



**Spartanburg
School
District 2**
Request for Proposals

Solicitation Number: 2008
 Date: February 18, 2020
 Procurement Official: Kacey Austin
 Phone: (864) 515-5135
 E-Mail Address: Kacey.austin@spart2.org

DESCRIPTION: General Contractor - Construction Management at Risk – FY2020-FY2025 Projects

The Term "Offer" Means Your "Bid" or "Proposal".

SUBMIT OFFER BY: **March 18, 2020** at 2:00PM

QUESTIONS MUST BE RECEIVED BY: **February 28, 2020** at 12:00PM

NUMBER OF COPIES TO BE SUBMITTED: **One (1) original, Five (5) copies and One (1) Electronic (all documents as a single PDF)**

Offers must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior.

SUBMIT A SEALED OFFER TO:

RFP# 2008 General Contractor CM At Risk
 Spartanburg School District 2
 3231 Old Furnace Rd.
 Chesnee, SC 29323
 Attention: Procurement

AWARD & AMENDMENTS	Award will be posted at the Physical Address stated above, and on the website below: The award, this solicitation, and any amendments will be posted at the following web address: https://www.spart2.org/departments/finance/procurement It is the responsibility of the offeror to check this website for amendments.
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You must submit a signed copy of this form with each copy of Your Offer. The pages of this form do not count towards any page requirements or limitations of any part of 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 sixty (60) calendar days after the Opening Date.

NAME OF OFFEROR <small>(Full legal name of business submitting the offer)</small>	OFFEROR'S TYPE OF ENTITY: <small>(Check one)</small> <input type="checkbox"/> Small (15 employees or less) <input type="checkbox"/> Women <input type="checkbox"/> Minority <input type="checkbox"/> Other _____ <small>(See "Signing Your Offer" provision.)</small>
AUTHORIZED SIGNATURE <small>(Person signing must be authorized to submit binding offer to enter contract on behalf of Offeror named above.)</small>	
TITLE <small>(Business title of person signing above)</small>	
PRINTED NAME <small>(Printed name of person signing above)</small>	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.

(Return Page Two with Your Offer)

HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business)	NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)								
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%; text-align: center;">Area Code</td> <td style="width:25%; text-align: center;">Number</td> <td style="width:25%; text-align: center;">Extension</td> <td style="width:25%; text-align: center;">Facsimile</td> </tr> <tr> <td colspan="4" style="text-align: center;">E-mail Address</td> </tr> </table>	Area Code	Number	Extension	Facsimile	E-mail Address			
Area Code	Number	Extension	Facsimile						
E-mail Address									

PAYMENT ADDRESS (Address to which payments will be sent.)	ORDER ADDRESS (Address to which purchase orders will be sent)
<input type="checkbox"/> Payment 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 Home Office Address <input type="checkbox"/> Order Address same as Notice Address (check only one)

ACKNOWLEDGMENT OF AMENDMENTS Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue.							
Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

MINORITY PARTICIPATION- Are you a Minority Business Enterprise: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please include a copy of your certification.

END OF MANDATORY FORM

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I. INSTRUCTIONS TO OFFERORS

A. GENERAL INSTRUCTIONS TO OFFERORS

DEFINITIONS - Except as otherwise provided herein, the following definitions are applicable to all parts of the solicitation:

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

BOARD means the Spartanburg School District Two Board of Trustees

BUYER means the Procurement Officer.

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 See clause entitled Contract Documents & Order of Precedence.

CONTRACT MODIFICATION means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

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

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

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

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

PROCUREMENT OFFICER means the person, or his successor, identified as such on the Cover Page.

RESPONSIBLE Bidder means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability, which will assure good faith performance, which may be substantiated by past performance

RESPONSIVE Bidder means a person who has submitted a bid or offer, which conforms in all material aspects to the invitation for bids or request for proposals.

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

SUBCONTRACTOR means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

WORK means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract

YOU and YOUR means Offeror.

AMENDMENTS TO SOLICITATION: (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors (b) 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.

