

DESIGN, BUILD OPERATE AND MAINTAIN **REQUEST FOR PROPOSAL FOR SCDMH PRTF**

Project J12-9830

SUBMIT OFFER BY (Opening Date/Time): **7 /14/2023 at 11:00 ET** (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: **06/ 30 /2020 at 16:00 ET** (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: **6 printed, 4 USB and 1 Redacted Copy if applicable**

Initial here if NO redacted copy is necessary _____

I. SCOPE OF SOLICITATION

ACQUIRE SERVICES (MODIFIED)

The State of South Carolina, by and through the South Carolina Department of Mental Health (SCDMH) solicits proposals for the Design, Construction, Operation and Maintenance of a Psychiatric Residential Care Facility (PRTF) located on a SCDMH owned site in Columbia, South Carolina.

BACKGROUND

SCDMH seeks proposals to Design, Build, Operate and Maintain (DBOM) a Psychiatric Residential Treatment Facility (PRTF) for adolescents who have been clinically determined to have a serious mental illness and require the level of care and treatment provided in a PRTF. It is anticipated that most adolescents referred for admission to the PRTF will be youth who have been committed to the South Carolina Department of Juvenile Justice (SCDJJ) by a Family Court, but who are being transferred to SCDMH for mental health treatment pursuant to State law and policy.

Many of the youth in SCDJJ facilities have diagnosable mental health disorders, and a substantial number of SCDJJ committed youth meet the criteria for a diagnosable serious mental illness (SMI), including but not limited to Psychotic Disorder, Major Depressive Disorder, Bipolar Disorder, severe Post Traumatic Stress Disorder and complex trauma, and Generalized Anxiety Disorder. SMI youth are required to be transferred to SCDMH in order to meet their identified treatment needs, generally by means of SCDMH securing placement in a residential treatment program or therapeutic residential facility. Such programs and facilities are operated by private providers. SCDMH has found it difficult to gain acceptance from such providers to accept those SMI youth with a history of undesirable behaviors, such as assaultive or destructive behaviors.

After years of encountering difficulties in adequately serving these youth using private sector providers, the State made the decision to establish a specialty designed SCDMH PRTF to provide an appropriate residential treatment program to serve those SMI youth which private providers have declined to serve.

The PRTF shall be designed to have a minimum of 24 beds. The facility and program shall be licensed by the South Carolina Department of Health and Environmental Control (DHEC) under Licensing Standards 61-103, Residential Treatment Facilities for Children and Adolescents. The facility and program must additionally meet certification standards of the Centers for Medicare and Medicaid Services (CMS) and be CMS certified in order for SCDMH to bill Medicaid for the treatment services provided to residents.

The contractor shall have a no refusal/no eject policy. The program must accept all youth determined by SCDMH to need a Psychiatric Residential Treatment level of care, including those youth whose treatment needs may not be as acute, but for whom the lower level of care is not currently available. Following construction, and during operation, SCDMH will pay its contractor at a “per resident per day” rate for its services. SCDMH will pay for an agreed upon minimum number of beds at the “per resident per day” rate whether occupied or not, as a guaranteed level of financial support.

The contractor’s service array for the PRTF’s residents must include a comprehensive treatment program and all services, including educational services, necessary to support the full-time residential care of youth living in a secure facility. The contractor will be required to provide treatment, rehabilitative and educational services and be responsible to the SCDMH for the satisfactory delivery of these services.

II. SUBMITTING OFFERS, CERTIFICATIONS, AND EVALUATIONS

MAXIMUM CONTRACT DURATION

As more fully set forth herein, this solicitation will result in two agreements with the contractor: a Development Agreement for the design and construction of the PRTF and an Agreement for the Operation and Maintenance of the PRTF after substantial completion of construction and occupancy approval. Services for the Operation and Maintenance of the PRTF shall commence on the date of substantial completion of construction and approval for occupancy. The term for Operation and Maintenance of the PRTF will be five (5) years after substantial completion of construction/occupancy approval with two (2) one-year renewal options for a possible maximum duration of seven (7) years after substantial completion of the PRTF. As used herein, substantial completion has the meaning set forth in Section 9.10 of the sample Development Agreement.

DEFINITIONS, CAPITALIZATION, AND HEADINGS (DEC 2015)

CLAUSE HEADINGS USED IN THIS SOLICITATION ARE FOR CONVENIENCE ONLY AND SHALL NOT BE USED TO CONSTRUE MEANING OR INTENT. EVEN IF NOT CAPITALIZED, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION, UNLESS EXPRESSLY PROVIDED OTHERWISE.

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

AUTHORITY means the State Fiscal Accountability Authority or its successor in interest.

BUSINESS means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity. [11-35-310(3)]

CHANGE ORDER means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract. [11-35-310(4)]

CONTRACT See clause entitled Contract Documents & Order of Precedence.

CONTRACT MODIFICATION means a written order signed by the procurement officer, directing the contractor to make changes which the clause of the contract titled "Changes," if included herein, authorizes the Procurement Officer to order without the consent of the contractor. [11-35-310(9)]

CONTRACTOR means the Offeror receiving an award as a result of this solicitation.

COVER PAGE means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

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

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

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

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

YOU and YOUR means Offeror.

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

STATE means the Using Governmental Unit(s) identified on the Cover Page.

SUBCONTRACTOR means any person you contract with to perform or provide any part of the work.

US or WE mean SCDMH.

WORK means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

[02-2A003-3]

AMENDMENTS TO SOLICITATION (MODIFIED)

- (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: www.procurement.sc.gov
- (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment.
- (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

AWARD NOTIFICATION (MODIFIED)

Notice regarding any award, cancellation of award, or extension of award will be posted at the location and on the date specified on the Invitation for Design-Build Services – SE-710 (Modified) for Public Notices. Such notice will also be sent electronically to all Offerors responding to the Solicitation and any award will not be effective until the calendar day (including weekends and holidays) immediately following the seventh business day after such notice is given.

BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)

By submitting Your Bid or Proposal, you are offering to enter into a contract with SCDMH. A binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed. [02-2A015-1]

BID ACCEPTANCE PERIOD (JAN 2004)

In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. [02-2A020-1]

BID IN ENGLISH and DOLLARS (JAN 2004)

Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)

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

(a) By submitting an offer, the offeror certifies that-

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

(i) Those prices;

(ii) The intention to submit an offer; or

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

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

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

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

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

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

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

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

(c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1]

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)

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

(i) Offeror and/or any of its principals-

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

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

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

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons

having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

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

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

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

[02-2A035-1]

CODE OF LAWS AVAILABLE (JAN 2006)

The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:

<http://www.scstatehouse.gov/code/statmast.php>

The South Carolina Regulations are available at:

<http://www.scstatehouse.gov/coderegs/statmast.php> [02-2A040-2]

DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (FEB 2015)

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

affiliated business of either. [02-2A047-2]

DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)

Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental body's mail room which services that purchasing office prior to the opening. [R.19-445.2070(G)] [02-2A050-1]

DRUG FREE WORKPLACE CERTIFICATION (JAN 2004)

By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]

DUTY TO INQUIRE (FEB 2015)

Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. See clause entitled "Questions from Offerors." [02-2A070-2]

ETHICS CERTIFICATE (MAY 2008)

By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]

OPEN TRADE REPRESENTATION (JUN 2015)

By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an

entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2A083-1]

PROTESTS (MAY 2019)

If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest a solicitation, you must submit a protest within fifteen days of the date the applicable solicitation document is issued. To protest an award, you must (i) submit notice of your intent to protest within seven business days of the date the award notice is posted, and (ii) submit your actual protest within fifteen days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13). Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided. [02-2A085-2]

PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015)

Violation of these restrictions may result in disqualification of your offer, suspension, or debarment, and may constitute a violation of law.

