



## **Procurement Department**

2 Space Drive • Taylors, SC 29687-6072 • (864) 355-1279 • Fax (864) 355-1283

## **The School District of Greenville County**

November 14, 2018

# **Invitation for Bid (IFB)**

**Ref:** USDA Fresh Fruit and Vegetable Program for  
Food and Nutrition Services

**IFB No.:** 118-82-12-6

**Bid Due:** December 6, 2018, at 10:00 A.M. EST

The School District of Greenville County invites responsible firms to submit **SEALED BIDS** to provide an USDA Fresh Fruit and Vegetable Program for Food and Nutrition Services (FANS).

This program is to be completed in accordance with all terms, conditions, and specifications contained or referenced in this solicitation. The solicitation Program Specifications were developed and approved by the Administration and Staff of the SDGC FANS Department and are included by reference in this solicitation and its referenced documents. For a complete detailed description of the program, the Bid Form and program documents should be consulted.

### **Solicitation Schedule Recap**

**Inquiry Deadline:** November 27, 2018, at 10:00 A.M. EST

**Public Opening and Bid Due Date/Time:** December 6, 2018, at 10:00 A.M. EST

### **Definition of Terms**

The terms, "vendor", "contractor", "prime contractor", "firm", "offeror", "proposer", "responder", "supplier" or "bidder" may be used interchangeably and refers to the entity offering a proposal. These terms are defined as including a legal business association of one (1) or more persons existing at the time of the proposal submission. The term "Agreement" means any transaction or contractual arrangement contemplated or created as a result of, arising out of, or relating to the solicitation and subsequent award. The terms, "The School District of Greenville County", "Greenville County Schools", "Customer", "Owner", "District", "SDGC", "GCSD", "GCS", "Board of Trustees" and "Board" may be used interchangeably and refers to the entity issuing the solicitation, receiving and reviewing the proposals and issuing an award. The term "Day" or "Days" refers to calendar days, unless noted otherwise.

### **Program Documents**

The Program Specifications are incorporated in this IFB as an enclosure. Note that the solicitation, its enclosures, and any future addendum may be posted and available for download on the SDGC Procurement Department website [www.greenville.k12.sc.us/Departments/procure.asp](http://www.greenville.k12.sc.us/Departments/procure.asp). Note that all program documents are incorporated into this solicitation by reference.

### **District Schedule**

Note that the District will be closed in observance of **Thanksgiving** from November 21, 2018, through November 23, 2018. For further information on the District calendar, interested parties may refer to the District website [www.greenville.k12.sc.us](http://www.greenville.k12.sc.us).

### **Pre-Bid Conference**

For this solicitation, the District will not conduct a Pre-Bid Conference.

### **Inquiries**

All inquiries/comments shall be submitted **in writing** to Patricia Phillips, Procurement Officer, 2 Space Drive, Taylors, South Carolina 29687 **no later than November 27, 2018, at 10:00 A.M. EST**. Firms may email questions to both [pPhillip@greenville.k12.sc.us](mailto:pPhillip@greenville.k12.sc.us) and [tstroud@greenville.k12.sc.us](mailto:tstroud@greenville.k12.sc.us), or fax the questions to (864) 355-1283. Verbal inquiries and comments will not be addressed at any time. Bidders shall not contact any other District employees or representatives in any way other than the method described herein.

After the Inquiry Deadline, prospective bidders will be notified by an addendum of any changes, additional information or clarifications to the solicitation, approved products lists, project design and/or specifications, or other information. Questions and comments received after the Inquiry Deadline will not be addressed. Questions and comments related to an addendum shall not be addressed after the Inquiry Deadline.

### **Alternate Products/Services**

Concerning the submission of requests for approval of alternate products, this same Inquiry Deadline applies. Each request for approval of alternate products shall include sufficient documentation for the District to evaluate the request. The District is not required to ask for additional technical data; therefore, anyone submitting such a request is advised to provide full technical information for the District's consideration.

Due care and diligence have been used in the preparation of the solicitation and specifications. The information contained herein is believed to be substantially correct; however, the responsibility for determining the full extent of the exposure and the verification of all information presented herein shall rest solely upon the bidding entity.

**Requests for approval of alternate product, material or service shall be submitted to the undersigned Procurement Officer prior to the Inquiry Deadline. Sufficient documentation and proof or apparent equivalency shall be provided to the Procurement Officer in order for the District to make a determination of acceptability or rejection.**

The District and its representatives will not be responsible for any errors or omissions in the specifications or the bidder's response nor for the failure on the part of the bidder to determine the full extent of the solicitation requirements and exposures.

Bidders may submit alternate products for consideration; however, the District is not required to accept any alternate product or provide an explanation as to why the alternate product was not accepted. The District reserves the right to determine if minor deviations from the listed specifications are acceptable. The District reserves the exclusive right to determine what constitutes a deviation. A minor deviation is defined as change from the stated solicitation requirements that shall have little or no material effect upon the required product and/or service.

The District reserves the exclusive right to determine the relative quality and acceptability of any proposed equipment, product, material or service when compared to the solicitation specifications. The District reserves the right to determine the acceptability of any proposed alternative service/product not requested in the invitation.

Bidders shall furnish any information the bidder deems important for District review. The District is not required to accept any submitted, non-pertinent documentation. When applicable, the bidder shall provide other information for any product that is bid. Pertinent information shall be provided with the bid so that the District may evaluate the bid properly.

**Important Note:** During the solicitation and evaluation process, inquiries or contacts made to District employees outside of the District Procurement Department may cause the associated firm's bid to be deemed non-responsive.

#### **Bidder Responsibility**

Each bidder may be required to submit three (3) professional references prior to an award for verification as to the quality of work. The District reserves the right to contact any or all professional references and discuss the bidder's past and present performance. The District reserves the right to utilize all data collected from professional references and project or business location site visits to evaluate the contractor's responsibility or capability.

#### **Award**

This is a sealed bid solicitation.

An award for the entire program may be made as **one lot** to the lowest pricing, responsible offeror whose responsive bid is determined to be the most advantageous to the District, taking into consideration the **Total Price** and the offeror's performance capabilities, inclusive of all requirements and adherence to the terms of this solicitation.

The Total Price is the sum total of all the extended line pricing detailed on page two (2) of the Bid Form. These extended figures shall be totaled to determine the lowest pricing bidder.

Any award shall encompass all of the requirements of the solicitation. Products or line items shall not be awarded individually.

The District shall not consider nor issue an award to two (2) or more bidders.

This program is on a critical timeline, and a contractor's ability to provide the program within the specified period of time will be examined and included in the evaluation.

### **Bid Evaluation Information**

Bids will be reviewed for the purpose of determining responsiveness and responsibility. Any bid that does not meet the salient requirements of the solicitation will be deemed non-responsive. The submission of a bid does not necessarily qualify the bidder as responsible, nor does the submission of a bid qualify the bid as responsive.

The award statement will be posted in the Procurement Department, 2 Space Drive, Taylors, South Carolina. The public may review this statement during regular office hours. Interested parties may call the Procurement Department at (864) 355-1279 to determine if an award has been posted. It is the responsibility of the Bidder to physically confirm such posting. Bidders may have the right to protest this solicitation or its subsequent award in accordance with Article XIV of the District's Procurement Code. Should a protest period end on a day that the District is closed, the protestor may file by 5:00 P.M. the following day that the District is open for business.

### **Insurance**

Please include a copy of the bidder's certificate of liability insurance and Workman's Compensation *in the sealed bid package* with the bid.

### **Bid Security**

The District does not require Bid Security for this solicitation.

### **Performance and Payment Bonds**

The District does not require Performance and Labor and Material Payment Bonds for this solicitation.

### **Licensing (When Applicable)**

The Prime Contractor and any Subcontractors shall be licensed in full accordance with the provisions of Section 40-11-10 through 40-11-340 of the Code of Laws of South Carolina, 1976, as amended.

### **Bid Form**

Enclosed is the official Bid Form to be used in submitting a bid. Only this Bid Form is to be used; no other Bid Form is acceptable. Indicate the bidding firm's name on each page of the Bid Form and have each page signed and dated by a person authorized to do so. Do not change the Bid Form or insert a different unit of measure or unit of pricing. Bidders must complete the Bid Form or insert the letters "N/A" if the bidder chooses not to submit a price. Failure to complete the form may cause the bidder to be determined non-responsive. The Bid Form shall be completed by the bidder in order to be considered for an award.

**NOTE:** Bidders that alter the Bid Form are qualifying the bid response and are subject to disqualification. A cover letter on the bidder's corporate stationery should include any information the bidder determines to be important to the evaluation of the bid.

After bids are recorded and the Intent to Award is issued, no additional costs will be considered. Hidden or undisclosed costs will not be accepted.

### **Contract Term**

The initial term of contract shall be from **date of award** through **July 31, 2019**. The next subsequent contract terms would be from August 1, 2019, through July 31, 2020.