AWARD NOTIFICATION: Notice regarding the District's intent to award a contract will be posted on the District Website – <https://www.spart2.org/departments/finance/procurement>. If the contract resulting from this Solicitation has a total or potential value

in excess of fifty thousand dollars, such notice will be sent to all Offerors responding to the Solicitation and any award will be effective the day such notice is given. Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given.

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

BID ACCEPTANCE PERIOD: In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing

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

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS: By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that- (a)(1)(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.
- (D) 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.

"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 Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default..

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

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

DEADLINE FOR SUBMISSION OF OFFER: Any offer received after the Procurement Officer or his/her designee has declared that the time set for opening has arrived, shall be rejected, unless the offer has been delivered to the designated procurement office or the District's mail room, where confirmation can be authenticated by a third party method, prior to bid opening.

DISTRICT CLOSINGS: If an emergency or unanticipated event interrupts normal District processes so that offers cannot be received at the Procurement Office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which the District processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If 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.

DISTRICT REGULATIONS: The bidder(s) and his representatives shall follow all applicable regulations while on District property, including the NO SMOKING, no weapons, and drug-free policies. No work shall interfere with school activities or environments unless an authorized employee for that location gives permission. All representatives of winning bidder must display identification tags (picture ID) at all times while on school grounds.

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.

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. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the District's attention.

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 officer at the same time the law requires the statement to be filed.

PROCUREMENT AUTHORITY: (a) All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement. (b) Purchasing Liability. The Procurement Officer is an employee of the Spartanburg School District Two acting on behalf of the District pursuant to their Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Spartanburg School District Two.

PROCUREMENT CODE AVAILABLE: The Spartanburg School District Two's Procurement Code, is available at <https://www.spart2.org/departments/finance/procurement>.

PROTESTS: (a) Solicitation - Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen (15) days of the date of issuance of the applicable solicitation document at issue.

(b) Intent to Award - Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten (10) days of the date notification of award is posted in accordance with this code. A protest shall be in writing, submitted to the appropriate Chief Procurement Officer, and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. [§ 11-35-4210]

PROTEST- ADDRESS: Any protest must be submitted in writing to the Chief Finance Officer, Kelly Richardson, 3231 Old Furnace Rd, Chesnee, SC 29323, or to Kelly.richardson@spart2.org

QUESTIONS FROM OFFERORS: (a) Any prospective offerer desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing, either by mail or electronic communication (e-mail). Questions must be received by the Procurement Officer no later than the date stated on the Cover Page. Label any communication regarding your questions with the name of the Procurement Officer, 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. (b) The District seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer - as soon as possible - regarding any aspect of this procurement, including any aspect of the Solicitation, which unnecessarily or inappropriately limits full and open competition.

REJECTION/CANCELLATION: The District may cancel this solicitation in whole or in part. The District may reject any or all proposals in whole or in part.

RESPONSIVENESS/IMPROPER OFFERS:

- a. Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.
- b. 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 Officer. [R.19-445.2070 and Section 11-35-1520(13)]

RESTRICTIONS APPLICABLE TO OFFERORS: Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, all communications must be solely with the Procurement Officer. You agree not to discuss this procurement activity in any way with any other District employees, agents or officials. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, you agree not to give anything to any other District employees, agents or officials prior to award.

SIGNING YOUR OFFER: Every Offer must be signed by the 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.

SUBMITTING CONFIDENTIAL INFORMATION: For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4- 40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to

conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response or any part thereof, is improperly marked as confidential or trade secret or protected, the District may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page.

By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the District will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless Spartanburg School District Two, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the District withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.)

SUBMITTING YOUR OFFER OR MODIFICATION: (a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) - (1) Addressed to the office specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package. (c) Each Offeror must submit the number of copies indicated on the Cover Page. (d) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the Solicitation. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. (g) It is the Offeror's responsibility to ensure that bids submitted by electronic commerce were received by the Procurement Officer.