(a) During the period between publication of the solicitation and final award, ***you must not communicate, directly or indirectly, with the Using Governmental Unit or its employees, agents or officials regarding any aspect of this procurement activity***, unless otherwise approved in writing by the Procurement Officer. All communications must be solely with the Procurement Officer. [R. 19-445.2010]

(b) You are advised to familiarize yourself with Regulation 19-445.2165, which restricts donations to a governmental entity with whom you have or seek to have a contract. ***You represent that your offer discloses any gifts made, directly or through an intermediary, by you or your named subcontractors to or for the benefit of the Using Governmental Unit during the period beginning eighteen months prior to the Opening Date.*** [R. 19-445.2165] [02-2A087-1]

PUBLIC OPENING (JAN 2004)

Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. [02-2A090-1]

REJECTION/CANCELLATION (JAN 2004)

The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]

RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)

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

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation

may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

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

[02-2A105-2]

SIGNING YOUR OFFER (JAN 2004)

Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

STATE OFFICE CLOSINGS (JAN 2004)

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <http://www.scemd.org/planandprepare/disasters/severe-winter-weather>

[02-2A120-3]

DISCLOSURE OF YOUR BID / PROPOSAL and SUBMITTING CONFIDENTIAL DATA (FEB 2021)

(a) According to Section 11-35-410, any person submitting a document in response or with regard to any solicitation or other request must "comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed

to the public." **IF YOU IDENTIFY YOUR ENTIRE RESPONSE AS EXEMPT FROM PUBLIC DISCLOSURE, OR IF YOU DO NOT SUBMIT A REDACTED COPY AS REQUIRED, THE STATE MAY, IN ITS SOLE DISCRETION, DETERMINE YOUR BID OR PROPOSAL NONRESPONSIVE AND INELIGIBLE FOR AWARD.** (b) By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page, or portion thereof, of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page, or portion thereof, was redacted and conspicuously marked "Trade Secret" or "Confidential" or "Protected", (2) agrees that any information not redacted and marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. (c) If your offer includes any information that you claim is exempt from public disclosure, you must submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). Except for the information removed or concealed, the redacted copy must be identical to your original offer. (d) Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If only portions of a page are subject to some protection, do not redact the entire page. The redacted copy must reflect the same pagination as the original and show the empty space from which information was redacted. The Procurement Officer must be able to view, search, copy and print the redacted copy without a password. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. (e) On the redacted copy, you must identify the basis of your claim by marking each redaction as follows: You must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that you redacted and claim as exempt from public disclosure because it is either (1) a trade secret as defined in Section 30-4-40(a)(1) of the Freedom of Information Act, or (2) privileged and confidential, as that phrase is used in Section 11-35-410. You must separately mark with the words "TRADE SECRET" every page, or portion thereof, that you redacted and claim as exempt from public disclosure as a trade secret pursuant to Section 39-8-20 of the Trade Secrets Act. You must separately mark with the word "PROTECTED" every page, or portion thereof, that you redacted and claim as exempt from public disclosure pursuant to Section 11-35- 1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. (f) In determining whether to release documents, the State will detrimentally rely on your redaction and marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "Protected". By submitting a response, you agree to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that you have redacted or marked as "Confidential" or "Trade Secret" or "Protected". (All references to S.C. Code of Laws.) [02-2A125-3]

SUBMITTING A PAPER OFFER OR MODIFICATION (MAR 2015)

Unless specifically instructed otherwise in the solicitation, you should submit your offer or modification in accordance with the clause titled "ON-LINE BIDDING INSTRUCTIONS." Paper offers *other than required drawings?* are discouraged. If you must submit a paper offer or modification the following instructions apply. (a) All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (b) (1) All copies of the offer or modification, and any other documents required to be submitted with the offer shall be enclosed in a sealed, opaque envelope or package. (2) Submit your offer or modification to the address on the Cover Page. (3) The envelope or package must show the time and date specified for opening, the solicitation number, and the name and address of the bidder. If the offer or modification is sent by mail or special delivery

service (UPS, Federal Express, etc.), the outermost envelope or wrapper must be labeled "OFFER ENCLOSED" on the face thereof. (c) If you are responding to more than one solicitation, submit each offer in a separate envelope or package. (d) Submit the number of copies indicated on the Cover Page. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. [02-2A130-2]

TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)

Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. [02-2A135-1]

VENDOR REGISTRATION MANDATORY (MODIFIED)

You must have a state vendor number to contract with the state. To obtain a state vendor number, visit www.procurement.sc.gov and select Doing Business with Us. Then select Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered and know your User ID & Password, you can update your information by selecting Update Vendor Registration. If you need to update information but do not have your User ID/Password, you must complete a new vendor registration and On Step 9 – Messages to Administration indicate "Update vendor number" with your existing 10-digit vendor number. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State [Index - Business Entities Online - S.C. Secretary of State \(sc.gov\)](http://Index - Business Entities Online - S.C. Secretary of State (sc.gov)) or S.C. Department of Revenue [Withholding \(sc.gov\)](http://Withholding (sc.gov))).

WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)

Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085. [02-2A150-1]

CONTENTS OF OFFER (RFP) (FEB 2015)

(a) Offers should be complete and carefully worded and should convey all of the information requested.

(b) Offers should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

(c) The contents of your offer must be divided into two parts, the technical proposal and the business proposal. Each part should be bound in a single volume.

(d) If your offer includes any comment over and above the specific information requested in the solicitation, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

REQUIRED MEDIA AND FORMAT (MODIFIED)

You must submit an electronic copy or copies on USB drive. Submit the number of copies indicated on Invitation for Design-Build-Operate-Maintain Services, SE-710 (Modified). Each copy should be on separate media. Every USB drive must be labeled with the solicitation number and the offeror's name and specify whether its contents address technical proposal or business proposal. If multiple USB drive sets are provided, each drive in the set must be appropriately identified as to its relationship to the set, e.g., 1 of 2. The electronic copy must be identical to the original offer. File format shall be compatible with Microsoft Office (version 2003 or later), or Adobe Acrobat or equivalent Portable Document Format (.pdf) viewer. The Procurement Officer must be able to view, search, copy and print electronic documents without a password. Additionally you must provide 6 printed copies of your drawings. See paragraph V.C.2, "Graphic Documents required for the RFP"

OPENING PROPOSALS -- INFORMATION NOT DIVULGED (FEB 2015)

In competitive sealed proposals, neither the number or identity of offerors nor prices will be divulged at opening. [Section 11-35-1530 & R. 19-445.2095(C)(1)] [02-2B110-2]

PROTEST – CPO-MMO ADDRESS (MODIFIED)

Any protest must be addressed to the Chief Procurement Officer for Construction, and submitted in writing

(a) by email to Protest-OSE@mmo.state.sc.gov ,

(b) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

III. STATEMENT OF WORK

A. OBJECTIVES

The objectives are:

1. To design and build a 24 bed licensed Psychiatric Residential Treatment Facility.
2. Following occupancy approval and licensure, to admit and care for eligible residents referred by SCDMH.

3. To deliver high quality residential psychiatric care and services that meet or exceed licensure and certification standards required by SCDHEC and the Centers for Medicaid and Medicare Services.
4. To operate a treatment program in a manner that is effective and evidence-based.
5. To anticipate and have staff trained to effectively address some residents' potential to engage in undesirable behaviors in a positive manner which both protects the safety of other residents and staff while not disrupting the ongoing treatment program.
6. To maintain an open and collaborative relationship with the administration and staff of SCDMH, SCDJJ and other State officials.
7. To maintain complete and accurate records of treatment; to provide prompt notification to SCDMH and any required external authorities, of serious adverse incidents and to cooperate in any subsequent investigations or reviews, as required.

B. PRTF FACILITY (Construction)

1. The contractor must have the capacity to design and construct a minimally 24 bed PRTF based on plans submitted. The Plans submitted with the proposal should indicate how the PRTF could be expanded to 32 beds should that become necessary in the future.
2. The selected contractor is responsible for supplying all beds, furniture, and other equipment necessary to include medical equipment, office equipment, computers, telephones, copiers, washer, dryers, refrigerators and replace and upgrade beds, furnishings, and equipment when required.
3. The building shall be located on an identified site on SCDMH property in Northeast Columbia, adjacent to the Department's G. Werber Bryan Psychiatric Hospital. The facility must meet all statutory and code requirements and be eligible for licensure by the S.C. Department of Health and Environmental Control (DHEC) as a Psychiatric Residential Treatment Facility.
4. The facility must comply with the South Carolina adopted International Building Codes. See the State Engineer's **Manual for Planning and Execution of State Permanent Improvements - Part II**, Chapter 5 for current building codes and standards, as well as the 2012 NFPA 101 – Life Safety Code and the 2018 NFPA 99 – Health Care Facilities Code or as updated in the DHEC DHFC Construction Guidelines Manual. Portions of the facility must meet International Building Code requirements for I-2 and I-3 Institutional Occupancy. The facility and program are required to be licensed by DHEC under their Regulation 61-103. The facility and the site it occupies must comply with the Americans with Disability Act, ANSI A117.1 and all applicable state laws regarding construction requirements. The Contractor will be responsible for adherence to all state regulatory processes.
 - a. The design must incorporate the optimum in function, security, aesthetics, efficiency and energy conservation, and execution of construction activities that are economical

