

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

Capacity Development for Public Water and Wastewater Systems
(Proposed Contract Period February 1, 2024, through January 31, 2027)
PROPOSALS ARE DUE NO LATER THAN November 17, 2023, at 5:00 p.m. CT

RFP #: 23RFP9188 BUYER: South Dakota Department of
Agriculture and Natural Resources (DANR)

EMAIL: Tina.McFarling@state.sd.us

READ CAREFULLY

FIRM NAME: _____ AUTHORIZED SIGNATURE: _____

ADDRESS: _____ TYPE OR PRINT NAME: _____

CITY/STATE: _____ TELEPHONE NO: _____

ZIP (9 DIGITS): _____ FAX NO: _____

FEDERAL TAX ID#: _____ E-MAIL: _____

PRIMARY CONTACT INFORMATION

CONTACT NAME: _____ TELEPHONE NO: _____

FAX NO: _____ E-MAIL: _____

1.0 GENERAL INFORMATION

1.1 Standard Contract Terms and Conditions

Any contract or agreement resulting from this RFP will include the DANR standard contract terms listed in Appendix A, along with any additional contract terms as negotiated by the parties. As part of the negotiation process the contract terms listed in Appendix A may be altered or deleted. The Offeror should indicate in their response any issues they have with specific contract terms. If the Offeror does not indicate that there are any issues with any contract terms, DANR will assume those terms are acceptable to the Offeror.

1.2 Purpose of Request For Proposal (RFP)

1.2.1 Background: The South Dakota Department of Agriculture and Natural Resources (DANR) is a state government agency. DANR provides staff resources to the Board of Water and Natural Resources (the "Board") which oversees the Clean Water and Drinking Water State Revolving Fund (SRF) programs in South Dakota. South Dakota receives an annual Drinking Water SRF Capitalization grant and a Clean Water SRF Capitalization grant. The Drinking Water SRF Program includes the option to utilize a Local Assistance Set-aside for public water systems as part of the capacity development strategy. The Board is allowed to use up to ten percent of their annual capitalization grant to provide for local assistance set-aside activity. The Clean Water SRF Program includes the option to utilize a Small System Technical Assistance Set-aside for publicly owned wastewater systems. The Board has chosen to use the Clean Water SRF set-aside funds for the improvement of financial or managerial capacity for small publicly owned wastewater systems.

DANR is seeking to select the most qualified contractor(s) whose submittal demonstrates the background, experience, capability and contains what is considered the best approach to provide the requested capacity development activities to assist public water and wastewater systems to operate in a cost efficient and effective manner as set forth in the RFP Objective section below.

Work completed for the water system will be paid from the Drinking Water capitalization grant local assistance set-aside and work done on the wastewater system will be paid from the Clean Water SRF capitalization grant small system technical assistance set-aside. This RFP is for work to be completed during calendar years 2024 through 2026. The Board reserves the right to renew the contract to be awarded to the successful respondent for up to three additional calendar years if the Board considers any contract price adjustment to be reasonable and justified. The scope of the technical, managerial, or financial capacity assistance activities must be approved by the South Dakota Board of Water and Natural Resources and the U.S. Environmental Protection Agency before the capacity assistance contract is awarded or renewed.

1.2.2 Goals and Objectives: The primary objective of the RFP is to seek proposals from qualified contractors to provide assistance to public water and wastewater systems in South Dakota as part of capacity development strategy. Capacity development is a process to gain and maintain adequate technical, managerial and financial capacity for the safe operation and upkeep of public water and wastewater systems. To assist public systems, the respondent will need to conduct on-site visits to review deficiencies in the most recent capacity self-assessment form(s), identify any additional technical, managerial, or financial capacity deficiencies from the on-site visit(s), be able to provide board training, review rate structures, provide assistance in water loss, vulnerability assessments, emergency response

plans, chemical safety plans, financial training, policy, procedures, record keeping, and any additional approved capacity trainings. A detailed scope of work is outlined in Appendix A – Scope of Work.

