

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

**Collections Management System**  
**PROPOSALS DEADLINE: April 12, 2024 by 5:00 PM CT**

RFP #: 24RFP9900

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: \_\_\_\_\_

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**PRIMARY CONTACT INFORMATION**

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

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

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## 1. General Information

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

The South Dakota Department of Education's Division of History ("State") seeks a qualified vendor to provide professional services on behalf of the State of South Dakota ("Consultant") for the purpose of artifact organization within the Museum of the South Dakota State Historical Society 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 Letter of Intent

All interested Consultants may submit a Letter of Intent to respond to this RFP.

The Letter of Intent must be received by the State no later than March 22, 2024 at 5:00 PM CT. The State will receive letters of intent by email. The Letter of Intent must be submitted to Rochelle Kenzy via email at Rochelle.Kenzy@state.sd.us. Please place the following in the subject line of your email: "Letter of Intent for RFP 24RFP9900".

### 1.3 Schedule of Activities

RFP Publication	March 15, 2024
Letter of Intent to Respond Due	March 22, 2024
Deadline for Submission of Written Inquiries	March 29, 2024 by 5:00 PM CT
Responses to Consultant Questions	April 5, 2024
<b>Proposal Submission Deadline</b>	<b>April 12 by 5:00 PM CT</b>
Oral proposals/discussions (if required)	April/May 2024
Anticipated Award /Contract Negotiation	May 2024
<b>Contract Start Date</b>	<b>June 1, 2024</b>

### 1.4 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 and two (2) copies 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 #24RFP9900  
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.

#### **1.5 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.

#### **1.6 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.

#### **1.7 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 #24RFP9900".

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.

#### **1.8 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.

#### 1.9 Length of Contract

June 1, 2024 to June 1, 2028

The State reserves the right to extend any contract awarded as a result of this Request for Proposal (RFP) for additional six (6) 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.

#### 1.10 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, Exhibit D – IT Standard Contract Terms, Exhibit E – Security Acknowledgment Form, and Exhibit F – Information Technology Security Policy. As part of the negotiation process, the IT Standard Contract Terms listed in Exhibit D may be altered or deleted.

The Consultant must indicate in their response any issues they have with specific contract terms if the Consultant does not indicate that there are any issues with any contract terms then the State will assume those terms are acceptable to the Consultant.

#### 1.11 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.

#### 1.12 Web Content Accessibility Guideline

If applicable the Consultant's application is required to conform to the Web Content Accessibility Guidelines 2.0.

In addition, any website must meet the Web standards listed in this RFP and as found in the following:

[https://www.sd.gov/bit?id=bit\\_standards\\_web](https://www.sd.gov/bit?id=bit_standards_web)

[https://www.sd.gov/bit?id=bit\\_standards\\_vendor\\_client\\_sec\\_req](https://www.sd.gov/bit?id=bit_standards_vendor_client_sec_req)

#### 1.13 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.

#### 1.14 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 be cause to suspend and debar a business under SDCL § 5-18D-12.

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

#### 1.15 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.

#### **1.16 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. Scope of Work**

The Consultant shall:

### **2.1 Transfer all data from current Collection Management System (CMS).**

- 2.1.1 This includes, but is not limited to, transferring images of artifacts, documentation of artifacts, any associated lists or search terms, donor information, and more.
- 2.1.2 This also includes regulating capitalization, punctuation, and more to make the new CMS uniform for use.

### **2.2 The CMS should have the ability to do the following:**

- 2.2.1 Store and show all documentation of an artifact, including condition reports, locations, etc.
- 2.2.2 Keep track of people involved with the artifacts, including donors, volunteers, research-related people, etc.
- 2.2.3 Must keep track of incoming and outgoing loans, deaccessions, and movements of artifacts within the museum.
- 2.2.4 Must have the ability to show images of artifacts and keep scanned documents attached to artifacts.
- 2.2.5 Must be searchable, have the ability for customized searches, and be able to save searches for future use.
- 2.2.6 Must have no limit to the number of records possible in the CMS.
- 2.2.7 Must have easily customizable reports that can be printed or saved in other formats (pdf, Excel and Word doc).

### **2.3 Give unlimited training and support for the use of the CMS.**

- 2.3.1 Be available for questions, requests, concerns, and help as needed.

