



SOUTH DAKOTA DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

STATE FAIR PARK DIVISION

1060 3RD St. SW

Huron, SD 57350

Phone: 605.353.7340 Fax: 605.353.7348

sdstatefair.com



REQUEST FOR PROPOSAL FOR SANITATION SERVICES

PROPOSALS ARE DUE NO LATER THAN 5 PM CT – FEBRUARY 26, 2024

RFP #: 24RFP9959 State POC: Peggy Besch EMAIL: peggy.besch@state.sd.us

READ CAREFULLY

FIRM NAME: _____ AUTHORIZED SIGNATURE: _____

ADDRESS: _____ TYPE OR PRINT NAME: _____

CITY/STATE: _____ TELEPHONE NO: _____

ZIP (9 DIGIT): _____ FAX NO: _____

E-MAIL: _____

PRIMARY CONTACT INFORMATION

CONTACT NAME: _____ TELEPHONE NO: _____

FAX NO: _____ E-MAIL: _____

1.0 GENERAL INFORMATION

1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)

The South Dakota State Fair is seeking proposals for sanitation services during the 2024, 2025, 2026, and 2027 annual South Dakota State Fair. Proposals must be based on a per year basis. Contract pricing to apply for any other non-fair time event where services may be needed including, but not limited to, Wheel Jam.

1.2 ISSUING OFFICE AND RFP REFERENCE NUMBER

The South Dakota State Fair, a division of the South Dakota Department of Agriculture and Natural Resources, is the issuing office for this document and all subsequent addenda

relating to it, on behalf of the State of South Dakota, South Dakota Department of Agriculture and Natural Resources, State Fair Division. The reference number for the transaction is RFP #: 24RFP9959. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

1.3 SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)

RFP Publication	January 26, 2024
Offeror Questions Due	February 7, 2024
Responses to Offeror Questions	February 13, 2024
Proposal Submission	February 26, 2024
Anticipated Award Decision/Contract Negotiation	March 4, 2024

1.4 SUBMITTING YOUR PROPOSAL

All proposals must be completed and received at the South Dakota State Fair 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 one identical copy of the proposal shall be submitted.

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 should be marked with the appropriate RFP Number and Title. Proposals should be addressed and labeled as follows:

REQUEST FOR PROPOSAL # 24RFP9959
PROPOSAL DUE February 26, 2024
BUYER: SD Department of Agriculture and Natural Resources, State Fair Division
ATTENTION: Peggy Besch
1060 3rd Street SW
Huron, SD 57350

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.

1.5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

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

1.6 NON-DISCRIMINATION STATEMENT

The State of South Dakota requires that all contractors, vendors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-

discrimination. By signing and submitting their proposal, the offeror certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.

1.7 CERTIFICATION RELATING TO PROHIBITED ENTITY

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

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

1.8 RESTRICTION OF BOYCOTT OF ISRAEL

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

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

term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

1.9 CERTIFICATION OF NO STATE LEGISLATOR INTEREST

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

1.10 MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn by the offeror prior to the established due date and time. No oral, telephonic, telegraphic or facsimile responses or modifications to informal, formal bids, or Request for Proposals will be considered.

1.11 OFFEROR INQUIRIES

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time indicated in the Schedule of Activities. Inquiries must be emailed to Peggy Besch at peggy.besch@state.sd.us with the subject line RFP #: 24RFP9959.

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

1.12 PROPRIETARY INFORMATION

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

1.13 LENGTH OF CONTRACT

This contract will be for a four (4) year period, beginning June 1, 2024, and ending December 31, 2027.

1.14 GOVERNING LAW AND VENUE

Venue for any and all legal action regarding or arising out of the transaction covered herein 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.

1.15 DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION/NEGOTIATIONS)

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

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

2.0 STANDARD CONTRACT TERMS AND CONDITIONS

Any contract or agreement resulting from this RFP will include the State's standard contract terms attached hereto as 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 then the DANR will assume those terms are acceptable to the Offeror.

