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| --- | --- | --- | --- |
|  | **State of South Carolina**    **Emergency Procurement** | Date Issued:  Procurement Officer:    Phone:  E-Mail Address: | 11/30/2020  Jo Marie Brown, NIGP-CPP, CPPO, CPPB  803-896-0670  [Jmbrown@mmo.sc.gov](mailto:kcraig@mmo.sc.gov) |

|  |
| --- |
| **DESCRIPTION:**ACH Enrollment Fillable Form  **AGENCY:** South Carolina State Treasurer’s Office |

SUBMIT QUALIFICATIONS BY (Date/Time):   **12/09/2020 at 11:00 AM**

SUBMIT YOUR QUALIFICATIONS BY E-MAIL (Email is preferred) OR TO EITHER OF THE FOLLOWING ADDRESSES:

|  |  |
| --- | --- |
| MAILING ADDRESS:  SFAA, Div. of Procurement Services, MMO  PO Box 101103 Columbia SC 29211 Attention: Jo Marie Brown ([jmbrown@mmo.sc.gov](mailto:jmbrown@mmo.sc.gov)) | PHYSICAL ADDRESS:  SFAA, Div. of Procurement Services, MMO  1201 Main Street, Suite 600  Columbia SC 29201 Attention: Jo Marie Brown |

|  |  |
| --- | --- |
| COMPANY NAME  (Full legal name of business) | |
| AUTHORIZED SIGNATURE | |
| TITLE  (Business title of person signing above) | |
| PRINTED NAME    (Printed name of person signing above) | DATE |
| MAILING ADDRESS | |
| CITY | STATE/ZIP CODE |
| TELEPHONE # | E-MAIL ADDRESS |

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**POWER BI DASHBOARD**

**SCHEDULE OF KEY DATES**

**All dates are subject to change**

|  |  |
| --- | --- |
| Distribution of the Emergency Procurement | 11/30/2020 |
| Deadline for Submission of Questions (5:00 p.m.) | 12/3/2020 |
| State’s Written Responses to Questions | 12/05/2020 |
| Deadline for Submittal of Qualifications (11:00 a.m.) | 12/09/2020 |
| Notification of Award | 12/23/2020 |

**PART ONE**

**GENERAL INSTRUCTIONS**

**1.1 AMENDMENTS TO THE EMERGENCY PROCUREMENT**: (a) The Emergency Procurement may be amended at any time prior to opening. All amendments to this Emergency Procurement shall be in writing from the State. The State shall not be legally bound by any amendment which is not in writing. Any amendment to the Emergency Procurement shall be e-mailed to all prospective respondents. (b) Respondents shall acknowledge receipt of any amendment to this Emergency Procurement (1) by signing and returning the amendment, (2) by acknowledging receipt in the respondents’ response, or (3) by submitting a response that indicates in some way that the respondent received the amendment.

**1.2 QUESTIONS FROM PROSPECTIVE RESPONDENTS**: (a) Any prospective respondent desiring an explanation or interpretation of the Emergency Procurement must request it in writing. Oral explanations or instructions will not be binding. Any information given a prospective respondent concerning the Emergency Procurement will be furnished promptly to all other prospective respondents as an Amendment to the Emergency Procurement, if that information is necessary for submitting a response or if the lack of it would be prejudicial to other prospective respondents. We will not identify you in our response to your question. (b) The State seeks to permit maximum practicable competition. Prospective respondents are urged to advise the Procurement Officer as soon as possible regarding any aspect of this procurement, including any aspect of the Emergency Procurement that unnecessarily or inappropriately limits full and open competition. Prospective respondents should advise the State of any problems they perceive as a result of reviewing this Emergency Procurement document.

**1.3 SUBMISSION OF QUESTIONS:** Any questions, comments, requests for information or clarifications regarding the Emergency Procurement must be submitted in writing and received no later than **5:00 PM EST, December 3, 2020**. After this date, no further questions, comments, request for information or clarifications regarding the Emergency Procurement will be addressed.

Any written questions, requests for information or request for clarifications received, will be responded to in the form of a written amendment to the Emergency Procurement and e-mailed to all prospective respondents.

All questions, comments, requests for information or clarifications should, to the highest degree possible, cite the specific Emergency Procurement section and paragraph number(s) to which the question refers. All questions, comments, requests for information or clarifications regarding this Emergency Procurement should include the identity of the sender, firm name, mailing address, telephone number, and e-mail address. Email is the method for submitting questions with “Questions: Emergency Procurement Professional Consulting Services” as the subject of the email. Submit questions in an easily copied format such as MS Word.

