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|  | <p align="center"><b>State of South Carolina</b></p> <p align="center"><b>Request for Qualifications</b></p> | <p>Date Issued: 12/01/2020<br/> Procurement Officer: Clarissa Belton, CPPB, CPM<br/> Phone: 803.737.0416<br/> E-Mail Address: <a href="mailto:cbelton@sccommerce.com">cbelton@sccommerce.com</a></p> |  |
|---|--|--|--|

**DESCRIPTION: Professional Grant Administration Services for program implementation of funds received through the 'Coronavirus Aid, Relief, and Economic Security Act' (CARES Act) for Community Development Block Grant Program Coronavirus Response (CDBG-CV).**

SUBMIT QUALIFICATIONS BY (Date/Time): **12/22/2020 11:00 AM**

SUBMIT YOUR QUALIFICATIONS BY E-MAIL OR TO EITHER OF THE FOLLOWING ADDRESSES:

|   |  |
|---|--|
| MAILING ADDRESS:<br>South Carolina Department of Commerce<br>1201 Main Street, Suite 1600<br>Columbia SC 29201<br>Attention: Clarissa Belton ( <a href="mailto:cbelton@sccommerce.com">cbelton@sccommerce.com</a> ) | PHYSICAL ADDRESS:<br>South Carolina Department of Commerce<br>1201 Main Street, Suite 1600<br>Columbia SC 29201<br>Attention: Clarissa Belton, CPPB, CPM |
|---|--|

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

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## REQUEST FOR QUALIFICATIONS

### PROFESSIONAL GRANT ADMINISTRATION SERVICES FOR PROGRAM IMPLEMENTATION OF FUNDS RECEIVED THROUGH THE 'CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT' (CARES ACT) FOR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM CORONAVIRUS RESPONSE (CDBG-CV).

#### SCHEDULE OF KEY DATES

All dates are subject to change

|   |            |
|---|------------|
| Distribution of the Request for Qualifications        | 12/01/2020 |
| Deadline for Submission of Questions (11:00 a.m.)     | 12/07/2020 |
| State's Written Responses to Questions                | 12/08/2020 |
| Deadline for Submittal of Qualifications (11:00 a.m.) | 12/22/2020 |
| Responses Evaluated / Short-Listing for Interviews    | 12/29/2020 |
| Interviews  | 01/06/2021 |
| Notification of Award                                 | 01/07/2021 |

#### PART 1

#### GENERAL INSTRUCTIONS

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

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

**1.3 SUBMISSION OF QUESTIONS:** Any questions, comments, requests for information or clarifications regarding the Request for Qualifications must be submitted in writing and received no later than **11:00 AM local time, December 07, 2020**. After this date, no further questions, comments, request for information or clarifications regarding the Request for Qualifications will be addressed.

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

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

**E-MAIL ADDRESS:**

[cbelton@sccommerce.com](mailto:cbelton@sccommerce.com)

**1.4 REJECTION/CANCELLATION:** The State reserves the right to accept or reject any and all responses and/or discontinue the selection process at any time prior to contract execution.

**1.5 SUBMITTING YOUR RESPONSE:** (a) All copies of your response, and any other documents required to be submitted with the response should be enclosed in a sealed, opaque envelope or package – (1) Addressed to the office specified on the Cover Page; and (2) Showing the time and date specified for opening, the Request for Qualifications number, and the name and address of the respondent. (b) Respondents using commercial carrier services shall ensure that the response is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) when delivered to the office specified on the Cover Page. (e) E-mail responses will be considered.

**1.6 SUBMITTING CONFIDENTIAL INFORMATION:** For every document respondent submits in response to or with regard to this Request for Qualifications, respondent must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that respondent contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document respondent submits in response to or with regard to this Request for Qualifications, respondent must separately mark with the words "TRADE SECRET" every page, or portion thereof, that respondent contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document respondents submit in response to or with regard to this Request for Qualifications, respondents must separately mark with the word "PROTECTED" every page, or portion thereof, that respondent contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response as confidential, trade secret, or protected. In determining whether to release documents, the State will detrimentally rely on respondents' marking of documents, as required by these instructions, as being either "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". By submitting a response, respondent agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of

its agencies, that respondent marked as "CONFIDENTIAL" or "TRADE SECRET" or "PROTECTED". (All references to S.C. Code of Laws.)