3.0 SCOPE OF WORK

3.1 South Dakota State Fair dates as follows:

- 3.1.1 August 27 -September 2, 2024
- 3.1.2 August 26 – September 1, 2025
- 3.1.3 September 1 - 7, 2026
- 3.1.4 August 31 -September 6, 2027

3.2 Contractor will provide standard and handicap port-a-potty units, hand washing units, pump and dump service and water fill to all camping areas and maintain all hand washing and port-a-potty units including State owned (number of units subject to change).

3.2.1 Port-a-potty units:

- 3.2.1.1 Approximately 40 to 50 standard units
- 3.2.1.2 Two (2) handicap
- 3.2.1.3 Maintain all contractor's units daily for seven (7) days, checking each unit at a minimum of twice daily for cleanliness and filling supplies.
- 3.2.1.4 Keep a daily log of locations and times of service to each port-a-potty unit and provide to State within two weeks after the State Fair.

3.2.2 Hand washing units:

- 3.2.2.1 Approximately 10 to 15 hand washing units.
- 3.2.2.2 Maintain hand washing units daily for seven (7) days, checking each unit multiple times a day for cleanliness and filling supplies.
- 3.2.2.3 Maintain approximately nine (9) State-owned hand washing units for seven (7) days, checking each unit multiple times a day for cleanliness and filling supplies.
- 3.2.2.4 Keep a daily log of locations and times of service to each hand washing unit including State owned and provide to State within two weeks after the State Fair.

3.2.3 Pump and dump service:

- 3.2.3.1 Fill orders upon request from each camper.
- 3.2.3.2 Service all camping areas on-grounds and off-grounds including Gate H and Gate 13 for pump out and water fill per camper as requested by camping guest.
- 3.2.3.3 Provide a per unit price per camper for pump out service for each year of agreement.
- 3.2.3.4 Provide a per unit price per camper for water service for each year of agreement.
- 3.2.3.5 Collect fees from each camper for service(s) provided at the contracted price per identified in contract.
- 3.2.3.6 Provide State with 1,800 inserts (colored paper) by July 15, each year, to be enclosed in the camping packets. Insert should include instructions on camper services including contact information, hours of operation, and pump and dump fees.

3.3 State will provide:

- 3.3.1 A map identifying the location of the Contractor and State-owned units.
- 3.3.2 A list of required units that will be rented by the State.
- 3.3.3 Up to six (6) weekly admission cards for worker passes. Any additional will be at Contractor's expense.
- 3.3.4 Up to six (6) service vehicle passes. Any additional must be approved by State and will be at Contractor's expense.
- 3.3.5 One (1) or two (2) campsites (if needed to house employees) at no additional charge.

3.4 Wheel Jam:

- 3.4.1 Traditional the first or second weekend in June (date determined annually).
- 3.4.2 Provide one (1) to ten (10) port-a-potty units. State will order a month or two in advance.

4.0 PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS

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

4.2 Offeror's Contacts: Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to the buyer of record indicated on the first page of this RFP. Offerors and their agents may not contact any state employee other than the buyer of record regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record.

4.3 Provide the following information related to at least three previous and current service/contracts, performed by the offeror's organization, which are similar to the requirements of this RFP.

4.3.1 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;

4.3.2 Dates of the service/contract; and

4.3.3 A brief, written description of the specific prior services performed and requirements thereof.

4.4 Provide the following information:

4.4.1 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements.

4.4.2 Resources available to perform the work, including any specialized services, within the specified time limits for the project.

4.4.3 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration.

4.4.4 Availability to the project locale.

4.4.5 Familiarity with the project locale.

4.4.6 Proposed project management techniques; and

4.4.7 Ability and proven history in handling special project constraints.

5.0 PROPOSAL RESPONSE FORMAT

5.1 An original and one copy shall be submitted.

5.1.1 In addition, the offeror should provide one (1) copy of their entire proposal, including all attachments, in Microsoft Word or PDF electronic format (flash drive, USB drive, etc.) Offerors may not send the electronically formatted copy of their proposal via email.

5.1.2 The proposal should be page numbered and should have an index and/or a table of contents referencing the appropriate page number.

5.2 All proposals must be organized and labeled for the following headings:

5.2.1 **RFP Form.** The State's Request for Proposal form (1st page of RFP) completed and signed.

