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|--|--|----------------------|----------------------------|
|  <p>School District Five of<br/>Lexington and Richland<br/>Counties</p> | <b>District Five of Lexington<br/>and Richland Counties</b><br><br><b>Bid Invitation</b> | Solicitation #       | <b>2021-014</b>            |
|  |  | Date Issued          | <b>October 22, 2020</b>    |
|  |  | Procurement Official | <b>Lynda Robinson</b>      |
|  |  | Phone                | <b>(803) 476-8140</b>      |
|  |  | E-Mail Address       | <b>D5bids@lexrich5.org</b> |

|             |                          |
|-------------|--------------------------|
| DESCRIPTION | Garbage/Trash Collection |
|-------------|--------------------------|

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

|                                  |                              |
|----------------------------------|------------------------------|
| SUBMIT OFFER BY                  | November 10, 2020 @ 11:00 am |
| QUESTIONS MUST BE RECEIVED BY    | October 29, 2020 @ 12:00 pm  |
| NUMBER OF COPIES TO BE SUBMITTED | <b>1</b>                     |

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

SUBMIT YOUR SEALED OFFER TO:

**District Five of Lexington and Richland Counties  
Purchasing Office  
1020 Dutch Fork Road  
Irmo, SC 29063**

|  |                                 |
|--|---------------------------------|
| <b>CONFERENCE TYPE:</b> N/A<br><b>DATE &amp; TIME:</b> (EST)<br>As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions | <b>LOCATION:</b> Not Applicable |
|--|---------------------------------|

|                               |   |
|-------------------------------|---|
| <b>AWARD &amp; AMENDMENTS</b> | The award, this solicitation, and any amendments will be posted at the following web address:<br><a href="http://www.lexrich5.org/Page/25417">www.lexrich5.org/Page/25417</a> |
|-------------------------------|---|

You **must** submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of sixty (60) calendar days after the Opening Date.

|  |             |  |
|--|-------------|--|
| NAME OF OFFEROR (Full legal name of business submitting the offer)   |             | <b>OFFEROR'S TYPE OF ENTITY:</b><br>(Check one)<br><input type="checkbox"/> Sole Proprietorship<br><input type="checkbox"/> Partnership<br><input type="checkbox"/> Corporation (tax-exempt)<br><input type="checkbox"/> Corporate entity (not tax-exempt)<br><input type="checkbox"/> Government entity (federal, state, or local)<br><input type="checkbox"/> Other _____<br>(See "Signing Your Offer" provision.) |
| AUTHORIZED SIGNATURE<br><br>(Person signing <b>must</b> be authorized to submit binding offer to enter contract on behalf of Offeror named above.)   |             |  |
| TITLE (Business title of person signing above)   |             |  |
| PRINTED NAME (Printed name of person signing above)  | DATE SIGNED |  |
| Instructions regarding Offeror's name: Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror above. The entity named as the Offeror <b>must</b> be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, <i>i.e.</i> , a separate corporation, partnership, sole proprietorship, etc. |             |  |
| STATE OF INCORPORATION<br><br>(If Offeror is a corporation, identify the state of Incorporation.)  |             | TAXPAYER IDENTIFICATION NO.  |

**COVER PAGE**

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.)   |            |            |            |            |
|  | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">Area Code:</td> <td style="width: 25%;">Number:</td> <td style="width: 25%;">Extension:</td> <td style="width: 25%;">Facsimile:</td> </tr> </table> | Area Code: | Number:    | Extension: | Facsimile: |
| Area Code:   | Number:   | Extension: | Facsimile: |            |            |
|  | E-Mail Address:   |            |            |            |            |

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

**ACKNOWLEDGMENT OF AMENDMENTS:** Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue.

| Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date | Amendment No. | Amendment Issue Date |
|---------------|----------------------|---------------|----------------------|---------------|----------------------|---------------|----------------------|
|               |                      |               |                      |               |                      |               |                      |
|               |                      |               |                      |               |                      |               |                      |

|                             |                      |                     |                      |                         |
|-----------------------------|----------------------|---------------------|----------------------|-------------------------|
| DISCOUNT FOR PROMPT PAYMENT | 10 Calendar Days (%) | 20 Calendar Days(%) | 30 Calendar Days (%) | _____ Calendar Days (%) |
|                             | _____                | _____               | _____                |                         |

**MINORITY PARTICIPATION**

Please answer the following question:

1. Are you certified as a MOB/WOB (minority-owned business/woman-owned business) by the State of South Carolina?  
 Yes    No  
 If yes, provide certification number: \_\_\_\_\_.

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### I. SCOPE OF SOLICITATION

School District Five of Lexington and Richland Counties is seeking to establish a contract for garbage collection and disposal.

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

**MAXIMUM CONTRACT PERIOD – ESTIMATED:** December 1, 2020 End: November 30, 2025. Dates are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract – Effective Date / Initial Contract Period".

### **GENERAL INFORMATION:**

School District Five of Lexington and Richland Counties encompasses a land area of approximately 196 square miles, approximately one-half of which is situated in each of Lexington and Richland Counties. The school district consists of the northern portion of Lexington County lying north of Lake Murray and the Saluda River and the northwestern portion of Richland County lying south of the Broad River. The School District is primarily a residential suburb located to the northwest of the city of Columbia, the capital city of South Carolina. The District has approximately 2,450 employees and currently operates a total of 12 elementary schools, 2 intermediate schools, 3 middle schools, 4 high schools, 1 Center for Advanced Technical Studies and 1 alternative school. A new elementary school is scheduled to open in the fall of 2021. Additional basic information about the District is posted on the District's website at: [www.lexrich5.org](http://www.lexrich5.org).

