

	<b>Fort Mill School District</b>  <b>Request for Qualifications</b>	Solicitation Number: #23-005 Date Issued: August 30, 2023 Procurement Officer: Kelly Keniston Phone: (803) 548-8202 E-Mail Address: kenistonk@fortmillschools.org
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DESCRIPTION: District Energy Savings Contracting Services

*Your offer may be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.*

SUBMIT YOUR SEALED OFFER TO THE FOLLOWING ADDRESSES:	
<b>MAILING ADDRESS:</b> Fort Mill School District 2233 Deerfield Drive Fort Mill, SC 29715	<b>PHYSICAL ADDRESS:</b> Fort Mill School District 2233 Deerfield Drive Fort Mill, SC 29715

QUESTIONS MUST BE RECEIVED BY: September 15, 2023 @ 10:00 a.m.

SUBMIT OFFER BY (Opening Date/Time): September 20, 2023 @ 10:00 a.m. (See "Deadline for Submission of Offer" provision)

NUMBER OF COPIES TO BE SUBMITTED: One (1) Original and Seven (7) Copies (clearly marked)

<b>CONFERENCE TYPE: Site Visit</b> <b>DATE &amp; TIME: September 13, 2023; 9:00 a.m.</b>	<b>LOCATION: FMSD Admin Office</b> 2233 Deerfield Drive Fort Mill, SC 29715
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<b>AWARD &amp; AMENDMENTS</b>	Award will be posted on or around <b>October 4, 2023</b> . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: <a href="http://www.fortmillschools.org/departments/procurement/">http://www.fortmillschools.org/departments/procurement/</a>
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You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" provision.)

<b>NAME OF OFFEROR</b>  <small>(full legal name of business submitting the offer)</small>	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. 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.	
<b>AUTHORIZED SIGNATURE</b>  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	<b>TAXPAYER IDENTIFICATION NO.</b>  <small>(See "Taxpayer Identification Number" provision)</small>	
<b>TITLE</b>  <small>(business title of person signing above)</small>		
<b>PRINTED NAME</b>  <small>(printed name of person signing above)</small>	<b>DATE SIGNED</b>	<b>STATE OF INCORPORATION</b>  <small>(If you are a corporation, identify the state of incorporation.)</small>

<b>OFFEROR'S TYPE OF ENTITY: (Check one)</b> <span style="float: right;"><small>(See "Signing Your Offer" provision.)</small></span>		
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	<input type="checkbox"/> Other _____
<input type="checkbox"/> Corporate entity (not tax-exempt)	<input type="checkbox"/> Corporation (tax-exempt)	<input type="checkbox"/> Government entity (federal, state, or local)

**PAGE TWO**  
**(Return Page Two with Your Offer)**

<b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)	<b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)
	Area Code - Number - Extension <span style="float: right;">Facsimile</span>
	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	___ Order Address same as Home Office Address
___ Payment Address same as Notice Address <b>(check only one)</b>	___ Order Address same as Notice Address <b>(check only one)</b>

<b>ACKNOWLEDGMENT OF AMENDMENTS</b> Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)							
Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

<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 <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, SC Certification # _____  Are you a Non SC Certified Minority Vendor <input type="checkbox"/> Yes <input type="checkbox"/> No	
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End of Page Two

**KEY DATES FOR RFQ  
(Subject to Change)**

Issue RFQ	August 30, 2022
Site Visit	September 13, 2023 @ 9:00 a.m.
Deadline for Questions	September 15, 2023 @ 10:00 a.m.
Responses to Questions	September 18, 2023 @ 10:00 a.m.
RFQ Due	September 20, 2023 @ 10:00 a.m.
Short List Selection	September 22, 2023
On-Site Presentation by Short Listed Firms Each vendor will have a specific start time	September 28, 2023 @ 9:00 a.m.
Intent to Award Posted	October 4, 2023

\*\*\* Note – The highest ranked offeror will be contacted to discuss contract terms. If agreement can't be made between that offeror and the District, the second highest ranked offered will be invited in to discuss contract terms.

## I. SCOPE OF SOLICITATION

The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions.

The Fort Mill School District is accepting proposals from qualified firms for the provisioning of an Energy, Water or Wastewater Savings Performance Contract. Pursuant to SC Code: 48-52-670, the District is seeking qualifications from interested Energy Services Companies (ESCOs) capable of providing a comprehensive solution that will reduce energy and operational costs across all District Facilities.

The ESCO must be a firm that is licensed in the State of South Carolina, is an approved contractor by the State of South Carolina, holds a National Association of Energy Services Companies (NAESCO) certification and has demonstrated experience in the implementation of Energy Performance contracts.

In accordance with the Fort Mill School District Procurement Regulations, the submittals will be reviewed and ranked by a selection committee. The selection committee will interview the top ranked firms after such time the District will then, at their convenience, proceed with firm selections.

Please submit one (1) original and seven (7) signed copies of the qualifications no later than 10:00 AM on September 20, 2023 to the person and address listed on the first page of this RFQ. Submissions after this date and time will not be considered and will be returned to this sender. Submittals must clearly respond to each of the five (5) evaluation factors of this RFQ as detailed in section IV. B. Evaluation Factors. All responses must refer to each section of this document by number and address compliance and/or exceptions to that section. FMSD reserves the right to disqualify any firm which does not follow such a format. Additional general narrative is welcome, but only addition to your specific response.

The District shall have the right to request correction (s) to a submittal or request additional information. Failure by the submitting firm to correct any deficiency or provide requested information within forty-eight (48) hours, may result in the proposal being considered non-responsive and excluded from further consideration.

At any time throughout the solicitation process, Submitters shall not contact any member of the Board of Education or the Selection Committee regarding this RFQ. Failure to comply will result in immediate rejection of your submittal.

