

## **Francis Marion University – Quote Request**

Quote Name and Number: **RFQ 2368 – Provide Adobe VIP Licenses for Francis Marion University**  
Date: **08/17/2021**

Francis Marion University is accepting quotes for: **Adobe Creative Cloud All Apps as specified for Francis Marion University for one (1) year.**

**Maximum Contract Period: 09/14/2021 – 09/13/2022** (see “MAXIMUM CONTRACT PERIOD - ESTIMATED (JAN 2006)” on page 7 under “Section II. INSTRUCTIONS TO OFFERORS – GENERAL”)

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Questions must be received by the vendor no later than **Monday, August 24, 2021 at 2:00 pm EST**

Quote Must be Received by: **Monday, August 31, 2021 at 2:00 pm EST**

**Note:** Offerors must provide the items as specified in this document. Failure to furnish adequate data with quotation or upon request by the University may result in bid rejection as non-responsive. The University is not interested in the purchase of other products or alternate quantities of the product(s) specified. The University reserves the right to reject any offering in which the items offered are considered unsatisfactory in any manner.

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**Winning offeror shall be capable of adding more licenses (whether Creative Cloud, Acrobat Pro, or Device) as requested by the University during the contract term at pro-rated rates based on license prices submitted by the vendor in response to this solicitation/quote request.**

Quantities of licenses for subsequent years may increase or decrease at the discretion of the University.

**All items apply per existing VIP Agreement 7E5AEF78DA3DE39DB70A**

**The following schedule is required to be completed by the offeror:**

Please quote your lowest price for the item(s) below. Francis Marion University reserves the right to reject any or all quotes and to waive any or all technicalities.

The intent of the University is to purchase at least one of the below items. Pending acceptable or unacceptable quoted pricing, the University at its sole discretion, may choose not to make an award based upon this quotation request.

Notes:

- 1) Exclude Sales Tax in your bid prices.
- 2) Include freight/shipping, if applicable. FOB Destination included to Florence, SC.
- 3) The attached Terms and Conditions apply to all quotes and supersede Offeror's Terms and Conditions.
- 4) **All items per “Scope of Work” listed below (beginning on page 4, “Scope of Work/Specifications”).**

## Pricing Schedule / Quote Proposal

Item	Quantity	Unit of Measure	Unit Price (one year)
1	29	Each	

**Item Description:** Adobe VIP Named – Creative Cloud All Apps – 12 Month **Named** Renewal

**Tendering Text:** Total cost for Adobe VIP – Named Creative Cloud All Apps for the period 09/14/2021 to 09/13/2022.

**License Mix:** 65272480BB03A12

Question	Mandatory/Optional	Multiple Responses Accepted?	Response
<p>Are you requesting the SC Resident Vendor preference?</p> <p>See the SC procurement code, section 11-35-1524(c)(1)(i)&amp;(ii) and section II.B of this solicitation for more information. For a FAQ on these preferences, please see <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a></p>	Optional	No	<p>_____ Yes</p> <p>_____ No</p>
<p>SC/US End-Product pref. Section 11-35-1524 and section II.B &amp; VII.B of this solicitation.</p> <p>Select SC End Product preference - if product is made, manufactured or grown in SC.</p> <p>Select US End Product - if product is made, manufactured or grown in the US.</p> <p>Select “No”, if not claiming a preference.</p>	Optional	No	<p>_____ Yes, I am claiming SC End Product Preference</p> <p>_____ Yes, I am claiming US End Product Preference</p> <p>_____ No, I am not Claiming Either Preference</p>

Item	Quantity	Unit of Measure	Unit Price (one year)
2	27	Each	

**Item Description:** Adobe VIP Named-User Acrobat Pro DC – **Named** Subscription 12 Month Renewal

**Tendering Text:** Total cost for Adobe VIP – Named-User Acrobat Pro DC – Named Subscription – 12 Month renewal for the period 09/14/2021 to 09/13/2022. **License Mix:** 65234076BB03A12

