



**DOING BUSINESS  
WITH THE  
STATE OF SOUTH DAKOTA**

**VENDOR'S MANUAL**

**Bureau of Administration  
Office of Procurement Management**

Revised July 1, 2010

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**Procurement Management Director  
Steven L. Berg (605) 773-3405**

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**Partial Listing of South Dakota State Agencies Purchasing Personnel**

**Black Hills State University**  
PO Box 9674  
Spearfish, SD 57799-9505  
Lorraine Talks  
605-642-6285

**Dakota State University**  
Business Office, Heston Hall  
Madison, SD 57042-1799  
Karen Alfson  
605-256-5127

**Northern State University**  
1200 S Jay Street  
Aberdeen, SD 57401-7198  
Earl Weisenberger  
605-626-2529

**School for the Deaf**  
1800 E 10th Street  
Sioux Falls, SD 57103-1899  
Nancy McKenzie  
605-367-5200

**School for the Visually  
Handicapped**  
423 17th Avenue SE  
Aberdeen, SD 57401-7699  
R Lee Ginsbach  
605-626-2580

**SD School of Mines and  
Technology**  
501 E St Joseph Street  
Rapid City, SD 57701-3995  
Barb Mustard  
605-394-2228

**South Dakota State University**  
PO Box 2201  
Brookings, SD 57007-2201  
Vicki Soren  
605-688-5128

**University of South Dakota**  
414 E Clark  
Vermillion, SD 57069-2390  
Darby Ganschow  
605-677-5667

**Human Services Center**  
PO Box 76  
Yankton, SD 57078-0076  
Ted Dumke  
605-668-3264

**SD Developmental Center-  
Redfield**  
PO Box 410  
Redfield, SD 57469-0410  
Darlene Rothacker  
605-472-2414

**South Dakota State  
Penitentiary**  
PO Box 5911  
Sioux Falls, SD 57117-5911  
Tim Symes  
605-367-5110

**State Treatment and  
Rehabilitation Academy**  
12279 Brady Drive  
Custer SD 57730  
Michelle Sorenson  
605-673-2521

**State Veterans Home**  
2500 Minnekahta Avenue  
Hot Springs, SD 57747-1199  
Haley Lux  
605-745-5127 ext. 110

**SD Women's Prison**  
Department of Corrections  
3200 E Hwy 34  
Pierre, SD 57501  
Jackie Hanson  
605-773-4395

**Mike Durfee State Prison**  
PO Box 322  
Springfield, SD 57062-0322  
Gail Myers  
605-369-2201

## **Forward**

The purpose of this manual is to acquaint potential vendors with procurement policies and procedures of the State of South Dakota and to outline the various steps involved in obtaining orders and contracts for state purchases of supplies, equipment, and related services. It is the goal of the State to procure supplies, equipment, and services at the lowest possible cost, consistent with the quality needed to meet the requirements of the State agencies and to ensure that the taxpayers receive the maximum value for each State dollar expended. All qualified vendors are invited to participate in the procurement of State purchases and services.

Every purchase is made in the public interest. All vendors will receive a fair and equal opportunity. Visits by sales representatives to the South Dakota Office of Procurement Management (SDOPM) are welcome and encouraged. It is recommended that you schedule your visits by telephoning for appointments.

## **Definitions**

When found in specifications, solicitations, awards and contracts issued by SDOPM, the following definitions shall apply, unless otherwise noted. Exceptions will be identified on a particular specification, proposal form or contract as "Special Instructions to the Bidders."

<b>State</b>	State of South Dakota (SD)
<b>Procurement Director</b>	Director of the Office of Procurement Management for the State of South Dakota
<b>Agency</b>	Includes all agencies, departments, divisions, institutions, boards and commissions of South Dakota state government.
<b>Bidder</b>	A person who has submitted a response to an invitation for bids issued by the Office of Procurement Management.
<b>Offeror</b>	A person who has submitted a response to a request for proposals issued by the Office of Procurement Management.
<b>Responsible Bidder or Offeror</b>	A person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
<b>Vendor/Contractor</b>	Any company, individual, corporation, or other agency to whom an award is made by Procurement Management.
<b>Procurement Management</b>	Office of Procurement Management, Bureau of Administration, State of South Dakota.
<b>Purchasing Specialist</b>	An employee of the Office of Procurement Management whose responsibility, among other things, is to authorize the purchase and lease of supplies for South Dakota state government agencies.