5.2.2 **Executive Summary.** The one-to-two-page executive summary is to briefly describe the offeror's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the offeror. The reader should be able to determine the essence of the proposal by reading the executive summary. Proprietary information requests should be identified in this section.

5.2.3 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:

5.2.3.1 A complete narrative of the offeror's assessment of the work to be performed, the offeror's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the offeror's understanding of the desired overall performance expectations.

5.2.3.2 A specific point-by-point response, in the order listed, to each requirement in the RFP. The response should identify each requirement being addressed as enumerated in the RFP.

5.2.3.3 A clear description of any options or alternatives proposed.

5.2.4 **Cost Proposal.** Cost will be evaluated independently from the technical proposal. Offerors may submit multiple cost proposals. All costs related to the provision of the required services must be included in each cost proposal offered.

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

6.0 PROPOSAL EVALUATION AND AWARD PROCESS

The State reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the State of South Dakota. The State may award a contract to the responsible and responsive Offeror whose proposal provides the best value for the purposes intended according to the criteria set forth in the RFP. If contract negotiations cannot be concluded successfully with the selected Offeror, the State may negotiate a contract with a responsible and responsive Offeror whose proposal provides the next best value to the State of South Dakota.

6.1 Evaluation Team: All proposals shall be evaluated by an evaluation team. Evaluation and potential selection of the Offeror shall be based on the information submitted in the proposals. The team may review references, require oral presentations, and conduct on-site visits to Offeror accounts and use the results in evaluating the proposals.

6.2 Meeting Terms and Conditions: Proposals will be reviewed to determine if required terms and conditions are met. Failure to meet the required terms and conditions may result in the proposal being rejected. If all Offerors fail to meet one or more of the required terms and conditions, the State reserves the right to continue the evaluation of proposals and to select the proposal that provides the best value to the State of South Dakota as determined by the evaluation team.

6.3 Qualification Criteria: Each proposal shall be evaluated on whether required qualification criteria are met. The qualification criteria that will be used to determine if the Offeror will be considered for an award is based on the information provided in response to Sections 4.0 and 7.0 of this RFP.

6.4 Evaluation Criteria: After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use subjective judgment in conducting a comparative assessment of the proposal by considering each of the following criteria, listed in the order of importance:

6.4.1 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements.

6.4.2 Resources available to perform the work, including any specialized services, within the specified time limits for the project.

6.4.3 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration.

6.4.4 Cost.

6.4.5 Proposed project management techniques.

6.4.6 Familiarity with the project locale.

6.4.7 Availability to the project locale.

6.4.8 Ability and proven history in handling special project constraints.

6.5 Information Relating to Past Performance and Success: Experience and reliability of the offeror's organization are considered subjectively in the evaluation process. Therefore, the offeror is advised to submit any information which documents successful and reliable experience in past performances, especially those performances related to the requirements of this RFP.

6.6 Qualifications of Personnel: The qualifications of the personnel proposed by the offeror to perform the requirements of this RFP, whether from the offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the offeror should submit detailed

information related to the experience and qualifications, including education and training, of proposed personnel.

6.7 Offeror to Submit Information Related to Evaluation Categories: The Offeror is cautioned that it is the Offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The Offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal. Failure to respond to each of the requirements in the RFP may be the basis for rejecting a response.

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

6.8.1 If the agency and the highest ranked offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, either orally or in writing, terminate negotiations with the contractor. The agency may then negotiate with the next highest ranked contractor.

6.8.2 The negotiation process may continue through successive offerors, according to agency ranking, until an agreement is reached or the agency terminates the contracting process.