1.2.3 Available Documents: The use of the set-aside funds is addressed in the 2023 Drinking Water SRF Intended Use Plan and 2023 Clean Water SRF Intended Use Plan as adopted by the Board of Water and Natural Resources. Both programs Intended Use Plans may be accessed at:

<https://danr.sd.gov/Funding/EnviromentalFunding/docs/2023%20DW%20IUP.pdf>

<https://danr.sd.gov/Funding/EnviromentalFunding/docs/2023%20CW%20IUP.pdf>

1.3 Issuing Office and RFP Reference Number

The DANR is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota, DANR. The reference number for the transaction is RFP# 23RFP9188. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

1.4 Scheduling of Activities (Subject to Change)

The following is a list of activities and estimated timelines relevant to the RFP process:

- RFP advertisement – October 2, 2023
- RFP Questions must be submitted by 3 p.m. CT – October 27, 2023
 - **All final responses to questions will be posted by 5 p.m. CT on November 3, 2023
- RFP submittal due by 5 p.m. CST – November 17, 2023
- Contractor selection – January 4, 2023
- Contract execution – January 31, 2023

1.5 Submitting Your Proposal

All proposals must be completed and received by SD DANR 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 and three identical copies of the proposal shall be submitted along with the signed transmittal letter. Also, Offerors are required to provide an electronic copy of their response on a flash drive. The electronic copy should be provided in MS WORD or in PDF format.

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 #23RFP9188 PROPOSAL TITLE Capacity Development for Public Water and Wastewater Systems

DUE: November 17, 2023

BUYER: South Dakota Department of Agriculture and Natural Resources

Attention: Tina McFarling

Address: 523 E. Capitol Avenue

Pierre, SD 57501-3182

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

1.6 Certification Regarding Department, 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 Consultants 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 regards to race, color, creed, religion, age, sex, ancestry, national origin or disability.

1.8 Modification or Withdrawal of Proposals

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

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

1.9 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 Board. All materials submitted become the property of the State of South Dakota and may be returned only at the Board's option.

1.10 Presentations/Demonstrations

Any presentation or demonstration by an Offeror to clarify a proposal may be required at the sole discretion of the Board. However, the Board may award a contract based on the initial proposals received without a presentation or demonstration by the Offeror. If presentations and/or demonstrations are required, they will be scheduled after the submission of proposals. Presentations and demonstrations will be made at the Offeror's expense.

1.11 Discussions

At the Board's discretion the Offeror may or may not be invited to have discussions with the Board. The discussions can be before or after the RFP has been submitted. Discussions will be made at the Offeror's expense.

1.12 RESTRICTION OF BOYCOTT OF ISRAEL

For contractors, Consultants, 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 Consultants, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any Consultant, 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.

1.13 RESTRICTION OF PROHIBITED ENTITY

In accordance with the South Dakota Codified Law 5-18A, any bidder or offeror submitting a bid or offer in response to this document certifies and agrees that the following information is correct:

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

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

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

1.14 CERTIFICATION OF NO STATE LEGISLATOR INTEREST

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

2.0 FORMAT OF SUBMISSION

All proposals should be prepared simply and economically and provide a direct, concise explanation of the Offeror's proposal and qualifications. Elaborate brochures, sales literature and other presentations unnecessary to a complete and effective proposal are not desired.

Offerors are required to provide an electronic copy of their response. The electronic copy should be provided in MS WORD or in PDF format, except for the project plan. The submission must be delivered as indicated in Section 1.5 of this document.

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.

Offerors and their agents (including subcontractors, employees, Consultants, or anyone else acting on their behalf) must direct all their questions or comments regarding the RFP, the evaluation, etc. to SD DANR, Attn: Capacity Development for Public Water and Wastewater Systems RFP #23RFP9188 Tina McFarling. Offerors and their agents may not contact any state employee other than the SD DANR office at Tina.McFarling@state.sd.us 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 SD DANR office at Tina.McFarling@state.sd.us.