**E-MAIL ADDRESS:**

[Jmbrown@mmo.sc.gov](mailto:kcraig@mmo.sc.gov)

* 1. **REJECTION/CANCELLATION**: The State reserves the right to accept or reject any and all responses and/or discontinue the selection process at any time prior to contract execution.
  2. **SUBMITTING YOUR RESPONSE**: (a) All copies of your response, and any other documents required to be submitted with the response should be enclosed in a sealed, opaque envelope or package – (1) Addressed to the office specified on the Cover Page; and (2) Showing the time and date specified for opening, the Emergency Procurement number, and the name and address of the respondent. (b) Respondents using commercial carrier services shall ensure that the response is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) when delivered to the office specified on the Cover Page. (e) E-mail responses will be considered at: [jmbrown@mmo.sc.gov](mailto:jmbrown@mmo.sc.gov)
  3. **SUBMITTING CONFIDENTIAL INFORMATION**: For every document respondent submits in response to or with regard to this Emergency Procurement, respondent must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that respondent contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document respondent submits in response to or with regard to this Emergency Procurement, respondent must separately mark with the words "TRADE SECRET" every page, or portion thereof, that respondent contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document respondent submits in response to or with regard to this Emergency Procurement, respondents must separately mark with the word "PROTECTED" every page, or portion thereof, that respondent contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response as confidential, trade secret, or protected. In determining whether to release documents, the State will detrimentally rely on respondents’ marking of documents, as required by these instructions, as being either "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". By submitting a response, respondent agrees 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 respondent marked as "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". (All references to S.C. Code of Laws.)

**1.7 DEADLINE FOR SUBMISSION OF YOUR RESPONSE:** The State will receive responses until 11:00 a.m. local time on the opening date shown. It is the respondents' sole responsibility to ensure the State receives their response. Respondents mailing responses should allow a sufficient mail delivery period to ensure timely receipt of their response by the State. Any response received after the date/time set for submittal shall be rejected.

* 1. **RESPONSE AS OFFER TO CONTRACT**: By submitting your response, you are offering to enter into a contract with the State. Any award issued will be issued to, and the contract will be formed with, the entity identified as the respondent on Page 1. A response may be submitted by only one legal entity; “joint bids” are not allowed.
  2. **CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS**:   
     (a)(1) By submitting a response, respondent certifies, to the best of its knowledge and belief, that-

(i) Respondent 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 response, 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;

(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) Respondent has not, within a three-year period preceding this response, 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) Respondent shall provide immediate written notice to the Procurement Officer, or his designee, if, at any time prior to contract award, respondent learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If respondent is unable to certify the representations stated in paragraphs (a)(1), respondent must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the respondent's responsibility. Failure of the respondent to furnish additional information as requested by the Procurement Officer, or his designee, may render the respondent 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 a respondent 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 respondent knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer, or his designee, may terminate the contract resulting from this solicitation for default.

* 1. **DRUG FREE WORK PLACE CERTIFICATION**: By submitting a response, 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.
  2. **ETHICS CERTIFICATE**: By submitting a response, the respondent certifies that the respondent 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 of a 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.
  3. **OPEN TRADE REPRESENTATION**: By submitting a response, respondent represents that respondent 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.
  4. **SIGNING YOUR RESPONSE**: Every response must be signed by an individual with actual authority to bind the respondent. (a) If the respondent is an individual, the response must be signed by that individual.  If the respondent is an individual doing business as a firm, the response 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 respondent is a partnership, the response must be submitted in the partnership name, followed by the words “by its Partner,” and signed by a general partner. (c) If the respondent is a corporation, the response must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) A response may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the respondent is a joint venture, the response 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 a response is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the response must state that it has been signed by an Agent. Upon request, respondent must provide proof of the agent’s authorization to bind the principal.
  5. **VENDOR REGISTRATION**:To obtain a state vendor number, visit [www.procurement.sc.gov](http://www.procurement.sc.gov) and select New 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, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm>.)
  6. **DEMONSTRATIONS:** Demonstrations may be required for up to but not to exceed the three (3) highest ranked responses.

