



Procurement Department

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

The School District of Greenville County

January 13, 2020

Food Products and Supplies

Invitation for Bid (IFB) No. 120-1-2-26

The School District of Greenville County (SDGC) invites interested firms to submit a SEALED BID to provide food products, related supplies, and limited services in accordance with the specifications enclosed. The intent of this solicitation is to establish a full service source for the purchase of perishable and nonperishable food and related supplies. There are no other school districts participating in this solicitation.

This is a Competitive Best Value Bid (BVB) solicitation. A bid shall consist of the details for the implementation, provision, and management of the program, products and services required in the Scope of Work and related sections of the solicitation.

Any contract which may result from this solicitation shall *not* be a cost-plus-fixed-fee contract.

Bids shall be delivered to The School District of Greenville County's Procurement Department, located in Taylors, South Carolina. The bid opening/recording is under the supervision of the SDGC Procurement Officers.

The bid must be submitted in the official name of the firm or individual under which business is conducted (showing the official business address) and must be signed by a person duly authorized to legally and contractually bind the person, partnership, entity, company or corporation submitting the bid.

In the event of conflict between terminology and/or terms and conditions of any other document(s), the District's terminology and conditions shall prevail.

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 being 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", "Owner", "District", "SDGC", "GCSD", "GCS", "Board of Trustees" and "Board" may be used interchangeably and refer 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.

“FANS” is defined as the District’s Food and Nutrition Services Department.

District Schedule

The District will be closed on January 20, 2020, in observance of Martin Luther King Day, and also on February 17, 2020, in observance of Presidents’ Day. For further information on the District calendar, interested parties may refer to the District website www.greenville.k12.sc.us.

Pre-bid Conference

The District will not conduct a Pre-Bid Conference for this solicitation.

Inquiries

All inquiries/comments shall be submitted **in writing** to Patricia Phillips, Procurement Officer, 2 Space Drive, Taylors, South Carolina 29687 no later than January 31, 2020, at 10:00 A.M. EST. Firms may email questions to both pPhillip@greenville.k12.sc.us **and** tstroud@greenville.k12.sc.us. 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.

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.

After the Inquiry Deadline, prospective bidders who are on record as possessing a solicitation 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. There will be no responses from the District until **after** the Inquiry Deadline has been reached. Questions and comments received after the Inquiry Deadline will not be addressed.

Alternate Products

Important Note: Requests for consideration/approval of alternate products shall be submitted in by email to both pPhillip@greenville.k12.sc.us **and** tstroud@greenville.k12.sc.us. All supporting documents submitted also shall be provided via email to both pPhillip@greenville.k12.sc.us **and** tstroud@greenville.k12.sc.us.

Additionally, the District shall consider only submissions for consideration of alternate products received from authorized bidders, i.e. **Food Service Distributors**. For the purposes of this solicitation, a “Food Service Distributor” is defined as a firm or company that is offering to provide the complete package of service, ordering, warehousing, providing, and delivering the specified food goods and related supplies for use in the District’s FANS’ program.

Submissions received from other sources shall be reviewed for compliance. Alternate product submissions received from individuals, non-distributors, manufacturers, or manufacturers’ representatives will not be considered.

Concerning the submission of requests for approval of alternate products or brands, this same Inquiry Deadline applies (January 31, 2020, at 10:00 A.M. EST). 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 data; therefore, anyone submitting such a request is advised to provide full information for the District's consideration.

Award

The project will be awarded as **one (1) total** lot to the highest ranked responsible bidder whose responsive bid is in the best interest of the District and at the discretion of the District's evaluators. The award shall not be divided by line item, category, or any other division. Any award shall encompass all of the requirements of the solicitation. Any bid that does not meet the salient requirements of the solicitation will be deemed nonresponsive. 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 company chosen for the award must be able to supply all requested products, supplies, and services to the District.

This project is on a critical timeline, and a contractor's ability to perform the scope of work within the specified time period will be examined.

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 not open, the protestor may file by 5:00 P.M. EST the following full day that the District is open for business.

Bid Evaluation Factors

The selection process will be based upon the following factors, listed in order of importance. Based on the responses, each factor will be assigned a percentage multiplier based upon the quality of the response to the factor.

The firm with the highest total score may be awarded the project.

