

**STATE OF SOUTH DAKOTA**

*(Bureau of Finance & Management • Internal Control Office • 500 East Capitol Ave. • Pierre, SD 57501)*

**(Internal Control Framework)**

**PROPOSALS ARE DUE NO LATER THAN 7/12/24**

RFP #: 24RFP10939

State POC: Allysen Kerr

EMAIL: allysen.kerr@state.sd.us

**READ CAREFULLY**

FIRM NAME: \_\_\_\_\_ AUTHORIZED SIGNATURE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TYPE OR PRINT NAME: \_\_\_\_\_

CITY/STATE: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

ZIP (9 DIGIT): \_\_\_\_\_ FAX NO: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

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PRIMARY CONTACT INFORMATION

CONTACT NAME: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

FAX NO: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

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## **1.0 GENERAL INFORMATION**

### **1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)**

The Bureau of Finance and Management (BFM) is seeking assistance in the continuous implementation of an effective and integrated internal control framework in accordance with generally accepted internal control standards (i.e. COSO, Standards for Internal Control in the Federal Government – Greenbook). The successful applicant will be expected to review the current tools in place, make recommendations for improvement, and to review and propose changes to the current adopted internal control framework for all state agencies. In addition, the successful applicant will assist with continuous onboarding and review of all current documented information in the risk and control matrix for all state agencies.

### **1.2 ISSUING OFFICE AND RFP REFERENCE NUMBER**

The Bureau of Finance and Management is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota, Internal Control Office. The reference number for the transaction is RFP #24RFP10939. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

Any potential contract(s) resulting from this RFP shall be between the respective State Agency or institution and the successful Offeror(s) hereafter referred to as the "Contractor" for the provision of Services according to the terms set forth therein. The State Agency or institution shall serve as the representative responsible for administration of the contract and referred to herein as the "State Contract Administrator" and will be responsible for reviewing contract compliance.

### **1.3. DEFINITIONS USED IN THIS RFP**

The following definitions are used in this RFP:

Offeror – a company who has submitted a proposal in response to this RFP.

Contractor – An Offeror that has been awarded a contract as a result of this RFP.

State - State of South Dakota, Bureau of Finance & Management.

### **1.4. OFFEROR INQUIRIES**

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time indicated in the Schedule of Activities. Inquiries must be emailed to Allysen Kerr – Bureau of Finance & Management at [Allysen.kerr@state.sd.us](mailto:Allysen.kerr@state.sd.us) with the subject line "RFP #24RFP10939".

The State will respond to offeror's inquiries (if required) via e-mail. All Offerors will be informed of any inquiries and the State's response. In addition, all inquiries and the State's response will be posted on the state's e-procurement system. Offerors may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this RFP. Offerors will be notified in the same manner as indicated above regarding any modifications to this RFP. Offerors may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this RFP. Offerors will be notified in the same manner as indicated above regarding any modifications to this RFP.

Offerors are expected to raise any questions, exceptions, or additions they have concerning the RFP document by the deadline for submission for written inquiries as indicated in the Schedule of Activities. If an Offeror discovers any significant ambiguity, error, conflict, discrepancy, omission or other deficiency in

this RFP, the Offeror should immediately notify Allysen Kerr at [Allysen.kerr@state.sd.us](mailto:Allysen.kerr@state.sd.us) with the subject line "RFP #24RFP10939, of such error and request modification or clarification of the RFP.

### 1.5 Offeror's Contacts

Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to Allysen Kerr as indicated above. Offerors and their agents may not contact any other state employee regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact Lee DeJabet as indicated above.

### 1.6 SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)

RFP Publication	06/14/2024
Responses to Offeror Questions	06/28/2024
Proposal Submission	07/12/2024
Presentations/discussions (if required)	To Be Determined (TBD)
Proposal Revisions (if required)	To Be Determined (TBD)
Anticipated Award Decision/Contract Negotiation	08/01/2024

### 1.7 PREPARING AND SUBMITTING YOUR PROPOSAL

Elaborate proposals (e.g., expensive artwork) beyond that sufficient to present a complete and effective presentation are not necessary or desired.

