

	Solicitation Type:	Invitation for Bids (IFB)
	Solicitation Number	2223-13VS
	Date Issued	10/3/2022
	Procurement Specialist	Valiant Sommers, NIGP-CPP, CPPB
	Phone	(843) 488-6938
	E-Mail Address	<a href="mailto:vsommers@horrycountyschools.net">vsommers@horrycountyschools.net</a>
	Address	HCS, Procurement Office
	Mailing:	Physical:
	PO Box 260005	335 Four Mile Road
	Conway, SC 29528	Conway, SC 29526

**DESCRIPTION:** Provide and Deliver Nutrition Service Ice Cream Products and Equipment

**USING GOVERNMENTAL:** Horry County Schools

*The Term "Offer" Means Your "Bid", "Proposal" or "Quote".*

**SUBMIT YOUR OFFER ON-LINE AT THE FOLLOWING URL**

<https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=2f302e8a-69b0-407b-a21a-3368d004365e>

**SUBMIT OFFER BY** (Opening Date/Time): 10/25/2022 / 2:30 p.m. (EST) (See "Deadline For Submission Of Offer" provision)

**QUESTIONS MUST BE RECEIVED BY**(Date/Time): 10/11/2022 /12:00 p.m. (EST) (See "Questions From Offerors" provision)

**SUBMIT QUESTIONS TO:** [vsommers@horrycountyschools.net](mailto:vsommers@horrycountyschools.net)

**NUMBER OF COPIES TO BE SUBMITTED:** SEE PAGE 3 **Initial here \_\_\_\_ if NO redacted copy is necessary**

This document contains the bidding instructions, scope of work, and the contractual terms and conditions applicable to the solicitation referenced above which is being issued and conducted by Horry County Schools.

See "Submitting Your Offer" provision.

<b>CONFERENCE TYPE:</b> <input type="checkbox"/> MANDATORY <input type="checkbox"/> NOT MANDATORY <input type="checkbox"/> Not Applicable <b>DATE &amp; TIME:</b> Click or tap to enter a date. at (EST) As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions	<b>LOCATION:</b>
---	------------------

<b>AWARD &amp; AMENDMENTS</b>	The award, this solicitation, and any amendments will be posted at the following web address: <a href="https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=2f302e8a-69b0-407b-a21a-3368d004365e">https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=2f302e8a-69b0-407b-a21a-3368d004365e</a>
-------------------------------	--

You **must** submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of ninety (90) calendar days after the Opening Date. (See "Signing Your Offer" provisions)

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

Instructions regarding Offeror's name: Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror above. An offer may be submitted by only one legal entity. The entity named as the Offeror **must** be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, *i.e.*, a separate corporation, partnership, sole proprietorship, etc.

STATE OF INCORPORATION  (If Offeror is a corporation, identify the state of Incorporation.)	TAXPAYER IDENTIFICATION NO.  (See "Taxpayer Identification Number" provision)
---	---

PAGE TWO  
(Return Page Two with Your Offer)

<b>HOME OFFICE ADDRESS</b> (Address for Offeror's home office / principal place of business)				<b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)			
				Area Code:	Number:	Extension:	Facsimile:
E-Mail Address:							
<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.) (See "Payment" clause)				<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)			
				Order E-Mail Address:			
<input type="checkbox"/> Payment Address same as Home Office Address				<input type="checkbox"/> Order Address same as Home Office Address			
<input type="checkbox"/> Payment Address same as Notice Address (check only one)				<input type="checkbox"/> Order Address same as Notice Address (check only one)			
<b>ACKNOWLEDGMENT OF AMENDMENTS:</b> Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)							
Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date
DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)		10 Calendar Days (%)	20 Calendar Days(%)	30 Calendar Days (%)	_____ Calendar Days (%)		
<p>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 <a href="http://www.procurement.sc.gov/preferences">www.procurement.sc.gov/preferences</a> <b>ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM, REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. 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.</b> [11-35-1524(E)(4)&amp;(6)]</p>							
<p>PREFERENCES - ADDRESS AND PHONE OF IN-STATE OFFICE: Please provide the address and phone number for your in-state office in the space provided below. An in-state office is necessary to claim either the Resident Vendor Preference (11-35-1524(C)(1)(i)&amp;(ii)) or the Resident Contractor Preference (11-35-1524(C)(1)(iii)). Accordingly, you must provide this information to qualify for the preference. An in-state office is not required, but can be beneficial, if you are claiming the Resident Subcontractor Preference (11-35-1524(D)).</p>							
(check only one)							
____ In-State Office Address same as Home Office Address							
____ In-State Office Address same as Notice Address							

**NUMBER OF COPIES**

Offerors will need to follow these instructions carefully when responding to the solicitation.

At least one (1) copy of the Offeror should contain original signatures; that copy shall be clearly marked or differentiated from the other copies of the Offeror by notation in the lower left corner of the cover of each Offeror with the words "ORIGINAL". This signed original copy will be retained for incorporation by reference in any contract resulting from this solicitation.

Offerors shall be signed by only those Company officials or agents duly authorized to sign bid/ proposals or contracts on behalf of their respective organizations. Each additional copy must be separated.

Additionally, if Offeror is submitting confidential information, one complete copy of your offer from which you have removed any information that you marked as exempt, i.e., a redacted copy. The information redacted should mirror in every detail the information marked as exempt from public disclosure. The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on magnetic media.

**Return all with boxes checked:**

- (1) Original of complete offer** Uploaded to the URL provided below:  
<https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=2f302e8a-69b0-407b-a21a-3368d004365e>
- (1) Redacted copy** Uploaded to the URL provided below:  
<https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=2f302e8a-69b0-407b-a21a-3368d004365e>

(see Section II A "Submitting Confidential Information")  
(see Section II B "Electronic Copies – Required Media and Format" )  
(see Section IV "Submitting Redacted Offerors provision)

## TABLE OF CONTENTS

- I. Scope of Solicitation
- II. Instructions to Offerors
  - A. General Instructions
  - B. Special Instructions
- III. Scope of Work / Specifications
- IV. Information for Offerors to Submit
- V. Qualifications
- VI. Award Criteria
- VII. Terms and Conditions
  - A. General
  - B. Special
- VIII. Bidding Schedule / Cost Proposal
- IX. Attachments to Solicitation

### USDA Nondiscrimination Statement:

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) Mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;
- (2) Fax: (202) 690-7442; or
- (3) Email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

This institution is an equal opportunity provider.

