

**Office Furniture Design Services Agreement  
Klein's Office Furniture and Supplies and the  
State of South Dakota  
Contract #16158**

**WHEREAS**, various state agencies require office furniture design services, and

**WHEREAS**, the Bureau of Administration is responsible for oversight of such furniture design and installation, and

**WHEREAS**, the State of South Dakota, Office of Procurement Management, with offices located at 523 East Capital Avenue, Pierre, South Dakota, 57501-3182, (the "State") issued RFP # 25567 (the "RFP") relating to furniture design services for state office facilities under the control of the Bureau of Administration; and

**WHEREAS**, Klein's Office Furniture & Supplies, and hereafter referred to as "Contractor" with offices located at 108 East Missouri Suite 2, Pierre, South Dakota, 57501 responded to said RFP;

**NOW, THEREFORE**, the State and the Contractor enter into the following Furniture Design Services Agreement (the "Agreement") dated June 1, 2011.

**FACILITIES**: The Contractor will provide furniture design services at all executive branch agencies under the control of the governor.

1. **TERM OF AGREEMENT**: The term of the Agreement shall be one year, beginning June 1, 2011 through May 31, 2012, with the option to renew for up to four (4) additional one (1) year extensions at the State's discretion and by mutual agreement of the parties.
2. **SERVICES TO BE PROVIDED**: The following services will be included in the work to be performed by the contractor:

- 2.1 Space measurement and drawing of the proposed or existing state-owned or leased facility. (Walls, electrical, phone, computer, stairs, doors, individual rooms, etc.)
- 2.2 Systems office furniture design and layout in detail or block plan. Using new or used furniture, existing furniture, remanufactured furniture, or parts from the state systems furniture warehouse in Pierre as directed by the state.
- 2.3 Contractor will furnish completed drawings, to include a complete parts list, part numbers and order documents to the furniture provider selected by the State, (Haworth, Steelcase, Herman Miller, Hon, etc.). All design drawings shall become the property of the state.
- 2.4 Contractor will be responsible to insure that part numbers and order documents are correct.
- 2.5 Contractor will be responsible for reordering, shipping costs, and installation provided the systems furniture was ordered incorrectly.
- 2.5 Floor plans prepared by the contractor must clearly and accurately include the depiction of any existing furnishings or equipment to be reused in conjunction with any new or used furnishings being used for the project. The brand name and line of furniture to be utilized is at the sole direction of the agency and the Facilities Planning Team (FPT), consistent with state bid laws.
- 2.6 Contractor shall incorporate the specifications of all agency required electrical connections and telecommunications drops into their plans and specifications.
- 2.7 All interior planning and specifications prepared by the contractor shall fully incorporate compliance with all applicable federal, state and local codes and ordinances.
- 2.8 The contractor shall bear sole responsibility and/or liability for all non-compliance issues regarding codes and ordinances if they originate from improper plans, specifications and/or installations prepared or completed by the contractor. Review or approval by and end-user agency shall not exonerate the contractor from this responsibility. The contractor shall bear full financial responsibility for the remedy of such deficiencies. The contractor shall not be responsible if building plans and specifications are provided by the lessor, the State of South Dakota, or an architectural and engineering firm hired by the end-user agency or the State.

- 2.9 The Facilities Planning Team (FPT), the Bureau of Administration, and the requesting agency reserve the right to review all plans and specifications prior to an order being placed. The contractor shall cooperate fully with FPT when such reviews are requested.
- 2.10 The contractor's interior space planning shall include providing agencies with preliminary design layouts/sketches for their input and approval, prior to progressing to the "final" floor plans and specifications. Up to four (4) preliminary floor plan revisions must be allowed. The contractor shall also be responsible for providing complete installation drawings to their installers prior to arrival at the site.
- 2.11 All site dimensions and measurements are to be verified by the contractor prior to "final design" of any installation. If the contractor is found to have designed and specified a furniture installation which does not fit as planned due to inaccurate floor plans, it shall be the contractor's sole responsibility (financially and logistically) to resolve the matter to the State's satisfaction. The State will not issue payment on such invoices until all matters are resolved.
- 2.12 The contractor must maintain up-to-date final floor plans on CAD systems that are transmissible and compatible with State of South Dakota CAD systems for the length of the contract, including any renewals or extensions. All floor plans are the property of the State of South Dakota. Within thirty (30) days of the termination of the contract, the Contractor shall furnish the Bureau of Administration with six (6) compact disk copies and six (6) paper copies of all final plans (letter-size for single/small jobs, C-size for medium jobs, and D-size for large jobs) for state-owned or leased space modified by the Contractor during the contract period.
- 2.13 Unless excused by the state, the contractor or his representative shall attend weekly meetings of the Facilities Planning Team (FPT) which are held in Pierre to coordinate projects. Any information discussed at FPT meetings is confidential and the contractor shall maintain the confidentiality of that information. Disclosure of confidential information without authorization from the State of South Dakota may result in contract cancellation.
- 2.14. The completion of design work by the contractor in a timely manner is of the essence.