#### 1.7.1 Incurring costs

The State is not liable for any cost incurred by Offerors in replying to this RFP.

#### 1.7.2 Submitting the proposal

All proposals must be completed and received in the BFM by the date and time indicated in the Schedule of Activities.

Proposals received after the deadline will be late and ineligible for consideration.

All proposals must be completed and received by the Bureau of Finance and Management, via e-mail, to the following email address: [allysen.kerr@state.sd.us](mailto:allysen.kerr@state.sd.us), Subject line: **RFP#24RFP10939 - Proposal**. All proposals must be received no later than July 12, 2024 (5:00pm CT).

All proposals must be signed by an officer of the responder, legally authorized to bind the responder to the proposal. Proposals that are not properly signed may be rejected.

No proposal shall be accepted from, or no contract or purchase order shall be awarded to any person, firm or corporation that is in arrears upon any obligations to the State of South Dakota, or otherwise may be deemed irresponsible or unreliable by the State of South Dakota.

All proposals and attachments must be either in Microsoft Word, MS Excel or PDF searchable format. A proposal cannot be a PDF derived from a scanned image which prevents search functionality. For more information regarding response format see Section 5 of this RFP.

No proposal shall be accepted from, or no contract or purchase order shall be awarded to any person, firm or corporation that is in arrears upon any obligations to the State of South Dakota, or that otherwise may be deemed irresponsible or unreliable by the State of South Dakota.

#### **1.8 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this proposal, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation, by any Federal department or agency, from transactions involving the use of Federal funds. Where the offeror is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to their offer.

#### **1.9 NON-DISCRIMINATION STATEMENT**

The State of South Dakota requires that all contractors, vendors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-discrimination. By signing and submitting their proposal, the offeror certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.

#### **1.10 CERTIFICATION RELATING TO PROHIBITED ENTITY**

For contractors, vendors, suppliers, or subcontractors who enter into a contract with the State of South Dakota by submitting a response to this solicitation or agreeing to contract with the State, the bidder or offeror certifies and agrees that the following information is correct:

The bidder or offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, is not an entity, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela, as defined by SDCL 5-18A. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response. The successful bidder or offeror further agrees to provide immediate written notice to the contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

#### **1.11 RESTRICTION OF BOYCOTT OF ISRAEL**

For contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by submitting a response to this solicitation or agreeing to contract with the State, the bidder or offeror certifies and agrees that the following information is correct:

The bidder or offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the bid or offer, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response. The successful bidder or offeror further agrees to provide immediate written notice

to the contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

#### **1.12 CERTIFICATION OF NO STATE LEGISLATOR INTEREST**

Offeror (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to any Agreement entered into as a result of this RFP. By signing an Agreement pursuant to this RFP, Offeror hereby certifies that the Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

#### **1.13 MODIFICATION OR WITHDRAWAL OF PROPOSALS**

Proposals may be modified or withdrawn by the offeror prior to the established due date and time.

No oral, telephonic, telegraphic or facsimile responses or modifications to informal, formal bids, or Request for Proposals will be considered.

#### **1.14 PROPRIETARY INFORMATION**

The proposal of the successful offeror(s) becomes public information. Proprietary information can be protected under limited circumstances such as client lists and non-public financial statements. An entire proposal may not be marked as proprietary. Offerors must clearly identify in the Executive Summary and mark in the body of the proposal any specific proprietary information they are requesting to be protected. The Executive Summary must contain specific justification explaining why the information is to be protected. Proposals may be reviewed and evaluated by any person at the discretion of the State. All materials submitted become the property of the State of South Dakota and may be returned only at the State's option.

#### **1.15 LENGTH OF CONTRACT**

The State anticipates that the initial term of this contract will be from August 1, 2024 to July 31, 2027. Upon mutual agreement, the contract may be renewed for up to five (5) additional one-year option periods.