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

**1.8 RESPONSE AS OFFER TO CONTRACT:** By submitting your response, you are offering to enter into a contract with the State. Any award issued will be issued to, and the contract will be formed with, the entity identified as the respondent on Page 1. A response may be submitted by only one legal entity; "joint bids" are not allowed.

**1.9 CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:**

(a)(1) By submitting a response, respondent certifies, to the best of its knowledge and belief, that-

(i) Respondent and/or any of its Principals-

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

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

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

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

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

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

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

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

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the respondent knowingly or in bad faith rendered an

erroneous certification, in addition to other remedies available to the State, the Procurement Officer, or his designee, may terminate the contract resulting from this solicitation for default.

**1.10 DRUG FREE WORK PLACE CERTIFICATION:** By submitting a response, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

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

**1.12 OPEN TRADE REPRESENTATION:** By submitting a response, respondent represents that respondent is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

**1.13 SIGNING YOUR RESPONSE:** Every response must be signed by an individual with actual authority to bind the respondent. (a) If the respondent is an individual, the response must be signed by that individual. If the respondent is an individual doing business as a firm, the response must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the respondent is a partnership, the response must be submitted in the partnership name, followed by the words "by its Partner," and signed by a general partner. (c) If the respondent is a corporation, the response must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) A response may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the respondent is a joint venture, the response must be submitted in the name of the joint venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If a response is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the response must state that it has been signed by an Agent. Upon request, respondent must provide proof of the agent's authorization to bind the principal.

**1.14 VENDOR REGISTRATION:** To obtain a state vendor number, visit [www.procurement.sc.gov](http://www.procurement.sc.gov) and select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm>.)

## PART 2

### INTRODUCTION

The South Carolina Department of Commerce (also referred to as the “SCDOC”) desires to procure professional grant administration services for program implementation and oversight of funds received through the 'Coronavirus Aid, Relief, and Economic Security Act' (CARES Act) for Community Development Block Grant Program Coronavirus Response (CDBG-CV) and any other available source of federal COVID-19 relief funds. It is intended that this procurement will result in a contract for professional grant program administration services that can assist the agency in implementing its action plan for the CDBG-CV1 Public Services & Facilities Program. The program administration services require understanding the CARES Act, CDBG-CV Federal Register Notice, HUD waivers for the CARES Act and all other requirements and funding streams related to the CARES Act CDBG-CV Funds, and will include, but are not limited to creating a framework for the development of processes and controls for the administration of: final applications, including final fundability review; award and grant startup; oversight of funded project implementation to ensure compliance with program requirements as identified in the CDBG Implementation Manual, as updated for CDBG-CV1; financial administration including compliance with pertinent HUD caps on administrative costs and non-LMI expenditure of funds, approval of requests for disbursement of funds, coordination with Commerce regarding IDIS drawdown, and related financial tracking and reporting; environmental reviews per CDBG guidelines; progress tracking and reporting; data collection, data analysis, and all required CDBG-CV, CARES Act and other federal reporting; liaison with Commerce regarding the CDBG CAPER performance report; final documentation of benefit, national objective compliance, and other close-out requirements; creating a system of monitoring for programmatic and financial compliance with all pertinent regulations and requirements; and duplication of benefits verification and detection of fraud, waste, and abuse.

#### Overview

### CDBG-CV1 Public Services & Facilities Program

#### Background

On March 27, 2020, the president signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The \$2 trillion aid package provides financial aid to families and businesses impacted by the COVID-19 coronavirus pandemic. Funding was provided to multiple Federal Agencies and programs, including HUD and three of the Consolidated Plan Programs: CDBG, ESG and HOPWA.

The CARES Act made \$5 billion in Community Development Block Grant Coronavirus (CDBG-CV) funds available to prevent, prepare for, and respond to the Coronavirus. HUD allocated these funds in three rounds, known as CDBG-CV1, CDBG-CV2 and CDBG-CV3. The purpose of this RFQ is to provide professional services related to implementation and oversight of CDBG-CV1.

