

Francis Marion University

**Request for Qualifications
Construction Management-at-Risk
MEDICAL EDUCATION FACILITY**

State Project # H18-9590-SG

April 18, 2024

It is the intention of Francis Marion University to select a Construction Manager at Risk (CM-R) to provide comprehensive pre-construction and construction services for the Medical Education Facility.

1. PROJECT OVERVIEW

- A. The proposed Medical Education Facility is to be located at 601 Gregg Avenue at the end of West Cheves Street in downtown Florence. The project scope includes demolition of the existing structure and construction of a new facility (3 story building and approximately 47,000 square feet) on the site dedicated to Medical and Graduate Health Science Education. The exterior of the building will encompass architectural features similar to those used on the University’s downtown campus with construction to include perimeter landscaping design. The interior space will be dedicated to inter-professional educational activities and will be largely used to support the University’s medical and graduate health science education programs. The interior will include but not be limited to simulation centers, classrooms, multi-disciplinary labs, faculty/administrative offices, student study space, restrooms, and a large multi-functional space. The facility will be constructed to meet either the Green Globes or Silver LEED standards. There are no known challenges that would prevent the University from using the Construction Manager at Risk (CM-R) delivery method.
- B. The selection of the CM-R will comply with the guidelines of the South Carolina Procurement Code and Regulations, including the Office of State Engineer (OSE) Manual for Planning and Execution of State Permanent Improvements Project (OSE Manual). The overall procurement will be a two-step process consisting of a Request for Qualifications (RFQ) followed by a Request for Proposals (RFP). In the first step (RFQ), qualifications alone will narrow the field to a short-list of firms who will be invited to respond to the RFP.
- C. In selecting a firm, the University will place great emphasis on the experience of the firm and assigned personnel in providing similar services on projects of similar magnitude and complexity as the Medical Education Facility construction. Selection preference will be toward firms that have a demonstrated depth of knowledge and resources in the successful application of principles of CM-R and general contracting, scheduling, contract coordination and compliance, budget control, familiarity with Federal, State, County, and City laws, ordinances, and codes.
- D. Submittal and Project Schedule
 - 1) Statement of Qualifications Due May 2024
 - 2) Short-list of firms announced May 2024
 - 3) Pre-Proposal Conference and site tour (optional) June 2024
 - 4) Technical Proposals (RFP) from short-listed firms due..... June 2024
 - 5) Interviews, Cost Proposals, and final ranking of short-listed firms June 2024
 - 6) Negotiations conclude No later than August 2024

2. PROJECT CONSTRAINTS

The project received Phase I approval by the State Fiscal Accountability Authority on January 19, 2022, and Phase II approval is anticipated in August of 2024. It is desired to start construction in late 2024, with a completion date in late 2025, such that faculty can begin instruction in the new facility for the Spring of 2026. Due to the desired construction schedule, the University intends to assess liquidated damages for failure to meet the contract substantial completion date.

3. DESCRIPTION OF SERVICES TO BE ACQUIRED

- A. The CM-R will provide a broad range of design support and construction services including, but not limited to: schedule and constructability reviews; value engineering (VE); identification of alternatives in project delivery phasing and early bid packages; prequalification of trade subcontractors; preliminary pricing of general conditions and site services; and the administration of general and trade contracts. These activities will first support the development of an overall Total Project Cost and Baseline Schedule. The CM-R will then assist the University and Designer in the development of a final Maximum Allowable Construction Cost (MACC) and Project Construction Schedule as the construction documents prepared by the design team reach a point for final pricing near the end of the design phase.