#### **1.16 GOVERNING LAW**

This RFP shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit regarding or arising out of the transaction covered herein shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

#### **1.17 DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION/NEGOTIATIONS)**

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the State. However, the State may award a contract based on the initial proposals received without discussion with the Offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offeror's expense.

This process is a Request for Proposal/Competitive Negotiation process. Each Proposal shall be evaluated, and each respondent shall be available for negotiation meetings at the State's request. The State reserves the right to negotiate on any and/or all components of every proposal submitted. From the time the proposals are submitted until the formal award of a contract, each proposal is considered a working document and as such, will be kept confidential. The negotiation discussions will also be held as confidential until such time as the award is completed.

## **2.0 STANDARD CONTRACT TERMS AND CONDITIONS**

Any contract or agreement resulting from this RFP will include, at a minimum, the substance of the contract terms and conditions as set forth in Appendix A. However, as part of the negotiation process, the language of a specific term or condition listed in Appendix A could be modified upon agreement between the State and the vendor. Additional terms and conditions may be required. The Offeror should indicate in their response any issues they have with specific contract terms. If the Offeror does not indicate that there are any issues with any contract terms, the State will assume those terms are acceptable to the Offeror.

## **3.0 SCOPE OF WORK**

Senate Bill 162 from the 2015 Legislative Session created the State Board of Internal Control (SDCL 1-56). The Board's primary function is to establish and maintain guidelines for an effective system of internal controls to be implemented by the state agencies.

The Board approved integrated internal control framework is designed to provide reasonable assurance that all agencies comprising the State of South Dakota are achieving their operational, reporting, and compliance objectives. The framework incorporates the 5 Components, the 17 Principles, and all relevant Points of Focus and/or Attributes as contained in the COSO and/or Standards for Internal Control in the Federal Government frameworks.

The Bureau of Finance and Management (BFM) is seeking assistance in the continuous implementation of the Board adopted statewide integrated internal control framework for all state agencies. The successful applicant will be required to:

1. Review and make recommendations for improvement of the current tools and internal control framework in place,
2. Assist BFM in the continuous implementation and onboarding of the internal control framework within state government,
3. Support and assist in the development and review of the risk assessments, control activities, information and communication, and monitoring activities, and
4. Assist with the continuous review of all current documented information in the risk and control matrix.

## **4.0 PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS**

**4.1** The offeror is cautioned that it is the offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.

- 4.2** Provide the following information related to at least three previous and current service/contracts, performed by the offeror's organization, which are similar to the requirements of this RFP.
- a. Name, address and telephone number of client/contracting agency and a representative of that agency who may be contacted for verification of all information submitted.
  - b. Dates of the service/contract.
  - c. A brief, written description of the specific prior services performed and requirements thereof.

#### 4.3 Provide the following information.

- 4.3.1 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements.
- 4.3.2 Resources available to perform the work, including any specialized services, within the specified time limits for the project.
- 4.3.3 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration.
- 4.3.4 Ability and proven history in handling special project constraints.
- 4.3.5 Proposed project management techniques.
- 4.3.6 Availability to the project locale.
- 4.3.6 Familiarity with the project locale.

#### 5.0 PROPOSAL RESPONSE FORMAT

5.1 The Contractor shall submit one (1) electronic copy of its entire proposal, including all attachments, in Microsoft Word or PDF electronic format (this document should be formatted in a searchable Text-Based PDF file format).

- 5.1.2 The proposal should be paginated and have an index and/or a table of contents referencing the appropriate page number.
- 5.1.3 Maximum Number of Pages - The total number of pages to include the RFP Form, the Executive Summary and Detailed Response should not exceed twenty (20) pages (key Executives and Manager resumes and/or bios may be added as an appendix to the proposal and are not included in the twenty-page limit).