#### State CDBG-CV Amendment to the 2020 Annual Action Plan

Under the three rounds of CDBG-CV CARES Act funding, South Carolina’s State CDBG program has been allocated \$39,499,819, as follows:

- CDBG-CV1 - \$12,456,807 in the first tranche of CDBG-CV funds



- CDBG-CV2 - \$14,859,540 in the second tranche
- CDBG-CV3 - \$12,183,522 in the third tranche

The Federal Register Notice for CDBG-CV provided multiple waivers and flexibilities, including the ability of states to carry out activities directly, provided that the amount of the first-round allocation, or \$12,456,807, be reserved or set-aside for eligible local governments in non-Entitlement areas of the state. The second-round allocation may be used in both Entitlement and non-Entitlement areas of the state and may be distributed by the State directly. The third-round methodology was based on needs assessment indicating the highest priority need nationwide was for emergency rental assistance. The State’s Plan for CDBG-CV reflects HUD’s priorities for CDBG CARES Act funding.

CARES Act provided other flexibilities, including suspension of the public services cap during the emergency and allowing States and local governments to reimburse costs of eligible activities incurred for pandemic response regardless of the date. The HUD Federal Register Notice for CDBG-CV added additional flexibilities, including 1) allowing the state to use up to 5% of the CDBG-CV allocation for general program administration and up to 2% for technical assistance, 2) allowing states to carry out activities directly, and 3) providing alternative requirements for meeting the LMI jobs national objective.

While many of the same rules that apply to regular CDBG program funds also apply to CDBG-CV funds, the funds must be kept separate. To distinguish the two programs, the CARES Act funding is referred to as CDBG-CV and is considered a supplemental appropriation. CDBG-CV funds will have separate reporting requirements and expenditures will be tracked separately from the regular CDBG program. Also, a key consideration is that activities must not result in duplication of assistance, where cumulative assistance from all sources exceeds the amount of the need, and projects must be needed to prepare for, respond to and prevent coronavirus.

D C  
 In order to access the CARES Act funding for CDBG, the State prepared a third substantial amendment to the 2020 Annual Action Plan for the CARES Act for CDBG-CV and a CDBG-CV Program Description. The CDBG-CV Program Description describes the HUD-approved Plan for which the contractor will provide professional administrative services to implement and oversee the Plan. The substantially amended 2020 Action Plan and CDBG-CV Program Description can be found in **Attachment A and can also be downloaded from [www.cdbgSC.com](http://www.cdbgSC.com)**.

The draft substantial amendment was also made available for public comment and review from November 12, 2020 to November 18, 2020.

**CDBG-CV1 Public Services Program**

To respond to the COVID 19 pandemic and address the increase in needs for public services in non-Entitlement regions of the state, \$8,584,831 in CARES Act CDBG-CV1 funding is being made available to localities for a **new or quantifiably increased** public services that will primarily benefit low and moderate income (LMI) individuals and are needed to prepare for, respond to and prevent the coronavirus.

Eligible activities may include a wide variety of activities, including but not limited to personal protective equipment (PPE), COVID-19 testing and contact tracking, food pantries, food distribution and delivery for elderly or other primarily LMI residents, child care required for LMI residents to maintain employment, after school education, senior services, etc.

All eligible public services that can be related to the coronavirus and are needed to prepare for, respond to or prevent coronavirus will be considered. All projects must meet a national objective and propose eligible activities. Other elements of the Method of Distribution contained in the substantially amended 2020 Action Plan, including

eligible applicants, method of distributing funds to recipients (application deadlines and selection), eligible activities, grants maximums and threshold requirements, etc. are all described in the CDBG-CV Program Description.

### **CDBG-CV1 Public Facilities Program**

To respond to the COVID 19 pandemic and address the significant need to adapt, retrofit or rehabilitate existing schools and other publicly owned facilities to provide services in a manner that complies with public health guidelines, \$3 million (\$3,000,000) in CARES Act CDBG-CV1 funding is being made available to non-Entitlement counties in the state. Projects must involve critically needed public improvements or improvements to public facilities, such as schools, that are needed to respond to, prepare for or prevent coronavirus. The public improvements or facilities must benefit all residents of the service area and must serve primarily low and moderate income (LMI) individuals.