- B.** The CM-R will be contracted to proceed with execution of the project by bidding and managing the general and trade contracts and to assume responsibility for project coordination and construction at a Guaranteed Maximum Price (GMP), which will become a contractual obligation. The CM-R will also develop a Construction Master Schedule, which will also become a contractual obligation. The CM-R will be responsible for the coordination and construction of the entire project, including management and coordination of all trade contracts, subcontracts, shop drawings, change orders, punch lists, and Owner Furnished Equipment. The CM-R will also be responsible for delivery of record drawings, O & M manuals, and warranties. The project will be subject to all third-party inspections required by the Office of State Engineer.
- C.** The CM-R shall generally provide the complete scope of services outlined in the South Carolina Division of Procurement Services, Office of State Engineer Version of AIA Document A133 – 2019, South Carolina Division of Procurement Services, Office of State Engineer Version of AIA Document A201 - 2017, and Standard Modifications to the AIA A201-2017, SCOSE Version, CM-R Project. Should the project execution plan require the project to proceed utilizing a multi-staged guaranteed maximum price (GMP), it is expected that the CM-R's services will be executed seamlessly based on appropriately executed amendments to the contract.
- D. Preconstruction Services:** Preconstruction Services include, but are not limited to:
- 1) Project Management
 - a) Establish a Construction Management Plan
 - b) Project Conference
 - c) Design Phase Information
 - d) Progress Meetings
 - e) Review of Design Documents
 - f) Provide Constructability and Efficiency Recommendations to the Design Team
 - g) Participate in University Design Reviews
 - h) Public Relations
 - i) Project Funding/Budgeting
 - 2) Time Management
 - a) Revisions to Baseline Schedule
 - b) Preconstruction (Design Phase) Milestone Schedule
 - c) Monitoring Design Phase Milestone Schedule
 - d) Pre-Bid Construction Schedules
 - 3) Cost Management
 - a) Cost Control & Estimating Services
 - b) Revisions to Project and Construction Budget
 - c) Value Engineering Studies
 - 4) Management Information System (MIS)
 - a) Schedule Reports
 - b) Project Cost Reports
 - c) Cash Flow Reports
 - d) Design Phase Change Order Reports
- E. Construction Buy Out Services:** These services are all services related to the actual procurement of construction related activities. As outlined in SCOSE AIA Document A133 – 2019, SCOSE AIA Document A201 – 2017, and Standard Modifications to the AIA A201-2017, SCOSE Version, CM-R project, the CM-R will be responsible for all services related to this phase including but not limited to:
- 1) Project Management
 - a) Vendor Outreach Campaign
 - b) Prequalifying Bidders
 - c) Delivery of Bid Documents
 - d) Pre-Bid Conferences
 - e) Information to Bidders
 - f) Addenda
 - g) Bid Opening
 - h) Construction Contracts
 - i) Permits, Insurance, and Labor Affidavits
 - j) Development of the Maximum Allowable Construction Cost (MACC) and the Guaranteed Maximum Price (GMP)
 - 2) Time Management
 - a) Pre-Bid Construction Schedule
 - b) Contractor's Construction Schedule
 - 3) Cost Management
 - a) Estimates for Addenda
 - b) Analyzing Bids

- c) Trade Contract Award
- 4) Management Information System (MIS)
 - a) Schedule Maintenance Reports
 - b) Project Cost Reports
 - c) Cash Flow Reports

F. Construction Services: The CM-R will be responsible for the coordination and construction of the entire project. The University and the Design Team will routinely review construction progress to protect the University's interests and to validate pay applications. The CM-R will provide the following construction phase services, including but not limited to:

- 1) Project Management
 - a) Pre-Construction Conference
 - b) Onsite Management / Construction Phase Communication Procedures
 - c) Contract Administration Procedures
 - d) Project Site Meetings
 - e) Coordination of Other Independent Consultants
 - f) Review of Requests for Changes to Contract Time / Price
 - g) Quality Review
 - h) Operation & Maintenance Materials
 - i) Substantial Completion
 - j) Final Completion
- 2) Time Management
 - a) Master Baseline Schedule
 - b) Contractor's Construction Schedule
 - c) Construction Schedule Report
 - d) Review of Time Extension Requests
 - e) Recovery Schedules
 - f) Project Closeout Schedule
- 3) Cost Management
 - a) Contractor Schedule of Values
 - b) Allocation of Costs to Contractor's Construction Schedule
 - c) Change Order Control
 - d) Cost Records
 - e) Trade-Off Studies
 - f) Progress Payments
- 4) Management Information System (MIS)
 - a) Schedule Maintenance Reports
 - b) Project Cost Reports
 - c) Revisions to Project & Construction Budget
 - d) Cash Flow Reports
 - e) Contractor Progress Payment Reports
 - f) Change Order Reports

G. Post-Construction Services: Following construction, the CM-R shall be responsible for project closeout and documentation, including but not limited to:

- 1) Project Management
 - a) Record Documents
 - b) Organize / Index Operations & Maintenance Materials
 - c) Occupancy Permit
 - d) Warranty Services
- 2) Time Management
 - a) Occupancy Plan
- 3) Cost Management
 - a) Change Orders
- 4) Management Information System (MIS)
 - a) Close-Out Reports
 - b) MIS Reports for Move-In & Occupancy including move management.