<b>Solicitation</b>	A Request for Quotation (RFQ), Invitation for Bids (IFB), or Request for Proposal (RFP).
<b>Supplies</b>	Any property, including equipment, materials, and printing;
<b>Bidders/Offerors Conference</b>	A meeting held with prospective bidders or offerors prior to submission of bids or proposals, to review, discuss and clarify technical considerations, specifications and standards associated with a proposed procurement.
<b>Responsive Bid</b>	A bid that conforms in all material respects to the requirements set forth in the invitation for bids.
<b>Addendum</b>	Refers to a written communication issued by Procurement Management informing interested parties that there are amendments, additions or both to an invitation for bid, request for proposals, notice, contract or other document previously issued or executed.
<b>Electronic Procurement System</b>	Refers to the Internet-based bidder registration and procurement system currently in use by the South Dakota Office of Procurement Management.

All solicitations issued by SDOPM will bind bidders or offerors to the conditions and requirements herein set forth, except as specifically qualified on detailed specifications or solicitation/specification sheets issued.

## **Bidders' List**

### **What is it?**

The bidders' list is a list of prospective bidders or offerors, categorized by supplies or services provided by each, which is maintained electronically by Mercury Commerce Solutions on behalf of the SDOPM. SDOPM uses the bidders' list in the solicitation of formal bids and proposals. Registered bidders receive email or fax notifications of sealed bid and proposal opportunities, and can submit their responses electronically through the eprocurement system, unless a specification instructs otherwise. Notifications are sent to registered bidders and offerors based on the commodity classifications chosen at the time of registration. **SDOPM, and other state agencies, may use the bidder's list to solicit quotes for items not requiring sealed bids or proposals; however these requests are not required to be sent to all registered bidders.**

### **Corporate Registration Requirements**

All corporations, limited liability companies, limited liability partnerships, limited partnerships, cooperatives and business trusts, must comply with the corporate registration requirements of the **South Dakota Secretary of State** as outlined in SDCL Chapter 47, before transacting any business in the State of South Dakota. Forms for business corporations, limited liability

companies, non-profit corporations, limited liability partnerships, limited partnerships, cooperatives, and business trusts are available at the Secretary of State's website at [http://www.sdsos.gov/businessservices/corporations\\_forms.shtm](http://www.sdsos.gov/businessservices/corporations_forms.shtm).

Any vendor interested in doing business with the State of South Dakota must register with the Secretary of State **before any contract can be awarded, or provide a statement with their bid or proposal providing specific details supporting the exemption the vendor is claiming.** Exemptions to the corporate registration requirement can be found in [SDCL 47-1A-1501](#).

**It is the bidder's responsibility to determine what they must do to comply with this requirement through consultation with their own legal counsel.** SDOPM personnel may not give any advice or assistance to bidders for making a determination of exemption from the corporate requirements.

The corporate registration fee required by the Secretary of State is in addition to the annual fee required by the SDOPM for placement on the state bidders' list.

### **How to Apply for Bidders' List - Registration Fee Required**

The State of South Dakota has contracted with Mercury Commerce Solutions to implement an online procurement system that includes bidder registration and bid distribution/response capabilities. To apply, the bidder must register online at the following web address:

<http://southdakota.mercurycommerce.com/secure/register.asp?submit=Register>

Once there, provide the required information. All registered Bidders are responsible for the accuracy of their registration information.

Bidders are not required to pay fees to Mercury Commerce Solutions to become a registered bidder and submit bids to the State of South Dakota; however the State may utilize a credit card payment system provided through Mercury Commerce (eSchoolMall) for the collection of the bidder registration fee for the State of South Dakota. Bidders may chose optional services provided by Mercury Commerce Solutions if they chose to do so. Any fees for such optional services are between the bidder and Mercury Commerce Solutions.

Bidders who are unable to register online should contact Dawn Dalton at the South Dakota Office of Procurement Management for assistance.

**An annual registration fee of \$50.00** is required in order to be on the registered bidder list. This fee may be paid by credit card or by check. **DO NOT SEND CASH.** Credit card payments may be made by going to [https://www.state.sd.us/applications/pu01VenderReg/secure/bidder\\_registration\\_fee\\_ccpmt\\_.asp](https://www.state.sd.us/applications/pu01VenderReg/secure/bidder_registration_fee_ccpmt_.asp).

Make your check or money order payable to - "Office of Procurement Management".

**Your bidder registration is not activated until your registration fee is received by Procurement Management.**

Your cancelled check or credit card statement will be your receipt. Only bidders with active registrations will receive a renewal notice. Bidders will be registered for a one year period from the date of approval of their registration by the State of South Dakota.

It is the bidder's responsibility to notify Procurement Management, in writing, of any changes in its ownership, officers, address or telephone number at the time the change occurs.