**MAXIMUM CONTRACT PERIOD – Estimated:** Start date: 10/11/2023 date: TBD. Dates provided are estimates only. Any resulting contract will begin on the date specified in the

notice of award. Fort Mill School District will have the option at the end of each year to renew additional one-year periods if both parties are in agreement. No contract shall exceed 20 years.

## **II. INSTRUCTIONS TO OFFERORS - A. General Instructions**

**DEFINITIONS, CAPITALIZATION, AND HEADINGS (MODIFIED - DEC 2015)**  
**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.**

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

**AUTHORITY** means the School Board or its successor in interest.

**BOARD** means Fort Mill School District Board of Trustees.

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

**BUYER** means the Procurement Specialist/Procurement Officer or his/her designee.

**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 clause of the contract titled "Changes," if included herein, 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.

**DISTRICT** means Fort Mill School District (FMSD)

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

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

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

**PROCUREMENT SPECIALIST/PROCUREMENT OFFICER** means the person, or his successor, identified as such on the Cover Page, an amendment, or an award notice.

**YOU and YOUR** means Offeror.

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

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

the work.

**US or WE** means the District; also referred to as Owner.

**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.

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

<http://www.fortmillschools.org/departments/procurement/> . Click "Current Bids and RFPs," then click the appropriate Bid listing. (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by identifying the amendment number and date in the space provided for this purpose on Page Two or (2) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

**AUTHORIZED AGENT (MODIFIED – FEB 2015):** 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 District official authorized to bind the District with regard to this procurement or the resulting contract.

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

**BID/PROPOSAL AS OFFER TO CONTRACT (MODIFIED – JAN 2004):** 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 District. An Offer may be submitted by only one legal entity; "joint bids" are not allowed.

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

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

**AUTHORITY AS PROCUREMENT AGENT (MODIFIED – DEC 2015):** The Procurement

Officer is an employee of the District acting on behalf of the District pursuant to Fort Mill School District Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the District. The Board of Trustees 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 (MAY 2008): GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.**

- (a) By submitting an offer, the offeror certifies that –
- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to –
    - (i) Those prices;
    - (ii) The intention to submit an offer; or
    - (iii) The methods or factors used to calculate the prices offered.
  - (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
  - (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.
- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory-
- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of the 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.

**CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (MODIFIED - JAN 2004):**

- (a) (1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-
- (i) Offeror and/or any of its Principals-
    - (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
    - (B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
    - (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.
  - (ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.
- (2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).
- (b) Offeror shall provide immediate written notice to the 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 nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the District, the Procurement Officer may terminate the contract resulting from this solicitation for default.

**CODE OF LAWS AVAILABLE (MODIFIED – JAN 2006):** The Fort Mill School District

Procurement Code is available at:

[http://www.fortmillschools.org/departments/procurement/procurement\\_code/](http://www.fortmillschools.org/departments/procurement/procurement_code/)

Solicitation #23-005 District Energy Savings Services



**DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (MODIFIED - FEB 2015):** You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the 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 that has already been performed by you, a proposed subcontractor, or an affiliated business of either.

**DEADLINE FOR SUBMISSION OF OFFER (MODIFIED – JAN 2004):** 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 purchasing office or the District's mail room which services the purchasing office prior to the bid opening

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

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

**ETHICS CERTIFICATE (MODIFIED - 2008):** By submitting an Offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statute requires 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

officials; 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 8-13-755, prohibiting public official with economic interest 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.

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

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

**PROTESTS (MODIFIED – JUN 2006):** 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 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 appropriate Procurement Officer within the time provided. (Article 17-4210 of Fort Mill School District Procurement Code)

**PROHIBITED COMMUNICATIONS AND DONATIONS (MODIFIED - FEB 2015):** Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law.

(a) During the period between publication of the solicitation and final award, *you must not communicate, directly or indirectly, with the 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. [R. 19-445.2010]

(b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. *You represent that your offer discloses any gifts made, directly or through an intermediary, by* Solicitation #23-005 District Energy Savings Services

*you or your named subcontractors to or for the benefit of the District during the period beginning eighteen months prior to the Opening Date.*

**PUBLIC OPENING (JAN 2004):** Offers will be accepted at the date/time and at the location identified in these documents. No information will be divulged at this time other than the names of the firms submitting proposals.

**QUESTIONS FROM OFFERORS (MODIFIED – FEB 2015):** (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 five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the Procurement 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. See clause entitled "Duty to Inquire." **We will not identify you in our answer to your question.** (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.

All questions shall be in writing and submitted to the Procurement Officer via Email or Mail. Please send questions to:

Mailing Address: Fort Mill School District  
Kelly Keniston, Procurement Officer  
2233 Deerfield Drive  
Fort Mill, SC 29715

Email: kenistonk@fortmillschools.org

**REJECTION/CANCELLATION (MODIFIED – JAN 2004):** The District may cancel this solicitation in whole or in part. The District may reject any or all proposals in whole or in part. (Article 5-1710 of Fort Mill School District Procurement Code)

**RESPONSIVENESS/IMPROPER OFFERS (MODIFIED – JUN 2015):** (a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be

submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the District cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement 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 subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the District even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

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

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

**DISTRICT OFFICE CLOSINGS (MODIFIED – JAN 2004):** 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, Solicitation #23-005 District Energy Savings Services

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.

**SUBMITTING CONFIDENTIAL INFORMATION (MODIFIED - FEB 2015):**

(An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the 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 District, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the District or any of its agencies, that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-2]

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

**TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008):** Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498.

**VENDOR REGISTRATION (MODIFIED – JAN 2006):** We encourage you to register with Fort Mill School District when you retrieve our Bid Documents. Our registration system is powered by Vendor Registry. To register, visit our website at <http://www.fortmillschools.org/>, select "Departments," select "Procurement," and select "Vendor Registration." There is no cost for you to register with Fort Mill Schools. Please

note that if you would like to receive notifications of solicitations, awards, or amendments for our solicitations, you will need to register your business with Vendor Registry. If you do not register, it will be your responsibility to check our website for updates, amendments, and awards of our solicitations.