4. DEFINITIONS

For the purposes of this solicitation the following definitions apply:

- A. Total Project Cost:** The sum of all charges to the project funding account, including the following major cost elements:
- Owner's Furnishings, Fixtures, and Equipment

- Other Owner Costs (design fees, field investigations, inspections, etc.)
- Owner's Overall Project Contingency
- Design Phase Contingency (Owner-controlled) and Owner's Contingency
- Total Construction Cost

B. Total Construction Cost (TCC): The negotiated sum of all direct and indirect charges for project construction, including the following major cost elements. This amount must be fully bonded as a contractual obligation.

- General Conditions Cost
- CM-R Costs and Fees (both preconstruction and construction)
- Maximum Allowable Construction Cost including Contractor's Construction Contingency

C. Maximum Allowable Construction Cost (MACC): A negotiated amount that includes the following elements. This amount will be a contractual obligation.

- Cost of the Construction (the Construction Buy-Out)
- Buy-Out Contingency (unspent Buy-Out Contingency reverts to the Owner at the conclusion of the Buy-Out phase)
- Construction Contingency (unspent Construction Contingency reverts to the Owner at Substantial Completion)

D. Guaranteed Maximum Price (GMP): The MACC less the unspent Buy-Out Contingency.

5. SUBMITTAL CONDITIONS AND GENERAL INSTRUCTIONS

A. Conditions

- 1) The University makes no guarantee that an award will be made as a result of the RFQ and reserves the right to accept or reject any or all submittals; waive any informalities, irregularities, or minor technical inconsistencies; or delete any item or requirement from this RFQ or any resultant contract when deemed to be in the University's best interest. Any and all representations made within a Statement of Qualification shall be binding on the Respondent.
- 2) The University is not obligated to request clarifications or additional information but may do so at its discretion. The University reserves the right to extend the deadline for submittals.
- 3) Upon receipt of a Statement of Qualifications by the University, the submission shall become the property of the University without compensation to Respondent for disposition or usage by the University at its discretion. Subject to the provisions of the Open Records Act, the details of the proposal documents will remain confidential until final award.
- 4) The University assumes no responsibility or obligation to the Respondents and will make no payment for any costs associated with the preparation or submission of responses to this solicitation.
- 5) During the performance of any contract resulting from this solicitation, the CM-R agrees as follows: The CM-R 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. CM-R 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 work force 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.
- 6) Failure to comply with all requirements contained in this RFQ may result in rejection of the submission and disqualification from further consideration.

B. General Instructions

- 1) Respondents shall carefully read the information contained in this RFQ and submit a complete response to all requirements and questions as directed. Incomplete Statements of Qualifications will be considered non-responsive and subject to rejection.
- 2) Only individual firms or formal joint ventures may apply. Two or more firms may not apply as a team unless they have formed a legal joint venture. Any associations will be disqualified. This does not preclude a Respondent from having sub-consultants.
 - a) "Prime-Sub" teams are bound by the requirements and limitations of this solicitation. Each firm must describe its experience and qualifications within the overall page limit.
 - b) For joint venture entities that have not completed at least two relevant projects as a joint venture, each firm should submit its qualifications separately within the overall page limit.

- 3) Submission of a Statement of Qualifications indicates the Respondent's acceptance of the evaluation techniques and a recognition that subjective judgments must be made by the University during the evaluation process.
- 4) Except for the submission of clarification questions as discussed herein, Respondents shall not contact any members or employees of the University, the Office of State Engineer, or the Design Team regarding any aspect of this procurement until after the award of the contract. Contact with the organizations mentioned above could be grounds for elimination.
- 5) Questions relating to the RFQ may be asked at any time up to the deadline set forth in the published advertisement.
- 6) It is the responsibility of each Respondent to examine the entire RFQ; to seek clarification in writing; and to review its submittal for accuracy before submitting the document. Once the submission deadline has passed, all submissions will be final. The University may, in its sole discretion, request clarification from any individual Respondent relative to their submission and reserves the right to ask for additional information from all parties that have submitted qualification statements.
- 7) Any clarifications or interpretations of this RFQ that materially affect or change its requirements will be addressed by formal addendum. It is the responsibility of all respondents to obtain this information in a timely manner. All such addenda issued by the University before the proposals are due are part of the RFQ, and respondents shall acknowledge receipt of and incorporate each addendum in its Statement of Qualifications.
 - a) Questions must be submitted no less than seven (7) days prior to the date of submission of the Statements of Qualifications. All questions must be submitted in writing (by email is acceptable) to the Point-of-Contact listed below.
 - b) Respondents shall consider as binding only those clarifications and interpretations that the University issues by addenda five (5) days prior to the submittal deadline. Interpretations or clarifications in any other form, including oral statements, will not be binding on the University, and should not be relied on in preparing Statements of Qualifications.
- 8) Statements of Qualifications shall not include any information regarding Respondent's fees, pricing, or other compensation. Inclusion of such information shall result in disqualification from further consideration. Such information will be solicited from firms qualified by the University to participate in step two of the selection process.