**3. PRICING:** The contractor shall bill as follows:

	<b>All Regions</b>
Hourly rate for space measurement and drawing of the proposed or existing state-owned or leased facility.	\$40.00 hourly
For systems furniture design and layout in detail or block plan, the contractor will invoice based on either the hourly or flat rate, whichever results in the lowest cost to the State.	
<ul style="list-style-type: none"> <li>Hourly rate for systems furniture design and layout in detail or block plan.</li> </ul>	\$40.00 hourly
<ul style="list-style-type: none"> <li>Flat rate for systems furniture design and layout in detail or block plan if no "as built" plan is available.</li> </ul>	\$50.00 FTE
<ul style="list-style-type: none"> <li>Flat rate for systems furniture design and layout in detail or block plan if "as built" plan is available.</li> </ul>	\$30.00 FTE
Hourly rate for travel time	\$24.00
Maximum daily charge for meals (Please provide a breakdown of the total daily amount)	State Rates
Maximum per mile rate to be charged for vehicle use (Please provide a breakdown if the rate varies for different types of vehicles)	State Rates
Maximum Hotel Rate per Night	State Rates or \$90

In determining travel expenses to any location, the contractor shall use the closest starting point of Sioux Falls, Pierre or Rapid City, to the location where any service is to be performed.

**4. PAYMENT TO CONTRACTOR:** The agency for whom the work is performed shall be responsible for the payment of all amounts owed to the contractor under this contract. Unless otherwise negotiated and agreed upon by the parties, the State will make payment in compliance with the Prompt Payment Act, SDCL 5-26 for services provided under the Agreement.

5. **INDEMNIFICATION:** 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 and employees.
6. **INSURANCE REQUIREMENTS:** The Contractor shall bear the full and complete responsibility for all risk of damage or loss of equipment, products or money resulting from any cause whatsoever and shall not penalize the State for any losses incurred related to the Agreement.

The Contractor, at all times during the term of the 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 for each occurrence and \$1,000,000 aggregate.
  - B. Workers' Compensation Insurance: The Contractor shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.
  - C. Automobile Liability (including hired/non-owned): Combines Single Limit of \$500,000.
7. **INDEPENDENT CONTRACTOR:** While performing services under agreement with the State, the Contractor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.
  8. **RENEWAL OPTIONS:** The Agreement may be renewed under the same terms and conditions for up to four (4) additional one (1) year extension at the State's discretion and by mutual agreement of the parties. Notice of intent to renew shall be given by the State to the Contractor within 120 days of the end of the current Agreement term. If the notice of intent to renew is given, the Agreement shall renew upon acceptance by the Contractor, unless terminated by either party pursuant to the Termination Provision of the Agreement.
  9. **TERMINATION PROVISION:** The contract may be terminated by either party on the anniversary of the effective date in any subsequent year of the Agreement, if either party provides the other party with written notice ninety (90) days prior to such anniversary date.

In the event the Contractor breaches any of the terms or conditions of the Agreement, the Agreement may be terminated by the State at any time with or without notice. The State may terminate the Agreement for breach, as determined by the State which shall consider such items as, but not limited to, insufficient insurance coverage, failure to provide required period statements, and/or failure to enforce required standards of sanitation or quality of service including but not limited to , failure to maintain adequate personnel, or any substantial change in ownership or proprietorship of the Contractor which, in the option of the State, is not in its best interest or failure to comply with the terms of the Agreement. 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 the Agreement. If after the State termination 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.

In the event of non-renewal, cancellation or expiration of insurance, the Contractor shall provide the State evidence of the new source(s) of required insurance within twenty-one (21) calendar days after the State's receipt of the sixty (60) day notice. In the event the Contractor fails to maintain and keep in force the insurance herein required, the State shall have the right to cancel and terminate the contract without notice.