- and sound. Perimeter and other fencing as well as other design features devoted to security will provide a secure environment for residents, staff, and the public.
- b. Design must incorporate areas for recreation, individual and group treatment as well as resident education. Sightlines must permit a direct view of supervision on units, recreation spaces, and corridors. Design must permit staff to be able to control resident movement to recreation, treatment and program spaces, and simultaneous movement must be possible.
 - c. The design must provide a minimum of 24 beds. A mix of single and double rooms is desirable, with an individual sink, toilet and shower for each room.
 - d. The design must include separate areas of male and female rooms. A desirable feature would be a design that would allow for flexibility of use, such as allowing for a change in the ratio of male-female bed allocations.
 - e. The design must incorporate private living spaces for residents yet facilitate contact between residents and staff. The design must show how residents will be able to have private but secure space, various types of common space, and access to outdoor space.
 - f. The design must permit multiple activities to be conducted at the same time. Program spaces must be adequately sized and must be capable of close supervision. Recreation spaces must be easily and safely accessible and also capable of close supervision.
 - g. Outdoor recreation space must be provided, including areas for a variety of athletic activities. The design must include open air and naturally lighted courtyards in the resident-accessible areas of the facility.
5. The facility shall be designed and constructed to meet the program's service array.
- a. Given the characteristics of the residents which will be treated in the facility, the resident areas shall be equipped with correctional grade doors, locks and fixtures.
 - b. Fixtures in all resident areas must be ligature resistant.
 - c. The proposal shall describe the safety and security features which the design will include that will help to minimize the risk of elopements and which will complement the behavior management features of its treatment program. The proposal should highlight those design elements and building materials it will include that will help to prevent deliberate damage to the facility by its occupants and minimize needed repairs.
 - d. Offerors should consider enhanced safety and security features which may include:
 - a central nurse/security station with complete line-of-sight down all bedroom and staff offices/treatment area hallways;
 - high ceilings with unreachable recessed sprinkler heads;
 - a camera system to monitor common spaces, with recordings maintained for a period of time to aid in review of adverse events or allegations of misconduct;
 - hardened wall surfaces;
 - resident room sleeping areas which can be securely separated and allow for the facility to serve youth of both genders, including on occasion youth with gender identity issues;

- recreation/exercise areas with no blind spots and which can be monitored from inside as well as outside the facility; and
- furniture and equipment which cannot easily be lifted and thrown.

6. Project Delivery Schedule

The contractor must provide a detailed timeline for delivery of the Facility.

7. Development Agreement

The contractor and SCDMH will enter into a detailed Development Agreement following contract award. The Development Agreement will set forth the obligations of SCDMH, including furnishing the contractor access to the site upon which the facility will be constructed and all known information in the possession of SCDMH regarding the property. The Development Agreement will set for the obligations of Contractor as developer of the facility on the site provided.

A sample of a detailed Development Agreement of the type expected is provided as an Addendum to this Solicitation. The Development Agreement will become an exhibit to the Record of Negotiations and describe the additional terms applicable to the Project.

C. PRTF OPERATION AND MAINTENANCE

Following occupancy approval and licensure, contractor will admit and care for eligible patients referred by SCDMH.

1. Healthcare Services

Contractor will provide all services associated with operation and management of a duly licensed psychiatric residential care facility as required by Medicare and Medicaid certification standards and SCDHEC Regulations regarding standards for licensing psychiatric residential care facilities. Contractor is responsible for providing all necessary equipment and supplies with regard to these services. Services provided must include those necessary for the treatment of pre-existing conditions as well as those that arise while under the care of contractor. Contractor must provide or arrange for the provision of all medically necessary services. Medically necessary services shall be defined as those services which physicians or other licensed medical practitioners, acting in the scope of their medical practice, are necessary for the well-being of a resident of the facility.

Services to be provided by Contractor will include all of those required in the most current DHEC Licensing Standards 61-103, Residential Treatment Facilities for Children and Adolescents. Services to be provided include:

- a. Physician Coverage;
- b. Medical Services;
- c. Clinical Services;
- d. Educational Services;

- e. Pharmacy Services may be provided by means of a subcontract arrangement or by in-house staff;
- f. Nutritional Services in accordance with SCDHEC and CMS standards and acceptable to the SCDMH;
- g. Security;
- h. Transportation

Contractor is responsible for transportation of residents for necessary off-site medical care, as well as providing one or more staff escorts to accompany the resident. For those residents who remain committed to the South Carolina Department of Juvenile Justice (SCDJJ), transportation to necessary legal proceedings will be provided or arranged for by SCDJJ.

- i. Utilities Water, HVAC, internet, trash, recycling, etc)

1. Internet/cable and necessary hardware/software infrastructure to support; voice system and necessary hardware/software infrastructure to support; Connections from internet/cable/voice provider from street to facility.

- j.. Preventive maintenance for the facility;
- k.. Grounds maintenance;
- l. Pastoral Care;
- m. Beauty and Barber Services;
- n. Laundry Services; and
- o. Canteen Services.

2. Electronic Health Record

- a. SCDMH requires the Contractor to utilize the same Electronic Health Record (EHR) in use at other SCDMH facilities to support resident care and available reimbursement of services. Currently, SCDMH utilizes My Avatar for its inpatient needs.
- b. All electronic records of residents will remain the property of SCDMH and SCDMH staff will have full access to the EHR.

3. Maintenance of Facility, Equipment and Systems

- a. The Contractor shall be responsible for maintenance of the building, equipment and all mechanical, electrical, plumbing and utility systems, including but not limited to:
 - (1) Air conditioning equipment and systems
 - (2) Air-handling/distribution equipment and systems
 - (3) Water distribution systems and plumbing
 - (4) Fire sprinkler system
 - (5) Electrical equipment, lighting and control systems
 - (6) Fire protection equipment and systems
 - (7) Heating equipment, systems and controls
 - (8) Food service equipment

- (9) Laundry equipment
- (10) Roofing
- (11) Painting

- b. Maintenance shall include both a program of preventive maintenance on all systems, to include boilers, chillers and generators, which shall, at a minimum, conform to State required, manufacturers recommended preventive maintenance schedules, and a program of scheduled and unscheduled maintenance and repairs designed to keep equipment and systems in good operating condition. Preventive maintenance records indicating the equipment maintained, the work performed, who performed the work, and the date the work was performed will be maintained for review by SCDMH representatives. The Contractor will be responsible for arranging, and the cost of, preventive maintenance contracts.
- c. Contractor shall be responsible for the cost of all labor, equipment, parts and materials required to repair and maintain the building(s) and systems, except major repairs. Major repairs shall be defined as those repairs to the buildings and mechanical, electrical, plumbing and utility systems, the single event cost of which exceeds Fifteen Thousand (\$15,000) Dollars. Major repair needs shall be identified to SCDMH as soon as the need arises or is foreseen.
- d. The Contractor shall be subject to Quarterly Facility Inspections performed by SCDMH Physical Plant Services (PPS) employees or a contractor employed by SCDMH. All known facility issues shall be disclosed to the inspector so that it is documented in the inspection notes. The Contractor will have thirty (30) days to correct issues noted on the report or respond in writing why corrective action will take longer than thirty (30) days. If the work has not been completed within the thirty (30) days or agreed upon time in writing SCDMH PPS reserves the right to contract out the repair and charge the Contractor back for the total cost of the repair including but not limited to time and travel of SCDMH PPS personnel to oversee the project.
- e. The Contractor shall keep written logs on when scheduled maintenance, equipment exercise, and inspections are performed on all mechanical and electrical equipment associated with the facility. SCDMH PPS may at any time request access to these records for review to ensure proper maintenance, equipment exercise, and scheduled inspections are performed. Any equipment not functioning, bypassed, or removed shall immediately be reported to SCDMH PPS and a plan to repair or replace shall be documented with a specific timeline for completion. Failure to do so will result in SCDMH PPS reserving the right to contract out the repair and charge the Contractor back for the total cost of the repair including but not limited to time and travel of SCDMH PPS personnel to oversee the project.

- f. SCDMH PPS shall review and approve Maintenance Supervisors before the Contractor hires them. PPS will also be notified when there are Maintenance personnel changes.
- g. If it is determined that the equipment failure or building damage is due to Contractor neglect/abuse, the Contractor shall share the cost to fix/repair the problem. The Contractor's share will be prorated depending on the equipment life expectancy and type of neglect/abuse, and the cost will be determined by SCDMH PPS. SCDMH PPS will contract out the repair and charge the Contractor back for their share of the repair and including but not limited to time and travel of SCDMH PPS personnel to oversee the project.h.
- h. If there is an insurance claim on damage to equipment or the facility, the Contractor shall bear full responsibility for the burden of proof, and SCDMH shall not be responsible for supplementing any loss should the claim not payout total loss dueto lack of documentation or proof.

IV. PAYMENT TO CONTRACTOR

- A. During the Construction phase, the Contractor will be paid as agreed upon in the Development Agreement.
- B. During the operation of the PRTF contractor will be paid monthly for services provided during the preceding month.
- C. Monthly payments will be based on the applicable per bed, per day rate times the number of occupied bed days for the previous month.
- D. It is anticipated that the majority of the residents will be Medicaid eligible and enrolled with a Medicaid Managed Care Organization. SCDMH will submit the actual claims for reimbursement but requires the contractor to properly obtain any needed prior authorization and to enter the required clinical and administrative information in My Avatar to support accurate claims for reimbursement.
- E. Rejection of a claim due to a failure by the contractor to obtain necessary prior authorization, or in the event of audit findings requiring a payback due to incorrect or defective clinical and administrative documentation which was the responsibility of the contractor, SCDMH may be deduct all or a portion of the amounts from the amount due contractor.