6. SPECIFIC SUBMITTAL INSTRUCTIONS

- A. The University will receive Statements of Qualification at the time and location given below:
 - 1) Date and Time as specified in the advertisement in *South Carolina Business Opportunities*.
 - 2) Francis Marion University
Facilities Management
4822 East Palmetto Street (P.O. Box 100547)
Florence, SC 29506 (29502-0547)
- B. The University designates the following person, as its representative and Point-of-Contact for this RFQ. Respondents shall restrict all contact with the Owner and direct all questions regarding this RFQ, including questions regarding terms and conditions, to the Point-of-Contact person.
Taylor H. McMillan, Project Manager
Francis Marion University Facilities Management
4822 East Palmetto Street (P.O. Box 100547)
Florence, SC 29506 (29502-0547)
Phone: 843-661-1488
Email: taylor.mcmillan2@fmarion.edu
- C. Submittal Format
 - 1) Submittals shall be printed on letter-size (8-1/2" x 11") paper and assembled with spiral-type bindings. DO NOT USE METAL-RING HARD COVER BINDERS.
 - 2) Submittals shall be a MAXIMUM OF TWENTY (20) PRINTED SHEETS OF PAPER. Sheets may be single or double-sided. Foldouts up to 11" x 17" are acceptable but will count as two (2) pages. Fonts shall be a minimum of 10 point.
 - 3) Number each side of a printed page consecutively, including the Letter of Interest, brochures, licenses, resumes, supplemental information, etc. The covers, table of contents, and divider sheets do not count as printed pages, provided no additional information is included on those pages. Provide the number of copies specified in the advertisement. Any submittals exceeding the 20-page limit will be disqualified.
 - 4) The front cover must clearly identify the Project Name, Project Number, the Date of Submission, and the Name of Respondent.

- 5) Separate and identify each criteria response by use of a divider sheet with an integral tab identified as follows:
 - Letter of Interest
 - Response to Prerequisite Criteria
 - Financial Information
 - Personnel Resources
 - General CM-R Experience
 - Specific Project Experience.
 - Statement of Why Firm Should Be Selected
- 6) When a criterion defines a specific number of items (e.g., number of projects) to be listed or described, then only that number of items shall be provided.

7. RESPONSES TO CRITERIA

A. Letter of Interest

- 1) Basic company information
 - Company name
 - Address & Zip code
 - Name of primary contact
 - Telephone number
 - Fax number
 - Email address
 - South Carolina Construction-Manager License Number
 - South Carolina General Contractor License Number
- 2) Form of ownership, including state of residency or incorporation—Is the offeror a sole proprietorship, partnership, corporation, Limited Liability Corporation (LLC), joint venture, or other structure?
- 3) Succinctly describe the history and growth of your firm.
- 4) State the number of years your firm has been providing CM-R services and General Contracting services.
- 5) If other than the home office, identify the branch office responsible for the performance of the services requested and its proximity to the project site.
- 6) Provide a statement of disclosure, which will allow the University to evaluate possible conflicts of interest. This disclosure requirement is not about giving the University permission regarding us contacting your references. It is about revealing relationships that your company may have with persons not of your company who are directly involved in the decision-making regarding this project. If your company has no conflicts of interest, your statement should affirm that as fact, and you may do so succinctly. The signer of this statement of disclosure should anticipate the following pledge that will be required by the CM-R Contract:
 - “The CM-R covenants that it currently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance required under this Contract. The CM-R further covenants that, in the performance of this Contract, it shall not employ or contract with any person whose employment or contracting would create a conflict of interest.”
- 7) Provide the following certification and acknowledgement statement.
 - “The undersigned hereby affirms that regarding information furnished by the applicant herewith, and as may be provided subsequently (including information presented at interview, if a finalist):
 - All information of a factual nature is certified to be true and accurate.
 - All statements of intent or proposed future action (including the assignment of personnel and the provision of services) are commitments that will be honored by the applicant if awarded the contract.
 It is acknowledged that:
 - If any information provided by the applicant is found to be, in the opinion of the Selection Committee or the State of South Carolina, substantially unreliable, this application may be rejected.
 - The Selection Committee may reject all applicants and may stop the selection process at any time.
 - The selection of finalists for proposal and interview will be made on the basis of information provided herein, including the results of the reference checks.”
- 8) Provide notarized signature of Corporate Executive or equivalent with authority to bind the firm to its submission.