The contract term resulting from this solicitation will be for one (1) base year with the option to renew annually for each of four (4) additional one-year periods if agreed to by the successful bidder(s) and the District. The total program is anticipated to be in effect for five (5) years.

If applicable, requests for price increases will be entertained by the District only as follows: Any requests for increase in pricing must be received in writing by a Procurement Officer no less than ninety (90) calendar days prior to the contract renewal date. Any increases in price may not exceed the Consumer Price Index for Urban Consumers (CPI-U) for the Southeast Region of the United States for the previous calendar year or three per cent (3%), whichever is less at the time of renewal. The District reserves the right to require supporting documentation from a disinterested third party related to increases in costs for the service(s) and/or product(s) in question. Price increases shall not be automatic. The District will determine the adequacy and acceptability of requests for price increases and any submitted documentation to support such requests.

### **Contract Termination for Cause**

The District reserves the right to terminate this solicitation or resulting agreement upon a thirty (30) calendar day notice, when in the best interest of the District. Termination of any contract by the District for cause, non-performance, default or negligence on the part of the successful bidder shall be a retained right. Termination costs levied against the District shall not apply and the thirty (30) calendar day termination notice requirement shall be waived. The default provisions shall apply when a contract is terminated for cause.

The District reserves the right to terminate the continuation of any agreement, service or award resulting from this solicitation when funding has not been appropriated. The District does not anticipate canceling a contract; however, it shall reserve the right to act in the best interest of the District and its constituents.

### **Bidder's/Contractor's Relationship with the District**

The successful bidder shall be independent of the District. None of the bidder's employees shall be deemed for any purpose to be employees, agents, or servants of the District, but shall at all times serve as employees, agents, or servants of the contractor for whom and at whose direction they shall act. No acts performed for or representations made, whether written or oral, by the contractor to third parties shall bind the District. The contractor shall be solely responsible for the withholding and payment of all federal, state, and local personal income, social security, unemployment, workers compensation, and other payroll taxes for its employees. The District

shall have no liability of any sort for the contractor's employees.

The successful bidder shall be responsible for any loss or damage to property (in the sole opinion of the District) owned by the District and in the bidder's possession or control. No portion of this contract shall be subleased, assigned, transferred or conveyed without written approval from a Procurement Officer of the District prior to or after issuance of the Intent to Award. The District will NOT provide office space, utilities and operating expenses. This includes phone, copier, fax and postage expenses.

### **Agreement**

The District shall not accept, enter into or sign any proposed agreement(s), document(s), offer(s), contract(s), leases(s) and/or provision(s) that materially conflicts with the District's General Terms and Conditions, the requirements of this solicitation or which are determined not to be in the best interest of the District.

This solicitation and the District's General Terms and Conditions shall govern and take precedence as the contract between the District and the awarded proposer. The terms of the agreement between the District and the successful bidder shall comply with the requirements contained in this solicitation and the District's General Terms and Conditions which are incorporated herein.

**NOTE: Should the bidder require the District to sign any contract(s), any document(s) and/or any agreement(s), the bidder shall inquire in writing if the District would consider its proposed contract(s), document(s) and/or agreement(s) and shall provide such contract(s), document(s) and/or agreement(s) or other pertinent documents to the District's undersigned Procurement Officer prior to the Inquiry Deadline which is noted in the solicitation. Submittal of any document(s) does not mean acceptance of the document(s) and the information contained therein, by the District or that a bidder is considered by the District to be responsible and/or the subsequent proposal responsive.**

Bids that include agreements, terms, conditions, contracts and/or contract provisions which conflict with the District's General Terms and Conditions (attached) and/or which were not submitted prior to the Inquiry Deadline and/or were not approved by the District and/or conflict with the requirements of this solicitation, may be rejected by the District as non-responsive. The rights and authority to make such a determination is reserved solely to the Procurement Officers of the District's Procurement Department.

The District shall not accept any proposed agreement, contract, lease, terms and conditions or any other contractual document which may be included with the proposal that has not been previously submitted prior to the Inquiry Deadline or is referenced to be enforceable in the future. The District shall not accept any terms and conditions which would be prejudicial to other proposers and/or materially change the solicitation. Software licensing agreements are included in this requirement.

Interested firms are hereby given notice that a "Bid Response Certification" form is included within the solicitation and by signing the certification form, with no alterations allowed, the

bidder agrees to be bound by the terms and conditions of the solicitation and by the District's General Terms and Conditions.

The School District of Greenville County's Procurement Code and Regulations govern and supersede any and all other documents, proposals and policies, whether stated or implied. Proposers may have the right to protest this solicitation or subsequent award in accordance with Article XIV of the District's Procurement Code.

Interested firms or individuals that submit a bid/proposal that contradicts this solicitation and which is not in compliance with the requirements of this solicitation, including the District's General Terms and Conditions, acknowledge and understand that, by doing so, its proposal may be deemed non-responsive by the District. Potential proposers that cannot agree to the above conditions should not expect to have a proposal considered for an award.

**DEFAULT**

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

Please mark the SEALED envelope containing the bid as follows:

**Sealed Bid Enclosed**

USDA Fruit and Vegetable Program  
IFB No. 118-82-12-6

Mail or hand-deliver the bid to:

The School District of Greenville County  
2 Space Drive  
Taylors, South Carolina 29687  
Attn: Procurement Department

**Solicitation Conditions**

The official time due time for a solicitation response is maintained according to the Time/Date Stamp located **in** the SDGC Procurement Department. All solicitation responses shall be received in The School District of Greenville County Procurement Department, 2 Space Drive, Taylors, South Carolina 29687, no later than the time specified in this solicitation. Solicitation responses shall be in the physical possession of a Procurement Department employee prior to the due time or the solicitation response shall be determined to be late once the due time has occurred. Responses that are in another SDGC location, room, department or area at the solicitation due time other than the Procurement Department shall be determined to be late and

shall not be accepted. If there is doubt as to the location of the Procurement Department, individuals may contact the District for directions. The District is not responsible for the interpretation of any directions by the bidder. The District is not responsible for weather, traffic, parking, or road conditions.

**NOTE: BIDS RECEIVED OR DATE STAMPED AFTER THE BID OPENING TIME SHALL NOT BE ACCEPTED OR CONSIDERED. FAXED OR EMAILED BIDS SHALL NOT BE CONSIDERED.**

The School District of Greenville County assumes no responsibility for the delivery of any solicitation, addendum, solicitation response, or any other correspondence by the U.S. Postal Service, delivery service, electronic transmission, facsimile or any other method.

Bid prices must remain in effect for sixty (60) calendar days from the bid due date. Bid prices submitted shall be inclusive of all costs (including Sales Tax) that the bidder expects the District to pay. The bidder's prices bid shall include all materials, delivery charges, taxes, and other costs required to provide the program.

Do not include **South Carolina Sales Tax** in the bid pricing. The District shall add S.C. Sales Tax to purchase orders as applicable.

Respondents must clearly mark the words "**Confidential**" or "**Protected**" next to each section of the bid that the bidder considers to be proprietary or believes to contain confidential information. In no manner or situation will pricing be considered confidential. The District shall have the sole, exclusive right to determine whether such confidential notations are valid and subject to public release. Entire documents should not be marked as "confidential" or "protected".

By submitting a solicitation response, the bidder acknowledges that it has had the opportunity to inquire about the District's Procurement Code, this solicitation and other pertinent policy.

The School District of Greenville County reserves the right to reject any or all bids or portions of bids and to waive any informalities or technicalities so as to purchase in the best interest of the District.

Responsibility of the bidder shall be ascertained for each contract awarded by the District based upon full disclosure to the District concerning capacity to meet the terms of the contracts and based upon a past record of performance for similar contracts. The failure of a bidder to supply information promptly to the District in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder. Failure to provide requested information may result in rejection of a solicitation response and/or suspension and/or debarment of the bidder.

The District shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such



books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by a District Procurement official.

### **Indemnity**

NOTE: The bidder agrees to indemnify and hold harmless the District and the District's members, officers, employees, representatives, servants and agents, from and against any and all liabilities, losses, damages, costs and expenses of any kind (including, without limitation, reasonable legal fees and expenses in connection with any investigative, administrative or judicial proceeding, whether or not designated a party thereto) which may be suffered by, incurred by or threatened against the District or any members, officers, employees, servants or agents of the District on account of or resulting from injury, or claim of injury, to person or property arising from the awarded proposer's actions or omissions relating to this Agreement, or arising out of the proposer's breach or failure to perform any term, covenant, condition or agreement herein provided to be performed by the bidder.

**The District shall not indemnify and/or hold harmless any bidding entity or its representatives as this action is not statutorily allowed by South Carolina law.**

### **Alcoholic Beverages, Illicit Drugs, Smoking, and Weapons**

The successful contractor shall not permit its personnel or any subcontractor or delivery personnel to possess upon District property any alcoholic beverages, illicit/non-prescribed drugs, tobacco products, or weapons. Alcoholic beverages, illicit/non-prescribed drugs, tobacco products, and weapons are not allowed on District property at any time. Any contractor-related actions involving, or possession of, any of the aforementioned items while on District property may cause a cancellation of any award/agreement, at no cost to the District. Criminal charges may apply.