- Overall Price – Sixty percent (60%)
- Customer support, service capability, and value added services – Twenty percent (20%)
- Experience with large school foodservice programs (10 or more locations) - Fifteen percent (15%)
- Implementation plan and schedule – Five percent (5%)

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/proposer 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/proposer require the District to sign any contract(s), any document(s) and/or any agreement(s), the proposer 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 proposer is considered by the District to be responsible and/or the subsequent bid/proposal responsive.

Bids/proposals 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.

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. Bidders/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 bid/proposal may be deemed non-responsive by the District. Potential bidders/proposers that cannot agree to the above conditions should not expect to have a bid/proposal considered for an award.

Bid Response Certification

Interested firms are hereby notified that a "Bid Response Certification" form is included within the solicitation Bid Form 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 included herein. The Certification Form that is included with this solicitation shall be signed and returned with the bid. Should a bidder wish not to sign the Certification Form, the reasons for the decision shall be noted on a separate page within the bid.

A bidder who takes exceptions to any portion of this solicitation may be deemed “non-responsible” and may not be eligible for an award. The rights and authority of such determination is reserved solely by the Procurement Officers of the District’s Procurement Department.

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

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

Bid Security is not required for this solicitation.

Performance and Payment Bonds

Performance and Labor and Material Payment Bonds are not required for this solicitation.

Liquidated Damages

Liquidated Damages are not applicable to this program.

Bid Form

The Bid Form is *not* included with this document. Interested parties may download the official Bid Form from the SDGC Procurement Department website:

www.greenville.k12.sc.us/Departments/procure.asp

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. Pricing for all line items on the Bid Form shall be completed in order to be considered for an award.

Do not include **South Carolina Sales Tax** in the bid pricing. The District will add South Carolina Sales Tax to Purchase Orders as applicable.

The Bid Form is Excel-formatted. FANS structured the Bid Form to automatically calculate line item price extensions, subtotals, totals, and the grand total.

On the Bid Form, certain line items (for example, line item number 8) have two (2) different Unit Price options. In these instances, a Bidder shall select and submit pricing for only a single product per line item. Due to the Bid Form's automatic calculations, submit only a single price per line item.

Prospective Bidders are advised to note that this Bid Form has multiple "Tabs" and that each "Tab" has multiple pages.

On the Bid Form, all **Unit Prices** are for the price per case.

All prices and notations on the Bid Form should be printed in ink or typewritten. Errors should be corrected in Excel, as corrections made in any other manner would not be reflected in the Excel calculations. Erasures or use of typewriter correction fluid may be cause for bid rejection. Each page of the Bid Form shall be signed.

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.

A cover letter on corporate stationery should include any information the bidder deems pertinent to the evaluation of the bid. Do not change or alter 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 Bid Form may cause the bidder to be determined "non-responsive". Bidders that alter the Bid Forms are qualifying the bid response and are subject to disqualification.

Bidders shall include with the bid, all applicable requested information and must include any additional information that the bidder wishes to have considered prior to an award. Due to the possibility of discussion or negotiation with an apparently eligible respondent(s) submitting a bid; a bidder's competitive information shall not be divulged unless required by South Carolina law.

In accordance with Regulation 11 of the District's Procurement Regulations, any bid(s) that "...were not independently arrived at in open competition, were collusive, or submitted in bad faith..." shall be rejected.

NOTE: Only the names of the responding firms will be provided at the public bid opening. Pricing and other information will not be made public at the bid opening. Accordingly, attendance at the bid opening is not required.

GENERAL INFORMATION

Due care and diligence has 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. 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.

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 deviation is defined as change from the stated solicitation requirements that shall have little or no material effect upon the required equipment 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 reject all or any portions of bids submitted by responsible bidders. The District reserves the right to interpret the acceptability of the proposed product, material and/or service in meeting the intent of this solicitation as determined by the end users. The District reserves the right to waive any informalities or technicalities in the solicitation process so as to purchase in the best interest of the District.

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

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.

Contractor Responsibility

Each bidder must provide three (3) professional references for verification as to the quality of projects/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 site visits to evaluate the supplier's responsibility or capability.

The District prefers references from school districts of similar size located in the southeast region of the United States, or other public entities.

Compliance

List all exceptions to the required services, performance objectives or other criteria stated in the solicitation. Material exceptions to the solicitation's requirements will be grounds for a determination of non-responsiveness.