B. Response to Prerequisite Criteria

Provide documents, including affidavits from insurance and surety agents attesting to your firm’s compliance with the prerequisite criteria listed below.

C. Financial Information

If the firm has multiple offices, the qualification statement should include financial information about the parent company and branch office separately. Parent company (or general office) financial information as totals will be acceptable if “parent” (or general office) means that it is financially responsible for the liabilities of the branch office.

- 1) List your total annual billings for each of the past five (5) calendar years.
- 2) Has the firm ever failed to complete any work awarded to it or been removed from any project awarded to the firm? If yes, provide an explanation and contact information for the Owner’s Project Manager.
- 3) List the contact persons, addresses, and phone numbers for your insurance carrier and agent.
- 4) List the contact persons, addresses, and phone numbers for the firm's bonding company and agent.
- 5) List the percentage of your firm's work during the past five (5) years that has been negotiated.
- 6) Supply firm’s Current Ratio (Current Assets/Current Liabilities) experience for the last five (5) years, with a signed affidavit.

D. Personnel Resources

- 1) Provide general information about the firm's personnel resources, including skill groups and numbers of employees for the proposed office location and the firm.
- 2) Name all key personnel which will be part of the construction management team for this project and provide their cities of residence. Describe in detail the experience and expertise of each team member. The key personnel, at a minimum, are the project superintendent, project manager, estimator or preconstruction manager, and the executive in charge. (Note: Key personnel must be committed to this project for its duration unless excused by the University.)
- 3) For each project listed as part of the relevant project experience sections, list the members of the proposed team for this project (including consultant staff) who worked on each listed project and describe their roles in those projects. If the team as a whole provided construction management services for any of the relevant projects listed, so indicate.
- 4) Name any consultants who are included as part of the proposed team. Describe each consultant's proposed role in the project and its related experience. Identify on which of the relevant projects your firm has worked with the consultant.

E. General CM-R Project Experience

- 1) List the five (5) projects with photos and floor plans for which your firm has provided or is providing construction management services which are most related to this project. List the projects in priority order, with the most related project listed first. In determining which projects are most related, consider the following:
 - work was for a SC State Agency.
 - similar use, size, and complexity.
- 2) For each of the listed projects, provide the following information:
 - construction cost (original GMP and final construction cost).
 - current phase of development.
 - estimated (or past) completion date.
 - type of construction services provided (CM at risk with GMP, CM-agency, design/build, general contractor-low bid, negotiated general contract, subcontractor to prime).
 - owner's contact person and telephone number and the name and telephone number of the project architect.
 - any active or pending legal claims and explain.

F. Specific Project Experience

- 1) Using the most relevant of your firm’s past projects (CM-R or other delivery method), provide a discussion of how this project demonstrates your firm’s singular capability to successfully complete this Project.
 - a) Describe how your firm’s approach to project management establishes clear lines of authority, responsibility and communication to achieve success.
 - b) Describe conflicts or potential conflicts with the owner or with trade contractors and describe the methods used to prevent and/or resolve those conflicts.
 - c) Describe the types of records, reports, monitoring systems, and information management systems which your firm used in the management of those projects.
 - d) Describe your cost control methods for the preconstruction and construction phases. How do you develop cost estimates and how often are they updated? Provide examples of how these techniques were used and what degree of accuracy was achieved. Include examples of successful value engineering to maintain project budgets without sacrificing quality.
 - e) Describe the way your firm maintains quality control during the preconstruction and construction phases. Provide specific examples of how these techniques were used.
 - f) Describe the way in which your firm develops and maintains project schedules. How often do you update schedules? Provide examples of how these techniques were used. Include specific examples of scheduling challenges, and how your firm helped solve them.