The proposal should be page numbered and should have an index and/or a table of contents referencing the appropriate page number. Each of the sections listed below should be tabbed.

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

Proposals should be prepared using the following headings, and in the order that they are presented below. Please reference the section for details on what should be included in your proposal.

2.1 Executive Summary

A one- or two-page executive summary that briefly describes 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 should be identified in this section.

2.2 Transmittal Letter

Each respondent shall prepare a transmittal letter summarizing the principal points in the respondent's proposal. The letter must be signed by the representative who would serve as the primary contact for this project and include that person's address, telephone number, fax number, and email address.

2.3 Experience

Describe the respondent's experience and capabilities as well as any proposed subcontractor's experience and capabilities. Emphasis should be placed on knowledge of the state's public water and wastewater systems as well as capabilities relating to the requirements of the Safe Drinking Water Act, Clean Water Act, South Dakota laws and rules pertaining to the treatment and distribution of water for domestic use, and South Dakota laws and rules pertaining to treatment and collection of wastewater. In addition, the proposal should state the respondent's knowledge of the operation and maintenance of drinking water and wastewater treatment, distribution, and collection systems. Knowledge of generally accepted accounting practices for utility enterprise funds is also required and should be documented.

2.4 Proposed Approach

Describe the activities proposed to accomplish the project's objectives as outlined in the Work Plan as Exhibit A of the draft contract provisions provided as Attachment A and any history of performing similar project activities.

2.5 Project Team

Identify the members of your firm as well as any proposed subcontractors that will participate in the completion of this project. The use of a subcontractor(s) to increase the effectiveness of the respondent's proposal is allowable. A joint venture is also allowed but one firm shall be designated as the lead agency for the purposes of communication, compensation, and contract execution.

2.6 Compensation

Provide a detailed description of the proposed compensation by the respondent's team, to include any proposed subcontractors. The compensation may be less than but shall not exceed the maximum available amount of \$125,000 per calendar year.

2.7 Respondent's must also provide the following information:

2.7.1 A detailed description of their specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;

2.7.2 A detailed description of their project management techniques and resources available to perform the work, including any specialized services, within the specified time limits for the project;

2.7.3 A detailed record of past performance which must include price and cost data from previous projects, a statement of its quality of work, a demonstration of its ability to meet schedules, demonstration cost control measures, and contract administration experience;

2.7.4 A detailed description of their availability to travel to South Dakota's public water and wastewater systems;

2.7.5 A detailed description of their familiarity with South Dakota's public drinking water and wastewater systems;

2.7.6 A detailed description of their overall ability and proven history in handling special project constraints for public drinking water and wastewater systems.

3.0 COST PROPOSAL

Offerors may submit multiple costs in their proposals. All costs related to the provision of the required services must be included in each cost proposal offered.

Costs will be evaluated as part of the technical proposal.

4.0 PROPOSAL EVALUATION AND AWARD PROCESS

4.1 Proposals will be evaluated according to the following criteria and points:

4.1.2 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements (25 points);

4.1.3 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration (10 points);

4.1.4 Availability to travel to South Dakota's public water and wastewater systems (10 points);

4.1.5 Familiarity with South Dakota's public drinking water and wastewater systems (10 points);

4.1.6 Overall ability and proven history in handling special project constraints for public drinking water and wastewater systems (15 points);

4.1.7 Project management techniques and resources available to perform the work, including any specialized services, within the specified time limits for the project (15 points); and

4.1.8 Compensation (15 points).

This is not a competitive bidding proposal. DANR personnel will review and rank the submitted proposals and then make a recommendation to the Board. At the discretion of the Board, respondents may be invited to make oral presentations to the Board. The Board reserves the right to hire more than one contractor if the Board deems doing so would be in the best interest of the State of South Dakota.