### **Bidder Opportunity**

The successful bidder shall perform this project in compliance with all Federal and State requirements concerning fair employment of all employees and applicants. Bidding firms shall promote the employment of the disabled and disadvantaged and shall employ without regard or discrimination due to the reason of ethnic background, age, color, religion, gender, national origin or physical disability. Bidders should provide information regarding the use of minority subcontractors if applicable or if requested by the District. Assistance to small, minority and disadvantaged firms and individuals is available in accordance with the District's Minority Business Enterprise Utilization Plan which is available by contacting the Procurement Officer.

### **IMPORTANT: Student and Staff Safety**

The successful bidder shall be required to verify that criminal conviction inquiries/checks and pertinent criminal background inquiries/checks have been conducted on all of its employees and the subcontractors who may interact with staff and/or students during the performance of the awarded Scope of Work or who may have a need to enter District property related to the performance of the contract or who may have access to personal student or District personnel information.

All inquiries and background checks must be conducted on a monthly basis or more frequently or as required by the District.

Persons who are identified as a Sex Offender or violator as defined by the South Carolina Code of Laws (Ann. 2006), Article 7, Sections 23-3-400 to 23-3-500 or other statute or any other states' statutes and persons who have been convicted of Violent Crimes as defined by the South Carolina Code of Laws, 1976, Section 16-1-60; are prohibited from entering any of The School District of Greenville County schools at any time, including all District grounds and all District facilities. Persons employed by or under the direction of the contractor or any subcontractor who are under investigation or have been charged with crimes and/or convicted of crimes against children or crimes of a sexual or violent nature shall not be allowed on District property.

While performing under this solicitation and subsequent award, a firm/individual/supplier who delivers material and/or a service to a District site at the direction of a contractor and/or a subcontractor shall be considered under the supervision of the contractor and/or subcontractor and shall be in compliance with this requirement. Contractor's and subcontractor's employees are not to interact with students at any time. Contractor's and subcontractor's employees are not to be in areas where students are present or may be present without prior authorization from the school's principal or designee.

The District may in its sole discretion terminate any existing contract for the failure by the awarded firm, its subcontractors or any representative of the contractor or subcontractor to observe this requirement or for any violation of this solicitation's requirements. No penalty or other costs shall be levied against the District as a result of its decision to terminate the contract or award.

In addition to the above obligations of the successful bidder/awarded firm, all persons and contractor personnel having contact with students and/or any individual who enters onto District property may be subject to a national criminal background check at the discretion of the District prior to entry upon District property and the performance of any duties. All individuals entering District property shall be screened nationally for criminal sex offenses/Sex Offender status on automated equipment at each school or site.

### **Iran Divestment Act**

A person or business that is identified on a list created pursuant to S. C. Section 11-57-310, as a person or business engaging in investment activities in Iran as described in Section 11-57-300, shall be ineligible to contract with the District or any political subdivision of South Carolina and any contract entered into with the District or a political subdivision of this State shall be void ab initio. Persons and businesses shall certify by their signature on the bid/proposal that the person or business contracting with the District is not listed on or named therein on a list created pursuant to S.C. Section 11-57-310.

By submission of a bid or proposal, each person signing on behalf of any individual or business certifies and in the case of a joint bid or proposal, that each party thereto certifies as to its own organization, under penalty of perjury, that to the best of the person's knowledge and belief that

each person, business, bidder or proposer is not on the list created pursuant to S.C. Section 11-57-310. A person or business shall not be considered for award, nor shall any award be made where the condition set forth has not been complied with in accordance with S. C. Section 11-57-310; provided, that if in any case the person, business, bidder or proposer cannot make the foregoing certification, the person, business, bidder or proposer shall so state and shall furnish with the bid or proposal, a signed statement which sets forth in detail the reasons for non-compliance. The District may award a person or business that cannot make the certification pursuant to S.C. Section 11-57-310, on a case-by-case basis, if:

(1) the investment activities in Iran were made before the effective date of the Act, the investment activities in Iran have not been expanded or renewed after the effective date of the Act and the person or business has adopted, publicized and is implementing a formal plan to cease any and all investment activities in Iran and shall refrain from engaging in any new investments in Iran; or

(2) the District makes a determination that the goods or services are necessary for the District to perform its functions and that absent such an exemption, the District would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be considered a public document subject to S.C. Section 11-35-410. Persons and businesses shall be responsible for reading and complying with South Carolina Code of Laws, TITLE 11, CHAPTER 57, ARTICLE 1-The Iran Divestment Act.

#### **South Carolina Illegal Immigration Reform Act**

By signing its bid or proposal, Contractor certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the District, upon request, any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to Contractor and its subcontractors or sub-subcontractors; or (b) that Contractor and its 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." Contractor agrees to include in any contracts with its subcontractors language requiring its subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)).

#### **Permits, Licenses and Taxes**

The vendor shall, at its own expense, prior to an award and prior to commencing services/operations on behalf of the District or under contract with the District, acquire all necessary permits, licenses and other approvals as required by law to provide the required services and/or actions in conjunction with a contract award with the District. It is recommended that bidders contact the following to learn of any pertinent requirements or licenses:

1. The South Carolina Secretary of State's office ([www.scsos.com](http://www.scsos.com))
2. The South Carolina Department of Revenue
3. The City of Greenville
4. The County of Greenville

The District shall not interpret the requirements of other public entities on behalf of the bidder.

Bidders shall obtain all necessary permits and licenses required by local, state and Federal law prior to any award or agreement and shall remain in compliance with all applicable statutes and pertinent regulations throughout the term of performance. Should any permits or licenses be revoked or lapse during the period of performance, the undersigned Procurement Officer shall be notified immediately.

The bidder shall pay all excise taxes, retail taxes and other fees imposed. The bidder assumes full responsibility for payment of all State and Federal taxes for unemployment, pensions or any Social Security legislation for all its employees and will further comply with all requirements that may be specified in regulations hereafter promulgated by the District's administrative officials.

#### **Cooperative Purchasing**

The School District of Greenville County's Procurement Code and Regulations authorizes the use of cooperative purchasing practices with regard to other public procurement units. Accordingly, any South Carolina school district, state, city or county agency or other public procurement unit may participate in any resulting award if agreeable to the District, the successful bidder/proposer and the other public procurement unit.

No other public procurement unit is required to make use of this capability as participation is at the discretion of the other public procurement unit. This District is not bound by any other public entities' solicitation, award or other contract.

The District shall not guarantee the participation of another public procurement unit nor be responsible for any resulting business or non-business with any other entity. Purchase Orders, delivery arrangements, payments and any other type of contractual documentation or performance shall be the responsibility of the actual participating public procurement unit, not The School District of Greenville County. The successful bidder/proposer shall hold harmless The School District of Greenville County, its employees, Administration, Board of Trustees and its representatives for any loss or damage as the result of the action or inaction of another public procurement unit.

#### **Procurement Card and ACH Processing (if applicable)**

The District has the capability to pay the majority of vendor invoices with a District managed Procurement Card (P-Card) and/or an Automated Clearing House (ACH) processing method. The District reserves the right to request that the awarded vendor process invoice/payment transactions by use of the District P-Card or ACH processing method. Failure by the vendor to provide P-Card and/or ACH transaction processing capabilities shall not be grounds for rejection of a proposal nor shall it create a contract controversy. **Any discounts offered by the vendor as**

**the result of the District's use of the P-Card or ACH processing should be noted in the solicitation response on a separate page entitled Procurement Card and ACH Processing Capability.**

### **Pre-Payment**

The District shall not approve or process any payment to the bidder, its subcontractors or suppliers prior to product delivery. Bidder requirements or requests for "up front", partial payment or pre-payment shall not be authorized. Bidders that require such conditions in their bid and/or file invoices or payment requests after an award, but prior to performance completion, shall have their contract cancelled with no penalty levied against the District.

### **Use of District Name**

The awarded bidder shall not use the name of the District in advertising or in seeking or joining into contracts with suppliers, customers, or for any other manner. The bidder shall make all of its contracts in its own name and the awarded firm shall be responsible for its financial obligations and contracts, not the District.

### **Postponements**

A bid opening or a pre-bid conference shall be postponed if the District's Procurement Department is closed for any of the following reasons: 1) Causes beyond the control of the District (e.g., fire, flood, weather conditions, etc.), or 2) Emergency or unanticipated events that interrupt normal District or Procurement operations. The postponed event (opening or conference) shall automatically be rescheduled to the next full and complete District business day after the published date. A District business day does not include a day starting after an announced opening delay or a closure. Bidders should consult the District's INFOLine (864-355-3100) or local media regarding closures.

