breadth of the References (Owners, Users, Maintenance Personnel)

Proposers must submit evidence of their abilities and provide complete, thorough, and comprehensive responses and information for each of the criteria above, as elaborated below.

The proposal submittal from short-listed firms should contain responses to the following and in the order shown:

2.2.2. Demonstrated Compliance with the Design Requirements

a. Describe how your firm will address the Owner's design requirements identified in Exhibit C of this document. Identify challenges with archiving the requirements and how you plan to overcome those challenges.

2.2.3. Project Approach

a. Will your approach be designer-led team or constructor-led team? What difference does it make?

b. Describe roles and responsibilities in the Design-Build delivery method during the main project phases. Describe your commitment to these.

c. Describe how your firm would assist the Owner in assuring participation by local contractors. Include examples of other projects where you have been successful in meeting similar goals.

d. Provide a Minority Business Utilization Plan that details your firm's efforts for achieving the minimum objectives as set forth in the RFQ. Each Plan should address efforts at outreach to the minority community to make them aware of specific business and work opportunities, including second- and third-tier participation.

e. Describe your process to settle upon a Contract Price.

f. Discuss your ability to get bonding for the project.

2.2.4. Qualifications and Experience of Proposed Project Team.

a. Describe your firm's proposed organization for the Design-Build team. Your synopsis should provide an organizational chart showing the lines of responsibility and accountability. Please designate the specific people to fill the following key roles on your team:

- Designer of Record
- Other Project Architects
- Project Engineers
- Superintendent
- Project Manager
- Preconstruction Services Manager
- Project Director
- Cost Estimator
- Project Executive
- Other (please describe, if applicable)

b. Please identify the person who, *from project start to finish*, will be the leader of your project team and the principal point of contact between your firm and the Owner. This person's competence, leadership, and ability to achieve customer satisfaction will be heavily considered in the selection of a Design-Build firm. Provide detailed information on this person's qualifications and the direction, authority, and management tools that you will provide him or her.

2.2.5. Management Plan

a. Describe your process for efficiently resolving issues and maintaining project commitments,

working collaboratively with the Owners.

b. Provide your detailed scope management plan for incorporating and protecting approved project components.

c. Provide your detailed schedule management plan for this project during design and construction. Describe systems and procedures your firm uses to manage the project schedule. Describe alternatives that may be explored to shorten the schedule.

d. Provide your detailed cost management plan for controlling costs on this project within the stated cost limitation during design and construction. Describe your systems and procedures for controlling costs during design and construction.

e. Provide your quality assurance plan for this project. Describe your firm's approach for validating compliance with the construction documents. Explain your process for ensuring quality workmanship.

f. Provide your detailed subcontractor management plan, including contract document compliance procedures, project accounting procedures, and issue resolution.

g. Provide specific examples demonstrating your ability to communicate to solve complex project issues without compromising your team commitments.

h. Provide your detailed change management plan for managing cost and schedule exposures within the stated limitations.

i. Provide your closeout management plan for this project. Describe your systems and procedures for your closeout plan.

2.2.6. References

If your firm has additional references that were not provided in your qualification submittal, provide them now, along with a brief statement about the relevance of each reference. **It is the proposer's responsibility to ensure that they have listed a current contact with a correct phone number.** Include project-specific references and contact information for the following team members:

- Designer of Record
- Project Manager

2.3. Additional Conditions.

2.3.1. The Selection Committee intends to interview all short-listed firms. Nevertheless, it is possible, although not anticipated, that the review of a technical proposal from a firm might convince the Selection Committee that a short-listed firm is not appropriate for this project after all. Therefore, the Selection Committee will issue formal invitations to interview, leaving open the possibility that a short-listed firm might not continue in the competition past submittal of its technical proposal.

2.3.2. WITHDRAWAL OF RFP: The Owner reserves the right to withdraw this 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 Francis Marion University or the State of South Carolina.

2.3.3. 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 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.

2.3.4. PROPOSAL ACCEPTANCE: 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 or proposal.

2.3.5. 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.

2.3.6. USE OF PROPOSALS: 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 retained by the Owner, become a matter of public record when final negotiations are completed. The submittal received from the selected firm will become part of the agreement reached by the Owners and the firm.

2.3.7. FOIA REQUEST: Access to another firm's submittals, after a contract award, is limited to the information that is subject to a FOIA request.