TAX CREDIT FOR SUBCONTRACTING WITH MINORITY FIRMS: Pursuant to Section 12-6-3350, taxpayers, who utilize certified minority subcontractors, may take a tax credit equal to 4% of the payments they make to said subcontractors. The payments claimed must be based on work performed directly for a South Carolina state contract. The credit is capped at \$25,000 per year or the total tax liability; whichever is lesser. The taxpayer is eligible to claim the credit for 6 consecutive taxable years beginning with the taxable year in which the credit is first claimed. There is no carry forward of unused credits. The credit may be claimed on Form TC- 2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Taxpayers must maintain evidence of work performed for a State contract by the minority subcontractor. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. The subcontractor must be certified as to the criteria of a "Minority Firm" by the Governor's Office of Small and Minority Business Assistance (OSMBA). Certificates are issued to subcontractors upon successful completion of the certification process. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. Reference: SC §11-35-5010 - Definition for Minority Subcontractor & SC §11-35-5230 (B) - Regulations for Negotiating with State Minority Firms.

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. The withdrawal and correction of Offers is governed by the District's Procurement Code Article 5 Section 1520.7.1.

B. SPECIAL INSTRUCTIONS TO OFFERORS

CONTENTS OF OFFER (RFP/SOLUTIONS):

a) Offers should be complete and carefully worded and should convey all of the information requested.

- b) Offers should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

MAGNETIC MEDIA -- REQUIRED MEDIA AND FORMAT: In addition to your original offer, you must submit an electronic copy or copies on USB drive. Submit the number of copies indicated on the cover page. Every disk or USB drive must be labeled with the solicitation number and the offeror's name. Each electronic copy must be identical to the original hard copy. File format shall 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.

CLARIFICATION: Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of this solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation.

OPENING PROPOSALS – INFORMATION NOT DIVULGED: In competitive sealed qualifications/proposals, neither the number nor identity of offerors nor prices will be divulged at opening.

II. SCOPE OF WORK/SPECIFICATIONS

It is the intent of Spartanburg School District Two (hereinafter referred to as the "District") to select one contractor to provide expertise in Pre-Construction Phase and Construction Phase Services, using the CM at Risk method. The District reserves the right to award to one or multiple vendors. This work shall be performed pursuant to an AIA form contract as modified by the Owner, with a guaranteed maximum price (GMP).

The selected Contractor will serve as an integral member of the project team providing expertise during the Pre-Construction Phase. The Contractor's expertise should include, but not be limited to, knowledge of construction means and methods, knowledge of materials and placement methods, cost estimating/value engineering, and skilled trade considerations. The owner places significant emphasis on similar experience to that described herein. The services related to Pre-Construction Phase activities will include, but are not limited to, cost estimating, development of a project scope, project scheduling, construction packaging and phasing, permitting/process planning and coordination of the subcontractor/vendor solicitation, sub-contractor pre-qualification, projection of construction cost and cash flow, and value engineering.

The scope of work will focus on the District's renovations and modification projects identified in the 5 Year Capital Plan for 2020-2025.

- Addition of approximately 15,000 square foot wing at Rainbow Lake Middle School, other renovations to Rainbow Lake Middle School and upgrades to athletic fields
- Renovations to Boiling Springs Intermediate School to convert to an elementary school
- Renovations to athletic fields and buildings at Chesnee High School
- Other projects identified and approved by the Board in the 5 Year Capital Plan

The projects are of varying scope with a total construction value of approximately \$10 million.

- Rainbow Lake Middle School, built in 2010 and was designed with the anticipation of an additional 15,000 square foot wing to be added in the future. Existing cooling tower installed Summer 2019 has capacity to accommodate the additional wing 15,000 sq. ft.
- Boiling Springs Intermediate School, built in 2006, currently housing only grade 5, was designed as an intermediate grade 4-6 school. Renovations to one wing are needed in order to accommodate grades K4-2, as well as adding appropriate playground space(s). Other renovations may include, but not limited to, reconfiguring existing traffic patterns and curbing.
- Chesnee High School athletic renovations include adding turf field(s), tennis courts, track, and improvements to other fields and buildings and seating with a goal of designing a cohesive flow to athletic facilities (including signage, walkways, etc.)

All proposers should understand that all or any portion of a proposed Project is subject to approval of the Spartanburg School District 2 Board of Trustees ("Board"). Accordingly, the Owner does not guarantee any work.

