

**STANDARD SOLICITATION PROVISIONS AND GENERAL CONTRACT CLAUSES
FOR
THE S.C. MATERIALS MANAGEMENT OFFICE**

THE BELOW LISTED STANDARD SOLICITATION PROVISIONS AND GENERAL CONTRACT CLAUSES WILL NO LONGER BE PRINTED IN FULL TEXT IN SOLICITATIONS ISSUED BY THE MATERIALS MANAGEMENT OFFICE, BUT WILL BE INCORPORATED BY REFERENCE AS SHOWN HEREIN.

STANDARD SOLICITATION PROVISIONS
=====

INSTRUCTIONS TO BIDDERS:

WHEN SPECIFICATIONS OR DESCRIPTIVE LITERATURE ARE SUBMITTED WITH YOUR INVITATION FOR BID, ENTER BIDDER'S NAME THEREON.

DO NOT INCLUDE MORE THAN ONE BID INVITATION PER ENVELOPE. IF DIRECTING ANY OTHER CORRESPONDENCE ADDRESS THE ENVELOPE TO THE PROCUREMENT OFFICER, BUT DO NOT INCLUDE THE BID NUMBER ON THIS ENVELOPE SINCE IT DOES NOT INCLUDE YOUR BID.

BY SUBMISSION OF A BID, YOU ARE GUARANTEEING THAT ALL GOODS AND/OR SERVICES MEET THE REQUIREMENTS OF THE BID DURING THE CONTRACT PERIOD.

UPON SUBMISSION OF A BID BY A STATE AGENCY, THE PROCUREMENT OFFICER WILL COMPUTE A 5% SALES/USE TAX TO THE NON-STATE AGENCY BIDS WHEN APPLICABLE (SERVICE/LABOR EXCLUDED) IN DETERMINING THE LOW BIDDER. THIS PROCEDURE IS NECESSARY BY S.C. TAX COMMISSION SALES AND USE TAX REGULATION 117-174-.95.

UNIT PRICE GOVERNING: UNIT PRICES WILL GOVERN OVER EXTENDED PRICES UNLESS OTHERWISE STATED IN BID INVITATION.

BIDDERS QUALIFICATION: BIDDERS MUST, UPON REQUEST OF THE STATE, FURNISH SATISFACTORY EVIDENCE OF THEIR ABILITY TO FURNISH PRODUCTS OR SERVICES IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THESE SPECIFICATIONS. THE MATERIALS MANAGEMENT SECTION RESERVES THE RIGHT TO MAKE THE FINAL DETERMINATION AS TO THE BIDDER'S ABILITY TO PROVIDE THE PRODUCTS OR SERVICES REQUESTED HEREIN.

RISK OF LOSS: THE CONTRACTOR SHALL ASSUME ALL RISK OF LOSS, AND SHALL MAINTAIN INSURANCE COVERAGE ON ALL ITEMS INSTALLED, UP TO THE TIME OF FINAL ACCEPTANCE.

AWARD CRITERIA: THE AWARD SHALL BE MADE TO THE LOWEST RESPONSIBLE AND RESPONSIVE BIDDER(S) WHOSE BID MEETS THE REQUIREMENTS AND CRITERIA SET FORTH IN THE INVITATION FOR BID.

REJECTION: THE STATE RESERVES THE RIGHT TO REJECT ANY BID THAT CONTAINS PRICES FOR INDIVIDUAL ITEMS OR SERVICES THAT ARE UNREASONABLE WHEN COMPARED TO THE SAME OR OTHER BIDS IF SUCH ACTION IS IN THE BEST INTEREST OF THE STATE.

ORDER OF PRECEDENCE: IN THE EVENT OF INCONSISTENCY BETWEEN PROVISIONS OF THIS SOLICITATION, THE INCONSISTENCY SHALL BE RESOLVED BY GIVING PRECEDENCE IN THE FOLLOWING ORDER: (A) BID PRICING SCHEDULE, (B) BID SPECIFICATIONS, (C) STANDARD SOLICITATION PROVISIONS/GENERAL CONTRACT CLAUSES, WHETHER INCORPORATED BY REFERENCE OR OTHERWISE, (D) SPECIAL SOLICITATION PROVISIONS/SPECIAL CONTRACT CLAUSES AND (E) INSTRUCTIONS TO BIDDERS.

CORRECTION OF ERRORS ON THIS BID FORM: 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. ERASURES OR USE OF TYPEWRITER CORRECTION FLUID MAY BE CAUSE FOR REJECTION. NO BID SHALL BE ALTERED OR AMENDED AFTER SPECIFIED TIME FOR OPENING.