- 2) The University, the Design Team, and the selected CM-R are expected to use Building Information Modeling (BIM) systems in connection with the design, engineering, coordination, and construction of the Project, with all design and engineering of the Project being provided in one or more integrated BIM models. Describe your firm’s experience in the use of BIM systems during both preconstruction (e.g., systems analysis, cost estimating, and scheduling) and construction (e.g., trade coordination and configuration control).

G. Statement of Why Firm Should Be Selected

Provide a summary statement, no longer than one (1) page, which differentiates your firm from others offering similar services and which uniquely establishes the firm’s capacity and capability to perform this project.

8. EVALUATION CRITERIA

A. Prerequisite Criteria. Firms must meet the criteria listed immediately below. Firms that do not meet these criteria are **automatically disqualified** from further evaluation.

- 1) Firm **MUST** have proper, current licenses at the time of submission to perform construction management services and to act as a prime contractor in the state of South Carolina. Copies of licenses must be provided.
- 2) Firm **MUST** provide a certificate of insurance showing the firm’s current limits of liability for commercial general liability, employer’s liability, business automobile liability, and professional liability.
- 3) Firm **MUST** provide a letter of commitment from a firm or firms licensed in the state of South Carolina to provide a Builder’s Risk Insurance Policy and other insurance as required for this project can be obtained.
- 4) Firm **MUST** provide a letter of commitment from a firm or firms licensed in the state of South Carolina to provide bonding in the amount of the Total Construction Cost (scope as defined above). For the purposes of this submittal the Total Construction Cost shall be assumed to be \$19 million (\$19,000,000). The letter shall include the firm’s bonding capacity (aggregate and single project) and the available bonding capacity.
- 5) Firm **MUST** demonstrate a sustained and superior commitment to workplace safety in all activities. Firm shall provide its OSHA incidence rates for recordable injuries and illnesses for the previous three years and shall relate those rates to current industry averages. Firm shall also provide its Experience Modification Rates for the previous five years. Rates which exceed industry averages by more than 10% may be grounds for disqualification from further consideration.
- 6) Firm or any component firm of a joint venture or “prime-sub” team **MUST NOT** appear on the Federal Government’s Excluded Parties List System or in any debarment list maintained by any State or any entity of South Carolina. A notarized affidavit to this effect shall be provided.

B. For those RFQ responses that have met the Prerequisite Criteria, the Selection Committee will evaluate the submittals based upon the criteria listed in the table below. The criteria listed are in no particular order.

RFQ CRITERIA	
MAJOR CATEGORY	CRITERIA ELEMENTS
Clarity of Submittal	a) Extent to which the instructions in the RFQ were followed and information is clearly presented.
Financial Information	a) Bonding capacity/Financial stability
Location of Firm’s proposed office in relation to Project Site	a) Ability of project team to respond to project needs during pre-construction and construction.
Depth of Resources - Personnel Capability with Relevant Experience	a) Availability of Project Superintendent. b) Availability of Project Manager. c) Availability of Project Executive.
Firm’s General CM-R Project Experience	a) Description of firm’s CM-R project management approach. b) Experience on South Carolina State Agency projects. c) Claims and litigation record and any pending legal actions.
Firm’s Specific Project Experience and Statement of Why the Firm Should be Selected for this Project	a) Related experience on CM-R projects of similar size and scope. b) Unique ability to provide services for this project. c) References from designers and owners.

MISCELLANEOUS PROVISIONS

1. Disclosure of Conflicts of Interest or Unfair Competitive Advantage: You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. Without limitation, an unfair competitive advantage exists where a contractor competing for award possesses either proprietary information that was obtained from a government official without proper authorization or source selection information (as defined in Regulation 19-445.2010(C)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an Offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered.
2. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION: GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.
 - a. By submitting an offer, the Offeror certifies that—
 - 1) The 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 2.a(1) through 2.a(3) 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 2.a(1) through 2.a(3) of this certification [As used in this subdivision 2.b(2)(a), 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(2)(a) of this certification have not participated, and will not participate, in any action contrary to paragraphs 2.a(1) through 2.a(3) of this certification; and
(c) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs 2.a(1) through 2.a(3) of this certification.
 - c. If the Offeror deletes or modifies paragraph 2.a(2) 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 3.a(1)(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 3.a, Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.
 - 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 3.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 3.a of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.
4. **ETHICS CERTIFICATE:** By submitting an offer, the Offeror certifies that the Offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: 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 communication 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, agent, 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.