V. INFORMATION FOR OFFERORS TO SUBMIT -- EVALUATION (JAN 2006)

In addition to information requested elsewhere in this solicitation, offerors should submit the following information for purposes of evaluation:

- A. Cover Letter - Submit a cover letter, which includes a summary of the offeror's ability to perform the services described herein and a statement that the offeror is willing to perform those services and enter into a contract with the State. The cover letter must state that the offeror will comply with all requirements of the RFP. The cover letter must be signed by a person having the authority to commit the offeror to a contract.
- B. Experience and Qualifications:
 1. Profiles of Contractor and Subcontractors. The Department intends to select a single contractor to design, build, operate and maintain the PRTF. Offerors must identify major entities to provide specific elements of the Project. These entities must include at a minimum:
 - the architectural firm or firms who will be providing design services for the project;
 - civil, structural and MEP engineers;
 - the general contractors who will provide construction services for the Project;
 - any entities that will provide management for any part of the Project; and
 - entities that will provide operations and maintenance if not performed by the offeror.
 2. For each of these entities, provide the following information:
 - Contractor and Subcontractor name(s)
 - Primary address for each Contractor and Subcontractor member
 - Building types developed (Healthcare Facilities, Correctional Facilities, Hospital Facilities, Retail, Office, Academic, Parking, etc.)
 - Description & approximate value of real estate assets developed and currently under control
 3. Project Team Personnel – Offerors must submit the experience and qualifications by whatever title denoted of the proposed positions of Administrator, Medical Director, Nursing Director, Social Service Work, Activity Therapy Director, Psychology Director, Quality Improvement Director, Facility Plant Manager, and any other key personnel. A description of the offeror's corporate professional support capability, to include professional qualifications of the staff who will provide support to the facility.

4. Identify the individuals of the offeror and each member of a subcontractor, as required by the preface, who will be directly responsible for performing the tasks required for the Project. Please address the following items for this section:
 - Point of contact for submission and potential questions
 - Offeror and Subcontractor organization chart
 - Résumé for the Project Executive for this Project
 - Résumés for each person identified in the submission as part of the Project Team
5. Experience and Capabilities / Previous Projects – Describe three recent projects, preferably developed within the past five years. This description should demonstrate experience in contracting for the design and construction of similar projects. Also, if possible, the project examples should demonstrate familiarity with the healthcare and correctional arenas. These project summaries should be in narrative form and additional descriptions may be included as an appendix. Each description is recommended to include the following:
 - Brief project summaries including project name, address, project size, development program, construction costs per square foot, total development costs per bed, total development costs, financing structure, length of project and date of completion.
 - Describe in detail the project's relevance to the Department's envisioned objectives and project outlined herein.
 - Physical description, specifically detailing construction quality, which may include photographs, renderings, and any other relevant graphics.
 - One reference for each project, including name, address, and current telephone number.
6. Financial Capacity and Performance – Provide the following information and references requested to demonstrate the financial strength of the offeror to cover all aspects of the financial requirements necessary to complete and manage the Project.

The following must be provided as well:

- Provide the offeror's audited financial statements for the last five fiscal years and information reflecting the offeror's current financial position.
- Include a detailed, narrative statement explaining how the offeror has available the appropriate financial, material, equipment, facility, and personal resources and expertise, or firm commitments to obtain them, necessary to meet all contractual requirements outlined herein.
- Provide contact information for banking and other financial references that can substantiate the offeror's capacity to implement the project being proposed.
- For publicly traded companies, provide quarterly SEC filings for the past 5 fiscal

years.

- The Department reserves the right to request additional detailed financial information if the offeror is initially selected.

7. Offerors must submit a list of all facilities owned and/or managed. Include name, address and number of beds. Submit three references, one of which is financial and two of which are from owners for whom offeror manages facilities. If the offeror does not manage any facilities, two references will be from entities qualified to judge the offeror's operating capabilities.

C. Facility Construction

1. Narrative Description and Overview -- The proposal must include a narrative description and overview of the facility as it is intended to look upon completion. While the Department does not require completed architectural drawings or plans, the proposal must include conceptual design drawings, prepared by a registered architect, and supporting narrative for the new facility. These drawings must indicate the proposed style, exterior of the facility and internal organization of space. Supporting illustrations, photographs from similar buildings, and sketches are encouraged. Narratives may also identify specifications offered which are beyond the design guidelines described herein.
2. Graphic Documents required for the RFP – Offerors shall illustrate their design proposal for the site in a graphic manner as part of the RFP response. The minimum drawings required by the RFP shall be:
 - i. A schematic site plan indicating the proposed facility, outside activity areas, and security fencing.
 - ii. Typical Resident Housing Unit floor plan indicating number of resident rooms/beds.
 - iii. Typical treatment/therapy space floor plans.
 - iv. Typical Floor plan for the administrative and support spaces.
 - v. Drawings shall be 11” x 17”, folded and inserted into the three-ring binder.
3. Safety and Security Features -- The proposal shall describe the safety and security features which the design will include that will help to minimize the risk of elopements and which will complement the behavior management features of its treatment program. The proposal should highlight those design elements and building materials it will include that will help to prevent deliberate damage to the facility by its occupants and minimize needed repairs.

Offerors must identify any enhanced safety and security features which may include:

- i. a central nurse/security station with complete line-of-sight down all bedroom and staff offices/treatment area hallways;
 - ii. high ceilings with unreachable recessed sprinkler heads;
 - iii. a camera system to monitor common spaces, with recordings maintained for a period of time to aid in review of adverse events or allegations of misconduct;
 - iv. hardened wall surfaces;
 - v. resident room sleeping areas which can be securely separated and allow for the facility to serve youth of both genders, including on occasion youth with gender identity issues;
 - vi. recreation/exercise areas with no blind spots and which can be monitored from inside as well as outside the facility; and
 - vii. furniture and equipment which cannot easily be lifted and thrown.
4. Independent Peer Reviewer. The offeror must provide a recommendation for an Independent Peer Reviewer for consideration by SCDMH to represent the Department. The function of the Independent Peer Reviewer is to confirm that the key elements of the professional engineering and architectural design provided by the offeror are in conformance with the applicable standard of care. The offeror must provide information to allow the Department to evaluate the competency and qualifications of the proposed Independent Peer Reviewer. The Department will not be obliged to select the Independent Peer Reviewer proposed by the offeror.

D. Operations and Maintenance

1. Overview The offeror must demonstrate its understanding of and capability to provide effective treatment services while also adhering to State statutory and regulatory requirements. The offeror must ensure it has appropriate procedures for admission, transfers, service/treatment planning, discharge planning, and all processes that require coordination with the SCDMH and other entities. Offerors shall provide a complete and detailed description and explanation of the offeror's understanding of the services and the proposed methodology to be utilized and plan for accomplishing all of the healthcare requirements in the Scope of Work/Specifications. Offerors shall also include a description of its understanding of the offeror's responsibility to maintain and repair the facility, to include keeping records of all such maintenance and repairs.
2. PRTF Treatment Program Components – Offeror must describe the components of its treatment program. Offeror's proposal shall address the following treatment program components:
- a. Treatment philosophy and approach: Describe the offering organization's treatment philosophy and approach.
 - b. Description of treatment program: Provide an overall description of the proposed treatment program. Specify the primary goals and objectives of treatment. Provide

- descriptions of the primary components of treatment as offered by the proposed program (e.g., treatment modalities, treatment tracks, curricula/modules, resources, etc.). Estimate the amount of time residents will spend in group treatment and individual treatment activities. Specify the size and nature of the group activities and the qualifications of the group facilitators.
- c. Given the characteristics of the residents which will be treated in the facility, offerors should highlight those treatment program components, if any, which reflect an evidence-based behavioral treatment program for justice involved youth with psychiatric disorders. Offerors must also describe the behavior management system (eg., point system, token economy, level system, etc.) used for incentivizing positive behavior.
 - d. Treatment process and program design: Describe admission procedures, resident orientation, assessment procedures, treatment planning, treatment implementation and review, phases of treatment and discharge planning. Describe plans for addressing and attempting to engage those residents who are not engaged in active treatment.
 - e. Assessment: Demonstrate knowledge of clinically appropriate assessment tools and protocols and describe when they will be used in the program. Indicate the positions and professional qualifications of persons responsible for conducting and reviewing individual assessments and developing a diagnostic formulation and treatment recommendations.
 - f. Treatment planning: Describe how the program will ensure that treatment plans are individualized, comprehensive, and based on each resident's assessments. Define the frequency of treatment plan updates. Describe the resident's involvement and family engagement in the planning process.
 - g. Treatment process: Describe how the clinical staff will manage and staff individual resident cases. Identify circumstances that would precipitate and describe the process for unscheduled management reviews. Describe the mechanism to measure progress and provide regular feedback to the residents.
 - h. Treatment progress assessment: Describe the plan for conducting periodic reviews to determine progress toward treatment goals and preparedness for community discharge/release as well as any outcome measures which will be used. Describe how the frequency of periodic assessments and the way they will be documented. Describe the process that the contractor will follow to communicate to SCDMH and other involved State agencies the resident's progress and readiness for discharge.
 - i. Pharmacology: Describe the potential role of pharmacological agents in the treatment program. Describe how residents for whom the treatment may be appropriate will be identified and how they will be assessed. Define the circumstances that might support implementation of such treatment within the facility and how the course of treatment will be monitored.