INDEMNIFICATION: THE STATE OF SOUTH CAROLINA, ITS OFFICERS, AGENTS, AND EMPLOYEES SHALL BE HELD HARMLESS FROM LIABILITY FROM ANY CLAIMS, DAMAGES, AND ACTIONS OF ANY NATURE ARISING FROM THE USE OF ANY MATERIALS FURNISHED BY THE CONTRACTOR, PROVIDED THAT SUCH LIABILITY IS NOT ATTRIBUTABLE TO NEGLIGENCE ON THE PART OF THE USING AGENCY OR FAILURE OF THE USING AGENCY TO USE THE MATERIALS IN THE MANNER OUTLINED BY THE CONTRACTOR IN DESCRIPTIVE LITERATURE OR SPECIFICATIONS SUBMITTED WITH THE CONTRACTOR'S PROPOSAL.

MMO Provisions & Clauses by Reference (OCT 2004)

RECORDS RETENTION & RIGHT TO AUDIT: THE STATE SHALL HAVE THE RIGHT TO AUDIT THE BOOKS AND RECORDS OF THE CONTRACTOR AS THEY PERTAIN TO THIS CONTRACT, BOTH INDEPENDENT OF, AND PURSUANT TO, S.C. CODE SECTION 11-35-2220. SUCH BOOKS AND RECORDS SHALL BE MAINTAINED FOR A PERIOD OF THREE (3) YEARS FROM THE DATE OF FINAL PAYMENT UNDER THE CONTRACT.

THE STATE MAY CONDUCT, OR HAVE CONDUCTED, PERFORMANCE AUDITS OF THE CONTRACTOR. THE STATE MAY CONDUCT, OR HAVE CONDUCTED, AUDITS OF SPECIFIC REQUIREMENTS OF THIS BID AS DETERMINED NECESSARY BY THE STATE.

PERTAINING TO ALL AUDITS, CONTRACTOR SHALL MAKE AVAILABLE TO THE STATE ACCESS TO ITS COMPUTER FILES CONTAINING THE HISTORY OF CONTRACT PERFORMANCE AND ALL OTHER DOCUMENTS RELATED TO THE AUDIT. ADDITIONALLY, ANY SOFTWARE USED BY THE CONTRACTOR SHALL BE MADE AVAILABLE FOR AUDITING PURPOSES AT NO COST TO THE STATE.

DISCUSSION WITH BIDDERS: DISCUSSION MAY BE CONDUCTED WITH APPARENT RESPONSIVE BIDDERS FOR THE PURPOSE OF CLARIFICATION TO ASSURE FULL UNDERSTANDING OF THE REQUIREMENTS OF THE INVITATION FOR BIDS.

GENERAL CONTRACT CLAUSES
=====

DEFAULT: IN CASE OF DEFAULT BY THE CONTRACTOR, THE STATE RESERVES THE RIGHT TO PURCHASE ANY OR ALL ITEMS IN DEFAULT IN THE OPEN MARKET, CHARGING THE CONTRACTOR WITH ANY ADDITIONAL COSTS. THE DEFAULTING CONTRACTOR SHALL NOT BE CONSIDERED A RESPONSIBLE BIDDER UNTIL THE ASSESSED CHARGE HAS BEEN SATISFIED.

NON-APPROPRIATIONS: ANY CONTRACT ENTERED INTO BY THE STATE OR ITS DEPARTMENTS, INSTITUTIONS, AGENCIES, POLITICAL SUBDIVISIONS OR OTHER ENTITIES 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.

CONTRACT ADMINISTRATION: QUESTIONS OR PROBLEMS ARISING AFTER AWARD OF THIS CONTRACT SHALL BE DIRECTED TO THE MATERIALS MANAGEMENT SECTION, 1201 MAIN STREET, SUITE 600, COLUMBIA, SOUTH CAROLINA 29201.