**WITHDRAWAL OR CORRECTION OF OFFER (MODIFIED – JAN 2004):** Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by Article 5-1520 of Fort Mill School District Procurement Code.

## **II. INSTRUCTIONS TO OFFERORS -- B. Special Instructions**

Packages containing submittals shall be presented such that they may be easily identified. **The outside of the package shall be identified as follows:**

**RFQ #23-005**

**District Energy, Water and Wastewater Conservation Services**

An officer of the firm or authorized person must sign submittal documents.

**AUTHORITY APPROVAL REQUIRED (MODIFIED - DEC 2015):** Any award is subject to prior approval by the School Board. Regularly scheduled Board meetings ordinarily occur pursuant to a published schedule.

### **CONTENTS OF OFFER (RFP) (FEB 2015)**

- (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.
- (c) The contents of your offer must be divided into two parts, the technical proposal and the business proposal. Each part should be bound in a single volume.
- (d) If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

**CLARIFICATION (MODIFIED – NOV 2007):** Pursuant to Article 5-1520.8, the Procurement Specialist 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.

**OPENING PROPOSALS -- INFORMATION NOT DIVULGED (FEB 2015)**

In competitive sealed proposals, neither the number, identity of offerors or prices will be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(C)(1)]

**PROTEST – ASSOCIATE SUPERINTENDENT OF FINANCE ADDRESS (MODIFIED - JUN 2006):** Any protest must be addressed to the Associate Superintendent of Finance, Fort Mill School District, and submitted in writing

- (a) by email to lordol@fortmillschools.org ,
- (b) by facsimile at (803) 547-4696, or
- (c) by post or delivery to Leanne Lordo, Associate Superintendent of Finance, 2233 Deerfield Drive, Fort Mill, SC 29715.

**III. SCOPE OF WORK / SPECIFICATIONS**

**A. INTRODUCTION**

The Fort Mill School District seeks to procure a broad range of services and capital improvements to accomplish conservation measures through a guaranteed energy, water and wastewater savings contract across the District’s facilities and infrastructure. These services and capital improvements will be provided and financed through a performance-based contract with a guarantee of savings under which the District: a.) incurs little to no initial capital costs; b.) achieves significant long-term savings; c.) achieves a guarantee for energy savings and operations and maintenance (O&M) savings which can include material, labor and avoided future equipment replacements; d.) obtains consistent levels of occupant comfort and building functionality.

Essential services and improvements sought are those that will reduce energy consumption in the District’s facilities, upgrade capital energy-related equipment, improve building operations and maintenance, save costs through fuel switching or improved demand management, and aid in meeting environmental management responsibilities.

No contract shall exceed 20 years in duration and is subject to annual appropriations. The energy savings achieved by the installed energy efficiency measures (EEMs) need to be sufficient to cover all project costs including annual maintenance and monitoring fees for the duration of the contract term. At a minimum, the energy savings guarantee should be structured to correspond to the annual financing costs associated with the project. The contract is subject to approval and review by the SC Office of School Facilities.



## B. PROJECT SCOPE OF WORK/SYSTEMS AND SERVICE CAPABILITIES

The intent of this project is to provide the District with the means to realize maximum utility savings, operational savings, and operational improvements without the requirement of capital funds or to reduce the amount of capital funds necessary for planned energy, water systems, and wastewater systems upgrades. The Offeror selected through the RFQ processes must have the demonstrated technical and managerial capabilities to address a broad range of building energy systems and provide a comprehensive set of energy services. Energy systems include, but are not limited to, heating, ventilation and air conditioning systems, lighting, windows, insulation and energy management controls, life safety measures that provide long-term, operating-cost reductions, building operation programs that reduce operating costs, other energy-conservation-related improvements, including improvements or equipment related to renewable energy, water and other natural resources conservation, including accuracy and measurement of water distribution and/or consumption, and other equipment, services and improvements providing energy efficiency.

Energy services include, but are not limited to, an investment grade technical energy audit and report; the design, acquisition, installation, modification maintenance, commissioning, monitoring and training in the operation of solutions installed in this project.

Any stipulated energy and/or non-energy cost savings that may be attributed to this project will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and verified by the ESCO and approved by the District. Additional services may include continuing O&M for all improvements and/or training of the District's staff on routine maintenance and operation of systems as well as training of occupants. Monitoring and verification (M&V) services include appropriate measurement and reporting of the performance and savings from improvements.

## C. OVERVIEW OF TERM AND CONDITIONS

**Guarantee.** Improvements and services must result in guaranteed minimum annual energy and O&M savings option, as well as guaranteed minimum levels of occupant comfort. The combined savings achieved by the installed projects must be sufficient to cover all project costs, including debt service, and all ESCO fees for services for the duration of the contract term. The guaranteed savings must be achieved each year. Annual cost savings derived from such improvements beyond the guaranteed minimum savings will be held by the District, and will not be allocated to future annual savings guarantees or shortfalls in other years.

**Financial Review.** Detailed financial projections of project benefits are dependent upon the scope of technical retrofits finally selected and installed. It is premature to place a major emphasis on projected financial benefits prior to the completion of a detailed engineering study and negotiation of the project structure. Respondents are encouraged to carefully review the evaluation criteria in the RFQ under Financial Approach and to respond as fully as possible.

**O&M Savings.** Any O&M cost savings proposed by the selected ESCO will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and approved by the District.

## **IV. QUALIFICATIONS**

Submitted proposals should thoroughly address all the items listed in the following sections. Proposals which do not address all of these areas may be considered incomplete. Final decision and selection of the firm(s) rests solely with the District. The District reserves the right to select any or none of the submitting firms if it is in the best interest of the District. The District reserves the right to reject any and all proposals and to waive any informality in proposals received whenever such rejection or waiver is in the interest of the District. Please note that the District considers response to this Request for Qualifications by competing firms as purely voluntary and is under no financial obligation to said firms regarding the contents of their proposal.

