

STATE OF SOUTH DAKOTA
OFFICE OF PROCUREMENT MANAGEMENT
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3182

Family Time & Transportation (Aberdeen)
PROPOSALS ARE DUE NO LATER THAN APRIL 26th, 2023, 5:00PM CST

23RFP8589

BUYER:
Division of Child Protection Services

POC: Kirsten Smart
Kirsten.Smart@state.sd.us

READ CAREFULLY

FIRM NAME: _____

AUTHORIZED SIGNATURE: _____
(Digital Signature allowed)

ADDRESS: _____

TYPE OR PRINT NAME: _____

CITY/STATE: _____

TELEPHONE NO: _____

ZIP (9 DIGIT): _____

FAX NO: _____

FEDERAL TAX ID#: _____

E-MAIL: _____

PRIMARY CONTACT INFORMATION

CONTACT NAME: _____

TELEPHONE NO: _____

FAX NO: _____

E-MAIL: _____

1.0 **GENERAL INFORMATION**

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

This request has been issued for the purpose of eliciting proposals for the provision of supervised family time services in a family friendly setting in Aberdeen, South Dakota for families whose children have been removed from the home and placed in the custody of Child Protection Services (CPS), in order to promote the possibility of reunification. Submissions should also include the provision of supervised transportation for children and their parents to and from the family time service, and to and from appointments as referred by CPS, within the Aberdeen area.

1.2 **ISSUING OFFICE AND RFP REFERENCE NUMBER**

The Department of Social Services is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota, Division of Child Protection. The reference number for the transaction is 23RFP8589. Refer to this number on all proposals, correspondence, and documentation relating to the RFP.

Please refer to the Department of Social Services website link <http://dss.sd.gov/keyresources/rfp.aspx> for the RFP, any related questions/answers, changes to schedule of activities, amendments, etc.

1.3 **LETTER OF INTENT**

All interested offerors are requested to submit a non-binding **Letter of Intent** to respond to this RFP. While preferred, a Letter of Intent is not mandatory to submit a proposal.

The letter of intent must be received by email in the Department of Social Services by the date and time indicated in the Schedule of Activities, and must be addressed to Kirsten.Smart@state.sd.us. Place the following, exactly as written, in the subject line of your email: **Letter of Intent for 23RFP8589**. Be sure to reference the RFP number in any attached letter or document.

1.4 **SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)**

RFP Publication	March 22 th , 2023
Letter of Intent to Respond Due	<u>April 5th, 2023</u>
Deadline for Submission of Written Inquiries	<u>April 5th, 2023</u>
Responses to Offeror Questions	<u>April 12th, 2023</u>
SFTP Request Due	<u>April 19th, 2023</u>
Proposal Submission	<u>April 26th, 2023</u>
Proposal Revisions (if required)	<u>To be announced if needed</u>
Anticipated Award Decision/Contract Negotiation	<u>May 12th, 2023</u>

1.5 **SUBMITTING YOUR PROPOSAL**

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

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

Proposals must be submitted as PDF's via Secured File Transfer Protocol (SFTP). Offerors must request an SFTP folder no later than the date and time indicated in the Schedule of Activities by emailing Kirsten Smart at the email indicated on page one.

The subject line should be "**23RFP8589 SFTP Request**". The email should contain the name and the email of the person who will be responsible for uploaded the document(s).

Please note, offeror will need to work with their own technical support staff to set up an SFTP compatible software on offeror's end. While the State of South Dakota can answer questions, State of South Dakota is not responsible for the software required.

All proposals may be signed in ink or digitally by an officer of the offeror legally authorized to bind the offeror to the proposal, and sealed in the form intended by the respondent. Proposals that are not properly signed may be rejected.

No proposal may be accepted from, or any contract or purchase order 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.

1.6 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.

1.7 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.

1.8 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.

1.9 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 South Dakota Executive Order 2023-02. 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.

1.10 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 unless previously approved.

1.11 OFFEROR INQUIRIES

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after no later than the date and time indicated in the Schedule of Activities. Email inquiries must be sent to Kirsten.Smart@state.sd.us with the following wording, exactly as written, in the subject line: **23RFP8589 Questions**.

The Department of Social Services (DSS) will respond to offerors' inquiries by posting offeror aggregated questions and Department responses on the DSS website at <http://dss.sd.gov/keyresources/rfp.aspx> no later than the date and time indicated in the Schedule of Activities. For expediency, DSS may combine similar questions. 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.

1.12 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. Pricing and service elements are not considered proprietary. 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.

Offerors may submit a redacted copy of their proposal when they respond though this is optional.