FORCE MAJURE: THE CONTRACTOR SHALL NOT BE LIABLE FOR ANY EXCESS COSTS IF THE FAILURE TO PERFORM THE CONTRACT ARISES OUT OF CAUSES BEYOND THE CONTROL AND WITHOUT THE FAULT OR NEGLIGENCE OF THE CONTRACTOR. SUCH CAUSES MAY INCLUDE, BUT ARE NOT RESTRICTED TO ACTS OF GOD OR OF THE PUBLIC ENEMY, ACTS OF THE GOVERNMENT IN EITHER ITS SOVEREIGN OR CONTRACTUAL CAPACITY, FIRES, FLOODS, EPIDEMICS, QUARANTINE RESTRICTIONS, STRIKES, FREIGHT EMBARGOES, AND UNUSUALLY SEVERE WEATHER BUT IN EVERY CASE THE FAILURE TO PERFORM MUST BE BEYOND THE CONTROL AND WITHOUT THE FAULT OR NEGLIGENCE OF THE CONTRACTOR. IF THE FAILURE TO PERFORM IS CAUSED BY DEFAULT OF A SUBCONTRACTOR, AND IF SUCH DEFAULT ARISES OUT OF CAUSES BEYOND THE CONTROL OF BOTH THE CONTRACTOR AND SUBCONTRACTOR, AND WITHOUT THE FAULT OR NEGLIGENCE OF EITHER OF THEM, THE CONTRACTOR SHALL NOT BE LIABLE FOR ANY EXCESS COSTS FOR FAILURE TO PERFORM, UNLESS THE SUPPLIES OR SERVICES TO BE FURNISHED BY THE SUBCONTRACTOR WERE OBTAINABLE FROM OTHER SOURCES IN SUFFICIENT TIME TO PERMIT THE CONTRACTOR TO MEET REQUIRED DELIVERY SCHEDULE.

SAVE HARMLESS: (THIS CLAUSE DOES NOT APPLY TO SOLICITATIONS FOR SERVICE REQUIREMENTS). THE SUCCESSFUL BIDDER SHALL INDEMNIFY AND SAVE HARMLESS THE STATE OF SOUTH CAROLINA AND ALL STATE OFFICERS, AGENTS, AND EMPLOYEES, FROM ALL SUITS OR CLAIMS OF ANY CHARACTER BROUGHT BY REASON OF INFRINGING ON ANY PATENT, TRADE MARK OR COPYRIGHT. BIDDER SHALL HAVE NO LIABILITY TO THE STATE IF SUCH PATENT; TRADE MARK OR COPYRIGHT INFRINGEMENT OR CLAIM IS BASED UPON THE BIDDER'S USE OF MATERIAL FURNISHED TO THE BIDDER BY THE STATE.

PUBLICITY RELEASES: CONTRACTOR AGREES NOT TO REFER TO AWARD OF THIS CONTRACT IN COMMERCIAL ADVERTISING IN SUCH A MANNER AS TO STATE OR IMPLY THAT THE PRODUCTS OR SERVICES PROVIDED ARE ENDORSED OR PREFERRED BY THE USER.

QUALITY OF PRODUCT: (THIS CLAUSE DOES NOT APPLY TO SOLICITATIONS FOR SERVICE REQUIREMENTS). UNLESS OTHERWISE INDICATED IN THIS BID IT IS UNDERSTOOD AND AGREED THAT ANY ITEM OFFERED OR SHIPPED ON THIS BID SHALL BE NEW AND IN FIRST CLASS CONDITION, THAT ALL CONTAINERS SHALL BE NEW AND SUITABLE FOR

STORAGE OR SHIPMENT, AND THAT PRICES INCLUDE STANDARD COMMERCIAL PACKAGING. FOR INFORMATION TECHNOLOGY PROCUREMENTS AS DEFINED IN 11-35-310 OF THE PROCUREMENT CODE, IF ITEMS THAT ARE OTHER THAN NEW (I.E. REMANUFACTURED OR REFURBISHED) ARE DESIRED TO BE BID, THE BIDDER MUST OBTAIN WRITTEN PERMISSION TO BID SUCH ITEMS AT LEAST 5 DAYS IN ADVANCE OF BID OPENING FROM THE PERSON TO WHOM INQUIRIES ARE TO BE DIRECTED AS LISTED ON THE FRONT PAGE OF THE INVITATION FOR BID.

SOUTH CAROLINA GOVERNING LAW CLAUSE: THE AGREEMENT AND ANY DISPUTE, CLAIM, OR CONTROVERSY RELATING TO THE AGREEMENT SHALL, IN ALL RESPECTS, BE INTERPRETED, CONSTRUED, ENFORCED AND GOVERNED BY AND UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA. 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 STATE'S CONSTITUTION. AS USED IN THIS PARAGRAPH, THE TERM "AGREEMENT" MEANS ANY TRANSACTION OR AGREEMENT ARISING OUT OF, RELATING TO, OR CONTEMPLATED BY THE SOLICITATION.