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

**DEFINITIONS, CAPITALIZATION, AND HEADINGS:** CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUCT 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.

BOARD means the Board of Trustees of District Five of Lexington and Richland Counties.

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

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

CONTRACT means all types of District Five of Lexington and Richland Counties' agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, equipment or construction.

CONTRACT MODIFICATION means a written order signed by the Procurement Officer, directing the contractor to make changes which the clause of the contract TITLED "Changes, "if included herein, authorizes the Procurement Coordinator 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 District Five of Lexington and Richland Counties.

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

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

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

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

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:** (a) The Solicitation may be amended at any time prior to opening. All bidders requesting the bid package will be sent copies of all amendments. (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

**AWARD NOTIFICATION:** Notice regarding any award, cancellation of award, or extension of award will be posted at the location specified on the Cover Page. If the contract resulting from this Solicitation has a total or potential value in excess of fifty thousand dollars, in addition to the posted notice, notice of intended award will be sent to all Offerors responding to the Solicitation. Any award resulting from this Solicitation will not be effective until the eleventh day after such notice is given. When only one response is received, the notice of intended award and the ten-day delay of award may be waived.

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

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

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

**CERTIFICATE OF INDEPENDENT PRICE DETERMINATION: GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.**

(a) By submitting an offer, the Offeror certifies that:

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Offeror or competitor relating to:

(i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the Offeror, directly or indirectly, to any other Offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the Offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory:

(1) Is the person in the Offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or

(2)(i) Has been authorized, in writing, to act as agent for the Offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the Offeror's organization responsible for determining the prices offered in this bid or proposal];

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

(c) If the Offeror deletes or modifies paragraph (a)(2) of this certification, the Offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

**CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:**

(a)

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

(i) Offeror and/or any of its Principals

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

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing

a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and  
(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

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

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

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

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

Check for federal and state disbarments at [www.sam.gov](http://www.sam.gov) and <http://procurement.sc.gov/PS/legal/PS-legal-suspend-debar.phtm>.

**CODE OF LAWS AVAILABLE:** The District's Procurement Code is available at: [www.lexrich5.org](http://www.lexrich5.org).

**COMPLETION OF FORMS/CORRECTION OF ERRORS:** All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including the bid schedule).

**DEADLINE FOR SUBMISSION OF OFFER:** Any offer received after the Procurement Officer of the District or designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated District office or mailroom as instructed on the Cover page prior to the bid opening.

**DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE:** You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the District may withhold award. Before withholding award on these grounds, an Offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. Without limiting the foregoing, you represent that your offer identifies any services that relate to either this

solicitation or the work and that has already been performed by you, a proposed subcontractor, or an affiliated business of either.

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

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

**DUTY TO INQUIRE:** Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the District's attention.

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

**CIVIL RIGHTS PROVISIONS:** The contractor providing services under this Invitation to Bid must comply with the provisions of the Civil Rights Act of 1964, as amended. The contractor must comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with contractor's performance of work under this contract, contractor agrees not to discriminate against any employee(s) or applicant(s) for employment because of race, color, national origin, sex, age, or disability. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. To file a complaint, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free at (866) 632-9992. Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at 800-877-8339; or 800-845-6136 (Spanish). USDA is an equal opportunity provider and employer.

**PROHIBITION AGAINST CONFLICTS OF INTERESTS, GRATUITIES AND KICKBACKS:** "Any employee or any official of the school district, elective or appointive, who shall take, receive or offer to take or receive either directly or indirectly, any rebate, percentage of contract, money or other things of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, for, or to, or from, any person, partnership, firm of corporation, offering, bidding for, or in open market seeking to make sales to the school district shall be deemed guilty of a felony and upon

conviction such person or persons shall be subject to punishment or a fine in accord with State and/or Federal laws."

**OPEN TRADE REPRESENTATION:** By submitting an Offer, Offeror represents that the 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 SC Code Section 11-35-5300.

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

**PROTESTS:** Any prospective bidder, Offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen (15) days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, Offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten (10) days of the date notification of award is posted in accordance with this code. A protest shall be in writing, 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 Chief Procurement Officer within the time provided.

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

**QUESTIONS FROM OFFERORS:** (a) Any prospective Offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors. We will not identify you in our answer to your question. (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.

**Email is the preferred method for submitting questions with "Questions: Solicitation # as the subject of the email. Questions must be submitted in an easily copied format such as Word.**

Email: [D5bids@lexrich5.org](mailto:D5bids@lexrich5.org)

Questions may also be submitted to the address listed on the Cover Page of this document or faxed to (803) 476-8032.

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

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

(b) 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.

**PROHIBITED COMMUNICATIONS AND DONATIONS:** Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of law. (a) During the period between publication of the solicitation and final award, ***you must not communicate, directly or indirectly, with the District or its employees, agents or officials regarding any aspect of this procurement activity***, unless otherwise approved in writing by the Procurement Officer. (b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donation to a governmental entity with whom you have or seek to have a contract. You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the District during the period beginning eighteen months prior to the opening date.

