

**STATE OF SOUTH DAKOTA
STANDARD TERMS AND CONDITIONS FOR INFORMAL SOLICITATIONS**

SPECIAL INSTRUCTIONS TO THE VENDOR

FIRM QUOTE. The Vendors' prices shall remain firm for a period of thirty- (30) days from the Date Due, unless otherwise specified in the Solicitation.

INFORMED VENDORS. Before submitting Quotes, Vendors must fully inform themselves of the conditions, requirements and specifications of the work or materials to be furnished. Failure to do so will be at Vendors' own risk and they cannot secure relief on the plea of error.

QUESTIONS, INTERPRETATION, OR CORRECTION OF QUOTE DOCUMENTS. Vendors shall notify the Requesting Agency promptly of any error, omission, or inconsistency that may be discovered during examination of the Solicitation.

RULES FOR SUBMITTING QUOTES.

Date Due. Quotes must arrive in the appropriate location as required by the Requesting Agency by the Date Due shown on the Solicitation. Responses to solicitations issued through the State's electronic procurement system are considered to be received on the date and time they are submitted by the Vendor.

Responsibility. Vendors are solely responsible for ensuring their Quote is received by the Requesting Agency in accordance with the solicitation requirements. The Requesting Agency shall not be responsible for any delays in mail or by common carriers or by electronic transmission errors or delays or mistaken delivery. Delivery of quote shall be made as specified in the Solicitation.

Extension of Date Due And/Or Time. The Requesting Agency reserves the right to extend the Date Due and/or time when it is in the best interest of the State of South Dakota.

Late Quotes. This is an informal solicitation with an informal Date Due. The Date Due has been established for the convenience of the Requesting Agency; it is not a firm date. The Requesting Agency reserves the right to accept quotes received after the Date Due. However, quotes received after an award has been made will be determined to be "late" and will not be considered.

Signature. To be considered for award, each Quote submitted by fax or on paper shall be signed by an authorized representative of the Vendor. Quotes submitted by email are considered signed by the person whose email address the quote was sent from. Quotes submitted through the State's electronic procurement system are considered signed by the person to whom the unique user identification and password required to login to the system have been assigned.

Unsealed. Quotes may be submitted by hand, electronically or by facsimile or any other method allowed by the Solicitation. It is *not* necessary that quotes be submitted in a sealed envelope.

TERMS OF THE OFFER. The State of South Dakota's acceptance of Vendor's offer shall be limited to the terms herein unless expressly agreed in writing by the Requesting Agency. Quotes offering terms other than those shown herein may be declared non-responsive.

AGREEMENT. Submission of a signed quote will be interpreted to mean Vendor hereby agrees to all the terms and conditions set forth in all the pages of this Solicitation. Vendor's signed quote and the State's written acceptance or purchase order shall constitute a contract.

ASSIGNMENT OF RIGHTS OR OBLIGATIONS. Successful Vendor may not assign, transfer or sell any rights or obligations resulting from this quote without first obtaining the specific written consent of the State of South Dakota.

CANCELLATION OF SOLICITATION. The Requesting Agency may cancel this solicitation at any time.

COMPLIANCE OR DEVIATION TO SPECIFICATIONS. It is understood that the materials, equipment or services offered by the Vendor will meet all requirements of the specifications in this Solicitation unless deviations there from are clearly indicated in Vendor's response. In order for the quote to be considered, an explanation must be made for each item in which an exception is taken, giving in detail the extent of the exception and the reason for which it was taken. Submittal of brochures or other manufacturers' literature as substitution for compliance/deviation information shall not be deemed to comply with this requirement and may be grounds for rejection of quote. Submittal of brochures or other literature as additional information is desirable. Vendor shall submit with their quote full descriptive data, including make and model specifications, general drawings (if applicable), brochures, and any other product or service information.

LAWS GOVERNING THE CONTRACT. This contract shall be in accordance with the laws of the state of South Dakota. Parties further stipulate that this contract was entered into in the County of Hughes and the State of South Dakota is the only appropriate forum for any litigation resulting from breach hereof or any questions arising herefrom.