If the awarded bidder is unable to provide services at any point, in the opinion of the District, the District reserves the right to secure the services from other sources as needed to meet District requirements. This action shall not be grounds for contract controversy. Failure to receive a certain level of business or sales volume shall not be grounds for contract controversy.

Each bid package shall include information that addresses the Scope of Work and other pertinent information requests. The bid may also include additional information on other services offered.

Governing Law and Venue

The solicitation and any resulting Agreement, as well as any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of all parties shall, in all respects, be interpreted, construed, enforced and governed by and processed under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or contractual arrangement arising out of, relating to, or contemplated by the solicitation. The parties agree that the Venue for any action relating to this agreement shall take place and be administered in Greenville County, South Carolina.

Any provisions required for inclusion in a contract of this type by an applicable and valid executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

Indemnity

NOTE: The proposer agrees to indemnify and hold harmless the District and the District's members, officers, Board of Trustees, 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 proposer.

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.

Warranty for Services

The bidder warrants and represents to the District that the awarded firm possesses the legal standing, training background, experience, expertise and qualifications to undertake and to provide the products and carry out the services required in this solicitation. The bidder further warrants and represents that the required services will be performed in a professional, thorough manner and in the best interest of the students, the District and the general public, consistent with

accepted industry standards.

Bidders who intentionally provide false information shall not have their bid considered for an award. The District reserves the right to determine the correctness of all information provided by the bidder.

General Conditions

The bid shall be signed by an authorized individual who may bind the offering firm to provide the products and the services in accordance with the specifications contained in this BVB. The bid must contain a statement to the effect that the bid's content is firm and not subject to change for an acceptance period of ninety (90) calendar days from the due date or longer, if so required by the District.

Enclosed is the Certification of Drug-Free Work Place to be used when submitting a bid. Only this form shall be used; no other form is acceptable. This form shall be completely filled out and returned with the bid.

This solicitation does not commit or in any way obligate the District to award a contract, to pay any costs incurred in the preparation of a response or to issue an award for any product or service.

The District reserves the right to accept or reject, in part or in entirety, any or all bids and to cancel in part or in entirety, this solicitation if it is in the best interest of the District. The District reserves the right to waive any informalities or technicalities in the solicitation or the bids received in order to serve the best interest of the District.

The District may conduct discussions with apparently responsible bidders for the purpose of clarification to assure full understanding of the requirements of the BVB and for the clarification of any responses received. The District is not required to contact any firm or individual for clarifications or conduct discussions or negotiations with any bidder. The District reserves the exclusive right to determine which firms shall be involved in any clarification, discussion or demonstration.

Prices submitted shall be inclusive of all costs that the bidder expects the District to pay. The prices proposed shall include all materials, delivery, labor, equipment, tools, non-sales taxes and consumables required to provide all aspects of the project. The District shall not honor hidden or undisclosed costs.

Bidder Responsibility

Responsibility of the bidding firm or individual shall be ascertained for a contract awarded by the District based upon full disclosure to the District concerning the capacity and capability to meet the terms of the solicitation and based upon a past record of performance for similar work. The unreasonable failure of a bidder to supply information promptly in connection with an inquiry regarding the bidder's "responsibility" may be grounds for a determination of non-responsibility with respect to such bidder. Failure to provide requested information or other evidence of bidder non-responsibility may result in a rejection of a solicitation response or debarment of the bidder.

Bidder/Proposer Opportunity

The successful bidder/proposer 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.

Bid Confidentiality

Bidders shall clearly mark any portion of their bid response that is considered proprietary and/or confidential. Bidders are not to mark or otherwise designate that the entire bid is of a confidential and proprietary nature. Proprietary and/or confidential information will not be released to the public except as required by Chapter 4 of Title 30 of the *South Carolina Code of Laws*. The District shall determine whether or not information is proprietary and/or confidential and subject to release.

DEFAULT

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

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.

Alcoholic Beverages, Illicit Drugs, Tobacco Products, 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.

South Carolina Illegal Immigration Reform Act

By signing its bid, 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))

Contractor Licensing

As applicable, the successful bidder must be licensed to perform such work in the City of Greenville and to perform such work in South Carolina in accordance with the provisions of Section 40-11-10 through 40-11-340 of the Code of Laws of South Carolina, 1976, as amended.

