



S.C. Education Lottery  
1333 Main Street, 4<sup>th</sup> Floor  
Columbia SC 29201

**SC Education  
Lottery**  
  
**Competitive Fixed  
Price Bid**

Quotation Number: **FPB GD FY14  
CHANGE ORDER 2**  
Date Issued: **Of Tues., Sept. 29, 2015  
Mon., April 14, 2014**  
Procurement Officer: **Petrina Marsh**  
Phone: **(803) 737-2808**  
E-Mail Address: **Procurement@scslot.com**

DESCRIPTION: Competitive Fixed Price Bid to Solicit Graphic Design Service Providers for Placement on a Qualified Provider List (QPL) for the South Carolina Education Lottery

*The Term "Offer" Means Your "Bid" or "Proposal". Unless submitted online, your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.*

SUBMIT OFFER BY (Opening Date/Time): **Wednesday, April 30, 2014, at 10:00 a.m.**

QUESTIONS MUST BE RECEIVED BY: **Tuesday, April 22, 2014, at 10:00 a.m.**

NUMBER OF COPIES TO BE SUBMITTED: **One (1) original: hard copy by mail or electronic copy via email.**

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

MAILING ADDRESS:  
S.C. EDUCATION LOTTERY  
Attention Procurement  
P.O. Box 11949  
Columbia, S.C. 29211-1949

PHYSICAL ADDRESS:  
S.C. Education Lottery  
Attention Procurement  
1333 Main Street, 4<sup>th</sup> Floor  
Columbia, S.C. 29201

CONFERENCE TYPE: <b>Not Applicable</b> DATE & TIME:		LOCATION: <b>Not Applicable</b>
(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)		
AWARD & AMENDMENTS	Award will be posted on <b>05/14/2014</b> . The award, this solicitation and any amendments will be posted at the following web address: <a href="http://www.sceducationlottery.com.lottery.procurement.aspx">http://www.sceducationlottery.com.lottery.procurement.aspx</a>	
Unless submitted on-line, you must submit a signed copy of this form with Your Offer. By submitting an offer, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. (See "Signing Your Offer" and "Electronic Signature" provisions.)		
NAME OF OFFEROR  (full legal name of business submitting the offer)	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.	
AUTHORIZED SIGNATURE  (Person must be authorized to submit binding offer to contract on behalf of Offeror.)	TAXPAYER IDENTIFICATION NO.  (See "Taxpayer Identification Number" provision)	
TITLE  (business title of person signing above)	STATE VENDOR NO.  (Register to Obtain S.C. Vendor No. at <a href="http://www.procurement.sc.gov">www.procurement.sc.gov</a> )	
PRINTED NAME  (printed name of person signing above)	DATE SIGNED	STATE OF INCORPORATION  (If you are a corporation, identify the state of incorporation.)
OFFEROR'S TYPE OF ENTITY: (Check one) <span style="float: right;">(See "Signing Your Offer" provision.)</span>		
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____ <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Corporation (tax-exempt) <input type="checkbox"/> Government entity (federal, state, or local)		

## PAGE TWO

(Return Page Two with Your Offer)

<b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)	<b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)
	_____ Area Code - Number - Extension                      Facsimile
	_____ E-mail Address

<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.) (See "Payment" clause)	<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses)
_____ Payment Address same as Home Office Address _____ Payment Address same as Notice Address <b>(check only one)</b>	_____ Order Address same as Home Office Address _____ Order Address same as Notice Address <b>(check only one)</b>

<b>ACKNOWLEDGMENT OF AMENDMENTS</b> Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)							
Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date
<b>DISCOUNT FOR PROMPT PAYMENT</b> (See "Discount for Prompt Payment" clause)		10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	_____ Calendar Days (%)		

Preferences do not apply to Fixed Price Bids.

End of PAGE TWO

**PAGE THREE**  
**IMPORTANT INFORMATION FOR OFFERORS**

**Quotation Outline:**

- I. Scope of Solicitation**
- II. Instructions to Offerors**
  - A. General Instructions**
  - B. Special Instructions**
- III. Scope of Work/Specifications**
- IV. Information for Offerors to Submit**
- V. Qualifications**
- VI. Award Criteria**
- VII. Terms and Conditions**
  - A. General**
  - B. Special**
- VIII. Bidding Schedule/Cost Proposal**
- IX. Attachments to Solicitation**

**I. SCOPE OF SOLICITATION**

**ACQUIRE SERVICES (JAN 2006):** The purpose of this solicitation is to acquire services complying with the enclosed description and/or specifications and conditions. [01-1010-1]

A. It is the intent of the South Carolina Education Lottery (SCEL) to solicit for creative design services, with fixed hourly rates and qualifications, to provide the Marketing and Product Development Department (“Marketing”) of SCEL sources of creative and concept development, graphic design, copy writing, art directions, layout and design, e-communication design, flash, two-dimensional animation, and video production (“Services”) on an “as-needed” basis. This solicitation invites submission of both qualifications and hourly pricing for review and possible placement of qualified services providers (“Providers”) on a list of qualified sources for freelance graphic and other design services.

B. Qualified Providers will be placed on a Qualified Provider List (QPL). SCEL will select individual(s) or firm(s) for negotiations. Being placed on the QPL does not guarantee any level of usage of Provider’s services. Failure of a Provider to receive business from SCEL shall not be grounds for a contract controversy under Section 11-35-4230 of the South Carolina Consolidated Procurement Code.

C. During the existence of this QPL, SCEL may add additional qualified Providers every three (3) months in January, April, July, and October, starting in the second year.

D. SCEL will review the submissions of all qualified individuals or entities and contact one or more sources to make up the QPL for engagement as and if needed. As the need arises, SCEL will contact one or more the Providers on the QPL and inform them of the specific services needed or desired and request a proposal at the predetermined hourly rate along with an estimated number of hours, a proposed timeline or schedule, and the total price. SCEL may also request a Not To Exceed Price for each request for services.