5.2 All proposals must be organized and tabbed with labels for the following headings:

- 5.2.1 **RFP Form.** The State's Request for Proposal form (1<sup>st</sup> page of RFP) completed and signed.
- 5.2.2 **Executive Summary.** The one-to-two-page executive summary is to briefly describe the offeror's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the offeror. The reader should be able to determine the essence of the proposal by reading the executive summary. Proprietary information requests should be identified in this section.
- 5.2.3 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:
  - 5.2.3.1 A complete narrative of the offeror's assessment of the work to be performed, the offeror's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the offeror's understanding of the desired overall performance expectations.
  - 5.2.3.2 A specific point-by-point response, in the order listed, to each requirement in the RFP. The response should identify each requirement being addressed as enumerated in the RFP (expressly including the requirements set forth in Section 4.0 of this RFP.).
  - 5.2.3.3 A clear description of any options or alternatives proposed.
- 5.2.4 **Cost Proposal.** Cost will be evaluated independently from the technical proposal. Offerors may submit multiple cost proposals. All costs related to the provision of the required services must be included in each cost proposal offered.

See section 7.0 for more information related to the cost proposal.

- 5.3. Offerors are cautioned that use of the State Seal in any of their documents is illegal as per South Dakota Codified Law § 1-6-3.1. Use of seal or facsimile without authorization prohibited--Violation as misdemeanor. No person may reproduce, duplicate, or otherwise use the official seal of the State of South Dakota, or its facsimile, adopted and described in §§ 1-6-1 and 1-6-2 for any for-profit, commercial purpose without specific authorization from the secretary of state. A violation of this section is a Class 1 misdemeanor.

5.4 **Response Glossary**

Any proposal submitted should provide a glossary of all abbreviations, acronyms and technical terms used to describe the services or products proposed. This glossary should be provided even if these terms are described or defined at their first use in the proposal response.

5.5 **Multiple Proposals**

Multiple proposals from an Offeror will be permissible. Each proposal submitted must conform fully to the requirements for proposal submission. If multiple proposals are submitted, each such proposal must be separately submitted and labeled as Proposal #1, Proposal #2, etc., on each page included in the response.

**6.0 PROPOSAL EVALUATION AND AWARD PROCESS**

- 6.1 **Evaluation Team:** All proposals shall be evaluated by an evaluation team. Evaluation and potential selection of the Offeror shall be based on the information submitted in the proposals. The team may review references, require oral presentations, and conduct on-site visits to Offeror accounts and use the results in evaluating the proposals.
- 6.2 **Meeting Terms and Conditions:** Proposals will be reviewed to determine if required terms and conditions are met. Failure to meet the required terms and conditions may result in the proposal being rejected. If all Offerors fail to meet one or more of the required terms and conditions, the State reserves the right to continue the evaluation of proposals and to select the proposal that provides the best value to the State of South Dakota as determined by the evaluation team.
- 6.3 **Qualification Criteria:** Each proposal shall be evaluated on whether required qualification criteria are met. The qualification criteria that will be used to determine if the Offeror will be considered for an award is based on the information provided in response to Section 4.0, as well as the Cost Proposal set forth in Section 7.0 of this RFP.
- 6.4 **Evaluation Criteria:** After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use subjective judgment in conducting a comparative assessment of the proposal by considering each of the following criteria:
- 6.4.1 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
    - a) Review and make recommendations for improvement of the current tools and internal control framework in place,
    - b) Assist BFM in the continuous implementation and onboarding of the internal control framework within state government,
    - c) Support and assist in the development and review of the risk assessments, control activities, information and communication, and monitoring activities, and
    - d) Assist with the continuous review of all current documented information in the risk and control matrix.



- 6.4.2 Resources available to perform the work, including any specialized services, within the specified time limits for the project;
- 6.4.3 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
- 6.4.4 Familiarity with the project locale;
- 6.4.5 Proposed project management techniques; and
- 6.4.6 Ability and proven history in handling special project constraints.
- 6.4.7 Availability to the project locale
- 6.4.8 Cost.