**PART TWO**

**INTRODUCTION**

***SCOPE OF SOLICITATION***

One of Treasurer Loftis’ key priorities is reducing the State’s reliance on paper checks. Paper checks currently cost the State around $10 million per year. The South Carolina State Treasurer’s Office (STO) is undertaking an initiative to reduce the number of paper checks issued to vendors that provide goods and services to the State. The transition from paper checks to electronic vendor payments will strengthen the State’s banking compliance, security and fraud prevention measures.  In addition, the onset of the COVID-19 pandemic has created an increased urgency to rapidly convert the existing vendor population paid via paper check to electronic payment in an effort to preserve the health and safety of employees and ensure timely delivery of vendor payments.

To achieve this objective, the STO is implementing a process to streamline and automate the conversion of vendors from paper checks to Automated Clearing House (ACH) electronic payments. This solicitation requires the engagement of services to create an automated fillable form that will allow high volumes of vendors to enter the necessary confidential company and banking information so that the State can enroll the vendor in ACH payment to process all future payments electronically.

The form must be easy to find and simple/intuitive to use by vendors. It must provide field-level validation of relevant data fields, per the included specification, to reduce the likelihood of data errors. The confidential data collected must be stored in a secure database with access only by those approved by STO-IT. STO employees must be able to download the data into MS Excel as needed to facilitate reporting and analysis. The data must be protected according to relevant State and STO data security and retention policies. Vendor must provide evidence of secure infrastructure via a certified third-party security audit. Data input into the electronic form will include confidential banking and routing numbers, vendor FEIN and single pay social security numbers will be input into this secure form.

The following business requirements, data specifications and sample form provide a summary of the required functionality:

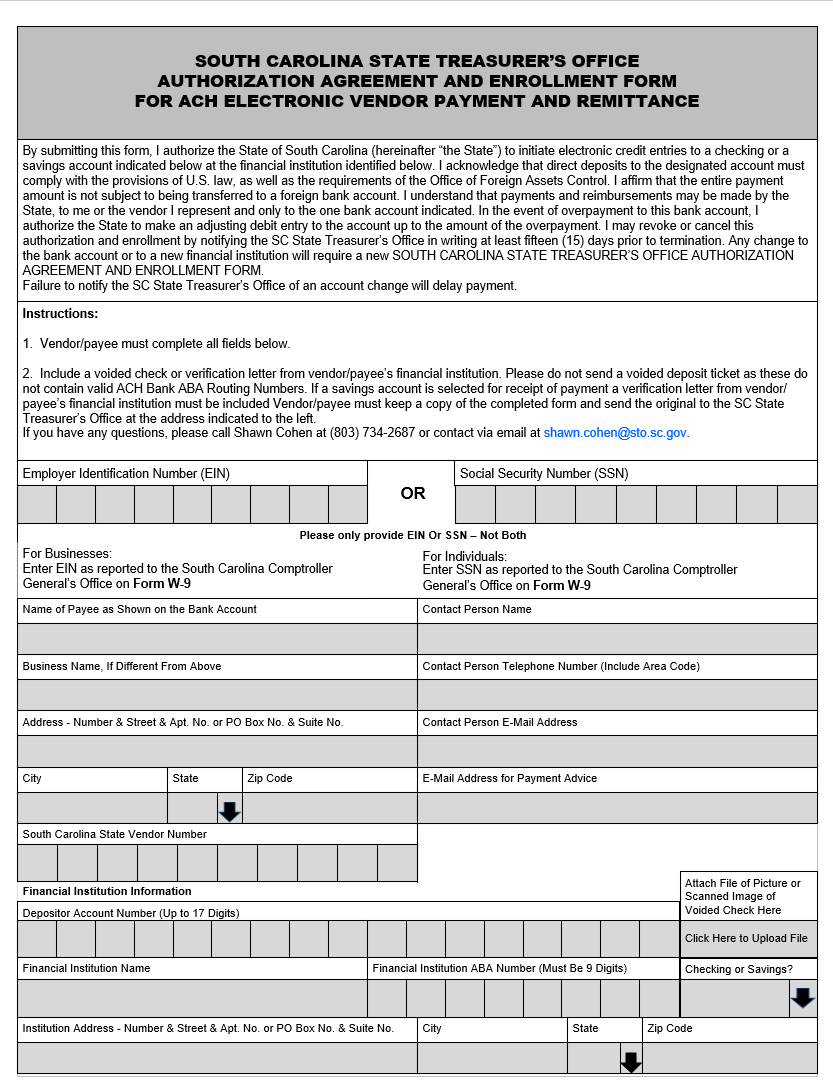
**Business Requirement Description:**

* Vendor must deliver full solution within a 30-calendar day timeframe from the date work commences.
* Form must be easy to locate on the Treasurer’s website.
* Data fields are user entered and must be subject to real-time validation per the specifications in Section 7.
* Forms may not be submitted unless all required fields and validations are completed (i.e. “Submit” button greyed out).
* Submitted forms and underlying data must be stored by the vendor real-time in a secure database (in accordance with SC DIS-200 requirements – See Appendix B) with access only by approved STO employees.
* After the form is successfully submitted, a message should display on the user’s screen confirming the submission.
* After the form is successfully submitted, an email should be sent to the address of the “Contact Person” confirming the submission.
* Approved STO employees must be able to access previously submitted forms on-line, in their original format, using standard query capabilities.
* Forms and all underlying data must not be editable by anyone after submission by the User.
* Submitted forms and underlying data must adhere to relevant STO data security and retention policies.
* Users must be required to attach a file of a photo or scanned image of a voided check to the form prior to submitting.
* System must validate that an attached file has been provided before allowing the user to submit.
* Submitted forms must be given a time and date stamp that logs when the form was submitted by the User. This stamp becomes part of the record.
* Integration points must be developed to regularly (daily) transmit collected data to the STO via secure FTP.
* Transmitted data must be in a .CSV format.
* Data must be encrypted in transit and at rest.

**Data Specifications:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Field Name** | **Mandatory?** | **Field Length** | **Field Format** | **Specifications** |
| Employer Identification Number (EIN) | \*Yes | 9 Digits Fixed | Numeric | \*User must provide either EIN or SSN but not both – Discuss approach with developer |
| Social Security Number (SSN) | \*Yes | 9 Digits Fixed | Numeric | \*User must provide either EIN or SSN but not both – Discuss approach with developer |
| Name of Payee as Shown on the Bank Account | Yes | Up to 35 characters | Alpha | Free text up to 35 characters |
| Contact Person Name | Yes | Up to 35 characters | Alpha | Free text up to 35 characters |
| Business Name, If Different from Name of Payee as Shown on the Bank Account | No | Up to 35 characters | Alpha-Numeric | Free text up to 35 characters |
| Contact Person Telephone Number (Include Area Code) | Yes | 10 Digits Fixed | Numeric |  |
| Business Address - Number & Street & Apt. No. or PO Box No. & Suite No. | Yes | Up to 35 characters | Alpha-Numeric | Free text up to 35 characters |
| Contact Person E-Mail Address | Yes | Up to 35 characters | Alpha-Numeric | Validation should ensure proper e-mail address formatting xxxx@xxxxx.xxx |
| E-Mail Address for Payment Advice | Yes | Up to 35 characters | Alpha-Numeric | Validation should ensure proper e-mail address formatting xxxx@xxxxx.xxx |
| City | Yes | Up to 25 characters | Alpha | Free text up to 25 characters |
| State | Yes | Two characters fixed | Alpha | Drop Down menu with two letter standard abbreviations and full names of US States and Territories |
| Zip Code | Yes | 5 Digit Fixed | Numeric | 5-digit validation? Can we add the possibility of the zip code extension? Zip Code to City/State validation? |
| South Carolina State Vendor Number | Yes | 10 characters fixed with leading zeros | Alpha-Numeric | If User’s vendor number is fewer than 10 digits, system must automatically fill in leading zeros to create a 10- character field. |
| Depositor Account Number (Up to 17 Digits) | Yes | Up to 17 digits | Numeric | Not more than 17 Alpha-Numeric characters but can be fewer |
| Checking or Savings? | Yes | Up to 8 characters | Alpha | Drop Down menu with two choices (Checking or Savings) |
| Financial Institution Name | Yes | Up to 35 characters | Alpha-Numeric | Free text up to 35 characters |
| Financial Institution ABA Number (Must Be 9 Digits) | Yes | 9 Digit Fixed | Numeric | Is a validation possible here based on the financial institution? |
| Institution Address -Number & Street & Apt. No. or PO Box No. & Suite No. | Yes | Up to 35 characters | Alpha-Numeric | Free text up to 35 characters |
| City | Yes | Up to 25 characters | Alpha | Free text up to 25 characters |
| State | Yes | Two characters fixed | Alpha | Drop Down menu with two letter standard abbreviations and full names of US States and Territories |
| Zip Code | Yes | 5 Digit Fixed | Numeric | 5-digit validation? Can we add the possibility of the zip code extension? Zip Code to City/State validation? |

**ACH On-Line Enrollment Form Mock-up Sample**



***MAXIMUM CONTRACT PERIOD***

Contract initial term is one (1) year with four (4) one (1) year renewal options.