**BUDGET MAXIMUM (JAN 2006):** The funds available for this project are limited to \$75 per hour. If the price you offer exceeds this amount, your offer will be rejected as non-responsive. [01-1030-1]

**MAXIMUM CONTRACT PERIOD – ESTIMATED (JAN 2006):** Start date: May 14, 2014; End date:

May 13, 2017. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled “Term of Contract - Effective Date/Initial Contract Period”. [01-1040-1]

The initial contract period is for one (1) year, with the option of two (2) one-year (1) renewals. The maximum contract period is for three (3) years. The total combined expenditures are limited to fifty thousand (\$50,000.00) dollars. If the fifty thousand (\$50,000.00) dollar limit is reached prior to expiration of the three (3) year term, the contract will terminate immediately.

This solicitation is governed by Section 11-35-1550 – Bid procedures on procurements up to fifty thousand dollars – of the South Carolina Consolidated Procurement Code.

## **II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS**

### **DEFINITIONS (JAN 2006): EXCEPT AS OTHERWISE PROVIDED HEREIN, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION.**

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

BOARD means the South Carolina Budget & Control Board.

BUYER means the Procurement Officer.

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

CONTRACT See clause entitled Contract Documents & Order of Precedence.

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

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

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

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

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

ORDERING ENTITY Using Governmental Unit that has submitted a Purchase Order.

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

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

YOU and YOUR means Offeror.

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

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

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

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

WORK means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations under the Contract. [02-2A003-1]

**AMENDMENTS TO SOLICITATION (JAN 2004):** (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: [www.procurement.sc.gov](http://www.procurement.sc.gov)(b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged. [02-2A005-1]

**AWARD NOTIFICATION (NOV 2007):** Notice regarding any award or cancellation of award will be posted at the location specified on the Cover Page. If the contract resulting from this Solicitation has a total or potential value of fifty thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation. Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given. [02-2A010-1]

**BID / PROPOSAL AS OFFER TO CONTRACT (JAN 2004):** By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; “joint bids” are not allowed. [02-2A015-1]

**BID ACCEPTANCE PERIOD (JAN 2004):** In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. [02-2A020-1]

**BID IN ENGLISH & DOLLARS (JAN 2004):** Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

**BOARD AS PROCUREMENT AGENT (JAN 2004):** (a) Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement. (b) Purchasing Liability. The Procurement Officer is an employee of the Board acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Board is not a party to such contracts, unless and to the extent that the board is a using governmental unit, and bears no liability for any party’s losses arising out of or relating in any way to the contract. [02-2A030-1]

**CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008):** GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.

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

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

(i) Those prices;

(ii) The intention to submit an offer; or

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

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

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

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

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

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

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

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

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

#### **CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)**

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

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

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

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

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

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

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

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

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

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of

records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default. [02-2A035-1]

**DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (MAY 2011):** You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. [02-2A047-1]

**CODE OF LAWS AVAILABLE (JAN 2006):** The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:  
<http://www.scstatehouse.gov/code/statmast.php>  
The South Carolina Regulations are available at:  
<http://www.scstatehouse.gov/coderegs/statmast.php> [02-2A040-2]

**COMPLETION OF FORMS / CORRECTION OF ERRORS (JAN 2006):** All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.) [02-2A045-1]

**DISCLOSURE OF CONFLICTS OF INTEREST OR UNFAIR COMPETITIVE ADVANTAGE (MAY 2011):** You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. The two underlying principles are (a) preventing the existence of conflicting roles that might bias a contractor's judgment, and (b) preventing an unfair competitive advantage. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered. [02-2A047-1]

**DEADLINE FOR SUBMISSION OF OFFER (JAN 2004):** Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies' mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)] [02-2A050-1]

**DRUG FREE WORK PLACE CERTIFICATION (JAN 2004):** By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free

Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]

**DUTY TO INQUIRE (JAN 2004):** Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. [02-2A070-1]

**ETHICS CERTIFICATE (MAY 2008):** By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]

**IRAN DIVESTMENT ACT - CERTIFICATION (JAN 2015):** (a) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-iran-divestment.phtm>(.) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By signing your Offer, you certify that, as of the date you sign, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time before posting of a final statement of award, you are added to the Iran Divestment Act List. [02-2A077-1]

**OMIT TAXES FROM PRICE (JAN 2004):** Do not include any sales or use taxes in Your price that the State may be required to pay. [02-2A080-1]

**OPEN TRADE REPRESENTATION (JUN 2015):** By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2A083-1]

**QUESTIONS FROM OFFERORS (JAN 2004):** (a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. (b) The State seeks to permit



maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation, that unnecessarily or inappropriately limits full and open competition. [02-2A095-1]

**REJECTION/CANCELLATION (JAN 2004):** The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]

**RESPONSIVENESS/IMPROPER OFFERS (JAN 2004):** (a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

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

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

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

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment. [02-2A105-1]

**RESTRICTIONS APPLICABLE TO OFFERORS (JAN 2004):** Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, you agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials. All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, you agree not to give anything to any Using Governmental Unit or its employees, agents or officials prior to award. [02-2A110-1]

**SIGNING YOUR OFFER (JAN 2004):** Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through

(d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

**STATE OFFICE CLOSINGS (JAN 2004):** If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: <http://scemd.org/index.php/department/response/severe-winter-weather> [02-2A120-2]

**SUBMITTING CONFIDENTIAL INFORMATION (AUG 2002):** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (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 Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-1]

**SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004):** (a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) - (1) Addressed to the office specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package. (c) Each Offeror must submit the number of copies indicated on the Cover Page. (d) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in

paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the Solicitation. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. [02-2A130-1]

**USE AS INFORMATION ONLY:**

**TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008):** Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. [02-2A135-1]

**TAXPAYER IDENTIFICATION NUMBER (JAN 2004):** (a) If Offeror is owned or controlled by a common parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent.