- 6.5 Offeror to Submit Complete Information:** The evaluation and potential selection of a Contractor will be based on the information submitted in the Offeror's proposal. Each Offeror shall furnish a complete description of capabilities to meet or exceed the Scope of Work as described in Section 3 herein. Failure to respond to each of the requirements in the RFP may be the basis for rejecting a response.
- 6.6 Offeror to Submit Information Related to Evaluation Categories:** The Offeror is cautioned that it is the Offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The Offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.
- 6.7 Information Relating to Past Performance and Success:** Experience and reliability of the Offeror's organization are considered subjectively in the evaluation process. Therefore, the Offeror is advised to submit any information which documents successful and reliable experience in past performances, especially those performances related to the requirements of this RFP.
- 6.8. Qualifications of Personnel:** The qualifications of the personnel proposed by the Offeror to perform the requirements of this RFP, whether from the Offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the Offeror should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.
- 6.9. Rejection of Proposals:** The State reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the State of South Dakota.

## 7.0 COST PROPOSAL

The offeror should submit a cost proposal for the allocation of various expenses associated with providing services to the State within the scope of their proposal. Specifically, the Cost Proposal or Proposals should list each individual or classification of individuals the Offeror intends to use in completing the scope of work, the hourly rate for those individuals or classifications, the total amount expected to be paid per individual and classification, and the total overall project cost.

The State reserves the right to negotiate with the highest ranked offeror to develop a cost structure that effectively satisfies all of the State's requirements as outlined in this RFP.

## 8.0 AWARD

- 8.1. The requesting agency and the highest ranked offeror shall mutually discuss and refine the scope of services for the project and shall negotiate terms, including compensation and performance schedule.

- 8.2. If the agency and the highest ranked offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, either orally or in writing, terminate negotiations with the contractor. The agency may then negotiate with the next highest ranked contractor.
- 8.3. The negotiation process may continue through successive offerors, according to agency ranking, until an agreement is reached or the agency terminates the contracting process.

**APPENDIX A**

STATE OF SOUTH DAKOTA  
CONTRACT FOR SERVICES  
Between

[NAME OF CONTRACTOR]  
[ADDRESS]

[CITY, STATE, ZIP CODE]  
[TELEPHONE NUMBER]

State of South Dakota  
BUREAU OF FINANCE & MANAGEMENT  
500 East Capitol Avenue  
Pierre, SD 57501

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Referred to as Contractor

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Referred to as State

The State hereby enters into this agreement (Agreement) for services with Contractor in consideration of and pursuant to the terms and conditions set forth herein.

1. SCOPE OF SERVICES:

The purpose of this contract is to \_\_\_\_\_ Contractor will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

2. PERIOD OF PERFORMANCE: This Agreement shall be effective on \_\_\_\_\_ and will end on \_\_\_\_\_, unless sooner terminated pursuant to the terms of this Agreement.

Upon mutual agreement, the contract may be renewed for up to five (5) additional one-year option periods.

3. USE OF EQUIPMENT, SUPPLIES AND FACILITIES:

Contractor will not use State equipment, supplies or facilities.

4. CONTRACTOR IDENTIFICATION:

Upon execution of this Agreement, Contractor will provide the State with Contractor's Employer Identification Number, Federal Tax Identification Number or Social Security Number.

5. CONTRACT AMOUNT AND PAYMENT:

The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$ \_\_\_\_\_. The State will not pay Contractor's expenses, including but not limited to travel, lodging and meals, as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26. Any overpayment of this Agreement shall be returned to the State within thirty (30) days after written notification to Contractor.

## 6. INDEMNIFICATION:

Contractor agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief that may arise at least in part as a result of an act or omission in performing services under this Agreement. Contractor shall defend the State of South Dakota, its officers, agents, and employees against any claim, including any claim, action, suit, or other proceeding related to the claim. Contractor's obligation to indemnify includes the payment of attorney fees and other costs of defense. In defending the State of South Dakota, its officers, agents, and employees, Contractor shall engage other professionals, subject to the written approval of the State which shall not be unreasonably withheld. Notwithstanding the foregoing, the State may, in its sole discretion and at the expense of Contractor, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Contractor in the defense. This section does not require Contractor to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of the State, its officers, agents or employees.