All eligible public facilities improvements and other public improvements that can be directly related to the coronavirus and are needed to prepare for, respond to or prevent coronavirus will be considered. But priority will be given to schools in districts where at least 75% of students are receiving SNAP or TANF subsidies and are in families that meet the federal guidelines for poverty.

All projects must meet a national objective and propose eligible activities. Other elements of the Method of Distribution contained in the substantially amended 2020 Action Plan, including eligible applicants, method of distributing funds to recipients (application deadlines and selection), eligible activities, grants maximums and threshold requirements, etc. are all described in the CDBG-CV Program Description.

### **CONTRACT PERIOD – ESTIMATED**

Start date: **January 11, 2021** End date: **January 10, 2024**. Dates provide estimates only. Any resulting contract will begin on the date specified in the notice of award.

This contract is a two (2) year contract with one (1) year renewal option. The maximum potential contract period is (3) years.

**We expect the funds for the service of Tranche I CDBG-CV1 to be awarded within 12 – 18 months, and monitoring/close-out is 3 – 6 months.**

### **PART 3**

#### **SCOPE OF WORK**

The respondent selected by the SCDOC will be required to provide professional services necessary to comply with all requirements of the CDBG-CV1 funds; including, but not limited to:

- a) Understanding the requirements and authorized uses of the CARES Act CDBG-CV1 funds;
- b) Understand the requirements of and establish policies and procedures for implementing and overseeing the South Carolina CDBG-CV1 Program as described in the CDBG-CV Program Description and Substantial Amendment to the 2020 Annual Action Plan for the CARES Act for CDBG-CV;
- c) Establish procedures for verification of eligibility for award and expenditure;

d) Design/establish final application and/or award;

Provide a grant management system

e) Provide a grants management system and establish processes and procedures related to final application, grant award, project implementation, monitoring, oversight of compliance at program and project level, closeout of grants, and all applicable reporting, including:

- Final application request, receipt and review, including review of budgets, eligible activities, national objective compliance, CARES Act need to prepare for, prevent or respond to COVID-19, and duplication of benefits. Applications and application files must contain all elements required for compliance with HUD, CDBG, CDBG-CV and other federal requirements, including HUD-required needs assessment.
- Fundability documentation
- Award Document processing and tracking to ensure signed grant awards
- Reporting to Commerce regarding Status of Award and FFATA/FSRS Reporting
- Develop Duplication of Benefits policy and procedures for ensuring grant recipient compliance and documentation
- Review CDBG Manual and applicable for elements required by HUD, CARES Act, and other federal regulations and requirements pertinent to each stage of the grant lifecycle and establish policies and procedures for administering:
  - Startup including environmental review, release/clearance, as well as ensuring the following are all received if not submitted with an approved final application
    - Administrative contract
    - Subrecipient agreements
    - Other required procurement processes that will be required
    - Section 504
    - Fair Housing
    - Section 3
    - Section 102 Disclosure
    - Conflict of Interest
    - Program income
    - Special conditions
    - Implementation schedule and detailed budget
    - Financial documents – authorized signatures for payment requests and checks, debarment/suspension certificate, compliance with OMB Single Audit requirements
  - Project implementation and progress oversight – particularly
    - where non-profit subrecipients and/or contractors unfamiliar with CDBG requirements will carry out activities
    - where public facility activities may trigger Davis Bacon and labor standards compliance
    - including recipient record-keeping requirements
  - Progress reporting, including bi-weekly reports to Commerce and periodic reporting of accomplishments from grant recipients and to Commerce as required for accomplishment reporting in IDIS