## I. SCOPE OF SOLICITATION

**ACQUIRE SERVICES & SUPPLIES / EQUIPMENT:** The purpose of this solicitation is to acquire services and supplies or equipment complying with the enclosed description and/or specifications and conditions. [01-1005-1]

**MAXIMUM CONTRACT PERIOD – (ESTIMATED):** Start date: 12/27/2022 End date: 12/26/2027.

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]

The contract resulting from this solicitation will be a one (1) year contract with four (4) additional one-year renewal options. The maximum potential contract life is five (5) years.

It is the intent of the Horry County Schools Office of Procurement to solicit offers from qualified vendors to provide a district term contract for the provision and delivery of ice cream and equipment in accordance with all requirements stated herein.

These specifications cover background services to furnish all supervision, labor, materials, training, technical support, supplies and equipment necessary to provide the services requested for the district.

## II. INSTRUCTIONS TO OFFERORS – A. GENERAL INSTRUCTIONS:

### DEFINITIONS, CAPITALIZATION, AND HEADINGS

CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, EXCEPT AS OTHERWISE PROVIDED HEREIN, 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 Horry County Schools Board of Education or its successor in interest.

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

**BUYER** means the Procurement Officer/Specialist.

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

**CONTRACT** means all types of Horry County Schools agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, equipment or construction.

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

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

**COOPERATIVE PURCHASING** means procurement conducted by, or on behalf of, more than (1) public procurement unit.

**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.

**DAYS** means calendar days.

**DISTRICT** means a governmental entity governed by an elected Board of Education, which appoints a Superintendent to carry out policies established by the Board. This refers to the Horry County Schools hereinafter referred to as the "District".

**HORRY COUNTY SCHOOLS (HCS)** is a public school district serving Horry County, South Carolina.

**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.

**PROCUREMENT OFFICER** means any person acting within the scope of his/her authority and duly authorized by Horry County Schools to enter into and administer contracts and make written determinations and findings with respect thereto, as identified as such on either the Cover Page, an amendment, or an award notice.

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

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

**US or WE** means Horry County Schools.

**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.

**YOU and YOUR** means Offeror. [02-2A003-2]

**AMENDMENTS/ADDENDUMS TO SOLICITATION (MODIFIED):** (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/Addendums. <https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=2f302e8a-69b0-407b-a21a-3368d004365e> (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by letter, or (3) 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. [02-2A005-1]

**AUTHORIZED AGENT:** All authority regarding this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Chief Procurement Officer or designee is the only Horry County Schools official authorized to bind the District with regard to this procurement or the resulting contract. [02-2A007-1]

**AWARD NOTIFICATION (MODIFIED):** 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 seventh business day after such notice is given. [02-2A010-3]

**BID/PROPOSAL AS OFFER TO CONTRACT:** By submitting Your Bid or Proposal, You are offering to enter into a contract with Horry County Schools. 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. [02-2A015-1]

**BID ACCEPTANCE PERIOD:** In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Specialist in writing, documenting the fact(s) of Offeror's error. [02-2A020-1]

**BID IN ENGLISH and DOLLARS:** Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

**BOARD AS PROCUREMENT AGENT:** The Procurement Officer is an employee of the Board acting on behalf of the Horry County Schools pursuant to the HCS Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the District. The Board is not a party to such contracts and bears no liability for any party's losses arising out of or relating in any way to the contract. [02-2A030-2]

**CERTIFICATE 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:

- (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:**

(a)

(1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Specialist if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Specialist may render the Offeror nonresponsible.

(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 Horry County Schools, the Procurement Specialist may terminate the contract resulting from this solicitation for default. [02-2A035-1]

**CODE OF LAWS AVAILABLE (MODIFIED):** The Horry County Schools District Procurement Code is available at: [https://www.horrycountyschools.net/cms/lib/SC02209139/Centricity/Domain/3189/Procurement\\_Code.pdf](https://www.horrycountyschools.net/cms/lib/SC02209139/Centricity/Domain/3189/Procurement_Code.pdf) [02-2A040-2]

The South Carolina Code of Laws are available at: <http://www.scstatehouse.gov/code/statmast.php>.

The South Carolina Regulations are available at: <http://www.scstatehouse.gov/coderegs/statmast.php>.

**COMPLETION OF FORMS/CORRECTION OF ERRORS:** 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).

**DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE:** You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, Horry County Schools 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]

**DEADLINE FOR SUBMISSION OF OFFER:** Any offer received after the Procurement Officer of Horry County Schools or designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated Horry County Schools Office of Procurement as instructed on the Cover page prior to the bid opening 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:** 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. [02-2A065-1]



**TOBACCO FREE ENVIRONMENT CERTIFICATION:** The District provides a smoke and tobacco free environment for its staff, students, and visitors. No tobacco products are allowed in any building or on the grounds of any District building. By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of the smoke and tobacco free environment.

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

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

**OMIT TAXES FROM PRICE:** Do not include any sales or use taxes in your price that Horry County Schools may be required to pay. [02-2A080-1]

**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]

**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]

**PROHIBITED COMMUNICATIONS AND DONATIONS:** Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law.

(a) During the period between publication of the solicitation and final award, ***you must not communicate, directly or indirectly, with Horry County Schools or its employees, agents or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by the Procurement Specialist.*** All communications must be solely with the Procurement Specialist.] [R. 19-445.2010]

(b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. ***You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the District during the period beginning eighteen months prior to the Opening Date.***

**PUBLIC OPENING:** Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. [02-2A090-1]

**QUESTIONS FROM OFFERORS:** (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 Procurement Specialist no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the Procurement Specialist, 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) Horry County Schools seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Specialist -- 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. [See R. 19-445.2140] [02-2A095-2]

All questions should be received no later than the "QUESTIONS MUST BE RECEIVED BY" date/time as noted on the cover page. The preferred method of receiving questions is via e-mail with the subject "QUESTIONS 2223-13VS" and a Microsoft Word attachment using the following format:

Question Number	Section Reference	Page Number	Question

**REJECTION/CANCELLATION:** Horry County Schools may cancel this solicitation in whole or in part. Horry County Schools may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065.] [02-2A100-1]

**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 District cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Specialist. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Specialist determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. HCS may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the District even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(f) **Do not submit bid samples or descriptive literature unless expressly requested.** Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D). [02-2A105-2]

**SIGNING YOUR OFFER:** Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

**SCHOOLS - Horry County Office of Procurement Services Closings:** If an emergency or unanticipated event interrupts normal processes so that offers cannot be received at Horry County Schools Office of Procurement as 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 processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If Horry County School district offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information is available online at: <https://www.horrycountyschools.net/Page/683>

