



**Fort Mill School District**

**Request for Bids**

Solicitation Number	21-003
Solicitation Issue Date	9/21/2021
Procurement Specialist	Karen U Taylor
Phone	(803) 548-8430
E-Mail Address	<a href="mailto:taylorku@fortmillschools.org">taylorku@fortmillschools.org</a>

DESCRIPTION: Solicitation #21-003 OPES Asphalt Parking Lot Work

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

SUBMIT OFFER BY (Opening Date/Time): 9/22/21 at 10:00 AM – EST

See "Deadline for Submission of Offer" provision

QUESTIONS MUST BE RECEIVED BY: 9/14/21 at 10:00 AM - EST

NUMBER OF COPIES TO BE SUBMITTED: **One (1) original Via Online (see below)**

See "Questions from Offerors" provision

CONFERENCE TYPE: **MANDATORY** Pre-Bid Meeting DATE & TIME: 9/08/2021 10:00 AM

LOCATION: Orchard Park Elementary School Front entrance of school: 474 Third Baxter Crossing

Fort Mill, SC 29715

Please submit your sealed offer on-line  
**ON-LINE AT:**  
<http://www.fortmillschools.org/departments/procurement/> under "Current Bids and RFP's"  
 Video of opening bids will be posted at [www.fortmillschools.org/departments/procurement](http://www.fortmillschools.org/departments/procurement)

(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)	
AWARD & AMENDMENTS	Award will be posted at the physical address stated above on or about 9/22/21. The award will be posted at the following web address: <a href="http://www.fortmillschools.org">http://www.fortmillschools.org</a>
<p>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 sixty (60) calendar days after the opening date.</p>	
NAME OF OFFEROR <small>(Full legal name of business submitting the offer)</small>	OFFEROR'S TYPE OF ENTITY: <small>(Check one)</small>
AUTHORIZED SIGNATURE	<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Tax exempt corporate entity <input type="checkbox"/> Government entity (federal, state, or local) <input type="checkbox"/> Other
(Person signing must be authorized to submit binding offer to enter contract on behalf of Offeror named above.)	
TITLE <small>(Business title of person signing above)</small>	(See "Signing your Offer" provision)
PRINTED NAME <small>(Printed name of person signing above)</small>	
DATE SIGNED	
<p>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>i.e.</i>, a separate corporation, partnership, sole proprietorship, etc.</p>	
STATE OF INCORPORATION	<small>(If offeror is a corporation, identify the State of Incorporation.)</small>
TAXPAYER IDENTIFICATION NO.	<small>(See "Taxpayer Identification Number" provision)</small>

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**(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)
___ Payment Address same as Home Office Address ___ Payment Address same as Notice Address <b>(check only one)</b>	___ Order Address same as Home Office Address ___ Order Address same as Notice Address <b>(check only one)</b>

<b>ACKNOWLEDGMENT OF AMENDMENTS</b>							
Offeror 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

<b>DISCOUNT FOR PROMPT PAYMENT</b> (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	___ Calendar Days (%)
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<b>Minority Participation:</b>  Are you a SC Certified Minority Vendor – Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, SC Certification # _____  Are you a Non SC Certified Minority Vendor - Yes <input type="checkbox"/> No <input type="checkbox"/>
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End of PAGE TWO

# Solicitation Outline

- 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
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## I. SCOPE OF SOLICITATION

The Fort Mill School District is seeking competitive sealed bids for Asphalt Parking Lot Work at Orchard Park Elementary School. See page 11 for more specifics.

**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.

## 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, the following definitions are applicable to all parts of the solicitation, unless expressly provided otherwise.

1. **Amendment** – means a document issued to supplement the original solicitation document.
2. **Authority** – means the State Fiscal Accountability Authority or its successor in interest.
3. **Board** – means the Lancaster County School District Board of Trustees.
4. **Business** – means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.
5. **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.
6. **Contract** - See clause entitled “Contract Documents & Order of Precedence.”
7. **Contract Modification** – means a written order signed by the procurement officer, directing the contractor to make changes which the clause of the contract titled “Changes”, if included herein, authorizes the Procurement Officer to order without the consent of the contractor.
8. **Contractor** - means the offeror receiving an award as a result of this solicitation.
9. **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.
10. **District** – means Lancaster County School District (LCSD)
11. **Offer** – means the bid or proposal submitted in response to this solicitation. The terms “Bid” and “Proposal” are used interchangeably with the term “Offer.”