Permits, Licenses and Taxes

The Contractor 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 proposers contact the following to learn of any pertinent requirements or licenses:

1. The South Carolina Secretary of State's office (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 proposer.

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.

Records

As required by the District, records shall be maintained by the awarded bidder in compliance with applicable municipal, federal or state laws, ordinances, codes, and/or as prescribed by SDGC. At any time during normal business hours and as SDGC may deem necessary, there shall be made available to SDGC for examination, all of the bidder's records with respect to all matters covered by this and any subsequent agreement with SDGC. SDGC may audit, examine and/or collect excerpts or transcripts from such records including, but not limited to, invoices, materials, payrolls, records of personnel, conditions of employment or any other data as may be pertinent.

Audit

The District shall be entitled to audit the books, documents and records of an awarded bidder, contractor or any subcontractor as a result of any award, contract or subcontract, negotiated or otherwise, to the extent that such books, documents and records relate to the performance of such pertinent contract or subcontract. Such books, documents and records shall be maintained by the awarded bidder/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 Officer. This provision applies to any resulting award related to this solicitation.

Bid Response and Delivery

All bids shall be in a sealed envelope and the following information shall be clearly marked on the envelope:

Sealed Bid Enclosed

Food Products and Supplies - FANS

IFB No. 120-1-2-26

All bids shall be received no later than **February 26, 2020, at 10:00 A.M. EST** at which time only the names of the bidding entities will be publicly read aloud and recorded. No further information shall be divulged at this time.

Attendance at this meeting is **not** required in order to have a bid submitted and evaluated.

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.

NOTE: 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, bidders may contact the District for directions, (864) 355-3100 or the District website, www.greenville.k12.sc.us. The District is not responsible for the interpretation of any directions by the bidder, the bidder's representative or a delivery service. The District is not responsible for weather, road, traffic or parking conditions.

Do NOT deliver bids to the SDGC Central Office or to another District facility.

Faxed or emailed bids shall not be accepted.

NOTE: BIDS RECEIVED OR DATE STAMPED AFTER THE DUE DATE AND OPENING TIME SHALL NOT BE ACCEPTED OR CONSIDERED.

Key Event Dates

Inquiry Deadline:

January 31, 2020, at 10:00 A.M. EST

Bid Due Date/Time and Public Opening: **February 26, 2020, at 10:00 A.M. EST**

Required Documents

Each bidder shall provide a total of one (1) original bid package, and two (2) complete, paper bid package copies. Bidders shall mark prominently the bid original as such, and also shall mark each bid copy as such.

**Deliver bids to: The School District of Greenville County
Procurement Department
2 Space Drive
Taylors, South Carolina 29687**

Evaluation

All bids and firms will be reviewed for purposes of determining bidder responsibility and bid responsiveness. Any bid or firm which does not meet the essential requirements of the District's solicitation will be subject to disqualification. For purposes of determining responsibility, all information provided by the bidding firm concerning its availability to perform fully the contract requirements contained in the solicitation and the integrity and reliability of the bidder will be reviewed. The submission of a bid for review does not necessarily qualify the bidding firm or the actual bid as being responsible or responsive. Failure to provide specific information, as requested, for use in the evaluation will cause the bid to be disregarded.

The evaluation team may request written or oral clarifications of any bid received. However, the District may, at its sole discretion, refuse to accept in full or in part, the response to a clarification request given by any vendor. Bidders are cautioned that the evaluators are not required to request clarification. The District is not required to meet with any bidder. Therefore, **all bids/offers should be complete and reflect the most favorable terms to the District.** The District reserves the right to reject any and all offers when such rejection is deemed to be in the best interest of the District.

Operational Matters

All facilities, equipment and services to be provided to support this program by the bidder shall be at the bidder's expense. The bidder shall maintain full and accurate records and accounts in connection with the operations required by this solicitation. All such records shall be retained by the awarded bidder for a period of five (5) calendar years from the date of award and may be audited by the District's designated representative at any time during regular working hours.

If a bidder is asked to attend a meeting for clarification at any time, it shall do so at its own expense.

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 telephone, copier, fax and postage expenses.

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.

Prepayment

The District shall not approve or process any payment to the bidder, its subcontractors or suppliers prior to project completion or agreed upon milestones that are not prejudicial to other bidders. 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.