- j. Meaningful resident participation: Define “meaningful participation” in the treatment program. Describe how it will be objectively and subjectively measured. Describe how the program will ensure that residents who do not meaningfully participate do not disrupt treatment for those who do participate.
 - k. Clinical direction and supervision: Describe how clinical direction and supervision will consistently be provided by qualified professionals so that all staff understands the treatment model, structure, and their respective roles. Identify the mechanism that will ensure that treatment planning and clinical decisions are consistent across treatment teams.
 - l. Family involvement: Describe how family involvement will be encouraged and implemented at the facility. Describe opportunities the program will provide for families to provide input regarding treatment and services.
 - m. Activities program: Explain how the activities program is incorporated into individualized treatment plan.
 - n. Discharge planning: Provide a detailed description of the proposed discharge/release planning. Describe a proposed model for determining a resident’s community services needs and linkages with qualified available community service providers.
 - o. Describe the Residents Rights Program that will be used in the facility.
 - p. Describe Offeror’s corporate compliance program.
 - q. Describe the Financial Record keeping Plan that will apply to this facility and the financial reports that will be available for inspection by SCDMH.
 - r. Describe the Health, Safety and Security Program that will be used in the facility.
 - s. Describe offeror’s plan for pre-occupancy licensing preparation plan for the new facility. This plan must include:
 - i. Personnel expected in key management and clinical positions.
 - ii. Licensing plan to include timeline and critical milestones. This includes elements which address both DHEC licensing requirements and completion of the initial CMS certification.
3. Psychiatric and Psychological Treatment Services - Offeror’s proposal must address describe the psychiatric and psychological services that residents can expect to receive based on individual need. Describe how the program will provide services for residents suffering from thought, perceptual and mood disorders requiring psychiatric intervention, and how their behavioral treatment needs will be addressed.
4. Pharmacy Services- The proposal must describe the offeror’s medication procedures, including assessment, prescription, medication administration, informed consent, emergency treatment orders, laboratory testing, medication monitoring, and resident and family education about medications. The proposal must demonstrate the offeror’s

commitment to the use of the most appropriate pharmaceutical medications, including “new generation” anti-depressant and anti-psychotic medications, regardless of costs.

5. Substance Abuse Services - Describe the program’s capacity to provide substance abuse services to residents. Describe how substance abuse interventions will be integrated into the treatment program for participants.
6. Specialized Behavioral Program – Offeror shall describe their behavior management modalities to address resident behaviors which are threatening, destructive or assaultive. Given the characteristics of the residents which will be treated in the facility, offerors should highlight any special treatment modalities which are part of an evidence-based behavioral treatment program for justice involved youth with psychiatric disorders.
7. Medical Services – Offerors must address the provision of medical services to residents in the treatment program. Proposals must describe in detail how the following services will be provided:
 - a. Primary and preventive health care;
 - b. Emergency medical services;
 - c. Access to a reasonably proximate hospital(s) for medical care that cannot adequately be provided at the facility.
 - e. Psychiatric care;
 - f. Dental Services (routine and specialty);
 - g. Eye care (routine and specialty);

Offerors shall address the following components:

- i. Describe proposed medical staffing for a program including 7 day/24 hour coverage, nursing ratios, level of staff, and on-call coverage.
- ii. Admission medical screening: Describe the intake medical assessment process including how close to admission it will be performed; the level of medical professional that will conduct the screening; the specific information gathered (e.g., screening form); and general procedure for handling significant findings. Describe how residents will be informed of the procedures for accessing medical services.
- iii. Comprehensive health assessment: Describe what medical information is gathered in the comprehensive health assessment; the level of medical professional that completes the assessment; and the time frame following admission within which the comprehensive assessment is completed.
- iv. Periodic health assessments: Describe the extent of the periodic health assessments (e.g., annual physical examinations).
- v. Provision of primary care/sick call: Describe the provision of primary care, including sick call clinics. Describe the sick call procedures, including frequency;

the level of attending practitioner; triage procedures; and sick call procedures for persons in confinement.

- vi. Specialty care referrals: Describe how the offeror will organize a system for providing specialists for the treatment of health care problems which may extend beyond the primary care services provided on-site.
 - ix. Assessment and treatment of co-morbid medical disorders: Describe how the offeror will provide coordinated assessment, planning and treatment for residents with co-occurring mental health-medical disorders.
 - x. Health education: Describe a health education program.
 - xi. Emergency care: Describe arrangements to be made for required emergency services beyond on-site capabilities with appropriate community resources.
 - xii. Dental care: Describe the proposed program for provision of dental health care. Describe provisions for emergency dental care and prosthetics (e.g. dentures, partial dentures, lab services).
 - xiv. Therapeutic diets: Describe proposed plan and staff for monitoring provision of therapeutic diets, including periodic evaluation of regular and therapeutic diets for nutritional adequacy.
 - xv. Pharmacy services: Describe proposed plan to provide, furnish, and supply pharmaceuticals and drugs to the program (e.g., formulary, provisions for on-site delivery of pharmaceuticals, onsite STAT dose capability for emergencies, emergency drug kit, Pharmacy and Therapeutics Committee, etc.).
 - xvi. Quality Improvement Program: Describe a quality improvement program for the review and analysis of medical care provided. Describe proposed plans to manage the areas of Safety, Life Safety, Security, Hazardous Materials and Waste, Medical Equipment and Utilities. Describe the proposed plan for an Infection Control Program.
- 8. PRTF Staff Levels - Offerors shall include the following information related to staffing:**
- a. Corporate organizational charts that identify proposed program and establish a clear chain of command within the program and the corporate entity.
 - b. Offeror's proposed staffing plan for all persons working within, or providing services to, the program listing each job title, number of individuals and salaries. This plan shall include employees, employees of subcontractors, independent contractors, etc. The staffing plan shall be broken out by type of staff (e.g. management, administration, clinical, medical, security and clerical support), and number of whole or fractional full-time equivalents of each type. The staffing plan shall be accompanied by position/job descriptions and minimum qualifications for each position. Offeror shall identify individual within the offeror's corporate management structure who will be the SCDMH's liaison for the overall management and operation of the program.

9. PRTF Staff Training - Offerors shall include the following information related to staff training.
- a. Given the characteristics of the residents which will be treated in the facility, offerors shall describe the types of training staff will receive to prepare them to safely and successfully engage with a resident population made up of justice involved youth.
 - b. Offerors should highlight any training of staff in implementing a behavioral program for justice involved youth with psychiatric disorders utilizing evidence-based practices of treatment.
 - c. Describe how the offeror will ensure that staff receive ongoing training and consultation to implement and sustain an evidence-based treatment program, with the oversight and support of a management team.
10. Facility Maintenance – Offerors shall include a description of its understanding of the offeror’s responsibility to maintain and repair the facility, to include a program of preventive maintenance on all building systems and major equipment, which conforms to State required, manufacturers recommended preventive maintenance schedules, and a program of scheduled and unscheduled maintenance and repairs designed to keep equipment and systems in good operating condition. Offerors shall describe its understanding of its responsibility to maintain regular records of all maintenance and repairs.

E. Price Proposal:

The Department intends to select a single contractor to design, build, operate and maintain the PRTF. The State will fund the construction of the approved design of the facility by the selected contractor, and the Department will enter into a detailed Development Agreement with the contractor establishing milestone and corresponding payments necessary to manage the construction of the facility.

Firm Price for Design/Build -- Offerors must submit a firm price for the initial design and construction of the facility as proposed if accepted by SCDMH without any changes. Offerors shall also include payment milestones if applicable.

Offerors must submit a Per Resident Per Day (PRPD) rate for the operation, management, and maintenance of the facility upon completion and occupancy. This rate must be supported by a line-item budget. Said line-item budget must include, but may not be limited to, psychiatric and medical care, therapy services, direct nursing care, nursing administration, educational services, activities and social services, dietary, laundry, maintenance, pharmacy,

utilities, medical records and administration. SCDMH will pay for a minimum number of beds at the “per resident per day” rate whether occupied or not, as a guaranteed level of financial support. **Offerors must submit a proposed minimum bed number.**

All medical care costs must be included in the Bed-Day rate. Medical care will not be separately reimbursed.

Offeror must itemize the annual costs (personnel, equipment, etc.) of each service. Use no more than one page per service.