12. **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.”
13. **Page Two** – means the second page of the original solicitation, which is labeled Page Two.
14. **Procurement Officer** – means the person, or his successor, identified as such on either the cover page, an amendment, or an award notice. Procurement Officer means the Chief Procurement Officer.
15. **Solicitation** – means this document, including all its parts, attachments, and any amendments.
16. **Subcontractor** – means any person you contract with to perform or provide any part of the work.
17. **Us (or) We** - means the using government unit.
18. **Using Governmental Unit** – means the unit(s) of government identified as such on the Cover Page.
19. **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.
20. **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 should monitor the following web site for the issuance of amendments: [www.fortmillschools.org](http://www.fortmillschools.org). (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on page two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

Because this solicitation is posted electronically, the District may not be aware of all potential offerors, particularly those that attained a copy from this web site or other unknown sources. ***It is the proposer’s responsibility to check this web site periodically to determine if any amendments have been issued. Any amendments issued by the District shall become a formal part of this solicitation.***

**Authorized Agent:** All authority regarding 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 District with regard to this procurement or the resulting contract.

**Award Notification:** 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. The date and location of posting will be announced at opening. Should the contract resulting from this solicitation have a 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 the district. 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.

**Board as Procurement Agent:** The Procurement Officer is an employee of the district acting on behalf of the Fort Mill School District pursuant to the Fort Mill School District 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, unless and to the extent that the Board is a using district department, and bears no liability for any party’s losses arising out of or relating in any way to the contract.

**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 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), Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the offeror's responsibility. Failure of the offeror to furnish additional information as requested by the Procurement Officer may render the offeror 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 district, 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.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). Please DO NOT use any form of correction tape or fluid if an error is made on the Bid Schedule or any other documents to be submitted with your bid. This can cause your bid to be rejected. Please mark through the error, writing the correct amount or information, and initialing the correction.

**Deadline for Submission of Offer:** Any offer received after the Procurement Officer of the district or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the District's mail room which services that purchasing office prior to the bid opening.

**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, the district 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.

**District Office Closings:** If an emergency or unanticipated event interrupts normal district processes so that offers cannot be received at the district office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal 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.

**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. 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".)

**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. [02-2A075-2]

**Omit Taxes from Price:** Do not include any sales or use taxes in your price that the District may be required to pay.

**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]

**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 the District or its employees, agents, or officials regarding any aspect of this procurement activity, unless otherwise approved in writing by the Procurement Officer.*** All communications must be solely with the Procurement Officer.
- (b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. ***You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.***

**Protests:** Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. 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 days of the date notification of an intent to award or award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the Procurement Officer within the time provided. (Article 17-4210 of the Fort Mill School District's procurement code.)

**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.

**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 Officer no later than eight (8) 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 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. **We will not identify you in our answer to your question(s).** (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 that unnecessarily or inappropriately limits full and open competition.

**Questions from Offerors - Amendment:** The solicitation is amended as provided herein. Information or changes resulting from questions will be shown in a question-and-answer format. All questions received have been printed below. The "District's response" should be read without reference to the questions. The questions are included solely to provide a cross-reference to the potential offeror that submitted the question. Questions do not form a part of the contract; the "District's response" does. Any restatement of part or all of an existing provision of the solicitation in an answer does not modify the original provision except as follows: Underlined text is added to the original provision. Stricken text is deleted.

**Rejection/Cancellation:** The district may cancel this solicitation in whole or in part. The district may reject any or all bids in whole or in part (Article 5-1710 of the Fort Mill School District's procurement code).

**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) 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 Officer.

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price.

(e) Unbalanced Bidding. The district may reject an offer as nonresponsive if the prices bid are materially unbalanced between line items or sub-line 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 of descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D).

