



Beaufort County School District	Solicitation Number:	09-027
	Date Printed:	December 10, 2008
	Date Issued:	December 10, 2008
	Procurement Officer:	Sandi Amsler, CPPB
Phone:		843-322-2349
Email:		Sandi.Amsler@beaufort.k12.sc.us

Request for Proposals

DESCRIPTION: Web Hosting

SUBMIT OFFER BY (Opening Date & Time): January 8, 2009; 3:00 PM EST

QUESTIONS MUST BE RECEIVED BY: December 30, 2008

NUMBER OF COPIES TO BE SUBMITTED:

One (1) Original and Five (5) Copies

Offers must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior.

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

MAILING ADDRESS:

Beaufort County School District
Procurement Office
P.O. Drawer 309
1300 King Street
Beaufort, SC 29901-0309

PHYSICAL ADDRESS:

Beaufort County School District
Procurement Office
1300 King Street
P. O. Drawer 309
Beaufort, SC 29902

CONFERENCE TYPE:

LOCATION:

DATE & TIME:

AWARDS & AMENDMENTS:

Award will be posted at the Physical Address stated above on or after January 8, 2009. The award, this solicitation, and any amendments will be posted at the following web address: www.beaufort.k12.sc.us

You must submit a signed copy of this form with Your Offer. By submitting a bid or bid, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of ninety (90) calendar days after the Opening Date.

NAME OF OFFEROR: (Full legal name of business submitting the offer)

ENTITY TYPE:

AUTHORIZED SIGNATURE (Person signing must be authorized to submit binding offer to enter contract on behalf of Offeror named above)

PRINTED NAME

TITLE

Instructions regarding Offeror's name: Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror above. An offer may be submitted by only one legal entity. The entity named as the Offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.

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1.0 SCOPE OF SOLICITATION:

1.0.1 ACQUIRE SERVICES & SUPPLIES / EQUIPMENT (JAN 2006):

The purpose of this solicitation is to establish a term contract for web hosting services (Services) from a financially viable and technically competent firm(s).

Beaufort County School District (BCSD) is the largest employer located in the County of Beaufort, South Carolina. It employs over 2,900 part-time and full-time employees. BCSD has 17 elementary schools, 6 middle schools and 4 high schools, 1 vocational school, 1 Alternative Program and several administrative offices.

1.0.2 MAXIMUM CONTRACT PERIOD:

July 1, 2009 through June 30, 2014

2.0 INSTRUCTIONS TO OFFERORS:

2.1 GENERAL INSTRUCTIONS:

2.1.1 AMENDMENTS TO SOLICITATION (JAN 2004):

- a) This solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: www.beaufort.k12.sc.us.
- b) Offerors shall acknowledge receipt of any amendment to this solicitation
 - 1) by signing and returning the amendment,
 - 2) by identifying the amendment number and date in the space provided for this purpose on Page Two,
 - 3) by letter, or
 - 4) by submitting a bid that indicates in some way that the bidder received the amendment.
- c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

2.1.2 AWARD NOTIFICATION (JUNE 2006):

Notice regarding any award or cancellation of award will be posted at the location specified on the Cover Page. The date and location of posting will be announced at opening. If the contract resulting from this Solicitation has a total or potential value in excess of fifty thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation. Should the contract resulting from this Solicitation have a

potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the sixteenth day after such notice is given.

2.1.3 BID / PROPOSAL AS OFFER TO CONTRACT (JAN 2004):

By submitting Your Bid or Proposal, You are offering to enter into a contract with the BCSD. Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror in this solicitation. An Offer may be submitted by only one legal entity, "joint bids" are not allowed.

2.1.4 BID ACCEPTANCE PERIOD (JAN 2004):

In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing.

2.1.5 BID IN ENGLISH & DOLLARS (JAN 2004):

Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

2.1.6 BOARD AS PROCUREMENT AGENT (JAN 2004):

a) Authorized Agent: All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement.

b) Purchasing Liability: The Procurement Officer is an employee of the Board acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Unit(s). The Board is not a party to such contracts, unless and to the extent that the board is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract.

2.1.7 CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004):

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

1) Offeror and/or any of its Principals-

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

- ii) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offer; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
 - iii) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in the paragraph a) 1) ii) of this provision.
- 2) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.
- b) "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.
- c) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- d) If Offeror is unable to certify the representations stated in paragraphs a) 1) and 2), Offeror must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure for the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror non-responsible.
- e) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings
- f) The certification in paragraph a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the BCSD, the Procurement Officer may terminate the contract resulting from this solicitation for default.

