

ONLINE AUCTION SERVICES

CONTRACT NO. 16568

REQUEST FOR PROPOSAL NO: 2231

OPENED: 1/31/2014

THIS AGREEMENT, entered into by and between the State of South Dakota through its Office of Procurement Management, Pierre, South Dakota, herinafter "State", and Stock Realty and Auction Company, A Nebraska Corporation d/b/a Big Iron, of 210 Beaver Street, St. Edward, NE 68660, herinafter "Contractor".

WITNESSETH, Whereas the Contractor has heretofore been awarded the contract to furnish and deliver to the State certain services, all of which are more specifically itemized, described and enumerated in the schedules and specifications of request for proposals number 2231, and made a part thereof by reference.

1. This contract is to provide online auction services for the SD Bureau of Administration, and interested political subdivisions of the State of South Dakota. This is a non-exclusive contract. The State of South Dakota reserves the right to utilize other providers of online auction services during the term of this agreement.
2. This is an open-ended contract between the Contractor and the State to furnish an undetermined quantity of a service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made. Certain terms of the Contractor's master agreement are incorporated into this contract as identified in Attachment A. Terms indicated with overstrikes do not apply to this contract.
3. This agreement shall commence on the date of the final signature, and terminate on December 31, 2014, unless terminated earlier by either of the parties in accordance with the terms of the agreement.
4. The parties agree that this contract shall be governed by and construed in accordance with the laws of the State of South Dakota. Venue for any action, claim, dispute or litigation pertaining to or affecting this contract shall be in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
5. The Contractor agrees to convey, assign and transfer to the State of South Dakota all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States, 15 U.S.C.A. §1, et seq. (1973), and under the antitrust laws of the State of South Dakota, SDCL 37-1, and amendments thereto, relating to the particular goods, services and materials purchased by the State of South Dakota in connection with this contract.
6. The Contractor will not use State equipment, supplies or facilities. The state authorizes contractor to start and move state equipment for the purpose of arrangement, display or demonstration if required.
7. Service Fee: State agrees to pay the following for services pursuant to this Agreement which will be deducted from the sale proceeds at the time of final settlement. No other fees apply to the State's use of Contractor services unless the the State agrees to such additional fees in writing, including additional advertising fees as described in this agreement.

Online Only Unreserved Timed Equipment	
Auctions	Service Fees
\$1 to \$1,000,000 aggregate per auction	6% but no more than \$6,000 per lot
\$1,000,001 to \$2,000,000 aggregate per auction	5% but no more than \$5,000 per lot
\$2,000,001 or more aggregate per auction	4% but no more than \$4,000 per lot
Aggregate Service Fees are based on the gross auction proceeds per auction date	

8. Advertising: Auctions will be promoted through the Contractor and advertised through Internet, Newspaper, Radio, Trade Shows, Sale Bill Direct Mailings, Broadcast Emailing, Big Iron Website, and Major Trade Publications.

a. To list a single lot or multiple lots of equipment in the Sale Bill and on the Big Iron Website, there is NO additional charge.

In addition to listing a single lot or multiple lots of equipment, State's equipment may be featured to draw attention to the auction. The following are State options for Sale Bill and Big Iron Website featured advertising:

b. To feature a single lot or multiple lots of equipment in the Sale Bill and on the Big Iron Website, with State's name and phone number, the cost is \$250.

c. To feature a single lot or multiple lots of equipment in the Sale Bill and the Big Iron Website, with State's name, phone number and a picture, the cost is \$500.

d. To feature 10 or more lots of equipment in the Sale Bill and on the Big Iron Website with the State's name, phone number and a picture, the cost is \$1,000.

9. Representation: State will allow Contractor to use State's name and phone number, as provided at the time of listing, in all advertising. Within a reasonable time period, State agrees to answer questions from potential buyers on repair history and condition of listed equipment.

10. Exclusive Listing: The State agrees that any equipment listed for sale with the Contractor will not be listed with any other selling or auction services during the time of the listing.

11. Unreserved Auction Items: State understands and acknowledges that State is extending an irrevocable offer to sell the equipment to the highest bidder. State may not set a reserve price for their equipment. This shall be an absolute auction, no minimums, no reserves, and no buybacks.