### **Educational Technology Services Requirement**

The following requirement has been prepared by the District's Education Technology Services (ETS) department and is enforceable when applicable:

***"For all COTS (commercial off-the-shelf applications), the Offeror shall submit security audit documentation which meets State and Federal law along with applicable regulatory standards including, but not limited to: the South Carolina Public Records Act, Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), Pupil Privacy Rights Act (PPRA), Individuals with Disabilities Education Act (IDEA), Gramm-Leach Bliley Act (GLBA), and Payment Card Industry Data Security Standard (PCI-DSS). Applications must also meet or exceed verifiable Greenville County School District security review and security application testing specifications, including, but not limited to: Open Web Application Security Project (OWASP), The Web Application Security Consortium (WASC), and United States Computer Emergency Readiness Team (US-CERT) National Vulnerability Database (NVD) as part of the Request for Proposal or Invitation for Bid submission."***

### **End of ETS Section**

If not submitting a bid, please submit a “NO BID” letter indicating the reason for not doing so. Failure to respond with either a bid or a “No Bid” letter may result in removal of the bidder’s name from the active bidders’ list.

The District appreciates each firm’s interest in this program.

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Patricia J. Phillips  
Senior Buyer

Enclosures:	Program Specifications	(5 pages)
	Bid Form	(3 pages)
	Attachment “A”	(1 page)
	General Terms and Conditions	(10 pages)

Copy: Mr. Eston Skinner, Director of Procurement  
Mr. Joe Urban, Director of Food and Nutrition Services

# **Program Specifications**

## **USDA Fresh Fruit and Vegetable Program for Food and Nutrition Services (FANS) IFB No. 118-82-12-6**

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### **Program Specifications**

The following section was developed and approved by the Administration and Staff of SDGC Food and Nutrition Services (FANS).

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### **SCOPE OF WORK**

The School District of Greenville County invites interested firms to submit a SEALED BID to provide Fresh Fruit and Vegetable Products to select District Food Service locations in accordance with these specifications. The intent of this solicitation is to enter into a program for the supply of Fresh Fruit and Vegetable Products for the United States Department of Agriculture (USDA) Fresh Fruit and Vegetable Program. Additionally, the Scope of Work also includes some unscheduled and emergency service to locations within the District.

The District anticipates beginning this program with a total of seven (7) schools participating. The District reserves the right to add new locations within Greenville County (South Carolina) to the Scope of Work and the resulting contract.

### **Contract Term/Option to Extend**

The initial term of this contract will be for the period from the date of award through **July 31, 2019**. 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. The total program contract term shall not exceed five (5) years.

The District's preference is for this new program to commence on January 1, 2019.

### **Award**

This is a Sealed Bid solicitation. The project will be awarded as one (1) total lot encompassing all products listed on the Bid Form to the lowest pricing, responsible bidder whose responsive bid is in the best interest of the District. Products or line items shall not be awarded individually. Any award shall encompass all of the requirements of the solicitation.

### **Bid Instructions**

Bidders should enter the following bid pricing information on page two (2) of the Bid Form.

- **Cost Per Case** (i.e. price per case)
- **Extended Cost** (Cost per Case multiplied by Estimated Usage Quantity)
- **Total Price** (The Sum of the Extended Cost for Item #'s 1 through 23)

## **Volume**

The total quantities (estimated annual usage) shown on the Bid Form are FAN's estimated requirements for each annual contract period. The District does not obligate itself to purchase the full quantities indicated, but the price offered must be allowed should the quantities be more or less. The District requirements may exceed the quantities shown. During the term of the contract, all orders received by the contractor shall be filled in accordance with the terms and conditions set forth herein. Since the District is providing estimated quantities only, the Procurement Specialist of the Food and Nutrition Services and the contractor should work closely together to provide as much accuracy as possible in adjusting quantities so that the contractor should not be left with an extreme overage or underage of products.

## **Deliveries**

All orders placed on this contract will require delivery of goods to the schools between the hours of 6:30 am and 1:30 pm.

Within five (5) working days after the date of award, a written schedule for ordering and delivery for each of the schools will be established and mutually agreed upon by the District and the successful bidder. **Please note that schools may require up to three (3) deliveries per week based on the school's volume and storage capacity.**

Holiday Deliveries – For the purpose of this contract, “holiday” shall be defined as any week that has less than five (5) school days. If a District holiday falls on a scheduled delivery day, the delivery shall be made on a day to be mutually agreed upon by the District and the successful contractor.

Drivers and helpers shall request the authorized school receiver, or the designated District representative, to verify the accuracy of quantities of each item, brand and code numbers of each items and condition of merchandise. Each delivery ticket shall be signed by a designated school receiver. Variations from the norm, i.e., shortages, damages, spoilage, etc., shall be noted on each ticket by the designated school receiver and initialed by both the delivery driver and school receiver.

## **Unscheduled and Emergency Deliveries**

The contractor will be expected to make unscheduled and/or emergency deliveries within twenty-four (24) hours after notification during normal business days (Monday through Friday). The Procurement Specialist of the Food and Nutrition Services will notify the contractor via email in the event an unscheduled and/or emergency delivery is required.

## **Delivery Requirements**

Products are expected to be delivered well in advance of the **use by date**. Items showing deficiencies in any form at the time of the delivery will not be accepted. Refrigerated products must be delivered in a temperature range of between 34 degrees Fahrenheit and 40 degrees Fahrenheit.

All schools will be required to receive deliveries within forty-eight (48) hours after returning from a holiday or extended weekend.



## **Product to Be Supplied**

Should a condition arise where the product originally contracted can no longer be supplied by the contractor, an application for substitution of another brand under the contract at an equal or lower price must be submitted to the Director of Food Service or designee and upon approval, the substitution will be allowed. Substitution of product not approved by the Director of Food Service or designee will result in the cancellation of the contract. Requests for substitutions and out of stock items should be kept to a minimum.

## **Out-of-Stock Conditions**

The awarded contractor may deliver a product equal or superior to the out of stock item if approved prior by the Director of Food Service or designee. Items shall be delivered at a price equal to or lower than the price bid. The Director of Food Service or designee shall be notified at least twenty-four (24) hours in advance of out-of-stock condition and he/she must approve the product being replaced. If a substitute product is not approved by the Director of Food Service or designee, the District shall, in good faith and in its sole discretion, purchase a product of equal or greater quality from another source. The contractor shall be responsible and liable for the difference in the cost between the amount paid for the substituted product and the amount, which would have been paid, had the product been delivered. The contractor shall have no basis to complain that the substituted product purchased could have been purchased at a lower price.

## **Price Escalation/De-escalation**

Monthly petitions for price escalation or de-escalation of Fresh Fruits and Vegetable Products can be submitted only on the basis of increases or decreases in costs of raw product to the awarded vendor. The vendor's invoice pricing from the manufacturer for the month of December 2018 will be used as the baseline for price escalations or de-escalations.

Petitions may not be submitted for overhead cost, packaging or transportation cost increases. Any request for a price change of Fresh Fruits and Vegetable Products must be submitted along with a copy of the awarded vendor's current invoice pricing from the manufacturer indicating the price change to the Procurement Specialist of the Food and Nutrition Services by the twenty-fifth (25<sup>th</sup>) day of the previous month to take effect the first day of the following month.

## **Facilities and Equipment**

The contractor shall have adequate warehouses to supply products. Chilled and frozen products shall be stored as recommended by the Refrigeration Research Foundation. Delivery temperatures of frozen and chilled food shall be as recommended by the Federal Food and Drug Administration.

## **Reports**

Utilization reports shall be issued to the District monthly. These reports shall be submitted for total quantity delivered per item in terms of bid units per school delivery point and a combined District total. Utilization reports shall be submitted within fifteen (15) calendar days after the end of a month.

## **Transmittal of Orders**

The contractor must have the capability for each school to place orders directly to the contractor through the internet.

## **Buy American Provision**

Section 104(d) of the William F. Goodling Child Reauthorization Act of 1998 requires schools participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) to purchase to the maximum extent possible, domestic commodities or products used in meals served in the NSLP and SBP. "Domestic commodity or product" is defined as one that is produced in the United States and over 51 percent of the final processed product consists of agricultural commodities that are grown domestically.

To maintain compliance with the USDA Buy American Provision, unless otherwise indicated on the Bid Form, only domestic food items are to be used.

- **Limited exceptions:** There are limited exceptions to the Buy American Provision which allow for the purchase of products not meeting the "domestic" standard ("non-domestic") in circumstances when use of domestic products is truly not practicable. These exceptions are:
  - The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; **(or)**
  - Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

Written documentation citing one of the two above-listed acceptable explanations is required whenever a non-domestic product is substituted for a product that has been specified as domestic on the Bid Form.

## **Site Visits**

The District reserves the right to make unscheduled site visits to successful contractor's operation facilities prior to and after award. Site visit may include the following:

- Walk through of warehouse and storage facilities.
- Inspection and review of delivery fleet capabilities.

## **Sanitation Requirements**

District officials may routinely inspect Contractor's warehouse and trucks. The warehouse and trucks shall be clean, be free of insects and rodents, and be adequate for storing and delivering products. The Contractor's warehouse must have and maintain a superior rating from the South Carolina Department of Health and Environmental Control (DHEC).