(b) Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member. "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(c) If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether (i) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States; (ii) Offeror is an agency or instrumentality of a state or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government. [02-2A140-1]

**VENDOR REGISTRATION MANDATORY (JAN 2006):** You must have a state vendor number to be eligible to submit an offer. 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>) [02-2A145-1]

**WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004):** Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile

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

## **II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS**

**CLARIFICATION (NOV 2007):** Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

**MAIL PICKUP (SCEL):** Mail will be delivered to the Procurement Office daily. The SCEL Procurement Office mailing address is:

S.C. EDUCATION LOTTERY  
Attention: Procurement  
P.O. Box 11949  
Columbia, S.C. 29211-1949

## **III. SCOPE OF WORK/SPECIFICATIONS**

A. Provider(s) are envisioned to be freelance graphic designers who will augment production of advertising deliverables for Marketing, utilizing their or his or her unique abilities, expertise, and knowledge. The projects assigned are envisioned to be collaborative efforts. Some projects will be short, taking less than eight hours to perform; other projects, such as designing an entire promotional campaign, will be longer, taking more time to complete.

B. Provider services will include, but may not be limited to:

- 1) generally creative design work by an individual;
- 2) potentially collaborative efforts creating design work under the direction and guidance of a team with professionals working together to develop the most effective design and messaging;
- 3) generally project specific design services;
- 4) quick turn around times on projects;
- 5) generally more production-oriented type work;
- 6) a broad understanding of SCEL products and how to most effectively reach the purchasers of SCEL projects; and
- 7) e-communication design, flash, two-dimensional animation, and video production.

C. For informational purposes, the projects may include, but may not be limited to: instant or scratch-off ticket art (the graphic design of the face of instant or scratch off tickets); play station posters (8.5 inch x 11 inch posters depicting instant tickets, promotions or other events, and other lottery products); instant ticket dispenser toppers (retangular pieces that attach to the top of acrylic instant ticket dispensers which generally sit atop the sales counter near the register in a lottery retailer); play slips (used by players to select their winning numbers for Pick 3, Pick 4, Palmetto Cash 5, Mega Millions® and Powerball® games); informative buckslips (bifold or trifold pamphlets describing or providing information on lottery

promotions or events); window posters (14 inch by 19 inch posters full size; or 14 inch by 9.5 inch half size); brochures; advertisements; trade show booths; vehicle wraps; e-marketing materials; two-dimensional graphic animation; three-dimensional graphic animation; web design and graphics; and other collateral materials.

D. Prospective Provider(s) must, at a minimum, be proficient with programs in the the Adobe Creative Suite, including: Illustrator, Photoshop, InDesign and Acrobat. Projects must be created using the Adobe Creative Suite software. **Prospective Providers agree to provide graphics and art work in a format usable by SCEL.**

E. The selected Provider(s) will be expected to perform as a liaison to Marketing and shall be familiar with all aspects of assigned work. The selected Provider(s) will be available to Marketing in an on-call basis. Any specialized professionals or subcontractors performing subsidiary work related to a project undertaken by a selected Provider under any individual engagement by SCEL, shall under the immediate direction of that Provider.

F. Providers engaged for a specific service will bill SCEL with an itemized invoice, per project, that includes any supporting documentation. Payment of invoices is subject to prior review and approval by SCEL.

G. Providers engaged for a specific service will be assigned work on a per job or per project basis. The successful Contractor will be responsible for providing all needed materials for each project and will be expected to meet deadlines and deliver finished work product on time. Successful contractors may perform work when, where and how he, she, or the entity deems appropriate. Work will NOT be performed at SCEL.

H. Compensation will be at the hourly rate for services, to be negotiated by SCEL, but shall not exceed seventy-five (\$75.00) dollars per hour for freelance graphic design services. A bid of an hourly rate of less than \$75.00 per hour DOES NOT ensure the person will be put on the QPL. Similarly, a bid of an hourly rate of less than \$75.00 per hour DOES NOT ensure an individual on the QPL will be selected for business.

I. Prospective Providers shall identify and submit rates for all operational expenses that may reasonably be expected to be incurred in performing the assignment including, but not limited to, packaging, postage, photocopying, shipping and delivery. Details on expenses must be verified prior to SCEL reimbursement. All such charges must be itemized within a total charge per project, contained in the project invoice, and preapproved by SCEL. Prospective Providers shall invoice SCEL within thirty (30) days of completing a task or at thirty (30) days if project goes over two or more months. All final invoices must be received by June 30, the end of the fiscal year.

**DELIVERY / PERFORMANCE LOCATION – PURCHASE ORDER (JAN 2006):** After award, all deliveries shall be made and all services provided to the location specified by the Using Governmental Unit in its purchase order. [03-3015-1]

**DELIVERY DATE (SCEL):** Delivery dates will vary depending on the project.

**DEFINITION – ADDITIONAL (SCEL):** The definition of “Lottery vendor” from Section 59-150-20(9) of the Lottery Act: “Lottery vendor” means a person who provides or proposes to provide goods or services to the South Carolina Lottery Commission pursuant to a procurement contract, but does not include an employee of the commission, a lottery retailer, or a state agency or instrumentality of the State.

The term includes a corporation whose shares are traded publicly and which is the parent company of the contracting party in a procurement contract.

