

**STATE OF SOUTH DAKOTA
DEPARTMENT OF EDUCATION
800 GOVERNORS DRIVE
PIERRE, SOUTH DAKOTA 57501-2235**

PBIS Coordinator

PROPOSALS DEADLINE: June 9, 2023 by 5:00 PM CT

RFP #: 23RFP8815

Buyer: Rochelle Kenzy

Phone: (605) 773-8063

REQUEST FOR PROPOSAL FORM

FIRM NAME: _____ AUTHORIZED SIGNATURE: _____

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. General Information

1.1 Purpose of this Request for Proposal ("RFP")

The South Dakota Department of Education's Division of College, Career, and Student Success ("State") seeks a qualified vendor to provide professional services on behalf of the State of South Dakota ("Consultant") for the purpose of providing PBIS services as further specified in Section 2 below.

The Consultant will review all requirements of the RFP and provide a proposal by the deadline listed below. The Consultant will also provide supporting documentation on qualifications and experience to the State.

1.2 Schedule of Activities

RFP Publication	May 25, 2023
Deadline for Submission of Written Inquiries	June 1, 2023 by 5:00 PM CT
Responses to Consultant Questions	June 5, 2023
Proposal Submission Deadline	June 9, 2023 by 5:00 PM CT
Anticipated Award /Contract Negotiation	June 2023
Contract Start Date	July 1, 2023

1.3 Proposal Submission

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

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

An original of the proposal shall be submitted. In addition, the Consultant shall provide one (1) copy of their entire proposal, including all attachments, in Microsoft Word or PDF electronic format. Consultants shall enclose the electronic copy with their mailed response and may not send the electronically copy of their proposal via email.

All proposals must be signed, in ink, by an officer of the responder, legally authorized to bind the responder to the proposal, and sealed in the form intended by the respondent. Proposals that are not properly signed may be rejected. The sealed envelope must be marked with the appropriate RFP Number and Title. The words "Sealed Proposal Enclosed" must be prominently denoted on the outside of the shipping container. Proposals must be addressed and labeled as follows:

**REQUEST FOR PROPOSAL #23RFP8815
BUYER ROCHELLE KENZY
DEPARTMENT OF EDUCATION
800 GOVERNORS DRIVE
PIERRE SD 57501-2235**

Proposals may be modified or withdrawn by the Consultant prior to the established due date and time. No oral, telephonic, telegraphic or facsimile responses or modifications to proposals will be considered.

1.4 Certification and Qualification

By signing and submitting this proposal, the Consultant certifies that neither it nor its principals are 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 Consultant is unable to certify to any of the statements in this certification, the Consultant shall attach an explanation to their proposal.

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.

1.5 Non-Discrimination Statement

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

1.6 Consultant Inquiries

Consultants may make 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 sent to Rochelle Kenzy at Rochelle.Kenzy@state.sd.us with the subject line "RFP #23RFP8815".

The State will respond to Consultant's inquiries (if required) via e-mail. All Consultants will be informed of any inquiries and the State's response. Consultants 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. Consultants will be notified in the same manner as indicated above regarding any modifications to this RFP.

Consultant's Contacts: Consultant and their agents must direct all questions and comments regarding this RFP to the buyer of record as indicated above. Consultants and their agents may not contact any State of South Dakota employee other than the buyer of record regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension or exclusion from specific procurements. Consultants and their agents who have questions regarding this matter should contact the buyer of record.

1.7 Proprietary Information

The proposal of the successful Consultant(s) becomes public information as required by SDCL § 1-27 and § 5-18D-20. 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. **Consultants 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 and may be returned only at the State's option.

1.8 Length of Contract

July 1, 2023-June 30, 2024

The State reserves the right to extend any contract awarded as a result of this Request for Proposal (RFP) for additional five (5) years if it is deemed to be in the best interest of the State of South Dakota. The contract may be renewed at the initiative of the State, and if mutually agreed upon by the parties, for additional one (1) year terms.