**DISCLOSURE OF YOUR BID / PROPOSAL & SUBMITTING CONFIDENTIAL DATA (FEB 2021):** (a) According to Section 11-35-410, any person submitting a document in response or with regard to any solicitation or other request must "comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public." IF YOU IDENTIFY YOUR ENTIRE RESPONSE AS EXEMPT FROM PUBLIC DISCLOSURE, OR IF YOU DO NOT SUBMIT A REDACTED COPY AS REQUIRED, THE STATE MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD. (b) By submitting a response to this solicitation or request, Offeror agrees to the public disclosure of every page, or portion thereof, 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, or portion thereof, was redacted and conspicuously marked "Trade Secret" or "Confidential" or "Protected", (2) agrees that any information not redacted and 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. (c) If your offer includes any information that you claim is exempt from public disclosure, you must submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). Except for the information removed or concealed, the redacted copy must be identical to your original offer. (d) Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If only portions of a page are subject to some protection, do not redact the entire page. The redacted copy must reflect the same pagination as the original and show the empty space from which information was redacted. The Procurement Officer must be able to view, search, copy and print the redacted copy without a password. 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. (e) On the redacted copy, you must identify the basis of your claim by marking each redaction as follows: You must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that you redacted and claim as exempt from public disclosure because it is either (1) a trade secret as defined in Section 30-4-40(a)(1) of the Freedom of Information Act, or (2) privileged and confidential, as that phrase is used in Section 11-35-410. You must separately mark with the words "TRADE SECRET" every page, or portion thereof, that you redacted and claim as exempt from public disclosure as a trade secret pursuant to Section 39-8-20 of the Trade Secrets Act. You must separately mark with the word "PROTECTED" every page, or portion thereof, that you redacted and claim as exempt from public disclosure pursuant to 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. (f) In determining whether to release documents, the State will detrimentally rely on your redaction and marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "Protected". By submitting a response, you agree 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 you have redacted or marked as "Confidential" or "Trade Secret" or "Protected". (All references to S.C. Code of Laws.) [02-2A125-3]

**SUBMITTING YOUR OFFER OR MODIFICATION (MAR 2015) (MODIFIED):** Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification in accordance with the clause titled "VENDOR REGISTRATION MANDATORY" and "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]

**TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES:** Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten 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. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. 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. 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. 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.

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

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

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

**VENDOR REGISTRATION MANDATORY (MODIFIED MARCH 2020):** The District has implemented an online, electronic bidding system to receive bids and proposals from prospective offerors. In order to submit offers in response to posted solicitations, prospective must be registered through this electronic system. Registration can be completed through the following link: <https://vrapp.vendorregistry.com/Vendor/Register/Index/horry-county-schools-sc-vendor-registration>. Once registered, suppliers must keep their information current.

**WITHDRAWAL OR CORRECTION OF OFFER:** Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.[02-2A150-1]

**CHILD NUTRITION LAW (CNL) BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352):** By submitting an Offer, the Offeror acknowledges, to the best of its knowledge and belief, that the Offeror and/or any of its Principals applying or bidding for an award of \$100,000 or more are certifying that they will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer, or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. However, Offeror and/or any of its Principal must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded to the non-Federal award.

**CHILD NUTRITION LAW (CNL) DEBARMENT AND SUSPENSION (Executive Orders 12549 and 12689)** – A contract award (See 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**CHILD NUTRITION LAW (CNL) PROCUREMENT CODE OF CONDUCT:** The DISTRICT acknowledges their responsibility under 2 CFR 200.318 (c) (1) to establish and enforce a local written policy to address the conduct of DISTRICT employees with regard to DISTRICT procurement transactions. This code of conduct must prohibit employees from soliciting gifts, travel packages, and other incentives from prospective Offerors and/or contractors. In addition, the code of conduct must prohibit an employee from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them, have financial interest. The code of conduct must also provide for the DISTRICT to set standards when financial interest is not substantial or the gift is an unsolicited item of nominal value and may be acceptable. Finally, the code of conduct must provide for disciplinary actions to be applied in the event the standards are violated.

Pursuant to the South Carolina Code of Laws, Section 8-13-700 et seq., a public official, public member, or public employee may not have an economic interest in a contract with the state or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function (including writing or preparing the contract, accepting bids, and awarding of the contracts) relating to a contract.

Any employee or official of the DISTRICT, elective or appointive, who shall take, receive or offer to take or receive either directly or indirectly, any rebate, percentage of contract, money or other things of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, for, to, or from any person, partnership, firm of corporation, offering, bidding for, or in open market seeking to make sales to the DISTRICT shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or a fine in accord with state and/or federal laws.

**CHILD NUTRITION LAW (CNL) PROCUREMENT STANDARDS:** The Solicitation is written to comply with all federal, state, and local procurement laws, including no application of the State’s Resident Vendor Preference to the SCEP and USEP Preferences. The applicable federal procurement laws are contained in 2 CFR 200.317-326.

## II. INSTRUCTIONS TO OFFERORS – B. SPECIAL INSTRUCTIONS

**DESCRIPTIVE LITERATURE – LABELLING:** Include Offeror’s name on the cover of any specifications or descriptive literature submitted with your offer. [02-2B045-1]

**ELECTRONIC FILES – REQUIRED MEDIA AND FORMAT (REVISED MARCH 2020):** Documents and/or electronic files submitted shall contain the solicitation number and the offeror’s name, and be compatible with Microsoft Office (version 2003 or later), or Adobe Acrobat or equivalent Portable Document Format (.pdf) viewer. The Procurement Officer must be able to view, search, copy and print electronic documents without a password. If required by the solicitation, your business and technical proposals must be within separate files. [Rev02-2B070-2]

**SUBMITTING A PAPER OFFER OR MODIFICATION:** Paper offers are not the preferred method of submission. Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification electronically. See clauses titled "VENDOR REGISTRATION MANDATORY" and "ON-LINE BIDDING INSTRUCTIONS."

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 one of the following address:

MAILING ADDRESS:	PHYSICAL ADDRESS:
Horry County Schools	Horry County Schools
Procurement Office	Procurement Office, B300
PO Box 260005	335 Four Mile Road
Conway, SC 29528	Conway, SC 29526

- (2) 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. The District is only receiving packages via of delivery service on Tuesdays and Thursdays. (c) If you are responding to more than one solicitation, submit each offer in a separate envelope or package. (d) If the solicitation is a Request For Proposal, you must submit one (1) original and five (5) copies. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation.

**MAIL PICKUP:** The District's Mail Services picks up all mail from the US Postal Service once daily around 9:00 a.m. (excluding weekends and holidays), and disseminates the mail to the Procurement office normally by 12:00 pm. See provision entitled Deadline for Submission of Offer [02-2B080-1]

**OFFERING BY ITEM OR LOT:** Offers may be submitted for complete lots or for one or more items not within lots. Failure to offer on all items within a single lot will be reason for rejection. [02-2B090-1]

**ON-LINE BIDDING INSTRUCTIONS (REVISED MARCH 2020-MODIFIED):** (a) Mandatory Registration. You must register before you can submit an offer on line! See clause entitled "VENDOR REGISTRATION MANDATORY."