Question	Mandatory/Optional	Multiple Responses Accepted?	Response
<p>Are you requesting the SC Resident Vendor preference?</p> <p>See the SC procurement code, section 11-35-1524(c)(1)(i)&amp;(ii) and section II.B of this solicitation for more information. For a FAQ on these preferences, please see <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a></p>	Optional	No	<p>_____ Yes</p> <p>_____ No</p>
<p>SC/US End-Product pref. Section 11-35-1524 and section II.B &amp; VII.B of this solicitation.</p> <p>Select SC End Product preference - if product is made, manufactured or grown in SC.</p> <p>Select US End Product - if product is made, manufactured or grown in the US.</p> <p>Select “No”, if not claiming a preference.</p>	Optional	No	<p>_____ Yes, I am claiming SC End Product Preference</p> <p>_____ Yes, I am claiming US End Product Preference</p> <p>_____ No, I am not Claiming Either Preference</p>

Item	Quantity	Unit of Measure	Unit Price (one year)
3	36	Each	
<b>Item Description:</b> Adobe VIP <u>Shared Device</u> : Creative Cloud Complete – 12 Month Renewal			
<b>Tendering Text:</b> Total cost for Adobe VIP Device: Creative Cloud Complete – 12 Month renewal for the period 09/14/2020 to 09/13/2021. <b>License Mix: 65272647BB03A12</b>			
Question	Mandatory/Optional	Multiple Responses Accepted?	Response
Are you requesting the SC Resident Vendor preference?  See the SC procurement code, section 11-35-1524(c)(1)(i)&(ii) and section II.B of this solicitation for more information. For a FAQ on these preferences, please see <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a>	Optional	No	____ Yes  ____ No
SC/US End-Product pref. Section 11-35-1524 and section II.B & VII.B of this solicitation.  Select SC End Product preference - if product is made, manufactured, or grown in SC.  Select US End Product - if product is made, manufactured, or grown in the US.  Select "No", if not claiming a preference.	Optional	No	____ Yes, I am claiming SC End Product Preference  ____ Yes, I am claiming US End Product Preference  ____ No, I am not Claiming Either Preference
<b>Grand Total of Items 1 – 3 for Unit Price (1 year).</b>	_____		

**For the total quantity of 92 units indicated in the Pricing Schedule/Quote Proposal, specify the Renewal Level/Tier (in the section below) for pricing reference for the University.**

Renewal Level/Tier \_\_\_\_\_

Estimated Implementation Time: (number of days/weeks after order is placed/received):

\_\_\_\_\_

Vendor: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_  
(Same as signature on cover page)

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



**This Section Must be Completed by the Vendor:**

<b>Company Name:</b>			
<b>Authorized Signature:</b>			
<b>Authorized Signature (printed):</b>			
<b>Date:</b>			
<b>Address:</b>			
<b>City/State/Zip:</b>			
<b>Phone Number:</b>		<b>Fax Number:</b>	
<b>E-Mail:</b>			
<b>Federal ID Number:</b>		<b>SC Minority Cert. # (if applicable):</b>	

**Please Check appropriate line:**

I certify that I: \_\_\_\_\_ **AM** a manufacturer or an authorized dealer for the items listed.

\_\_\_\_\_ **AM NOT** a manufacturer or an authorized dealer for the items listed.

SC Certified Minority Vendor: Y  N  If yes, please include your SC Certification #: \_\_\_\_\_

**I. GENERAL CONDITIONS**

**DEFAULT:** In case or default by the Contractor, Francis Marion University reserves the right to purchase any or all items in default in the open market, charging the Contractor with any additional costs. The defaulting Contractor shall not be considered a responsible Contractor until the assessed charge has been satisfied.

All amendments to and interpretation of this RFQ shall be in writing. The procurement officer shall not be legally bound by any amendment or interpretation that is not in writing.

Any contract entered into by Francis Marion University resulting from this quotation shall be subject to cancellation at the end of any fiscal or appropriated year unless otherwise provided by law.

Payment shall be made in accordance with Section 11-35-45 of the South Carolina Consolidated Procurement Code and Disbursement Regulations. Delay in receiving invoices, as well as errors and omissions on the invoices, will be considered just cause for withholding payment without losing discount privileges. The University reserves the right to withhold payment or make such deductions as may be necessary to protect the University from loss or damage because of defective work, claims, damages, or to pay for repair of correction of materials furnished hereunder.

Quoted prices must remain firm for a period of thirty (30) days beyond the Request for Quotation deadline.

Unit prices will govern over extended prices unless otherwise stated.

Francis Marion University shall consider payment discounts in the award of this contract when such discounts are for thirty (30) days or more after final inspection and acceptance of contract requirements. Payment discounts for less than thirty days are encouraged but shall not be a factor in award determination. Please state your discount terms using the above referenced information as the University's position on the matter.

