



Charleston Naval Complex Redevelopment Authority/Naval Base Museum Authority Standard Terms of Purchase

This document contains terms and conditions applicable to procurements conducted by or on behalf of the Charleston Naval Complex Redevelopment Authority/Naval Base Museum Authority ("Authority"). Authority instructions and terms specific to an individual solicitation or order may also apply and are considered in addition to these Standard Terms of Purchase.

AGREEMENT means any transaction, contract or agreement arising out of, relating to, or contemplated by the relationship of which this solicitation or order forms a part. These Standard Terms of Purchase (in addition to any instructions and terms included in the solicitation or order) shall apply notwithstanding any conflicting terms or conditions including, without limitation, any offer, confirmation, invoice, privacy policy, terms of use, end user agreement, contract or any other form of terms and conditions provided by Contractor and such conflicting terms or conditions provided by Contractor shall be null, void and of no effect unless Contractor has requested, in writing, a modification of these Standard Terms of Purchase which clearly identifies each modification sought and such request for modification has been approved, in writing, by a representative duly authorized to bind the Authority.

AMENDMENT: The Agreement can only be modified by a written change order issued by the Authority or by an amendment signed by each party's authorized representative.

ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE: (a) Contractor shall not assign the Agreement, or its rights, obligations, or any other interest arising from the Agreement, or delegate any of its performance obligations, without the express written consent of an authorized signatory on behalf of the Authority. (b) If Contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), its tax structure, or its tax identification number, Contractor shall provide the Authority prompt written notice in the form of an updated IRS Form W-9 showing such change.

COMPLIANCE WITH LAWS: During the term of the Agreement, Contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations and tariffs relating to the Work.

CONFIDENTIALITY: Any information or materials provided by or on behalf of the Authority should be considered and treated as confidential and/or proprietary to the Authority. Contractor shall hold such information and materials in strictest confidence unless and until the Authority authorizes disclosure in writing and Contractor shall use such information and materials only for the performance of its obligations under the Agreement.

CONTRACTOR: means the individual or business submitting a quote, proposal or bid to the Authority or providing goods or services to the Authority pursuant to the order or Agreement.

CONTRACTOR IDENTIFICATION: The Authority must have Contractor's Federal Taxpayer Identification Number (Employer Identification Number for a company or Individual Taxpayer Identification or Social Security Number for an individual or sole proprietor) before processing any invoices for payment. The Authority collects this information via a completed and signed IRS Form W-9. If Authority has not received a completed and signed Form W-9 from Contractor, backup tax withholding at the current rate required by the IRS may be withheld from any payments to Contractor for services or a combination of services and goods.

CONTRACTOR'S INSURANCE: (a) Except as explicitly replaced, modified or supplemented by the Authority, Contractor must obtain from a company lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII and must maintain for the duration of the Agreement, insurance in the following kinds and amounts:

(1) Workers Compensation Insurance complying with the statutory limits of the State of South Carolina as well as such insurance coverage and limits as is commensurate with usual and customary industry practice for similarly situated businesses and adequate to protect against claims for injuries to persons or damages to property which may arise from or in connection with the performance and results of the Work by Contractor, its agents, representatives, employees or subcontractors.

(2) If fabrication, construction, installation, service or other Work is to be conducted on Authority premises, Contractor and/or, as applicable, its subcontractor(s) shall maintain during the period of the Work the insurance required by subsection (1) above, which must include *at least* the following insurance coverage:

(A) Commercial General Liability (CGL): covering CGL on an "occurrence" basis, including products-completed operations, and personal injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be at least \$2,000,000. The Agreement shall be considered to be an "insured contract" as defined in the policy;

(B) Auto Liability: covering any Contractor owned, non-owned, leased or hired autos *used in the performance of the Work* insuring against bodily injury and property damage with limits no less than required by South Carolina law;

(b) All cost and expense of such insurance shall be borne by Contractor and will not be reimbursed by or charged to the Authority.

(c) Prior to commencement of any Work on Authority owned or maintained premises, Contractor **MUST** provide the Authority with original certificates and required amendatory endorsements or copies of the applicable policy language effecting coverage required by this section. However, failure by the Authority to obtain the required documents prior to the Work beginning shall not waive the Contractor's obligation to provide the required insurance coverage. The Authority reserves the right to require complete, certified copies of all required insurance policies at any time and Contractor's failure to provide a certificate of insurance when requested shall constitute a material default under the Agreement.