2.1.8 CODE OF LAWS AVAILABLE:

The Beaufort County School District Procurement Code is available at <http://www.beaufort.k12.sc.us>. The South Carolina Regulations are available at <http://www.scstatehouse.net/coderegs/statmast.htm>.

2.1.9 COMPLETION OF FORMS / CORRECTION OF ERRORS (JAN 2006):

All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.)

2.1.10 DEADLINE FOR SUBMISSION:

Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing mail room at 1300 King Street, which services that purchasing office prior to the bid opening (R.19-445.2070(H)).

2.1.11 DEFINITIONS EXCEPT AS OTHERWISE PROVIDED HEREIN, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION:

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

BCSD – means the Beaufort County School District or its designated agent(s)

BOARD – means the elected Board of Education of the Beaufort County School District

BUYER – means the Procurement Officer

CHANGE ORDER- means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT MODIFICATION- means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

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

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

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

OFFEROR- means the single legal entity submitting the offer. The term “Bidder” is used interchangeably with the term “Offeror.” See bidding provision entitled “Signing Your Offer” and “Bid/Proposal as Offer to Contract.”

ORDERING ENTITY- Using Governmental Unit that has submitted a Purchase Order.
PAGE TWO- means the second page of the original solicitation, which is labeled Page Two.

PROCUREMENT OFFICER- means the person or his successor, identified as such on Cover Page.

YOU and YOUR- mean Offeror.

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

SUBCONTRACTOR- means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

USING GOVERNMENTAL UNIT – means the unit(s) of government identified as such on the Cover Page. If the Cover Page names a “Statewide Term Contract” as the Using Governmental Unit, the Solicitation seeks to establish a Term Contract [11-35-310(35)] open for use by all South Carolina Public Procurement Units [11-35-4610(5)].

WORK - means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

2.1.12 DRUG FREE WORK PLACE CERTIFICATION (JAN 2004):

By submitting an Offer, Offeror 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.

2.1.13 DUTY TO INQUIRE:

Offerer, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to BCSD's attention.

2.1.14 ETHICS ACT (JAN 2004):

By submitting an Offer, You certify that You are in compliance with South Carolina's Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended. The following statutes require special attention:

- a) Offering, giving, soliciting, or receiving anything of value to influence action of public employee – Section 8-13-790,
- b) Recovery of kickbacks – Section 8-13-790,

- c) Offering, soliciting, or receiving money for advice or assistance of public official – Section 8-13-720,
- d) Use or disclosure of confidential information – Section 8-13-725, and
- e) Persons hired to assist in the preparation of specifications or evaluation of bids – Section 8-13-1150.

2.1.15 OMIT TAXES FROM PRICE (JAN 2004):

Do **not** include any sales or use taxes in Your price that BCSD may be required to pay. Taxes shall be computed by BCSD using the then-current tax rates.

2.1.16 PROTESTS (JAN 2004):

Any prospective Bidder, Offeror, Contractor, or Subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual Bidder, Offeror, Contractor, or Subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within fifteen days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate chief procurement officer within the time provided.

2.1.17 PUBLIC OPENING (JAN 2004):

Offers will be publicly opened at the date/time and at the location identified on the cover page, or last Amendment, whichever is applicable.

2.1.18 QUESTIONS FROM OFFERORS (JAN 2004):

- a) Any prospective Offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer as indicated on the Cover Page. Label any communication regarding your questions with the name of the Procurement Officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective Offeror concerning a solicitation will be furnished promptly to all other prospective Offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Offerors.
- b) The BCSD seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer – as soon as possible – regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.

2.1.19 REJECTION/CANCELLATION:

The BCSD may cancel this solicitation in whole or in part. The BCSD may reject any or all proposals in whole or in part.

2.1.20 RESPONSIVENESS / IMPROPER OFFERS (JAN 2004):

- a) Bid as Specified: Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.
- b) Multiple Offers: Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate Offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple Offers may be submitted as one document, provided that you clearly differentiate between each Offer and you submit a separate cost proposal for each Offer, if applicable.
- c) Responsiveness: Any Offer that fails to conform to the material requirements of the Solicitation may be rejected as non-responsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the BCSD cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]
- d) Price Reasonableness: Any Offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].
- e) Unbalanced Bidding: The BCSD may reject an Offer as non-responsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the BCSD even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

2.1.21 RESTRICTIONS APPLICABLE TO OFFERORS (JAN 2004):

Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the State Ethics Act.