## **Service Levels**

Successful contractor shall fill all original orders at a monthly average of ninety-seven percent (97%) or

above on the scheduled day. The remaining three percent (3%) shall be delivered within twenty-four (24) hours of the scheduled delivery day.

### **Invoicing**

All invoices shall be verified and signed by an authorized District FANS employee at each site at the time of delivery. The Contractor shall leave one (1) copy of the invoice with the Food Service Manager, and shall send one (1) copy of the invoice signed by the Food Service Manager to the following address:

Attn: Accounts Payable  
Food and Nutrition Services  
Greenville County Schools  
100 Blassingame Road  
Greenville, South Carolina 29605

### **Federal Debarment, Suspension, Exclusion, Etc.**

In accordance with the requirements contained in 2 CFR 200.213 and 7 CFR 3017.300, the offeror certifies, by submission of this offeror and subsequent contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency. The offeror shall notify SFA during the term of the contract and any subsequent renewal periods if the status changes. Pursuant to Executive Orders 12549 and 12689, a contract award (see 2 CFR 180.220) must not be made to parties listed on the government Excluded Parties List Systems in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549

### **Bid Form Abbreviations**

The abbreviation "IW" designates "Individually Wrapped", i.e., each *portion* shall be individually wrapped. The abbreviation "pkg" designates the "package" of each individually-wrapped portion.

### **Program Schedule**

This FANS program is scheduled to begin upon issuance of the Intent to Award and following the duration of any applicable waiting period. The District will issue Purchase Orders for all required products.

Before the selected firm fills a District request for product, the firm must have in hand a **written District Purchase Order** for the goods and/or services to be provided.

## **End of Program Specification Section**

# Bid Form

**Invitation for Bid No. 118-82-12-6**  
**The School District of Greenville County**  
**USDA Fruit and Vegetable Program for Food and Nutrition Services**

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**Bid Response Certification**

As an authorized representative of the Bidder, I hereby certify that the costs and services stated in this bid are accurate and binding for not less than sixty (60) calendar days from the solicitation due date. All costs and charges are accurate and complete as stated in the bid are inclusive of all costs the District is expected to pay. If an award is not made within sixty (60) calendar days, it shall be incumbent upon the Bidder to notify the District, in writing, if it does not want its bid further considered. Failure to notify the District shall mean that the bid remains valid until an award is made or the solicitation is cancelled.

I further certify that the Bidder will deliver the service(s) and/or material(s) as required by the Invitation for Bid. No additional costs or payments to any entity, including the Bidder, shall be requested of the District due to any miscalculation, deficiency or other cause later discovered. The Terms and Conditions of the solicitation are accepted by the undersigned.

I certify that the Bidder has availed itself of every opportunity to understand the Invitation for Bid, the District's Procurement Code and Regulations and other pertinent District policy.

By submission of a bid, I certify that the Bidder has read and understands all of the requirements and conditions of the solicitation and shall be bound by such without exception. Therefore, the undersigned respectfully submits the bid.

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Firm Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

**Bid Form**  
**The School District of Greenville County**  
**IFB No. 118-82-12-6 for USDA Fruit and Vegetable Program**

Item #	Description	Bid Unit	Cost per Case	Estimated Annual Usage in Cases	Extended Cost
1	Apple Wedges – Red, IW: ½ cup pkg; 100 pkg per case	Cs	\$ _____/Cs	132	\$ _____
2	Apple/Grape Combo - IW; 1/2 cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
3	Blueberries, IW; ½ cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
4	Cantaloupe, IW; ½ cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
5	Grape Giggles, IW; 2 oz. pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
6	Honeydew Chunks, IW; ½ cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
7	Kiwi Wedges, IW; ½ cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
8	Mango Chunks, IW; ½ cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
9	Orange Wedges, IW; ⅓ oz. pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
10	Papaya Chunks, IW; ½ cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
11	Pear Wedges - IW; 2 oz.; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
12	Pineapple Chunks, IW; ½ cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
13	Strawberries, IW; 2 oz. pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
14	Tangerine , 120 count per case	Cs	\$ _____/Cs	110	\$ _____
15	Tomato-Grape, IW; ½ cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
16	Watermelon Chunks - IW; 1/2 cp pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
17	Carrot Stix, IW; ½ cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
18	Celery Stix, IW; 3 oz. pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
19	Cucumber Slices , IW; ½ cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
20	Pepper Stix –Red/Yellow, IW; 2 oz. pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
21	Sugar Snap Peas, IW; 2 oz. pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
22	Sweet Potato Stix - IW; 1/2 cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____
23	Squash - Yellow/Zucchini - IW; 1/2 cup pkg; 50 pkg per case	Cs	\$ _____/Cs	264	\$ _____

**Total Price \$ \_\_\_\_\_**

(Total Price = Sum of Extended Cost of Items #'s 1 through 23)

Firm Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

**Bid Form**  
**For IFB No. 118-82-12-6**  
**The School District of Greenville County**  
**USDA Fruit and Vegetable Program for Food and Nutrition Services**

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**Acknowledgement of Addendum**

This bidder hereby acknowledges all addenda as listed below:

**Addendum No.** \_\_\_\_\_

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- The prices submitted herein reflect compliance with all specifications and conditions of the solicitation without exception.
  - The prices indicated herein are FOB Destination with all freight and delivery charges Prepaid and Allowed to any location within The School District of Greenville County.
  - Do not include **South Carolina Sales Tax** in the bid pricing. The District will add S.C. Sales Tax to Purchase Orders as applicable.
- 

**Firm Name:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_ **Fax Number:** \_\_\_\_\_

**Attachment “A”**  
**IFB No. 118-82-12-6 for USDA Fruit and Vegetable Program**  
**For Informational Purposes Only**

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**Bidder shall complete and sign Attachment “A”.**

**Bidder shall include Attachment “A” in the sealed bid envelope.**

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

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

Name of Primary Contact Person: \_\_\_\_\_

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Does this firm plan to subcontract out any portion of this work?      \_\_\_\_\_ Yes      \_\_\_\_\_ No

If you answered in the affirmative (yes), please describe below the portion of the work that this firm proposes to subcontract:

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Describe the primary line of work engaged in by this firm:

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What percentage of this firm’s current business is fresh produce?      \_\_\_\_\_ Percentage

How many employees are currently employed at the above location?      \_\_\_\_\_ Employees

How long has this firm been in business providing fresh product?      \_\_\_\_\_ Years

How many years has this firm maintained the business location noted above?      \_\_\_\_\_ Years

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**I certify the accuracy of the above information.**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

## **GENERAL TERMS AND CONDITIONS**

While effort has been made to separate substantive and procedural matters through the division of a solicitation or agreement into various parts, the distinctions between such categories are not always exact. Consequently, offerors are advised that all contents of a solicitation or agreement will constitute the substantive terms and conditions of the relationship, if any occurs, between the offeror and the District in accordance with this document.

### **DEFINITIONS**

The terms, "vendor", "contractor", "prime contractor", "contractor", "firm", "offeror", "proposer", "responder", "supplier", "entity" or "bidder" may be used interchangeably and refers to the entity offering a bid/proposal. These terms are defined as including a legal business association of one (1) or more persons existing at the time of the bid/proposal submission. The terms "solicitation", "Invitation for Bid", "Bid", "Request for Proposal", "Proposal", "Quotation", "Quote" may be used interchangeably and refers to the solicitation. The term "Agreement" means any transaction or contractual arrangement contemplated or created as a result of, arising out of, or relating to the solicitation and subsequent award. The terms, "The School District of Greenville County", "Greenville County Schools", "Customer", "Owner", "District", "SDGC", "GCSD", "GCS", "Board of Trustees" and "Board" may be used interchangeably and refers to the entity issuing the solicitation, receiving and reviewing the proposals and issuing an award. The term "Day" or "Days" refers to calendar days, unless noted otherwise.

### **GOVERNING LAW**

The contractor or offeror shall comply with the laws of the State of South Carolina which require that it be authorized and/or licensed to bid and/or conduct business in said State. By signing an Agreement or by offering a bid or proposal or agreement, contractor agrees to subject itself to the jurisdiction and process of the District's Procurement Code and Regulations, the courts of the State of South Carolina or federal courts as to all matters and disputes arising or may arise under and in regard to the solicitation, Agreement and the performance thereof, including any questions as to the liability for taxes, licenses or fees levied by the State.

The solicitation and/or Agreement and any dispute, claim or controversy relating to the solicitation and/or Agreement shall, in all respects, be interpreted, construed, enforced and governed by and in accordance with the Procurement Code and Regulations of The School District of Greenville County and the laws of the State of South Carolina. All disputes, claims or controversies relating to the Agreement shall be resolved exclusively by the District's Chief Procurement Officer or Purchasing Agent/Procurement Director in accordance with Article XIV of The School District of Greenville County's Procurement Code or in the absence of jurisdiction, the Court of Common Pleas for, or a federal court located in, Greenville County, State of South Carolina. Contractor or offeror agrees that any act by the District regarding the solicitation and/or Agreement is not a waiver of either the District's sovereign immunity or the District's immunity under the Eleventh Amendment of the United States' Constitution. As used in this paragraph, the term "Agreement" means any transaction, contract, understanding or agreement arising out of, relating to, or contemplated by the pertinent solicitation and/or agreement between the proposer and the District.