TERMINATION: SUBJECT TO THE CONDITIONS BELOW, THE CONTRACT MAY BE TERMINATED FOR ANY REASON BY THE MATERIALS MANAGEMENT SECTION PROVIDING A 30 DAY ADVANCE NOTICE IN WRITING IS GIVEN TO THE CONTRACTOR.

FOR CONVENIENCE - IN THE EVENT THAT THIS CONTRACT IS TERMINATED OR CANCELED UPON REQUEST AND FOR THE CONVENIENCE OF THE STATE WITHOUT THE REQUIRED THIRTY (30) DAYS ADVANCE WRITTEN NOTICE, THEN THE STATE MAY NEGOTIATE REASONABLE TERMINATION COSTS, IF APPLICABLE.

FOR CAUSE - TERMINATION BY THE STATE FOR CAUSE, DEFAULT OR NEGLIGENCE ON THE PART OF THE CONTRACTOR 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. (SEE CLAUSE NO. 1)

ASSIGNMENT: NO CONTRACT OR ITS PROVISIONS MAY BE ASSIGNED, SUBLET, OR TRANSFERRED WITHOUT THE WRITTEN CONSENT OF THE MATERIALS MANAGEMENT SECTION.

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.

ITEM SUBSTITUTION: (THIS CLAUSE DOES NOT APPLY TO SOLICITATIONS FOR SERVICE REQUIREMENTS). NO SUBSTITUTES WILL BE ALLOWED ON PURCHASE ORDERS RECEIVED FROM AGENCIES WITHOUT PERMISSION FROM THE MATERIALS MANAGEMENT SECTION.

RESTRICTIONS/LIMITATIONS: NO PURCHASES ARE TO BE MADE FROM THIS CONTRACT FOR ANY ITEM THAT IS NOT LISTED OR FOR ANY ITEM THAT IS CURRENTLY AUTHORIZED UNDER ANY OTHER CONTRACT AWARDED PRIOR TO THIS CONTRACT.

PURCHASES FROM OTHER SOURCES: THE MATERIALS MANAGEMENT SECTION RESERVES THE RIGHT TO BID SEPARATELY ANY UNUSUAL REQUIREMENTS OR LARGE QUANTITIES OF THE ITEMS SPECIFIED IN THIS PROPOSED CONTRACT (THE ABOVE DOES NOT APPLY TO SOLICITATIONS FOR SERVICE REQUIREMENTS). (THE FOLLOWING PORTION APPLIES ONLY TO STATEWIDE TERM CONTRACTS) OTHERWISE, IT IS MANDATORY THAT ALL GOVERNMENTAL BODIES PROCURE THEIR REQUIREMENTS FOR THE GOODS AND SERVICES DURING ITS TERM, PROVIDED HOW-EVER THAT SECTION 9 OF THE PROVISOS TO THE APPROPRIATIONS ACT REQUIRES THAT,"...IF A GOVERNMENTAL BODY IS OFFERED GOODS AND SERVICES AT A PRICE THAT IS AT LEAST TEN PERCENT LESS THAN THE TERM CONTRACT PRICE FOR THE SAME GOODS OR SERVICES, IT MAY PURCHASE FROM THE VENDOR OFFERING THE LOWER PRICE AFTER FIRST OFFERING THE VENDOR HOLDING THE TERM CONTRACT THE OPTION TO MEET THE LOWER PRICE. IF THE VENDOR HOLDING THE TERM CONTRACT MEETS THE LOWER PRICE, THEN THE GOVERNMENTAL BODY MUST PURCHASE FROM THE CONTRACT VENDOR..."

CONTRACT PARTICIPATION: UNDER AUTHORITY OF SECTION 11-35-4810 OF THE S.C. PROCUREMENT CODE, THE MATERIALS MANAGEMENT SECTION HAS DETERMINED THAT ANY CONTRACT RESULTING FROM THIS SOLICITATION SHALL BE MADE AVAILABLE UNDER THE SAME TERMS AND CONDITIONS TO PUBLIC PROCUREMENT UNITS IN THE STATE.

CONTRACT AMENDMENTS, MODIFICATIONS & CHANGE ORDERS: ANY CHANGE ORDERS, ALTERATIONS, AMENDMENTS OR OTHER MODIFICATIONS HEREUNDER SHALL NOT BE EFFECTIVE UNLESS REDUCED TO WRITING AND APPROVED BY THE BUYER RESPONSIBLE FOR THIS SOLICITATION AND THE CONTRACTOR. ALL QUESTIONS, PROBLEMS OR CHANGES ARISING AFTER AWARD OF THIS CONTRACT SHALL BE DIRECTED TO THE BUYER RESPONSIBLE FOR THIS SOLICITATION, AT 1201 MAIN STREET, SUITE 600, COLUMBIA, SC 29201.