Proposals which, in the judgment of DANR, fail to meet the requirements of this RFP or which are in any way incomplete, conditional, or which contain additions or deletions not called for, alterations or other irregularities, or in which errors occur, may be rejected at DANR's discretion. The DANR reserves the right to waive any requirements of or informalities in any proposal or to reject any or all proposals if it determines that it is in DANR's best interest to do so.

5.0 TERMS AND CONDITIONS

5.1 DANR will make a recommendation to the Board on which contractor to hire. The Board will make the final determination regarding the selection of the contractor.

5.2 The Board reserves the right to reject any and all proposals.

5.3 The Board may combine portions of different proposals if the Board deems this action to be warranted.

5.4 The Board may negotiate the compensation and hire the successful respondent subject to the terms and conditions specified by the Board.

5.5 If the Board is not able to successfully negotiate a contract with the highest ranked respondent, negotiations shall cease. The Board shall then begin negotiations with the second highest ranked respondent. This process may continue until negotiations are successful.

5.6 The successful respondent may not subcontract with any firm not previously identified in its RFP without the prior, written consent of the Board.

5.7 All respondents will be notified in writing of the selection.

5.8 Neither the Board nor DANR shall be liable for any expenses incurred by any respondent in preparing or presenting the proposal.

Offeror's name: _____

APPENDIX A – Scope of Services

1.1 Scope of Work

DRINKING WATER CAPACITY ASSESSMENT WORK PLAN

WORK OBJECTIVES

- A) Consultant field staff in the State of South Dakota will meet with the Capacity Assessment Coordinator and other staff of the Department of Agriculture and Natural Resources (DANR) on a quarterly basis to review drinking water capacity assessments to determine the extent of any deficiencies, possible noncompliance issues or additional technical assistance for selected systems.
- B) The Consultant's staff will contact all systems identified by DANR and arrange for an on-site visit to review the status of the deficiencies identified in the most recent capacity self-assessment form, submitted funding application, or system identified as needing additional technical assistance during a DANR inspection.
- C) While on the on-site visit, the consultant's staff will review the deficiencies identified, complete the technical assistance identified, and discuss possible additional technical assistance that should be done for the system to address any additional deficiencies identified.
- D) The consultant's staff will gather information relating to the deficiencies identified and any additional deficiencies identified by the on-site visit prepare a Capacity Report to DANR outlining the technical assistance that the consultant has provided and/or additional technical assistance identified. If approved by DANR, the consultant will conduct additional technical assistance for the system.
- E) The consultant's staff will update the Capacity Report to DANR once the additional technical assistance has been completed. DANR will determine based on the report if any follow-up is necessary to include additional on-site technical assistance.

ADDITIONAL ON-SITE TECHNICAL ASSISTANCE

Board Training

Review and conduct rate studies.

Create a Chemical Safety Plan and provide training for staff in the safe handling

Assist the system with water loss studies

Assist the system with the VA/ERP

Well Assessments

Assist the Finance Officer prepare for audits

Assist with the review and rewrite of policies and procedures

Assist the community with logs for maintenance and repair of the system

Provide guidance on record management

Provide one-on-one Finance Officer training

Develop Job Descriptions

Develop Flushing Plans

Develop meter testing and replacement plans

REPORTING

The Consultant will file a written report to the Capacity Assessment Coordinator of the South Dakota Department of Agriculture and Natural Resources on a quarterly basis. This report will include the names and contact information of the systems contacted, deficiencies identified prior to and during the initial on-site visit and a breakdown of technical assistance completed.

WASTEWATER CAPACITY ASSESSMENT WORK PLAN

WORK OBJECTIVES

- A) The Consultant will contact systems identified by the Environmental Funding Program staff and determine a course of action to address capacity deficiencies identified, e.g. arrange for an on-site visit, telephone consultations, email exchanges, etc.
- B) Technical assistance will be of a financial and managerial nature and will include, but not be limited to, accounting principles, rate setting assistance and board training.
- C) The Consultant will gather information related to the deficiencies and prepare a plan of action for Environmental Funding Program staff review and approval. Once approved, the Consultant will present the plan of action to the system.
- D) The Consultant will keep Environmental Funding Program staff informed of the status of the plan of action and arrange for on-site technical assistance follow-ups, if necessary.