(b) Steps for On-Line Bidding

1 The link provided on the solicitation's Cover Page will take you to our web based on-line bidding system, where you will enter and/or upload your offer.

2 Once registered and signed into the system, choose the solicitation you wish to submit an offer. The system will provide the necessary steps to obtain the required information from you.

3 Only offers with an email status of "Vendor Bid File Submittal" have been received by the District. Offers with a status of "saved" have not been received.

If you have trouble entering your offer, call the Vendor Registry at 844-802-9202 or [cservice@vendorregistry.com](mailto:cservice@vendorregistry.com) . The Procurement Office is not able to assist you in entering your offer.

It is STRONGLY recommended that you enter your bid online well before the bid opening date and time.

**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). ALL THE PREFERENCES MUST BE CLAIMED AND ARE APPLIED BY LINE ITEM,



REGARDLESS OF WHETHER AWARD IS MADE BY ITEM OR LOT. 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)] [02-2B111-1]

**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. [02-2B112-1]

**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 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). [02-2B113A-1]

**PREFERENCES - RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009):** To qualify for this preference, You must meet the following requirements. (1) You must --at the time you submit your bid -- have a documented commitment from a single proposed first tier subcontractor to perform some portion of the services expressly required by the solicitation. (2) The subcontractor -- at the time you submit your bid -- must directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds, as applicable, either twenty percent for a 2% preference or forty percent of bidder's total bid price for a 4% preference. (3) You must identify the subcontractor that will perform the work, the work the subcontractor is to perform, and your factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement. [11-35-1524(D)] You can stack this preference, i.e., earn another 2% or 4% preference for each additional qualifying subcontractor, but the preference is capped. [11-35-1524(D)(4), (E)(7)] Upon request by the procurement officer, you must identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, the employer of those persons, your relationship with the employer, and documentation of the subcontractor's 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). YOU WILL NOT RECEIVE THE PREFERENCE UNLESS YOU SPECIFY WHETHER YOU ARE CLAIMING THE 2% OR 4% PREFERENCE AND YOU PROVIDE THE INFORMATION REQUIRED BY ITEM (3) ABOVE. [02-2B113B-1]

**PREFERENCES - RESIDENT VENDOR PREFERENCE (SEP 2009):** To qualify for the RVP, you must maintain an office in this state. An office is a non-mobile 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 for 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).[02-2B114-1]

**PREFERENCES - RESIDENT VENDOR PREFERENCE (SEP 2009):** To qualify for the RVP, you must maintain an office in this state. An office is a non-mobile 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 for 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). [02-2B114-1]

**PROTEST-CPO – HCS ADDRESS (MODIFIED):** Any protest must be addressed to the Chief Procurement Officer, Horry County Schools, and submitted in writing (a) by email to [rstrickland@horrycountyschools.net](mailto:rstrickland@horrycountyschools.net), (b) by post or delivery to 335 Four Mile Road, Conway, SC 29526 or PO Box 260005, Conway, SC 29528-6005. [02-2B120-1]

**SAMPLES (Modified):** Free samples may be required for testing and/or evaluation. If requested, your failure to provide a sample will result in rejection of your offer. If requested, you must send your sample to the Procurement Specialist under separate cover, mark the solicitation number on the outside of the shipping carton, and tag each sample with your name and other pertinent information. Samples submitted shall be used as a measurement of type and quality until all products represented by the samples have been delivered and accepted. The District reserves the right to disassemble any sample and subject such sample to any tests necessary to determine its strength, integrity, quality and fitness for the District's purposes without being responsible for damage to the sample caused thereby. All samples shall become the property of the District unless otherwise stated in the terms of this solicitation. [02-2B135-1]

**UNIT PRICES REQUIRED (JAN 2006):** Unit price to be show for each item. [02-2B170-1]

### III. SCOPE OF WORK / SPECIFICATIONS:

SEE BIDDING SCHEDULE [03-3005-1]

#### INTRODUCTION:

Horry County Schools (HCS) is the third largest school district among the 85 school districts in the State of South Carolina and is coterminous with Horry County's land area of approximately 1,152 square miles. The present boundaries of the District were established in 1952 as a result of the consolidation of all existing school Districts in the county. Horry County Schools has more than 45,000 students The district is made up 56 schools and four additional program schools within nine attendance areas: Aynor, Carolina Forest, Conway, Green Sea Floyds, Loris, Myrtle Beach, North Myrtle Beach, Socastee, and St. James

The District is governed by a board of trustees, the Horry County Board of Education, consisting of a 12-member Board of Education, elected from single-member Districts with the Board Chairman elected at-large. The Horry County Board of Education members have decision-making authority, the power to designate management, the ability to significantly influence operations, and have primary accountability for fiscal matters.

#### SCOPE OF WORK:

It is the intent of the Horry County Schools Office of Procurement to solicit offers from qualified vendors to provide approved ice cream with equipment to display ice cream products for the participating schools within the District in accordance with all requirements stated herein. These specifications cover professional services to furnish all supervision, labor, materials, training, technical support, supplies and equipment necessary to provide the services requested.



The district presently has twenty-six (26) schools that offer Smart Snack compliant ice cream for student consumption. The district reserves the right to add or delete schools upon the recommendation of the Nutrition Service Director. Schools participating in this ice cream solicitation are highlighted in yellow in Attachment B.

**DELIVERY / PERFORMANCE LOCATION:** After award, all deliveries shall be made and all services provided to the location specified by HCS in its purchase order or purchasing card authorization. Delivery will be made to each individual schools location. Horry County Schools does not have a central warehouse for deliveries. The Directory for the Horry County Schools is available online at the URL: <http://www.horrycountyschools.net> , then select Our Schools under the About Us.

**DELIVERY DATE – 7 DAYS ARO:** Unless otherwise specified herein, all items shall be delivered no later than seven days after contractor's receipt of the order.

**DELIVERY TIME:** All items and associated services shall be made between the hours of 8:00 am and 2:00 pm EST, Monday through Friday, except for District closures, unless the contractor and ordering school mutually agree upon another time frame. The approved student calendar is available online at the url: <http://www.horrycountyschools.net> , then select, then select Our Schools, Student Calendars under the About Us.

**SALES AND USE TAXES:** Food and certain non-food items purchased by the District under this Contract are not subject to state, federal, and/or local taxes. A tax exemption certificate shall be furnished upon request.