- Drawdown and disbursement of funds, including receipt, review of and approval of payment requests, documentation, and coordination with Commerce as necessary to facilitate IDIS drawdown and any required State financial reporting
- Project amendment requests, review and approval, as applicable, including evaluation of revised project scope, determination of eligibility and fundability, grant award increases, documentation, budgets, etc.
- Monitoring of financial and programmatic compliance with all HUD CDBG and cross-cutting federal requirements
- Monitoring to ensure compliance with duplication of benefits and other CARES Act and CDBG-CV specific provisions
- Final performance reporting from grant recipients and to Commerce, including documentation of program benefit and compliance with national objective and caps related to LMI expenditures and administrative expenditures
- Final fundability review prior to grant project closeout
- Financial and programmatic closeout, including all documentation required and in compliance with all applicable regulations and requirements
- Recipient Single Audit compliance
- Grant closeout, including all required documents, certifications, public hearing, etc.
- Data collection, documentation and required reporting related to all of the above and specifically included but not limited to:
  - Compliance with HUD caps on LMI and administrative expenditures
  - Timeliness of expenditures and expenditure deadline for CDBG-CV
  - Federal reports required for CDBG-CV
    - Contract and Subcontract Activity report due October 10 each year, for the period Oct 1 – Sept 30,
    - Section 3 for April 1 through March 31 each year, with report due June each year, including both contractor efforts and grant recipient efforts
    - Labor standards due biannually
  - Annual performance reporting as required for HUD and the State’s CAPER
  - Any specific reporting required by the CARES Act, the CDBG-CV Federal Notice or HUD for the CARES Act
- Submit procedures for complying with the above to Commerce
- Identify all forms that recipients must submit at each stage, develop any new forms required and adapt any that are needed but can be streamlined, and establish systems and procedures for ensuring receipt and retention in grant files
- Create mini manual revising applicable, regular CDBG Manual for CDBG-CV or other grant recipient guidance materials
- Ensure adequate and accurate data collection, data management, and record-keeping, including the establishment of grant files for application, award documents, documentation of eligibility and national objective compliance, documentation of benefit, documentation related to duplication of benefits, other requirements that may be specific to CDBG-CV
- Compliance with Section 3 requirements and grant recipient, subrecipient and contractor compliance
- Administrative cost time-keeping to facilitate grant allocation of administrative cost payments related to activity delivery
- Waste and fraud management procedures and compliance

- OMB, financial management and administrative procedures requirements compliance

f) Confirmation of verification of eligibility of authorized uses and final disbursement of CDBG-CV1 funds or other awards of proceeds;

g) Coordinate with federal and state agencies, including but not limited to, the U.S. Department of HUD, U.S. Department of the Treasury, the US Attorney's office, the US Department of Justice, the SC Emergency Management Division, the SC Department of Health and Environmental Control, and the State Housing Finance and Development Authority;

h) Provide for fraud, waste, and abuse identification, reporting and remediation;

i) Assist the SCDOC and representation to any federal or state audit of CDBG-CV funds;

j) Provide for consolidated financial reporting;

k) Establish appeal procedure regarding any disputes regarding amounts awarded, funds drawn, contractors and subrecipients involved in project delivery and a process for evaluation for final determination;

l) Provide bi-weekly status reports, to include assessments of financial compliance and performance toward the completion of grant criteria and reporting on financial performance and projection modeling—How are we doing? How well have we done? How much more remains to be done?;

m) Process for review and any subsequent reporting required by the CDBG-CV funds; provide all necessary reporting; and,

n) Provide for the review of all financial audits pertaining to these funds for both grant recipients and sub-recipients and the reporting of any material findings or financial irregularities.

**The SC Department of Commerce will:**

- a. Provide the SC CDBG-CV Program Description
- b. Provide access to the email inbox to which applicants will submit Intent to Apply forms
- c. The Intent to Apply forms
- d. Provide technical assistance to grant recipients and initial project eligibility evaluation, via Commerce's Technical Assistance contractor
- e. Provide standard CDBG Implementation Manual and forms, downloadable from [www.cdbgSC.com](http://www.cdbgSC.com)
- f. Submit draw requests to HUD for CDBG-CV1 funds
- g. Disburse pay requests to awardees

## PART 4

### INFORMATION TO BE SUBMITTED

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

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

Respondents shall submit:

- a. One (1) USB flash drive containing the respondent's response (in MS Word and/or PDF format).
- b. One (1) USB flash drive labeled "original redacted" containing a redacted version of your response.
- c. If submitted via email, respondents must attach both a. and b.