Documents submitted may be reviewed and evaluated by any person at the District's discretion, including non-allied and independent consultants retained by the Owner now or in the future

### **A. INTRODUCTION**

Provide an executive summary highlighting the major points of the submittal (2 pages maximum).

### **B. EVALUATION FACTORS**

- A. Organization, Qualifications and Experience
- B. Financial Strength
- C. References and Track Record
- D. Project Management
- E. Technical Approach

#### Appendix

- A-1 Sample Investment Grade Audit
- A-2 Sample Commissioning Plan
- A-3 Sample Energy Services Agreement (Performance Contracting Agreement)
- A-4 Sample District Savings Report
- A-5 Sample Measurement and Verification Plan
- A-6 Financial Statements

Any additional information not specifically requested in this RFQ must be put in a separate Appendix at the end of the response. Responses must be paginated and must include a table of contents.

- Failure to complete any question in whole or in part, or any deliberate attempt by the respondent to mislead the District, may be used as grounds to find the proposing ESCO ineligible.
- All submissions become the property of District and will not be returned to the ESCO.
- All costs associated with submission preparation will be borne by the submitting ESCO.

## **V. AWARD CRITERIA**

**AWARD CRITERIA – PROPOSALS (MODIFIED - JAN 2006):** After presentations, firms will be ranked and award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the District.

### **DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (MODIFIED - FEB 2015)**

Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the District may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the District may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The District may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the District may elect to disregard the negotiations and accept your original proposal.

**EVALUATION FACTORS:** Proposals will be evaluated by a Selection Committee based on the evaluation criteria. Each proposal will be evaluated both objectively and as compared to the other responses. All proposals will be reviewed for purposes of determining responsiveness and responsibility. Any proposal that does not meet the essential requirements of the RFQ will be deemed non-responsive. The Selection Committee will consist of representatives as appointed by the District. Proposer should not attempt to contact members of the evaluation committee nor School Board members during the period of the solicitation. Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the State Ethics Act.

To determine responsibility, all information given by the proposer concerning its availability to perform fully the contract requirements, including the integrity and reliability of the proposer,

will be reviewed. The submission of a proposal for review does not necessarily qualify the proposer or proposal as being responsive or responsible. Failure to provide specific information as requested, for use in the evaluation, may cause a proposal to be disregarded.

Following receipt of information from all interested persons and firms, the Selection Committee will review all submissions and then hold interviews with all proposers. The purpose of the interviews shall be to provide such further information as may be required by the Selection Committee to fully acquaint itself with the relative qualifications of the several interested firms. The Selection Committee shall identify the proposal which, in its judgment, presents the best proposal for the Owner's needs in accordance with the selection criteria, and an award will be made. The award will be made without further discussion of proposals submitted.

The Selection Committee will base both its initial evaluation of responses on the responses to this RFQ and its prioritization of firms on the following criteria (in no priority order):

- Business, Organization & Qualifications
- Financial Strength
- Track Record & References
- Project Management
- Technical Approach

The contract resulting from this solicitation shall be awarded to the responsive and responsible offeror whose proposal is determined to be the most advantageous to the District. However, the District reserves the right to reject any and all, or portions of proposals received, and in all cases will be the sole judge as to whether an offeror's proposal has satisfactorily met the requirements of this solicitation. The District is not required to furnish a statement of the reason(s) as to why a proposal was not deemed to be most advantageous to the District.

## **VI. TERMS AND CONDITIONS – A. General**

**ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (MODIFIED FEB 2015):** (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 days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identify (by contract number) of the specific contract to which the assignment applies, and (iii) the name of the assignee and he exact address or account information to which assigned payments should be made. (b) if contractor amends, modifies, or otherwise changes its name, its identify (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 required approvals.

**CHOICE-OF-LAW (JAN 2006):** 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 and ORDER OF PRECEDENCE (MODIFIED FEB 2015):** (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 signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

**DISCOUNT FOR PROMPT PAYMENT (MODIFIED JAN 2006):** (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 (MODIFIED JAN 2006):** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the 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 State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

**EQUAL OPPORTUNITY (JAN 2006):** 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 (JAN 2006):** 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.

**FIXED PRICING REQUIRED (JAN 2006):** 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.

**NO INDEMNITY OR DEFENSE (MODIFIED FEB 2015):** 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 (MODIFIED JAN 2006):** (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 Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

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

**PAYMENT & INTEREST (MODIFIED FEB 2015):** (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, payment will be made by check mailed to the payment address on "Page Two." (c) Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable.

- All invoices for payment of purchases of goods or services shall be delivered to Fort Mill School District Administrative Office.
- All payment for purchases of goods or 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 (MODIFIED JAN 2006):** Contractor shall not publish any comments or quotes by District employees, or include the District in either news releases or a published list of Districts, without the prior written approval of the Procurement Officer.

**PURCHASE ORDERS (MODIFIED JAN 2006):** 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.

**SURVIVAL OF OBLIGATIONS (JAN 2006):** The Parties' rights and obligations which, by  
Solicitation #23-005 District Energy Savings Services

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 (MODIFIED - JAN 2006):** 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.

**TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006):** 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. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

**THIRD PARTY BENEFICIARY (JAN 2006):** 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 (MODIFIED JAN 2006):** 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.

## **VII. TERMS AND CONDITIONS -- Special**

**Section Not Applicable - Intentionally Omitted**



**CHANGES (MODIFIED JAN 2006):**

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

**CONTRACTOR'S LIABILITY INSURANCE – GENERAL (MODIFIED FEB 2015):**

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

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

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

(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 the officers, officials, employees and volunteers of the District, 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. Please list the additional insured as Fort Mill School District, 2233 Deerfield Drive, Fort Mill, SC 29715.

(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the District and the officers, officials, employees and volunteers of the District. Any insurance or self-insurance maintained by the District or the officers, officials, employees and volunteers of the District, 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 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.