### **2.4 CMS should be accessible via the latest versions of the browsers (Chrome, Edge, Firefox) and available for all types of user access.**

- 2.4.1 System should have capabilities to make the data available for potential future public-facing online use.

2.5 Have and share with the State a SOC 2 Type II Certified Framework or better when dealing with data that includes potential personal information.

2.6 Must be willing to work with the South Dakota Bureau of Information and Telecommunications for integration purposes.

2.7 Hosting and Data Access Requirement

2.7.1 The contract doubles as an agreement for the State to own the data tables and is able to manipulate data, run reports as needed, pull code tables, access raw data, and develop dashboards as needed through Microsoft Power BI, ESRI, Tableau and associated platforms.

2.8 Single Sign-On Requirements

2.8.1 As part of the State's Identity and Access Management (IAM) strategy, the proposed solution will need to integrate with the State of South Dakota's standard identity management service single sign-on (SSO) which enables custom control of how citizens and state employees sign up, sign in, and manage their profiles.

The SSO supports two industry standard protocols: OpenID Connect and OAuth 2.0 (preferred). This identity management will handle password recovery and multi-factor authentication (MFA). MFA is required for all application Administrators and may be required for other users. Microsoft's official documentation on the identity provider the State has implemented can be found at: 1) <https://docs.microsoft.com/en-us/azure/active-directory-b2c/> and <https://docs.microsoft.com/en-us/azure/active-directory-b2c/integrate-with-app-code-samples> for public/citizens (Azure B2C), 2) <https://learn.microsoft.com/en-us/azure/active-directory/architecture/auth-oauth2> and <https://learn.microsoft.com/en-us/azure/active-directory/develop/v2-protocols-oidc> for state employees, businesses, partners, providers, etc. (Azure Active Directory).

If the Consultant is not able to fulfill this identity management standard, they will be excluded from the list.

2.9 Onboarding/Provisioning Users

2.9.1 The Consultant must describe how new users are onboarded/provisioned in the system using an external identity provider and provide an Identity/SSO/Login Design Document.

2.10 Interfaces and Integration

2.10.1 The Consultant must describe how the system can adapt to business necessary interfaces using widely adopted open APIs and standards. Additionally, the State expects that the Consultant will make available/expose software services and publish documentation for those software services that would enable third party developers to interface other business applications. A detailed description of system capability shall be included in the proposal.

2.11 Solution Diagram

2.11.1 The Consultant must provide a solution diagram providing specific details of how the entire solution will meet the requirements of the RFP. This will include integration with the State's infrastructure, existing systems that will integrate with the proposed solution, how data would flow between systems, the technology stack of the solution including any dependencies, and include user onboarding/provision, SSO, etc.

2.12 Additional Technology Project Deliverables/Approach/Methodology

2.12.1 If the State will be hosting the solution in a cloud environment, the offeror will provide a system diagram. The diagram must be detailed enough that the State can understand the

components, the system flow, and system requirements. It is preferred that the diagram be provided as a separate document or attachment. The file must be named “(Your Name) System Diagram and Requirements”. If the Consultant elects to make the diagram part of the proposal, then the location of the diagram must be clearly indicated in the Table of Contents.