- a) After issuance of the solicitation, **You agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials.** All communications must be solely with the Procurement Officer. This

restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed.

- b) Unless otherwise approved in writing by the Procurement Officer, **You agree not to give anything to any Using Governmental Unit or its employees, agents or officials prior to award.**

2.1.22 SIGNING YOUR OFFER (JAN 2004):

Every Offer must be signed by an individual with actual authority to bind the Offeror.

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

2.1.23 STATE OFFICE CLOSINGS:

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the BCSD office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If BCSD offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference.

2.1.24 SUBMITTING CONFIDENTIAL INFORMATION (AUG 2002): (An overview is available at www.procurement.sc.gov):

- a) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either
 - 1) a trade secret as defined in Section 30-4-40(a)(1) or
 - 2) privileged and confidential, as that phrase is used in Section 11-35-410.
- b) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act.
- c) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810.
- d) 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 (Bid, Proposal, Quote, etc.) as confidential, trade secret, or protected! If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the BCSD may, in its sole discretion, determine it non-responsive. If only portions of a page are subject to some protection, do not mark the entire page.
- e) By submitting a response to this solicitation or request, Offeror
 - 1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED",
 - 2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and
 - 3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure.
- f) In determining whether to release documents, the BCSD will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED".

- g) By submitting a response, Offeror agrees to defend, indemnify and hold harmless ~~the~~ BCSD, its officers, and its employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the BCSD withholding information that Offeror marked as "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". (All references to S.C. Code of Laws.)

2.1.25 SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004):

- a) Offers and Offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) –
 - 1) Addressed to the office specified in the Solicitation; and
 - 2) showing the time and date specified for opening, the solicitation number, and the name and address of the bidder.
- b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package.
- c) Each Offeror must submit the number of copies indicated on the Cover Page.
- d) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraph 1) a) and b) of this provision when delivered to the office specified in the Solicitation.
- e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation.
- f) Offers submitted by electronic commerce shall be considered on if the electronic commerce method was specifically stipulated or permitted by the solicitation.

2.1.26 TAXPAYER IDENTIFICATION NUMBER (JAN 2004):

- a) If Offeror is owned or controlled by a Common Parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent.
- b) Definitions:
 - 1) "Common Parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Offeror is a member.
 - 2) "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

- c) If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether
- 1) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
 - 2) Offeror is an agency or instrumentality of a state or local government;
 - 3) Offeror is an agency or instrumentality of a foreign government; or
 - 4) Offeror is an agency or instrumentality of the Federal Government.

2.1.27 WITHDRAWAL OR CORRECTION OF OFFER:

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

2.2 SPECIAL INSTRUCTIONS

2.2.1 BID BOND (JAN 2006):

A bid bond is not required.

2.2.2 BOARD APPROVAL REQUIRED (JAN 2006):

Any award is subject to prior approval by the BCSD Board.

2.2.3 DISCUSSION WITH BIDDERS (JAN 2006):

After opening, the Procurement Officer, in her/his sole discretion, may initiate discussions with you to discuss your bid.

2.2.4 OPENING PROPOSALS – PRICES NOT DIVULGED (JAN 2006):

In competitive sealed proposals, prices will not be divulged at opening.

2.2.5 PROTEST – CPO:

Any protest must be submitted in writing to the Chief Procurement Officer, Procurement Office, 1300 King Street, Beaufort, SC 29902

3.0 SCOPE OF WORK/SPECIFICATIONS

3.0.1 ATTACHMENTS

- a) Reference the Attachment A for the “Web Hosting Technical Requirements” document available ONLY in PDF format.
- b) Reference the Attachment B for the “Web Hosting Proposal Response Form” document available in PDF format and Microsoft Word.

4.0 INFORMATION FOR OFFEROR TO SUBMIT:

4.0.1 INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (JAN 2006):

- a) Offeror shall submit a signed Cover Page and Page Two.
- b) Offeror should submit all other information and documents requested in this part and in parts 2.2 - Special Instructions; 3.0 - Scope of Work; 5.0 - Qualifications; 8.0 - Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section 9.0 - Attachments to Solicitations.