2.3.8. USE OF IDEAS OR CONCEPTS: By providing a submittal, each firm 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 firm.

2.3.9. 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.

2.3.10. 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. Moreover, the Owner reserves the right to check any reference given by the proposer.

2.3.11. Confidentiality of Documents: Upon receipt of a proposal 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 proposal documents will remain confidential until final award.

2.3.12. Equal Employment Opportunity: During the performance of this Contract, the Design-Builder agrees as follows: The Design-Builder 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. Design-Builder 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 work force and procurement practices.

2.3.13. Francis Marion University embraces diversity in all aspects of its function, including use of minority businesses, vendors, or contractors in construction projects.

2.3.14. Non-Collusion: In submitting its proposal, the proposer affirms that, in connection with its proposal, the proposer 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 proposal have not been communicated by the proposer or by any of the proposer's employees or agents to any person who is not an employee or agent of the proposer or of the surety on any bond furnished with the proposal and will not be communicated to any person who is not an employee or agent of the proposer or of said surety prior to the official opening of the proposal, and, to the extent that subcontractors and teaming partners have not participated in any collusive activities as described above.

3. Interview & Price Proposal

3.1. Proposal Presentation and Interview Format. The scheduled date for the interviews is **April 17th, 2019**. The time allotted to each firm for the presentation and interview will not exceed 65 minutes (40 minutes for presentation and 25 minutes for questions and answers). 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.

3.2. Who Should Attend? Please limit the number of representatives of the Design-Builder team to no more than ten (10) people, but include at least the Design Professional(s), the Design-Builder's Project

Manager, and those with whom the Owner will interact regularly. Essential consultants may be appropriate, also.

3.3. Things to Address at Interview The intent of the formal interview process is to provide the Selection Committee with an elaboration of the written proposal's information in order to help the Selection Committee make a final selection of the firm that, in the sole discretion of the Selection Committee, best meets the requirements for this project.

3.4. Price Proposal Submission Price proposals must be submitted to the Selection Committee by the conclusion of the interview session in a sealed envelope.

3.4.1. The price proposals should include the total cost of the project including fees, design, overhead, profit, and construction cost. For overhead and expenses, firms might consider using categories cited in the attached Exhibit A, Suggested Price Proposal Form. The total of these prices and fees should be expressed in the price proposal for the entire project—all costs and fees included. The proposal shall include a one-page summary, carefully expressing the firm's rationale for its particular expression of prices. The proposed price may be conveyed in the form of an estimated stipulated lump sum. The proposal price may become the Contracted Price or negotiations may occur that would result in a Contracted Price that is different than the proposed price. Any cost savings between the proposed lump sum price and the Contracted Price.

Once a contract is signed, any revisions to the Contract Price are to be based on cost reductions only unless the Owner modifies the scope of work. Any savings as a result of "value engineering", final design pricing from vendors and subcontractors, etc. will result in a shared savings between the Owner and the Design/Build firm. The percentage of that sharing between the Owner and the Design/Build firm will be negotiated prior to entering a contract.

3.4.2. The price proposal should not include expenses associated with contracting for Chapter 1 inspections, Chapter 17 testing and inspections, Building Permit fees or other local, state or federal fees which may include the South Carolina Department of Health and Environment Control, the U.S. Army Corps of Engineers or any such other agency. These fees will be paid directly by the Owner. However, any application, permits, notices, etc. that may need to accompany such fees will be completed by the successful Design/Build firm on behalf of the Owner. An allowance as listed in Exhibit D shall be set aside for these fees.

3.5. Contract Negotiation. After the ranking of the short listed firms, the Owners will initiate negotiations with the top-ranked firm to determine the final scope of the project and determine the Contract Price. In the event that a satisfactory Contract Price cannot be agreed upon with the highest-ranked firm, the Owners will enter into negotiations in turn with the second-ranked firm and so-on until a mutually agreed-upon contract is established. Once the successful Design-Builder and Contract Price are agreed upon, the Owner will award a Design-Build services contract. Contract documents will be based on those developed by the Engineers Joint Contract Documents Committee (EJCDC): EJCDC #D-520 – Standard Form of Agreement Between Owner and Design/Builder on the Basis of a Stipulated Price as amended, EJCDC #D-700 Standard General Conditions of the Contract Between Owner and Design/Builder as amended and Clauses used for Design-Build Contracts (Exhibit F).