The District recently issued an Intent to Award for Architectural Design for these projects to Jumper Carter Sease.

POTENTIAL AND ACTUAL PROPOSERS SHALL NOT CONTACT MEMBERS OF THE DISTRICT TWO BOARD OF TRUSTEES OR ANY DISTRICT STAFF AT ANY TIME DURING THE EVALUATION AND SELECTION PROCESS WITH THE PURPOSE OF INFLUENCING THE OUTCOME OF THE COMPETITION. All communication concerning the solicitation must be through the Procurement Department.

III. INFORMATION FOR OFFEROR TO SUBMIT

In order to ensure a uniform review process and to obtain the maximum degree of comparability, it is required that proposals be submitted in the format outlined in Proposal Contents. **Any portion not included will be cause for possible elimination from the process.** Any portions of the submission that are to be treated by the District as proprietary and confidential information must be clearly marked as

such. Proprietary and confidential information submitted by an Offeror shall not be subject to public disclosure; however, the Offeror must invoke this protection by so stating in writing. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information. The classification of the entire proposal document, line item prices and/or total proposal prices as proprietary or trade secret information is not acceptable and may result in rejection of the proposal as nonresponsive. By submission of a proposal, you are guaranteeing that all goods and services meet the requirements of this RFP.

You shall submit a signed Cover Page and all other information and documents requested in this part and Special Instructions, Scope of Work and Bidding Schedule and any Attachments to Solicitation. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein.

IV. QUALIFICATIONS

The offeror shall be a qualified South Carolina Contractor/Construction Manager, capable of providing all services in conformance with all rules, laws, statutes, and regulations of the industry, as well as the State of South Carolina, and knows of no reason why the Offeror cannot enter into a contract with the State of South Carolina or the District;

V. AWARD CRITERIA

Upon receipt of all qualifications by the date and time specified in the RFP, the Procurement Officer shall review all qualifications for responsiveness to the qualifications instructions. The District shall retain the right to consider any qualifications as non-responsive based solely on its judgment that the qualifications does not satisfactorily meet the criteria of the qualifications instructions or the District’s Procurement Code. Those qualifications found to be responsive shall be further evaluated by the District’s Evaluation Committee based on the merits of the technical qualifications in relation to the evaluation criteria established.

A. During the technical evaluation, the committee members evaluate each response, as per the following criteria:

CRITERIA (See Section VII Qualifications Contents)	POINTS VALUE
Firm Overview and Proposed Management Team	30
Relevant Construction Experience	35
Location/Proximity	5
Approach to CM at Risk	10
Claims History	5
Financial Information	5
CM Fees	5
Involvement of Minority and Small Business Enterprise and Local Participation	5
TOTAL	100

After completion of the proposal evaluations, the highest ranked offerors may be contacted for a personal presentation/interview. The number of offerors selected for presentations/interviews is at the discretion of the Owner. Interview criteria will be given to firms selected.

NEGOTIATIONS/AMENDMENTS: When the contract has been negotiated, it will be presented to the District Two Board of Trustees. As provided by the District Two Procurement Code (Sec. 3220.7), "The Superintendent or a designee shall negotiate a contract for services with the most qualified person or firm at a compensation that is fair and reasonable to the District. If the Superintendent or designee is unable to negotiate a satisfactory contract with this person or firm, negotiations must be terminated formally. Negotiations must commence in the same manner with the second and then the third most qualified until a satisfactory contract is negotiated. If an agreement is not reached with one of the three, additional persons or firms in order of their competence and qualifications must be selected after consultation with the District Selection Committee, and negotiations must be continued in the same manner until agreement is reached." If no contract is negotiated, or if no competent firms remain, the District will re-solicit.

VI. PROPOSAL CONTENTS

In order to insure a uniform review process and to obtain the maximum degree of comparability, it is required that proposals be submitted in the format outlined below.