(d) Contractor shall notify the Authority in writing at least thirty (30) days in advance of any modification, cancellation or replacement of any of the required insurance policies. Contractor's failure to maintain required insurance for the term of the Agreement shall constitute a material default.

CONTRACTOR'S OBLIGATION - GENERAL: Contractor shall provide 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 Contractor's obligations under the Agreement. Contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. Contractor will be considered the sole point of contact with regard to the Agreement, including payment of all charges and the meeting of all other requirements.

CONTRACTOR'S USE OF STATE PROPERTY: Upon termination of the Agreement for any reason, the Authority shall have the right, upon demand, to obtain access to, and possession of, all Authority property, including, but not limited to, current copies of all Authority application programs and necessary documentation, all data, files, intermediate materials and supplies held by Contractor. Contractor

shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the Authority without the Authority's prior written consent, except to the extent necessary to fulfill Contractor's obligations under the Agreement.

DELIVERY / PERFORMANCE LOCATION: F.O.B. Destination, freight prepaid. Destination is the Authority's designated receiving site, or other location, as specified in the solicitation or order documents. If other than F.O.B. Destination, all transportation, insurance, crating and/or packing charges are to be included as separate line items on any offer, bid, quote or proposal submitted by Contractor and on Contractor's invoices.

DRUG FREE WORK PLACE CERTIFICATION: If the actual or potential total value of the Agreement equals or exceeds \$50,000 - Contractor certifies that it 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.

ETHICS CERTIFICATE: By submitting an offer and/or providing the requested goods or services, Contractor certifies that it has complied and will comply with, and has not induced, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (the Ethics Act). The Authority may rescind any Agreement and recover all amounts expended as a result of any action taken in violation of this provision.

GOVERNING LAW & FORUM: The Authority is a public body, corporate and politic of the State of South Carolina. Accordingly, the solicitation and/or any ensuing order or Agreement, as well as any dispute, claim, or controversy relating thereto, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed in accordance with the laws of the State of South Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of South Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of South Carolina. Any legal suit, action or proceeding arising out of or relating to the solicitation and/or any ensuing order or Agreement shall be instituted in the federal or state courts of the State of South Carolina and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Venue for any action regarding the Agreement shall lie in Charleston County, South Carolina. Nothing contained herein or otherwise in the solicitation, order or Agreement shall be construed as waiving any immunity to suit or liability, including without limitation, sovereign immunity or immunity under the Eleventh Amendment of the United States Constitution, which may be available to the Authority.

IMMIGRATION CERTIFICATION: (An overview is available at <https://procurement.sc.gov/immigration>) By submitting an offer and/or providing the requested goods or services, Contractor certifies that it will comply with applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the Authority, upon request, any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to Contractor and its subcontractors or sub-subcontractors; or (b) that Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Contractor agrees to include in any contracts with its subcontractors language requiring its subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

INDEPENDENT CONTRACTOR: It is expressly understood that the relationship of Contractor to the Authority will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees and will not be considered Authority employees for any reason including, without limitation, wages, benefits, unemployment or workers' compensation.

INSPECT/REJECT: The Authority reserves the right to inspect any goods offered or completed services and to reject such goods or services if the same is not acceptable as determined by the

Authority.

LICENSES AND PERMITS: Contractor is responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, and inspections as well as related fees for any such licenses, permits and /or inspections required by the State of South Carolina, county, city or other government entity or unit to accomplish Contractor's obligations under the Agreement.

MATERIAL AND WORKMANSHIP: Unless otherwise specifically provided in the solicitation or order, all equipment, material, and articles incorporated in the Work are to be new and of the most suitable grade for the purpose intended.

NO INDEMNITY OR DEFENSE: Any term or condition is void to the extent it requires the Authority to indemnify, defend, or pay attorney's fees to any person or entity for any reason.

OBLIGATIONS BEYOND CONTRACT TERM. The Agreement shall remain in full force and effect until the end of the specified term or until terminated or canceled pursuant to the terms of the Agreement. All obligations herein relating to payment, confidentiality, license and ownership, indemnification, and limitations on damages shall survive the termination of this Contract.