The District shall not accept, enter into or sign any proposed agreement(s), document(s), offer(s), contract(s), leases(s) and/or provision(s) that materially conflicts with the District's General Terms and Conditions, the requirements of a solicitation or which are determined not to be in the best interest of the District.

The solicitation and the District's General Terms and Conditions shall govern and take precedence as the contract between the District and the awarded entity. The terms of the agreement between the District and the successful/awarded entity shall comply with the requirements contained in this solicitation and the District's General Terms and Conditions.

### **CONTRACTUAL NEGOTIATIONS**

Contract negotiations, if applicable, may be started at the District's discretion, with the apparent successful offeror. If any points/issues exist that cannot be resolved, so that a final contract, to the mutual satisfaction of all parties, can be reached, negotiations may be initiated with the next qualified offeror. All contractual documents submitted will be subject to approval of the District.

### **CONTRACT DOCUMENTS & ORDER OF PRECEDENCE**

- (a) Any contract resulting from this solicitation shall include the following documents: (1) a Record of Negotiations, if any, executed by the vendor and the District, (2) documentation regarding the clarification



of an offer, if applicable, (3) the solicitation, as may be amended, (4) modifications, if any, to an offer, if accepted by the District, (5) the vendor's offer, (6) any statement reflecting the District's final acceptance (award), (7) purchase orders, and (8) any related contracts or agreements executed by the District and the proposer. These documents shall be read to be consistent and complimentary. Any document signed or otherwise agreed to by persons other than the Executive Director of Finance or a Procurement Officer shall be void and of no effect.

#### OFFEROR RESPONSIBILITY

The offeror is the entity that is proposing or offering to perform work or supply service(s) and/or material(s) to the District. Each offeror shall fully acquaint itself with conditions relating to the scope and restrictions attending the performance of obligations under the conditions of this solicitation or agreement. The omission of an offeror to acquaint itself with existing pre-contract conditions or post-contract consequences shall in no way relieve such offeror of any obligation with respect to the proposal or to any contract resulting from a solicitation or agreement. Offerors are notified that failure to inspect, familiarize or otherwise gather information as to the total cost to the District will, in addition to any and all other remedies available, create cost difference liabilities and claims against the ultimately successful contractor. Offerors shall notify the District of all costs reasonably expected.

#### BID/PROPOSAL/AGREEMENT CONSTITUTES OFFER

By submitting a bid/proposal or agreement, the offeror agrees to be governed by the terms and conditions as set forth in the solicitation document or proposed agreement and the District Procurement Code and Regulations. Any bid or proposal response or proposed agreement containing variations from the terms and conditions set forth herein may, at the sole discretion of the District, render such bid or proposal or agreement non-responsive. Any inconsistencies between the solicitation and any other contractual instrument shall be governed by the terms and conditions of the solicitation or proposed agreement, except where subsequent amendments to any contract resulting from the award are specifically agreed to in writing by the parties in order to supersede any such provisions of the solicitation or other contractual document.

#### SPECIFICATIONS MANDATORY

The offeror must meet all of the mandatory specifications and requirements set forth in the solicitation or proposed agreement. By incorporating said specifications into the offeror's response, subject to acceptance by the District of any amendments hereto as submitted by the offeror, the offeror is agreeing to comply with said solicitation specifications or agreement. Failure to provide mandatory evidence of capability will result in a low evaluation ranking of the offeror's bid/proposal. Items designated as evaluation factors will be evaluated and rated in accordance with the evaluation criteria, if applicable.

#### INQUIRIES

Every effort has been made to ensure that all information needed by an offeror is included herein. If an offeror finds that it cannot provide a response without additional information, it may submit written questions to the person designated herein on or before the deadline set forth in the solicitation. Questions shall not be accepted by the District after the specified date. All replies to questions will be in writing and contained within an addendum. When a question received by the District is found to be previously and sufficiently addressed in the solicitation, that question will be returned to the proposer with a reference to the part of the solicitation containing the answer. All questions and written replies will be distributed to all known interested firms and individuals via an addendum and will be regarded as a part and parcel of the solicitation.

#### AMENDMENTS OR ADDENDA

If it becomes necessary to revise any part of the solicitation or agreement, amendments in the form of an addendum will be provided in writing to all known, interested firms and individuals.

ALL AMENDMENTS TO AND INTERPRETATIONS OF A SOLICITATION SHALL BE IN WRITING. THE DISTRICT SHALL NOT BE LEGALLY BOUND BY ANY AMENDMENT, ADDENDUM, INFORMATION OR INTERPRETATION THAT IS NOT IN WRITING.

#### COMPANY EXPERIENCE AND REFERENCE ACCOUNTS

If requested, interested firms and individuals must provide reference accounts where the services and/or equipment/material(s) offered were similar to the services and/or equipment/material(s) requested in the solicitation. The intent is to show company experience in receiving contracts for, and delivery of, goods and services similar to those proposed. Information should include the name, address, telephone number, and title of

the person to contact for inquiry as to the proposer's experience and performance. Referenced accounts must not be company owned or an affiliate of the bidder or proposer.

The District reserves the right to consider historic information and facts about the bidder or proposer, whether gained from the submitted response, question and answer conferences, references or any other source, during the evaluation process.

#### SOLICITATIONS/AGREEMENTS SIGNED

All submittals shall be signed by a representative of the entity authorized to commit to the provisions of the submittal. Unsigned bids/proposals will be rejected unless an authorized representative is present at the bid/proposal opening and provides the needed signature, provided that the discovery is made prior to the recording of the contractor's bid/proposal. Any proposed and agreed upon contract shall be signed by an authorized representative of the offeror.

#### PUBLIC OPENING

All bids/proposals received in response to a solicitation will be recorded publicly at the time and place specified in the solicitation. The name of each offeror shall be announced, recorded and made available for scheduled public inspection.

#### POSTING OF AWARD

Solicitation awards shall be posted in the District's Procurement Department located at 2 Space Drive, Taylors, South Carolina. Awards may be viewed during normal business hours. The Procurement Department may be contacted to determine if a particular award has been posted.

#### RIGHT TO PROTEST

Any prospective bidder, proposer, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest in writing to the Purchasing Agent/Director of Procurement within fifteen (15) calendar days of the date of issuance of the Invitation for Bid/Request for Proposal or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.

Any actual bidder, proposer, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest in writing to the Purchasing Agent/Director of Procurement within fifteen (15) calendar days of the Posting Date as noted on the award document.

PROTEST RIGHTS -- The provisions of Article XIV Section A of the District Procurement Code shall not apply to contracts which are less than \$ 25,000 in total.

A protest shall be submitted in writing to the Purchasing Agent/Director of Procurement, The School District of Greenville County, 2 Space Drive, Taylors, South Carolina 29687 and shall set forth the grounds of the protest, evidence to support the protest and the relief requested with enough particularity to give notice of the issues to be decided.

It shall be agreed that the District may exercise its right to require a protest bond or irrevocable letter of credit from a protesting party when applicable.

#### CLARIFICATIONS

The District reserves the right, at any time after opening and prior to award, to request from any apparently responsible bidder or proposer, clarification(s) of the bid/proposal submitted to the District, address questions or to seek or provide other information regarding the offeror's submittal/response. This process may be used for such purposes as providing an opportunity for the offeror to clarify its bid/proposal in order to assure mutual understanding and to determine acceptability.

#### 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 via a solicitation method by issuing a Purchase Order. Purchase Orders may be used to elect any options available pursuant to a solicitation; e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of the solicitation.

#### PATENT AND COPYRIGHT LIABILITY

If notified promptly in writing by the District of any actions (and all prior claims relating to such action) brought against the District, based on a claim that the District's use of the services or any products offered, including software, infringes a United States patent or copyright, the contractor will defend and indemnify the District in such action at its expense and will pay the costs and damages awarded in such action, provided that the contractor shall have sole control of the defense of any such action and all negotiation for its settlement or compromise. The District shall give the Contractor prompt written notice of such claim and full right and opportunity to conduct the defense thereof, together with full information and reasonable cooperation. No cost or expenses shall be incurred for the account of the contractor without its written consent. If principles of government or public law are involved, the District may participate in the defense of any action. If, in the opinion of the contractor, the products furnished there under are likely to, or do become, the subject of a claim of infringement of a United States patent or copyright, then, without diminishing its obligation to satisfy a final award, the contractor may, at its option and expense, (a) obtain the right for the District to continue to use such goods; or (b) substitute, with prior notice and District approval, for the alleged infringing products other equally suitable products that are satisfactory to the District; or (c) take back, with District approval, such products, provided however, that the contractor will not exercise option (c) until the contractor and the District have evaluated options (a) and (b). In such event, contractor will reimburse the District for the purchase price of any goods removed pursuant to option (c).