5.0 QUALIFICATIONS:

5.0.1 QUALIFICATIONS OF OFFEROR:

To be eligible for award of a contract, a prospective Contractor must be responsible. In evaluating an Offeror’s responsibility, the BCSD Standards of Responsibility and information from any other source may be considered. An Offeror must, upon request of the BCSD, furnish satisfactory evidence of its’ ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive and award.

- a) Contractor shall be licensed and meet all applicable regulations.
- b) Contractor shall not use subcontractors for any portion of the work without BCSD’s prior written approval.

- f) Contractor shall abide with all provisions of the United States Immigration Reform and Control Act of 1986 (Act) and any subsequent Immigration Acts as approved by the United States Congress.
- g) The prevailing rates of wages are the minimums that must be paid in conformance with all applicable laws of the State of South Carolina.

5.0.2 CONTRACTOR E-RATE QUALIFICATIONS

- a) BCSD participates in the E-Rate Program to the maximum extent possible each year and intends to do so as long as the program continues. BCSD intends to apply for E-Rate support in the 2009/2010 E-Rate Year and thereafter throughout the term of the contract term. BCSD contracts with an E-Rate consultant to assist with the paperwork, track progress, provide updates, etc. At BCSD's request, Contractor shall coordinate with BCSD, BCSD's E-Rate consultant, the Schools and Libraries Division (SLD), and others to assist BCSD in complying with all E-Rate requirements related to this procurement and any resulting contract. BCSD typically utilizes the Billed Entity Applicant Reimbursement (BEAR) process but may choose, at BCSD's sole discretion, to utilize discounted invoices.
- b) All Proposers must qualify for and be in good standing with the E-Rate Program managed by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) for the Federal Communications Commission (FCC); therefore each Proposer,
 - 1) Must have a valid Service Provider Identification Number (SPIN) with the SLD
 - 2) Must be approved by the FCC to offer the services proposed.
 - 3) Must have filed a Service Provider Annual Certifications (SPAC) annually with the SLD.
 - 4) Must not be under a "Red Light" status with the FCC.

5.0.3 QUALIFICATIONS – REQUIRED INFORMATION (JAN 2006):

In order to evaluate your responsibility, Offeror shall submit the following information or documentation for the Offeror and any Subcontractor, if the value of Subcontractor's portion of the work exceeds 10% of your price (if in doubt, provide the information):

- a) Submit the items listed below.
 - 1) Type of firm - Proprietorship, Partnership, or Corporation
 - 2) Minority/Women-Owned Business Enterprises Status

- 3) E-Rate SPIN #
- 4) Brief profile of your firm including a general history, the location(s), year established, and number of permanent, full time, and part time employees
- 5) Organization chart of the departments that will plan, configure, install, and support the Services.
- 6) Bank and credit references with contact names and telephone numbers
- 7) Most current financial statements for your last two fiscal years and information reflecting your current financial position. If you have audited financial statements meeting these requirements, you must provide those statements.
- 8) Potential scheduling or other conflicts of interest
- 9) Brief profile of five projects and client references listed in order of relevance and completed within the last two years. Include your firm's project manager, the client contact information, and approximate contract value for each reference.
- 10) Resumes for Contractor's proposed team members.
- 11) Technical information and cut-sheets on all components, including specifications from the manufacturer documenting the requirements specified in Quality Assurance and Testing. If more than one item appears on the cut-sheet, the provided products shall be underlined or highlighted.
- 12) Copies of any warranties, guarantees, and/or maintenance agreements, which exceed these specifications
- 13) List all objections, exceptions, and observations regarding the specified systems, requirements, or conditions in writing
- 14) Paragraph-by-paragraph item specification review indicating compliance or exception with full description of the reason for the exception
- 15) Liability insurance and Worker's Comprehensive Insurance limits of coverage
- 16) Test procedures
- 17) Sample record drawings
- 18) Sample invoice
- 19) Completed Response Form (Attachment B)

b) List failed projects, suspensions, debarments, and significant litigation.

5.0.4 SUBCONTRACTOR IDENTIFICATION:

If you intend to subcontract with another business for any portion of the work and that portion exceeds 10% of your price, your offer must identify that business and the portion of work that they are to perform. Identify potential Subcontractors by providing the business' name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the BCSD may evaluate your proposed Subcontractors.