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Exhibit A – Clauses

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 SC 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.
2. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION: GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SC CODE § 16-9-10 AND OTHER APPLICABLE LAWS.
 - a. By submitting an offer, the offeror certifies that—
 - 1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—
 - (a) Those prices;
 - (b) The intention to submit an offer; or
 - (c) The methods or factors used to calculate the prices offered.
 - 2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
 - 3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
 - b. Each signature on the offer is considered to be a certification by the signatory that the signatory—
 - 1) Is the person in the offeror's organization responsible for determining the prices being offered in this offer, and that the signatory has not participated and will not participate in any action contrary to paragraphs 1.A through 1.C of this certification; or
 - 2) (a) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs 1.a through 1.c of this certification [As used in this subdivision 2.b.i, the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid];
(b) As an authorized agent, does certify that the principals referenced in subdivision 2.b.i of this certification have not participated, and will not participate, in any action contrary to paragraphs 1.a through 1.c of this certification; and
(c) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs 1.a through 1.c of this certification.
 - c. If the offeror deletes or modifies paragraph 1.b of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

3. CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:

- a.** By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-
- 1)** 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 1.a.(i)(b) of this provision.
 - 2)** Offeror has not, within a three-year period preceding this bid, had one or more contracts terminated for default by any public (Federal, state, or local) entity.
- b.** "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).
- c.** 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.
- d.** If Offeror is unable to certify the representations stated in paragraphs 1.a., 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 nonresponsive.
- e.** 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.
- f.** The certification in paragraph 1 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. ETHICS CERTIFICATE:** By submitting a 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: SC Code § 8-13-700, regarding use of official position for financial gain; SC Code § 8-13-705, regarding gifts to influence action of public official; SC Code § 8-13-720, regarding offering money for advice or assistance of public official; SC Code §§ 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; SC Code § 8-13-790, regarding recovery of kickbacks; SC Code § 8-13-1150, regarding statements to be filed by consultants; and SC Code § 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 SC Code § 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed.

5. RESTRICTIONS APPLICABLE TO OFFERORS & 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 procurement 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 the donor has or is seeking to obtain contractual or other business or financial relationships with the governmental body. SC Regulation 19-445.2165(C) broadly defines the term donor.
6. NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING (IMPORTANT TAX NOTICE - NONRESIDENTS ONLY):
- a. Withholding Requirements for Payments to Nonresidents: SC Code § 12-8-550 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.
 - b. The withholding requirement does not apply to:
 - 1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina,
 - 2) nonresidents who are not conducting business in South Carolina,
 - 3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or
 - 4) payments to a nonresident who
 - (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and
 - (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.
 - c. For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: www.sctax.org.
 - d. This notice is for informational purposes only. This Owner does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898- 5383.
 - e. Please see the "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" form (Form Number I-312) located at: <http://www.sctax.org/forms/withholding/i-312-form>.
7. SUBMITTING CONFIDENTIAL INFORMATION:
- a. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either
 - 1) a trade secret as defined in SC Code § 30-4-40(a)(1), or
 - 2) privileged & confidential, as that phrase is used in SC Code § 11-35-410.

- b. 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 SC Code § 39-8-20 of the Trade Secrets Act.
 - c. 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 SC Code § 11-35-1810.
 - d. 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 your 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.
 - e. By submitting a response to this solicitation, Offeror
 - 1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, & documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED",
 - 2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and
 - 3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure.
 - f. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED".
 - g. 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".
8. SOLICITATION INFORMATION FROM SOURCES OTHER THAN OFFICIAL SOURCE: South Carolina Business Opportunities (SCBO) is the official state government publication 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 the South Carolina Consolidated Procurement Code.
9. TAX CREDIT FOR SUBCONTRACTING WITH MINORITY FIRMS: Pursuant to SC Code § 12-6-3350, taxpayers, who utilize certified minority subcontractors, may take a tax credit equal to 4% of the payments they make to said subcontractors. The payments 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 ten 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 Firm" 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 Code § 11-35-5010 – Definition for Minority Subcontractor & SC Code § 11-35-5230 (B) – Regulations for Negotiating with State Minority Firms.