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

**CONTRACTOR'S OBLIGATION – GENERAL (JAN 2006):** 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.

**CONTRACTOR'S USE OF DISTRICT PROPERTY (MODIFIED - JAN 2006):** 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.

**DEFAULT (MODIFIED JAN 2006)**

(a) (1) The District may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The District's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.

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

terminated.

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

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

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

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

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

(h) The rights and remedies of the District in this clause are in addition to any other rights and remedies provided by law or under this contract.

**DISPOSAL OF PACKAGING (JAN 2006):** 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 (MODIFIED NOV. 2008):** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)): By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the 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.

**INDEMNIFICATION – THIRD PARTY CLAIMS – (MODIFIED NOV 2011):** Notwithstanding any limitation in this agreement, contractor shall defend and indemnify Fort Mill School District, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all suits or claims of any nature (and all damages, settlement payments, attorney's fees, costs, expenses, losses or liabilities attributable thereto) by any third party which arise out of, or result in any way from any defect in the goods or services acquired hereunder or from any act or omission of contractor, it's subcontractors, their employees, workmen, servants or agents. Contractor shall be given written notice of any suit or claim. District shall allow contractor to defend such claim so long as such defense is diligently and capably prosecuted through legal counsel. District shall allow contractor to settle such suit or claim so long as:

- a. all settlement payments are made by (and any deferred settlement payments are the sole liability of) contractor; and
- b. the settlement imposes no non monetary obligation upon the District.

The District shall not admit liability or agree to a settlement or other disposition of the suit or claim, in whole or in part, without the prior written consent of contractor. District shall reasonably cooperate with the contractor's defense of such suit or claim. The obligations of this paragraph shall survive termination of the parties' agreement.

**INFORMATION USE AND DISCLOSURE – STANDARDS (MODIFIED - FEB 2015)**

To the extent applicable:

- (a) Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. Section 1-11-490.
- (b) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of District information, as defined herein, and Contractor agrees that the District is not a licensee.

- (c) The South Carolina Family Privacy Protection Act of 2002, S.C. Code Ann. Sections 30-2-10, et seq.
- (d) Personal Identifying Information Privacy Protection, S.C. Code Ann. Sections 30-2-310 et seq.
- (e) Data Breach Notification, 2014 Act No. 286, Section 117.117, as revised in any future annual appropriations act.

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

**PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY (JAN 2006):** Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase. Any request for price increase shall not exceed 2% per year and will only be effective from year 2 forward. If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase.

**PRICING DATA – AUDIT – INSPECTION (MODIFIED - JAN 2006):** [Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer’s request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the 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 11-35-2220(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. Section 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 Section 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 (JAN 2006):** Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

**TERM OF CONTRACT – OPTION TO RENEW (MODIFIED – JUNE - 2018):** At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of 1 year(s), 0 month(s), and 0 day(s), unless contractor receives notice that the District elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. Maximum contract period is 5 (five) years unless additional years are approved by the Superintendent and/or Board.

**TERM OF CONTRACT – TERMINATION BY CONTRACTOR (JAN 2006):** Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least 120 days prior to the expiration of the then current term.

**TERMINATION FOR CONVENIENCE (MODIFIED - JAN 2006):** (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the District. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

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

(3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the District in the manner and to the extent directed by the Procurement 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. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the District has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the District has breached the contract by exercise of the Termination for Convenience Clause.

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

(b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the District, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:

(i) contract prices for supplies or services accepted under the contract;

(ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;

(iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;

(iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.

(5) Contractor’s failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the District’s right to require the termination of a subcontract, or (ii) increase the obligation of the District beyond what it would have been if the subcontract had contained an appropriate clause.



**ATTACHMENT A**  
**CONTRACT TERMS AND CONDITIONS**

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The minimum conditions the District will accept from the selected ESCO are described below. This section defines the scope of services related to the technical requirements that will be included in any final contract. It also defines the key contractual provisions.

1. **Scope of Services** (Technical Requirements)

The Scope of Services must be included in any performance contract the District enters into, and must include the following items at a minimum:

- a. **Investment Grade Technical Energy Audit and Report.** The ESCO's proposed contract terms must include the performance and presentation of results from a detailed investment grade technical energy audit and report of acceptable quality to the District. If the District decides not to enter into a contract after the audit report has been accepted, the District agrees to pay the cost of the audit as stated in the submitted response to this RFQ, provided that all contract terms and conditions of the audit have been met by the ESCO.
- b. **Standards of Comfort.** Specific standards of comfort, safety and functionality will not be degraded from the existing condition and/or shall meet minimum established industry standards. The ESCO will be responsible for maintaining the levels of comfort for each building as specified in the Technical Facility Profile or in any final agreement. Persistent failure to maintain the defined climate and lighting conditions will constitute a default.
- c. **Professional Engineer Involvement.** A registered professional engineer must, at a minimum, review and approve design work done under this contract.
- d. **Guaranteed Savings.** The District requires a minimum annual savings guarantee. If the project does not generate the guaranteed level of savings in any given year, the ESCO will be responsible for reimbursing the District the amount of necessary to pay for annual project financing and all related contract obligations. Excess savings will not be used to reimburse the ESCO for any payments made due to shortfalls in other years or be credited to future annual savings guarantees.
- e. **Construction Management.** The ESCO will be required to work with current building management and maintenance personnel in order to coordinate construction and provide appropriate training in operations and maintenance of all installed improvements. No equipment or other improvements will be installed that would require the District to hire additional personnel unless contract negotiations produce an explicit exemption for a specific installation.
- h. **Equipment Standardization.** All equipment installed that is comparable to similar equipment at other sites operated by the District shall be of the same manufacturer for standardization of equipment District wide, unless otherwise accepted by the District.
- i. **As-Built Drawings.** Where applicable, ESCO must provide by mylar, reproducible "as built" and record drawings (or such electronic equivalents as may be agreed to with the District) of all existing and modified conditions associated with the project, conforming to

typical engineering standards. These should include architectural, mechanical, electrical, structural, and control drawings and operating manuals within 30 days of completion of installation.