6.0 AWARD CRITERIA:

6.0.1 AWARD CRITERIA – PROPOSALS:

Award will be made to the highest ranked, responsive and responsible Offeror whose offer is determined to be the most advantageous to the District.

6.0.2 AWARD TO ONE OFFEROR (JAN 2006):

Award(s) will be made to one or more Offerors at BCSD's sole discretion.

6.0.3 EVALUATION FACTORS – PROPOSALS (JAN 2006):

Offerors will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the **first factor being the most important**. Once evaluation is complete, all responsive Offerors will be ranked from most advantageous to least advantageous using the evaluation criteria listed below.

- Proposed cost for E-Rate eligible components and services (30%)
- Offeror's qualifications including number of years in business, reliability, and financial stability, team members, and experience/certifications (25%)
- Quality of the proposal including preparation, thoroughness, and responsiveness to the RFP requirements (20%)
- Five (5) client references (citations are welcome but are not references) from prior implementations, including service and support, where services have been provided for projects of similar size and complexities (15%)
- The best interest of the District (10%)

6.0.4 ON-SITE PRESENTATIONS:

On-site presentations are not planned at this time.

6.0.5 NEGOTIATIONS (JAN 2006):

The Procurement Officer may elect to make an award without conducting negotiations. However, after the offers have been ranked, the Procurement Officer may elect to negotiate price or the general scope of work with the highest ranked Offeror. If a satisfactory agreement cannot be reached, negotiations may be conducted with the second, and then the third, and so on, ranked Offerors to such level of ranking as determined by the Procurement Officer.

6.0.6 UNIT PRICE GOVERNS (JAN 2006) –

In determining award, unit prices will govern over extended prices unless otherwise stated.

6.0.7 NOTICE TO PROCEED:

A letter of notice to proceed or refusal will be sent to the Contractor(s). Award shall be made to the lowest responsible Bidder, taking in to consideration satisfactory past performance and quality of workmanship and whether the Bidder's past record indicates reasonable completion of jobs on schedule. The Project Manager will contact the Contractor within three (3) days of awarding the job to discuss a defined starting and finishing date. If the Project Manager can not reach the Contractor within the three (3) days the job will be awarded to the next available Contractor.

7.0 TERMS & CONDITIONS:

7.1 GENERAL:

7.1.1 ASSIGNMENT (JAN 2006):

No Contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer.

7.1.2 BANKRUPTCY (JAN 2006):

- a) Notice: In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within five (5) 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 BCSD 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 BCSD upon the Contractor's insolvency, including the filing of proceedings in bankruptcy.

7.1.3 CHOICE OF LAW (JAN 2006):

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

7.1.4 CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (JAN 2006):

- 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) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable,
- 3) the solicitation, as amended,
- 4) modifications, if any, to Your Offer, if accepted by the Procurement Officer,
- 5) Your Offer,
- 6) any statement reflecting the BCSD's final acceptance (a/k/a "award"), and
- 7) purchase orders.

These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

- b) The terms and conditions of documents 1) through 6) above shall apply notwithstanding any additional or different terms and conditions in either:
 - 1) a purchase order or other instrument submitted by the BCSD or
 - 2) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect.
- c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise

agreed to by persons other than the Procurement Officer shall be void and of no effect.

7.1.5 DISCOUNT FOR PROMPT PAYMENT (JAN 2006):

- a) Discounts for prompt payment will not be considered in the evaluation of Offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the Offeror. As an alternative to offering a discount for prompt payment in conjunction with the Offer, Offerors awarded contracts may include discounts for prompt payment on individual invoices.
- b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the District annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

7.1.6 DISPUTES (JAN 2006):

- a) 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, Beaufort County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.
- b) Service of Process: Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

7.1.7 EQUAL OPPORTUNITY (JAN 2006):

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

7.1.8 FALSE CLAIMS (JAN 2006):

According to the S.C. Code of Laws § 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.

7.1.9 FIXED PRICING REQUIRED:

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

7.1.10 NON-INDEMNIFICATION (JAN 2006):

Any term or condition is void to the extent it requires BCSD to indemnify anyone.

7.1.11 NOTICE (JAN 2006):

- a) After award, any notices shall be in writing and shall be deemed duly given
 - 1) upon actual delivery, if delivery is by hand,
 - 2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or
 - 3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used.
- b) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the BCSD 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.