1.13 LENGTH OF CONTRACT

The provider contract resulting from this RFP will be issued for a period of one (1) year, June 1, 2023 to May 31, 2024, with the option for renewal for up to three (3), one (1) year contracts at the discretion of the State based on performance and/or the continued availability of funds. Contracts will be renegotiated on an annual basis.

1.14 GOVERNING LAW

Venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in Hughes County, State of South Dakota. The laws of South Dakota shall govern this transaction.

1.15 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 AGREEMENT TERMS AND CONDITIONS

Any contract or agreement resulting from this RFP will include, at minimum, the State's standard terms and conditions as seen in Attachment A. As part of the negotiation process, the contract terms

listed in Attachment A may be altered or deleted.

The offeror should indicate in their response any issues they have with any specific contract terms. If the offeror does not indicate any contract term issues, then the State will assume the terms are acceptable.

3.0 SCOPE OF WORK

The Department of Social Services, Division of Child Protection Services (CPS) vision is to support strong families, as they are South Dakota's foundation and our future. As part of the CPS mission to strengthen and support families, CPS provides certain services to families where children have been removed from their homes and placed in out-of-home care. Child Protection Services believes children should be with family whenever possible, and by providing a facility for supervised family time, families have the opportunity for consistent contact in order to enhance and promote the bonds that exist as families move towards reunification. Family time should occur in other venues outside the facility, such as the family's homes, parks or other family like settings whenever possible and safe. Child Protection Services must also ensure the well-being needs of children in our care are met, and must provide transportation not only to these services, but to family time. The Aberdeen office of Child Protection Services provides services to a large number of families. Due to limitations of staff and physical resources, there is a need for a Family Visitation Center (FVC) who can provide support in the form of supervised family time to as many families as possible who are working towards reunification, based on referrals from CPS. There is a need for children in foster care to be transported to and from the facility, as well as to various appointments to meet their educational, medical or mental health needs. At times, the parents also need transportation to family time or appointments. Child Protection Services is seeking a Provider that can provide services in two areas: Transportation and Family Time Services. In Fiscal Year 2022, the current vendor provided 1,477 hours of supervised family time and 252 hours of transportation. There was an average of 350 transportation miles reimbursed each month. These services were in addition to the family time and transportation services provided to families by the Division of Child Protection Services outside of the contract.

3.1 Supervised Family Time

3.1.1 The Offerer will provide a child and family friendly location for family time Services between families and children referred by Child Protection Services.

Describe in the RFP how the Offeror will:

- A. Provide a clean, safe facility or pre-approved alternative location for children of all ages to have supervised family time with their parents or custodians;
- B. Provide a location that is a natural, comfortable, and family-like setting for children and families;
- C. Provide for more than one family time service to occur simultaneously;
- D. Provide audio/visual recordings (when necessary) and written reports of the family time services for the agency;
- E. Provide the ability for observation of family time services by Offeror or CPS staff;
- F. Provide flexible scheduling of family time services for the agency that can occur outside the course of a normal business day, to include evenings and weekends.

3.1.1 The Offerer will provide staff to supervise the family time between the children and family members.

Describe in the RFP how the Offeror will:

- A. Ensure employees have criminal background checks and Central Registry checks completed before working for the family visitation center;
- B. Ensure that employees will be provided with training about family time, family dynamics, and maltreatment of children;

- C. Ensure that employees will be able to determine when a family time service is detrimental and be able to comply with expectations of the Division of Child Protection Services in providing family time services that are safe for the child and in reported suspected abuse or neglect;
- D. Ensure that employees will maintain confidentiality;
- E. Provide technology for employees to communicate with Child Protection Services, both verbally and in writing.

3.2 Transportation Services

3.2.1 The Offeror will provide transportation services for parents and children referred by Child Protection Services.

Describe in the RFP how the Offeror will:

- A. Ensure employees have criminal background checks and Central Registry checks completed before working for the family visitation center;
- B. Comply with child safety restraint requirements, both as outlined in the South Dakota Codified Law 32-37 and by the Division of Child Protection Services;
- C. Ensure transportation employees have met legal requirements to drive within South Dakota and that the employees will provide an environment that is safe for the children and families referred by the Division of Child Protection Services;
- D. Provide insurance for the vehicles and other insurance as required.

3.3 Payment for Supervised Family Time and Transportation

3.3.1 Rates

The RFP will describe the Offeror's proposed rates for mileage, transportation, and supervised family time.

3.3.2 Billing Procedures

The RFP will describe the system the Offeror will use to document services in order to provide a monthly billing to Child Protection Services, while assuring the mileage and time for each transportation and family time service, is documented separately with the name of the family and the name of the Division of Child Protection Services staff.