**STATUTORY AND REGULATORY COMPLIANCE:** The District and Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, regulations, and tariffs pertaining to the performance of this Contract, including but not limited to the following: Executive Order 11246 (Equal Employment Opportunity), as amended by Executive Order 11375 and as supplemented in United States Department of Labor regulations 41 CFR Part 60; Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; USDA-FNS Instruction 113-6 "Civil Rights Compliance and Enforcement in School Nutrition Programs;" Consumer Product Safety Act; the Immigration Reform and Control Act of 1986 in conjunction with the South Carolina Illegal Immigration Reform Act; the Drug Free Workplace Act, S.C. CODE ANN. 44-107-10 et seq. (1976, as amended); and Section 306 of the Clean Air Act (42 U.S.D. 1857 {h}) in conjunction with Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15), and Section 6002 of the Solid Waste Disposal Act (42 USC 82) as further specified by 2 CFR 200.322.

**HAZARD ANALYSIS, AND CRITICAL CONTROL POINT (HACCP) PLAN AND RELATED SANITATION REQUIREMENTS:** The Contractor shall maintain a current Hazard Analysis Critical Control Point (HACCP) Plan that is in compliance with all appropriate government and industry standards, copies of which shall be available for review by the DISTRICT upon request.

**FOOD RECALL:** The Contractor shall be expected to comply with all federal, state, and local mandates regarding the identification and recall of foods from the commercial and consumer marketplaces. The Contractor shall maintain a current documented process to address and resolve food recalls, copies of which shall be available for review by the DISTRICT upon request. This documentation shall include a means for accurate and timely communication with the DISTRICT, as well as specific protocols to identify and remove unsafe products from schools in an expedient, efficient, and effective manner.

**REBATES BONUSSES, AND OTHER FINACIAL BENEFITS:** All rebates, bonuses, discounts or other financial benefits derived from the procurement process must accrue to the District's nonprofit school food service account as defined in 7CFR 210.21(f). Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates, and applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allowable to the allowable portion of the costs billed to the District.

**DELIVERY AND FOB REQUIREMENTS–** All shipments shall be F.O.B. destination, freight prepaid and Allowed to the district locations specified in the purchase order or purchasing card authorization. The term FOB destination shall mean delivered and unloaded at either the delivery location, with all charges for transportation and unloading paid by Contractors. These charges are to be included in the price of the product, not invoiced separately by Contractors.

**PACKAGING:** All items shall be packed in substantial commercial boxes of the type, size, and kind commonly used for the purpose to insure a safe delivery to the school.

All orders received must be accompanied by a packing list indicating quantities ordered, quantities shipped, a description of the item and a purchase order number, must be delivered with all items. Until receipt and acceptance by the District, items furnished will remain the liability of the contractor, including all risk of loss and damage in any stage of shipment. The Cafeteria Manager, Assistant Cafeteria Manager or designee, must sign for deliveries.

**QUALITY – NEW:** All items must be new. [03-3060-1]

**SAMPLES:** Throughout the life of the contract, the Horry County Schools District reserves the right to require sample(s) for evaluation, if deemed necessary.

#### IV. INFORMATION FOR OFFERORS TO SUBMIT:

**INFORMATION FOR OFFERORS TO SUBMIT – GENERAL:** Offeror shall submit a signed Cover Page and Amendments (if applicable). Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations. [04-4010-2]

Offers shall include the following with their response:

1. A list of references from at least three (3) commercial accounts the Offeror has performed or is currently performing a similar or larger scale scope of work within the past two (2) years. Provide the name of the business, address, contact person, telephone and/or email address. HCSD reserves the right to contact references provided. The District prefers that Horry County Schools not be listed as references. The District reserves the right to contact any, all or none of the references provided pursuant to this section.
2. Offeror shall list all contact information of the local representative who will be performing under this contract.
3. If Offeror is submitting items that have not been approved by the District as “student nutritionally approved”, the attached Nutrition Guideline must be completed and returned to the attention of the Nutrition Service Director prior to the submission of the offer. Only items that have been approved for student usage as USDA Smart Snack compliance will be considered in this bid.
4. Nutrition Fact information shall be included for each item offered and pack sizes.

Name of Offeror as identified on the cover page: \_\_\_\_\_  
 (Full legal name of business submitting the offer)

Authorized Signature: \_\_\_\_\_  
 (Person signing **must** be authorized to submit binding offer to enter contract on behalf of Offeror named above.)

**MINORITY PARTICIPATION (DEC 2015):**

Is the bidder a South Carolina Certified Minority Business?  Yes  No

Is the bidder a Minority Business certified by another governmental entity?  Yes  No

If so, please list the certifying governmental entity: \_\_\_\_\_

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor?  Yes  No

If so, what percentage of the total value of the contract a SC will perform certified Minority Business as a subcontractor? \_\_\_\_\_

Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor?  Yes  No

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? \_\_\_\_\_

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

Traditional minority

Traditional minority, but female

Women (Caucasian females)

Hispanic minorities

DOT referral (Traditional minority)

DOT referral (Caucasian female)

Temporary certification

SBA 8 (a) certification referral

Other minorities (Native American, Asian, etc.)

(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)

The Department of Administration, Division of Small and Minority Business

Contracting and Certification, publishes a list of certified minority firms. The Minority Business Directory is available at the following URL:

<http://osmba.sc.gov/directory.html> [04-4015-3]

## V. 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]

**SUBCONTRACTOR – IDENTIFICATION:** If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either (1) exceeds 10% of your cost, (2) involves access to any "District information," as defined in the clause entitled "Information Security - Definitions," if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the portion of work which they are to perform. Identify potential subcontractors by providing the business' name, address, phone, taxpayer identification number, **and point of contact**. In determining your responsibility, the state may evaluate your proposed subcontractors. [05-5030-2]

## VI. AWARD CRITERIA:

**AWARD CRITERIA – BIDS:** Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]

**AWARD TO ONE OFFEROR:** Award will be made to one Offeror. [06-6040-1]

**COMPETITION FROM PUBLIC ENTITIES:** If a South Carolina governmental entity submits an offer, the Procurement Specialist will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004) [06-6057-1]

**UNIT PRICE GOVERNS:** In determining award, unit prices will govern over extended prices unless otherwise stated. [06-6075-1]

## VII. TERMS AND CONDITIONS – A. GENERAL:

**ASSIGNMENT, NOVATION AND CHANGE OF NAME, IDENTITY, OR STRUCTURE:** (a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible Procurement Specialist. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible Procurement Specialist with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the Procurement Specialist prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restricts transfers by operation of law. [07-7A004-2]

**AFFIRMATIVE ACTION:** During the term of the contract, contractors will take affirmative action in complying with all federal and state requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap. The following are incorporated herein by reference: 41 C.F.R. 60-1.4, 60-250.4 and 60-741.4.