NON-DISCRIMINATION. 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 submitting a quote, the bidder certifies they do not discriminate in their employment practice with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.

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 certifies and agrees that the following information is correct:

The bidder in preparing its response in considering bids 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, 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 submitted by the bidder on this project and terminate any contract awarded based on the bid. The successful bidder 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.

RIGHTS RESERVED.

A. Rejection. The State of South Dakota reserves the right to reject any or all quotes or any part thereof, or to accept any quote or any part thereof, or to waive any informality in any quote, whenever it is deemed to be in the best interest of the State. The State also reserves the right to reject the quote of any Vendor who has previously failed to perform adequately for the State or any other governmental agency.

B. Cover. Should the successful Vendor fail to comply with the conditions of this quote or fail to complete the required work or furnish the required materials within the time stipulated, the State reserves the right to purchase the materials in open market, or to complete the required work, at the expense of the successful Vendor.

C. Severability. If any provision or any portion of any provision, of any contract resulting from this quote shall be held invalid, illegal, or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible.

HOLD HARMLESS. Successful Vendor/Contractor, lessor, or licensor 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 that may arise as a result of performing services hereunder. This section does not require the Vendor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

TERMS OF THE CONTRACT. The terms of the contract shall be limited to the terms herein unless expressly agreed otherwise in writing by the State of South Dakota.

WARRANTY BY VENDOR. Successful Vendor shall fully warrant all materials, equipment, and service against poor and inferior quality or workmanship for a period of not less than one- (1) year from date of final acceptance by the State. Successful Vendor shall repair or replace any inoperable materials or equipment in a timely manner during warranty period.

PAYMENT. Unless otherwise agreed by the parties, the State shall make payment to the vendor in compliance with the "South Dakota Prompt Payment Act", SDCL 5-26. A state agency which acquires property or services from a vendor shall pay for each complete delivered item of property or service on the date agreed by the vendor and the state agency or, if no date for payment is specified, within forty-five days after receipt and written acceptance of property or services and receipt of the invoice covering the delivered items or services. Proper invoices not paid within forty-five days shall accrue interest beginning on the thirtieth day after receipt of property or service and receipt of the invoice covering the delivered items or services. Interest shall accrue and be charged on payments overdue under § 5-26-2 at one and one-half percent per month or at the rate agreed to by the parties.

SPECIAL PROVISIONS FOR MATERIALS AND EQUIPMENT

AUTHORIZED DISTRIBUTOR. Successful Vendor must be an Authorized Distributor for the product offered. With their quote, the Vendor must submit documentation from an authorized distributor from whom the Vendor has purchased the specified materials or equipment. Said documentation must state that the distributor will honor all manufacturers' warranties.

BRAND NAMES. Manufacturer names, trade names, brand names, model and catalog numbers used in these specifications are for the purpose of describing and establishing general quality levels. Such references are not intended to be restrictive. Quotes will be considered for alternative brands that meet or exceed the quality of the specifications listed for any item.

BRAND SUBSTITUTIONS. Quotes will be considered for items complying substantially with specifications, provided deviations to the specifications are stated and items are described in detail. When offering alternate products, it is the responsibility of the Vendor to indicate the brand names and model/catalog numbers, and to provide evidence of the equality of the items to the products specified in the solicitation. Standard catalog sheets or technical data will not be accepted in lieu of this requirement. The Requesting Agency will be the sole judge of whether such alternates are equivalent to the items specified. The State reserves the right to waive immaterial variations in the specifications.

COMPLIANCE WITH LAWS. All quotes shall comply with current federal, state, and other laws relative thereto.

DELIVERY HOURS. Unless otherwise specified, all items must be delivered to the address shown on the Purchase Order, Monday through Friday, between the hours of 8:00 A.M. & 12:00 P.M. and 1:00 P.M. and 5:00 P.M. local time, excluding holidays.