- a. Physician Coverage
- b. Medical Services
- c. Clinical Services
- d. Educational Services
- e. Pharmacy
- f. Nutritional Services
- f. Security
- g. Preventive maintenance for the facility
- h. Grounds maintenance
- i. Pastoral Care
- j. Beauty and Barber Services
- k. Laundry Services
- l. Canteen Services

EVALUATION FACTORS -- PROPOSALS (MODIFIED)

In accordance with the Procurement Code and Regulations, the following are the factors to be evaluated with the relative importance corresponding to the sequence in which they are presented here:

EXPERIENCE AND QUALIFICATIONS

- _____ Offeror's qualifications, experience, project team, resources, and demonstrated ability to design and build a specialized healthcare facility.
- _____ Offeror’s qualifications, experience, key personnel, resources, and demonstrated ability to operate a psychiatric residential treatment program for justice involved youth.
- _____ Experience of corporate management in inpatient psychiatric services and the ownership and/or management of psychiatric residential treatment facilities for

children and adolescents.

_____ History of successful contracting for management of inpatient psychiatric services.

DESIGN, BUILD, OPERATIONS AND MAINTENANCE (DBOM)

_____ Offeror's Initial Design of the Facility and Construction Schedule.

_____ Quality and comprehensiveness of offeror's plans and programs for operating the PRTF and providing the required PRTF services, as well as maintaining the facility..

PRICE

_____ Total Potential Price (Facility + Services)

Evaluation points for price will be assigned using the following methodology:

The Procurement Officer will assign points for the price (Cost of construction and Offeror's PRPD rate/ The responsive offeror submitting the lowest total cost will receive the maximum points assigned for Price. All other responsive offerors will receive prorated points for price by determining the ratio of their rate compared to the lowest rate and then multiplying this ratio by the maximum points assigned for Price.

Method of Award

The Proposals will be evaluated by the Selection Committee. proposals will be scored and the Offerors will be ranked from most advantageous to least advantageous to the State considering only the evaluation factors.

The highest ranked respondent will be notified of its initial selection to enter the negotiations (pre-development). During negotiations, the respondent will work at its own expense and risk with SCDMH to complete a Development Agreement and further the design through the conceptual stage of development for the PRTF.

If a satisfactory contract cannot be negotiated with the highest ranking respondent, negotiations may be conducted with the second ranked respondent in an effort to successfully reach a proposed contract. In addition, SCDMH may terminate negotiations and seek best and final offers. SCDMH reserves the right to reject all proposals. This procurement process will be managed and supervised by the Division of Procurement Services.

VII. TERMS AND CONDITIONS APPLICABLE TO OPERATIONS AND MAINTENANCE –

A. MANDATORY

ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015)

(a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible procurement officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible procurement officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the procurement officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restrict transfers by operation of law. [07-7A004-2]

BANKRUPTCY - GENERAL (FEB 2015)

(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 Using Governmental Unit. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State 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 State upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-2]

CHOICE-OF-LAW (JAN 2006)

The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]

COMPLIANCE WITH LAWS (JAN 2006)

During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs. [07-7B035-1]

CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (MODIFIED)

- (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation discussions [11-35-1530(6)] of an offer, if applicable, (4) your offer, (5) any statement reflecting the state's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

CONTRACTOR'S OBLIGATION -- GENERAL (JAN 2006)

The contractor shall provide and pay for all materials, tools, equipment, labor, and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements. [07-7B065-1]

CORPORATE COMPLIANCE

As applicable, conform to SCDMH and Contractor credentialing and privileging, and Corporate Compliance requirements, as well as Compliance Guidance issued by the OIG USDHHS. Contractor will not employ persons listed on the OIG's Cumulative Sanctions Report or Excluded Parties List System (<http://exclusions.oig.hhs.gov/> <http://www.epls.gov/>). Contractor will adopt SCDMH policies regarding §6032 of the Deficit Reduction Act of 2005 as stated in DMH S&P No.1. (http://www.state.sc.us/dmh/policies/corp_comply/6032.pdf)

DISPUTES (JAN 2006)

(1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

(2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]

EFT INFORMATION (FEB 2021)

The Contractor must furnish to the State Treasurer's Office information necessary for making a payment by electronic funds transfer (EFT). You may do this by completing STO Form 4 and filing it with the STO. Additional information is available at the STO's website at <https://treasurer.sc.gov>. The Contractor is responsible for the currency, accuracy and completeness of the EFT information. Updating EFT information may not be used to accomplish an assignment of the right to payment, does not alter the terms and conditions of this contract, and is not a substitute for a properly executed contractual document. [07-7A027-1]

EQUAL OPPORTUNITY (JAN 2006)

Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference. [07-7A030-1]

FALSE CLAIMS (JAN 2006)

According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime. [07-7A035-1]

FIXED PRICING REQUIRED (JAN 2006)

Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award. [07-7A040-1]

INFORMATION SECURITY - DEFINITIONS (FEB 2015)

The following definitions are used in those clauses that cross reference this clause.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object may have occurred. Without limitation, the term "compromise" includes copying the data through covert network channels, or copying the data to unauthorized media, or disclosure of information in violation of any obligation imposed by this contract.

Data means a subset of information in an electronic format that allows it to be retrieved or transmitted.

Government information means information (i) provided to Contractor by, or generated by Contractor for, the using governmental unit, or (ii) acquired or accessed by Contractor as a result of performing the Work. Without limiting the foregoing, government information includes any information that Contractor acquires or accesses by software or web-based services, which includes, without limitation, any metadata or location data. Government information excludes unrestricted information.

Information means any communication or representation of knowledge such as facts, statistics, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Public information means any specific information, regardless of form or format, that the State has actively and intentionally disclosed, disseminated, or made available to the public. Information is not public information solely because it may be subject to inspection pursuant to an unfulfilled public records request.

Software means any computer program accessed or used by the Using Governmental Unit or a third party pursuant to or as a result of this contract.

Third party means any person or entity other than the Using Governmental Unit, the Contractor, or any subcontractors at any tier.

Unrestricted information means (1) public information acquired other than through performance of the work, (2) information acquired by Contractor prior to contract formation, (3) information incidental to your contract administration, such as financial, administrative, cost or pricing, or management information, and (4) any ideas, concepts, know-how, methodologies, processes, technologies, techniques which Contractor develops or learns in connection with Contractor's performance of the work.

Web-based service means a service accessed over the Internet and acquired, accessed, or used by the using governmental unit or a third party pursuant to or as a result of this contract, including without limitation, cloud services, software-as-a-service, and hosted computer services. [07-7B104-1]

INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS (FEB 2015)

(a) *Definitions.* The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions. In addition, as used in this clause—

Clearing means removal of data from an information system, its storage devices, and other peripheral devices with storage capacity, in such a way that the data may not be reconstructed using common system capabilities (i.e., through the keyboard); however, the data may be reconstructed using laboratory methods.

Intrusion means an unauthorized act of bypassing the security mechanisms of a system.

Media means physical devices or writing surfaces including but not limited to magnetic tapes, optical disks, magnetic disks, portable hard drives, “thumb” drives, large scale integration memory chips, and printouts (but not including display media, e.g., a computer monitor, cathode ray tube (CRT) or other (transient) visual output) onto which information is recorded, stored, or printed within an information system.

Safeguarding means measures or controls that are prescribed to protect information.

Voice means all oral information regardless of transmission protocol.

(b) *Safeguarding Information.* Without limiting any other legal or contractual obligations, contractor shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards (including without limitation written policies and procedures) for protection of the security, confidentiality, and integrity of the government information in its possession. In addition, contractor shall apply security controls when the contractor reasonably determines that safeguarding requirements, in addition to those identified in paragraph (c) of this clause, may be required to provide adequate security, confidentiality and integrity in a dynamic environment based on an assessed risk or vulnerability.

(c) *Safeguarding requirements and procedures.* Contractor shall apply the following basic safeguarding requirements to protect government information from unauthorized access and disclosure:

(1) Protecting information on public computers or Web sites. Do not process government information on public computers (e.g., those available for use by the general public in kiosks, hotel business centers) or computers that do not have access control. Government information shall not be posted on Web sites that are publicly available or have access limited only by domain/Internet Protocol restriction. Such information may be posted to web pages that control access by user ID/password, user certificates, or other technical means, and that provide protection via use of security technologies. Access control may be provided by the intranet (versus the Web site itself or the application it hosts).

(2) Transmitting electronic information. Transmit email, text messages, blogs, and similar communications that contain government information using technology and processes that provide the best level of security and privacy available, given facilities, conditions, and environment.

(3) Transmitting voice and fax information. Transmit government information via voice and fax only when the sender has a reasonable assurance that access is limited to authorized recipients.

(4) Physical and electronic barriers. Protect government information by at least one physical and one electronic barrier (e.g., locked container or room, login and password) when not under direct individual control.

(5) Sanitization. At a minimum, clear information on media that have been used to process government information before external release or disposal. Overwriting is an acceptable means of clearing media in accordance with National Institute of Standards and Technology 800–88, Guidelines for Media Sanitization, at http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with-errata.pdf.

(6) Intrusion protection. Provide at a minimum the following protections against intrusions and compromise:

(i) Current and regularly updated malware protection services, e.g., anti-virus, antispyware.