**BANKRUPTCY:** (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to Horry County Schools. This notification shall be furnished within two (2) 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 HCS 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 cancellable and subject to immediate termination by HCS upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-2]

**CHOICE-OF-LAW :** The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]

**CONTRACT DOCUMENTS & ORDER OF PRECEDENCE:** (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Specialist, (2) the solicitation, as amended, , (3) documentation of clarifications or discussions of an offer, if applicable, (4) your offer, (5) any statement reflecting HCS' final acceptance (a/k/a "award"), and (6) 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 (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation (i) a purchase order or other instrument submitted by HCS or (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. 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 HCS. Any document signed or otherwise agreed to by persons other than the Chief Procurement Officer shall be void and of no effect. [07-7A015-2]

**CONTRACT VIOLATION:** During the term of the contract, contractors who violate this contract will be considered in breach and subject to cancellation for cause. Contractors may be suspended or debarred from doing business with the District. Examples of vendor violations, include, but are not limited to: (1) Adding items to the contract without approval. (2) Increasing contract price without approval. (3) Misrepresentation of the contract to any District entity.

**DISCOUNT FOR PROMPT PAYMENT:** (a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the Offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, Offerors awarded contracts may include discounts for prompt payment on individual invoices. (b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided HCS annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or a legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day. [07-7A020-1]

**DISPUTES :** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Florence County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation

of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]

**EQUAL OPPORTUNITY:** Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference. [07-7A030-1]

**FALSE CLAIMS:** According to the S.C. Code of Laws § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime. [07-7A035-1]

**FIXED PRICING REQUIRED:** Any pricing provided by contractor shall include all costs for performing the work associated with that price. Contractor's price shall be fixed for the duration of this contract, including option terms, except as otherwise provided in this solicitation. This clause does not prohibit contractor from offering lower pricing after award. [07-7A040-1]

**NO INDEMNITY OR DEFENSE:** Any term or condition is void to the extent it requires HCS to indemnify, defend, or pay attorney's fees to anyone for any reason. [07-7A045-2]

**NOTICE:** (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified on Cover Page. Notice to HCS shall be to the Procurement Specialist 's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

**OPEN TRADE (JUN 2015):** During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [07-7A053-1]

**PAYMENT & INTEREST (FEB 2015):** HCS shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by HCS. (b) Unless otherwise provided herein, including the purchase order, payment will be made by check mailed to the payment address on "Page Two." (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, HCS shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to HCS shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. § 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The District shall have all of its common law equitable and statutory rights of set-off. [07-7A055-3]

**PAYMENT WITH PROPER INVOICE:** Invoices submitted for payment for goods or services provided under this contract shall contain, as a minimum, the following information:

- Name of business concern
- Contract number or other authorization for delivery of service or property
- Complete description per individual line item

- Price and quantity of property or service actually delivered or executed.
- Shipping and payment terms.
- Name where applicable
- Title, telephone number and complete mailing address of responsible official to whom payment is to be sent; and
- Other substantiating documentation of information as required by the contract.

Invoices shall be provided to Horry County Schools at the address below. An itemized invoice shall be provided even if payment is made with a District purchase card.

Horry County Schools  
 Attn: Accounts Payable  
 PO Box 260005  
 Conway, SC 29528  
 Email: [accountspayable@horrycountyschools.net](mailto:accountspayable@horrycountyschools.net)

During the term of the contract, if the District identifies items that have been overcharged, the contractor shall reimburse the District the difference in the overcharge(s) plus an additional ten percent of the overages. Repeated instances of overcharging the HCS's may result in the contract being terminated.

**PUBLICITY:** Contractor shall not publish any comments or quotes HCS employees, or include HCS in either news releases or a published list of customers, without the prior written approval of the Procurement Specialist. [07-7A060-1]

**PURCHASE ORDERS:** CONTRACTOR SHALL NOT PERFORM ANY WORK PRIOR TO THE RECEIPT OF A PURCHASE ORDER FROM HORRY COUNTY SCHOOLS. The District shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

**RECORDS RETENTION AND RIGHT TO AUDIT:** Horry County Schools has the right to audit the books and records of the vendors they pertain to this purchase order, both independent of, and pursuant to, the District Procurement Code. Such books and records shall be maintained for six (6) years from the date of final payment under the purchase order.

The District may conduct, or have conducted, performance audits of the vendor. The District may conduct, or have conducted, audits of specific requirements of this bid as determined necessary by the District.

Pertaining to all audits, vendor shall make available to the District access to its computer files containing the history of purchase order performance and all other documents related to the audit. Additionally, any software used by the vendor shall be made available for auditing purposes at no cost to the District.

**SURVIVAL OF OBLIGATIONS:** The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]

**TAXES:** Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by HCS, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by HCS. It shall be solely HCS' obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by HCS to contractor, contractor shall be liable to HCS for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]

**TERMINATION DUE TO UNAVAILABILITY OF FUNDS:** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term. [07-7A085-1]

**THIRD PARTY BENEFICIARY:** This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise. [07-7A090-1]

**WAIVER:** HCS does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Specialist has actual authority to waive any of HCS' rights under this Contract. Any waiver must be in writing. [07-7A095-1]

## VII. TERMS AND CONDITIONS – B. SPECIAL:

**ACCEPTANCE OF OFFERS 10% BELOW PRICE:** If the district is offered the exact same item on the exact same terms and conditions as those provided under this contract by a vendor other than the contractor (the "alternate vendor") for a price that is at least ten percent less than the contract price, the district may purchase those items from the alternate vendor if the contractor does not agree to meet the offered price. Any acquisition pursuant to this clause must be documented by the Procurement Specialist in sufficient detail to satisfy the requirements of an external audit.

**CHANGES:** (1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Specialist may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (a) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for HCS in accordance therewith;
- (b) Method of shipment or packing;
- (c) Place of delivery;
- (d) Description of services to be performed;
- (e) Time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) Place of performance of the services.
- (g) Product upgrades and new products that are offered by manufacturer.

Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the District promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Specialist in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the District is prejudiced by the delay in notification.

(4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract. [07-7B025-1 Revised 2017 06]

**CISG:** The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement. [07-7B030-1]



**COMPLIANCE WITH LAWS:** During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs. [07-7B035-1]

**CONFERENCE – PRE-PERFORMANCE:** Unless waived by the Procurement Specialist, a pre-performance conference between the contractor, district and Procurement Specialist shall be held at a location selected by the district within five (5) days after final award, and prior to commencement of work under the contract. The responsibilities of all parties involved will be discussed to assure a meeting of the minds of all concerned. The successful contractor or his duly authorized representative shall be required to attend at contractor's expense. [07-7B040-1]

**CONTRACTOR'S LIABILITY INSURANCE – GENERAL(FEB 2015) (MODIFIED):**(a) Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the contractor, his agents, representatives, employees or subcontractors.