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 bid/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.**

Use of District Name

The awarded bidder shall not use the name of the District in advertising or in seeking to join or actually joining into contracts with suppliers, customers or for any other manner. The bidder shall create 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 District business day after the published date unless notified otherwise. A District business day starting after a delay is not a full District business day. Bidders should consult the District's Infoline (355-3100) or local media regarding closures.

Evaluation after Award of Contract

The District will evaluate the selected bidder as needed during the period of performance, as regards to meeting the District's standards and the goals contained in the solicitation. The District may also evaluate the bidder's experience and records, cost reporting compliance with deadlines and timeframes, cost management, value awareness, schedule adherence, quality control, accuracy of reports, relationship with District employees, any communications with District representatives, and professionalism. Precise criteria for evaluation of performance will consist, at a minimum, of the terms of this solicitation and others may be developed after award of the contract.

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

Scope of Work/Specifications

The following section was developed, provided, and approved by the Administration and Staff of the SDGC Food and Nutrition Services Department. A contract may be awarded encompassing all of the bid response or portions of the bid response, whichever is in the best interest of the District. The awarded contract shall consist minimally of the Scope of Work/Specifications of this solicitation.

Scope of Work/Specifications **(Provided by FANS)**

The purpose of this solicitation is to establish a source for the purchase of perishable and nonperishable food and supplies for the USDA School Breakfast, School Lunch, Afternoon Snack and the Seamless Summer Feeding Programs located in Greenville County, South Carolina. The Scope of Work shall also include some unscheduled and emergency service to locations within the District. When required, the District may drop locations and/or add new sites within the county to the Scope of Work and the resulting contract.

Bidders shall provide separate pricing for each of the items on the product Bid Form. All products shall be bid as either the exact product specified or as a District-approved alternate product. Prior to the Inquiry Deadline, potential bidders (Food Service Distributors) may submit apparently equal product(s) to the District for review. After the Inquiry Deadline, by Addendum, the District will release a list of any and all District-approved alternate product(s).

After the Intent to Award is issued, no additional costs will be considered until the renewal time has arrived. Hidden or undisclosed costs will not be accepted.

Contract Term/Option to Extend

The initial term of this contract will be for the period from **July 1, 2020**, through **June 30, 2021**. 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 award/agreement shall not exceed five (5) calendar years in total.

Price Adjustment

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.

Qualification of Bidders

The District is requesting to receive bids from Food Service Distributors. A Food Service Distributor is defined as a company that is fully capable of ordering, warehousing, providing, and delivering food and supplies for use in the District's Food and Nutrition Services program.

Each bidder, in its Sealed Bid Package, will furnish satisfactory evidence of its ability to furnish products and services in accordance with the terms and conditions of these specifications. The District reserves the right to make the final determination as to a bidder's ability to provide the products and services requested herein.

Bidder's Information (Required)

The bidder must provide a response to each of the following items listed below. Failure to respond to each of the items below may result in the bid being deemed nonresponsive. Respond in the sequence stated below on a separate sheet(s) of paper. Bidders may provide additional information with the bid submittal if desired.

1. State the Bidder's main business activities.
2. Address and fully explain the capability and quality of the service(s) to be provided.
3. State the length of service in this business/activity and experience with large school foodservice programs (10 or more locations).
4. Provide a minimum of four (4) business references.
5. Describe the Bidder's implementation plan, including a detailed schedule for developing the unique District order guide, training of FANS Central Office staff, and training of school management staff on Bidder's online ordering platform.
6. Describe the Bidder's customer support and service capability, and any value-added services that will be included that would benefit the District.
7. List any impartial service ratings/or reports regarding the Bidder's company or affiliates.
8. Provide records of governmental or client litigation, including any debarments, related to the Bidder or its affiliates.
9. Provide information regarding the Bidder's current financial status and number of years at current business address.
10. Provide name and contact information for the dedicated Account Manager that would be assigned to this contract.

Alternate Products

Concerning the submission of request for approval of alternate products or brands, these requests can be made only by Distributors qualified to submit a bid on the entire solicitation. The same Inquiry Deadline applies. Sufficient documentation and proof of apparent equivalency shall be provided to the Procurement Representative prior to the Inquiry Deadline in order for the District to make a determination of acceptability. Submittals of request for approval of alternate products or brands do not mean that the District shall accept proposed alternates. Acceptance shall be noted in an addendum.