DELIVERY TIME. Time is of the essence of this contract. Vendor shall state their earliest delivery time on their Quote. If the vendor does not indicate a delivery time, the State shall assume the vendor's earliest delivery time is the maximum delivery time stipulated by the State on the solicitation. The State reserves the right to cancel any order not received within the time stated by the Vendor in their Quote. Delivery time will be a factor in award of a Quote where a maximum time for delivery is stipulated. Deliveries shall be made at such time, place and in such quantities as shown on the Purchase Order.

DEMONSTRATION OF PRODUCT OFFERED. A demonstration of the item(s) offered may be required. Quotes for item(s) that do not perform to the State's satisfaction during the demonstration will be declared non-responsive and will not be considered for award.

F.O.B. POINT & SHIPPING CHARGES. All prices must be quoted F.O.B. destination with all transportation and handling charges paid by the successful Vendor.

MANUFACTURER & MODEL NUMBER. Vendor must state the manufacturer's name and model number of each item proposed in their Quote.

NEW AND UNUSED. Unless specifically provided to the contrary, all material and equipment shall be new and unused and of the current production year. Quotes that are received for other than the current production year or for items and materials that have been previously used will be rejected.

SAMPLES. For evaluation purposes, samples may be requested from any Vendor. Samples shall be provided at no charge unless Vendors have indicated on their bids the charge for samples. The State reserves the right to consume samples for testing purposes. The State may retain samples until delivery and acceptance of contracted items. Vendors shall remove samples at their expense within (30) days of request by the State.

TAXES. The State of South Dakota is ordinarily exempt from the payment of taxes imposed by the Federal Government or the State of South Dakota. Such taxes should not be included in the prices quoted. (Exception: State tax will be included in quotes for gasoline.) State of South Dakota Federal Exemption Registry number is 46-73-0079K.

TESTING. After delivery, random samples may be submitted to a commercial laboratory, or other inspection agency, for testing to determine if they conform to the specifications. In cases where the tests indicate the samples do not meet specifications, the cost of the testing shall be borne by the contractor. When tests indicate the materials do not meet specifications, the State reserves the right to cancel the award and purchase the goods in the open market at the expense of the vendor.

WARRANTY BY MANUFACTURER(S). Copies or descriptions of all manufacturer(s)'s warranties shall accompany quote for the item(s) proposed. The description(s) shall include the length and scope of the warranties.

SPECIAL PROVISIONS FOR NON-CONSTRUCTION SERVICES

ACCESSIBILITY. The contractor shall fully inform themselves regarding any peculiarities and limitations of the spaces available for the installation of all work and materials furnished and installed under the contract Contractor shall exercise due and particular caution to determine that all parts of their work are made quickly and easily accessible.

AUTHORITY OF THE STATE OF SOUTH DAKOTA. Subject to the power and authority of the State as provided by law in this contract, the State shall in all cases determine the quantity, quality, and acceptability of the work, materials and supplies for which payment is to be made under this contract. The State shall decide the questions that may arise relative to the fulfillment of the contract or the obligations of the contractor hereunder.

BUSINESS LICENSE. Seller agrees to obtain at Seller's own cost and before performing services or installations within the City limits, the appropriate business license.

CLEANUP. During performance and upon completion of work on this project contractor will remove all unused equipment and instruments of service, all excess or unsuitable material, trash, rubbish and debris, and legally dispose of same, unless otherwise directed by these specifications. Contractor shall leave entire area in a neat, clean and acceptable condition as approved by the State.

CONTRACTOR. The term "Contractor" refers to the party entering into a contract with the State as a result of this solicitation.

COOPERATION BETWEEN CONTRACTORS. The State reserves the right to contract for and perform other or additional work on or near the work covered by these specifications. When separate contracts are let within the limits of any one project, each contractor shall conduct their work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed. Each contractor involved shall assume all liability, financial or otherwise, in connection with their contract and shall protect and save harmless the State of South Dakota from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by the contractor because of the presence and operations of other contractors working within the limits of the same project.