#### **IV. INFORMATION FOR OFFERORS TO SUBMIT**

**INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (JAN 2006):** Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations. [04-4010-1]

#### **ADDITIONAL INFORMATION FOR OFFERORS TO SUBMIT:**

A. To be considered for placement on the Qualified Provider List (“QPL”), please submit the following information:

- 1) A cover page and Page 2 completed, signed, and dated per instructions;
- 2) A cover letter that includes a summary of the prospective Provider’s ability to perform the services described in the solicitation and contains the following information: company name, street address or post office box, city, state and zip code, telephone number, fax number, e-mail address, and the name of the responsible person;
- 3) A statement that the prospective Provider is willing to perform these services for the fixed hourly rate submitted with the prospective Provider’s proposal;
- 4) A statement that the prospective Provider is willing to enter into a contract with SCCL if required;
- 5) A company history including the type of business, number of years in business, company background, number of employees, changes to company name, ownership, mergers, acquisitions, and mode of conducting business;
- 6) A list of at least three (3) professional references with current contact names, phone numbers, and addresses;
- 7) The hourly rate to be charged which must not exceed the maximum fixed price of seventy-five (\$75.00) dollars per hour;
- 8) Prospective Providers must clearly indicate the areas in which they have demonstrated expertise including, but not limited to, relevant design experience, similar projects, reputation and financial strength, and specific experience of staff responsible for these projects and assignments as described in Section V below; and
- 9) One (1) set of samples, portfolio, or printed materials representative of prior work(s) including, but not limited to, those materials or materials which are substantially similar to the materials listed in Section III, C. above and which meet the requirements of Section VI, Award Criteria, below. The ownership of the samples(s) will remain with the prospective Provider and will be returned following the creation of the QPL. The samples may be provided in hard copy or via electronic copy, AI or PDFs. (Electronic copy preferred.)

#### **USE AS INFORMATION ONLY:**

#### **MINORITY PARTICIPATION (JAN 2006):**

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

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

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

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

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

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

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

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

- Traditional minority
- Traditional minority, but female
- Women (Caucasian females)
- Hispanic minorities
- DOT referral (Traditional minority)
- DOT referral (Caucasian female)
- Temporary certification
- SBA 8 (a) certification referral
- Other minorities (Native American, Asian, etc.)

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

For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL: <http://www.govoepp.state.sc.us/osmba/> [04-4015-1]

**OFFSHORE CONTRACTING (JAN 2006):** Work that will be performed offshore by the Offeror and/or its subcontractors must be identified in the Offeror's response. For the purpose of this solicitation, offshore is defined as outside the 50 States and US territories. Offeror is to include an explanation for the following:

(a) What type of work is being contracted offshore? \_\_\_\_\_

(b) What percentage (%) of the total work is being contracted offshore?

\_\_\_\_\_  
(c) What percentage (%) of the total value of the contract is being contracted offshore?

\_\_\_\_\_  
(d) Provide a Service Level Agreement (SLA) demonstrating the arrangement between the off-shore contractor and the Offeror. Attach Service Level Agreement to this document or paste here. Data provided by the Offeror in regards to this clause is for information only and will not be used in the evaluation and determination of an award. [04-4020-1]

## V. QUALIFICATIONS

**QUALIFICATION OF OFFEROR (JAN 2006):** To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810. [05-5005-1]

Qualified Providers will be placed on the Qualified Provider List ("QPL") if the Offeror:

- 1) Provides samples of materials or portfolios that meet or exceed South Carolina Education Lottery standards of excellence in their appearance and, in compliance with the requirement of Section 59-150-60(A)(18), will promote the lottery and lottery games in a dignified manner befitting the State;

- 2) Provides samples of materials that show the Offeror's artistic and creative abilities and capabilities;
- 3) Provides samples of materials that are of a quality and consistency over a broad spectrum of artistic media and subject matter indicating an excellent artistic and creative range and standard from logo development to full marketing campaigns;
- 4) Provides samples of materials which are approved by three (3) of the four (4) review panelists for inclusion on the QPL using the rating scale in Section VI below;
- 5) Is proficient in and with Adobe Creative Suite 6 (**Illustrator, Photoshop, InDesign, Acrobat**);
- 6) Has as three (3) to five (5) years of graphic design experience or a Bachelors of Fine Arts in Graphic Design from an accredited college or art school or other substantially similar degree;
- 7) Provides information that the Offeror seeking to be included on the SCEL QPL has the:
  - a. Ability to work and be creative within SCEL's design constraints (i.e. no gambling card games graphics, no casino games, no holographic designs, no overly expensive design elements, and a "dignified manner befitting the State of South Carolina");
  - b. Ability to work and cooperate with SCEL's vendor for file transfer and upload, work within vendor ticket specifications, and know and understand that his or her designs will be altered to fit layout and printing criteria;
  - c. Ability and willingness to work with and around tight deadlines; and
  - d. Ability to create new and innovative designs but create designs that will also appeal to loyal lottery players.

Placement on the QPL **DOES NOT** ensure use as a freelance graphic designer by SCEL. SCEL reserves the right to use none, one, or many of the Qualified Providers on the QPL in SCEL's sole discretion and on an as needed basis.

Qualified Offerors will be placed on a Qualified Provider List (QPL) from which SCEL will obtain Graphic Design Service Providers. Any additional bids may be received after the initial bid opening. Selected Providers who bid after the initial bid opening will be added to QPL in January, April, July, and October, in the following year. The total combined expenditures by SCEL for services by Qualified Offerors on the QPL are limited to fifty thousand (\$50,000.00) dollars. If and once the fifty thousand (\$50,000.00) dollar limit is reached, the contract will terminate.

**SUBCONTRACTOR – IDENTIFICATION (JAN 2006):** If you intend to subcontract with another business for any portion of the work and that portion exceeds 10% of your price, your offer must identify that business and the portion of work which they are to perform. Identify potential subcontractors by providing the business' name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the state may evaluate your proposed subcontractors. [05-5030-1]

## **VI. AWARD CRITERIA**



**AWARD CRITERIA – FIXED PRICE BIDDING (JAN 2006):** Award will be made to all responsive and responsible Offerors. [06-6023-1]

**AWARD CRITERIA:** All responsible and responsive bidders not exceeding seventy-five (\$75.00) dollars per hour, meeting the criteria listed below, and the qualifications listed in Section V above, will be placed on a Qualified Provider List (QPL). Any additional bids may be received after the initial bid opening. Selected Providers will be added to QPL in January, April, July, and October, starting in the following year.