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

**DISTRICT OFFICE CLOSINGS:** If an emergency or unanticipated event interrupts normal processes so that offers cannot be received at the District as designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal district processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule the 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. Useful information may be available at: <http://www.lexrich5.org>

**SUBMITTING CONFIDENTIAL INFORMATION:** 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 or (b) privileged and confidential. 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 officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the District withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.)

**SUBMITTING YOUR OFFER OR MODIFICATION:** (a) Offers and offer modifications shall be submitted in sealed envelopes or packages - (1) Addressed to the Office of Procurement Services as specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package. (c) Each Offeror must submit the number of copies indicated on the Cover Page. (d) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the Solicitation. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered.

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

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

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

**VENDOR REGISTRATION:** Offerors who have not provided products/services to the District in the past or within the past three years should complete a W-9 and submit it with your offer.

**WITHDRAWAL OR CORRECTION OF OFFER:** Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening,

the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085.

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

**CLARIFICATION:** Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of 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.

**DISCUSSIONS WITH BIDDERS:** After opening, the Procurement Officer may, in his sole discretion, initiate discussions with you to discuss your bid. Discussions are possible only if your bid is apparently responsive and only for the purpose of clarification to assure your full understanding of the solicitation's requirements. Any discussions will be documented in writing and shall be included with the bid.

### **PROTESTS:**

Bidders desiring to exercise protest rights under Section 4210 of the District Procurement Code should direct all correspondence to:

Lynda Robinson, Coordinator of Procurement  
School District Five of Lexington and Richland Counties  
1020 Dutch Fork Road  
Irmo, SC 29063  
Fax: 803-476-8140  
E-Mail: [ljrobins@lexrich5.org](mailto:ljrobins@lexrich5.org)

**EVERY RESULTING CONTRACT IS SUBJECT TO ALL TERMS OF THE DISTRICT PROCUREMENT CODE INCLUDING LIMITATIONS AS TO DURATION, RIGHTS OF THE DISTRICT TO TERMINATE AND MEANS OF DISPUTE RESOLUTION. NO RESULTING CONTRACT IS RENEWABLE EXCEPT TO THE EXTENT PROVIDED IN THE SOLICITATION. NO VENDOR TERMS TAKE PRECEDENCE OVER THE SOLICITATION AND DISTRICT PROCUREMENT CODE.**

### III. SCOPE OF WORK / SPECIFICATIONS

#### SCOPE OF WORK

School District Five of Lexington and Richland Counties is seeking to establish a contract for garbage collection and disposal. The District currently has a student population of approximately 17,000 students with twenty-three (23) site locations and a new elementary school opening in the fall of 2021. The sites are indicated on the Bid Schedule and the addresses are listed in Attachment A.

**CONTRACT TERMS:** The initial contract period shall be for one (1) year from the date of award of this contract. In addition, the contract may be renewed for four (4) additional one (1) year periods if both parties agree to such an extension. The contract shall automatically renew on each anniversary date unless the contractor receives notice that the District elects not to renew the contract at least thirty (30) days prior to the renewal date.

The initial price must remain fixed during the initial term. Any price decreases must be passed on to the District within two weeks of price change. No price increases will be considered during the contract term. Request for price increases shall be made in writing to the Coordinator of Purchasing one hundred and eighty (180) days prior to the end of the contract term. The District may choose to negotiate a fair and reasonable increase with the current contract holder or may choose to cancel the contract and rebid the services.

#### SPECIFICATIONS

These specification cover refuse, trash, transportation and disposal services. The contractor shall furnish all labor, transportation, equipment and materials necessary in providing the required level of services.

**1. DESCRIPTION OF REFUSE**

Refuse collection as described in these specifications shall include paper, rags, bottles, metal, boxes, cloth, cans, cartons, crates, worn out articles of equipment and broken furniture, etc. The contractor shall provide a list of nonconforming refuse not accepted as standard waste at the landfill. The contractor shall also notify the District when nonconforming refuse is found in the containers. The District will be responsible for removing any nonconforming refuse prior to contractor loading the contents of the container.

**2. BUSINESS HOURS**

The Contractor must be available Monday through Friday from 8:30 AM to 5:00 PM.

**3. CONTRACTOR REPRESENTATIVE**

a) The Contractor must, within ten (10) days after the award of the contract and prior to commencement of work, submit the following contract representative's point-of-contact information to the District Representative.

- Name of primary and or secondary representative
- Address
- Office telephone number
- Fax number
- Email address
- Business phone number
- Emergency telephone number
- Cell phone number
- Primary and secondary liaisons normal working hours

b) The contractor representative must be able to accept requests after normal working hours for emergency situations. The contractor representative must also have the authority and capacity to fill requests and take action on any written notices or official correspondence. The Contractor shall have the right to change or substitute the name of its point of contact

at any time during the course of the contract. However, the contractor must immediately notify the District in writing of the change.