PROTECTION OF HUMAN HEALTH & THE ENVIRONMENT: THE STATE OF SOUTH CAROLINA REQUIRES ALL CONTRACTUAL ACTIVITIES TO BE IN COMPLIANCE WITH LOCAL, STATE, AND FEDERAL MANDATES CONCERNING "PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT". ANY CONTRACTOR DOING BUSINESS WITH THE STATE WILL BE REQUIRED TO DOCUMENT COMPLIANCE AND TO SPECIFY PRUDENT PRACTICES USED BY THE CONTRACTOR TO ADDRESS APPLICABLE MANDATES INCLUDING, BUT NOT RESTRICTED TO "THE HAZARD COMMUNICATION STANDARD" OSHA CFR 1910.1200 (SCRR ARTICLE 1,71-1910.1200). BY SUBMISSION OF THIS BID, THE VENDOR AGREES TO TAKE ALL NECESSARY STEPS TO ENSURE COMPLIANCE WITH THESE REQUIREMENTS.

PAYMENT FOR GOODS & SERVICES: PAYMENT FOR GOODS & SERVICES RECEIVED BY THE STATE SHALL BE PROCESSED IN ACCORDANCE WITH SECTION 11-35-45 OF THE SOUTH CAROLINA PROCUREMENT CODE.

PROVISIONS AND CLAUSES BY REFERENCE

THE FOLLOWING S.C. STANDARD SOLICITATION PROVISIONS AND GENERAL CONTRACT CLAUSES ARE INCORPORATED HEREIN BY REFERENCE WITH THE SAME FORCE AND EFFECT AS IF SET FORTH HEREIN IN FULL TEXT. THE FULL TEXT OF THESE PROVISIONS AND CLAUSES IS AVAILABLE ON THE MATERIALS MANAGEMENT OFFICE WEBSITE AT www.state.sc.us/mmo/ops/chgbid.doc AND IS POSTED AT THE MATERIALS MANAGEMENT OFFICE.

STANDARD SOLICITATION PROVISIONS

(APPLIES TO ALL SOLICITATIONS)

AWARD CRITERIA
REJECTION
INSTRUCTIONS TO BIDDERS
UNIT PRICE GOVERNING
BIDDERS QUALIFICATION
INDEMNIFICATION

ORDER OF PRECEDENCE
CORRECTION OF ERRORS
RECORDS RETENTION
DISCUSSION WITH BIDDERS
RISK OF LOSS

GENERAL CONTRACT CLAUSES

(APPLIES AS INDICATED BELOW)

OPEN MARKET CONTRACTS

DEFAULT
CONTRACT ADMINISTRATION
FORCE MAJURE
SAVE HARMLESS
PUBLICITY RELEASES
QUALITY OF PRODUCT

GOVERNING LAW
ASSIGNMENT
AFFIRMATIVE ACTION
CONTRACT AMENDMENTS
PROTECTION OF HUMAN HEALTH
PAYMENT FOR GOODS & SERVICES

STATEWIDE TERM CONTRACTS

AGENCY CONTRACTS

DEFAULT
NON-APPROPRIATIONS
CONTRACT ADMINISTRATION
FORCE MAJURE
SAVE HARMLESS
PUBLICITY RELEASES
QUALITY OF PRODUCT
GOVERNING LAW
TERMINATION
ASSIGNMENT
AFFIRMATIVE ACTION
ITEM SUBSTITUTION
RESTRICTIONS/LIMITATIONS
PURCHASES FROM OTHER SOURCES
CONTRACT PARTICIPATION
CONTRACT AMENDMENTS
PROTECTION OF HUMAN HEALTH
PAYMENT FOR GOODS & SERVICES
SOUTH CAROLINA PURCHASING CARD
CONTRACT AMENDMENTS, MODIFICATIONS & CHANGE ORDERS

DEFAULT
NON-APPROPRIATIONS
CONTRACT ADMINISTRATION
FORCE MAJURE
SAVE HARMLESS
PUBLICITY RELEASES
QUALITY OF PRODUCT
GOVERNING LAW
TERMINATION
ASSIGNMENT
AFFIRMATIVE ACTION
ITEM SUBSTITUTION
RESTRICTIONS/LIMITATIONS
PURCHASES FROM OTHER SOURCES
CONTRACT AMENDMENTS
PROTECTION OF HUMAN HEALTH
PAYMENT FOR GOODS & SERVICES