7.1.12 PAYMENT (JAN 2006):

- a) The BCSD shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this Contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless

otherwise specified in this Contract, including the purchase order, payment shall not be made on partial deliveries accepted by the BCSD.

- b) Unless the purchase order specifies another method of payment, payment will be made by check.
- c) Payment and interest shall be made in accordance with S.C. Code Section 11-35-45. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable.

7.1.13 PUBLICITY (Jan 2006):

Contractor shall not publish any comments or quotes by the BCSD employees, or include the BCSD in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

7.1.14 PURCHASE ORDERS (JAN 2006):

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

7.1.15 SETOFF (JAN 2006):

The BCSD shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the BCSD's option to withhold for the purposes of set-off any moneys due to the Contractor under this Contract up to any amounts due and owing to the BCSD with regard to this Contract, any other contract with any BCSD department or agency, including any contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the BCSD for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

7.1.16 SURVIVAL OF OBLIGATIONS (JAN 2006):

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

7.1.17 TAXES (JAN 2006):

Any tax the Contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the BCSD, 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 BCSD. It shall be solely the BCSD'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 BCSD to Contractor, Contractor shall be liable to the BCSD for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the Contractor.

7.1.18 TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006):

Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds 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.

7.1.19 THIRD PARTY BENEFICIARY (JAN 2006):

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

7.1.20 WAIVER (JAN 2006):

The-BCSD 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 BCSD's rights under this Contract. Any waiver must be in writing.

7.2 SPECIAL:

7.2.1 CHANGES (JAN 2006):

- a) 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:
 - 1) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the BCSD in accordance therewith;
 - 2) method of shipment or packing;
 - 3) place of delivery;
 - 4) description of services to be performed;
 - 5) time of performance (*i.e.*, hours of the day, days of the week, etc.); or,
 - 6) place of performance of the services.

Subparagraphs 1) to 3) apply only if supplies are furnished under this contract.

Subparagraphs 4) to 5) apply only if services are performed under this contract.

- b) 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. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided that the BCSD 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.
- b) Time Period for Claim: Within 30 days after receipt of a written contract modification under Paragraph a) 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 BCSD is prejudiced by the delay in notification.
- c) 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.

7.2.2 COMPLIANCE WITH LAWS (JAN 2006):

During the term of the Contract, Contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

7.2.3 CONTRACT LIMITATIONS (JAN 2006):

No sales may be made pursuant to this Contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this Contract and may subject contractor to suspension or debarment.

7.2.4 CONTRACTOR'S LIABILITY INSURANCE (JAN 2006):

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

- b) Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the work until date of final payment. Coverage must include the following on a commercial basis:
- 1) Premises – Operations,
 - 2) Independent Contractor’s Protective,
 - 3) Products and Completed Operations,
 - 4) Personal and Advertising Injury,
 - 5) Contractual, including specific provision for contractor’s obligations under the provision entitled Indemnification – Third Party Claims,
 - 6) Broad Form Property Damage including Completed Operations, and
 - 7) Owned, Non-owned and Hired Motor Vehicles.
- c) The insurance required by this paragraph shall be written for not less than the following limits of liability or as required by law, whichever coverage is greater:

General Liability:

- \$1,000,000 Each Occurrence
- \$ 50,000 Fire
- \$1,000,000 General Aggregate
- \$1,000,000 Products – Completed Operations

Automobile Liability:

- \$1,000,000 Combined Single Limit

Workers’ Compensation:

- Statutory

- d) Required Documentation:
- 1) Prior to commencement of the work, Contractor shall provide to the BCSD a signed, original certificate of liability insurance (ACORD 25). The certificate shall identify the types of insurance, state the limits of liability for each type of coverage, include a provision for 30 days notice prior to cancellation, name every applicable using governmental unit (as identified on the cover page) as a Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis.
 - 2) Prior to commencement of the work, Contractor shall provide to the BCSD a written endorsement to the contractor’s general liability insurance policy that

- i) names every applicable using governmental unit (as identified on the Cover Page) as an additional insured,
 - ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named governmental unit(s) has been given at least thirty (30) days prior written notice, and
 - iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the BCSD as secondary and noncontributory.
- 3) Both the certificate and the endorsement must be received directly from either the Contractor's insurance agent or the insurance company.
- e) Contractor shall provide a minimum of thirty (30) days written notice to every applicable using governmental unit of any proposed reduction of coverage limits (on account of revised limits or claims paid under the General Aggregate) or any substitution of insurance carriers.
- f) The BCSD's failure to demand either a certificate of insurance or written endorsement required by this paragraph is not a waiver of Contractor's obligations to obtain the required insurance.