**4. COLLECTION, TRANSPORTATION AND DISPOSAL**

1. All refuse materials must be collected and transported by the contractor in accordance with the rules and regulations of the State of South Carolina, and the US Federal Government, including but not limited to the South Carolina Solid Waste Policy and Management Act of 1991. Refuse must be taken to a legal designated facility for disposal.
2. Each receptacle must be emptied in accordance with the bid schedule and returned to its original position with the lid closed. Any spillage around the receptacle must be swept up and removed during the current pick-up schedule. All excess debris around the receptacle must be disposed of by the contractor at time of pickup. The District is not requiring the contractor to re-load container. However, the Contractor will be held accountable for the clean-up of any spillage occurred during the time of its service. Excess debris that has been placed around the containers will be the responsibility of the District.
3. During collection, the District will perform a visual inspection for spillage and will make its determination on clean-up responsibility. If the inspection reveals that the offeror is not responsible, then the District will perform the clean-up.
4. All open top containers must be covered for over the road transportation. Extreme care must be exercised to avoid damaging trees, shrubs, plants, containers, buildings or other structures. The contractor is required to respond to complaints regarding these matters within twelve (12) hours of notification. The contractor is responsible for all costs associated with any damage or cleanup. The contractor must let the District Representative know immediately if any situation occurs that violates these conditions.
5. The District reserves the right to add or delete buildings and locations as required during the entire contract period. The District reserves the right to adjust size of receptacles, frequency of pickup, and schedule pick-up times as deemed necessary. The District's bid schedule unit prices contained herein will be used for adjusting price (increase or decrease) as mentioned herein. The District will have delegation authority to generate change order for adding or deleting buildings and container sizes as they are described on the bid schedule. A change order will be issued by the District for all requests that will drastically change the scope of work from its present form herein to include container sizes not previously mentioned on the work sheet.

**6. COLLECTION SCHEDULE**

The number of pickup days per week for each location is reflected on the bid schedule. All pickups shall be made no later than 12:00 PM. Pickups will be scheduled on weekdays as follows:

- 1 per Week – Friday
- 2 per Week – Monday, Thursday
- 3 per Week – Monday, Wednesday, Friday
- 4 per Week – Monday, Tuesday, Thursday, Friday
- 5 per Week – Monday through Friday

Note that special pick-up schedules will need to be made the last two weeks of the school year and the two weeks prior to the opening of school in August. The schools will need five (5) pickups per week during those weeks to help cover the volume of refuse for disposal. Summer pickups will last approximately eight (8) weeks.

**7. EQUIPMENT**

- a) All containers must comply with all applicable State, County, Local, and Federal codes.
- b) At the beginning of the first contract term and again at the beginning of the third contract term, the contractor shall provide freshly painted containers that are free of dents and blemishes with new lids/covers.

- c) The containers must have leak-proof bodies incorporated in their design for its intended use plus remain leak-proof throughout the length of the contract.
- d) Equipment must be properly maintained so that doors, latches, switches, covers, etc., function properly.
- e) Lids must cover the top of the container and be in working condition at all times
- f) The exterior of the containers must be painted as necessary in order to continuously present a well-maintained appearance.
- g) Containers shall be clearly marked with the contractors name and telephone number.
- h) All vehicles used by the contractor in conjunction with the contract must be equipped with a warning devise, which automatically sounds when the vehicle is in reverse gear.

The bidder, prior to the execution of the contract, will be required to show proof that their company has sufficient equipment and personnel to provide the services required. The bidder shall have back-up equipment and personnel to cover any breakdown or scheduled maintenance or service. The district reserves the right to inspect the bidder's facilities, equipment and personnel prior to award.

**8. CLEANING AND SANITIZING**

- a) All containers used in providing services in accordance with these specifications shall be cleaned and sprayed at least once per month with an insecticide and an odor counter acting agent to maintain a sanitary condition and to eliminate objectionable odors, unsightly outward appearance and the breeding of vermin and insects. When monthly treatment does not effectively eliminate or control the problem, more frequent cleanings and sprayings will be warranted.
- b) Special attention in cleaning shall be given to seams and rolled edges of containers and covers. The cleaning and disinfecting of containers will be subject to approval of The South Carolina Department of Health and Environmental Control and the District.

**10. INACCESSIBLE RECEPTACLES**

The District will provide adequate vehicular access to the container sites, however, the incidence of an illegally parked vehicles or a delivery vehicle which blocks contractor access may occur from time to time. Should the Contractor find any container blocked, the Contractor should immediately contact the District Representative. The Contractor should continue on to other sites and return to the blocked site. A blocked receptacle must still be emptied no later than the following work day.

**11. MISSED PICKUPS**

- a) Missed pickups will be defined as the contractor not picking up a container on their normal scheduled route at any of the District locations.
- b) Should a pickup be missed by the contractor for whatever reason, the contractor shall make the pickup as soon as possible but no later than the following day. Failure to make a pickup by the following day shall result in a credit in accordance with the bid prices and will be applied to the monthly invoice. Failure to pick up a container because the container is consistently obstructed will not result in a credit, provided that the contractor has notified the District Representative of the obstruction.
- c) Missed pickups on a regular basis will not be tolerated and will be grounds for termination of the contract.
- d) If a regularly scheduled pickup falls on a holiday, the pickup will be made on the day before. Any other arrangements must be agreed upon by the District Representative. The Contractor will supply a list of observed holidays to the District Representative at the beginning of each contract period.

**9. PRICING**

- a) The contractor will include in its annual price the below items (1 through 3). The District will not pay invoices that list these items as a separate charge.
  - 1. Fuel surcharge
  - 2. Administration fees
  - 3. Or any other fees/charges that are not identified

Therefore, the contractor's total annual cost must include all fees and surcharges. If the fuel market has drastic price increases, the District may consider a nominal temporary fuel surcharge at that time. The contractor will be required to provide evidence to justify any surcharges. The District will expect the surcharges to be dropped as soon as the market stabilizes. Fuel surcharges will only be considered on rare special circumstances.

b) Additions/Deletions to this contract for additional services needed or services no longer required will be based on the alternate unit prices on the Bid Schedule.