## 7. INSURANCE:

At all times during the term of this Agreement, Contractor shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

### A. Commercial General Liability Insurance:

Contractor shall maintain occurrence-based commercial general liability insurance or equivalent form of coverage with a limit of not less than one million dollars (\$1,000,000) for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

### B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

Contractor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than one million dollars (\$1,000,000).

### C. Business Automobile Liability Insurance:

Contractor shall maintain business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) for each accident. This insurance shall include coverage for owned, hired and non-owned vehicles.

### D. Worker's Compensation Insurance:

Contractor shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota or federal law.

Before beginning work under this Agreement, Contractor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement including naming the State, its officers and employees, as additional insureds, as set

forth above. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Contractor agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Contractor shall furnish copies of insurance policies if requested by the State.

#### 8. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event Contractor breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for a breach is affected by the State, any payments due to Contractor at the time of termination may be adjusted to cover any additional costs to the State because of Contractor's breach. Upon termination the State may take over the work and may award another party a contract to complete the work contemplated by this Agreement. If after the State terminates for a breach by Contractor it is determined that Contractor was not at fault, then Contractor shall be paid for eligible services rendered and expenses incurred up to the date of termination.

#### 9. SURVIVAL FOLLOWING TERMINATION:

Any terms of this Agreement that would, by their nature or through the express terms of this Agreement, survive the expiration or termination of this Agreement shall so survive including but not limited to the indemnification, controlling law and venue, and sovereign immunity provisions.

#### 10. FUNDING:

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State upon five (5) business days written notice. Contractor agrees that termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State or any officer, agent or employee of the State, and Contractor waives any claim against the same.

#### 11. CERTIFICATIONS

##### A. COMPLIANCE WITH EXECUTIVE ORDER 2020-01:

Executive Order 2020-01 provides that for contractors, vendors, suppliers or subcontractors with five (5) or more employees who enter into a contract with the State that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this Agreement Contractor certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Contractor further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

B. COMPLIANCE WITH SDCL ch 5-18A:

Contractor certifies and agrees that the following information is correct:

The bidder or offeror is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

The successful bidder or offeror further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

C. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

By signing this Agreement, Contractor certifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Contractor further agrees that it will immediately notify the State if during the term of this Agreement Contractor or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

D. CERTIFICATION OF NO STATE LEGISLATOR INTEREST:

Contractor (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, Contractor hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

12. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to \_\_\_\_\_ on behalf of the State, and by and to

\_\_\_\_\_, on behalf of Contractor, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

13. CONTROLLING LAW AND VENUE:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

14. INDEPENDENT CONTRACTOR:

While performing services hereunder, Contractor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

15. THIRD PARTY BENEFICIARIES:

This Agreement is intended to govern only the rights and interests of the parties named herein. It is not intended to create, does not and may not be relied upon to create, any rights, substantive or procedural, enforceable at law by any third party in any matters, civil or criminal.

16. ASSIGNMENT AND AMENDMENT:

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof and be signed by an authorized representative of each of the parties hereto.

17. COMPLIANCE: Contractor will comply in full with all federal, tribal, state and local laws, regulations, ordinances, guidelines, permits, requirements and other standards applicable to the services provided under this Agreement and will be solely responsible for obtaining current information regarding the foregoing. Nothing herein shall constitute a waiver by the State to any defense to jurisdiction nor shall anything herein constitute an acknowledgement by the State that any tribe has or exercises any jurisdiction over this Agreement or the parties.

18. REPORTING:

Contractor agrees to report to the State any event encountered in the course of performance of this Agreement which results in an injury to any person or property, or which may otherwise subject Contractor, or the State of South Dakota or its officers, agents or employees to liability. Contractor shall report any such event to the State immediately upon discovery.

Contractor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Contractor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g.,

attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.

19. SUBCONTRACTING:

Contractor may not use subcontractors to perform the services described herein without the express prior written consent of the State. Contractor will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage in a manner consistent with this Agreement. Contractor will cause its subcontractors, agents, and employees to comply with applicable federal, tribal, state, and local laws, regulations, ordinances, guidelines, permits and other standards and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. Contractor shall assist in the vetting process.