## 2. **Contractual Provisions**

Key elements that must be provided for in any performance contract that District enters into will, at a minimum, include the following:

- a. **Written Submissions.** The contents of the ESCO's submissions in response to this solicitation will become part of any final agreement between the District and the contractor.
- b. **Meeting Project Schedule.** The ESCO must provide a final schedule of project milestones including equipment-servicing and preventive maintenance provisions that will become part of any final contract. ESCO is responsible for meeting schedule deadlines. In the event any milestone or service provision is not met as scheduled without prior approval from the District, the District reserves the right to consider it a default and withdraw from all contractual obligations without penalty.
- c. **District Inspection.** The District must have the right to inspect, test and approve the work conducted in the facilities during construction and operation. The District shall have the right and access to the account books, records, and other compilations of data that pertain to the performance of the provisions and requirements of this agreement. This is covered below by the open book pricing requirement. Records shall be kept on a generally recognized accounting basis, and calculations will be kept on file in legible form and retained for three years after close-out. The District retains the right to have its representative visit the site during the analysis and implementation phases of the project, and to attend relevant on-site or off-site meetings of the ESCO and/or its subcontractors.
- d. **Final Approval of District.** The District retains final approval over the scope of work and all end-use conditions.
- e. **Repayment of Project Financing.** The repayment obligation and term of the financing for this project must be arranged to coincide with the acceptance by the District that the project is fully installed and functioning.
- f. **Compliance.** All work completed under this contract must be in compliance with all applicable federal, state and local laws, rules and regulations such as building codes and appropriate accreditation, certification and licensing standards. Work must be in accordance with sound engineering and safety practices and in compliance with all District regulations relative to the premises. The ESCO and its subcontractors will be responsible for obtaining any and all required governmental permits, consents and authorizations, and for payment of any and all state and city required taxes and fees which result from

contract. The contract must comply with the statutory provisions of §48-52-670 of the South Carolina Code.

- g. Handling of Hazardous Materials.** All work completed under this contract must be in compliance with all applicable federal, state and local laws, rules and regulations regarding waste disposal and treatment/disposal of any hazardous materials that could result from this project. Work must also be in accordance with sound engineering and safety practices, and in compliance with all reasonable District rules relative to the premises. In the event the ESCO encounters any such materials, the ESCO shall immediately notify the project manager and stop work pending further direction from the project manager. The State may, in its sole discretion, suspend work on the project pending removal of such materials or terminate this Agreement.
- h. Methodology to Adjust for Changes.** The contract must contain a mutually acceptable clause whereby unanticipated changes in facility use, occupancy, schedule and/or utility rates can be accommodated in a fair manner agreeable to both parties.
- i. Hiring and Wage Requirements.** The ESCO will comply with all requirements for the payment of prevailing wages, and for minority and women-owned business enterprises.
- j. Subcontractor Approval.** The District retains the right to approve any ESCO selected subcontractor prior to its commencement of work on this project.
- k. Bonding Requirements.** The ESCO will provide to the District assurance of completion in the form of separate performance and labor and material payment bonds, each in the sum of 100 percent of all subcontracts.
- l. Guaranteed Cost Savings.** Improvements and services must result in guaranteed a minimum annual energy and O&M savings option, as well as guaranteed minimum levels of occupant comfort. A guarantee is required to equal the calculated savings attributable to all energy and operating saving measures during the contract period, in accordance with §48-52-670 of the South Carolina Code, as amended. The combined savings achieved by the installed projects must be sufficient to cover all project costs including debt service and contractor fees maintenance, monitoring and other services, for the duration of the contract term. At a minimum, the savings guarantee should be structured to correspond to the annual financing costs associated with the project. Annual cost savings derived from such improvements beyond the guaranteed minimum savings will be held by the District, and will not be allocated to shortfalls in other years or credited to future annual savings guarantees.
- m. Applicability of O&M savings.** Any O&M cost savings related to maintenance and operation of the facilities will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and approved by the District.
- n. Annual Reconciliation.** Annual savings will be reconciled and verified each year as specified in the final contract.

- o. Contract Term.** No contract shall exceed 20 years in duration and is subject to annual appropriations.
- p. Post-Contract Preventive Maintenance Schedule.** Upon completion of the contract, the ESCO shall provide to the District a single comprehensive schedule of necessary preventive maintenance for all installations.
- q. No Funds Disclaimer Clause.** No funds disclaimer clause as provided for in Section 11-35-2030 is required in these contracts.

## **ATTACHMENT B**

### **ESCO PROFILE FORM AND ESCO QUALIFICATIONS AND APPROACH TO PROJECT**

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## WRITTEN SUBMITTAL INFORMATION

The responses to this Request for Qualifications will consist of six (6) specific information subject areas and an Appendix which must be completed and returned in the order indicated below with each section divided and tabbed with the appropriate section title.

F. Organization, Qualifications and Experience

G. Financial Strength

H. References and Track Record

I. Project Management

J. Technical Approach

K. Authorization and Notary Statement

Appendix

A-1 Sample Investment Grade Audit

A-2 Sample Commissioning Plan

A-3 Sample Energy Services Agreement (Performance Contracting Agreement)

A-4 Sample District Savings Report

A-5 Sample Measurement and Verification Plan

A-6 Financial Statements

Any additional information not specifically requested in this RFQ must be put in a separate Appendix at the end of the response. Responses must be paginated and must include a table of contents.

- Failure to complete any question in whole or in part, or any deliberate attempt by the respondent to mislead the District, may be used as grounds to find the proposing ESCO ineligible.
- All submissions become the property of the District and will not be returned to the ESCO.
- All costs associated with submission preparation will be borne by the submitting ESCO.