10. **PERMITS AND LICENSES**

The contractor shall without any additional expense to the School District, be responsible for obtaining any necessary licenses and permits for complying with any applicable federal, state or local laws, codes, and regulations in connection with the execution of the work under this contract. The contractor shall be responsible for all damages to person and/or property that occur as a result of his/her negligence.

11. **STRIKES AND WORK STOPPAGES**

The District reserves the right to engage temporary collection and disposal service from any other source in the event the Contractor is not able to provide the services called for herein for reasons not limited to strikes, work stoppages, and equipment breakdown. The Contractor will be responsible for the cost associated with the temporary service. If the cost exceeds the contractor's monthly invoice to the District, the District will bill the contractor for the difference. Otherwise the cost will be deducted from the monthly invoice. In the event of a delay in service, the Contractor is to notify the District Representative as soon as possible.

## IV. INFORMATION FOR OFFERORS TO SUBMIT

**INFORMATION FOR OFFERORS TO SUBMIT – GENERAL:** Offeror shall submit a signed Cover Page, Page Two, bid schedule, and Amendments (if applicable). Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; and any appropriate attachments addressed in section IX. Attachments to Solicitations. You should submit a summary of all insurance policies you have or plan to acquire to comply with the insurance requirements stated herein, if any, including policy types; coverage types; limits, sub-limits, and deductibles for each policy and coverage type; the carrier's A.M. Best rating; and whether the policy is written on an occurrence or claims-made basis.

**SUBMITTING REDACTED OFFERS:** You are required to mark the original copy of your offer to identify any information that is exempt from public disclosure. You must do so in accordance with the clause entitled "Submitting Confidential Information." In addition, you must also submit one complete copy of your offer from which you have removed any information that you marked as exempt, i.e., a redacted copy. The information redacted should mirror in every detail the information marked as exempt from public disclosure. The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on magnetic media. (See clause entitled "Magnetic Media Required Format.") Except for the redacted information, the CD must be identical to the original hard copy. Portable Document Format (.pdf) is preferred.

## V. QUALIFICATIONS

**QUALIFICATION OF OFFEROR: (1)** To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the District's standards of responsibility and information from any other source may be considered. An Offeror must, upon request of the District, furnish satisfactory evidence of its ability to meet all contractual requirements We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. **(2)** You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award.

### QUALIFICATIONS -- REQUIRED INFORMATION

In order to evaluate your responsibility, offeror shall submit the following information or documentation for the offeror and any subcontractor, if the value of subcontractor's portion of the work exceeds 10% of your price (if in doubt, provide the information):

- a) Provide information on company's background including the number of years in business, size of firm, and the number of available trucks.
- b) Include a brief history of the offeror's experience in providing work of similar size and scope.
- c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) which you have performed and the general history and experience of your organization.
- d) A list of every business for which offeror has performed, at any time during the past three year(s), services substantially similar to those sought with this solicitation. Err on the side of inclusion; by submitting an offer, offeror represents that the list is complete.
- e) List of failed projects, suspensions, debarments, and significant litigation. If no such list exists, please include a statement to that fact.



## VI. AWARD CRITERIA

**AWARD CRITERIA:** Award will be made to the lowest responsive and responsible bidder.

**AWARD TO ONE OFFEROR:** Award will be made to one Offeror.

## VII. TERMS AND CONDITIONS – A. GENERAL

### **ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE**

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

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

**BANKRUPTCY:** (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the District. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all District contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is cancellable and subject to immediate termination by the District upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

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

**CONTRACT DOCUMENTS & ORDER OF PRECEDENCE:** (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer, if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the District's final acceptance (a/k/a "award"), and

(7) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the District or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) 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 or designee shall be void and of no effect.

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

**DISPUTES:** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (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:** Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

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

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

**NO INDEMNITY OR DEFENSE:** Any term or condition is void to the extent it requires the District to indemnify, defend, or pay attorney's fees to anyone for any reason.

**NOTICE:** (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified on Cover Page. 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 REPRESENTATION:** 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 SC Code Section 11-35-5300.

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

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

**PAYMENT FOR GOODS AND SERVICES:** Payment for goods and services received by the District shall be processed in accordance with the District Procurement Code. A purchase order will be issued and must be referenced on all invoices presented for payment.

**PURCHASE ORDERS:** Contractor shall not perform any work prior to the receipt of a purchase order from the district. The district shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. Purchase order number must be clearly stated on each carton or package, shipping ticket, invoice and any/all other information related to the order.

**ITEM SUBSTITUTION:** (This clause does not apply to solicitations for service requirements). No substitutes will be allowed on purchase orders received from the District without permission from the Procurement Official.

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

**SWMBE PARTICIPATION:** District Five of Lexington and Richland Counties encourages SWMBE businesses to participate in the Solicitation process. All business conducted with SWMBE businesses certified by the South Carolina Governor's Office of Small and Minority Business Assistance is recorded in an annual report submitted to the Board of Trustees. In order to be included in this report, you must submit a copy of your certificate with your bid.

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

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

**WAIVER:** The District does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of District's rights under this Contract. Any waiver must be in writing.

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

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

- (a) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the District in accordance therewith;
- (b) Method of shipment or packing;
- (c) Place of delivery;
- (d) Description of services to be performed;
- (e) Time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) Place of performance of the services.

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

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price

made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the District promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

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

(4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

**CISG:** The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement.

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

**TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD:** The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is one (1) year from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. Prices submitted in response to this solicitation shall remain firm during the initial term.