**PART THREE**

**INFORMATION TO BE SUBMITTED**

All vendors that intend to participate in this process must submit information only on their qualifications, experience, ability to perform the requirements of the contract and fee structure.

Respondents shall be held responsible for the validity of all information supplied in its response. Respondents are advised that the State reserves the right to conduct an independent investigation of any information, including prior experience, identified in the responses. Should subsequent investigation disclose that the facts and conditions were not as stated, the respondent’s submittal may be rejected or contract terminated for default if after award, in addition to any other remedy available under the contract or by law.

Respondents shall submit:

1. One (1) USB flash drive containing the respondent’s response (in MS Word and/or PDF format).
2. One (1) USB flash drive labeled “original redacted” containing a redacted version of your response.
3. One copy submitted via email, respondents must attach both a. and b.

**As time is of the essence, Respondent’s responses are limited to a total length of ten (10) pages** **excluding DIS-200 Security Requirements Survey (Appendix A).**

Respondents should submit the following information for purposes of evaluation. Restate each of the items below and provide your response to that item immediately thereafter. The response should include the following sections and should be presented in the listed order:

* 1. BUSINESS MODEL AND EXPERIENCE IN PROVIDING WEB DEVELOPMENT AND DATA PROCESSING SERVICES,

1. Respondent shall have a minimum of five (5) years of similar size and scope.
2. Provide a narrative designed to demonstrate to the evaluation panel your company’s qualifications, and advantages to the State in selecting your company to provide the services outlined in Part 2, Scope of Work. The narrative should include a demonstration of minimum experience and the professional and technical competence of your firm with respect to the type of services requested.
3. Provide a detailed description of your company and company history. Include your company’s principal business, ownership, DBA (if applicable), number of employees regularly employed, how long your company has been in the business and number of offices and locations, including the location of the office that would serve as primary contact during this contract. Year established and organizational chart.
4. Provide three (3) references familiar with your work. Include the name of a contact person, their title, address, telephone number and e-mail address. References may be contacted and/or sent a written reference survey. As such, respondents should submit references they are certain will complete and return a written reference survey.
   1. SYSTEM FUNCTIONALITY, SECURITY AND DATA INTEGRITY

Provide a brief description of:

* The services your company would provide under the contract,
* The processes taken to create the required form for vendor data entry,
* Confirm the validity of the data entered by the vendors,
* How data integrity and security will be maintained at all times,
* Demonstrate ability to meet Business Requirements and Data Specifications,
* Demonstrate ability to comply with South Carolina DIS-200 security requirements and third-party assessment (DIS-200 Security Requirements Survey Appendix B), and
* Briefly describe any areas where you believe your company’s offering would provide a unique and competitive advantage with regard to the services described in this solicitation.

1. Provide a narrative designed to demonstrate the capacity and capability of your firm to provide the services requested on an expedited basis. Provide a timeline required to complete the project. Include any staffing plan and identify any sub-consultants necessary to perform the services and the professional qualifications of both staff and sub-consultants.
2. Provide information reflecting your company’s current financial position. Include a copy of your company’s audited financial statements for the last three (3) years.
3. Provide specific detailed information regarding any and all situations where your company has defaulted on a contract. Provide specific detailed information regarding any and all situations where a contract has been canceled or in which a contract was not renewed due to alleged fault on the part of your company.
4. In the last three (3) years has your company had a project or contract terminated? If so, please describe the circumstances. Provide a list of any contracts that were terminated for convenience prior to the original contract end date and the reason for termination.
5. Provide specific detailed information regarding any legal action(s), including currently pending actions against your company in the past five (5) years.
   1. BUSINESS PROPOSAL

Pricing shall be listed by line item in the following categories and will be a fixed price:

1. Price for form development, testing and launch. The Unit Price shall be the price for development, testing and launch of the fillable form in production, and acceptance by the STO.
2. Price per month for data storage, processing and purging. The Unit Price shall be the total price per month for all in scope services. This price shall not increase over the full contract period.

Method of Payment

By signature and submission, the Respondent acknowledges that payment will be made via ACH only with no check payments.

**PART 4**

**EVALUATION CRITERIA**

Selection will be based upon the scoring of the evaluation panel. Respondents will be ranked from most qualified to least qualified based on their qualifications and experience, ability to perform and their proposed fee structure. Interviews may be held with the top two (2) qualified respondents. All submittals will be considered.