#### TAXES

Prices shall include all applicable taxes unless otherwise noted. The current tax rate in South Carolina is six percent (6%). In the event that the contractor fails to pay or delays in paying to any taxing authorities sums paid by the District to the contractor, the 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.

#### PRICE ADJUSTMENT

Any request for price increase must be submitted to the user location and the District's Procurement Department by the contractor at least sixty (60) calendar days prior to any proposed contract extension. The price increase will only become effective if agreed to in writing by the District's Procurement Department. The maximum increase shall not exceed three percent (3%) or the adjusted percent change from the previously reported period shown in the Producers Price Index (PPI), or in the Consumer Price Index for all urban consumers (CPI-U), whichever is less at the time of renewal.

#### TERMINATION BY DISTRICT

##### Termination for Non-appropriations:

In the event no funds or insufficient funds are appropriated and budgeted in any fiscal year for payments due under this Agreement, or there is no further need for the equipment, material(s), service(s) and program products to satisfy the need for which same were acquired herein, then the District shall promptly notify the contractor of such occurrence, and this Agreement shall create no further obligation of the District as to such current or succeeding fiscal year and shall be null and void, except as to the portions of payments herein agreed upon for funds which shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the District of any kind whatsoever.

Subject to the provisions below, any contract resulting from this solicitation, or any portion thereof, may be terminated by the District providing a sixty (60) calendar day advance notice in writing is given to the contractor, unless the District agrees to a different notice period.

#### SUSPENSION BY DISTRICT

The District reserves the right to suspend Contractor's work, with or without cause, upon three (3) calendar day's written notice. If the suspension was not due to any default by Contractor, the District will reasonably and equitably adjust the amount(s) to be paid to Contractor when work is resumed.

#### TERMINATION BY CONTRACTOR

Requests for termination of a contract by the contractor must be received in writing by a District Procurement Officer at least sixty (60) calendar days prior to the requested contract termination date.

#### WAIVERS

No waiver of right, obligation, or default shall be implied, but must be in writing, signed by the party against whom the waiver is sought to be enforced. One or more waivers of any right, obligation, or default shall not be construed as a waiver of any subsequent right, obligation, or default.

#### APPROVAL OF PUBLICITY RELEASES

The contractor shall not have the right to include the District's name in its published list of customers or use of the District or individual school logo without prior approval of the District. The contractor agrees not to publish or cite in any form any comments or quotes from District staff. Contractor further 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 District without the written consent of an authorized District official.

#### AFFIRMATIVE ACTION

The successful bidder shall perform this project in compliance with all Federal and State requirements concerning fair employment of all employees and applicants. Vendors shall promote the employment of the disabled and disadvantaged and shall employ without regard or discrimination due to the reason of ethnic background, age, color, religion, gender, national origin, or physical disability. Vendors should provide information regarding the use of minority subcontractors if applicable or if requested by the District. Assistance to minority and disadvantaged firms and individuals is available in accordance with the District's Minority Business Enterprise Utilization Plan. Vendors should contact the Procurement Department with questions regarding this plan.

#### 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 five (5) calendar days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all District contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(b) Termination. This contract is voidable and subject to immediate termination by the District upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

#### INDEMNIFICATION

The School District of Greenville County, 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 or equipment furnished by the contractor or actions by the contractor, provided that such liability is not attributable to negligence on the part of the District or failure of the District to use the materials in the manner outlined by the contractor.

**The District shall not indemnify and/or hold harmless any proposing entity or its representatives as this action is not statutorily allowed by South Carolina law.**

#### CONTRACTOR RESPONSIBILITY

The contractor alone will be held solely responsible to the District for performance of all contractor obligations under any contract resulting from the awarded solicitation.

The contractor warrants that services will be provided in a professional manner. The contractor shall be responsible for the full performance of any subcontractors and/or suppliers and the District shall rely solely upon said contractor for project compliance and proper contractual performance.

#### CONTRACTOR'S USE OF DISTRICT PROPERTY

Upon termination of the contract for any reason, the District shall have the right to possession of all District properties, including, but not limited to, current copies of all District application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the District without the District's written consent, except to the extent necessary to carry out the work. All District property and information is to be considered confidential in nature and shall not be disseminated or transferred without the District's written authorization.

**IMPORTANT: Student and Staff Safety**

The awarded entity shall be required to verify that criminal conviction inquiries/checks and pertinent criminal background inquiries/checks have been conducted on all of its employees and the subcontractors who may interact with staff and/or students during the performance of the solicitation requirements/awarded Scope of Work or who may have a need to enter District property related to the performance of the contract or who may have access to personal student or District personnel information.

Persons who are identified as a Sex Offender or violator as defined by the South Carolina Code of Laws (Ann. 2006), Paragraph 223-3-400 or other statute or any other states' statutes; are prohibited from entering any of The School District of Greenville County schools at any time, including all District grounds and all District facilities. Persons employed by or under the direction of the contractor or any subcontractor who are under investigation or have been charged with crimes against children or crimes of a sexual or violent nature shall not be allowed on District property.

While performing under this solicitation and subsequent award, a firm/individual/supplier who delivers material and/or a service to a District site at the direction of a contractor and/or a subcontractor shall be considered under the supervision of the contractor and/or subcontractor and shall be in compliance with this requirement. Contractor's and subcontractor's employees are not to interact with students at any time. Contractor's and subcontractor's employees are not to be in areas where students are present or may be present without prior authorization from the school's principal or designee.

Failure by the awarded firm, its subcontractors or any representative of the contractor or subcontractor to observe this requirement or any violation of this solicitation's requirements shall result in the immediate termination of any existing contract and no penalty or other costs shall be levied against the District.

NOTE: All personnel entering District property and/or having contact with students or staff on District property shall be subject to a South Carolina State Law Enforcement Division (SLED) background/criminal check/investigation prior to being allowed entry or the performance of any duties. All schools have automated equipment which allows instant verification of an individual's status.

**IMMIGRATION REQUIREMENTS**

By signing the bid or proposer, the bidder or proposer certifies that it 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 the bidder and/or its subcontractors or sub-subcontractors; or (b) that the bidder and its 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." The bidder agrees to include in any contracts with its subcontractors, language requiring the subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) to include in the subcontractor's contracts with the sub-subcontractors, language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

**Permits, Licenses and Taxes**

The bidder shall, at its own expense, prior to an award and prior to commencing services/operations on behalf of the District or under contract with the District, shall acquire all necessary permits, licenses and other approvals as required by law to provide the required services and/or actions in conjunction with a contract award with the District. It is recommended that firms contact the following to learn of any pertinent requirements or licenses:

The South Carolina Secretary of State's office ([www.scsos.com](http://www.scsos.com))  
The South Carolina Department of Revenue  
The South Carolina Department of Labor, Licensing and Regulation  
The City of Greenville, South Carolina

The District shall not interpret the requirements of other public entities on behalf of the proposer.

Firms shall obtain all necessary permits and licenses required by local, state and Federal law prior to any award or agreement and shall remain in compliance with all applicable statutes and pertinent regulations throughout the

term of performance. Should any permits or licenses be revoked or lapse during the period of performance, the undersigned Procurement Officer shall be notified immediately.

The awarded entity shall pay all excise taxes, retail taxes and other fees imposed. The entity assumes full responsibility for payment of all State and Federal taxes for unemployment, pensions or any Social Security legislation for all its employees and will further comply with all requirements that may be specified in regulations hereafter promulgated by the District's administrative officials.

By submitting a bid/proposal the bidder/proposer affirms that it shall possess and maintain all required license(s) prior to award and throughout the period of performance.

#### INSURANCE

Contractor shall maintain, throughout the performance of its obligations under this Agreement, a policy or policies of Worker's Compensation insurance with such limits as may be required by law, and a policy or policies of general liability insurance insuring against liability for injury to, and death of, persons and damage to, and destruction of, property arising out of or based upon any act or omission of the contractor or any of its subcontractors or their respective officers, directors, employees or agents. Such general liability insurance shall have limits sufficient to cover any loss or potential loss resulting from a solicitation and/or contract.

#### CONTRACTOR'S LIABILITY INSURANCE

(1) Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in South Carolina such insurance as will protect the contractor from the types of claims set forth below which may arise out of or result from the contractor's operations under the contract and for which the contractor may be legally liable, whether such operations be by the contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the contractor's employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the contractor's employees; (d) claims for damages insured by usual personal injury liability coverage; (e) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting thereof; (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; (g) claims for bodily injury or property damage arising out of completed operations; and (h) claims involving contractual liability insurance applicable to the Contractor's obligations under the provision entitled Indemnification – Third Party Claims.