The District reserves the right to request **full case samples** of any requested alternative product. Requested product samples must be delivered to the Food and Nutrition Services Central Office located at 100 Blassingame Road, Greenville, SC 29605 within five (5) business days of the District request. FANS staff reserves the right to determine the acceptability of any alternative product based on quality, taste, and appearance.

Dedicated Account Manager

At no additional cost to the District, the successful bidder shall provide a dedicated Account

Manager responsible for managing the day-to-day needs of the program to FANS. The Distributor's Account Manager shall be available by telephone and email to the FANS Director, FANS Procurement Specialist, or designee between the hours of 9 a.m. through 5 p.m. Monday through Friday.

Volume

The total quantity(quantities) shown herein are estimated annual case requirements for the contract period, based on historical data. Note that the District does not obligate itself to purchase the full quantities indicated, but the price offered must be allowed should the quantities be less. The District requirements may exceed the quantities shown and all orders received by the Contractor during the term of the contract shall be filled in accordance with the terms and conditions hereinafter set forth. 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 unacceptable level of products.

Deliveries

All orders placed on this contract will require delivery of goods to all schools a minimum of once per week, Monday through Friday during normal schedule, between the hours of 6:30 am and 1:30 pm.

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 within five (5) working days after the date of award. Schools may require up to two (2) deliveries per week based on the school's volume and storage capacity.

Holiday Deliveries (Holiday shall be defined as any week that has less than five (5) school days.) If the 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.

In the event that weather or other factors force a school to close on a day for a scheduled delivery, the Contractor shall make arrangements to deliver products on the first day that the school reopens. The FANS Procurement Specialist will inform the vendor of any school delays or closures.

Drivers and helpers shall request the authorized school receiver, or the designated 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, etc., shall be noted on each ticket by the designated school receiver and initialed by both the delivery driver and school receiver. Drivers and helpers shall deliver merchandise into designated storage areas (dry, chilled, and frozen).

Drivers will be easily identifiable to school staff during deliveries by wearing name tags and uniforms with the company name and delivery driver's name clearly displayed.

The District shall not tolerate any fraternization with students by the Contractor.

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-Friday). The Procurement Specialist for the Food and Nutrition Services department will notify the Contractor via email in the event an unscheduled and/or emergency delivery is required.

Delivery Requirements

Products are expected to be fresh and 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. Frozen products must be completely frozen and be free from ice crystals or any form that would indicate that the product was thawed and refrozen. Refrigerated products must be delivered in a temperature range of between thirty-three degrees Fahrenheit and forty-one degrees Fahrenheit (33° F - 41° F). All dry food items and supplies must be in good condition and not exhibit any form of damage or bug infestation.

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. Upon District FANS 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.

Product Requirements

The District has "automatic" product protection recourse against suppliers for products that are misrepresented. According to federal regulations, the supplier whose name and address appear on the package is the responsible party. Contractors are expected to take immediate action to correct any situation in which product integrity is violated.

Upon award, the Contractor shall provide the Food and Nutrition Services Procurement Specialist with access to electronic Product Data Sheets and related documentation for all items on the Bid Form. Documentation shall include, but is not limited to, ingredients, allergens, nutrition information statements, product codes, pack sizes, and preparation instructions. Blanket approval is given to products where "Private Packer Label/Distributor Choice" is listed in the

“Approved Brand Name” column on the bid form, the potential contractor shall offer quotes on **1st Quality or Grade A Premium labels only.**

Potential contractors shall bid on those products that are specified or pre-approved. Pre-approved products are identified as “**1st choice**” and “**approved alternate**” on the Bid Form. Private Packer Label products for beef, poultry, pork, fish, and spices may be accepted as approved alternate products only when the following conditions are met:

- A. The retail product must be designated as an approved product on the Bid Form.
- B. The private/packer label and retail product must be prepared at the same plant and the establishment number must be included on the bid.
- C. A letter signed by an official from the manufacturer stating the private label product is the identical product as the retail product.

Facilities and Equipment

The Contractor shall have adequate warehouse space to store and deliver dry, chilled, and frozen products. Warehouse facilities and equipment shall be maintained in accordance with the Contractor’s Hazard Analysis Critical Control Plan (HACCP) to ensure optimum levels of safety and quality. The Contractor shall be liable for the safety and quality of products and packaging materials. District officials may, upon reasonable written notice to the Contractor’s servicing distribution center, inspect Contractor’s warehouse facilities and delivery vehicles.