1. Business Model and Experience in Providing Web Development and Data Processing Services
2. System Functionality, Security and Data Integrity
3. Business Proposal

**PART 5**

**TERMS AND CONDITIONS**

**5.1 ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE:** (a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the 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 (30) days after Contractor (not the assignee) has provided the 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.

**5.2 BANKRUPTCY – GENERAL:** (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 State. 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.

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

**5.4 CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (FEB 2015):** (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 of clarifications or discussions 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 complementary.  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 the State.  Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

**5.5**  **DISPUTES:** (1) Choice-of-Forum.  All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina.  Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States’ Constitution.  As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by this solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary 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 on the Cover Page or by personal service or by any other manner permitted by law, in or outside South Carolina.  Notice by certified mail is deemed duly given upon deposit in the United States mail.

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

**5.7**  **FALSE CLAIMS:** 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.

**5.8 NO INDEMNITY OR DEFENSE:** 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.

**5.9 NOTICE:** (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, 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.

* 1. **OPEN TRADE**: 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.

**5.11 PAYMENT and INTEREST:** (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 ACH only (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.

**5.12 PUBLICITY:** 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.

**5.13 PURCHASE ORDERS:** Contractor shall not perform any work prior to the receipt of a purchase order from the State. Purchase orders are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order.

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

**5.15** **TAXES:** Any tax the Contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the 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 the 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 the Contractor's net income or assets shall be the sole responsibility of the Contractor.

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

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

**5.18** **WAIVER:** 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.

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

(a)  drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [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 the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly.  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 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.

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

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

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

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

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

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

(c) 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.

**5.22 CONTRACTOR PERSONNEL:** 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.

**5.23**  **CONTRACTOR'S OBLIGATION - GENERAL:** The Contractor shall provide and pay for all materials, 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.

**5.24 CONTRACT INTERPRETATION:** In the event there are any disagreements between the parties with regards to the application of this contract or the requirements of the ORS arising from any interpretation of the Request for Proposal, this contract, or otherwise, Contractor agrees to defer to the reasonable interpretations of ORS as from time to time may be made by the ORS. This provision applies to all matters including those arising from disputes concerning whether Contractor is required to provide some service or item including scope of work issues and whether particular items or services were included in the scope of work agreed to by the parties in this contract or otherwise. In summary, if both parties have a reasonable interpretation regarding application of the contract, Contractor agrees to defer to ORS’s interpretation.

**5.25 CONTRACTOR'S USE OF STATE PROPERTY:** 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.

**5.26** **DEFAULT:** (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 ten (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.

**5.27** **ILLEGAL IMMIGRATION:** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov) )  By signing your response, 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 subcontractors 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-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

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

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

**5.30** **OWNERSHIP OF DATA & MATERIALS:** All data, material and documentation prepared for the state pursuant to this contract shall belong exclusively to the State.

**5.31 PRICE ADJUSTMENTS:** Price(s) submitted shall be fixed for the term of the Contract and may not be modified absent a Change Order or Contract Modification approved as provided by law.

**5.32 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.

**5.33** **RELATIONSHIP OF THE PARTIES (JAN 2006):** Neither party is an employee, agent, partner, or joint venturer of the other.  Neither party has the right or ability to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party.

**5.34 TERM OF CONTRACT:** The contract will be a term of one (1) year; however, prior to the expiration of the term, the contract may be extended for an additional period of time as agreed between the parties to continue any services made necessary by the Relief Funds.

**5.35** **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.

**5.36 BANKRUPTCY – GOVERNMENT INFORMATION** (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.

**5.37 CONTRACT DOCUMENTS & ORDER OF PRECEDENCE–SOFTWARE LICENSING–SINGLE AGENCY**

Notwithstanding the clause entitled "Contract Documents & Order of Precedence," but as provided in the clause titled “Software Licensing Agreements–Single Solicitation,” any contract awarded pursuant to this solicitation shall not include a software licensing agreement. Further, the document titled South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency, which is attached hereto as an exhibit, is offered as information only and does not form part of the contract.

**5.38 CONTRACTOR'S LIABILITY INSURANCE - INFORMATION SECURITY AND PRIVACY**

(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, dispose of, destroy, or otherwise control non-public personally identifiable information in any format; (B) loss of, unauthorized access to, 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 one million ($1,000,000.00) dollars per occurrence and one million ($1,000,000.00) 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 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.

(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.

**5.39 INDEMNIFICATION - THIRD PARTY CLAIMS – DISCLOSURE OF INFORMATION**

(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.

**5.40 INFORMATION SECURITY - DEFINITIONS**

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.