REPORTING

Upon completion, the Consultant will submit a final plan of action report to the Capacity Assessment Coordinator of the South Dakota Department of Agriculture and Natural Resources. The plan will include the system name, system contacts, and deficiencies, corrective actions taken, and recorded hours for each of the Consultant's staff assigned.

APPENDIX B – Contract Terms and Conditions

STATE OF SOUTH DAKOTA Consultant Contract for Services Between

State of South Dakota
Board of Water and Natural Resources
523 E. Capitol Avenue
Pierre, SD 57501-3182

Referred to as Consultant

Referred to as State

The State hereby enters into this agreement (the “Agreement” hereinafter) for services with the Consultant. While performing services hereunder, Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

A. STANDARD PROVISIONS

1. CONSULTANT

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

2. PERIOD OF PERFORMANCE OF THIS AGREEMENT

This agreement shall be effective on February 1, 2024 and will end on January 31, 2027, unless sooner terminated pursuant to the terms hereof. The State in its sole discretion may renew the Agreement under the same terms and conditions for up to one (1) additional three-year period. Notice of intent to renew shall be given by the State to the Consultant in writing prior to a term’s expiration as provided in the Agreement. If notice of intent to renew is given, the Agreement shall renew unless terminated by either party pursuant to the Termination Provision of the Agreement.

3. 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 Tina McFarling on behalf of the State, and by and to _____, 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.

4. PROVISIONS

The Purpose of this Consultant Contract is to:

- A. Provide assistance to public water and wastewater systems in South Dakota as part of capacity development strategy. Capacity development is a process to gain and maintain adequate technical, managerial and financial

capacity for the safe operation and upkeep of public water and wastewater systems. To assist public systems, the Consultant will need to conduct on-site visits to review deficiencies in the most recent capacity self-assessment form(s), identify any additional technical, managerial, or financial capacity deficiencies from the on-site visit(s), be able to provide board training, review rate structures, provide assistance in water loss, vulnerability assessments, emergency response plans, chemical safety plans, financial training, policy, procedures, record keeping, and any additional approved capacity trainings.

The Consultant agrees to perform the following services:

- A. The Consultant will perform those activities described in the Scope of Work attached hereto as Attachment A and incorporated herein.

The Consultant further agrees, represents, and warrants that:

- A. The Consultant will not use state equipment, supplies or facilities.
- B. The State will not pay Consultant expenses as a separate item.
- C. The TOTAL CONTRACT AMOUNT will not exceed \$_____.

5. BILLING AND PAYMENT

The State will make payment for services upon satisfactory completion of the services. Consultant agrees to submit an itemized invoice for services quarterly, to be received by the State no later than the first of the month in the months of January, April, July, and October. Consultant agrees to submit a final itemized invoice within thirty (30) days of the Agreement end date to receive payment for completed services. As used herein, the term "end date" shall include the completion of any services pursuant to the Agreement, any extension period, or early termination of the Agreement. If a final itemized invoice cannot be submitted in thirty (30) days, then a written request for extension of time and explanation must be provided to the State.

Payment will be made consistent with SDCL ch. 5-26, as such, payment will be made within forty-five (45) days of the receipt of an itemized invoice submitted by the Consultant with a signed state voucher. The 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 for by that section. Accordingly, Consultant hereby agrees that the State shall have thirty (30) days to provide the requisite notice of disagreement

6. OVERPAYMENT

All payments to the Consultant by the State are subject to site review and audit as prescribed and carried out by the State. Any overpayment of this Agreement shall be returned to the State within thirty (30) days after written notification to the Consultant

7. LICENSING AND STANDARD COMPLIANCE

The Consultant agrees to comply in full with all laws, regulations, ordinances, guidelines, permits, requirements and other standards applicable to providing services under this Agreement, promulgated by any federal, state, tribal, or local government, and will be solely responsible for obtaining current information regarding the foregoing.