**Because time is of the essence, Respondent's responses are limited to a total length of twenty (20) pages.**

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

#### 4.1 RESPONDENT'S QUALIFICATIONS AND EXPERIENCE

- a. Provide a narrative designed to demonstrate to the evaluation panel your company's qualifications, and advantages to the State in selecting your company to provide the services outlined in Part 3, Scope of Work. The narrative should include a demonstration of minimum experience and the professional and technical competence of your firm with respect to the type of services required by governmental entities for compliance with federal grants, including, but not limited to: project management experience; experience, knowledge of, and compliance with state and federal ethics rules; experience with identification and reporting of waste, fraud and abuse; and experience with the oversight of disbursement and tracking of federal funds by state or federal agencies.
- b. Provide a detailed description of your company and company history. Include your company's principal business, ownership, the number of employees regularly employed, how long your company has been in the business and the number of offices and locations, including the location of the office that would serve as primary contact during this contract.
- c. Provide three (3) references familiar with your work. Include the name of a contact person, their title, address, telephone number and e-mail address. References may be contacted and/or sent a written reference survey. As such, respondents should submit references they are certain will complete and return a written reference survey.

#### 4.2 RESPONDENT'S ABILITY TO PERFORM

- a. Provide a narrative designed to demonstrate the capacity and capability of your firm to provide the services requested on an expedited basis, specifically a staffing plan and identification of any sub-consultants necessary to perform the services and the professional qualifications of both staff and sub-consultants.

- b. Provide information reflecting your company's current financial position. Include a copy of your company's audited financial statements for the last three (3) years.
- c. Provide specific detailed information regarding any and all situations where your company has defaulted on a contract. Provide specific detailed information regarding any and all situations where a contract has been canceled or in which a contract was not renewed due to alleged fault on the part of your company.
- d. In the last three (3) years, has your company had a project or contract terminated? If so, please describe the circumstances. Provide a list of any contracts that were terminated for convenience prior to the original contract end date and the reason for termination.
- e. Provide specific detailed information regarding any legal action(s), including currently pending actions against your company in the past five (5) years.

#### **4.3 RESPONDENT'S FEE STRUCTURE**

- a. Provide a fee structure and methodology. Identify any fees and anticipated expenses applicable to the provision of the services.

### **PART 5**

#### **EVALUATION CRITERIA**

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

1. Qualifications and Experience.
2. Ability to accomplish the Scope of Work.
3. Fee Structure. The evaluation panel will evaluate comparative costs and methodologies.

### **PART 6**

#### **TERMS AND CONDITIONS**

**6.1 ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE:** (a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the Procurement Officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, Contractor may assign monies receivable under the contract provided that the state shall have no obligation to make payment to an assignee until thirty (30) days after Contractor (not the assignee) has provided the Procurement Officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific state contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If Contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its

FEIN, Contractor shall provide the Procurement Officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restrict transfers by operation of law.

**6.2 BANKRUPTCY – GENERAL:** (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the State. This notification shall be furnished within two (2) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the Contractor's insolvency, including the filing of proceedings in bankruptcy.

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

**6.4 CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (FEB 2015):** (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) the solicitation, as amended, (3) documentation of clarifications or discussions of an offer, if applicable, (4) your offer, (5) any statement reflecting the State's final acceptance (a/k/a "award"), and (6) purchase orders. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (5) above shall apply notwithstanding any additional or different terms and conditions in any other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by the State. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

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

**6.6 EQUAL OPPORTUNITY:** Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2,



60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

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

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

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

**6.10 OPEN TRADE:** During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300.

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

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

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

a purchase order.

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

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

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

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

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

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

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) description of services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed

by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

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

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

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

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

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

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

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

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

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

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

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

The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this section, at any time.

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

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

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

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

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

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

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

**6.25 CONTRACTOR'S USE OF STATE PROPERTY:** Upon termination of the contract for any reason, the State shall have the right, upon demand, to obtain access to, and possession of, all State properties, including, but not limited to, current copies of all State application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the State without the State's written consent, except to the extent necessary to carry out the work.

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

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

- (2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within ten (10) days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.
- (b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- (e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- (f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.
- (h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

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

subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

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

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

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

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

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

[Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with Contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the State finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the Chief Procurement Officer. The State may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the State may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data,

as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the State context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

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

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

**6.35 TERMINATION FOR CONVENIENCE (JAN 2006):** (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

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

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

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

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

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

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

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

(iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant

to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;

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

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

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