All materials and products offered must be guaranteed to meet and comply with the requirements all the specifications, terms and conditions indicated or referred to.

The award will be made in accordance with Section 11-35-1550 (b)of the South Carolina Consolidated Procurement Code.

The University reserves the right to reject any and all quotations and to cancel the solicitation; waive any and all technicalities; the University reserves the right to reject any quotation in which the delivery time indicated to be of substantial length to cause disruption and/or delay in operation for which the item(s) is/are intended; ambiguous quotations which are uncertain as to terms, delivery, quantity or compliance with specifications may be rejected.

The contractor assumes sole responsibility and shall hold harmless Francis Marion University, its directors, officers, employees and agents from and against any and all claims, actions or liabilities of any nature which may be asserted against them by third parties in connection with the performance of the successful Contractor, its directors, officers, employees and agents under this agreement. Francis Marion University agrees to accept responsibility for claims, actions or liabilities resulting from negligent acts of its employees occurring within the scope of their employment which may be asserted against them by third parties in connection with the performance of Francis Marion University, its members, directors, officers, employees and agents under this agreement.

Contractor agrees not to refer to award of this contract in commercial advertising in such a manner to state or imply that the products or service provided are endorsed or preferred by the user.

Upon award of a contract under this quotation, the person, partnership, association or corporation to whom the award is made must comply with the laws of South Carolina that require such person or entity to be authorized and/or licensed to do business in this State. Notwithstanding the fact that applicable statutes may be exempt or exclude the successful Contractor from requirements that it be authorized and/or licensed to do business in this State, by submission of this signed quote, the Contractor agrees to subject itself to the jurisdiction and process of the courts of the State of South Carolina as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to the liability for taxes, licenses or fees levied by the State.

**Termination:** Subject to the provisions below, the contract may be terminated for any reason by the University providing a thirty-day advance notice in writing is given to the contractor.

**Termination for Convenience:** In the event that this contract is terminated or cancelled upon request and for the convenience of the University may negotiate reasonable termination costs, if applicable.

**Termination for Cause:** Termination by the University for cause, default, or negligence on the part of the Contractor shall be excluded from the foregoing provisions; termination costs, if any, shall not apply. The thirty day advance notice requirement is waived and the default provision in this bid shall apply.

**HIPAA Law:** The Contractor agrees that to the extent that some or all of the activities within the scope of this Contract are subject to the Health Insurance Portability Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the Francis Marion University may require to ensure compliance. Additional information may be viewed at: <http://www.sc.edu/hipaa/>

## **II. INSTRUCTIONS TO OFFERORS – GENERAL**

**Scope of Services – Acquisition:** The scope of this solicitation is for one (1) successful vendor to provide Adobe Creative Cloud All Apps (for Named Users and Devices) and Adobe Acrobat Pro DC as specified previously within "Scope of Work/Specifications" section beginning on page 4 of this document.

ACQUIRE SERVICES & SUPPLIES / EQUIPMENT (JAN 2006): The purpose of this solicitation is to establish a source or sources of supply for the purchase of new supplies and/or equipment as listed.

**A contract or contracts will be awarded in accordance with the provisions and conditions of this solicitation. The contract shall be for one (1) year.**

MAXIMUM CONTRACT PERIOD - ESTIMATED (Jan 2006):

Start date: 09/14/2021 End date: 09/13/2022

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

DEFINITIONS, CAPITALIZATION, AND HEADINGS (FEB 2015) CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRU E MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.

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

BOARD means the South Carolina Budget & Control Board or its successor in interest.

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

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

CONTRACT See clause entitled Contract Documents & Order of Precedence.

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

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

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

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

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

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

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

YOU and YOUR means Offeror.

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

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

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

US or WE means the using governmental unit.

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

WORK means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.[02-2A003-2]

AMENDMENTS TO SOLICITATION (JAN 2004) (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments:

<https://www.fmarion.edu/procurement/solicitationsawards/> (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

AUTHORIZED AGENT (FEB 2015) All authority regarding this procurement is vested solely with the responsible Purchasing Officer. Unless specifically delegated in writing, the Purchasing Officer is the only government official authorized to bind the government with regard to this procurement or the resulting contract. [02-2A007-1]

AWARD NOTIFICATION (FEB 2015) Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Cover Page or, if applicable, any notice of extension of award. Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given. [02-2A010-2]

BID / PROPOSAL AS OFFER TO CONTRACT (JAN 2004) By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed.