(2) Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the work until date of final payment. Coverage must include the following on a commercial basis: (i) Premises – Operations, (ii) Independent Contractor's Protective, (iii) Products and Completed Operations, (iv) Personal and Advertising Injury, (v) Contractual, including specific provision for contractor's obligations under the provision entitled Indemnification – Third Party Claims, (vi) Broad Form Property Damage including Completed Operations, and (vii) Owned, Non-owned and Hired Motor Vehicles.

(3) The insurance required by this paragraph shall be written for not less than the following limits of liability or as required by law, whichever coverage is greater.

#### **COMMERCIAL GENERAL LIABILITY:**

General Aggregate (per project) \$1,000,000

Products/Completed Operations \$1,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

Fire Damage (Any one fire) \$ 50,000

Medical Expense (Any one person) \$ 5,000

#### **BUSINESS AUTO LIABILITY (including All Owned, Non-owned, and Hired Vehicles):**

Combined Single Limit \$1,000,000

OR

Bodily Injury & Property Damage (each) \$750,000

#### **WORKER'S COMPENSATION:**

State Statutory

Employers Liability \$100,000 Per Acc.

\$500,000 Disease, Policy Limit; \$100,000 Disease, Each Employee

(4) Required Documentation. (a) Prior to commencement of the work, contractor shall provide to the District a signed, original certificate of liability insurance (ACORD 25). The certificate shall identify the types of insurance, state the limits of liability for each type of coverage, include a provision for 30 days notice prior to cancellation, name every applicable using governmental unit (as identified on the cover page) as a Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. (b) Prior to commencement of the work, contractor shall provide to the District a written endorsement to the contractor's general liability insurance policy that (i) names the District as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named governmental unit(s) has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the District as secondary and noncontributory. (c) Both the certificate and the endorsement must be received directly from either the contractor's insurance agent or the insurance company. (5) Contractor shall provide a minimum of thirty (30) days written notice to the District of any proposed reduction of coverage limits (on account of revised limits or claims paid under the General Aggregate) or any substitution of insurance carriers. (6) The District's failure to demand either a certificate of insurance or written endorsement required by this paragraph is not a waiver of contractor's obligations to obtain the required insurance.

#### INDEMNIFICATION - THIRD PARTY CLAIMS

Notwithstanding any limitation in this agreement, Contractor shall defend and indemnify the District, its instrumentalities, agencies, departments, boards, and all their respective officers, agents and employees against all suits or claims of any nature (and all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party which arise out of, or result in any way from, any defect in the goods or services acquired hereunder or from any act or omission of Contractor, its subcontractors, their employees, workmen, servants or agents. Contractor shall be given written notice of any suit or claim. The District shall allow the Contractor to defend such claim so long as such defense is diligently and capably prosecuted through legal counsel. The District shall allow the Contractor to settle such suit or claim so long as (i) all settlement payments are made by (and any deferred settlement payments are the sole liability of) Contractor, and (ii) the settlement imposes no non-monetary obligation upon the District. The District shall not admit liability or agree to a settlement or other disposition of the suit or claim, in whole or in part, without the prior written consent of Contractor. The District shall reasonably cooperate with the Contractor's defense of such suit or claim. The obligations of this paragraph shall survive termination of the parties' agreement.

#### ASSIGNMENT

No solicitation response, contract or any of its provisions may be assigned, sublet, or transferred without the prior written consent of the District.

#### PAYMENT

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 in this contract, including the purchase order, payment shall not be made on partial deliveries accepted by the District.

#### INTELLECTUAL PROPERTY INFRINGEMENT

(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, 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 the Contractor to defend such claim so long as the defense is diligently and capably prosecuted. The District shall allow the 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 the Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, the 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 neither (1) nor (2), above, is practical, the District may require that the Contractor

remove the acquired item from the District, refund to the District any charge(s) paid by the District, and take all steps necessary to have the District released from any further liability. (c) the Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by the Contractor's compliance with specifications furnished by the District unless the Contractor knew or reasonably had prior knowledge or suspected its compliance with the District's specifications would infringe an IP right, or (ii) that the claim is caused by the 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 the Contractor and failed to identify such product to the 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.

#### OWNERSHIP OF DATA & MATERIALS

All data, information, material and documentation either specially prepared by Contractor for the District or provided by the District pursuant to this solicitation shall belong exclusively to the District.

#### PRIVACY – WEB SERVICES

The offeror agrees that any information acquired by about individuals or businesses which are available to the offeror as a result of the performance of this solicitation award/contract shall not be retained beyond the end of the term of the contracted project without the express written consent of the District. Such information shall not be sold, traded, or released in any form to another entity, including affiliates, and shall not be used for any purpose other than performing this contract. Upon request, the contractor shall provide written confirmation of compliance with this clause.

#### PROPRIETARY SOFTWARE (WHEN APPLICABLE)

##### Definition

Proprietary software is defined as data programs, non-custom written, non-made for hire software supplied by the contractor on a magnetic tape, disk, semiconductor device or other memory device; or system memory including hard wired logic instructions, microcode and documentation used to describe, maintain and use the programs.

##### License

The District is hereby granted a non-exclusive, fully paid perpetual license to use the contractor's proprietary software associated with the materials and/or hardware acquired, but only in conjunction with the material, equipment and/or service purchased pursuant to this Agreement.

##### Title

Title to any proprietary software, provided by the contractor to the District will remain with the contractor.

##### Trade Secrets

The District agrees that proprietary software is a trade secret of the contractor. The District agrees to take reasonable precautions to protect the trade secret nature of the proprietary software and to prevent its disclosure to unauthorized personnel. The license herein granted cannot be transferred, assigned, or made available by the District for use by any other individual, firm, partnership, or legal entity not affiliated, associated, or connected with the District without the prior expressed written consent of the contractor, which consent will not be unreasonably withheld. Such transfer shall also be conditioned upon the execution by the transferee of a written declaration agreeing to be bound by the terms and conditions of confidentiality provided for in this section.

##### Source Code

In the event the contractor, at any point during the continued installation and operation of the equipment herein acquired, discontinues the conduct of business, or for any reason fails to continue to support the proprietary software; the District will be provided a copy of the source code for said proprietary software, at no expense to the District.

Escrow for Source Code: In the event the contractor at any point during the continued installation and operation of the software herein acquired discontinues the conduct of business or for any other reason fails to continue to



support the software, the District shall be provided a copy of the source code for said software within thirty days at no expense to the District.

For the effective term of this contract, contractor will provide, to a mutually agreed upon escrow agent in the United States, the most recent version of the source code on magnetic media. The proprietary source code shall be deposited into the escrow account within fifteen (15) calendar days of the initiation of the contract, or any major update, non-customized enhancement, version or release of said licensed software.

The source code may be accessed only upon the following conditions:

- a. The contractor refuses to provide software maintenance, bug fixes, upgrades, updates and/or enhancement services under the terms set forth in this contract or as generally provided similarly situated customers; or
- b. The contractor ceases to do business or exist as a valid business entity, as evidenced by an adjudication of bankruptcy or other definitive measure of cessation of operations.

With regards to proprietary software, the District may not sell, assign lease, or otherwise provide said source code(s) to any other person, firm or entity, regardless of modification, without the express written consent of the contractor, its successors, and assigns.

### CUSTOMIZED SOFTWARE

#### Definition

Customized software is defined as made-for-hire, custom written and customer specific computer programs developed for the District by the contractor or by employees or agents of the District on magnetic tape, disk, semiconductor device or their memory device or system memory including hard wired logic instructions, microcode; and documentation used to describe, maintain and use the programs and any and all of the foregoing created in conjunction with this contract.

#### Title

Title to the customized software rests in the District as set forth herein. The contractor shall thereafter have no right, title or interest in any customized software. As herein used, title includes providing to the District all intellectual elements of the customized software including, but not limited to, developmental, work product, notes, object and source codes and any other items or material regardless of form which would aid the District in understanding, using, maintaining, and enhancing the pertinent customized software.

#### Software Tools

The contractor shall provide to the District, simultaneous with its initial installation and any subsequent enhancements, upgrades, modifications, "patches", fixes, etc., software tools (including, but not limited to compilers, editors, etc.) that the District may require to maintain or to enhance the customized software. The price for said tools and the cost to train District personnel to maintain and/or to enhance the customized software shall be noted separately and included in the contractor's cost bid/proposal submitted to the District in response to the solicitation.

### ETHICS ACT

By submitting an offer, the vendor certifies that it is in compliance with South Carolina's Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended. The following statutes require special attention: (a) Offering, giving, soliciting, or receiving anything of value to influence action of a public employee – Section 8-13-790, (b) Recovery of kickbacks – Section 8-13-790, (c) Offering, soliciting, or receiving money for advice or assistance of a public official – Section 8-13-720, (d) Use or disclosure of confidential information – Section 8-13-725, and (e) Persons hired to assist in the preparation of specifications or evaluation of bids/proposals – Section 8-13-1150.

Any questions regarding the aforementioned General Terms and Conditions shall be directed to The School District of Greenville County Procurement Department, 2 Space Drive, Taylors, South Carolina 29687, (864) 355-1279. Rev. 2 17.