Reports

Utilization reports shall be issued to the District monthly. These reports shall provide total quantity delivered per item in terms of bid units per school delivery point and a combined District total, as well as current pricing and fees. These reports shall be inclusive of all active products purchased, as well as any products purchased but no longer available. Utilization reports shall be provided within fifteen (15) calendar days after the end of a month.

Retention of Records

The contractor agrees to retain all books, records, and other documents relative to this agreement for five (5) years after final payment. The District, its authorized agents and/or federal/state representatives shall have full access to, and the right to examine any of said materials during said period. If an investigation or audit is in progress, records shall be maintained until stated matter is closed.

Transmittal of Orders

The Contractor must have the capability for each school to place orders directly to the Contractor through a web-based ordering platform. The web-based ordering platform shall include only the approved products listed in this solicitation or other items approved by the Director of FANS.

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 site visits to successful Contractor's operation facilities prior to and after award. Site visit may include:

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

Sanitation Requirements

District officials may routinely inspect the Contractor's facilities, 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.

Force Majeure

The Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and unusually severe weather; however, in every case the

failure to perform must be beyond the control and without the fault or negligence of the Contractor. The District shall govern the acceptability of such claims.

The District and the Contractor shall be required to use due caution and preventative measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred shall rest on the party seeking relief under this provision. In order to seek relief due to Force Majeure, the party seeking relief shall be required to promptly notify the District, citing the details of the Force Majeure event (including documentation) and request approval of the Force Majeure. The party seeking relief shall be required to use due diligence to overcome obstacles to performance created by the Force Majeure event, and shall resume performance immediately after the obstacles have been removed, provided that the Contract has not been terminated in the interim.

Delay or failure of performance by either party to this Contract caused solely by the Force Majeure event shall be excused for the period of delay caused solely by the Force Majeure event, provided that the affected party has promptly notified the other party in writing. Neither party shall have any claim for damages against the other party resulting from delays caused solely by the Force Majeure event.

The Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. The District shall not be responsible for any costs incurred by the Contractor because of the Force Majeure event unless the District has requested in writing that the Contractor incur such costs and that the School Food Authority (SFA) has agreed in writing to incur such costs.

With regard to product price adjustments requested pursuant to this section, the following procedures shall apply:

1. The Contractor shall submit a written request to the District Procurement Officer and the Director of FANS for review and approval at least one (1) month prior to the price adjustment taking effect for the following month. The request shall include the applicable Force Majeure cause as listed above substantiating the reason the relief is being requested;
2. In addition to the required documentation referenced in this provision, the affected product's manufacturer representative shall submit a signed statement of condition to support the request;
3. Documentation from the Contractor shall also be included to support pricing was obtained from at least two (2) other sources which would be higher than the requested increase. This could also include documentation to substantiate non-availability of the product; and
4. Failure to comply with all three (3) provisions shall automatically result in a denial of the request.

Notwithstanding any other provision of this section, in the event the Contractor's performance of its obligations under this Contract is delayed or stopped by a Force

Majeure event, the District shall have the option to terminate the Contract. Further, this section shall not be interpreted as to limit or otherwise modify any of the District's rights as provided elsewhere in this Contract.

Pre-Performance Audit

All items included in the "bidding sheets" are subject to an audit before contract performance. The Contractor shall be given notice of the District's intent to conduct an audit within five (5) business days after an Intent to Award is issued. All source documents referenced in this Solicitation, as well as any other documentation used for purposes of establishing a cost basis shall be subject to audit by the District.

Post-Award Audits

The District shall coordinate and conduct recurring Post-Award audits of the Contract throughout the contract term. All items in the "bidding sheets" shall be subject to audit. All source documents referenced in this Solicitation, as well as any other documentation used for purposes of establishing a cost basis and/or price adjustments shall be subject to audit. Post-Award Audit findings indicating an overcharge from pricing and/or the proper crediting of any applicable rebates, bonuses, discounts, credits, promotional allowances, or other financial benefits intended specifically for the District by manufacturers and suppliers shall be resolved by the Contractor via a credit memorandum to the District for the total value of the overcharge retroactive to the date the overcharge first occurred.