1.9 Contract Terms

Any contract or agreement resulting from this RFP will include the State's standard terms and conditions as set forth in Exhibit A – Standard Contract Terms and Conditions and Exhibit D- Confidentiality Exhibit

1.10 Governing Law

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

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 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 Consultant certifies and agrees that the following information is correct:

The Consultant, 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 response submitted by the Consultant on this project and terminate any contract awarded based on the response. The successful Consultant 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,

1.13 Prohibition on Discrimination against Firearm-related Entity

In accordance with the State of South Dakota, Office of the Governor, Executive Order 2023-04, the following applies to any type of agreement by or on behalf of the State with a financial institution to provide financial services that involves the expenditure of one hundred thousand dollars (\$100,000) or more:

For contractors 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 discriminated against a firearm-related entity as defined by South Dakota Executive Order 2023-04. 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 bidder or offeror further agrees that falsely submitting this certification shall serve as cause for debarment from consideration of any state contract for a period not to exceed three years.

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 will result in the contract's termination if the noncompliance is not cured as provided for in Section 3 of Executive Order 2023-04. The successful bidder or offeror further agrees that its failure to cure any subsequently arising noncompliance shall serve as cause for suspension or debarment from consideration of any state contract pursuant to SDCL § 5-18D- 12.

2. Scope of Work

The Consultant shall:

MTSS/PBIS Coordinator

- 2.1 Facilitate and support the district-wide implementation of a Multi-Tiered System of Support (MTSS) to districts committed to the MTSS project according to the State MTSS manual and development of the annual MTSS project evaluation
 - 2.1.1 Build local capacity within each district to enable districts to sustain their system independently with minimal support from MTSS coordinators.
 - 2.1.2 Train district staff to independently gather and assess their data to make data-based decisions for all three tiers of their MTSS
 - 2.1.3 Train district staff in evidence-based literacy and instructional practices
 - 2.1.4 Provide trainings to school teams for school-wide, small group, and individual positive behavioral supports
 - 2.1.5 Facilitate data digs to discover root causes of student behavior and academic challenges
 - 2.1.6 Train school staff to preform data digs to ensure fidelity
- 2.2 Attend scheduled State MTSS team meetings and collaborate to identify the strengths and needs of each district.

- 2.2.1 Provide school/district data to State MTSS directors when requested.
- 2.2.2 Collaborate with other MTSS coordinators to create and deliver initial team trainings. Training materials used for the team trainings will be developed in collaboration with the other MTSS coordinators to ensure consistency.
- 2.3 Provide assistance to school and district teams in developing and implementing their action plans. A 3-5 year plan is to be developed during the summer team trainings. MTSS coordinators will ensure schools are following their plan and implementing with fidelity.
 - 2.3.1 Communicate frequently with assigned MTSS district staff to ensure implementation fidelity.
 - 2.3.2 Assist the school/district team to prepare a presentation for the rest of the school/district staff. The coordinator will assist the team in presenting the material.
 - 2.3.3 Attend school/district MTSS meetings based on each district's individual needs, and provide technical assistance (TA) accordingly
 - 2.3.4 Provide professional development activities as needed by MTSS districts to ensure fidelity of implementation (Data Analysis, new team trainings, coaching, behavior management, action plan development)
- 2.4 Advance personal skills by attending professional development as recommended by State MTSS directors
 - 2.4.1 Research evidence-based practices and bring information to the MTSS state level team as well as to the districts. Continue to gather information to help SD better their implementation plan for MTSS
- 2.5 Provide information to new districts interested in becoming an MTSS district.
 - 2.5.1 Assist interested district in looking at what they are currently doing to see what pieces they already have and where they will need to focus their efforts to establish an effective MTSS.
 - 2.5.2 Present on MTSS as requested by State MTSS directors

Agrees not to enter into contracts with the assigned schools/districts while under contract for MTSS activities required as listed above

3. Proposal Response

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

3.1 An original shall be submitted.

- 3.1.1 In addition, the Consultant shall provide one (1) copy of their entire proposal, including all attachments, in Microsoft Word or PDF electronic format. Consultants shall enclose the electronic copy with their mailed response and may not send the electronically copy of their proposal via email.