COORDINATION WITH AGENCIES. The contractor shall coordinate their activities with the proper regulatory agencies and have their representative on site at the proper times.

DAMAGE. The Contractor shall be held responsible for any breakage, loss of the State's equipment or supplies through negligence of the contractor or the contractor's employee while working on the State's premises. The Contractor shall be responsible for restoring/replacing any equipment, facilities, etc. so damaged. The Contractor shall immediately report to the State any damages to the premises resulting from services performed under this contract.

EXAMINATION OF SPECIFICATION AND SITE. Suppliers are expected to carefully examine the site of the proposed work, the proposal, specifications, and the bid forms. They shall satisfy themselves as to the character, quality, and quantities of work to be performed, materials to be furnished and the requirements of the proposed specifications.

INDEPENDENT CONTRACTOR. In accepting this contract, Successful Supplier (hereinafter Contractor) covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be employed. Contractor certifies that to the best of his knowledge, no one who has or will have any financial interest under this contract is an officer or employee of the State of South Dakota. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at times be considered independent contractors and not agents of the State of South Dakota.

INSURANCE REQUIREMENTS. Contractor shall provide insurance as specified in the Solicitation. Within ten (10) calendar days of award of contract, Successful Vendor must furnish the Requesting Agency with the Certificates of Insurance proving coverage as specified in the Solicitation and naming the State of South Dakota Additional Insured by endorsement. Failure to furnish the required certificates within the time allowed may result in withdrawal of award.

LIQUIDATED DAMAGES. Time is of the essence of this contract. Failure to start and complete all work specified within the time specified in these bid documents shall constitute material breach of contract. Failure of Successful Vendor/Contractor to complete the work within the time allowed will result in damages, and for each consecutive day in excess, the Contractor shall pay to the Requesting Agency the sum indicated in the solicitation. Such amount shall not be

construed as a penalty but as a minimum value of liquidated damages that may be deducted from payment due to the Contractor if such delay occurs.

MEASUREMENTS. It is the responsibility of the Supplier to make all measurements to determine a quote price. The State of South Dakota will not be responsible for determining the quantities of materials necessary to complete the work specified.

PERMITS. Contractor shall, unless otherwise provided elsewhere in the contract, at his or her expense, obtain all permits and licenses and pay all charges and fees necessary for the performance of the contract, and shall give all public notices necessary for the lawful performance of the contract.

PROTECTION OF PUBLIC. Adequate warning devices, barricades, guards, flagmen, or other necessary precautions shall be taken by the contractor to give advice and reasonable protection, safety and warning to persons and vehicular traffic concerned in the area.

REJECTION OF WORK. Contractor agrees that the State of South Dakota has the right to make all final determinations as to whether the work has been satisfactorily completed.

TAXES. Contractor shall pay all taxes, levies, duties and assessments of every nature due in connection with any work under the contract, shall make any and all payroll deductions required by law, and shall indemnify and hold harmless the State of South Dakota from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

SPECIAL PROVISIONS FOR PRINTING SERVICES

USE OF SOYBEAN-BASED INK: The 1989 Legislature passed legislation (SDCL 5-23-37) which is intended to encourage the use of soybean-based ink for state projects. All quotes for printing projects with the State of South Dakota must reflect the use of soybean-based ink.

Vendors not using soybean-based ink must indicate on their quote or in a separate document attached to their quote, the reasons why soybean based ink is not being used. For quotes submitted through the eprocurement system, suppliers must indicate their reasons in the comments area for each item being bid, or in a separate document uploaded to their bid. **Unless otherwise indicated by the supplier, it shall be assumed that the supplier is using soybean-based ink.**

PAPER REQUIREMENTS:

Shall include the statement "Printed On Recycled Paper" if applicable.