4.0 PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS

- 4.1 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. Provide this information as well for any service/contract that has been terminated, expired or not renewed in the past three years:
 - 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; and
 - c. A brief, written description of the specific prior services performed and requirements thereof.
- 4.2 The offeror must submit information that demonstrates their availability and familiarity with the locale in which the project (s) are to be implemented.
- 4.3 The offeror must detail examples that document their ability and proven history in handling special project constraints.
- 4.4 The offeror must describe their proposed project management techniques.

- 4.5 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.
- 4.6 **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 the point of contact of the buyer of record indicated on the first page of this RFP. Offerors and their agents may not contact any state employee other than the buyer of record 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 the buyer of record.
- 4.7 The offeror may be required to submit a copy of their most recent independently audited financial statements.
- 4.8 If an offeror's proposal is not accepted by the State, the proposal will not be reviewed/evaluated.

5.0 PROPOSAL RESPONSE FORMAT

- 5.1 Only a PDF copy shall be submitted.
- 5.1.1 As outlined in section 1.X "SUBMITTING YOUR PROPOSAL" proposals shall only be submitted electronically via SFTP.
- 5.1.2 The proposal should be page numbered and should have an index and/or a table of contents referencing the appropriate page number.
- 5.2 All proposals must be organized and have a separator page between each the following headings. The separator page should have the heading names on it.
- 5.2.1 **RFP Form.** The State's Request for Proposal form completed and signed.
- 5.2.2 **Executive Summary.** The one or 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 as detailed in Sections 3 and 4. The response should identify each requirement being addressed as enumerated in the 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.

6.0 PROPOSAL EVALUATION AND AWARD PROCESS

- 6.1 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 listed in order of importance:

- 6.1.1 Familiarity with the project locale;
- 6.1.2 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
- 6.1.3 Availability to the project locale;
- 6.1.4 Resources available to perform the work, including any specialized services, within the specified time limits for the project;
- 6.1.5 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
- 6.1.6 Proposed project management techniques;
- 6.1.7 Ability and proven history in handling special project constraints, and
- 6.1.8 Cost proposal.

- 6.2 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.

- 6.3 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.

- 6.4 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.

- 6.5 **Award:** 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.

- 6.5.1 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.

- 6.5.2 The negotiation process may continue through successive offerors, according to agency ranking, until an agreement is reached or the agency terminates the contracting process.
- 6.5.3 Only the response of the vendor awarded work becomes public. Responses to work orders for vendors not selected and the evaluation criteria and scoring for all proposals are not public. Vendors may submit a redacted copy with the full proposal as stated in Section 1.12 Proprietary Information. SDCL 1-27-1.5 and See SDCL 1-27-1.5 and 1-27-1.6.

7.0 **COST PROPOSAL**

The offeror should submit their proposal for the allocation of various expenses associated with providing services to the State within the scope of their proposal. This proposal should include all costs associated with employee salaries and benefits, for direct and indirect care staff, insurance vehicle costs, facility rent/lease/maintenance cost, office supply costs, utilities, professional fees and contract services and any other expenses that are deemed necessary to perform the services outlined in this proposal.

Please download the Excel document **23RFP8589 Attachment B-Cost Proposal Family Time Supervision and Transportation (Aberdeen).xlsx** and fill that out. Return as a separate document with your proposal.

ATTACHMENT A

**STATE OF SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF CHILD PROTECTION
Purchase of Services Agreement
For Provider Services
Between**

State of South Dakota
Department of Social Services
DIVISION OF CHILD PROTECTION

700 Governors Drive
Pierre, SD 57501-2291

Referred to as Provider

Referred to as State

The State hereby enters into a contract (the "Agreement" hereinafter) for procurement of goods or services. While performing services hereunder, Provider is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. PROVIDER'S South Dakota Vendor Number is _____. Upon execution of agreement, Provider will provide the State with Provider's Employer Identification Number, Federal Tax Identification Number, or Social Security Number.
2. PERIOD OF PERFORMANCE :
 - A. This Agreement shall be effective as of June 1, 2023 and shall end on May 31, 2024, unless sooner terminated pursuant to the terms hereof.
 - B. Agreement is the result of request for proposal process, RFP #8589 , initial term.
3. PROVISIONS:
 - A. The Purpose of this Provider contract is:
 1. To provide supervised family time services in Aberdeen, SD.
 2. Does this Agreement involve Protected Health Information (PHI)? YES () NO (X)
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the Agreement (refer to attachment) .
 3. The Provider WILL () WILL NOT (X) use state equipment, supplies or facilities.
 4. If WILL is indicated above, the following state equipment, supplies, or facilities will be used:
 - B. The Provider agrees to perform the following services (add an attachment if needed):
 1. There is a need for a Family Visitation Center (FVC) who can provide support in the form of supervised family time to as many families as possible who are working towards reunification, based on referrals from CPS. There is a need for children in foster care to be transported to and from the facility, as well as to various appointments to meet their educational, medical, or mental health needs. At times, the parents also need transportation to family time or appointments.
 - C. The TOTAL CONTRACT AMOUNT will not exceed \$ _____.
Payment will be in accordance with SDCL 5-26-2.