10. CLARIFICATION (NOV 2007): Pursuant to SC Code § 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [SC Code § 11-35-1520(8); SC Reg.19-445.2080]
11. DISCUSSIONS & 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 discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals 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. [SC Code § 11-35-1530(6); SC Reg 19-445.2095(I)] The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in SC Code § 11-35-1530(8). If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal.
12. OPEN TRADE REPRESENTATION (JUN 2015): By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

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Exhibit B, Suggested Price Proposal Form

For applicable items marked with an "X," enter the estimated total cost based upon your knowledge of the budget and scope.

All preconstruction services cease upon approval of the GMP change order.

Project Number: H18-9574-SG, Honors Learning Center

Office Expense	In Preconstruction Services	In Construction Services
Offices, Furniture & Furnishings; Utilities		X
Office Supplies	X	X
Field Office Equipment & Maintenance		X
Jobsite Radios/Beepers/Phones		X
Copy Machine & Maintenance	X	X
Computers, Usage, Software & Maintenance	X	X
Fax Machine & Service		X
Field Office Telephone		X
Office Janitorial		X
Postage & Expressage	X	X
Plans & Specifications		X
Scheduling Expenses		X
Construction Photos & Office Supplies		X
Project Superintendent (only) Moving Expenses & Per Diem		X
Job Travel		X
Job Meetings & Ceremony Expense		X
Construction Trade Training Program		X
Drawing Coordination	X	X
Marked-Up (As Built) Drawings		X
Advertising (for bids)	X	X
Messenger/Runner/Courier	X	X
Audit		X
Records Storage		X
Taxes/Insurance/Fees (One Time Costs)	In Preconstruction Services	In Construction Services
Worker's Compensation Insurance		X
Builders Risk Insurance		X

Liability & Property Insurance for Project		X
Miscellaneous Insurance		X
Sales, Use, and Gross Receipts Taxes		X
Performance & Payment Bonds (for Design-Builder <u>only</u> , not including bonds for subcontractors)		X
Design-Build Labor	In Preconstruction Services	In Construction Services
Payroll Tax Fringes	X	X
Worker's Compensation Insurance	X	X
Management Labor	X	X
Safety Officer		X
General Conditions Labor		X
Construction Cost		X
Allowances		X

SUBTOTALS: \$0.00 \$0.00

Lump Sum Price: \$0.00

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EXHIBIT C - Owner's Design Requirements and Considerations

I. Owner's Design Requirements and Considerations

A. Building Design Guidelines

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. Firms interested in submitting for this project should become familiar with the following documents, and these should be used as guidelines in the design and construction of this project. It is expected that this facility will comply with all applicable building codes as described to the 2018 Manual for Planning and Execution of State Permanent Improvements – Part II and Francis Marion University guidelines, policies and requirements. The following links are provided for your use in achieving this requirement:

* 2018 Manual for Planning and Execution of State Permanent Improvements – Part II

<https://procurement.sc.gov/files/ose/2018%20OSE%20Manual.pdf>

2. The University expects to seek a LEED Silver certification for this facility. Therefore, energy efficiency, sustainability, and environmental impact are all concerns of the University. Thus, 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.

3. The construction of this facility shall not interrupt or interfere with the normal day to day traffic patterns along the two streets that enclose the project location. All utility service connections/disruptions must be scheduled with the University and be as brief as possible.

4. It shall be the responsibility of the design/build firm to demolish, remove, relocate, restore any existing condition in order to fully implement the design/build firms design while maintaining the area adjacent to the construction fully functional such as light poles/vertical structures, asphalt, storm drain lines and structures, etc. Special attention shall be made to the nearby Modulating Omni Directional (MOD) high power speaker.

B. Building Design and Function

1. Exhibit D is a General Location. Map/site plan of the area available for construction. As part of your proposal, please describe how you intend to use the space for laydown, access, traffic flow, etc. The floor plan included as an example.

2. The FMU Honors Center will be a high-profile facility designed to house the FMU Honors Program, the Robert E. McNair Center for Research and Service, and the FMU International Studies Program. The facility will also include instructional and meeting space for a variety of academic disciplines and student functions. All HVAC related functions shall be designed and installed in such a way as to be monitored, scheduled, and controlled by the use of Johnson Controls Metasys System. Office space will be conveniently located to allow for ease of communication and effective resource sharing. Security

cameras and access control with proximity cards will be key features. This card system, associated hardware, and system components are a part of the card system allowance identified in Exhibit E. The associated junction boxes, conduit, wire, etc. should be included in the proposed price. All low-voltage for items such as this card system, security cameras, internet, phone and their associated junction boxes, conduit, wire, etc. should be included in the proposed price.