**Signing Your Offer:** 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's 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's name, followed by the words "by its Partner," and signed by a general partner. (c) If the offeror is a corporation, the offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the offeror is a joint venture, the offer must be submitted in the name of the joint venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the offer must state that it has been signed by an agent. Upon request, offeror must provide proof of the agent's authorization to bind the principal.

**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 the Fort Mill School District, its 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 District, 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 (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.

**Tax Credit For Subcontracting with Disadvantaged Small Businesses:** Pursuant to Section 12-6-3350, a taxpayer having a contract with this District 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, 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.

**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 Article 1520.7.1 of the Fort Mill School District's procurement code.

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

**Bid Bond:** Your offer must include either a bid bond issued by a surety or sureties licensed in South Carolina or a certified check. The amount of surety shall be five per cent (5%) of the total bid amount. This bid bond penalty may be expressed in terms of a percentage of the bid price or may be expressed in dollars and cents. If a certified check is submitted in lieu of a bid bond, it must be made payable to the District.

**Clarification:** Pursuant to Article 5-1520.8, the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation.

Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation.

**Descriptive Literature - Labeling:** Include offeror's name on the cover of any specifications or descriptive literature submitted with your offer.

**Descriptive Literature – Required:** Your offer must include manufacturer's latest literature showing complete product specifications.

**Protest – Procurement Department Address:** Any protest must be addressed to the Assistant Superintendent of Finance, Fort Mill School District, and submitted in writing (a) by email to [lordol@fortmillschools.org](mailto:lordol@fortmillschools.org), (b) by facsimile at 803-547-4696, or (c) by post or delivery to 2233 Deerfield Dr, Fort Mill, SC 29715.

### III. SCOPE OF WORK / SPECIFICATIONS

#### Objective:

The Fort Mill School District is seeking competitive sealed bids for Asphalt Parking Lot Work at Orchard Park ES (OPES).

Contractor will saw cut area of parking lot Approximately 83'x23' and dig out existing asphalt area and compact sub-grade.

All debris to be removed off site by contractor.

Patch back the same area with a minimum approximately 4" full depth hot mix asphalt.

Compact asphalt.

## **Contractor Requirements:**

1. Interested contractors **must be currently licensed** in the State of South Carolina by the South Carolina Department of Labor Licensing and Regulations. The SC Code of Laws, 40-11-30, Licensing Requirements states, "No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total costs of construction is greater than five thousand dollars for general contracting or greater than five thousand dollars for mechanical contracting without a license issued in accordance with this chapter."
2. All materials shall be new and of first quality. Workmanship shall be in full compliance with project drawings and manufacturer's specifications.
3. Contractor shall provide a storage facility for all materials, equipment and debris throughout the duration of the project.
4. Contractor shall be responsible for removal of all packaging, trash and debris, including beverage bottles, candy, cracker, or chewing gum wrappers from the job site on a daily basis. District dumpsters are not to be used by the contractor for this purpose.
5. Contractor shall coordinate with the District's Project Manager and/or the onsite General Contractor for the coordination of the work in order that it does not interfere with the District's daily operations. Adequate protection shall be provided for the building and contents during performance of this contract.
6. Contractor has (30) days from Notice to Proceed to complete the project. **Final Completion Date: One month from award date.**
7. Availability and estimated project completion will be considered in the awarding of a contract resulting from this solicitation. Availability and estimated project completion date must be provided on the attached Bid Schedule.
8. Provide temporary toilet facilities throughout the duration of the project.
9. Contractor will be required to provide all necessary licenses and permits, if required.
10. All workmanship shall be performed by skilled and capable workmen under competent supervision, employing latest and best practices of the trade.
11. Contractor shall be responsible for the supervision and direction of the work performed by contractor's employees.
12. The contractor shall be responsible for instructing contractor's employees in all applicable safety measures and requirements. All equipment used by the contractor shall be in safe operating condition at all times, and shall be free from defects or wear which may in any way constitute a hazard to any person or persons on district property. The contractor shall be responsible for instructing contractor's employees to wear proper personal protective equipment while performing work under this contract.
13. All forms of tobacco products, alcohol, and drugs shall not be allowed on district's premises.
14. Guns, knives, or other dangerous weapons shall not be allowed on district's premises.
15. Contractor shall obtain a full criminal background check for contractor's employees and other persons carrying out the contract on the contractor's behalf. The contractor shall not permit employment of any person with a criminal record without written permission of the district. Contractor must check the following databases at a minimum, South Carolina criminal check (SLED), North Carolina criminal check, Sex Offender registries, and Social Security number verification. Upon request of the district, the contractor shall furnish proof that such background checks were executed and the restrictions on employment mandated by the district were followed. Contractor shall be responsible for cost associated with background checks.
16. Contractor shall not permit employment of any person with felony drug convictions or with convictions on associated or directed weapons charges.
17. The successful contractor, contractor's employees, and all subcontractors must wear picture identification badges at all times while on district premises.