**TERM OF CONTRACT – OPTION TO RENEW:** (a) At the end of the initial term, and at the end of each renewal term, the District reserves the right to extend the contract for a period not to exceed up to four (4) additional one (1) year period(s) upon the mutual agreement of both parties and provided prices remain the same for the extended one-year period(s). Regardless, this contract expires no later than the last date stated on the final statement of award.

**TERM OF CONTRACT – TERMINATION BY CONTRACTOR:** Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least one hundred eighty (180) days prior to the expiration of the then current term.

**TERMINATION:** Subject to the conditions below, the District, providing a (30) thirty-day advance written notice is given to the vendor, may terminate the contract for any reason.

**NON-APPROPRIATIONS:** Any contract entered into by the District resulting from this bid invitation shall be subject to cancellation without damages or further obligation when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period or appropriated year.

**FOR CONVENIENCE:** In the event that this contract is terminated or canceled upon request and for the convenience of the District without the required thirty (30) days advance written notice, then the District may negotiate reasonable termination costs, if applicable.

**FOR CAUSE:** Termination by the District for cause, default or negligence on the part of the vendor shall be excluded from the foregoing conditions; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived and the default clause in this bid shall apply.

**DEFAULT:** In case of default by the vendor, the District reserves the right to purchase any or all items in default in the open market, charging the vendor with any additional costs. The defaulting

vendor shall not be considered a responsible bidder until the assessed charge has been satisfied.

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

**CONTRACTS:** Every resulting contract is subject to all terms of the district procurement code including limitations as to duration, rights of the district to terminate and means of dispute resolution. No resulting contract is renewable except to the extent provided in the solicitation. No vendor terms take precedence over the solicitation and the District's procurement code.

**CONTRACT LIMITATIONS:** No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment.

**CONTRACTOR'S LIABILITY INSURANCE(General):**

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

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

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

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

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

(c) The District and its officers, officials, employees and volunteers must be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

(d) For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the District and its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District and its officers, officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(e) Prior to commencement of the work, the Contractor shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required

by this section. All certificates are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

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

(g) Contractor hereby grants to the District and all of its officers, officials, employees and volunteers a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

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

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

**CONTRACTOR PERSONNEL:** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. Contractor personnel shall present a professional appearance at all times while on District property. Personnel shall be neat, clean, well groomed, properly uniformed, and conduct themselves in a respectable and courteous manner and display proper identification. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. No forms of tobacco products, alcohol, and drugs, guns, knives, or other weapons are allowed on the District's premises.

The District reserves the right to prohibit any individual employee of the Contractor from providing services on District property or at District events if the District determines, in its sole discretion, that such employee poses a threat to the safety or well-being of students, District/school personnel, or others.

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

**DEFAULT:** (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 State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

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

(e) If this contract is terminated for default, 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.

**ESTIMATED QUANTITY - PURCHASES FROM OTHER SOURCES:** The District may bid separately any unusual requirements or large quantities of supplies covered by this contract.

**ESTIMATED QUANTITY – UNKNOWN:** The total quantity of purchases of any individual item on the contract is not known. The State does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information.

**DEFECTIVE GOODS:** Any item delivered in an unacceptable condition will not be accepted. Successful bidder agrees to pay for return shipment of goods that arrive in a defective or inoperable condition. Offeror must agree to arrange for return shipment of damaged goods.



**DESCRIPTIVE LITERATURE – LABELING:** Include offeror’s name on the cover of any specifications or descriptive literature submitted with your offer.

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

**ILLEGAL IMMIGRATION:** (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 subcontractor’s 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-subcontractor’s language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

**INDEMNIFICATION - THIRD PARTY CLAIMS - General:** Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee’s negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor’s obligations hereunder are in no way limited by any protection afforded under workers’ compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, “Indemnitees” means District Five of Lexington and Richland Counties, its instrumentalities, agencies, departments, boards, and all their respective officers, agents and employees.

**INDEMNIFICATION INTELLECTUAL PROPERTY:** (a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the District, its instrumentalities, agencies departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. The District shall allow Contractor to defend such claim so long as the defense is diligently and

capably prosecuted. The District shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon the District. The District shall reasonably cooperate with Contractor's defense of such claim.

(b) In the event an injunction or order shall be obtained against the District's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for the District the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by the District. If either (1) nor (2), above, is practical, the District may require that Contractor remove the acquired item from the District, refund to the District any charges paid by District therefore, and take all steps necessary to have the District released from any further liability.

(c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the District unless Contractor knew its compliance with the District's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the District if the District knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor.

(d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work.

(e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

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

**MATERIAL AND WORKMANSHIP:** Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended.

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

(a) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) By unit prices specified in the Contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or,

(e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

(2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830.

**PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY:** 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. 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

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

**RECORDS RETENTION AND RIGHT TO AUDIT:** The District has the right to audit the books and records of the contractor as they pertain to this contract, both independent of, and pursuant to, the District Procurement Code. Such books and records shall be maintained for a period of three (3) years from the date of final payment under the contract.

**PURCHASING CARD:** Contractor agrees to accept payment by the district's purchasing card for no extra charge. The purchasing card is issued by Visa. The purchasing card allows the district to make authorized purchases from a vendor without the requirement to issue a purchase order.