C. Site Survey. Soils assessment and survey will be the responsibility of the Design/Build firm.

D. Expected Student Occupancy. The student populations for each of the three programs currently scheduled to be housed in this building are:

- *250 for the FMU Honors Program
- * 20 for the McNair Center for Research and Service Program
- * 30 for the FMU International Academic Program

E. Office Space. Each program will have associated program directors, assistants, faculty, administrative and reception personnel. Accordingly, office space commensurate with assigned duties will need to be programmed. Currently we expect the need for office space for 5 personnel. We anticipate offices to be conveniently located to maximize the ability to share resources and to provide effective communication. One large conference room to be shared between the programs is needed.

F. Instructional spaces. Traditional style class rooms will be required. Seating/desks should be designed in order to allow ease of configuration and allow students to quickly move into group settings for collaborative learning sessions.

G. Lounges. These spaces allow for relaxation and a means to have a place to eat while maintaining a rigid academic schedule.

H. Restrooms. Shall be centrally located and meet all codes requirements for accessibility and size.

I. Other. Custodial closets and storage are needed to ensure a clean and tidy atmosphere is maintained. They should be located in close proximity to the restrooms. The floor covering should be epoxy-covered concrete. Mechanical/Electrical rooms should be located away from teaching spaces as much as is practical. They should be adequately sized for the equipment that will be installed in them as well as providing adequate room for servicing this equipment. The layout and placement of the equipment should be well-thought out allowing for the total replacement of equipment should the need arise. These rooms should accommodate as a minimum the electrical distributions panels, lighting control panels, fire alarm panel, space to terminate fiber optic cable for audio and video purposes, sound system equipment, HVAC related equipment, water meter, pressure regulator and backflow preventer, fire sprinkler system piping riser, and associated valves. The walls encasing these rooms should be well insulated and/or CMU block. The floor should be sealed concrete. There shall be plywood mounted to the wall for securing AV and fiber optic related equipment. Lighting of these rooms should be accomplished using T-5 LED fixtures.

EXHIBIT D

General Site Plan



EXHIBIT E – Allowances

Allowances:

The following allowances should be itemized and included in your proposed price:

* \$40,000 – Third Party Chapter 1 and Chapter 17 Inspections (To be backed out of proposal price and paid for by the owner)

* \$25,000 – Electronic and Data equipment (Switches, cameras, access points, phones, multi-door controllers, licenses, card access system to include components and installation specific to the operation of the system.) (to be backed out of proposal price and paid for by the owner)

* \$15,000.00 – Security Systems and Assemblies (Conduit, junction boxes, wire, etc. should be in the proposed price.

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EXHIBIT F – Clauses for Design-Build Contracts

1. 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.
2. ILLEGAL IMMIGRATION:
 - a. 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 that:
 - 1) Title 8, Chapter 14 is inapplicable both to Contractor and its subcontractors or sub-subcontractors; or
 - 2) Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to SC Code § 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."
 - b. Contractor agrees to include in any contracts with its subcontractors language requiring its subcontractors to
 - 1) comply with the applicable requirements of Title 8, Chapter 14, and
 - 2) 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)
3. 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. FALSE CLAIMS: According to the SC Code § 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.
5. 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. (SC Code § 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. (SC Code § 11-1-40)

6. 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 1 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 2.b.
- 2) If after meeting in accordance with the provisions of Section 2.a., 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 State's Constitution.
- 3) If any party seeks resolution to a dispute pursuant to Section 2.b., 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.

7. PRICING DATA AND AUDIT:

- a.** Cost or Pricing Data - Upon request of the Owner, 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.
- b.** 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.
- c.** Records Retention - The term "records" means any books or records that relate to cost or pricing data that Contractor is required to submit pursuant to SC Code § 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.

8. INTELLECTUAL PROPERTY INDEMNITY:

- a.** Without limitation and notwithstanding any other provision in this agreement, Design-Builder shall, upon receipt of notification, defend and indemnify the Indemnitees 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 that:
 - 1) 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
 - 2) 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.
- b.** The 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. The State may participate in the defense of any action.
- c.** Design-Builder's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.
- d.** "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, "Indemnitees" 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.

9. OPEN TRADE (JUN 2015): During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

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