7.2.5 CONTRACTOR PERSONNEL (JAN 2006):

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

7.2.6 CONTRACTOR'S OBLIGATION – GENERAL (JAN 2006):

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

7.2.7 DEFAULT – SHORT FORM (JAN 2006):

The BCSD may terminate this Contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the BCSD, upon request, with adequate assurances of future performance. In the event of termination for cause, the BCSD shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the BCSD for any and all rights and remedies provided by law. If it is

determined that the BCSD improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

7.2.8 ESTIMATED QUANTITY - UNKNOWN (JAN 2006):

The total quantity of purchases of any individual item on the Contract is not known. The BCSD does not guarantee that the BCSD will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information.

7.2.9 INDEMNIFICATION - THIRD PARTY CLAIMS (JAN 2006):

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

The obligations of this clause shall survive termination of the parties' agreement.

7.2.10 INTELLECTUAL PROPERTY INFRINGEMENT (JAN 2006):

- a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the BCSD, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside

counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. BCSD shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. BCSD shall allow Contractor to settle such claim so long as

- 1) all settlement payments are made by Contractor, and
 - 2) the settlement imposes no non-monetary obligation upon BCSD. BCSD shall reasonably cooperate with Contractor's defense of such claim.
- b) In the event an injunction or order shall be obtained against BCSD's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either:
- 1) procure for BCSD the right to continue to use, or have used, the acquired item, or
 - 2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by BCSD.

If neither (1) nor (2), above, is practical, BCSD may require that Contractor remove the acquired item from BCSD, refund to BCSD any charges paid by BCSD therefore, and take all steps necessary to have BCSD released from any further liability.

- c) Contractors obligations under this paragraph do not apply to a claim to the extent
- 1) that the claim is caused by Contractor's compliance with specifications furnished by the BCSD unless Contractor knew its compliance with the BCSD's specifications would infringe an IP right, or
 - 2) that the claim is caused by Contractor's compliance with specifications furnished by the BCSD if the BCSD knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor.
- d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work.
- e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

7.2.11 LICENSES AND PERMITS (JAN 2006):

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

7.2.12 LIQUIDATED DAMAGES:

A 2% deduction per day will be assessed to the payment of the project for each day of work performed after the determined substantial completion date. If any unforeseen conditions arise during work such as an act of God, change order, etc., these situations must be communicated to and agreed upon by the Project Manager for an extension of the substantial completion date.

7.2.13 MATERIAL AND WORKMANSHIP (JAN 2006):

Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this Contract are to be new and of the most suitable grade for the purpose intended.

7.2.14 PRICE ADJUSTMENTS (JAN 2006):

- a) Method of Adjustment: Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):
 - 1) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - 2) by unit prices specified in the Contract or subsequently agreed upon;
 - 3) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;
 - 4) in such other manner as the parties may mutually agree; or,
 - 5) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

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

7.2.15 STORAGE OF MATERIALS (JAN 2006):

Absent approval of the using governmental unit, Contractor shall not store items on the premises of the using governmental unit prior to the time set for installation.

7.2.16 TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD:

The effective date of this contract will be July 1, 2008. The initial term of this agreement is for three (3) years from the effective date.

7.2.17 TERM OF CONTRACT – OPTION TO RENEW (JAN 2006):

At the end of the initial term, and at the end of each renewal term, this Contract may be renewed for a period of one (1) year upon prior written approval by both BCSD and Contractor. Regardless, this Contract expires no later than the last date stated on the final statement of award.

7.2.18 TERMINATION FOR CONVENIENCE – INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (JAN 2006):

Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination.