- 3.2 The proposal must be page numbered and should have an index and/or a table of contents referencing the appropriate page numbers.
- 3.3 All proposals must be organized and tabbed with labels for the following headings:
- 3.3.1 **RFP Form.** The State's Request for Proposal Form completed and signed.
 - 3.3.2 **Executive Summary.** The one- or two-page executive summary is to briefly describe the Consultant's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the Consultant. The reader should be able to determine the essence of the proposal by reading the executive summary. Proprietary information requests must be identified in this section.
 - 3.3.3 **Examples of Similar Work.** This section should include brief descriptions and work samples from three previous jobs of a similar nature that the agency has completed. Provide the following information related to at least three previous or current projects, performed by the Consultant's organization, which are similar to the requirements of this RFP. In addition, provide this information for any project that has been terminated, expired or not renewed in the past three years.
 - 3.3.3.1 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;
 - 3.3.3.2 Dates of the service/contract; and
 - 3.3.3.3 A brief, written description of the specific prior services performed and requirements thereof.
 - 3.3.4 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:
 - 3.3.4.1 A complete narrative of the Consultant's assessment of the work to be performed, the Consultant's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the Consultant's understanding of the desired overall performance expectations.
 - 3.3.4.2 A specific point-by-point response, in the order listed, to each Scope of Work requirement in Section 2 above. The response should identify each requirement being addressed as enumerated in the RFP.
 - 3.3.4.3 A clear description of any options or alternatives proposed.
 - 3.3.5 **Financial Statements.** The Consultant must submit a copy of their most recent audited financial statements. The Consultant may mark its financial statements as proprietary in accordance with Section 1 above.
 - 3.3.6 **South Dakota Substitute W9.** Complete the substitute W9 form attached herein as Exhibit B. Do not type a signature in the signature line. The signature must be handwritten and a copy attached to the RFP proposal.
 - 3.3.7 **Certification Relating to Prohibited Entity.** Complete the Contractor certification required by South Dakota executive order 2023-02 attached herein as Exhibit C.

4. Proposal Evaluation and Award

4.1 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:

- a. Cost and Reliability;
- b. Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
- c. Resources available to perform the work, including any specialized services or personnel, within the specified time limits for the project;
- d. Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
- e. Availability to the project locale;
- f. Familiarity with the project locale;
- g. Proposed project management techniques; and
- h. Ability and proven history in handling special project constraints.

4.2 The evaluators will evaluate and score the proposals according to the criteria and point values shown in Table 1 below.

Table 1. Proposal Content Evaluation and Score Criteria

Section	Points Possible	Score
Cost and Reliability	10	
Experience, Qualifications, and Approach	25	
Resources available to perform the work	15	
Record of Past Performance	20	
Availability to and familiarity with the project locale	5	
Proposed project management techniques	15	
Ability and proven history in handling special project constraints	10	
Maximum Total	100	

4.3 Experience and reliability of Consultant's organization and personnel are considered subjectively in the evaluation process. Therefore, the Consultant 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.

4.4 The qualifications of the personnel proposed by the Consultant to perform the requirements of this RFP, whether from the Consultant's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the Consultant should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.

4.5 The State reserves the right to reject any or all proposals, waive technicalities, and make awards as deemed to be in the best interest of the State of South Dakota. If it is deemed to be in the best interest of the State of South Dakota, the State may accept more than one proposal and divide the services covered by this RFP into more than one contract or Consultant.

4.6 **Discussions with Consultants.** An oral presentation by a Consultant 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 Consultant. If oral presentations are required,

they will be scheduled after the submission of proposals. Oral presentations will be made at the Consultant's expense.

- 4.7 Any Consultant that is a finalist may need to be prepared to have an onsite meeting. At that time, Consultant shall provide a series of live demonstrations for evaluation as well as make available key staff for interviews.
- 4.8 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 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.
- 4.9 **Award:** The State and the highest ranked Consultant will mutually discuss and refine the scope of work for the project and will negotiate terms, including compensation and performance schedule.

If the State and the highest ranked Consultant are unable for any reason to negotiate a contract, the State will, either orally or in writing, terminate negotiations with the Consultant. The State may then negotiate with the next highest ranked Consultant.

The negotiation process may continue through successive Consultants, according to the evaluation ranking, until an agreement is reached or the State terminates the contracting process.