An Offeror will be considered a Qualified Provider and placed on the Qualified Provider List (“QPL”) if the samples of materials provided by the Offeror are approved by three (3) of the four (4) review panelists for inclusion on the QPL using the following rating scale:

- a. Use of fonts, textures, colors and words that are easily readable, understandable, and recognizable by the majority of the population of South Carolina - carrying a weight of 20%;
- b. Use of advertising industry standards - carrying a weight of 20%;
- c. Appeal or creativity - carrying a weight of 20%;
- d. Innovative and creative - carrying a weight of 20%; and
- e. Past work experience with a lottery within the past three (3) to five (5) years – carrying a weight of 20%.

Placement on the QPL **DOES NOT** ensure use as a freelance graphic designer by SCEL. SCEL reserves the right to use none, one, or many of the Qualified Providers on the QPL in SCEL’s sole discretion and on an as needed basis.

The determination of whether an Offeror is properly responsive and responsible is solely within the discretion of SCEL.

**AWARD TO MULTIPLE OFFERORS (JAN 2006):** Award may be made to more than one Offeror. [06-6035-1]

**BIDS RECEIVED AFTER AWARD – FIXED PRICE BIDDING (JAN 2006):** Offerors not responding to the initial solicitation may be added to the awarded vendors list provided the bidder furnishes evidence of responsibility and responsiveness to the state’s original fixed price bid as authorized by the solicitation. [06-6045-1]

**COMPETITION FROM PUBLIC ENTITIES (JAN 2006):** If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]

## **VII. TERMS AND CONDITIONS -- A. GENERAL**

**ASSIGNMENT (JAN 2006):** No contract or its provisions may be assigned, sublet, or transferred

without the written consent of the Procurement Officer. [07-7A004-1]

**BANKRUPTCY (JAN 2006):** (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-1]

**CHOICE-OF-LAW (JAN 2006):** The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]

**CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (JAN 2006):** (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-1]

**DISCOUNT FOR PROMPT PAYMENT (JAN 2006):**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day, [07-7A020-1]

**DISPUTES (JAN 2006):** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only

in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]

**EQUAL OPPORTUNITY (JAN 2006):** Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference. [07-7A030-1]

**FALSE CLAIMS (JAN 2006):** According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime. [07-7A035-1]

**FIXED PRICING REQUIRED (JAN 2006):** Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award. [07-7A040-1]

**NON-INDEMNIFICATION (JAN 2006):** Any term or condition is void to the extent it requires the State to indemnify anyone. [07-7A045-1]

**NOTICE (JAN 2006):** (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

**OPEN TRADE (JUN 2015):** During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [07-7A053-1]

**PAYMENT & INTEREST (MAY 2011):** (a) Unless otherwise provided in this Solicitation, 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. (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, 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. (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. [07-7A055-2]

**PUBLICITY (JAN 2006):** Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer. [07-7A060-1]

**PURCHASE ORDERS (JAN 2006):** Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

**SETOFF (JAN 2006):** The state shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State’s option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the state with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. [07-7A070-1]

**IRAN DIVESTMENT ACT – ONGOING OBLIGATIONS – (JAN 2015):** (a) You must notify the procurement officer immediately if, at any time during the contract term, you are added to the Iran Divestment Act List. (b) Consistent with Section 11-57-330(B), you shall not contract with any person to perform a part of the Work, if, at the time you enter into the subcontract, that person is on the then-current version of the Iran Divestment Act List. [07-7A072-1]

**SURVIVAL OF OBLIGATIONS (JAN 2006):** The Parties’ rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]

**TAXES (JAN 2006):** Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State’s obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing

authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]

**TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006):** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term. [07-7A085-1]

**THIRD PARTY BENEFICIARY (JAN 2006):** This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise. [07-7A090-1]

**WAIVER (JAN 2006):** The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

## **VII. TERMS AND CONDITIONS -- B. SPECIAL**

**CONTRACTOR'S OBLIGATION – GENERAL (JAN 2006):** The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements. [07-7B065-1]

**DEFAULT – SHORT FORM (JAN 2006):** The state may terminate this contract, or any part hereof, for cause in the event of any default by the contractor, or if the contractor fails to comply with any contract terms and conditions, or fails to provide the state, upon request, with adequate assurances of future performance. In the event of termination for cause, the state shall not be liable to the contractor for any amount for supplies or services not accepted, and the contractor shall be liable to the state for any and all rights and remedies provided by law. If it is determined that the state improperly terminated this contract for default, such termination shall be deemed a termination for convenience. [07-7B080-1]

**ILLEGAL IMMIGRATION (NOV 2008):** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By signing your offer, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." You agree to include in any contracts with your 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. [07-7B097-1]

**INTELLECTUAL PROPERTY INFRINGEMENT (JAN 2006):** (a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. [07-7B105-1]

**LICENSES AND PERMITS (JAN 2006):** During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract. [07-7B115-1]

**LOTTERY VENDORS (SCEL):** If selected, Providers must provide an attestation certifying that the Offeror and its employees, if any, are in compliance with and will not violate or induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (the Ethics Act) or Title 59, Chapter 150 of the South Carolina Code of Laws, as amended, (the South Carolina Education Lottery Act). The Offeror is responsible for reviewing and understanding the obligations, requirements, and prohibitions contained in these Acts.