BID ACCEPTANCE PERIOD (JAN 2004) In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Purchasing Officer in writing.

BID IN ENGLISH & DOLLARS (JAN 2004) Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation

PROCUREMENT AGENT (FMU) The Purchasing Officer is an employee of the State acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s).

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008) GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS. (a) By submitting an offer, the offeror certifies that- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to- (i) Those prices; (ii) The intention to submit an offer; or (iii) The methods or factors used to calculate the prices offered. (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition. (b) Each signature on the offer is considered to be a certification by the signatory that the signatory- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or (2)(i) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal]; (ii) As an authorized agent, does certify that the



principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and (iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification. (c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1].

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004): (a)(1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that- (i) Offeror and/or any of its Principals- (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency; (B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision. (ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity. (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions). (b) Offeror shall provide immediate written notice to the Purchasing 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 Purchasing 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 Purchasing Officer may terminate the contract resulting from this solicitation for default.

CODE OF LAWS AVAILABLE (JAN 2006): The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at <http://www.scstatehouse.net/code/statmast.htm>. The South Carolina Regulations are available at: <http://www.scstatehouse.net/coderegs/statmast.htm>.

COMPLETION OF FORMS / CORRECTION OF ERRORS (JAN 2006): All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.)

DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015) You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either. [02-2A047-2]

SUBMISSION OF OFFER: Offers must be received in the Purchasing Office by date and time stated on pages 1 & 4 of this document. (FMU 9/20)

DEADLINE FOR SUBMISSION OF OFFER (JAN 2004): Any offer received after the Purchasing Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the

designated purchasing office or the governmental body's mail room which services that purchasing office prior to the opening. [R.19-445.2070(G)] [02-2A050-1]

**DRUG FREE WORK PLACE CERTIFICATION (JAN 2004 )**By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

**DUTY TO INQUIRE (FEB 2015)** Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors." [02-2A070-2]

**ETHICS CERTIFICATE (May 2008):** By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the Purchasing Officer at the same time the law requires the statement to be filed. [02-2A075-2]

**OMIT TAXES FROM PRICE (JAN 2004):** Do not include any sales or use taxes in your price that the State may be required to pay.

**PROTESTS (MAY 2019):** If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest a solicitation, you must submit a protest within fifteen days of the date the applicable solicitation document is issued. To protest an award, you must (i) submit notice of your intent to protest within seven business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided. [02-2A085-2]

**OPEN TRADE REPRESENTATION (JUN 2015):** By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2A083-1]

**PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)** Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law. (a) During the period between publication of the solicitation and final award, you must not communicate, directly or indirectly, with the Using Governmental Unit or its employees, agents or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by the Purchasing Officer. All communications must be solely with the Purchasing Officer. [R. 19-445.2010] (b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date. [R. 19-445.2165] [02-2A087-1]

PUBLIC OPENING (JAN 2004) Offers will be publicly opened at the date / time and at the location identified on the Cover Page, or last Amendment, whichever is applicable.

QUESTIONS FROM OFFERORS (FMU AUG 2020) (a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the buyer no later than August 31, 2:00pm. Label any communication regarding your questions with the name of the buyer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. See clause entitled "Duty to Inquire." We will not identify you in our answer to your question. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the buyer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.

REJECTION/CANCELLATION (JAN 2004) The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065.]

REJECTION – TIME – FMU: The right is reserved to reject any offer in which the delivery time indicated is considered sufficient to delay the operation for which the commodity is intended

RESPONSIVENESS/IMPROPER OFFERS (JUN 2015): (a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation. (b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable. (c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Purchasing Officer. [R.19-445.2070 and Section 11-35-1520(13)] (d) Price Reasonableness: Any offer may be rejected if the Purchasing Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070]. (e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment. (f) Do not submit bid samples or descriptive literature unless expressly requested. Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D).

SIGNING YOUR OFFER (JAN 2004) Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words "by its Partner," and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

**SUBMISSION OF OFFER (FMU):** By Submission of an offer, you are guaranteeing that all goods and/or services meet the requirements of the bid during the contract period.