4. **BILLING:**

Provider agrees to submit a bill for services within (30) days following the month in which services were provided. Provider will prepare and submit a monthly bill for services. Provider agrees to submit a final bill within 30 days of the Agreement end date to receive payment for completed services. If a final bill cannot be submitted in 30 days, then a written request for extension of time and explanation must be provided to the State.

5. **TECHNICAL ASSISTANCE:**

The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Provider and to assist in the correction of problem areas identified by the State's monitoring activities.

6. **LICENSING AND STANDARD COMPLIANCE:**

The Provider agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this Agreement. The Provider will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Provider's failure to ensure the safety of all individuals served is assumed entirely by the Provider.

7. **ASSURANCE REQUIREMENTS:**

The Provider agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Executive orders 12549 and 12689 (Debarment and Suspension), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

8. **COMPLIANCE WITH EXECUTIVE ORDER 2020-01:**

By entering into this Agreement, Provider certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it 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 of 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. Provider 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.

9. **COMPLIANCE WITH EXECUTIVE ORDER 2023-02:**

Contractor certifies and agrees that the following information is correct:

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, Contractor 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 South Dakota Executive Order 2023-02.

Contractor further agrees 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.

10. RETENTION AND INSPECTION OF RECORDS:

The Provider agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Provider shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Provider agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Provider's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Provider's established record retention policies.

All payments to the Provider by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this Agreement shall be returned to the State within thirty days after written notification to the Provider.

11. WORK PRODUCT:

Provider hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, as defined in the Confidentiality of Information paragraph herein, state data, end user data, Protected Health Information as defined in 45 CFR 160.103, and all information contained therein provided to the State by the Provider in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Provider without the written consent of the State.

Paper, reports, forms, software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State nonetheless reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Provider agrees to return all information received from the State to State's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties.

12. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Provider breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time, with or without notice. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination. If termination for breach is effected by the State, any payments due to Provider at the time of termination may be adjusted to cover any additional costs to the State as a result of Provider'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 the State terminates for a breach by Provider and it is determined that the Provider was not at fault, then Provider shall be paid for eligible services rendered and expenses incurred up to the date of 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 by not limited to the terms of sections 9, 10, 14, 21, 22, 25 and 31.

13. 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 the law or federal funds reduction, this Agreement will be terminated by the State upon five days written notice. Provider 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 Provider waives any claim against the same.

14. ASSIGNMENT AND AMENDMENTS:

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.

15. CONTROLLING LAW:

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 resolved in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

16. SUPERCESSION:

All 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.

17. IT STANDARDS:

Any service, software or hardware provided under this Agreement will comply with state standards which can be found at <http://bit.sd.gov/standards/>.

18. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

19. 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 the Division being contracted with on behalf of the State, and by the Provider, 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.

20. SUBCONTRACTORS:

The Provider may not use subcontractors to perform the services described herein without express prior written consent from the State. The State reserves the right to reject any person from the Agreement presenting insufficient skills or inappropriate behavior.

The Provider 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 for the benefit of the State in a manner consistent with this Agreement. The Provider will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements 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. The Provider is required to assist in this process as needed.

21. STATE'S RIGHT TO REJECT:

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

22. INDEMNIFICATION:

Provider 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. Provider 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. Provider'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, Provider 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 Provider, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Provider in the defense. This section does not require Provider 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.

23. INSURANCE:

Before beginning work under this Agreement, Provider shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement, including naming the State of South Dakota, its officers and employees as additional insureds, as set forth below. The Provider, at all times during the term of this Agreement, shall maintain in force insurance coverage of the types and limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Provider agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Provider shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

Provider shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$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. Business Automobile Liability Insurance:

Provider shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. The insurance shall include coverage for owned, hired, and non-owned vehicles. 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.

C. Worker's Compensation Insurance:

Provider shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota or federal law.

D. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

Provider agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000. 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.