**Delivery/Performance Location – Purchase Order:** After award, all deliveries shall be made and all services provided to the location specified by the district's purchase order.

**Delivery/Performance Location – Specified:** After award, all deliveries shall be made and all services provided to the following address, unless otherwise specified:

➤ Orchard Park Elementary  
School

474 Third Baxter Crossing Fort Mill, SC 29715

**Protection of Persons and Property:** The contractor shall take every precaution necessary to assure the protection of both persons and property while performing work under this contract. The contractor shall be responsible for the repair of any damage caused to district or private property, utilities, etc. as a result of work performed under this contract, at no cost to the district.

**Quality – New:** All items and materials must be new. Refurbished or remanufactured items will NOT be accepted.

**Substitutions:** All substitution requests must be submitted in writing to the District no later than the date specified on the cover page for the submission of questions. The district must approve all substitutions.

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

**Information for Offerors to Submit – General:** Offeror shall submit a signed Cover Page, along with Page Two. 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. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis.

## V. QUALIFICATIONS

**Qualifications of Offeror:** (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.

**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 costs, (2) involves access to any “government 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 District may contact and evaluate your proposed subcontractors.

## VI. AWARD CRITERIA

**Award Criteria – Bids:** Award will be made to the lowest responsible and responsive bidder(s).

**Award to One Offeror:** Award will be made to one offeror.

**Unit Price Governs:** In determining award, unit prices will govern over extended prices unless otherwise stated.

## 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 officer. 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 District shall have no obligation to make payment to an assignee until thirty (30) days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific District 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 officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-44.2180, which does not restrict transfers by operation of law.

**Bankruptcy - General:** (a) Notice. In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish written notification of the bankruptcy to the district. 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 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.

**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.

**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) the solicitation, as amended, (3) documentation of clarifications or discussions of an offer, if applicable (4) your offer (5) any statement reflecting the District's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complementary. 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 the District (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 the District. Any document(s) signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

**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 the district 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 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.

**Disputes:** (a) Choice-of-Forum. All disputes, claims, or controversies relating to the agreement shall be resolved exclusively by the Chief Procurement Officer in accordance with the district's procurement code, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in the 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 States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (b) 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.

**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.

**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.

**Fixed Pricing Required:** Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award.

- Price(s) shall include overhead, profit, insurance, rental equipment, power tools, travel, fuel, fuel surcharges, delivery, set-up charges, taxes, etc. The district shall not honor any hidden charges.

**No Indemnity or Defense:** Any term or condition is void to the extent it requires the district to indemnify, defend, or pay attorney's fees to anyone for any reason.

**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 as the notice address on page two. Notice to the district shall be to the Procurement Office address on the cover page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

**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]

**Payment & Interest:** (a) The District 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 the district. (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 Article 1550 of the Fort Mill School District's procurement code 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, the district 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 the district shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Article 1550 of the Fort Mill School District's procurement code ("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.



- All invoices (Noting Purchase Order number on invoice) for payment of purchases of goods or services shall be delivered to the Fort Mill School District's office at 2233 Deerfield Dr Fort Mill, SC 29715.
- All payment for purchases of goods and services shall be paid by the district within thirty (30) days after the acceptance of the goods or services and proper invoice, whichever is received later.