Any portions of the submitted proposal that are to be treated by the District as **proprietary and confidential information** must

be clearly marked as such. Proprietary and confidential information submitted by an Offeror shall not be subject to public disclosure; however, the Offeror must invoke this protection by so stating in writing. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information. The classification of the entire proposal document, line item prices and/or total proposal prices as proprietary or trade secret information is not acceptable and may result in rejection of the proposal as nonresponsive. By submission of a proposal, you are guaranteeing that all systems meet the requirements of this RFP.

SECTION 1: Signatory / Information Sheets and Cover Letter

Pages 1 and 2 of this solicitation, duly executed.

Cover Letter - Each proposal shall include a one-page cover letter at the beginning of the proposal. The cover letter shall provide a brief overview, and summarize the key strengths of the submitting firm.

SECTION 2: Firm Overview & Proposed Management Team (30%)

Briefly describe your firm, its officers, and executive management. Explain your company philosophy as a Construction Manager, including any unique aspects of your firm that separate you from your competitors. Factors such as years-in-business and work experience will be considered. Furnish an organizational chart for your firm specifically indicating those who will be involved in this project, the amount of time they will be assigned to the project and their specific assignments, resumes, and construction experience. Please include detailed resumes of the onsite management team proposed (both Project Manager and Superintendent).

SECTION 3: Relevant Construction Experience (35%)

Specifically identify the top ten (10) most similar projects your firm has completed, and include the following information, emphasizing your firm's CM-at-Risk experience on public projects and prior experience in educational planning, pre-construction and construction of K-12 public schools:

- a. Project name, location & description
- b. Original GMP compared to final cost
- c. Original schedule compared to actual completion time
- d. Reference for the project with name, address and a current telephone number

SECTION 4: Proximity to Site (5%)

Identify the location of the managing home office and its proximity to Spartanburg, South Carolina. Describe how your company would provide adequate supervision, oversight, and involvement from company executives/owners.

SECTION 5: Approach to CM-at-Risk (10%)

Describe your general approach to the cost, bidding, schedule, quality control, and safety methods for this project as they relate to CM-at-Risk.

- a. Describe your firm's project management systems and how your firm intends to provide pre-construction and construction management services.
- b. Describe the bidding process your firm will use to select sub-contractors.

SECTION 6: Claims History (5%)

List all litigations, arbitrations, and mediations in which the firm has been involved in the past ten (10) years and indicate the disposition of each such claim, the name of the owner, and the nature of the claim.

For the past three years, provide the following information:

- a. Indicate any such project where liquidated damages were assessed against your firm for failure to achieve substantial completion within the contract time, and describe the circumstances of the same.
- b. Identify any such project in which your firm made a claim or change order request for acceleration damages, and describe the circumstances of the same.
- c. Identify any such project, or proposed project, in which your firm was terminated (whether for cause or for convenience) by the owner, and describe the circumstances of the same.

SECTION 7: Financial Information (5%)

Provide a reviewed and/or audited financial statement, balance sheet and income statement for the firm, prepared by a certified public accountant. The financial statement must be within 6 months of year end, but in no case more than 18 months old. Provide a compliance letter from your bonding company showing consent to provide 100% Performance and Payment Bonds for your services as a Contractor. Each respondent shall provide a certificate of insurance detailing their firm's present coverage and limits. Insurance

agent shall certify that they are licensed to perform business in the State of South Carolina. The certificate of insurance should be addressed to Owner and be dated within 30 days of the RFP due date.

- a. Identify any occasion in the past five (5) years where any Surety was required to pay any claim against any Payment Bond furnished by the Proposer for any project.
- b. Identify any occasion in the past five (5) years where any Surety was required to render or secure performance due to any owner under any Performance Bond furnished by the Proposer for any project.
- c. Identify any occasion in the past five (5) years where any Surety requested any owner of a project in which the Proposer had furnished Performance and/or Payment Bonds to make any payment(s) by joint check to the Proposer and Surety.
- d. Provide a certificate showing your current Commercial General Liability (CGL) insurance policy and any other insurance policies that would be applicable to the Project.
- f. Provide your current bonding rate schedule.