10. **NON-APPROPRIATION OF FUNDS:** The Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for the intended 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, the Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.
11. **ASSIGNMENT OF AGREEMENT:** 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 thereof, and be signed by an authorized representative of each of the parties thereto.
12. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Venue for any lawsuit pertaining to or affecting the Agreement shall be in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
13. **COMPLIANCE WITH LAWS:** The Contractor will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements

14. **UNENFORCEABLE PROVISIONS:** In the event that any court of competent jurisdiction shall hold any provision of the Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision thereof.
15. **PRIOR DISCUSSIONS:** All other prior discussions, communications and representations concerning the subject matter of the Agreement are superseded by the terms of this Agreement, and except as specifically provided therein, this Agreement constitutes the entire agreement with respect to the subject matter thereof.
16. **COMMUNICATIONS BETWEEN PARTIES:** Any notice or other communication required under this Agreement shall be in writing. Notices shall be given by and to Steven Berg, Director, Office of Procurement Management, 523 East Capitol Avenue, Pierre, SD 57501, on behalf of the State, and by and to Craig Bump 108 East Missouri Suite 2, Pierre, South Dakota, 57501, on behalf of the 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.
17. **USE OF SUBCONTRACTORS:** The Contractor may not use subcontractors to perform the services described in the Agreement 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.
18. **EXCUSED PERFORMANCES:** If, because of riots, war, public emergency or calamity, fire, flood, earthquake, act of God, government restriction, or labor disturbance or strike, business operations at the State are interrupted or stopped, performance of the Agreement, with the exception of monies already due and owing, shall be suspended and excused to the extent commensurate with such interfering occurrence. The expiration date of the Agreement may be extended for a period of time equal to the time that such default in performance is excused.
19. **ADJUSTMENTS TO THE AGREEMENT:** After the initial Agreement year, the parties upon mutual agreement may adjust the specific terms or guarantees of this

Agreement. All adjustments shall be proposed in writing to the State for approval prior to becoming effective. All required Agreement amendments shall be issued by the Office of Procurement Management.

**20. REGULAR MEETINGS ON PERFORMANCE:** The Contractor shall meet as needed with the Facility Planning Team (FPT) to effect design and design implementation.

**21. CONTRACTOR FURNISHED ITEMS:** The Contractor shall furnish all equipment and software necessary to provide the specified services included in this Agreement and any subsequent extensions or amendments.

**22. EXPENSES:** The agency shall reimburse the contractor for mileage to and from installation job sites at the current state rate for personal vehicle use as authorized in ARSD 5:01:02:01, and for hotel expenses not to exceed \$90 per room per night. Any additional expenses shall be approved in advance by the agency.

**23. STATEMENTS, AUDITS, PAYMENTS AND BILLINGS**

A. Monthly Billings: At a minimum, the Contractor shall submit, to the State agency for whom the work was performed, on the fifteenth (15<sup>th</sup>) day of each month, and/or upon completion of the project, covering the preceding month, an invoice for all services rendered. More frequent billing is negotiable if both parties agree to the frequency of billing. In addition, the contractor shall submit to BOA a monthly spreadsheet detailing the following:

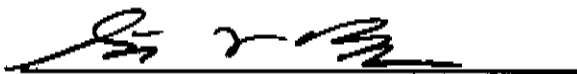
1. The agency for whom work was performed on each project.
2. The billable hours performed for the agency for each project.
3. The number of work stations designed for each project.
4. The mileage expenses billed for each project.
5. Any other miscellaneous expenses billed for each project.
6. The total amount billed to each agency under this contract.

B. Record Retention/Audits: *Retention and Inspection of Records:* The Contractor agrees to maintain or supervise the maintenance of records including records and documents regarding the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Contractor shall retain such records for a period of six (6) years from the close of each year's operations. If such records are under pending audit, the Contractor agrees to hold such records until such time as the audit is resolved or a longer period upon notification from the State. The State, through an authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to furniture design services rendered under this Agreement.

- 24. **CONTRACTOR TAX DELINQUENCY:** Contractors who have delinquent South Dakota tax liability may have their payments offset by the State of South Dakota.
- 25. **CONTRACT NOT TO EXCEED:** The total amount expended annually under this contract shall not exceed \$30,000.00.

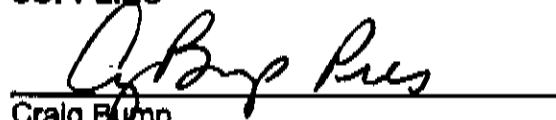
**STATE OF SOUTH DAKOTA**

**KLEIN'S OFFICE FURNITURE & SUPPLIES**



Steven L. Berg, Director  
Office of Procurement Management

Date signed: 6-3-2011



Craig Bump  
Klein's Office Furniture & Supplies

Date signed: 6-3-2011