**RELATIONSHIP OF THE PARTIES:** Neither party is an employee, agent, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

**RELATIONSHIP OF USING GOVERNMENTAL UNITS:** Each using governmental unit's obligations and liabilities are independent of every other using governmental unit's obligations and liabilities. No using governmental unit shall be responsible for any other using governmental unit's act or failure to act.

**WARRANTY:** The Contractor warrants to the District that all work performed as a result of this solicitation and specifications will be performed in a professional manner and consistent with Federal, State, and local laws.

**VIII. BIDDING SCHEDULE**

**Vendor Name:** \_\_\_\_\_

| <b>LOCATION</b>                   | <b># OF CONTAINERS</b> | <b>CONTAINER SIZE (YARDS)</b> | <b># OF WEEKLY PICKUPS SCHOOL YEAR</b> | <b># OF WEEKLY PICKUPS SUMMER</b> |
|-----------------------------------|------------------------|-------------------------------|--|-----------------------------------|
| District Office                   | 2                      | 8                             | 2                                      | 1                                 |
| Ballentine Elementary             | 2                      | 8                             | 3                                      | 2                                 |
| Chapin Elementary                 | 2                      | 8                             | 5                                      | 1                                 |
| Chapin Bus Transportation         | 1                      | 6                             | 2                                      | 1                                 |
| Chapin Intermediate               | 1                      | 8                             | 5                                      | 1                                 |
| Chapin Middle                     | 1                      | 8                             | 5                                      | 1                                 |
| Chapin High                       | 3                      | 8                             | 5                                      | 1                                 |
| Cross Roads Middle                | 2                      | 8                             | 2                                      | 1                                 |
| Dutch Fork Elementary             | 1                      | 8                             | 3                                      | 2                                 |
| Dutch Fork Middle                 | 2                      | 8                             | 2                                      | 1                                 |
| Dutch Fork High                   | 3                      | 8                             | 5                                      | 3                                 |
| Dutch Fork Bus Transportation     | 1                      | 6                             | 3                                      | 2                                 |
| H.E. Corley Elementary            | 1                      | 8                             | 5                                      | 2                                 |
| Harbison West Elementary          | 2                      | 8                             | 3                                      | 1                                 |
| Irmo Bus Transportation           | 1                      | 6                             | 2                                      | 1                                 |
| Irmo Elementary                   | 2                      | 8                             | 4                                      | 1                                 |
| Irmo High                         | 3                      | 8                             | 5                                      | 3                                 |
| Irmo High                         | 1                      | 6                             | 5                                      | 3                                 |
| Irmo Middle                       | 2                      | 8                             | 3                                      | 1                                 |
| Lake Murray Elementary            | 2                      | 8                             | 3                                      | 1                                 |
| Leaphart Elementary               | 1                      | 8                             | 2                                      | 2                                 |
| Nursery Road Elementary           | 1                      | 8                             | 4                                      | 3                                 |
| Oak Pointe Elementary             | 1                      | 8                             | 4                                      | 2                                 |
| River Springs Elementary          | 1                      | 8                             | 3                                      | 2                                 |
| Seven Oaks Elementary             | 1                      | 8                             | 3                                      | 2                                 |
| Spring Hill High                  | 2                      | 8                             | 4                                      | 2                                 |
| The Center for Adv. Tech. Studies | 1                      | 8                             | 2                                      | 2                                 |

**Total Annual Price (Basis of Award):** \$ \_\_\_\_\_

**ADD ON / DELETIONS**

**MONTHLY COST FOR ONE (1) 8 YARD CONTAINER**

2 X PER WEEK \$ \_\_\_\_\_  
3 X PER WEEK \$ \_\_\_\_\_  
4 X PER WEEK \$ \_\_\_\_\_  
5 X PER WEEK \$ \_\_\_\_\_

**MONTHLY COST FOR ONE (1) 6 YARD CONTAINER**

2 X PER WEEK \$ \_\_\_\_\_  
3 X PER WEEK \$ \_\_\_\_\_  
4 X PER WEEK \$ \_\_\_\_\_  
5 X PER WEEK \$ \_\_\_\_\_

**MONTHLY COST FOR ONE (1) 4 YARD CONTAINER**

2 X PER WEEK \$ \_\_\_\_\_  
3 X PER WEEK \$ \_\_\_\_\_  
4 X PER WEEK \$ \_\_\_\_\_  
5 X PER WEEK \$ \_\_\_\_\_

**COST OF UNSCHEDULED PICK-UP FOR ONE CONTAINER (8 YARD)**

\$ \_\_\_\_\_

**COST OF 30 YARD ROLL OFF CONTAINER**

DELIVERY \$ \_\_\_\_\_  
PICK-UP \$ \_\_\_\_\_  
MONTHLY RENTAL \$ \_\_\_\_\_  
DISPOSAL PER TON \$ \_\_\_\_\_

**COST OF 40 YARD ROLL OFF CONTAINER**

DELIVERY \$ \_\_\_\_\_  
PICK-UP \$ \_\_\_\_\_  
MONTHLY RENTAL \$ \_\_\_\_\_  
DISPOSAL PER TON \$ \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_

Print name and Title: \_\_\_\_\_

## **IX. ATTACHMENTS TO SOLICITATION**

- A. Site Addresses
- B. Minority Participation Affidavit
- C. Offeror's Checklist