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

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

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

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

(c) Horry County Schools, and the officers, officials, employees and volunteers, 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 District, and the officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, or the officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

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

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

(g) Contractor hereby grants to the District a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District 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 District has received a waiver of subrogation endorsement from the insurer.

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

(i) The District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. [07-7B056-2]

**CONTRACTOR PERSONNEL:** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. [07-7B060-1]

**CONTRACTOR PERSONNEL - OBLIGATION:** Contractors are responsible for the conduct of their employees, representatives and agents and for their subcontractors' and sub-subcontractors' employees, representative and agents. Suppliers are considered contractors, subcontractors or sub-subcontractors when the performance of their work (including deliveries) is conducted on District property. All such businesses/individuals shall comply with the following:

1. No drugs, alcohol, tobacco products, knives, firearms or other weapons on District property.
2. No fraternizing with, threats to, use of abusive or profane language or improper attire or actions while on District property or adjacent thereto.
3. Take all necessary precautions to ensure the safety of children and employees when performing contracted work or making/accepting deliveries on District property.
4. Secure SLED (State Law Enforcement Division) criminal background checks on every employee, representative and agent performing work, making deliveries or in any other way conducting business on District property. Ensure that no person having been convicted of violent crimes, crimes against children, illegal drug distribution, or other crimes of moral turpitude is assigned or performs work on District property. SLED background checks shall be maintained on file at the main office of the Contractor and made available to District personnel or the District's legal counsel immediately upon request.
5. Not employ or contract with, during the performance of the contract, any illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as may be amended.
6. Not violate the provisions of the South Carolina Illegal Immigration Reform Act, as may be amended, beginning January 1, 2009, and abide by this Act regardless of the number of employees employed. Participation in E-Verify through the Dept. of Homeland Security is required by the District regardless of the number of employees you employ.
7. Provide picture ID badges for all persons performing work on District property and ensure they are worn at all times. The ID shall include the name of the individual, his/her picture and the name of their employer.

Contractors are to ensure that their subcontractors, sub-subcontractors, as well as suppliers who meet the "contractor, subcontractor or sub-subcontractor" definition above are advised of these requirements and comply with them. These are mandatory conditions for doing business (whether directly or indirectly) with Horry County Schools. The District, at its discretion, may perform random compliance checks. Any Contractor, subcontractor, sub-subcontractor, or supplier found not to be in compliance with these requirements shall result in termination of any existing contract or non-award of a contract.

**CONTRACTOR'S OBLIGATION – GENERAL:** The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements. [07-7B065-1]

**DEFAULT:** (a)(1) HCS may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to-(i) Deliver the supplies or to perform the services within the time specified in

this contract or any extension; (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or (iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause). (2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Specialist) after receipt of the notice from the Procurement Specialist specifying the failure.

(b) If HCS terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Specialist considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the District for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) 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.

(d) 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.

(e) If this contract is terminated for default, HCS may require the Contractor to transfer title and deliver to the District, as directed by the Procurement Specialist, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Specialist, the Contractor shall also protect and preserve property in its possession in which HCS has an interest.

(f) HCS shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Specialist shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Specialist shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. HCS may withhold from these amounts any sum the Procurement Specialist determines to be necessary to protect the District against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of HCS, be the same as if the termination had been issued for the convenience of HCS. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of HCS, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

(h) The rights and remedies of HCS in this clause are in addition to any other rights and remedies provided by law or under this contract. [07-7B075-1]

**ESTIMATED QUANTITY - UNKNOWN:** The total quantity of purchases of any individual item on the contract is not known. HCS does not guarantee that the District will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information. [07-7B095-1]

**INDEMNIFICATION - THIRD PARTY CLAIMS - GENERAL:** Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers'

compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means Horry County Schools, its instrumentalities, agencies, departments, boards, and all their respective officers, agents and employees. [07-7B100-2]

**OFFSHORE CONTRACTING PROHIBITED:** No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States. [07-7B122-1]

**PRICE ADJUSTMENTS:** (1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

- (a) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) By unit prices specified in the Contract or subsequently agreed upon;
- (c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;
- (d) in such other manner as the parties may mutually agree; or,
- (e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Specialist of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Specialist 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 Specialist, 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]

**PRICE ADJUSTMENT - LIMITED - AFTER INITIAL TERM ONLY:** Upon approval of the Procurement Specialist, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Specialist at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Specialist no later than fifteen (15) days after the Procurement Specialist sends contractor notice rejecting the requested price increase. [07-7B165-1]

**PRICE ADJUSTMENTS – LIMITED BY CPI “All Items”:** Upon request and adequate justification, the Procurement Specialist may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), “all items” for services, as determined by the Procurement Specialist. The Bureau of Labor and Statistics publishes this information on the web at [www.bls.gov](http://www.bls.gov). [07-7B170-1]

**PRICING DATA -- AUDIT – INSPECTION:** [Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Specialist's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Specialist. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records"

means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state. [07-7B185-1]

**PURCHASING CARD:** Contractor agrees to accept payment by the Horry County Schools Purchasing Card for no extra charge. The Purchasing Card is issued by Master Card. The purchasing card allows state agencies to make authorized purchases from a vendor without the requirement to issue a purchase order. [07-7B200-1]

**TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD:** 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 one (1) year from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

**TERM OF CONTRACT – OPTION TO RENEW (FEB 2021):** (a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of one (1) year, unless contractor receives notice that the district elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B245-3]

**TERM OF CONTRACT – TERMINATION BY CONTRACTOR:** Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least ninety (90) days prior to the expiration of the then current term. [07-7B250-1]

**TERMINATION FOR CONVENIENCE – INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS:** Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination. [07-7B255-1]

**TERMINATION FOR CONVENIENCE:** (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the District. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the District. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the District in the manner and to the extent directed by the Procurement Specialist: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the District has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

- (b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the District, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;
- (c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:
- (i) contract prices for supplies or services accepted under the contract;
  - (ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;
  - (iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;
  - (iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.
- (d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.
- (5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause. [07-7B265-1]

**VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL:**

Name of Offeror as identified on the cover page: \_\_\_\_\_  
(Full legal name of business submitting the offer)

Authorized Signature: \_\_\_\_\_  
(Person signing must be authorized to submit binding offer to enter contract on behalf of Offeror named above.)

**ATTACHMENT A: BIDDING SCHEDULE** – Excel Worksheet link:

<https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=2f302e8a-69b0-407b-a21a-3368d004365e>

All bidders are to electronically complete the Bidding Schedule and return it with their bid response. Calculations will be performed with formulas provided in the Worksheet.