### **A. ORGANIZATION, QUALIFICATIONS AND EXPERIENCE**

#### **1. General Firm Information**

FIRM'S NAME:
MAILING ADDRESS:
PHYSICAL ADDRESS:
CITY: STATE: ZIP:
COUNTY:
PHONE:
E-MAIL:
WEBSITE:

Names, Titles and Phone Number of two principal contact persons:

NAME	TITLE	PHONE

Submittal is for:  Parent Company  Division  Subsidiary  Branch Office

List any Division or Branch Offices that will participate materially in the development of the submission, and/or in the conduct of any services provided.

Name of Office: \_\_\_\_\_

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

Name and Address of Parent Company (if applicable)

Name: \_\_\_\_\_

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

Former Name(s) of Firm (if applicable)

Name: \_\_\_\_\_

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

2. **Date Prepared:** \_\_\_\_\_

3. **Type of Firm:**  Corporation  Partnership  
 Sole Ownership  Joint Venture

4. Federal Employer Identification Number: \_\_\_\_\_

5. Year Firm was Established: \_\_\_\_\_

6. Please indicate if your firm is a recognized as a Minority Business Enterprise.

Yes  No

If yes, indicate if your firm is registered as such with the SC Governor's Office of Small and Minority Business Assistance:

Yes  No

7. Five year summary of contract values for energy performance contracts implemented and currently under contract with your firm

2019: \$ \_\_\_\_\_ 2022: \$ \_\_\_\_\_

2020: \$ \_\_\_\_\_ 2023: \$ \_\_\_\_\_

2021: \$ \_\_\_\_\_

Indicate the number of all energy performance contracting projects implemented by and currently under contract with your firm. Limit your response to ONLY those projects that have been managed directly by the specific branch, division, office or any individual in such branch, division or office that will be specifically assigned to this project.

Estimate of total value for all energy performance contracts that are currently in repayment and under contract with your firm: \$ \_\_\_\_\_ (total value) as of \_\_\_\_\_ date.

8. Certifications, Awards and Credentials

a. Provide proof of membership by the Department of Energy and National Association of Energy Service Companies (NAESCO) accreditation.

b. List of pertinent certifications, awards and credentials

9. Corporate background/historical data

a. How many years has your firm been in business under its present business name?  
Years \_\_\_\_\_

b. Indicate all other names by which your organization has been known and the length of time known by each name.

\_\_\_\_\_



- c. How many years has your firm been involved in energy-related business?  
Years \_\_\_\_\_
- d. Please identify all states in which your firm is legally qualified to do business.  
\_\_\_\_\_
- e. Discuss your firm's local business footprint (years in business, annual revenues, number of employees, etc.)  
\_\_\_\_\_
- f. List your firm's previous or current business association with [DISTRICT]  
\_\_\_\_\_

**10. Personnel Information**

- a. Provide a graphical representation (organizational chart) of the participants listed in the ESCO's proposal and their responsibilities in the program. The chart is to be used to show the company and personnel responsible for each phase of the project, lines of authority, and relationships between prime contractor and subcontractors.
- b. Please identify your firm's legal counsel for this project.  
\_\_\_\_\_
- c. Include a list of key personnel and their responsibilities for the duration of the project contract. Include in this list the number of years each individual has been in the industry. Attach resumes of individuals who will directly have a role in the project (no more than 10 individuals).

**B. FINANCIAL STRENGTH**

**11. Demonstrate Financial Soundness of ESCO**

- a. Please describe the financial strength of your company as it relates to its ability to deliver performance for a period of 15-20 years. Does firm hold the guarantee or is a 3<sup>rd</sup> party utilized?
- b. Describe what resources your firm has available to assist the District with financing and funding solutions. Provide three bank references that have provided financing for past projects.
- c. Please provide financial statements including income statement, balance sheets, and statement of changes for three (3) most recently completed fiscal years. Owner may, during the evaluation process, request additional financial information for supplementation and clarification.

- d. Please provide proof of insurance with coverage and limits in place at the time of this RFQ.
- e. Please certify that your firm is not currently under suspension or debarment by the State of South Carolina, any other state, or the federal government.
- f. Describe your firm's capacity to issue payment and performance bonds. Provide a letter from surety company demonstrating the bonding capacity of the ESCO.
- g. Provide a letter of recommendation from a financial institution.

12. **Demonstrate Reasonable Pricing Policies**

- a. Please describe the specific services your firm will be paid for over the contract term. Describe the method by which you will be paid for those services and how often payments will be made.
- b. Describe your firm's overhead and profit pricing policies for these types of projects.
- c. Discuss your firm's approach to change orders.

13. **Provision of Financing**

- a. Please briefly describe the types of financing arrangements used by your firm for past performance contracting projects. Describe preferred approach to providing or arranging financing for this project including a description of the source of funds and the potential dollar amounts currently available to your firm to finance these types of projects. Please indicate what representative interest rates may be available, financing terms, and other variable economic factors associated with each method that you are aware of at the time of this submission.
- b. Describe your firm's capabilities and experience helping organizations secure available grants, rebates or other financial incentives associated with proposed project scope. Discuss strategies required to leverage these funds to meet specific parameters and ensure the Owner is not held liable to repayment of funds.

**C. REFERENCES AND TRACK RECORD**

14. **Project History**

Addressing all information on the following form, list at least (5) *five* energy performance contracting projects currently under contract with your firm, (3) *three* of which are in repayment with at least two full years' worth of saving data. *Limit your response to ONLY those projects that have been managed directly by the specific branch, division, office or any individual in such branch, division or office that will be specifically assigned to this project.* Projects with installed costs of less than \$500,000.00 or single technology projects (e.g. lighting only, controls only, etc.), or performed by other ESCOs will not be considered. Attach additional sheets as necessary. Please put an asterisk by those project references

involving buildings similar to the building(s) described in the technical appendices. **All information is required.**

Project History	
Project Name and Location	
Type of Facility(s)	
Project Dollar Amount (installed project costs)	
Primary scope items Installed	
Construction Start and End Date	
Contract Start & End Dates	
Dollar Value of Annual Projected Savings	
Break-out the type and amount of any non-energy savings included in the project (e.g., outside maintenance contracts, material savings, etc.)	
Method(s) of Savings Measurement and Verification and percentage of guarantee associated with each M&V protocol	
Identify all ESCO personnel associated with this project and their specific role(s) and responsibility(s)	
Provide current and accurate phone and email information of the owner(s)' representatives with whom your firm did business on this project.	