**STATE OFFICE CLOSINGS (JAN 2004)** If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at:  
<http://www.scemd.org/myscgovweb/weather.html>

**SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015)** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-2]

**SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015):** Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification in accordance with the clause titled "ON-LINE BIDDING INSTRUCTIONS." Paper offers are discouraged. If you must submit a paper offer or modification the following instructions apply. (a) All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (b) (1) All copies of the offer or modification, and any other documents required to be submitted with the offer shall be enclosed in a sealed, opaque envelope or package. (2) Submit your offer or modification to the address on the Cover Page. (3) The envelope or package must show the time and date specified for opening, the solicitation number, and the name and address of the bidder. If the offer or modification is sent by mail or special delivery service (UPS, Federal Express, etc.), the outermost envelope or wrapper must be labeled "OFFER ENCLOSED" on the face thereof. (c) If you are responding to more than one solicitation, submit each offer in a separate envelope or package. (d) Submit the number of copies indicated on the Cover Page. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. [02-2A130-2]

TAXPAYER IDENTIFICATION NUMBER (JAN 2004): (a) If Offeror is owned or controlled by a common parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent. (b) Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member. "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number. (c) If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether (i) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States; (ii) Offeror is an agency or instrumentality of a state or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government.

VENDOR REGISTRATION MANDATORY (JAN 2006): You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit [www.procurement.sc.gov](http://www.procurement.sc.gov) and select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting Change

Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm> [02-2A145-1])

WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004) Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085.

### **III. INSTRUCTIONS TO OFFERORS – SPECIAL**

CLARIFICATION (NOV 2007) Pursuant to Section 11-35-1520(8), the Purchasing Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

MAIL PICKUP FMU: Francis Marion University picks up all mail from The US Postal Service once daily around 8:30 a.m. (excluding weekends and holidays). See provision entitled Deadline for Submission of Offer. [02-2B080-1]

PROTEST - CPO - MMO ADDRESS (JAN 2008): Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to [protest-mmo@mmo.sc.gov](mailto:protest-mmo@mmo.sc.gov) , (b) by facsimile at 803-737-0639 , or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

PROTEST - CPO - ITMO ADDRESS (JUN 2006): Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing (a) by email to [protest-itmo@itmo.sc.gov](mailto:protest-itmo@itmo.sc.gov), (b) by facsimile at 803-737-0102 , or (c) by post or delivery to 1201 Main Street, Suite 601, Columbia, SC 29201. [02-2B120-1]

PREFERENCES - A NOTICE TO VENDORS (SEP 2009): On June 16, 2009, the South Carolina General Assembly rewrote the law governing preferences available to in-state vendors, vendors using in-state subcontractors, and vendors selling in-state or US end products. This law appears in Section 11-35-1524 of the South Carolina Code of Laws. A summary of the new preferences is available at [www.procurement.sc.gov/preferences](http://www.procurement.sc.gov/preferences). VENDORS ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES. THE REQUIREMENTS TO QUALIFY HAVE CHANGED. IF YOU REQUEST A PREFERENCE, YOU ARE

CERTIFYING THAT YOUR OFFER QUALIFIES FOR THE PREFERENCE YOU'VE CLAIMED. IMPROPERLY REQUESTING A PREFERENCE CAN HAVE SERIOUS CONSEQUENCES. [11-35-1524(E)(4)&(6)]

PREFERENCES - SC/US END-PRODUCT (SEP 2009): Section 11-35-1524 provides a preference to vendors offering South Carolina end-products or US end-products, if those products are made, manufactured, or grown in SC or the US, respectively. An end-product is the tangible project identified for acquisition in this solicitation, including all component parts in final form and ready for the use intended. The terms "made," "manufactured," and "grown" are defined by Section 11-35-1524(A). By signing your offer and checking the appropriate space(s) provided and identified on the bid schedule, you certify that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law. Post award substitutions are prohibited. See "Substitutions Prohibited - End Product Preferences (Sep 2009)" provision.

PREFERENCES - RESIDENT VENDOR PREFERENCE (SEP 2009): To qualify for the RVP, you must maintain an office in this state. An office is a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must either: (1) maintain at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities on which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars [\$50,000] or the annual amount of the contract; or (2) be a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product being sold is either made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code).

PREFERENCES - RESIDENT CONTRACTOR PREFERENCE (SEP 2009): To qualify for the RCP, you must maintain an office in this state. An office is a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must, at the time you submit your bid, directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and your total direct labor cost for those individuals to provide those services must exceed fifty percent of your total bid price. [11-35-1524(C)(1)(iii)] Upon request by the procurement officer, you must identify the persons domiciled in South Carolina that will perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, and documentation of the your labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and, potentially, for other enforcement action).