**Publicity:** Contractor shall not publish any comments or quotes by district employees, or include the district in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

**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 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.

- **Purchase order number** must be clearly stated on each carton or package, shipping ticket, invoice and any/all other information related to the order.

**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.

**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 the District, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the District. It shall be solely the District's 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 the District to contractor, contractor shall be liable to the District 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.

**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.

**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 Chief Procurement Officer has actual authority to waive any of the district's rights under this contract. Any waiver must be in writing.

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

### **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.

**Compliance with Laws:** During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

**Contractors Liability Insurance – General:** (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) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. (d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it. (e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before

work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time. (f) Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, the Contractor shall notify the State immediately upon receiving any information that any of the coverages required by this section are or will be changed, cancelled, or replaced. (g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer. (h) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. (i) The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**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 person not skilled in tasks assigned to them.

**Contractor's Obligation - General:** The contractor shall provide and pay for all materials, tools, equipment, labor and professional and nonprofessional 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

**Default – Short Form:** The state may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any material contract terms and conditions, or fails to provide the state, upon request, with adequate assurances of future performance. In the event of termination for cause, the state shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the state for any and all rights and remedies provided by law. If it is determined that the state improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

**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.

**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 district upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

**Indemnification – Third Party Claims – 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 the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

**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.

**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.

**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 Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of **Article 1830** of the Fort Mill School District's procurement code.

(2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of **Article 1830** of the Fort Mill School District's procurement code.

**Pricing Data – Audit – Inspection:** (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. § 2.101 (2004), prior to either (1) any award to contractor pursuant to Article 1830 or Article 1830, 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 district 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 Officer. The district 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 Article 1830 (2). (c) Inspection. At reasonable times, the district 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. § 15.408 (2004) (adapted as necessary for the district context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR § 15.406-2(a) (adapted as necessary for the district 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 district.

**Relationship of the Parties:** Neither party is an employee, agent, partner, or joint venture of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

**Restrictions on Presenting Terms of Use or Offering Additional Services:**

(a) Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government pursuant to this contract (hereinafter “applicable services”) or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter “terms of use”) not previously approved in writing by the procurement officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect.

(b) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not-for itself or on behalf of any third party-offer citizens or public employees (other than the procurement officer) any additional products or services not required by the contract.

(c) Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work.

(d) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the district liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction.

**Shipping/Risk of Loss:** F.O.B. Destination. Destination is the shipping dock of the District’s designated receiving site, or other location, as specified on the purchase order.

**Termination for Convenience – Short Form:** The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. In such a termination, the Procurement Officer may require the contractor to transfer title and deliver to the State 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 State, using its standard record keeping system, have resulted from the termination. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided. As a condition of payment, contractor shall submit within three months of the effective date of the termination a claim specifying the amounts due because of the termination. The absence of an appropriate termination for convenience clause in any subcontract shall not increase the obligation of the state beyond what it would have been had the subcontract contained such a clause.

**Warranty – Standard:** Contractor must provide the manufacturer’s standard written warranty upon delivery of product. Contractor warrants that manufacturer will honor the standard written warranty provided.

**VIII. Bid Schedule**

**Contractor Name:** \_\_\_\_\_

**GRAND TOTAL BID:** \$ \_\_\_\_\_

\*\*\*Above price to include all labor and materials to complete the work as specified, with a one-year guaranteed warranty.