### 15. Project Track Record

- a. Please provide a complete list of projects that in the last 15 years have experienced a savings shortfall, include the amount of the shortfall and method in which it was remedied under your firm's savings guarantee.
- b. Please provide an acknowledgment letter signed by an officer of the respondent company affirming the statements in this section (15. Project Track Record) are true and correct. (Please include title of company officer). **Failure to provide accurate and complete information as requested is grounds for disqualification.**

## **D. PROJECT MANAGEMENT**

### **16. Project Alignment**

- a. Using no more than 1 typed page, describe why your firm is the best partner for the District. How does your approach align and advance the mission, vision and goals of this organization?

### **17. Project Understanding**

- a. Describe respondent's approach to project management, including: coordination with subcontractors, division of responsibility among project staff, and interaction with District representatives. Include a sample of any contracts and/or agreements between the respondent and subcontractor(s) that would be used in this project in an appendix.

### **18. Training Provisions**

- a. Outline any training proposed as part of the project, including the subject, duration, and location of training. Respondent should also describe the relationship with the organization providing training, if not provided by the prime contractor.
- b. Give specific, verifiable examples of how Offeror trained operating and maintenance personnel with similar responsibilities as District personnel.

### **19. Equipment and Maintenance Services**

- a. Specify how existing equipment will be incorporated, removed, surplus, etc.
- b. Please address how you would approach the role of the District's personnel in performing maintenance on existing and new equipment.
- c. Please discuss the relationship of maintenance services to the savings guarantee, any required length of the maintenance agreement and what impact termination of maintenance, prior to the end of the contract term, would have on the savings guarantee.
- d. Does your company (parent company) manufacture equipment? What is your approach to installing equipment/products from another manufacturer? Does your company have stated goals to use your equipment or products in ESPC projects?
- e. Describe what guidelines are established to identify when new or upgraded equipment will be installed post implementation period.
- f. Describe any warranties on equipment, systems, and materials. What factors are necessary to keep warranties valid? Provide samples of warranties and assignments of warranties if used.

- g. Describe the types of contract maintenance and/or repair services Offeror could provide. Comment on whether District's staff can perform some or all of these duties if desired.

20. **Value Added Services**

- a. Describe any additional benefits that may result from implementation of the comprehensive energy program and the respondent's added value elements in providing products/services for energy projects: including, but not limited to, jobs creation, potential greenhouse emissions reductions, and student engagement opportunities.

21. **Investment Grade Energy Audit**

- a. Please give a general description of your Investment Grade Audit Process.
- b. Please provide a sample *Investment Grade Audit Report*.

22. **Construction Planning**

- a. Please describe your firm's proposed approach to scheduling and completion of work required to implement a performance contract in the District's facility(s).
- b. Provide examples of situations where your firm has overcome challenges during construction.
- c. Please describe your firm's approach to the selection of contractors and consultants.

23. **Project Commissioning**

- a. Please describe your firm's approach to equipment commissioning.
- b. Please provide a *Sample Commissioning Plan* from a completed performance contract implemented by your firm.

**E. TECHNICAL APPROACH**

24. **Savings Guarantee Calculations**

- a. Please provide a copy of your firm's savings guarantee language and where to locate in your Energy Services Agreement. Please include a copy of your firm's *Energy Services Agreement*.
- b. Please describe your processes and approach to post-installation support services, training and measurement and verification services.
- c. Please describe District's role in maintaining the guarantee. Describe the type and frequency of communication throughout the guarantee and recourse if the District does not follow through on their responsibilities during the guarantee period. Provide

examples of how your firm has handled changes to District facilities or operations that would have an effect on the guarantee.

- d. Please attach a *Sample District Savings Report* from a completed energy performance-contracting project currently in repayment.

**25. Energy Baseline Calculation Methodology and Measurement and Verification Plan**

- a. Describe the methods used to compute baseline energy use. Describe any computerized modeling programs used by your firm to establish baseline consumption. Please summarize procedures, formulas, and methodologies including any special metering or equipment your firm will use to measure and calculate energy savings for this project.
- b. Describe the methods used to adjust the guaranteed level of savings from any material changes that occur due to factors such as weather, occupancy, facility use changes, etc.
- c. Describe your firm’s approach to utilizing stipulated savings. Indicate any operational cost savings opportunities and how such savings are to be identified, documented, and measured.
- d. Describe your firm’s proposed approach to treatment of savings achieved during construction and how those savings will be documented and verified.
- e. What are the standards of service and comfort (temperature, airflow, light levels, etc.) you would typically use for system design?

**F. AUTHORIZATION AND NOTARY STATEMENT**

**26. Authorization**

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.

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

By \_\_\_\_\_

Title \_\_\_\_\_

**27. Notary Statement**

a. Mr./Ms. \_\_\_\_\_ being duly sworn deposes and says that he/she is the \_\_\_\_\_ of \_\_\_\_\_, ESCO, and that answers to the foregoing questions and all statements therein contained are true and correct.

b. Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_ 20\_\_\_\_\_

## APPENDIX

A-1 Sample Investment Grade Audit

A-2 Sample Commissioning Plan

A-3 Sample Energy Services Agreement (Performance Contracting Agreement)

A-4 Sample District Savings Report

A-5 Sample Measurement and Verification Plan

A-6 Audited Financial Statements