20. STATE'S RIGHT TO REJECT:

The State reserves the right to reject any person from performing services under this Agreement who the State believes would be detrimental to the services, presents insufficient skills, presents inappropriate behavior or is considered by the State to be a security risk.

21. SEVERABILITY:

In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

22. MERGER:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

23. FORCE MAJEURE:

Notwithstanding anything in this Agreement to the contrary, neither party shall be liable for any delay or failure to perform under the terms and conditions of this Agreement, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, quarantine, epidemic, pandemic, earthquake or any act of God, or other causes beyond the party's reasonable control provided, however, that in order to be excused from delay or failure to perform, the party must act diligently to remedy the cause of such delay or failure and must give notice to the other party as provided in this Agreement as soon as reasonably possible of the length and cause of the delay in performance.

24. WAIVER OF BREACH:

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision in this Agreement.



25. HEADINGS:

The headings in this Agreement are for convenience and reference only and shall not govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

26. AUTHORITY TO EXECUTE:

Contractor represents and warrants that:

A. Contractor is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

B. The execution, delivery and performance of this Agreement has been duly authorized by Contractor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Contractor to enter into this Agreement and perform its obligations under this Agreement;

C. Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Agreement; and

D. Contractor has obtained all licenses, certifications, permits, and authorizations necessary to perform the services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's performance of the services. Contractor will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

27. SOVEREIGN IMMUNITY:

Nothing in this Agreement is intended to constitute a waiver of sovereign immunity by or on behalf of the State of South Dakota, its agencies, officers or employees.

28. CONFIDENTIALITY:

For the purpose of this Agreement, "Confidential Information" shall include all information, regardless of its format, disclosed to Contractor by the State and all information, regardless of its format, obtained by Contractor through the provisions of services as contemplated by this Agreement. Contractor, and any person or entity affiliated with Contractor shall not disclose any Confidential Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Contractor, and any person or entity affiliated with Contractor shall not: (i) disclose any Confidential Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of Confidential Information except to exercise rights and perform obligations under this Agreement; (iii) make Confidential Information available to any of its employees, officers, agents or consultants except those who have agreed, by contract, to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information and who have been instructed that such information is or may be confidential under state or federal law. Contractor, and any person or entity affiliated with Contractor is held to the same standard of care in guarding Confidential Information as it applies to its own confidential or proprietary information and materials of a similar nature,

and no less than holding Confidential Information in the strictest confidence. Contractor, and any person or entity affiliated with Contractor shall protect the confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced.

Confidential Information shall not include information that: (i) was in the public domain at the time it was disclosed to Contractor or to any person or entity affiliated with Contractor; (ii) was known to Contractor, or to any person or entity affiliated with Contractor, without restriction at the time of disclosure from the State; (iii) was disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Contractor, or by any person or entity affiliated with Contractor, without the benefit or influence of the State's information; or (v) becomes known to Contractor, or to any person or entity affiliated with Contractor, without restriction, from a source not connected to the State of South Dakota.

Confidential Information can include, but is not limited to, names, social security numbers, employer numbers, addresses and all other data about applicants, participants, employers or other clients to whom the State provides services of any kind. Contractor understands that this information may be confidential and protected under state or federal law. Contractor agrees to immediately notify the State if the information is disclosed, either intentionally or inadvertently.

If work assignments performed in the course of this Agreement require additional security requirements or clearance, Contractor agrees that its officers, agents and employees may be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.

Contractor will enforce the terms of this Confidentiality Provision to its fullest extent.

Contractor agrees to remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision and to immediately notify the State of such matter.

Contractor will comply with any other confidentiality measures and terms included in the Agreement.

Upon termination of this Agreement, if not already done so as part of the services performed under the Agreement, Contractor agrees to return to the State, at Contractor's cost, any Confidential Information or documentation maintained by Contractor regarding the services provided hereunder in a format readily useable by the State as mutually agreed by Contractor and State.