OPEN TRADE REPRESENTATION: If the actual or potential total value of the Agreement equals or exceeds \$50,000 (not applicable to Commercially Available Off-The-Shelf items (COTS)) - Contractor represents that it 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 S.C. Code Section 11-35-5300. During the term of the Agreement, 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 S.C. Code Section 11-35-5300.

OWNERSHIP OF DATA & MATERIALS: All data, material and documentation prepared for the Authority pursuant to this Agreement shall belong exclusively to the Authority.

PAYMENT & INTEREST: (a) The Authority shall pay Contractor, after the submission of proper invoices or vouchers, the prices stipulated in the Agreement for goods delivered and accepted or services rendered and accepted, less any deductions provided in the Agreement. Unless otherwise specified herein, including the order, payment shall not be made on partial deliveries accepted by the Authority. (b) Unless prearranged by the Authority, all payments will be NET 30 and payments will be issued within 30 days from the date a proper invoice has been received and the goods or services have been accepted as satisfactory by the ordering department. (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 Authority. 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 Authority shall not be liable for the payment of interest on any debt or claim arising out of or related to the Agreement for any reason.

RELATIONSHIP OF THE PARTIES: Neither party is an employee, agent, partner or joint venturer of the other. Except as explicitly set forth in the Agreement, neither party has the right or ability to bind the other to any agreement with a third party or incur any obligation or liability on behalf of the other party.

PUBLIC RECORDS: Contractor acknowledges that the Authority is a public body, subject to South Carolina's public records laws and that any documents related to the Agreement may be subject to disclosure pursuant to the South Carolina Freedom of Information Act (S.C. Code Sections 30-4-10 to 30-4-55). Once an order is issued by the Authority, all related solicitation documents submitted to the Authority, including, but not limited to, quotations, proposals, bids, statements of work, and/or specifications, will be

open to the inspection of any citizen, or any interested person, firm or corporation. If Contractor believes that documents related to the Agreement contain trade secrets or other proprietary data, Contractor must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Contractor contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in South Carolina Code Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in South Carolina Code Section 11-35-410. For every document Contractor submits in response to or with regard to this solicitation or request, Contractor must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Contractor contends contains a trade secret as that term is defined by South Carolina Code Section 39-8-20. For every document Contractor submits in response to or with regard to this solicitation or request, Contractor must separately mark with the word "PROTECTED" every page, or portion thereof, that Contractor contends is protected by South Carolina Code Section 11-35-1810. If only portions of a page are subject to some protection, do not mark the entire page. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Contractor may not request that its offer documents in their entirety be treated as trade secret or confidential information, nor may a firm request that its pricing be treated as a trade secret or confidential information. Contractor must invoke the protections of this section prior to or upon submission of its offer documents.

TERMINATION DUE TO UNAVAILABILITY OF FUNDS: It is expressly understood and agreed that the obligation of the Authority to proceed under the Agreement for succeeding fiscal periods after the initial fiscal period of the Agreement is expressly conditioned upon the continued receipt of State funding by the Authority and appropriation by the Authority's Board of Directors of adequate funding for such Agreement in any renewal term. If the Authority reasonably determines it is unable to support continuation of performance in a subsequent fiscal period, the Authority will have the right, upon written notice stating the effective date of termination, to terminate the Agreement and shall not be subject to penalty of any kind. In the event of a termination pursuant to this paragraph, Contractor will be entitled only to payments authorized under the Agreement for those services performed and materials provided in accordance with the Agreement up to the date of termination and any authorized expenses already incurred up to the date of termination.

TERMINATION FOR CAUSE: Either party may terminate this Agreement for cause upon written notice of material default by the other party that remains uncured. The defaulting party will have ten (10) business days, or such longer period provided in the notice of default, after written notification to correct or cease the violation. If the defaulting party fails to cure within the applicable cure period, the other party may immediately terminate the Agreement without penalty and without prejudice to any other right or remedy available to the terminating party. Upon such termination, Contractor will be entitled only to payments under the Agreement for those authorized services and materials provided up to the date of termination, and any authorized expenses already incurred up to the date of termination.

TERMINATION UPON NOTICE: Authority may terminate the Agreement in whole or in part upon thirty (30) days written notice of such termination, without the payment of any penalty or incurring any further obligation to the Contractor. Upon such termination, Contractor will be entitled only to payments under the Agreement for those authorized services and materials provided up to the date of termination, and any authorized expenses already incurred up to the date of termination.

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