- 2.12.2 If the Consultant is hosting the solution in a cloud environment, provide a diagram giving an overview of the proposed system. It is preferred that this diagram be provided as a separate document or attachment. The file must be named “(Your Name) Hosted System Diagram”. If the Consultant elects to make the diagram part of the proposal, then the location of the diagram must be clearly indicated in the Table of Contents.
- 2.12.3 The Consultant should state whether its proposed solution will operate in a virtualized environment. Consultant also should identify and describe all differences, restrictions or limitations of its proposed solution with respect to operation, licensing, support, certification, warranties, and any other details that may impact its proposed solution when hosted in a virtualized environment. This information must be included with the solution diagram for the Consultant hosted solution.
- 2.12.4 This section identifies tasks and deliverables of the project as described in this Section 2. The selected Consultant is responsible for providing the required deliverables. These deliverables will be the basis against which the Consultant’s performance will be evaluated.
- 2.12.5 The Consultant is required to include a test system for its application. This test system will be used at the discretion of BIT. All resource costs associated with keeping the test system available must be borne by the project owner or the Consultant. Any licensing costs for the test system must be included with the costs.
- 2.12.6 At BIT’s discretion, any code changes made by the Consultant, either during this project or thereafter, will be placed in the above test system first. It is at BIT’s discretion if the code changes are applied by BIT or the Consultant. If the code testing delays a project’s timeline, a change management process should be followed, and the State will not be charged for this project change. If the test and production systems are to be hosted by the State, the schedule for the testing of the code changes is to be decided by BIT. Testing of emergency code changes will be scheduled by BIT based on the severity and resource availability.
- 2.12.7 The test system will be maintained by the Consultant as a mirror image of the production system code base. At BIT’s discretion, updates to the production system will be made by copying code from the test system after the test system passes BIT certification requirements.
- 2.12.8 If BIT determines that the application must be shut down on the production system, for any reason, the Consultant will, unless approved otherwise by BIT, diagnosis the problem on and make all fixes on the test system. The Consultant is expected to provide proof, to BIT, of the actions taken to remediate the problem that led to the application being denied access to the production system before the application can go back into production. This proof can be required by BIT even if the fix passes all BIT certification criteria. BIT is willing to sign a non-disclosure agreement with the Consultant if the Consultant feels that revealing the fix will put the Consultant’s intellectual property at risk.
- 2.12.9 All solutions acquired by the State that are hosted by the Consultant, including Software as a Service, or hosted by a third-party for the Consultant will be subjected to security



scans by BIT or preapproved detailed security scan report provided by the Consultant. The scan report sent in with the proposal can be redacted by the Consultant. The State's goal at this point is to see if the contents of the report will be acceptable, not to review the contents themselves. If the Consultant will be providing a security scan report, one must be sent with the proposal for approval. Approval is not guaranteed. If the scan report is not acceptable, the State must scan the Consultant's solution. The actual scanning by the State or the submission of a security scan report will be done if the proposal is considered for further review. A detailed security report must consist of at least:

- The system that was evaluated (URL if possible, but mask it if needed).
- The categories that were evaluated (example: SQL injection, cross site scripting, etc.)
- What were the general findings, (meaning how many SQL injection issues were found, what was the count per category)
- Technical detail of each issue found. (where was it found – web address, what was found, the http response if possible)

- 2.12.10 The cost of any scans done by the Consultant or the Consultant's costs associated with the State's scans must be part of the Consultant's bid. If the Consultant is sending a security scan report, it should price the product both as if the State was to do the security scan or if the Consultant was to do the security scan.
- 2.12.11 All hardware, website(s), or software purchased by the State and hosted by the State will be subjected to security scans by BIT.
- 2.12.12 Security scanning will be performed during the software development phase and during pre-production review. These scans and tests can be time consuming and should be allowed for in project planning documents and schedules. Products that do not meet BIT's security and performance requirements will not be allowed to go into production and may be barred from UAT until all issues are addressed to the State's satisfaction. The State urges the use of industry scanning/testing tools and secure development methods be employed to avoid unexpected costs and project delays. Costs to produce and deliver secure and reliable applications are the responsibility of the software entity producing or delivering an application to the State. Unless expressly indicated in writing, the State assumes all price estimates and bids are for the delivery and support of applications and systems that will pass security and performance testing. If the State determines the hardware, website(s), software, and or cloud services have security vulnerabilities that must be corrected, the State will inform the Consultant of the nature of the issue and the Consultant will be required to respond in writing regarding mitigation plans for the security vulnerabilities. If the product(s) does not pass the initial security scan, additional security scans may be required to reach an acceptable level of security. The Consultant must pass a final follow-up security scan for the website(s), software or cloud services for the product(s) to be acceptable products to the State. The State may suspend or cancel payments for hardware, website(s), software, or cloud services that do not pass a final security scan.
- 2.12.13 Any website or web application hosted by the Consultant that generates email cannot use "[@state.sd.us](mailto:state.sd.us)" as the originating domain name per state security policy.
- 2.12.14 As part of this project, the Consultant will provide a monitoring tool the State can utilize to monitor the operation of the proposed solution as well as all systems and all subcomponents and connections. It is required that this tool be easy to use and provide a dashboard of the health of the proposed solution. The effectiveness of this monitoring tool will be a component of the acceptance testing for this project.