**5.41 INFORMATION SECURITY - SAFEGUARDING REQUIREMENTS**

(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 stall 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.

**5.42 INFORMATION SECURITY – LOCATION OF DATA** 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.

**5.43 INFORMATION USE AND DISCLOSURE** 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 us. 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.

**5.44 INFORMATION USE AND DISCLOSURE – STANDARDS**

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.

**5.45 OFFSHORE CONTRACTING PROHIBITED** 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.

**5.46 RESTRICTIONS ON PRESENTING TERMS OF USE OR OFFERING ADDITIONAL SERVICES**

(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.

**5.47 SOFTWARE LICENSES**

Proprietary Software: Proprietary software is non-custom written, non-made for hire computer software supplied by the contractor and documentation used to describe, maintain and use the software.

License: The State is hereby granted a non-exclusive, fully paid perpetual license to use the proprietary software acquired hereunder.

Title: Title to any proprietary software provided by the Contractor to the State will remain with the Contractor.

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

Source Code: Source code includes files used by assembly, basic, c or other language compatibles to produce object modules for linkage into applications programs. The source code media will contain source code, files for compiling and linking software, and any other files and documentation available in machine-readable form to facilitate compiling and linking the code.

In the event the contractor, at any point during the continued installation and operation of the products acquired under this contract, discontinues the conduct of business, or for any reason fails to continue to support its proprietary software, it will either make provision for the continued support under the same terms and conditions or provide the State with a copy of the source code for said proprietary software, at no expense to the State.

Export Control: The State acknowledges that the products acquired hereunder may be licensable by the U. S. Government. It further acknowledges that a valid export license must be obtained from the Department of Commerce prior to export of said products.

Customized Software: Customized software is made-for-hire, custom written and customer specific software or customizations to proprietary software developed for the State by contractor and documentation used to describe, maintain and use the software.

Title: Title to the customized software vests in the State as set forth herein. Contractor shall thereafter have no right, title or interest in any customized software. As herein used, title includes providing to the State all intellectual elements of the customized software including, but not limited to, developmental work product, notes, object and source codes, documentation, and any other items which would aid the State in understanding, using, maintaining, and enhancing said customized software.

Software Tools: The contractor shall provide to the STATE, simultaneous with its initial installation, and any subsequent enhancements, upgrades, fixes, etc., software tools (including, but not limited to compilers, editors, etc.) that the STATE would require to maintain or enhance the customized software. The price for said tools and the cost to train State personnel to maintain and/or to enhance the customized software shall be noted separately and included in the contractor’s cost proposal submitted to the State in response to the State’s solicitation.

Escrow for Source Code: In the event the contractor at any point during the continued installation and operation of the software herein acquired discontinues the conduct of business or for any other reason fails to continue to support the software, the state shall be provided a copy of the source code for said software within thirty days at no expense to the State.

For the effective term of this contract, contractor will provide, to a mutually agreed upon escrow agent in the United States, the most recent version of the source code on magnetic media.

Proprietary source code shall be deposited into the escrow account within fifteen (15) days of the initiation of the contract, or any major update, non-customized enhancement, version or release of said licensed software.

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

a. Contractor refuses to provide software maintenance, bug fixes, upgrades, updates and/or enhancement services under the terms set forth in this contract or as generally provided similarly situated customers; or

b. Contractor ceases to do business or exist as a valid business entity, as evidenced by an adjudication of bankruptcy or other definitive measure of cessation of operations.

With regards to proprietary software, the state may not sell, assign lease, or otherwise provide said source code(s) to any other person or entity, regardless of modification, without the express written consent of contractor, its successors, and assigns. [07-7B215-1]

**5.48 SOFTWARE LICENSING AGREEMENTS–SINGLE SOLICITATION**

(a) Definitions. As used in this clause, these terms are defined as follows:

“Commercial Off-The-Shelf (COTS) Software” means software used with no customization and for which source code is not made available to licensees.

“Configuration” means any customer-specific modification to software that does not require changes to the software’s source code, such as rules-based, rules engine based, or parameter driven modifications to configure the software.

“Customization” means any customer-specific modification to software that requires changes to the software’s source code.

“Firmware” means software sold or licensed only in conjunction with machines, designed for execution only on a machine with which it is provided, designed only for machines other than a dedicated computer, and embedded into or installed on the machine by the machine’s manufacturer or seller.

"Licensor" means an entity that owns the intellectual property rights for an item of software or has the authority to license or sublicense the software directly to the using governmental unit.