SECTION 8: Involvement of Minority & Small Business Enterprise & Local Participation (5%)

It is the desire of the Spartanburg School District Two that minority-owned business enterprises (MBE) and small business enterprises (SBE) have a fair and equal opportunity to participate in the project. The Contractor(s) shall demonstrate its program for providing opportunity for local subcontractors and suppliers to compete for contracts to provide goods, services and/or construction.

SEPARATE ENVELOPE – Attachment A - CM Fees (5%)

- 1. Pre-Construction Services Fee: Provide a percentage of cost of work for the project’s pre-construction services. Services will include field verification, constructability reviews, pre-construction, and cost estimating. Please provide a rate for the above services based on the assumption that the cost of work is \$10,000,000.
- 2. Construction Fee: Propose a Percentage of the Cost of the Work for the project on Attachment A. The Guaranteed Maximum Price (GMP) consists of the Cost of the Work plus the Construction Fee for the project.

VII. TERMS AND CONDITIONS

- 1. **ASSIGNMENT:** No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer.
- 2. **BACKGROUND CHECKS:**
 - (1) As a minimum, the Bidder shall obtain a complete South Carolina statewide criminal background investigation for all individuals and employees performing work or services for Bidder or any other entities such as subcontractors, sub-sub-contractors, and consultants who will perform work or a service on this project. In the event that the individual being investigated is from out of state, the criminal background investigation shall be broadened to include their home state, as well as the state of South Carolina as outlined above. The company providing such information must be recognized by local law enforcement agency as qualified to do so. In addition, the Bidder shall check employees against the National Database of Registered Sex Offenders. Any individual that is registered as a sex offender will not be permitted on school property.
 - (2) All costs associated with these criminal background checks are the responsibility of the bidder.
 - (3) The Bidder shall be responsible and liable for the conduct and actions of their employees and all individuals working under them.
 - (4) Any individual with the following criminal convictions or pending charges will not be permitted on any school project or property.

Rape or Criminal Sexual Conduct
Child Molestation or Abuse
Any Sexually Oriented Crime
Drugs: Felony use, possession or distribution.
Violent crimes
Robbery
Felony

- (5) Any individual with a prior conviction or pending charges contained in the aforementioned list shall not be permitted on the District's property.
- (6) The District may, at any time, request verification of criminal background investigation for any employee or subcontractor on school property.
3. **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 Spartanburg School District Two. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all District contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the District upon the contractor's insolvency, including the filing of proceedings in bankruptcy.
4. **CHANGES:**
- (1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer 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 the [District] 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.
- 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 Officer 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.
5. **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.
6. **COMPLIANCE WITH LAWS:** During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.
7. **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 Officer, (2) documentation of clarifications [11-35-1520(8)] or discussions [11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the District's final acceptance (a/k/a "award"), and (7) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or

other instrument submitted by the District or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

8. **CONTRACT LIMITATIONS:** No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment.
9. **CONTRACTOR'S LIABILITY INSURANCE REQUIREMENTS:**
 - a. 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. The District, and its 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, the officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, 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 with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The 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.
10. **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.
11. **CONTRACTOR'S OBLIGATION:** 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.

12. **CONTRACTOR'S USE OF DISTRICT PROPERTY:** Upon termination of the contract for any reason, the District shall have the right, upon demand, to obtain access to, and possession of, all District properties, including, but not limited to, current copies of all District application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the District without the District's written consent, except to the extent necessary to carry out the work.
13. **DEFAULT:** The District may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any contract terms and conditions, or fails to provide the District, upon request, with adequate assurances of future performance. In the event of termination for cause, the District shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the District for any and all rights and remedies provided by law. If it is determined that the District improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
14. **DISPOSAL OF PACKAGING:** Contractor shall dispose of all wrappings, crating, and other disposable materials pertaining to this contract at the end of each working day and upon completion of installation.
15. **ILLEGAL IMMIGRATION:** By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.
16. **INDEMNIFICATION - THIRD PARTY CLAIMS:** 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 Spartanburg School District Two, its instrumentalities, agencies, departments, boards, and all their respective officers, agents and employees.
17. **LICENSES AND PERMITS:** During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.
18. **MATERIAL AND WORKMANSHIP:** Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended.
19. **OWNERSHIP OF DATA & MATERIALS:** All data, material and documentation prepared for the District pursuant to this contract shall belong exclusively to the District.
20. **PRICE ADJUSTMENTS - LIMITED BY CPI "Other Goods & Services":** Upon request and adequate justification, the Procurement Officer 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), "Other Goods & Services" for services and/or the Producer Price Index (PPI), whichever is applicable, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov. Price adjustments must be requested in writing annually, 45 days prior to renewal.