- 2.12.15 As part of the project plan, the Consultant will include development of an implementation plan that includes a back out component. Approval of the implementation plan by BIT should be a project milestone. Should the implementation encounter problems that cannot be resolved and the implementation cannot proceed to a successful conclusion, the back out plan will be implemented. The Implementation and back out documentation will be included in the project documentation.
- 2.12.16 The successful Consultant will use the approved BIT processes and procedures when planning its project, including BIT's change management process. Work with the respective agency's BIT Point of Contact on this form. The Change Management form is viewable only to BIT employees. The purpose of this form is to alert key stake holders (such as: Operations, Systems Support staff, Desktop Support staff, administrators, Help Desk personnel, client representatives, and others) of changes that will be occurring within state resources and systems to schedule the:
- Movement of individual source code from test to production for production systems
  - Implementation of a new system
  - A major enhancement to a current system or infrastructure changes that impact clients
  - Upgrades to existing development platforms
- 2.12.17 If as part of the project the state will be acquiring software the proposal should clearly state if the software license is perpetual or a lease. If both are options, the proposal should clearly say so and state the costs of both items separately.
- Include in your submission details on your:
    - Data loss prevention methodology;
    - Identity and access management;
    - Security intelligence;
    - Annual security training and awareness;
    - Manual procedures and controls for security;
    - Perimeter controls;
    - Security certifications and audits.
- 2.12.18 If the Consultant will have State data on its system(s) or on a third-party's system and the data cannot be sanitized at the end of the project, the Consultant's proposal must indicate this and give the reason why the data cannot be sanitized as per the methods in NIST 800-88.
- 2.12.19 The Consultant's solution cannot include any hardware or hardware components manufactured by Huawei Technologies Company, Nuctech, or ZTE Corporation or any subsidiary or affiliate of such entities. This includes hardware going on the State's network as well as the Consultant's network if the Consultant's network is accessing the State's network or accessing State data. This includes Infrastructure as a Service, Platform as a Service or Software as a Service situations. Any company that is considered to be a security risk by the government of the United States under the International Emergency Economic Powers Act, in a United States appropriation bill, an Executive Order, or listed on the US Department of Commerce's Entity List will be included in this ban.
- 2.12.20 If the Consultant's solution requires accounts allowing access to State systems, then the Consultant must indicate the number of the Consultant's staff or subcontractors that will require access, the level of access needed, and if these accounts will be used for remote access. These individuals will be required to use Multi-Factor Authentication (MFA). The State's costs in providing these accounts will be a consideration when assessing the cost

of the Consultant's solution. If the Consultant later requires accounts that exceed the number of accounts that was originally indicated, the costs of those accounts will be borne by the Consultant and not passed onto the State. All State security policies can be found in the Information Technology Security Policy (ITSP) attached to this RFP. The Consultant should review the State's security policies regarding authorization, authentication, and, if relevant, remote access (See ITSP 230.67, 230.76, and 610.1). Use of Remote Access Devices (RAD) by contractors to access the State's system must be requested when an account is requested. The Consultant should be aware that access accounts given to non-state employees, Non-State (NS) accounts, will be disabled if not used within 90 days. A NS account may be deleted after 30 days if it is not used.

- 2.12.21 Regression Testing- Regression testing is the process of testing changes to computer programs to make sure that the older programming still works with the new changes.
- 2.12.22 Integration Testing- Integration testing is a software development process which program units are combined and tested as groups in multiple ways. In this context, a unit is defined as the smallest testable part of an application. Integration testing can expose problems with the interfaces among program components before trouble occurs in real-world program execution. Integration testing is also known as integration and testing (I&T).
- 2.12.23 Functional Testing- Functional testing is primarily used to verify that a piece of software is meeting the output requirements of the end-user or business. Typically, functional testing involves evaluating and comparing each software function with the business requirements. Software is tested by providing it with some related input so that the output can be evaluated to see how it conforms, relates or varies compared to its base requirements. Moreover, functional testing also checks the software for usability, such as ensuring that the navigational functions are working as required. Some functional testing techniques include smoke testing, white box testing, black box testing, and unit testing.
- 2.12.24 Performance Testing- Performance testing is the process of determining the speed or throughput of an application. This process can involve quantitative tests such as measuring the response time or the number of millions of instructions per second (MIPS) at which a system functions. Qualitative attributes such as reliability, scalability, and interoperability may also be evaluated. Performance testing is often done in conjunction with load testing.
- 2.12.25 Load Testing- Load testing is the process of determining the ability of an application to maintain a certain level of effectiveness under unfavorable conditions. The process can involve tests such as ramping up the number of users and transactions until the breaking point is reached or measuring the frequency of errors at your required load. The term also refers to qualitative evaluation of factors such as availability or resistance to denial-of-service (DoS) attacks. Load testing is often done in conjunction with the more general process of performance testing. Load testing is also known as stress testing.
- 2.12.26 User Acceptance Testing- User acceptance testing (UAT) is the last phase of the software testing process. During UAT, actual software users test the software to make sure it can handle required tasks in real-world scenarios, according to specifications. UAT is one of the final and critical software project procedures that must occur before newly developed or customized software is rolled out. UAT is also known as beta testing, application testing or end user testing. In some cases, UAT may include piloting of the software.