Offeror should list only products that meet USDA Smart Snack Compliance Guidelines (student nutritionally approved) including seasonal options.

Resource Materials: [USDA's Smart Snacks in School nutrition standards](#)

Product Calculator: [Smart Snacks Product Calculator \(healthiergeneration.org\)](#)

**ATTACHMENT B: Participating Schools Directory:**

<https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=2f302e8a-69b0-407b-a21a-3368d004365e>

## IX. ATTACHMENTS TO SOLICITATION –

The following documents are attached to this solicitation:

### **NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING**

### **REQUIRED SUBMITTALS**

### **VENDOR PROFILE & QUESTIONNAIRE**

### **OFFEROR'S CHECKLIST**

#### **IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding 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.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

---

Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

---

For information about other withholding requirements (e.g., employee withholding), contact the South Carolina Department of Revenue at 1-844-898-8542 or visit the Department's website at: [dor.sc.gov](http://dor.sc.gov)

---

This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration and withholding tax questions should be directed to the South Carolina Department of Revenue at 1-844-898-8542. Additional contact information can be found by visiting the Department's website at [dor.sc.gov](http://dor.sc.gov)

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: [dor.sc.gov](http://dor.sc.gov) [09-9005-5]



### REQUIRED SUBMITTALS for Solicitation # 2223-13VS

Offerors are advised that, notwithstanding any instructions or inferences elsewhere in this solicitation, the instructions provided and the documents shown on this sheet need to be submitted with and made part of their proposal. Other documents may be required after the submittal deadline, but prior to award. Offerors are advised that failure to follow these instructions or submit the documents shown on this sheet and return the forms in the condition indicated MAY RENDER THE PROPOSAL NON-RESPONSIVE and eliminate it from further consideration.

**NOTE: Only those instructions or items marked with an (X) are applicable to this procurement.**

<input checked="" type="checkbox"/>	Pages 1 & 2 (COVER SHEET)
<input type="checkbox"/>	SUBMITTALS REQUIRED as per II. Instructions to Offerors – B. Special Instructions:
<input type="checkbox"/>	SUBMITTALS REQUIRED as per III. Scope of Work / Specifications:
<input checked="" type="checkbox"/>	SUBMITTALS REQUIRED as per IV. Information for Offerors to Submit: Page 18
<input type="checkbox"/>	SUBMITTALS REQUIRED as per V. Qualifications:
<input checked="" type="checkbox"/>	Page 31 BIDDING SCHEDULE/PRICE-BUSINESS PROPOSAL
<input checked="" type="checkbox"/>	SUBMITTALS NOT LISTED ELSEWHERE: Page 34 Vendor Profile and Questionnaire

## VENDOR PROFILE & QUESTIONNAIRE

*The Offeror must complete this profile & questionnaire which may be used in the evaluation process to help determine if an Offeror is responsible.*

Vendor Name			
Years in business under this name	Current licenses:		
Local Representative Contact Information:			
Name:			
Phone# (w):	(m):		
Email:			

### REFERENCES

*The references provided below should reflect services of similar scope and size. See section IV.*

#### *Reference #1*

Company Name			
Address			
City, State, Zip			
Contact Name	Title		
Contact Phone	E-Mail		
Description & Date of Services			

#### *Reference #2*

Company Name			
Address			
City, State, Zip			
Contact Name	Title		
Contact Phone	E-Mail		
Description & Date of Services			

#### *Reference #3*

Company Name			
Address			
City, State, Zip			
Contact Name	Title		
Contact Phone	E-Mail		
Description & Date of Services			

## OFFEROR'S CHECKLIST

### *AVOID COMMON BID/PROPOSAL MISTAKES*

Review this checklist prior to submitting your bid/proposal.  
If you fail to follow this checklist, you risk having your bid/proposal rejected.

- DO NOT INCLUDE ANY OF YOUR STANDARD CONTRACT FORMS! Horry County Schools will not recognize or sign alternate or substitute contracts. The terms and conditions stated in this solicitation becomes the contract after award.
- UNLESS EXPRESSLY REQUIRED, DO NOT INCLUDE ANY ADDITIONAL BOILERPLATE CONTRACT CLAUSES.
- REREAD YOUR ENTIRE BID/PROPOSAL TO MAKE SURE YOUR BID/PROPOSAL DOES NOT TAKE EXCEPTION TO ANY OF THE DISTRICT'S MANDATORY REQUIREMENTS.
- MAKE SURE YOU HAVE PROPERLY MARKED ALL PROTECTED, CONFIDENTIAL, OR TRADE SECRET INFORMATION IN ACCORDANCE WITH THE INSTRUCTIONS ENTITLED: SUBMITTING CONFIDENTIAL INFORMATION.
  - **DO NOT MARK YOUR ENTIRE BID/PROPOSAL AS CONFIDENTIAL, TRADE SECRET, OR PROTECTED!**
  - **DO NOT INCLUDE A LEGEND ON THE COVER STATING THAT YOUR ENTIRE RESPONSE IS NOT TO BE RELEASED!**
- HAVE YOU PROPERLY ACKNOWLEDGED ALL AMENDMENTS? INSTRUCTIONS REGARDING HOW TO ACKNOWLEDGE AN AMENDMENT SHOULD APPEAR IN ALL AMENDMENTS ISSUED.
- MAKE SURE YOUR BID/PROPOSAL INCLUDES A COPY OF THE SOLICITATION COVER PAGE. MAKE SURE THE COVER PAGE IS SIGNED BY A PERSON THAT IS AUTHORIZED TO CONTRACTUALLY BIND YOUR BUSINESS.
- MAKE SURE YOUR BID/PROPOSAL INCLUDES THE NUMBER OF COPIES REQUESTED.
- CHECK TO ENSURE YOUR BID/PROPOSAL INCLUDES EVERYTHING REQUESTED!
- IF YOU HAVE CONCERNS ABOUT THE SOLICITATION, DO NOT RAISE THOSE CONCERNS IN YOUR RESPONSE! **AFTER OPENING, IT IS TOO LATE! IF THIS SOLICITATION INCLUDES A PRE-BID/PROPOSAL CONFERENCE OR A QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS!** PLEASE SEE INSTRUCTIONS UNDER THE HEADING "SUBMISSION OF QUESTIONS" AND ANY PROVISIONS REGARDING PRE-BID/PROPOSAL CONFERENCES.

This checklist is included only as a reminder to help Offerors avoid common mistakes. Responsiveness will be evaluated against the solicitation, ***not*** against this checklist. You do not need to return this checklist with your response. [09-9010-1]

**END OF SOLICITATION**