"Piggyback” means the document attached to this solicitation and entitled South Carolina Standard Amendment To End User License Agreements For Commercial Off-The-Shelf Software – Single Agency, which serves as South Carolina's standard amendment to a licensor's standard software licensing agreement (regardless of how denominated, e.g., master software licensing agreement, end user license agreement) for COTS. [Note: While the piggyback is generally indicative of what the State finds acceptable, terms in a Licensor’s standard software licensing agreement may need to be negotiated.]

"Software" means a combination of computer instructions and data definitions that enable computer hardware to perform computational or control functions, excluding firmware.

"Software licensing agreement" means any agreement, regardless of how designated, that defines the intellectual property rights for, or the rights to use, any software product. A software licensing agreement must address only terms directly associated with licensing the right to use the software and must not address any of the work governed by the contract or any services (other than warranty services regarding the software code or associated documentation).

“Software maintenance” means the process of modifying software after delivery to correct faults, improve performance or other attributes, or adapt to a changed environment. (Reference ISO/IEC 14764:2006, as amended or superseded.) Software maintenance does not include any customization or configuration.

“Software product” means any COTS which you propose to provide pursuant to the contract.

“Source code” means computer instructions and data definitions expressed in a form suitable for input into an assembler, compiler or other translator.

(b) Contract and Software Licensing Agreement are Separate. The State seeks to establish related but independent agreements, one with each applicable licensor of COTS and one with the contractor - regardless of whether the licensor and the contractor are the same or different entities. As provided in the clause titled “Bid / Proposal As Offer To Contract,” a contract between the State and the contractor results from an award made pursuant to this solicitation. In contrast, the State’s acceptance of your offer does not serve as the State’s acceptance of any software licensing agreement; rather, software licensing agreements must be separately executed in order to be binding, regardless of whether the license to use the software will be granted by you or a third party. The contract, as defined in the clause titled "Definitions,” will address all work (excluding the use rights for any software product) and all terms regarding pricing, payment, and delivery of any software product. Accordingly, the State intends to pay contractor in order to acquire license rights for any software product, but the license rights will be governed by a software licensing agreement with the licensor.

(c) Critical Instructions. (1) Your offer must identify each software product you propose to provide, identify the licensor, and explain which of the following licensing models apply: (i) you intend to license (or sublicense) the item directly to the State, or (ii) you intend to "resell" or distribute the item to the State (with licensing handled directly with the third-party licensor). You should use the Software Table attached to this solicitation to assist you in providing this information. (2) Your offer must NOT include any software licensing agreements; however, for any software product identified in your offer, you must submit a software licensing agreement upon request of the procurement officer. You must be prepared to provide any requested software licensing agreement within one business day of receiving a request. (3) Regardless of your licensing model, your price must include the cost of providing every software product you propose to provide to the State and those terms will form part of the contract.

(d) Pre-Condition of Award. If the work you are offering to perform is dependent upon the licensing of a software product by the State and the State is unsuccessful in negotiating an acceptable software licensing agreement for any software product for which it finds such an agreement necessary, your offer will be rejected. To facilitate the timely and successful negotiation of a software licensing agreement deemed necessary by the State, the State may ask you, after opening but prior to award, to acquire from the licensor an executed copy of the piggyback. You should communicate with the licensors for any major or critical software product well in advance of submitting a proposal, and licensors should be informed that few changes will be made to the piggyback. [The State already has, and continues to enter into, standing, statewide, licensing agreements for a variety of computer programs. Without limiting any of the above requirements, an applicable agreement may already exist for one or more items of COTS you have identified.]

**Appendix**

**Appendix A: Minority Participation Form**

**Appendix B: SC DIS 200 Security Requirements Survey**

**Appendix C: Tax Notice**

**Appendix D-Offeror’s Checklist**

**Appendix A**

**MINORITY PARTICIPATION (DEC 2015)**

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

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

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

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

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

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

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

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

[ ] Traditional minority

[ ] Traditional minority, but female

[ ] Women (Caucasian females)

[ ] Hispanic minorities

[ ] DOT referral (Traditional minority)

[ ] DOT referral (Caucasian female)

[ ] Temporary certification

[ ] SBA 8 (a) certification referral

[ ] Other minorities (Native American, Asian, etc.)

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

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

[04-4015-3]

**Appendix B**

**SC DIS 200 Security Requirements Survey**

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**Appendix C**

**IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed $10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of $1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: **https://dor.sc.gov**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-896-1420.

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: **https://dor.sc.gov**

[09-9005-4]

**Appendix D**

Offeror’s Checklist