7.0 COST PROPOSAL

At a minimum, any cost proposal must contain the following information:

Item	Estimated Quantity	Cost per Item	Estimated total Cost
Regular port-a-potty	40-50		
Handicap port-a-potty	2		
Handwashing units	10-15		
Handwashing units (State-owned)	9		
Pump out service (charged to consumer)	n/a		
Water fill service (charged to consumer)	n/a		

APPENDIX A

STATE OF SOUTH DAKOTA CONTRACT FOR SERVICES

Between

STATE OF SOUTH DAKOTA

DEPARTMENT OF AGRICULTURE AND
NATURAL RESOURCES, STATE FAIR
DIVISION

1060 3RD STREET SW

HURON, SD 57350

605-353-7340

Referred to as Contractor

Referred to as State

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

1. SCOPE OF SERVICES:

The purpose of this contract is to perform sanitation services for the South Dakota State Fair. Contractor will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

2. PERIOD OF PERFORMANCE OF THIS AGREEMENT:

The purpose of this contract is to perform sanitation services for the South Dakota State Fair. Contractor will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

3. USE OF EQUIPMENT, SUPPLIES AND FACILITIES:

Contractor will not use State equipment, supplies or facilities.

4. CONTRACTOR IDENTIFICATION:

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

5. CONTRACT AMOUNT AND PAYMENT:

The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$_____. This amount will include Contractor's travel, hotel, meals, honorarium, and any other expenses incurred by the Contractor to complete the terms under this agreement. The State will not pay Contractor's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26. Any overpayment of this Agreement shall be returned to the State within thirty (30) days after written notification to Contractor.

6. INDEMNIFICATION:

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

7. INSURANCE:

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

A. Commercial General Liability Insurance

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

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

When applicable Contractor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than one million dollars (\$1,000,000). The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

C. Business Automobile Liability Insurance:

Contractor shall maintain business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles. This insurance shall include coverage for owned, hired and non-owned vehicles. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

D. Worker's Compensation Insurance:

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

Before beginning work under this Agreement, Contractor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement including naming the State, its officers and employees, as additional insureds, as set forth above. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Contractor agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Contractor shall furnish copies of insurance policies if requested by the State.

8. TERMINATION:

This Agreement may be terminated by either party hereto upon ninety (90) days written notice. In the event the Contractor breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for a breach is affected by the State, any payments due to Contractor at the time of termination may be adjusted to cover any additional costs to the State because of Contractor's 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 breach by Contractor it is determined that Contractor was not at fault, then the Contractor shall be paid for eligible services rendered and expenses incurred up to the date of termination.

9. SURVIVAL FOLLOWING TERMINATION:

Any terms of this Agreement that would, by their nature or through the express terms of this Agreement, survive the expiration or termination of this Agreement shall so survive including but not limited to the terms of sections 6, 13 and 27.

10. FUNDING:

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

12. CERTIFICATIONS

A. COMPLIANCE WITH EXECUTIVE ORDER 2020-01:

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

B. COMPLIANCE WITH SDCL ch 5-18A:

Contractor certifies and agrees that the following information is correct:

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

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

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

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

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

D. CERTIFICATION OF NO STATE LEGISLATOR INTEREST:

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

13. 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 Peggy Besch on behalf of the State, and by and to _____, on behalf of Contractor, or such authorized designees

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

14. CONTROLLING LAW AND VENUE:

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

15. INDEPENDENT CONTRACTOR:

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

16. THIRD PARTY BENEFICIARIES:

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

17. 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.

18. COMPLIANCE:

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

19. REPORTING:

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

Contractor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Contractor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.

20. SUBCONTRACTING:

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

21. STATE'S RIGHT TO REJECT:

The State reserves the right to reject any person from performing services under this Agreement who the State believes would be detrimental to the services, presents insufficient

skills, presents inappropriate behavior or is considered by the State to be a security risk.

22. SEVERABILITY:

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

23. MERGER:

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

24. FORCE MAJEURE:

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

25. WAIVER OF BREACH:

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

26. 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.

27. AUTHORITY TO EXECUTE:

Contractor represents and warrants that:

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

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

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

28. 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.

29. OTHER METHODS OF NOTICE:

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

30. THIRD PARTY RIGHTS:

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

31. OTHER METHODS OF NOTICE:

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

32. COUNTERPARTS:

This Agreement may be executed in one or more counterparts, including by way of .pdf or other electronic means (such as DocuSign or Adobe eSign), each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

AUTHORIZED SIGNATURES:

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

STATE

BY: _____

(Signature)

(Printed name)

(Printed title)

(DATE)

CONTRACTOR

BY: _____

(Signature)

(Printed name)

(Printed title)

(DATE)

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