UNIT PRICES REQUIRED (JAN 2006): Unit price to be shown for each item.

[Note: The University is only interested in receiving quotations for the items and quantities specified herein. The right is reserved to reject any offering in which the items offered are considered unsatisfactory in any manner. Failure to furnish adequate data with quotation or when requested by the University may result in bid rejection as non-responsive.](#)

#### **IV. QUALIFICATIONS**

QUALIFICATION OF OFFEROR (MAR 2015): (1) To be eligible for award, you must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. (2) You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection. **(3) Corporate subsidiaries are cautioned that the financial capability of an affiliated or parent company will not be considered in determining financial capability;** however, we may elect to consider any security, e.g., letter of credit, performance bond, parent-company corporate guaranty, that you offer to provide Instructions and forms to help assure acceptability are posted on [procurement.sc.gov](http://procurement.sc.gov), link to "Standard Clauses & Provisions." [05-5005-2]

## **V. AWARD CRITERIA**

AWARD BY LOT (JAN 2006): Award will be made by complete lot(s).

AWARD CRITERIA – BIDS (JAN 2006): Award will be made to the lowest responsible and responsive bidder(s).

UNIT PRICE GOVERNS (JAN 2006): In determining award, unit prices will govern over extended prices unless otherwise stated

COMPETITION FROM PUBLIC ENTITIES (JAN 2006): If a South Carolina governmental entity submits an offer, the Purchasing Officer will, when determining the lowest offer, add to the price provided in any offers submitted by nongovernmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004).

AWARD TO ONE OFFEROR (JAN 2006): Award will be made to one Offeror. [06-6040-1]

**IMPORTANT– Please Note** – The University MUST have your Federal ID # (company) prior to processing any invoices for payment. Failure to provide this information will result in delay of payments until this information is received. Please complete Appendix A – VENDOR APPLICATION FORM, include your W-9, and provide each with your quote.

## **VI. TERMS & CONDITIONS – SPECIAL**

ADDITIONS/DELETIONS: The University shall have the right to make additions to and /or deletions from the contract as necessary. Any change orders to the contract must be communicated in writing between the contractor and the University Purchasing office and must be approved by the State Materials Management Office prior to implementation.

BANKRUPTCY (JAN 2006): (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

COMPLIANCE WITH LAWS (JAN 2006): During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

CONTRACT ADMINISTRATION: Questions or problems arising after award of this contract shall be directed to Francis Marion University, Director of Procurement, PO Box 100547, Florence, SC 29502.

CONTRACT AMENDMENTS, MODIFICATIONS & CHANGE ORDERS: Any change orders, alterations, amendments or other modifications hereunder shall not be effective unless reduced to writing and approved by the buyer responsible for this solicitation and the contractor. All questions, problems or changes arising after award of this contract shall be directed to the buyer responsible for this solicitation, at the phone number and address shown on the cover page

CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (JAN 2006): (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

CONTRACTOR PERSONNEL (JAN 2006): The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

CONTRACTOR'S LIABILITY INSURANCE - GENERAL (FEB 2015)

(a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors. (b) Coverage shall be at least as broad as: (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit. This contract shall be considered to be an "insured contract" as defined in the policy per accident for bodily injury or disease. (c) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. (d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it. (e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time. (f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced. (g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer. (h) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. (i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. [07-7B056-2]

DEFAULT – SHORT FORM (FEB 2015) The state may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any material contract terms and conditions, or fails to provide the state, upon request, with adequate assurances of future performance. In the event of termination for cause, the state shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the state for any and all rights and remedies provided by law. If it is determined that the state improperly terminated this contract for default, such termination shall be deemed a termination for convenience. [07-7B080-2]

DELIVERIES SHALL BE FOB DESTINATION, FREIGHT PREPAID. It is agreed by the parties hereto that delivery by the contractor to the common carrier does not constitute delivery to the University. Any claim for loss or damage shall be between the contractor and the carrier.