"Section 59-150-130. (A) In coordination with the State Law Enforcement Division, the commission shall investigate the financial responsibility, security, and integrity of a lottery vendor who is a finalist in submitting a bid, proposal, or offer as part of a procurement. To defray a portion of the expense of this investigation, each lottery vendor finalist shall submit a certified check for five thousand dollars to the commission. This sum must be placed in an escrow account from which SLED must be paid to conduct

the investigation pursuant to this section. If five thousand dollars is not sufficient to complete the investigation, the commission shall require the lottery vendor finalist to remit additional funds. Any funds remaining in the escrow account after the investigation is complete must be returned to the lottery vendor finalist. At the time of submitting the bid, proposal, or offer to the commission, the commission shall require disclosure of the:

(1) lottery vendor's name and address and, as applicable, the names and addresses of the following, if the lottery vendor is:

(a) a corporation, the officers and directors and each stockholder in the corporation, except that in the case of owners of equity securities of a publicly-traded corporation, the names and addresses of only those known to the corporation to own beneficially five percent or more of the securities must be disclosed;

(b) a trust, the trustee, and all persons entitled to receive income or benefits from the trust;

(c) an association, the members, officers, and directors; and

(d) a partnership or joint venture, all of the general partners, limited partners, or joint venturers;

(2) states and jurisdictions in which the lottery vendor does business and the nature of the business for each such state or jurisdiction;

(3) states and jurisdictions in which the lottery vendor has contracts to supply gaming goods or services including, but not limited to, lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction;

(4) states and jurisdictions in which the lottery vendor has applied for, sought renewal of, received, been denied, or had revoked, or has issuance pending of, a lottery or gaming license of any kind or had fines or penalties assessed to his license, contract, or operation and the disposition of each in each state or jurisdiction. If a lottery or gaming license or contract has been revoked or has not been renewed or a lottery or gaming license or application has been denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive a license must be disclosed;

(5) details of a finding or any plea, conviction, or adjudication of guilt in a state or federal court of the lottery vendor for a felony or other criminal offense other than a traffic violation;

(6) details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or pending litigation of the lottery vendor;

(7) contributions made to or independent expenditures relative to the campaign of a candidate for the General Assembly or statewide constitutional office, to any political party, as defined in Section 8-13-1300(26), or to a committee, as defined in Section 8-13-1300(6), for the twelve-month period before the application and up to the date of disqualification of the applicant or the awarding of the contract, whichever occurs first; and

(8) additional information the commission determines appropriate for the procurement involved. If at least twenty percent of the cost of a lottery vendor's contract is subcontracted, the lottery vendor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a lottery vendor.

(B) A lottery procurement contract must not be entered into with a lottery vendor who has not complied with the disclosure requirements described in subsection (A), and a contract with a noncomplying lottery vendor is voidable at the option of the commission. The commission may terminate a contract with a lottery vendor who does not comply with the requirements for periodically updating the disclosures during the time specified in the contract. The provisions of this section must be construed broadly and liberally to achieve the ends of full disclosure of all information necessary to allow for a full and complete evaluation by the commission of the competence, integrity, background, and character of a lottery vendor for procurements.

(C) A procurement contract must not be entered into with a lottery vendor if he or it has:

(1) been convicted of a felony related to the security or integrity of the lottery in this or another jurisdiction;

(2) been convicted of unlawful gambling activity, false statements, false swearing, or perjury in this or another jurisdiction; or

(3) been found to have violated the provisions of this chapter or a regulation of the commission, unless either ten years have passed since the violation or the board finds the violation both minor and unintentional in nature.

(D) A procurement contract must not be entered into with a lottery vendor if the lottery vendor has an ownership interest in an entity that supplied consultation services under contract to the commission regarding the request for proposals pertaining to those particular goods or services.

(E) A lottery vendor or applicant for a procurement contract must not pay, give, or otherwise make available anything of value in violation of provisions of the South Carolina Ethics Reform Act. A violation of the act is subject to the provisions of Sections 11-35-4220 and 11-35-4230.

(F) A lottery vendor who has entered into the competitive solicitation process for a procurement contract or who has been awarded a procurement contract with the commission shall not contribute, for a period of twelve months before entering into the procurement process, except that during the first twelve months the period must be from the date of enactment, and during the term of the contract, to or make independent expenditures relative to the campaign of a candidate for the General Assembly or a statewide constitutional office; to a political party, as defined in Section 8-13-1300(26); or to a committee, as defined in Section 8-13-1300(6).

(G) A lottery vendor must not enter into a contract for the purpose of influencing a political decision in connection with the operation of the lottery, and a lottery vendor must not employ, contract with, or otherwise authorize a lobbyist, as defined in Section 2-17-10(13), to engage in lobbying, as defined in Section 2-17-10(12), on behalf of the lottery vendor for the purpose of influencing a political decision in connection with the operation of the lottery.

(H) A lottery vendor shall disclose, upon written inquiry, the amount of any commission, referral fee, finder's fee, consulting fee, or contingency fee paid in connection with obtaining the contract and the name of the person to whom the monies were paid.

(I)(1) The prohibitions and restrictions described in subsections (F) and (G) specifically apply to a lottery vendor as defined in Section 59-150-20(9), except as provided in item (2) of this subsection, and its employees, members of its board, and holders of an interest in it of more than ten percent, and their immediate family members, as defined in Section 59-150-20(6).

(2) The prohibitions and restrictions described in subsection (F) do not apply to a lottery vendor that is a federally-chartered or insured financial institution that provides only usual and customary banking services as a lottery vendor, but do apply to the vendor's employees and their immediate family members who are involved on a day-to-day basis in providing the goods or services that are the subject of the contract with the commission.

(J) The commission is prohibited from contracting with a lottery vendor if the fee or commission payable in connection with the service or product is contingent, in whole or in part, upon performance of lottery sales or other lottery profitability measure.”

“Section 59-150-140. (A) At the execution of the contract with the commission, a lottery vendor shall post a performance bond or letter of credit from a bank or credit provider acceptable to the commission in an amount determined by the commission for that particular bid or contract. Instead of the bond, a lottery vendor, to assure the faithful performance of its obligations, may deposit and maintain with the commission securities that are interest bearing or accruing and that are rated in one of the three highest classifications by an established nationally recognized investment rating service. Securities eligible pursuant to this section are limited to:

(1) certificates of deposit issued by solvent banks or savings associations which are organized and existing under the laws of this State or under the laws of the United States and are approved by the commission;

(2) United States bonds, notes, and bills for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest; and



(3) corporate bonds approved by the commission. The corporation that issued the bonds must not be an affiliate or subsidiary of the depositor. The securities must be held in trust and must have at all times a market value equal at least to the full amount estimated to be paid annually to the lottery vendor under contract.