## 29. WORK PRODUCTS:

Contractor hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by Contractor in connection with the performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by Contractor without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

## 30. TRANSFER OF INFORMATION:

Upon termination of this Agreement (whether initiated by the State or Contractor) and following a written request by the State, Contractor agrees to provide to the State, at Contractor's expense, any data and other pertinent records related to services performed under this Agreement ("Information") to the State or a designee chosen by the State ("Recipient") within thirty (30) days, unless otherwise agreed by the parties. The transfer of Information shall be conducted based upon the State's standards and in accordance with all applicable laws and regulations in a format readily usable by the State or Recipient as mutually agreed by Contractor and State.

## 31. OTHER METHODS OF NOTICE:

The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing provided that delivery is confirmed.

## 32. DILIGENCE AND SKILL:

In the performance of these services and providing the deliverables under the Agreement, Contractor, and its employees shall exercise the degree of skill and care consistent with customarily accepted practices and procedures for the performance of the type of services required. Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services and deliverables furnished by Contractor and any subcontractors, if applicable, under this Agreement. It shall be the duty of Contractor to assure that its services and deliverables are technically sound and in conformance with all pertinent technical codes and standards. Contractor represents and warrants that: (i) it shall give high priority to the performance of the services; and (ii) the services shall be performed in a timely manner.

Contractor shall be responsible to the State for material deficiencies in the contracted deliverables and services which result from the failure to meet the standard given herein. Contractor shall promptly correct or revise any material errors or omissions in deliverables and re-perform any services which are not in compliance with such representations and warranties at no cost to the State, provided that Contractor's failure to comply is not due solely to the actions, errors, or omissions of the State.

Permitted or required approval by the State of any services or deliverables furnished by Contractor shall not in any way relieve Contractor of its responsibility for the professional quality and technical accuracy and adequacy of its work. The State's review, approval, acceptance, or payment for any of Contractor's services or deliverables herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and except as provided herein Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the State caused by Contractor's performance or failure to perform under this Agreement.

In the event of a breach of these representations and warranties, the State shall provide telephonic or electronic notice to Contractor. The State may, in its sole discretion, require Contractor to cure such breaches. If it is necessary for Contractor to send at least one qualified and knowledgeable representative to the State's site where the system is located, this will be done at Contractor's expense. This representative will continue to address and work to remedy the deficiency, failure, malfunction, defect, or problem at the site. The rights and remedies provided in this paragraph are in addition to any other rights or remedies provided in this Agreement or by law.

### 33. INTELLECTUAL PROPERTY:

In connection with the performance of this Agreement and the provision of services and deliverables under this Agreement, Contractor will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. Contractor will not improperly use any trade secrets or confidential or proprietary information owned by any third party in performing this Agreement or the services related to this Agreement. Contractor shall indemnify the State, the State of South Dakota, its officers, agents and employees (hereinafter collectively "the State") from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief (collectively, a "Claim") to the extent such Claim alleges improper use of, or infringement or misappropriation by, the State or Contractor of any patent, copyright or federally registered trademark or trade secret in connection with the performance of this Agreement and the provision of services and deliverables under this Agreement.

### 34. THIRD PARTY RIGHTS:

Contractor represents and warrants that it has the full power and authority to grant the rights described in this Agreement without violating any rights of any third party, and that there is currently no actual or, to Contractor's knowledge, threatened suit by any such third party based on an alleged violation of such rights by Contractor.

### **AUTHORIZED SIGNATURES:**

In Witness Whereof, the parties signify their agreement effective the date below last written by the signatures affixed below.

STATE

CONTRACTOR

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Printed title)

\_\_\_\_\_  
(Printed title)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(DATE)

- State Agency Coding (MSA Center) \_\_\_\_\_.
- State Agency MSA Company for which contract will be paid \_\_\_\_\_.
- Object/sub-object MSA account to which voucher will be coded \_\_\_\_\_.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract \_\_\_\_\_.