- 2.12.27 The State, at its sole discretion, may consider a solution that does include all or any of these deliverables or consider deliverables not originally listed. Consultant must highlight any deliverable it does not meet and give any suggested “work-around” or future date that it will be able to provide the deliverable.
- 2.13 Non-Standard Hardware and Software.
- 2.13.1 State standard hardware and software should be utilized unless there is a reason not to. If your proposal will use non-standard hardware or software, you must first obtain State approval. If your proposal recommends using non-standard hardware or software, the proposal should very clearly indicate what non-standard hardware or software is being proposed and why it is necessary to use non-standard hardware or software to complete the project requirements. The use of non-standard hardware or software requires use of the State’s New Product Process. This process can be found through the Standards’ page and must be performed by State employees. The costs of such non-standard hardware or software should be reflected in your cost proposal. The work plan should also account for the time needed to complete the New Product Process. See [https://bit.sd.gov/bit?id=bit\\_standards\\_overview](https://bit.sd.gov/bit?id=bit_standards_overview), for lists of the State’s standards. The proposal should also include a link to your hardware and software specifications.
- 2.13.2 If non-standard hardware or software is used, the project plan and the costs stated in Section 6 must include service desk and field support, since BIT can only guarantee best effort support for standard hardware and software. If any software development may be required in the future, hourly development rates must be stated. The project plan must include the development and implementation of a disaster recovery plan since non-standard hardware and software will not be covered by the State’s disaster recovery plan. This must also be reflected in the costs.
- 2.14 Background Checks. The Consultant must include the following statement in its proposal:
- 2.14.1 (Company name here) acknowledges and affirms that it understands that the (company name here) employees who have access to production Personally Identifiable Information (PII), data protected under the Family Educational Rights and Privacy Act (FERPA), Protected Health Information (PHI), Federal Tax Information (FTI), any information defined under state statute as confidential or have access to secure facilities will have fingerprint-based background checks. These background checks will be used to check the criminal history records of the State as well as the Federal Bureau of Investigation’s records. (Company name here) acknowledges and affirms that this requirement will extend to include any Subcontractor’s, Agents, Assigns and or Affiliated Entities employees.

### **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 and two (2) copies 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 hand written and a copy attached to the RFP proposal.
- 3.3.7 **Certification Relating to Prohibited Entity.** Complete the Contractor certification required by South Dakota SDCL § 5-18D-12 attached herein as Exhibit C.
- 3.3.8 **Completion of BIT Security and Vendor Questions.** The Consultant must complete and submit the BIT Security and Vendor Questions attached to this RFP as Exhibit G. These questions and the Consultant's responses may be used in the proposal evaluation.

It is preferred that the Consultant's response to these questions is provided as a separate document from the RFP response. If the Consultant will be hosting the solution, the file name must be "(Your Name) Hosted Security and Vendor Questions Response". If the solution will be hosted by the State, the file must be named "(Your Name) Security and Vendor Questions Response State Hosted". If the solution is not a hosted solution, the file name must be "(Your Name) Security and Vendor Questions Response". If there are multiple non-hosted solutions, please provide some designation in the file name that indicates which proposal it goes to. This document cannot be a scanned document but must be an original. If the Consultant elects to make the Security and Vendor Questions part of its response, the questions must be clearly indicated in the proposal's Table of Contents. A single numbering system must be used throughout the proposal.

#### **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**

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

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.  
shall maintain cyber liability insurance with a limit of not less than \$20,000,000.00.

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.