(B) Each lottery vendor must be qualified to do business in this State and shall file appropriate tax returns as provided by the laws of this State. All contracts pursuant to this section are governed by the laws of this State.

(C) A contract must not be let with a lottery vendor in which a public official has an ownership interest unless the letting of the contract complies with Section 8-13-775.

(D) Procurement contracts must be handled in accordance with the South Carolina Consolidated Procurement Code.

(E) In all contracts entered into in connection with this chapter, the resident lottery vendor preference provided in Section 11-35-1524 must apply to procurements made by the commission, except that the following additional provisions apply:

(1) the preference also must apply to the procurement of services, as defined in Section 11-35-310(29), and advertising;

(2) with respect to the procurement of services or advertising, the definition of the term “resident lottery vendor” must be modified as provided in this item. Section 11-35-1524(B)(6)(c) does not apply to a lottery vendor providing services or advertising. Instead of Section 11-35-1524(B)(6)(c), the lottery vendor shall provide services or advertising which are representative of the general type of services or advertising on which the bid is submitted;

(3) with respect to the procurement of services or advertising, instead of providing the certifications provided in Section 11-35-1524(C), the lottery vendor shall certify in writing in the bid:

- (a) that he is a resident of the State;
- (b) the services or advertising is available; and
- (c) the cost of the services or advertising is not unreasonable.”

**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. [07-7B205-1]

**SHIPPING / RISK OF LOSS (JAN 2006):** F.O.B. Destination. Destination is the shipping dock of the Using Governmental Units’ designated receiving site, or other location, as specified herein. (See Delivery clause) [07-7B220-1]

**TERM OF CONTRACT – EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006):** The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is years, months, days from the effective date. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B240-1]

~~**TERM OF CONTRACT – OPTION TO RENEW (JAN 2006):** At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of year(s), month(s), and day(s), unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the final statement of award. [07-7B245-1]~~

**TERM OF CONTRACT – OPTION TO RENEW (JAN 2015):** (a) At the end of the initial term, and at the end of each renewal term, this contract shall automatically renew for a period of year(s), month(s), and day(s), unless contractor receives notice that the state elects not to renew the contract at least thirty (30) days prior to the date of renewal. Regardless, this contract expires no later than the last date stated on the

final statement of award. (b) Contractor acknowledges that, unless excused by Section 11-57-320, if the contractor is on the then-current Iran Divestment Act List as of the date of any contract renewal, the renewal will be void ab initio. [07-7B245-2]

**TERM OF CONTRACT – TERMINATION BY CONTRACTOR (JAN 2006):** Contractor may terminate this contract at the end of the initial term, or any renewal term, by providing the Procurement Officer notice of its election to terminate under this clause at least days prior to the expiration of the then current term. [07-7B250-1]

**TERMINATION FOR CONVENIENCE – SHORT FORM (JAN 2006):** The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. In such a termination, 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. Upon such termination, the contractor shall (a) stop work to the extent specified, (b) terminate any subcontracts as they relate to the terminated work, and (c) be paid the following amounts without duplication, subject to the other terms of this contract: (i) contract prices for supplies or services accepted under the contract, (ii) costs incurred in performing the terminated portion of the work, and (iii) any other reasonable costs that the contractor can demonstrate to the satisfaction of the State, using its standard record keeping system, have resulted from the termination. The contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided. As a condition of payment, contractor shall submit within three months of the effective date of the termination a claim specifying the amounts due because of the termination. The absence of an appropriate termination for convenience clause in any subcontract shall not increase the obligation of the state beyond what it would have been had the subcontract contained such a clause. [07-7B260-1]

**VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL**

**BIDDING SCHEDULE (NOV 2007):**

<b>Quantity</b>	<b>Unit of Measure</b>	<b>Fixed Price</b>	<b>Offeror's Price</b>
1.000	Hours	\$75.00	
<b>Product:</b> Graphic Design Services			
<b>Description:</b> Maximum fee for freelance graphic design services is seventy-five (\$75.00) dollars per hour. Fees in excess of this maximum will be determined as non-responsive and will not be considered for bid award. The total combined expenditures are limited to fifty thousand (\$50,000.00) dollars. Once the fifty thousand (\$50,000.00) dollar limit is reached, the contract will terminate immediately.			

“LOTTERY VENDORS (SCLE): If selected, Providers must provide an attestation certifying that the Offeror and its employees, if any, are in compliance with and will not violate or induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (the Ethics Act) or Title 59, Chapter 150 of the South Carolina Code of Laws, as amended, (the South Carolina Education Lottery Act). The Offeror is responsible for reviewing and understanding the obligations, requirements, and prohibitions contained in these Acts.”

“I certify that I and my employees, if any, are in compliance with and will not violate or induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (the Ethics Act) or Title 59, Chapter 150 of the South Carolina Code of Laws, as amended, (the South Carolina Education Lottery Act).”

\_\_\_\_\_ Date

\_\_\_\_\_ Provider's Name

The submission of the attestation is deemed a substitute for the \$5,000.00 deposit requirement for criminal background check(s) for the purposes of this procurement.

**IX. ATTACHMENTS TO SOLICITATION**

**ATTACHMENTS LIST** [09-9002-1]  
 The following documents are attached to this solicitation:

**NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING**

**IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**

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

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

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

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For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: [www.sctax.org](http://www.sctax.org)

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This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898- 5383.