7.2.19 TERMINATION FOR CONVENIENCE – SHORT FORM (JAN 2006):

- a) The Procurement Officer may terminate this Contract in whole or in part, for the convenience of the BCSD. In such a termination, the Procurement Officer may require the Contractor to transfer title and deliver to the BCSD in the manner and to the extent directed by the Procurement Officer:
 - 1) any completed supplies; and
 - 2) 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.
- b) Upon such termination, the Contractor shall
 - 1) stop work to the extent specified,

- 2) terminate any Subcontracts as they relate to the terminated work, and
- 3) be paid the following amounts without duplication, subject to the other terms of this Contract:
 - i) Contract prices for supplies or services accepted under the contract,
 - ii) costs incurred in performing the terminated portion of the work, and
 - iii) any other reasonable costs that the Contractor can demonstrate to the satisfaction of BCSD, using its standard record keeping system, have resulted from the termination.
- c) The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.
- d) As a condition of payment, Contractor shall submit within three (3) months of the effective date of the termination a claim specifying the amounts due because of the termination.
- e) The absence of an appropriate termination for convenience clause in any Subcontract shall not increase the obligation of the BCSD beyond what it would have been had the Subcontract contained such a clause.

7.2.20 WARRANTY – STANDARD (JAN 2006):

Contract must provide the manufacturer's standard written warranty upon delivery of product. Contractor warrants that manufacturer will honor the standard written warranty provided.

8.0 BIDDING SCHEDULE / PRICE BUSINESS PROPOSAL:

8.0.1 PRICE PROPOSAL (JAN 2006):

Notwithstanding any other instructions herein, you shall submit the following price information as a separate document – See Attachment B in response spreadsheet.

9.0 ATTACHMENTS TO SOLICITATION

9.0.1 MINORITY AND FEMALE BUSINESS ENTERPRISE POLICY AND REQUIREMENTS:

a) Statement of Policy:

It is the policy of the Beaufort County School District that discrimination against businesses on the basis of race, color, national origin, and gender is prohibited. No person shall be denied the benefit of, or otherwise discriminated against, on the grounds of race, color, national origin or gender in connection with the award and/or performance of any contract or modification of a contract between a vendor or contractor and the Board which contract is paid or is to be paid for, in whole or part, with monetary appropriations of the Board. Further, it is the policy of BCSD to encourage and promote, on an inclusionary basis, contracting opportunities for all business, without regard to race, color, national origin or gender. It is expected that all firms seeking to do business with the Beaufort County School District will comply with this BCSD policy.

b) Subcontractor Participation

Beaufort County School District, through its contract documents, encourages contractors to utilize minority subcontractors on their projects.

A prime contractor must identify M/FBE utilization expenditures to certified M/FBE subcontractors that perform a commercially useful function in the work of the contract. An M/FBE subcontractor is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the work of a contract for which the MBE or FBE has the skill and expertise and carries out its responsibilities by actually performing, managing and supervising the work involved.

c) Business Utilization Report

In order to facilitate an effective monitoring system, each contractor, bidder or offeror must submit a completed and signed Utilization Report with the bid submission which lists the names, addresses and contact persons of the M/FBE and majority owned businesses, if any, to be used in the contract, the type of work each business will perform, the dollar value of the work and the scope of work. The Utilization Report submitted by the contractor shall be submitted as a part of the contract with BCSD. If the information contained in the Contractor's Utilization Report changes by the time the contract is executed, the Contractor shall amend the Utilization Report and such amended Utilization Report shall be incorporated into the contract.

Business Enterprise Utilization Report

List all vendors/subcontractors to be used on this project. All MBEs or FBEs proposed for utilization on this project must be certified by the Small and Minority Business Assistance Office through the State of South Carolina according to the criteria of the Beaufort County School District's Minority Business Enterprise Plan prior to utilization on this project.

In column 2 below, please specify ethnic/racial/gender group as follows:

- AABE – African-American Business Enterprise
- HBE – Hispanic Business Enterprise
- ABE – Asian-American Business Enterprise
- FBE – Female Business Enterprise
- MAJ – Majority Business Enterprise

Statement of Intent

We, the undersigned, have prepared and submitted all the documents required for this project. We have prepared these documents with a full understanding of the Beaufort County School District's goal to ensure equal opportunities in the proposed work to be undertaken in performance of this project. Specifically the BCSD seeks to encourage and promote on an inclusionary basis contracting opportunities without regard to the race, gender, national origin or ethnicity of the ownership or management of any business and that it is an equal opportunity employer and contracting entity. We certify that the representations contained in the Minority/Female Business Enterprise (M/FBE) Utilization Report, which we have submitted with this solicitation, are true and correct as of this date. We commit to undertake this contract with the Minority/Female Business utilization Report we have submitted, and to comply with all non-discrimination provisions of the Minority/Female Business Enterprise Program in the performance of this contract.

Signature

Date

Name: _____

Title: _____

Project: _____