12. Shill Bidding: State will not use an alias or collude with others to place bids on any of the State's equipment, including but not limited to State's family members, employees, or friends. State agrees not to bid directly or indirectly, in any capacity whatsoever, or cause or assist anyone to bid for State or on State's behalf nor bid as an officer, director, shareholder, partner, proprietor, joint venture, advisor, limited liability company member, consultant, owner or employee of any third party. State understands it is only upon these terms that Contractor will agree to list State's property and further understands and agrees that these restrictions are necessary to protect the integrity of the "unreserved auction" or "absolute auction" process and the reputation of Contractor when it conducts the same.

13. Withdrawal of equipment: The equipment shall not be withdrawn or pulled from the scheduled auction within ten (10) business days or fourteen (14) calendar days of the scheduled auction date. The equipment shall remain at the advertised State location and with the advertised point of contact. If the specified State point of contact name or phone number changes, the State must immediately send an updated contact name and phone number to Contractor.

14. Release of Item(s): State shall not release any equipment to a buyer unless State has written confirmation or an invoice marked "Paid in Full" from Contractor. State will have equipment ready for transportation and will release equipment to buyer upon receipt of confirmation of payment from Contractor.

15. Disbursement of Funds: When the equipment is sold and the transaction closes, Contractor agrees to disburse monies due to State, after deduction of State fees, within ten (10) banking/business days after the date of the sale.

16. Collapsed Sale: A "Collapsed Sale" shall be a sale that for any reason may become null and void. Contractor reserves the right to collapse any sale between State and a buyer for any reason and may return any or all funds to buyer.



17. Right to Refuse: Contractor reserves the right to refuse to list any item or piece of equipment for any reason.
 18. Contractor's Obligations: Unless otherwise expressly set forth herein, Contractor's sole duty shall be to use commercially reasonable efforts to affect a sale of the State's equipment during the term of this Agreement, with the understanding that Contractor makes no warranty or guaranty in connection with whether or not the equipment will be sold hereunder.
 19. Preparation of Equipment: In getting the equipment presentable for potential buyer's pre-auction inspections, State agrees to do the following:
 - a. Wash the equipment; remove all mud, dirt, grease and other hazardous materials.
 - b. If applicable, clean the engine compartment and operator's station.
 - c. Have any attachments or accessories with the equipment at the same location, ready for inspection.
 - d. Have equipment keys available. Machines shall be in operable condition and must crank, start, and operate, unless advertised and disclosed that the machine is not fully or partially operational.
 - e. Motorized vehicles shall have adequate fuel for loading/unloading when the buyer picks up the vehicle.
 20. Warranties: As a Seller, State represents and warrants that:
 - a. the equipment is in a safe condition, free of hazardous materials and in compliance with applicable US EPA and OSHA requirements;
 - b. State shall be responsible for the content of all listing details and all descriptions of equipment posted by Contractor. State shall verify that the unit Serial or VIN is correct and proofread any text descriptions, maintenance records, graphs or pictures that describe State's equipment;
 - c. Answers to questions provided by State to Contractor shall be truthful, accurate and complete, and shall accurately represent the condition of the equipment until removed from State's location by the buyer. If at any time prior to the listing period the equipment is altered or modified in any way which might affect the accuracy of the previously advertised or written descriptions, the State shall contact Contractor immediately;
 - d. State owns all right, title and interest in and to the equipment being auctioned, the equipment is free and clear of all liens or encumbrances, except as otherwise disclosed by State to Contractor in writing as set forth in Section 21 of this Agreement, and State otherwise has the right to list the equipment for auction with Contractor and to sell the equipment through the Auction Service;
 - e. State hereby represents and warrants that all information provided: (a) is true and accurate; (b) is not fraudulent, equipment is not stolen or counterfeit; (c) does not infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; and (d) does not violate any applicable law, statute, ordinance or regulation.
 21. Restrictions of Use: From the time the State lists equipment with Contractor, until the buyer takes delivery of the equipment from the State's location, unless noted otherwise in the description, State shall not operate, use, lease, rent, modify, damage or alter the equipment in any way, unless the operation is properly disclosed to potential bidders before the scheduled auction begins to update the hour meter, odometer, and/or the condition of the equipment.
 22. Soliciting Bids: State agrees not to offer to sell, or privately or publicly sell any of State's listed equipment when in contact with any potential bidders. When fielding questions of potential buyers, the State will refer those buyers to the Big Iron Sales Representative and/or the Big Iron Website at www.bigiron.com to register for the scheduled auction to submit their bids.
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23. Buyer Default: If the winning bidder fails to timely pay Contractor for the equipment purchased, the buyer is in default. Contractor will notify State when any piece of equipment is in default. As the seller of any piece of equipment that is subject to buyer default, the State shall have the following options:

Option 1: Contractor will offer the equipment to the second highest bidder at the second highest bidder's last bid price. If the second highest bidder accepts, the equipment will be sold and the State will receive the sale proceeds based on the second highest bidder's last bid price, less fees, within 14 calendar days of sale;

Option 2: State may re-list the equipment on Big Iron; or

Option 3: State may choose to not re-list the equipment for sale on Big Iron.

24. Ownership Certification and Lien Searches: The State gives Contractor permission to carry out, at Contractor's discretion, title and lien searches to investigate the existence of UCC financing statements on equipment. Contractor shall not be required to conduct nor be responsible for the results of such title and lien searches. State will convey to buyer good and marketable title. State agrees that they will warrant and defend, at State's expense, title to any equipment sold.

State agrees that in the event a title or piece of equipment is determined to be encumbered after investigation, Contractor may, at its discretion, deduct the balance due on said encumbrance from the State's proceeds. Under no circumstances will Contractor be responsible for paying encumbrances, and this discretion shall not relieve any of State's duties herein.

25. Titles: Before a titled item will be listed on the Big Iron auction website, State agrees to deliver to Contractor evidence of title to the vehicles or equipment being sold. Evidence of title shall include but not be limited to the original Department of Motor Vehicle title, manufacturer's certificate of origin and any other documents required to transfer title of the equipment to buyer. Prior to delivery, State will endorse titles and documents by signature or will execute a power of attorney in favor of Contractor authorizing State's agents to allow for buyer to properly register and license vehicle or equipment sold. Said titles must be delivered to Contractor no later than thirty-two (32) calendar days before the scheduled Sale Date.
26. The Contractor agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.
27. The Contractor, 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 Contractor 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. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

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

c. Business Automobile Liability Insurance:

The Contractor 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.

d. Worker's Compensation Insurance:

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

28. 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. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the 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.
29. While performing services hereunder, the Contractor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.
30. Contractor 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 Contractor or the State 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.

31. This Agreement may be terminated by either party hereto upon thirty (30) 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 such a default is effected 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 default 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.
32. 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.
33. 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.
34. The Contractor 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.
35. The Contractor may not use subcontractors to perform the services described herein without the express prior written consent of the State. The 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 for the benefit of the State in a manner consistent with this Agreement. The Contractor 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.

36. Contractor 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 the software program, and all information contained therein provided to the State by the Contractor 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 Contractor 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.
37. The 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.
38. 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.
39. 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.
40. In the event of a conflict in terms of language among any documents related to this agreement, the following order of precedence shall govern:
 - a. State of South Dakota contract #16568;
 - b. State of South Dakota RFP #2231;
 - c. Contractor's listing agreement
41. Notices: All notices related to this agreement shall be addressed as follows: Steve Boring, Purchasing Specialist, Office of Procurement Management, PMB 01231, 523 E. Capitol Avenue, Pierre, SD 57501.

THEREFORE, in consideration of the covenants on the part of the State which are fully set and enumerated in the said State of South Dakota request for proposals and resulting contract, the Contractor agrees to furnish and deliver to the State all of the said awarded services as enumerated in the said request for proposals and contract, at the price and according to the terms and conditions, and of the kind, quality, and amounts and at the times specified in said request for proposals and contract. The Contractor may extend the services authorized by this contract to political subdivisions of the State of South Dakota under the same terms and conditions.



In Witness whereof the parties hereto have caused their Agreement to be executed as of the date of execution by both parties below.

STATE OF SOUTH DAKOTA
OFFICE OF PROCUREMENT MANAGEMENT


SIGNATURE

STEVEN L. BERG, DIRECTOR

2-18-2014
DATE

BIG IRON


SIGNATURE

MARK E FORT, CEO

2-18-2014
DATE