(ii) Prompt application of security-relevant software upgrades, e.g., patches, service packs, and hot fixes.

(7) Transfer limitations. Transfer government information only to those subcontractors that both require the information for purposes of contract performance and provide at least the same level of security as specified in this clause.

(d) *Subcontracts.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for and shall impose by agreement requirements at least as secure as those imposed by this clause on, any other person or entity that contractor authorizes to take action related to government information.

(e) *Other contractual requirements regarding the safeguarding of information.* This clause addresses basic requirements and is subordinate to any other contract clauses or requirements to the extent that it specifically provides for enhanced safeguarding of information or information systems. [07-7B105-1]

INFORMATION SECURITY – LOCATION OF DATA (FEB 2015)

Notwithstanding any other provisions, contractor is prohibited from processing, storing, transmitting, or accessing government information, as defined in the clause titled Information Security - Definitions, outside the continental United States. For clarity, this obligation is a material requirement of this contract and applies to subcontractors at any tier. [07-7B106-1]

INFORMATION USE AND DISCLOSURE – STANDARDS (FEB 2015)

To the extent applicable:

- (a) Breach of security of state agency data; notification; rights and remedies of injured parties; penalties; notification of Consumer Protection Division, S.C. Code Ann. Section 1-11-490.
- (b) South Carolina Financial Identity Fraud and Identity Theft Protection Act (FIFITPA), 2008 Act 190, as amended. Solely for purposes of Section 39-1-90 of the South Carolina Code of Laws, as amended, Contractor is deemed to be the owner of government information, as defined herein, and Contractor agrees that the Using Governmental Unit is not a licensee.
- (c) The South Carolina Family Privacy Protection Act of 2002, S.C. Code Ann. Sections 30-2-10, et seq.
- (d) Personal Identifying Information Privacy Protection, S.C. Code Ann. Sections 30-2-310 et seq.
- (e) Data Breach Notification, 2014 Act No. 286, Section 117.117, as revised in any future annual appropriations act. [07-7B110-1]

LICENSES AND PERMITS (JAN 2006)

During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract. [07-7B115-1]

NO INDEMNITY OR DEFENSE (FEB 2015)

Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason. [07-7A045-2]

NOTICE (JAN 2006)

(A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

OPEN TRADE (JUN 2015)

During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [07-7A053-1]

PAYMENT and INTEREST (FEB 2021)

(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted by the Government.

(b) Unless otherwise provided herein, including the purchase order, payment will be made by electronic funds transfer (EFT). See clause titled " EFT Information."

(c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off.[07-7A055-4]

PUBLICITY (JAN 2006)

Contractor shall not publish any comments or quotes by State employees or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer. [07-7A060-1]

PURCHASE ORDERS (JAN 2006)

Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

SURVIVAL OF OBLIGATIONS (JAN 2006)

The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]

TAXES (JAN 2006)

Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]

TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)

Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term. [07-7A085-1]

THIRD PARTY BENEFICIARY (JAN 2006)

This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third-party beneficiary or otherwise. [07-7A090-1]

WAIVER (JAN 2006)

The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

VII. TERMS AND CONDITIONS -- B. SPECIAL

BANKRUPTCY – GOVERNMENT INFORMATION (FEB 2015)

(a) All government information (as defined in the clause herein entitled "Information Security - Definitions") shall belong exclusively to the State, and Contractor has no legal or equitable interest in, or claim to, such information. Contractor acknowledges and agrees that in the event Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, government information in its possession and/or under its control will not be considered property of its bankruptcy estate.

(b) Contractor agrees to notify the State within forty-eight (48) hours of any determination that it makes to file for bankruptcy protection, and Contractor further agrees to turn over to the State, before such filing, all government information that is in Contractor's possession in a format that can be readily utilized by the State.

(c) In order to protect the integrity and availability of government information, Contractor shall take reasonable measures to evaluate and monitor the financial circumstances of any subcontractor that will process, store, transmit or access government information. [07-7B007-1]

CHANGES (JAN 2006)

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

(a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;

(b) method of shipment or packing;

(c) place of delivery;

(d) description of services to be performed;

(e) time of performance (i.e., hours of the day, days of the week, etc.); or,

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

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by directive or by order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

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

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

[07-7B025-1]

CONFERENCE – PRE-PERFORMANCE (MODIFIED)

If requested by the Procurement Officer or the State, a pre-performance conference between the contractor, State and Procurement Officer shall be held at a location selected by the State within five (5) days after the request has been received, and prior to commencement of work under the contract. The responsibilities of all parties involved

will be discussed to assure a meeting of the minds of all concerned. The successful contractor or his duly authorized representative shall be required to attend at contractor's expense.

CONTRACTOR'S LIABILITY INSURANCE – GENERAL (FEB 2015)

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

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

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

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

(3) Worker's Compensation: As required by the State of South Carolina, with Statutory Limits, and Employer's Liability

Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

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

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

(e) Prior to commencement of the work, the Contractor shall furnish the State with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this section. All certificates are to be received and approved by the State before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

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

(g) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that

may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

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

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

[07-7B056-2]

CONTRACTOR'S LIABILITY INSURANCE – INFORMATION SECURITY AND PRIVACY (FEB 2015)

[ASK QUESTIONS NOW: For products providing the coverages required by this clause, the insurance market is evolving. Our research indicates that the requirements stated herein reflect commercially available insurance products. Any offeror having concerns with any specific requirements of this clause should communicate those concerns to the procurement officer well in advance of opening.]

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

(b) Coverage must include claims for:

(i) information security risks, including without limitation, failure to prevent unauthorized access to, tampering with or unauthorized use of a computer system; introduction of malicious codes, computer viruses, worms, logic bombs, etc., into data or systems; or theft, damage, unauthorized disclosure, destruction, or corruption of information in whatever form.

(ii) privacy risks, including (A) failure to properly handle, manage, store, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss or disclosure of confidential information; and (C) any form of invasion, infringement, or interference with rights of privacy, including breach of security/privacy laws or regulations.

(iii) contractual liability for the contractor's obligations described in the clauses titled "Indemnification - Third Party Claims – Disclosure of Information" and "Information Use and Disclosure;" and

(iv) errors, omissions, or negligent acts in the performance, by the contractor or by any entity for which the contractor is legally responsible, of professional services included in the work.

(c) If the work includes content for internet web sites or any publications or media advertisements, coverage must also include claims for actual or alleged infringement of intellectual property rights, invasion of privacy, as well as advertising, media, and content offenses.

(d) If the work includes software, coverage must also include claims for intellectual property infringement arising out of software and/or content (with the exception of patent infringement and misappropriation of trade secrets)

(e) Coverage shall have limits no less than five million (\$5,000,000.00) dollars per occurrence and ten million (\$10,000,000.00) dollars aggregate.

(f) If the insurance required by this clause is procured on a form affording "claims-made" coverage, then (i) all limits stated above as "per occurrence" shall be understood to mean "per claim" or "per occurrence," as is consistent with the terms of the "claims-made" policy; and (ii) such claims-made insurance shall provide for a retroactive date no later than the date the contract is awarded.

(g) All terms of this clause shall survive termination of the contract and shall continue until thirty (30) days past the final completion of the work, including the performance of any warranty work. In addition, contractor shall maintain in force and effect any "claims-made" coverage for a minimum of two (2) years after final completion of all work or services to be provided hereunder. Contractor shall purchase an extended reporting period, or "tail coverage," if necessary to comply with the latter requirement.

(h) Every applicable Using Governmental Unit, and the officers, officials, employees and volunteers of any of them, must be covered as additional insureds on the policy or policies of insurance required by this clause.

(i) For any claims related to this contract, the insurance coverage required by this clause shall be primary insurance as respects the State, every applicable Using Governmental Unit, and the officers, officials, employees, and volunteers of any of them. Any insurance or self-insurance maintained by the State, every applicable Using Governmental Unit, or the officers, officials, employees, and volunteers of any of them, shall be excess of the Contractor's insurance and shall not contribute with it.

(j) Prior to commencement of the work, the Contractor shall furnish the State with original certificates of insurance for every applicable policy effecting the coverage required by this clause. All certificates are to be received and approved by the Procurement Officer before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The State reserves the right to require complete, certified copies of all required insurance policies, including policy declarations and any endorsements required by this section, at any time.

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

(l) Contractor hereby grants to the State and every applicable Using Governmental Unit a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State or applicable Using Governmental Unit by virtue of the payment of any loss under such insurance as is required by this clause. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State or Using Governmental Unit has received a waiver of subrogation endorsement from the insurer.