Shall include an inscription listing the publisher, number of copies published, and approximate cost per copy per SDCL 5-18D-15

The vendor must provide environmentally preferable paper products that meet one of the following criteria:

- (1) Green Seal certified as defined in ARSD 10:02:05:04;
- (2) Ecologo certified as defined in ARSD 10:02:05:05; or
- (3) Comply with the minimum requirements for recycled content as published in the United States Environmental Protection Agency Comprehensive Procurement Guidelines, Buy- Recycled Series, Paper Products, October 2007. The Comprehensive Guide can be viewed on OPM's website at www.state.sd.us/boa/opm under "Info for Vendor's"

The vendor may offer lower cost alternative paper products that do not meet one of the listed requirements, as long as all other specification requirements are met. The State may consider the alternative products for award if it is apparent that no product is available that meets any of the stated requirements or if the environmentally preferable paper product does not exceed the price of the alternate product by more than five percent.

PROOFS REQUIRED: Unless stated as "Exact Reprint", **PROOFS OF ALL PRINTING MUST BE SUBMITTED** to the department or institution for which the work is ordered. All corrections and necessary changes in proof are to be made without charge. Said proofs must be approved by the agency in writing before the work is finished.

DELIVERY DATES: Delivery dates when stated as "30, 60, or 90" days, or a specific date, shall mean calendar days, and shall normally begin with receipt of copy. When purchase order date is used as criteria for job start date for a specified delivery time, an allowance of 10 days from the date of the order is applicable. Penalty for late delivery is to be computed on the basis of delivery time specified on a purchase order or contract.

PENALTIES: The Office of Procurement Management Director will apply penalties for all printed matter.

- A The penalty for late delivery will be one half of one percent (.5%) of the bid price for each day after specified delivery date.
- B The penalty for poor workmanship shall be determined by the Office of Procurement Management Director based on evidence that a proof was approved, on comparison with other work of similar quality expectations and on compliance with the stated specification. A COPY OF EACH COMPLETED JOB MUST BE SUBMITTED TO THE OFFICE OF PROCUREMENT MANAGEMENT FOR DETERMINATION OF WORKMANSHIP QUALITY.

PACKAGING: Unless otherwise specified in the item description, all printed matter shall be packed so they will not shift within their carton, be wrapped in Kraft paper or shrink wrapped in poly (in the case of sheeted items and brochures) and be banded into bundles of 100. Books, booklets, etc. shall be bulk packed so that they will not shift within their carton. Forms may be bulk packed in cartons with internal dimensions of cartons being approximately 1/16" greater than the width and 1/8" greater than the length of packed forms so as to assure against damage due to bending, curling, shifting, etc.

Only new corrugated containers with a minimum Mullen strength test of 200 lbs. per square inch shall be used. The containers shall also be securely sealed to protect the contents. All cartons for delivery of a single item are to be uniform in size and are to weigh no more than 50 lbs. All cartons are to be end labeled as to the contents, i.e. agency name, address, item name, quantity in carton, serial or consecutive numbers therein and purchase order number.

SPECIFICATIONS: Changes in any of the specifications, as set forth herein, must be approved prior to implementation by the Office of Procurement Management. This applies to the quote and/or purchase orders that define the particular specifications. Examples of such are excessive increase or decrease in the number of pages, changes in stock, colors of inks to be used and/or others. Unless otherwise stated in the specifications, underruns will not exceed 2% per item ordered. Charges for overruns in excess of 2% per item will not be paid for by the State. Individual item specifications may stipulate different requirements for under and overruns. In these cases, the item specification takes precedence.

Delays in sending or receiving composition copy, proofs or late delivery shall be reported to the Office of Procurement Management as they occur. Penalties so justified will be applied when evidence in writing between the Agency and the Printer/supplier supports this action.

It shall be the responsibility of the supplier to notify the Office of Procurement Management if delivery is not on schedule as specified on the purchase order and the reasons why it is not.

Any composition (hot or cold) done by successful suppliers will become the property of the State of South Dakota. Cold type (art boards) will be returned to the state agency upon completion of the job. Hot type (repro proofs) will be returned to the state agency upon completion of the job. Any color separation negatives will remain the property of the State of South Dakota and will be returned to the state agency upon completion of the job.