8. TERMINATION

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 for cause 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. Upon termination of this Agreement in all other circumstances, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

In the event this Agreement is to be terminated by the State pursuant to Paragraph 9 (FUNDING), the Agreement may be terminated by the State upon five (5) business days written notice.

9. SURVIVAL FOLLOWING TERMINATION:

Any terms of this Agreement that would, by their nature or through the express terms of this Agreement, survive the expiration or termination of this Agreement shall so survive including but not limited to the terms of sections 12, 18 and 26.

10. FUNDING

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, 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.

11. ASSIGNMENT AND AMENDMENT

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

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

13. MERGER

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.

14. 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.

15. THIRD PARTY BENEFICIARIES

This Agreement is intended only to govern the rights and interests 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.

16. SUBCONTRACTORS

The Consultant may not use subcontractors to perform the services described herein without express prior written consent from the State.

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. The State, at its option, may require the vetting of any subcontractors. The Consultant is required to assist in this process as needed.

17. STATE'S RIGHT TO REJECT

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

18. INDEMNIFICATION

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

19. INSURANCE

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. 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 listed below. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal

of a 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.

A. Commercial General Liability Insurance:

Consultant 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:

Consultant 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.

C. Worker's Compensation Insurance:

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

20. CERTIFICATIONS

A. COMPLIANCE WITH EXECUTIVE ORDER 2020-01:

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

B. COMPLIANCE WITH SDCL ch 5-18A:

Contractor certifies and agrees that the following information is correct:

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

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the

purchasing agency to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response, and further would constitute cause to suspend and debar a business under SDCL § 5-18D-12.

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

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

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

D. CERTIFICATION OF NO STATE LEGISLATOR INTEREST:

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

21. REPORTING

Consultant 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 Consultant, or the State of South Dakota or its officers, agents or employees to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant'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. 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 section 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.

22. 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 other causes beyond the party's reasonable control. Provided, however, that in order to be excused from delay or failure to perform, the party must act diligently to remedy the cause of such delay or failure and must give notice to the other party as provided in this Agreement as soon as reasonably possible of the length and cause of the delay in performance.

23. DILIGENCE AND SKILL

A. In the performance of these services and providing the deliverables under the Agreement, Consultant, and its

employees shall exercise the degree of skill and care consistent with customarily accepted practices and procedures for the performance of the type of services required. The Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services and deliverables furnished by the Consultant and any subcontractors, if applicable, under this Agreement.

B. Consultant represents and warrants that:

- i. It shall give high priority to the performance of the services; and
- ii. The services shall be performed in a timely manner.

C. It shall be the duty of the Consultant to assure that its services and deliverables are technically sound and in conformance with all pertinent technical codes and standards.

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

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

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

24. THIRD PARTY RIGHTS

The Consultant represents and warrants that it has the full power and authority to grant the rights described in this Agreement without violating any rights of any third party, and that there is currently no actual or, to Consultant's knowledge, threatened suit by any such third party based on an alleged violation of such rights by Consultant. The Consultant further represents and warrants that the person executing this Agreement for Consultant has actual authority to bind Consultant to each and every term, condition and obligation to this Agreement, and that all requirements of Consultant have been fulfilled to provide such actual authority.

25. COMPLIANCE WITH FEDERAL STATE REVOLVING FUND PROVISIONS

- A. The Consultant agrees to provide services in compliance with the Americans with Disabilities Act of 1990.
- B. The Consultant agrees to provide the state with their Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) status as well as the MBE/WBE status and agreement amounts of all subcontractors.

26. SOVEREIGN IMMUNITY:

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

27. 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.

B. AUTHORIZED SIGNATURES:

State

Consultant

(Signature)

(Signature)

BY: Jerry Soholt

BY: _____
(Name)

Board Chair

(Title)

DATE: _____

(Consultant)