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



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

**ILLEGAL IMMIGRATION (NOV 2008):** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

**INDEMNIFICATION -- THIRD PARTY CLAIMS (NOV 2011)** Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B100-2]

**LICENSES AND PERMITS (JAN 2006):** During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

**PRICE ADJUSTMENTS (JAN 2006):** (1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed): (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable; (b) by unit prices specified in the Contract or subsequently agreed upon; (c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon; (d) in such other manner as the parties may mutually agree; or, (e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws. (2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830. [07-7B160-1]

**PURCHASES FROM OTHER SOURCES:** The University's Purchasing Office reserves the right to bid separately any unusual requirements or large quantities of the items specified in this proposed contract (the above does not apply to solicitations for service requirements).

RELATIONSHIP OF THE PARTIES (JAN 2006): Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

RESTRICTIONS/LIMITATIONS: No purchases are to be made from this contract for any item that is not listed or for any item that is currently authorized under any other contract awarded prior to this contract

SAVE HARMLESS: The successful offeror shall indemnify and save harmless the State of South Carolina and all state officers, agents, and employees, from all suits or claims of any character brought by reason of infringing on any patent, trade mark or copyright. Offeror shall have no liability to the state if such patent; trademark or copyright infringement or claim is based upon the offeror's use of material furnished to the offeror by the state.

SHIPPING / RISK OF LOSS (JAN 2006): F.O.B. Destination. Destination is the shipping dock of the Using Governmental Units' designated receiving site, or other location, as specified herein. (See Delivery clause)

SUBCONTRACTOR SUBSTITUTION PROHIBITED - RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009) - If you receive an award as a result of the subcontractor preference, you may not substitute any business for the subcontractor upon which you relied to qualify for the preference, unless first approved in writing by the procurement officer. If you violate this provision, the State may terminate your contract for cause and you may be debarred. In addition, the procurement officer may require you to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder, unless the substituted subcontractor qualifies for the preference. [11-35-1524(D)(5)(c)]

SUBSTITUTIONS PROHIBITED - END PRODUCT PREFERENCES (SEP 2009): If you receive the award as a result of the South Carolina end product or United States end product preference, you may not substitute a nonqualifying end product for a qualified end product. If you violate this provision, the State may terminate your contract for cause and you may be debarred. In addition, you shall pay to the State an amount equal to twice the difference between the price paid by the State and your evaluated price for the item for which you delivered a substitute. [11-35-1534(B)(4)] [07-7B236-1]

TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006) - The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is **1 Year, 0 Months, 0 Days** from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award.

Option to Extend:

The term of this contract shall be one year, and may be renewable by mutual agreement in annual increments for not more than four one-year periods. The contract will automatically extend at the current rates on the anniversary date unless the contractor sends written request for pricing consideration forty-five days prior to the anniversary date. Total expenditures under this contract will not exceed \$275,000.

TERMINATION FOR CONVENIENCE – SHORT FORM (JAN 2006): The Purchasing Officer may terminate this contract in whole or in part, for the convenience of the State. In such a termination, the Purchasing Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Purchasing Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. Upon such termination, the contractor shall (a) stop work to the extent specified, (b) terminate any subcontracts as they relate to the terminated work, and (c) be paid the following amounts without duplication, subject to the other terms of this contract: (i) contract prices for supplies or services accepted under the contract, (ii) costs incurred in performing the terminated portion of the work, and (iii) any other reasonable costs that the contractor can demonstrate to the satisfaction of the State, using its standard record keeping system, have resulted from the termination. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided. As a condition of payment, contractor shall submit within three months of the effective date of the termination a claim specifying the amounts due because of the termination. The absence of an appropriate termination for convenience clause in any subcontract shall not increase the obligation of the state beyond what it would have been had the subcontract contained such a clause.

VOLUME: Quantities shown herein are estimated requirements for the contract period and the University does not obligate itself to purchase the full quantities indicated, but the price offered must be allowed should the quantities be less. The

University's requirements may exceed the quantities shown and all orders received by the contractor during the term of the contract shall be filled in accordance with the terms and conditions herein.

**WARRANTY – ONE YEAR (JAN 2006):** Contractor warrants all items acquired shall conform to all contractor's representations, the requirements of this contract, and all published documentation. [07-7B275-1]

**WARRANTY – STANDARD (JAN 2006):** Contractor must provide the manufacturer's standard written warranty upon delivery of product. Contractor warrants that manufacturer will honor the standard written warranty provided. [07-7B280-1]

**DATA BREACH (FMU 2017):** In the event of a data breach or unauthorized access to data, Offeror shall provide all details of the breach to the University including the time of the breach, nature of the breach, the specific data that was compromised, all parties involved in the breach, all litigation efforts by the Offeror regarding the breach, and corrective actions to be taken by Offeror as a result of the breach. Offeror shall be responsible for all damages, fines, litigation costs, and all other expenses related to a breach of data. Any term or condition is void to the extent it requires the University to indemnify, defend, or pay attorney's fees to anyone for any reason.