(Medical Health Professional shall maintain current general professional liability insurance with a limit of not less than one million dollars for each occurrence and three million dollars in the aggregate. Such insurance shall include South Dakota state employees as additional insureds in the event a claim, lawsuit, or other proceeding is filed against a state employee as a result of the services provided pursuant to this Agreement. If insurance provided by Medical Health Professional is provided on a claim made basis, then Medical Health Professional shall provide "tail" coverage for a period of five years after the termination of coverage.)

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

Provider certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the federal government or any state or local government department or agency. Provider further agrees that it will immediately notify the State if during the term of this Agreement either it 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.

25. CONFLICT OF INTEREST:

Provider agrees to establish safeguards to prohibit employees or other persons from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Provider expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

26. CONFIDENTIALITY OF INFORMATION:

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Provider by the State. Provider acknowledges that it shall have a duty to not disclose any State Proprietary 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. Provider shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this Agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents or providers except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. Provider is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Provider shall protect 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. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Provider; (ii) was known to Provider without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Provider without the benefit or influence of the State's information; (v) becomes known to Provider without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Provider understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. Provider acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Provider will 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.

27. REPORTING PROVISION:

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

Provider'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. Provider'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 Provider to report any event to law enforcement or other entities under the requirements of any applicable law.

28. COST REPORTING REQUIREMENTS:

☐ The Provider agrees to submit a cost report in the format required by the State, and is due four months following the end of the Provider's fiscal year.

or

☐ No reporting is required.

28. DAVIS-BACON ACT:

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

29. COMPLIANCE WITH 40 U.S.C. 3702 AND 3704:

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

30. FUNDING AGREEMENT AND "RIGHTS TO INVENTION":

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Provider wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Provider must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

31. 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, earthquake or any act of God, or any 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.

32. 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 provisions in this Agreement.

33. 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.

34. **AUTHORITY TO EXECUTE:**

Provider represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized by Provider and that no approval, authorization, or consent of any governmental or regulatory agency is required to be obtained in order for Provider to enter into this Agreement and perform its obligations under this Agreement. If the Provider is a corporation, said corporation is 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. If Provider is an individual person, partnership, or other non-corporate entity, Provider is authorized to conduct business in and is in good standing in each jurisdiction in which Provider will conduct business in connection with this Agreement. Provider 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 Provider's performance of the services. Provider will maintain all required certifications, licenses, permits and authorizations during the term of this Agreement at its own expense.

35. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

_____ Provider Signature	_____ Date
_____ Provider Printed Name	
_____ State - DSS Division Director Pamela Bennett	_____ Date
_____ State - DSS Chief Financial Officer Jason Simmons	_____ Date
_____ State – DSS Cabinet Secretary Matthew K. Althoff	_____ Date

State Agency Coding:

CFDA #	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____

DSS Program Contact Person _____
Phone _____

DSS Fiscal Contact Person Contract Accountant
Phone 605 773-3586

Provider Program Contact Person _____
Phone _____

Provider Program Email Address _____

Provider Fiscal Contact Person _____
Phone _____

Provider Fiscal Email Address _____

**CONTRACTOR CERTIFICATION REQUIRED BY
SOUTH DAKOTA EXECUTIVE ORDER 2023-02**

Section 1 Definitions. The words used in this Certification shall mean:

1.1. “Prohibited Entity,” 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 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;

1.2. “Executive Branch Agencies,” each state agency, authority, bureau, board, commission, department, or institution of the State of South Dakota that is controlled by the Governor;

1.3. “Contract,” any type of agreement by or on behalf of the State to sell or lease supplies or goods, or to provide services, professional services, construction, or public improvements, to the State in return for a fee, or any other form of compensation to be paid or provided by the State; and

1.4. “Contractor,” a vendor, supplier, construction contractor, or subcontractor that has submitted a bid or offer for or has been selected to engage in providing goods or services to the State but does not mean a sole proprietorship or individual natural U.S. citizen.

Section 2. Certification. The undersigned hereby certifies to the State of South Dakota that:

2.1. The undersigned is not a Prohibited Entity.

2.2 If at any time after making this certification the undersigned becomes a Prohibited Entity, the undersigned will provide immediate written notice to all Executive Branch Agencies with whom the undersigned has a Contract. The undersigned understands and agrees that if the undersigned becomes a Prohibited Entity, Executive Branch Agencies may terminate any Contract with the undersigned.

2.3 The undersigned acknowledges and agrees that Executive Branch Agencies have the right to terminate a Contract with any Contractor that submits a false certification.

Company

Title

Signature

Date

DSS Purchase Order # 23SC08 ____
Provider Contract # 23-08 ____

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