(m) Any deductibles or self-insured retentions must be declared to and approved by the State. The State may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. [07-7B058-1]

CONTRACTOR PERSONNEL (JAN 2006)

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. [07-7B060-1]

CONTRACTOR'S USE OF STATE PROPERTY (JAN 2006)

Upon termination of the contract for any reason, the State shall have the right, upon demand, to obtain access to, and possession of, all State properties, including, but not limited to, current copies of all State 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 State without the State's written consent, except to the extent necessary to carry out the work. [07-7B067-1]

DEFAULT (JAN 2006)

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

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension.
- (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or
- (iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

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

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

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

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

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

(f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall

set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

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

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract. [07-7B075-1]

ILLEGAL IMMIGRATION (NOV 2008)

(An overview is available at www.procurement.sc.gov) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your subcontractor's language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractor's language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

INDEMNIFICATION – THIRD PARTY CLAIMS – GENERAL (NOV 2011)

Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnities for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnatee; however, if an Indemnatee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnatee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suite or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancellation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. [07-7B100-2]

INDEMNIFICATION – THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION (FEB 2015)

(a) Without limitation, Contractor shall defend and hold harmless Indemnitees from and against any and all suits, claims, investigations, or fines (hereinafter “action”) of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which arise out of or in connection with a disclosure of government information (as defined in the clause titled Information Security - Definitions) caused in whole or in part by any act or omission of contractor, its subcontractors at any tier, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such action is brought by a third party or an Indemnitee, but only if the act or omission constituted a failure to perform some obligation imposed by the contract or the law.

(b) Indemnitee must notify contractor in writing within a reasonable period of time after Indemnitee first receives written notice of any action. Indemnitee's failure to provide or delay in providing such notice will relieve contractor of its obligations under this clause only if and to the extent that such delay or failure materially prejudices contractors' ability to defend such action. Indemnitee must reasonably cooperate with contractor's defense of such actions (such cooperation does not require and is without waiver of an Indemnitees attorney/client, work product, or other privilege) and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, allow contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. Indemnitee may participate in contractor's defense of any action at its own expense. Contractor may not, without Indemnitee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Indemnitee's consent is necessary for any settlement that requires Indemnitee to part with any right or make any payment or subjects Indemnitee to any injunction.

(c) Notwithstanding any other provision, contractor's obligations pursuant to this clause are without any limitation whatsoever. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of the contract. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.

(d) "Indemnitee" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents, and employees. [07-7B102-1]

INDEMNIFICATION – INTELLECTUAL PROPERTY (JAN 2006)

(a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents, and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its

expense, either: (1) procure for State 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 State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefore, and take all steps necessary to have State released from any further liability. (c) Contractor obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired items(s)" means the rights, good, 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 the Agreement. [07-7B103-1]

INFORMATION USE AND DISCLOSURE (FEB 2015)

Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor's use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be broadly interpreted to effectuate this intent. Every obligation in this clause is material. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information.

(a) *Definitions.* The terms used in this clause shall have the same meaning as the terms defined in the clause titled Information Security – Definitions.

(b) *Legal mandates.* Contractor shall be permitted to use, disclose, or retain government information to the limited extent necessary to comply with any requirement imposed on Contractor by law. If it is necessary for Contractor to use, disclose, or retain government information in order to comply with a law, Contractor shall provide using governmental unit with written notice, including a description of the circumstances and applicable law, in advance of such use, disclosure or retention except to the extent expressly prohibited by law.

(c) *Flow down.* Any reference in this clause to Contractor also includes any subcontractor at any tier. Contractor is responsible for and shall impose by agreement the requirements of this clause on, any other person or entity that contractor authorizes to take action related to government information.

(d) *Collecting Information.* Contractor must gather and maintain government information only to the minimum extent necessary to accomplish the work.

(e) *Rights, Disclosure and Use.* Except as otherwise expressly provided in this solicitation, Contractor agrees NOT to either (1) use or disclose government information, or (2) retain government information after termination or expiration of this contract. Contractor acquires no rights in any government information except the limited rights to use, disclose and retain the government information in accordance with the terms of this solicitation. To the extent reasonably necessary to perform the work, Contractor may: (i) use (including access, process, transmit, and store) and maintain the government information itself; and (ii) disclose government information to persons having

a need-to-know (e.g., subcontractors). Before disclosing government information to a subcontractor or third party, Contractor shall give the using governmental unit detailed written notice of both the reason for disclosure and the identity and location of the recipient. The notice shall be provided no later than fifteen (15) business days in advance of the disclosure.

(f) *Return*. Notwithstanding the using governmental unit's failure to perform or the pendency of a dispute, Contractor agrees to promptly deliver to the using governmental unit (or destroy, at the using governmental unit's option) all government information in its possession as and upon written request of using governmental unit (provided that, if the contract has not expired or been terminated, Contractor shall be excused from the performance of any work reasonably dependent on Contractor's further access to such government information).

(g) *Privacy Policy & Applicable Laws*. Without limiting any other legal or contractual obligations imposed by this contract or the law, Contractor shall (a) comply with its own privacy policies and written privacy statements relevant to the work, and (b) comply with (1) all laws applicable to Contractor regarding government information, and (2) all laws and standards identified in the clause, if included, entitled Information Use and Disclosure – Standards.

(h) *Actions Following Disclosure*. Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on the using governmental unit, and (5) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.

(i) *Survival & Remedy*. All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights, the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause. [07-7B108-1]

OFFSHORE CONTRACTING PROHIBITED (FEB 2015)

No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United State or by means, methods, or communications that, in whole or in part, take place offshore of the United States. [07-7B122-1]

OWNERSHIP OF DATA & MATERIALS (JAN 2006)

All data, material and documentation prepared for the state pursuant to this contract shall belong exclusively to the State. [07-7B125-1]

PRICE ADJUSTMENTS (JAN 2006)

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

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

(b) by unit prices specified in the Contract or subsequently agreed upon.

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

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

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

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

[07-7B160-1]

PRICE ADJUSTMENTS -- LIMITED BY CPI "ALL ITEMS" (MODIFIED)

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

[07-7B170-1]

If requested by the contractor at least ninety (90) days prior to the expiration of the anniversary of the date of occupancy and licensure the Procurement Officer will review the change in the Consumer Price Index - All Urban Consumers with respect to the per bed per day rate. Any change in the per bed per day rate with respect to CPI will be calculated by averaging the monthly changes in the CPI for the most current 12-month period available at the time the request is made. Said adjustments may increase, or decrease, the per bed per day rate based on the result of said calculations.

PRICING DATA -- AUDIT -- INSPECTION (JAN 2006)

[Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state. [07-7B185-1]

RELATIONSHIP OF THE PARTIES (JAN 2006)

Neither party is an employee, agent, partner, or joint venture of the other. Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party. [07-7B205-1]

RESTRICTION ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES (FEB 2015)

(a) Citizens, as well as public employees (acting in their individual capacity), should not be unnecessarily required to agree to or provide consent to policies or contractual terms in order to access services acquired by the government pursuant to this contract (hereinafter "applicable services") or, in the case of public employees, to perform their job duties; accordingly, in performing the work, contractor shall not require or invite any citizen or public employee to agree to or provide consent to any end user contract, privacy policy, or other terms of use (hereinafter "terms of use") not previously approved in writing by the procurement officer. Contractor agrees that any terms of use regarding applicable services are void and of no effect.

(b) Unless expressly provided in the solicitation, public contracts are not intended to provide contractors an opportunity to market additional products and services; accordingly, in performing the work, contractor shall not – for itself or on behalf of any third party – offer citizens or public employees (other than the procurement officer) any additional products or services not required by the contract.

(c) Any reference to contractor in items (a) or (b) also includes any subcontractor at any tier. Contractor is responsible for compliance with these obligations by any person or entity that contractor authorizes to take any action related to the work.

(d) Any violation of this clause is a material breach of contract. The parties acknowledge the difficulties inherent in determining the damage from any breach of these restrictions. Contractor shall pay the state liquidated damages of \$1,000 for each contact with a citizen or end user that violates this restriction.

[07-7B212-1]

SERVICE PROVIDER SECURITY REPRESENTATION (FEB 2015)

The following obligations are subordinate to any other contract clause to the extent the other clause specifically provides for enhanced safeguarding of government information, applicable information systems, or applicable organizations. Offeror (i) warrants that the work will be performed, and any applicable information system (as defined in the clause titled "Information Security - Definitions") will be established and maintained in substantial conformity with the information provided in Offeror's Response to SPSAQ; (ii) agrees to provide the Using Governmental Unit with prompt notice of any material variation in operations from that reflected in the Response to SPSAQ; and (iii) agrees to comply with all other obligations involving either information security or information use and disclosure imposed by the contract, notwithstanding any inconsistent statement in Offeror's Response to SPSAQ. To the extent Offeror's Response to SPSAQ does not conform to any other contractual requirements, the Using Agency's lack of objection does not constitute a waiver [07-7B217-1]

TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD (MODIFIED)

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is 5 years, 0 months, 0 days from substantial completion of the PRTF. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

TERM OF CONTRACT – OPTION TO RENEW (FEB 2021)

At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of 1 year(s), month(s), and day(s), unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B245-3]

TERMINATION FOR CONVENIENCE (JAN 2006)

(1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

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

(3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

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

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

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

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

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

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

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

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

(5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause. [07-7B265-1]