**Signature:**

**Date:**

## IX. ATTACHMENTS TO SOLICITATION

### 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!
- 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!
- Make sure you have properly acknowledged all amendments. Instructions regarding how to acknowledge amendments are outlined in section entitled: “**Instructions to Offerors – A. General Instructions (Amendments to Solicitation)**”.
- Make sure your bid/proposal is signed by a person that is authorized to contractually bind your business.
- Make sure your bid/proposal includes the number of copies requested.
- Make sure you properly mark the outside of your envelope with the bid number, due date, and time.
- Check to ensure your bid/proposal includes everything requested!
  - ❑ Cover Page – completed and signed
  - ❑ Page Two - completed
  - ❑ Bid Schedule – completed (to include name of company in space provided and references)
  - ❑ Certificate of Insurance if not on record with Fort Mill Schools
  - ❑ Bid Bond if not on record with Fort Mill Schools
  - ❑ Copy of Warranty to be provided with Fort Mill Schools
  - ❑ W-9 if not on record
- If you have concerns about this solicitation, do not raise those concerns in your response! **After opening, it is too late!** **If this solicitation includes a prebid/proposal conference or a question & answer period, raise your questions as a part of that process!** Please see instructions under the heading “**Instructions to Offerors – A. General Instructions - Questions from Offerors**” and any provisions regarding prebid/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 submit this checklist with your response.

**X. MINORITY AND WOMAN BUSINESS ENTERPRISE POLICY AND REQUIREMENTS:**

a) Statement of Policy:

It is a practice of the Fort Mill School District that discrimination against businesses on the basis of race, color, national origin, and gender is prohibited. No person shall be denied the benefit of, or otherwise discriminated against, on the grounds of race, color, national origin or gender in connection with the award and/or performance of any contract or modification of a contract between a vendor or contractor and the District which contract is paid or is to be paid for, in whole or part, with monetary appropriations of the District. Further, it is the practice of the District to encourage and promote, on an inclusionary basis, contracting opportunities for all business, without regard to race, color, national origin or gender. It is expected that all firms seeking to do business with the Lancaster County School District will comply with this policy.

b) Subcontractor Participation:

The Fort Mill School District, through its contract documents, encourages contractors to utilize minority subcontractors on their projects.

A prime contractor must identify M/WBE utilization expenditures to certified M/WBE subcontractors that perform a commercially useful function in the work of the contract. An M/WBE subcontractor is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the work of a contract for which the MBE or WBE has the skill and expertise and carries out its responsibilities by actually performing, managing and supervising the work involved.

c) Business Utilization Report:

In order to facilitate an effective monitoring system, each contractor, bidder or offeror must submit a completed and signed Utilization Report with the bid submission which lists the names, addresses and contact persons of the M/WBE and majority owned businesses, if any, to be used in the contract, the type of work each business will perform, the dollar value of the work and the scope of work. The Utilization Report submitted by the contractor shall be submitted as a part of the contract with the Fort Mill School District. If the information contained in the Contractor's Utilization Report changes by the time the contract is executed, the Contractor shall amend the Utilization Report and such amended Utilization Report shall be incorporated into the contract.

**Business Enterprise Utilization Report**

List all vendors/subcontractors to be used on this project. All MBE's or WBE's proposed for utilization on this project must be certified by the Small and Minority Business Assistance Office through the State of South Carolina according to the criteria of the Fort Mill School District's Minority Business Enterprise Plan.

In column 6 below, please specify ethnic/racial/gender group as follows:

- AABE – African-American Business Enterprise
- HBE – Hispanic Business Enterprise
- ABE – Asian-American Business Enterprise
- FBE – Female Business Enterprise
- MAJ – Majority Business Enterprise

Project Title	W/M Business Enterprise Name	Address	Contact Person(s)	Telephone #	Designation Code

**Statement of Intent**

We, the undersigned have prepared and submitted all the documents required for this project. We have prepared these documents with a full understanding of the Fort Mill School District's goal to ensure equal opportunities in the proposed work to be undertaken in performance of this project. Specifically the District seeks to encourage and promote on an inclusionary basis contracting opportunities without regard to the race, gender, national origin or ethnicity of the ownership or management of any business and that it is an equal opportunity employer and contracting entity. We certify that the representations contained in the Minority/Women Business Enterprise (M/WBE) Utilization Report, which we have submitted with this solicitation, are true and correct as of this date. We commit to undertake this contract with the Minority/Women Business utilization Report we have submitted, and to comply with all non-discrimination provisions of the Minority/Women Business Enterprise Program in the performance of this contract.

Name: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_