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT:  
<http://www.sctax.org/Forms+and+Instructions/withholding/default.htm>

## OFFEROR'S CHECKLIST (JUN 2007)

### OFFEROR'S CHECKLIST -- AVOID COMMON BID/PROPOSAL MISTAKES

Review this checklist prior to submitting your bid/proposal.

If you fail to follow this checklist, you risk having your bid/proposal rejected.

- Do not include any of your standard contract forms!
- Unless expressly required, do not include any additional boilerplate contract clauses.
- Reread your entire bid/proposal to make sure your bid/proposal does not take exception to any of the state's mandatory requirements.
- Make sure you have properly marked all protected, confidential, or trade secret information in accordance with the instructions entitled: SUBMITTING CONFIDENTIAL INFORMATION. **DO NOT mark your entire bid/proposal as confidential, trade secret, or protected! Do not include a legend on the cover stating that your entire response is not to be released!**

- Have you properly acknowledged all amendments? Instructions regarding how to acknowledge an amendment should appear in all amendments issued.
- Make sure your bid/proposal includes a copy of the solicitation cover page. Make sure the cover page is signed by a person that is authorized to contractually bind your business.
- Make sure your Bid/proposal includes the number of copies requested.
- Check to ensure your Bid/proposal includes everything requested!
- If you have concerns about the solicitation, do not raise those concerns in your response! **After opening, it is too late! If this solicitation includes a pre-bid/proposal conference or a question & answer period, raise your questions as a part of that process!** Please see instructions under the heading "submission of questions" and any provisions regarding pre-bid/proposal conferences.

**ATTACHMENT 1  
AMENDMENT 1  
FPB GD FY14  
Monday, April 14, 2014**

**Question 1**

**Q:** We were considering entering a bid for this until we found the clause that said selected vendors must submit a check for \$5,000 for a SLED background check. With no guarantee of work, this seems highly unreasonable just to be placed on a qualified vendors list. Let me know if I have misunderstood this.

**A:** Near the middle of page ~~24~~ 22 under VII. Terms and Conditions – B. Special is the following clause:

**“LOTTERY VENDORS (SCEL):** If selected, Providers must provide an attestation certifying that the Offeror and its employees, if any, are in compliance with and will not violate or induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (the Ethics Act) or Title 59, Chapter 150 of the South Carolina Code of Laws, as amended, (the South Carolina Education Lottery Act). The Offeror is responsible for reviewing and understanding the obligations, requirements, and prohibitions contained in these Acts.”

Offerors must include the following statement as an attestation with their submission: “I certify that I and my employees, if any, are in compliance with and will not violate or induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (the Ethics Act) or Title 59, Chapter 150 of the South Carolina Code of Laws, as amended, (the South Carolina Education Lottery Act).”

The submission of the attestation is deemed a substitute for the \$5,000.00 deposit requirement for criminal background check(s) for the purposes of this procurement.

After the clause, the two codes sections in the Lottery Act relating to Lottery Vendors, §§ 59-150-130 and 59-150-140, are provided as information only. The Attestation is provided under the bidding schedule on page 27.

**ATTACHMENT 2  
AMENDMENT 2  
FPB GD FY14  
Thursday, April 9, 2015**

**Question 2**

**Q: The amendment to the first solicitation from April 14, 2014 states:**

**Q: On page 4 of this solicitation, it states: The initial contract period is for one (1) year, with the option of two (2) one-year (1) renewals. The maximum contract period is for three (3) years. If we have been approved for the initial year, do we need to reapply for the option of two one-year renewals? Or does it automatically renew?**

**A: Once a vendor has been placed on Qualified Provider List, the vendor stays on the list through the length of the contract period, up to three years or until the \$50,000 maximum has been reached. Vendors do not re-apply every year.**

**However, vendors on the Qualified Provider List (QPL) received a memo by email thirty days before the end of the first contract period, informing them of a Change Order [1] in Compliance with the Iran Divestment Act. Vendors already on the QPL must return a form certifying the vendor is not on the Iran Divestment Act List.**

**Graphic Designers, who wish to go through the approval process during the last two years of the contract, must sign the updated solicitation which includes three new clauses. By signing the solicitation the vendor certifies the vendor is not on the current Iran Divestment Act Iran Divestment Act List. The three new or modified clauses are highlighted in yellow in the solicitation.**

**See Attachment 3/Amendment 3 for information included in Change Order 2.**

**ATTACHMENT 3  
AMENDMENT 3  
FPB GD FY14  
Tuesday, September 29, 2015**

**Question 3**

**Q: What changes does Change Order 2 include?**

**A: In August 2015, the State Fiscal Accountability Authority, (the successor to the Budget and Control Board), informed Procurement Staff at State Agencies of the enactment of Act No. 63 (A63, R96, H3583) of 2015. New Code Section 11-35-5300 prohibits contracting with discriminatory businesses. It requires a pre-award representation from a contractor that the business is not currently engaged in, and an agreement that the business 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.**

The two new clauses are:

**OPEN TRADE REPRESENTATION (JUN 2015):** By submitting an Offer, Offeror represents that Offeror is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [02-2A083-1]

**OPEN TRADE (JUN 2015):** During the contract term, including any renewals or extensions, Contractor will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code Section 11-35-5300. [07-7A053-1]

These clauses are highlighted in yellow in the body of the solicitation. Vendors who have already been placed on the Qualified Provider List, must return the Certification Form sent to them to remain on the list. Not returning the Certification Form will result in being found nonresponsive and will cause the vendor to be removed from the QPL.

**ATTACHMENT 4  
AMENDMENT 4  
FPB GD FY14  
Wednesday, October 7, 2015**

**Question 4**

**Q: Can samples of design work be in a Dropbox, or on a website and the link be in the proposal? This will eliminate emailing huge file sizes.**

**A:** Yes, an Offeror may place samples in a dropbox or on a website and provide the link for a Dropbox or the login for an FTB site in the proposal. Please provide information on whom to contact and how if there are any questions when printing out the materials.