21. **RELATIONSHIP OF THE PARTIES:** Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.
22. **SHIPPING/ RISK OF LOSS:** F.O.B. Destination. Destination is the shipping location of the Districts' designated receiving site, as specified herein.
23. **TERMINATION FOR CONVENIENCE:** The Procurement Officer may terminate this contract in whole or in part, for the convenience of the District. In such a termination, 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 Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. Upon such termination, the contractor shall (a) stop work to the extent specified, (b) terminate any subcontracts as they relate to the terminated work, and (c) be paid the following amounts without duplication, subject to the other terms of this contract: (i) contract prices for supplies or services accepted under the contract, (ii) costs incurred in performing the terminated portion of the work, and (iii) any other reasonable costs that the contractor can demonstrate to the satisfaction of the District, using its standard record keeping system, have resulted from the termination. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided. As a condition of payment, contractor shall submit within three months of the effective date of the termination a claim specifying the amounts due because of the termination. The absence of an appropriate termination for convenience clause in any subcontract shall not increase the obligation of the District beyond what it would have been had the subcontract contained such a clause.
24. **WARRANTY:** Contractor must provide the manufacturer's standard written warranty upon delivery of product. Contractor warrants that manufacturer will honor the standard written warranty provided.
25. **DISCUSSIONS WITH BIDDERS:** After opening, the Procurement Officer may, in his sole discretion, initiate discussions with you to discuss your bid. Discussions are possible only if your bid is apparently responsive and only for the purpose of clarification to assure your full understanding of the solicitation's requirements. Any discussions will be documented in writing and shall be included with the bid.
26. **DISPUTES:**
(1) Choice-of-Forum. All disputes, claims, or controversies relating to an Agreement shall be resolved exclusively by the 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 in the State of South Carolina. Contractor agrees that any act by Spartanburg School District Two regarding an Agreement is not a waiver of either the District's sovereign immunity or 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 this 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 an 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, 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.
27. **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.
28. **FALSE CLAIMS:** According to the S.C. Code of Laws Section 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.
29. **FORCE MAJURE:** The Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be

beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either of them, the contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the required delivery schedule.

30. **NON-INDEMNIFICATION:** Any term or condition is void to the extent it requires the District to indemnify anyone.
31. **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.
32. **PUBLICITY:** Contractor shall not publish any comments or quotes by Spartanburg School District Two employees, or include the District in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.
33. **PURCHASE ORDERS:** Contractor shall not perform any work prior to the receipt of a purchase order from the District. The District shall order any supplies 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.
34. **SETOFF:** The District shall have all of its legal, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the District's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the District with regard to this contract including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the District for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.
35. **SURVIVAL OF OBLIGATION:** 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.
36. **TERMINATION DUE TO UNAVAILABILITY OF FUNDS:** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. Contractor will not be reimbursed any costs beyond the initial contract term.
37. **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.
38. **WAIVER:** The District 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 Officer has actual authority to waive any of the District's rights under this Contract. Any waiver must be in writing.
39. **TERM OF CONTRACT:** Will be as stated in the Award or Intent to Award until project completion, district sign-off and necessary receipt of any applicable warranties.
40. **OPEN TRADE REPRESENTATION:** 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]
41. **OPEN TRADE:** 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]

Attachment A

**Construction Management at Risk Services for Spartanburg School District Two
Solicitation 2008**

Pre-Construction Phase Services Fee (state as a % of the Cost of the Work):

_____ %

Construction Phase Services Fee (state as a % of the Cost of the Work in the GMP Agreement):

_____ %

Name of Offeror

Authorized Signature

Date