HACCP Plan and Related Sanitation Requirements

The Contractor shall maintain a current Hazard Analysis Critical Control Point (HACCP) Plan that is in compliance with all appropriate government and industry standards, detailed summaries of the plans shall be available for review by the District upon request.

Food Recall Plan

The Contractor shall be expected to comply with all applicable federal, state, and local mandates regarding the identification and recall of foods from the commercial and consumer marketplaces. The Contractor shall maintain a current documented process to address and resolve food recalls, copies of which shall be available for review by the District upon request. This documentation shall include a means for accurate and timely communication with the District, as well as specific protocols to identify and remove unsafe products from schools in an expedient, efficient, and effective manner.

Invoicing

All invoices shall be verified and signed by the FANS manager or designee 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 of Greenville County Schools
100 Blassingame Road
Greenville, South Carolina 29605

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

USDA Nondiscrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotope, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW Washington, D.C. 20250-9410;
- (2) Fax: (202) 690-7442; or
- (3) Email: program.intake@usda.gov.

This institution is an equal opportunity provider.

End of Section - Scope of Work/Specifications

The District appreciates each bidder's interest in this program.

Sincerely,

Patricia J. Phillips
Senior Buyer

Enclosures:	Certification of Drug-Free Work Place	(2 pages)
	Bid Response Certification	(1 page)
	Terms and Conditions	(11 pages)

Copy: Mr. Eston Skinner, Director of Procurement
Mr. Joe Urban, Director of FANS

The School District of Greenville County (District)

Certification of a Drug-Free Workplace

This certification is required by the Drug-free Workplace Act, Section 44-107-10 et seq South Carolina Code of Laws (1976, as amended). The regulation requires signed Certification by Proposers/Contractors/Vendors prior to an award, that the entity shall maintain a drug-free workplace as required below and in accordance with South Carolina law. The signed Certification is a material and binding representation of fact upon which reliance shall be placed when determining the award of a contract. False representation or violation of the Certification requirements shall be grounds for suspension of payments, suspension and/or termination of any contract, or suspension and/or debarment regarding the right to submit bids or proposals to The School District of Greenville County.

For purposes of this Certification, "Drug-free Workplace" is defined as set forth in Section 44-107-20(1), South Carolina Code of Laws (1976, as amended). The aforesaid Section defines a workplace to include any District site where work is performed to carry out the Contractor's/ Vendor's duties under an award/contract. The Contractor's/Vendor's employees shall be prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of the Drug-free Workplace Act.

By signing this document, the Contractor/Vendor hereby certifies that it shall provide and maintain a drug-free workplace by:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited on a District site or in the Contractor's/Vendor's workplace and specifying the actions that will be taken against employees for violation of the prohibition;
- (2) Establishing a drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The Contractor's/Vendor's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug violations;
- (3) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (1) above
- (4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the contract, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer of any criminal drug statue conviction for a violation occurring in the workplace no later than Five (5) calendar days after the conviction;
- (5) Notifying the District within Ten (10) calendar days after receiving notice under subparagraph (4) (b) from an employee or otherwise receiving actual notice of the conviction;

- (6) The Contractor/Vendor shall take one of the following actions, within Thirty (30) calendar days of receiving notice under subparagraph (4) (b) with respect to any employee who is convicted:
- (a) Taking appropriate personnel action against the employee, up to and including termination; and
 - (b) Requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health facility/service, law enforcement agency or other appropriate agency;
- (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of Paragraphs (1), (2), (3), (4), (5), and (6) above.

SDGC Solicitation/Contract Number: IFB No. 120-1-2-26

Project Name: Food Products and Supplies for FANS

Contractor/Vendor Name:

Address:

Authorized Representative Name/Title:

Signature: _____ **Date:** _____

Witness:

Note: This Certification Form is required to be submitted for all contracts for a stated or estimated value of \$ 10,000 or more prior to an award.

**Food Products and Supplies
Invitation for Bid No. 120-1-2-26**

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 ninety (90) 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 ninety (90) 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.

Authorized Signature: _____

Printed Name and Title: _____

Firm Name: _____

Physical Address: _____

Date: _____

Telephone Number: _____ **Fax Number:** _____

Email Address: _____

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)
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.