**PUBLIC RECORDS REQUESTS (FMU 2017):** Offeror shall not provide data to individuals, groups, or organizations making records requests unless directed to do so by an authorized University official. In the event of litigation, during the duration of the litigation Offeror shall provide the mechanism by which data is preserved in its entirety. All media maintained for the backup of data must be available for a search in the case of litigation. To ensure compliance with all South Carolina laws, data requested will be reviewed and potentially redacted or removed from provision by authorized University officials.

**RIGHT TO AUDIT AND INSPECT (FMU 2017):**

1. The University reserves the right to request third-party audits and/or certifications related to infrastructure and security, including penetration testing and vulnerability assessments. In addition, any reports produced from these audits and certifications will be provided to the University for review.
2. The University (or a third-party provider selected by the University) reserves the right to perform an onsite inspection of the cloud offeror's infrastructure and security practices on a specified basis.
3. The University reserves the right to review the infrastructure and security specifications in written format if it so chooses.
4. The University reserves the right to audit the performance records of the cloud provider, as well as access to daily and weekly service quality statistics.

**OUTSOURCED SERVICES (FMU 2017):** No assignment of the contract or components of the contract can occur without explicit, written agreement from an authorized University official. The Offeror is directly responsible for all terms of the contract, regardless of outsourced functions.

APPENDIX 1 – VENDOR APPLICATION FORM



Francis Marion University  
Vendor Application Form

Taxpayer ID Number (circle): FEIN or SS: \_\_\_\_\_

FMU Vendor #: \_\_\_\_\_

New Vendor: \_\_\_\_\_

Vendor Info Change: \_\_\_\_\_

**Submit your W-9 form WITH this Vendor Application Form**

Company Name or Individual Name (as shown on your income tax return): \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Contact E-mail Address: \_\_\_\_\_

This is also my address where Purchase orders should be sent (circle) Yes or No

If you have a "Doing Business As" name, please include here.

Doing Business As (DBA) Name: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

This is also my address where Purchase orders should be sent (circle) Yes or No

Payment Remittance Address

Payment Remittance Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Contact E-mail Address: \_\_\_\_\_

This is also my address where Purchase orders should be sent (circle) Yes or No

E-mail Address for receiving Purchase Orders from FMU: \_\_\_\_\_

Would you like to arrange for electronic payment (circle): Yes or No

South Carolina Small and Minority Business Certification Number \_\_\_\_\_ Expiration Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Individual Completing Form

\_\_\_\_\_  
Date

For FMU Use Only:

International Vendor Number (FMU will provide) : \_\_\_\_\_

\_\_\_\_\_  
Purchasing Keyed by:

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

\_\_\_\_\_  
Accounting Reviewed by:

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

Orig - April 4, 2017

**Attachment 2**

**OPEN TRADE REPRESENTATION**

(S.C. Code Ann. §§ 11-35-5300)

*The following representation, which is required by Section 11-35-5300(A), is a material inducement for the State to award a contract to you.*

---

I, the official named below, certify that I am duly authorized to execute this certification on behalf of the vendor identified below, and as of the date of my signature, the vendor identified below is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

Vendor Name (Printed)	State Vendor No.
By (Authorized Signature)	Date Executed
Printed Name and Title of Person Signing	[Not used]

### Attachment 3 References

In the space below, please provide contact information for at least three (3) references in which you provided services of a similar scope:

#### Reference 1

Name of Organization \_\_\_\_\_

Point of Contact \_\_\_\_\_

Telephone \_\_\_\_\_

E-mail \_\_\_\_\_

#### Reference 2

Name of Organization \_\_\_\_\_

Point of Contact \_\_\_\_\_

Telephone \_\_\_\_\_

E-mail \_\_\_\_\_

#### Reference 3

Name of Organization \_\_\_\_\_

Point of Contact \_\_\_\_\_

Telephone \_\_\_\_\_

E-mail \_\_\_\_\_