## **ATTACHMENT A**

### **SITE ADDRESSES**

- District Office, 1420 Dutch Fork Road, Irmo, SC 29063
- Ballentine Elementary School, 1040 Bickley Road, Irmo, SC 29063
- Chapin Elementary School and Chapin Bus Transportation Building, 940 Bush River Road, Chapin, SC 29036
- Dutch Fork Elementary School, 7900 Broad River Road, Irmo, SC 29063
- H E Corley Elementary School and Irmo Transportation Building, 1500 Chadford Road, Irmo, SC 29063
- Harbison West Elementary School, 257 Crossbow Drive, Columbia, SC 29212
- Irmo Elementary School, 7401 Gibbes Street, Irmo, SC 29063
- Lake Murray Elementary School, 1531 Three Dog Road, Chapin, SC 29036
- Leaphart Elementary School, 120 Piney Grove Road, Columbia, SC 29210
- Nursery Road Elementary School, 6706 Nursery Road, Columbia, SC 29212
- Oak Pointe Elementary School, 1 River Bottom Road, Irmo, SC 29063
- River Springs Elementary School, 115 Connie Wright Road, Irmo, SC 29063
- Seven Oaks Elementary School, 2800 Ashland Road, Columbia, SC 29210
- Chapin Intermediate School, 1130 Old Lexington Highway, Chapin, SC 29036
- Chapin Middle School, 11661 Broad River Road, Chapin, SC 29036
- CrossRoads Intermediate School, 6949 St. Andrews Road, Columbia, SC 29212
- Irmo Middle School, 6051 Wescott Road, Columbia, SC 29212
- Dutch Fork Middle School and Dutch Fork Transportation Building, 1528 Old Tamah Road, Irmo, SC 29063
- Chapin High School, 300 Columbia Avenue, Chapin, SC 29036
- Dutch Fork High School, 1400 Old Tamah Road, Irmo, SC 29063
- Irmo High School, 6671 St. Andrews Road, Columbia, SC 29212
- Spring Hill High School, 11629 Broad River Road, Chapin, SC 29036
- The Center for Advance Technical Studies, 916 Mount Vernon Church Road Chapin, SC 29036
- Piney Woods Elementary, 814 Amicks Ferry Road, Chapin, SC 29036 (Opening in the fall of 2021)

**ATTACHMENT B**

**MINORITY PARTICIPATION AFFIDAVIT**

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

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

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

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

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

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

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

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

- Traditional minority
- Traditional minority, but female
- Women (Caucasian females)
- Hispanic minorities
- DOT referral (Traditional minority)
- DOT referral (Caucasian female)
- Temporary certification
- SBA 8 (a) certification referral
- Other minorities (Native American, Asian, etc.)

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

The Department of Administration, Division of Small and Minority Business Contracting and Certification, publishes a list of certified minority firms. The Minority Business Directory is available at the following URL: <http://osmba.sc.gov/directory.html>  
[04-4015-3]



## ATTACHMENT C

### OFFEROR'S CHECKLIST AVOID COMMON MISTAKES!

(Review this checklist prior to submitting your offer)

- ✓ COMPLETED & SIGNED ALL REQUIRED DOCUMENTS.
- ✓ DO NOT INCLUDE ANY OF YOUR STANDARD CONTRACT FORMS!
- ✓ UNLESS EXPRESSLY REQUIRED, DO NOT INCLUDE ANY ADDITIONAL BOILERPLATE CONTRACT CLAUSES!
- ✓ MAKE SURE YOUR OFFER DOES NOT TAKE EXCEPTION TO ANY OF THE DISTRICT'S MANDATORY REQUIREMENTS!
- ✓ MAKE SURE YOU HAVE PROPERLY MARKED ALL PROTECTED, CONFIDENTIAL OR TRADE SECRET INFORMATION IN ACCORDANCE WITH THE INSTRUCTIONS: "SUBMITTING CONFIDENTIAL INFORMATION." DO NOT MARK YOUR ENTIRE RESPONSE AS CONFIDENTIAL, TRADE SECRET OR PROTECTED! DO NOT INCLUDE A LEGEND ON THE COVER STATING THAT YOUR ENTIRE RESPONSE IS NOT TO BE RELEASED!
- ✓ PROPERLY ACKNOWLEDGED ALL AMENDMENTS?
- ✓ MAKE SURE THAT YOUR OFFER INCLUDES THE SOLICITATION COVER PAGE. MAKE SURE THE COVER PAGE IS SIGNED BY A PERSON THAT IS AUTHORIZED TO CONTRACTUALLY BIND YOUR BUSINESS.
- ✓ MAKE SURE YOUR OFFER INCLUDES THE NUMBER OF COPIES REQUESTED.
- ✓ CHECK TO ENSURE YOUR OFFER INCLUDES EVERYTHING REQUESTED!
- ✓ IF YOU HAVE CONCERNS ABOUT THE SOLICITATION, DO NOT RAISE THOSE CONCERNS IN YOUR RESPONSE! AFTER OPENING, IT IS TOO LATE! IF THIS SOLICITATION INCLUDES A QUESTION & ANSWER PERIOD OR A PRE-SOLICITATION CONFERENCE, RAISE YOUR QUESTIONS AS PART OF THAT PROCESS.

This checklist is included only as a reminder to help offerors avoid common mistakes. Responsiveness will be evaluated against the solicitation, not against this checklist. You do not need to return this checklist with your offer.

#### **SUBMIT WITH OFFER:**

1. Cover Page
2. Page 2
3. Bid Schedule
4. Minority Participation Affidavit
5. Completed W-9 (if needed)