5. Cost Proposal

- 5.1 The financial commitment required of the State is an important consideration. The proposed costs will be reviewed in conjunction with all other criteria. Costs will be evaluated to determine if all applicable cost components are clearly, concisely, and completely addressed by the Consultant. The costs must be reasonable, realistic, and include all possible costs.
- 5.2 The Consultant is strongly encouraged to identify the critical cost factors from the Scope of Work in Section 2 above and itemize as much as possible for these activities. The State expects a detailed budget submitted by the Consultant.
- 5.3 All invoices submitted through the duration of this contract are to be submitted in a consistent manner and include line-item costs per deliverable. All cost information shall be presented in a uniform manner.

EXHIBIT A – STANDARD CONTRACT TERMS AND CONDITIONS

Any contract or agreement resulting from this RFP will include the State's standard terms and conditions as listed below, along with any additional terms and conditions as negotiated by the parties:

1. The Consultant will perform those services described in the Work Plan, which will be attached to the contract as Exhibit A and incorporated by reference. The Consultant's response to this RFP shall be considered part of the Work Plan.
2. The services to be provided under the contract shall commence and terminate on mutually agreed upon dates. Terms for early termination shall be included in the agreement as negotiated by the parties.
3. The terms of the agreement shall state whether or not the Consultant will use State equipment, supplies or facilities. If the Consultant will use State equipment, supplies or facilities, the scope and conditions of such use will be clearly indicated in the agreement.
4. Unless otherwise negotiated and agreed upon by the parties, the State will make payment in compliance with the Prompt Payment Act, SDCL 5-26 for services provided under the contract.
5. The agreement shall indicate whether or not the State shall have the option to renew the agreement. If a renewal option is specified, the State shall have the option to renew the agreement (unless otherwise modified by a special contract term, condition, or specification), under the same terms and conditions, for one (1) year intervals. Notice of intent to renew shall be given by the State to the Consultant as mutually agreed upon prior to the end of the current contract term. If the notice of intent to renew is given, the Agreement shall renew unless terminated by either party pursuant to the Termination Provision of the Agreement.
6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:
 - a. Commercial General Liability Insurance:

The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 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.
 - b. Business Automobile Liability Insurance:

The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.
 - c. Worker's Compensation Insurance:

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.
 - d. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

The Consultant agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this

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

7. 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 _____, on behalf of the Consultant, 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.

8. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent or employee of the State of South Dakota. The Consultant will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.

9. Consultant agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

10. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery. Consultant's obligation under this paragraph shall only be to report the occurrence of any event to the State and to make any other report provided for by Consultant's duties or applicable law. Consultant'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 paragraph shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

11. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

12. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant is solely responsible for the performance of any subcontractor. The Consultant 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 Consultant 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.

13. This Agreement may not be assigned without the express prior written consent of the State. An assignment may not operate to relieve Consultant of any of its duties and obligations under this Agreement, nor may such assignment affect any remedies available to the State that may arise from any breach of the provisions of the Agreement, including but not limited to rights of setoff. Any attempted assignment, transfer or delegation in contravention of this paragraph shall be null and void. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

14. The Consultant 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 any software program, and all information contained therein provided to the State by the Consultant in connection with its 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 the Consultant 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.

15. The Consultant certifies that neither Consultant 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. The Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant 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. The Consultant further certifies that neither it nor its principals have, within a three (3) year period preceding the awarding of this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local transaction or contract or been convicted of a violation of federal or state antitrust statutes, embezzlement, theft, forgery, bribery, falsifications, destruction of records, making false statements, or receiving stolen property. Consultant further certifies that neither it nor its principals have, within a three (3) year period preceding this contract, had a federal, state, or local transaction terminated for cause or default.

16. The award of this Agreement to Consultant is not in any way an endorsement of Consultant or Consultant's services by the State and may not be so represented by Consultant in any advertising or publicity materials. Consultant agrees to submit to the State all advertising, sales promotion, and other publicity relating to this Agreement wherein the State's name is mentioned or language is used from which the connection of the State's name therewith may, in the State's judgment, be inferred or implied. Consultant further agrees not to publish or use such advertising, sales promotion, or publicity without the prior written consent of the State. Consultant may not in any way contract on behalf of or in the name of the State, nor may Consultant release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Agreement without obtaining the prior written approval of the State.

17. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Each invoice must reference the Agreement number and provide detailed information in a format as requested by the State. Payment will be made consistent with SDCL Ch. 5-26. Consultant acknowledges that it would be difficult or impracticable for the State to provide the notice of disagreement provided for by SDCL 5-26-5 within the ten days provided by that section. Accordingly, Consultant hereby waives the application of that section to this Agreement.

18. The payment of any invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. The Consultant shall promptly, but in all cases within thirty days of notification, pay to the State the full amount of any erroneous payment or overpayment upon notice of an erroneous payment or overpayment to which Consultant is not entitled. If Consultant fails to make such a timely refund, the State shall charge Consultant one percent (1%) per month on the amount due until paid in full.

19. The State is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

20. Amounts due to the State by Consultant, including but not limited to damages, or claims for damages, may be deducted or set-off by the State from any money payable to Consultant pursuant to this Agreement.

21. Consultant shall maintain documentation for all work performed or money received under this Agreement for a period of five (5) full years following completion of this Agreement. This documentation may be subject to audit, at any reasonable time and upon reasonable notice, by State or federal authorities.

22. Claims for payment must be submitted on an invoice within forty-five (45) days of the date upon which the Consultant knew or should have known of the claim or forty-five (45) days after the termination or expiration of this Agreement, whichever is earlier. If an invoice cannot be submitted within forty-five days, then written notice and an explanation of need must be provided to the State for consideration of an extension, which shall be in the sole discretion of the State. Failure of the Consultant to abide by this paragraph shall relieve the State of any obligation to pay for such claim.

23. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant 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 such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

24. 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. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

25. 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. Consultant 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, including but not limited to posting this Agreement on the State's website. If work assignment performed in the course of this Agreement required security requirements or clearance, the Consultant will be required to undergo investigation.

26. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

27. 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.

28. 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.

29. 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.

30. No remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each and every remedy may be cumulative and may be in addition to every other remedy given under this agreement, not and hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

31. Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under this Agreement may not be deemed a waiver of any such

right, power, or privilege under this Agreement. Any waivers granted by the State for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. The State's pursuit or non-pursuit of a remedy under this Agreement for Consultant's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that the State may have at law or equity for any other occurrence of the same or similar breach, nor prevent the State from pursuing such remedy.

32. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by the State of any immunities from suit or from liability that the State may have by operation of law.

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

34. Agreement, nor may such assignment affect any remedies available to the State that may arise from any breach of the provisions of the Agreement, including but not limited to rights of setoff. Any attempted assignment, transfer or delegation in contravention of this paragraph shall be null and void. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

35. Pursuant to Executive Order 2022-02, Consultant certifies and agrees that all actions taken in performance with this agreement will not promote inherently divisive concepts or direct or compel any department employees, students, teachers, or school district employees to personally affirm, adopt, or adhere to inherently divisive concepts. "Inherently divisive concepts," means advancing any ideas in violation of the Civil Rights Act of 1964, including, but not limited to, any of the following concepts:

- (i) that one race, color, religion, sex, ethnicity, or national origin is inherently superior to another race, color, religion, sex, ethnicity, or national origin;
- (ii) that an individual should be discriminated against or adversely treated solely or partly on the basis of his or her race, color, religion, sex, ethnicity, or national origin,
- (iii) that an individual's moral character is inherently determined by his or her race, color, religion, sex, ethnicity, or national origin,
- (iv) that an individual, by virtue of the individual's race, color, religion, sex, ethnicity, or national origin, is inherently racist, sexist, or oppressive, whether consciously or subconsciously,
- (v) that an individual, by virtue of the individual's race, color, religion, sex, ethnicity, or national origin, is responsible for actions committed in the past by other members of the same race, color, religion, sex, ethnicity, or national origin, or
- (vi) that meritocracy or traits, such as a strong work ethic, are racist or sexist, or were created by a particular race or sex to oppress members of another race or sex.

In the event of Consultant's noncompliance with the requirements of this section may be grounds for termination of this agreement. Consultant shall include the provisions of this section in each subcontract, so that the provisions shall be binding upon each subcontractor.