### **Addition of Name to Bidder List**

If the application (and financial statement if requested) gives substantial evidence of the bidder's financial and business responsibility, the registration fee has been paid and no reason is known by Procurement Management why the bidder would not be a responsible bidder, the name will be placed on the active bidders' list for the supplies or services classifications requested. Vendors on the bidders' list will receive notices of bid or proposal opportunities issued for those commodity categories the vendor selected at the time of registration. The SDOPM issues its invitations for bids and requests for proposals through the electronic procurement system. Procurement Management is not responsible for a bidder not receiving bid notifications if the bidder failed to select the appropriate commodity categories upon registration.

**Bidders that are unable to receive notices of bids or quotes via email or fax, or are unable to submit bids through the electronic procurement system, must contact the SDOPM for assistance.**

A bidder will be subject to a continuous review of its ability to fulfill its commitments to the State.

### **Removal from Bidder's List**

A vendor will be removed from the bidders' list for failure to pay the required registration fee.

### **Suspension or Debarment**

A vendor may be suspended for a period not to exceed three months from consideration of awards or contracts. A vendor may be debarred for a period not to exceed three years from consideration of awards or contracts. Notice to the vendor is required and the action by the SDOPM will be pursuant to the SD Administrative Procedures Act.

## **Procurement Methods**

Procurement Management uses three (3) procurement methods. Other methods may be used when deemed in the best interest of the State. The three (3) procurement methods are:

### **Request for Quotation**

A Request for Quotation (commonly referred to as an "RFQ") is utilized for the informal solicitation of prices for purchases of supplies and/or services that do not exceed \$25,000, or for procurements not required by state law to be publicly advertised. An RFQ may be accomplished through the electronic procurement system, in writing, or by telephone, at the option of the purchasing specialist or a state agency buyer. Informal RFQs have an informal due date, which is not firm. The agency requesting quotes may accept quotes received after the informal due

date, however quotes received after an award has been made are considered late. Once a requesting agency has obtained at least three written quotes, an award can be made at any time. Bidders are strongly encouraged to provide an immediate response to an RFQ since awards may be made promptly.

### **Invitation for Bid**

An Invitation for Bid (commonly referred to as an "IFB") is a formal request for sealed bids that is advertised as prescribed by state law, when a purchase exceeds \$25,000. The IFB document will contain technical specifications and a formal bid closing date and time with which the bidder must comply in order to be considered for an award. The entity that responds to an IFB with an offer to sell is referred to as a "Bidder" and the document submitted by the bidder is referred to as a "Bid Response". The SDOPM issues IFBs to registered bidders through the electronic procurement system. The term "formal solicitation" may also be used.

### **Request for Proposal**

SDOPM also may utilize a Request for Proposals (commonly referred to as an "RFP") for requirements that preclude the use of a specification. A RFP is a competitive method of procurement whereby offerors are asked to submit proposals for the supply of goods and/or services in a format, which allows for the consideration of factors in addition to the price in the evaluation and award process. This method of solicitation is used when it is determined by SDOPM that the use of competitive sealed bidding is not practicable or is not advantageous to the State. The RFP solicits sealed price proposals from prospective vendors and seeks to obtain the "best value" for the State.

The RFP method does not use the cost of the project as the single determining factor, rather, uses a combination of lowest cost plus best proposed solution to determine the award. RFPs are used when the project does not lend itself to the creation of a clear and accurate Statement of Work and the objective of the solicitation is to determine a vendor who can offer the best possible solution at the most reasonable cost.

The RFP describes in general terms the problems and needs of the State. However, unlike the informal or formal bidding process in which the State prescribes both the specifications and solution to its own needs and vendors replicate the State's specifications and solution in the bids that they submit, the RFP process contemplates that vendors will propose their own comprehensive and innovative solutions to the State's needs described in the RFP. The State will evaluate offerors' proposals in accordance with evaluation criteria described in the RFP.

## **Receipt and Opening of Formal Sealed Bids and Proposals**

It is the **bidder or offeror's sole responsibility** to ensure that a sealed bid or proposal is either physically deposited at the SDOPM, or submitted through the electronic procurement system, prior to the time and date specified for the opening of bids or submission of proposals. Late bids or proposals will not be opened and will be rejected regardless of the degree of lateness or the reasons related thereto.

The mere fact a paper bid or proposal was mailed "early enough to be received in time" will **not** be considered unless it is received by SDOPM **on time**. Likewise, bidders and offerors must

ensure that paper bids or proposals submitted in response to an Invitation for Bid or Request for Proposals are sealed prior to delivery to Procurement Management. Either an envelope or box may be used. The container must bear the solicitation number, bid opening or proposal due date and Purchasing Specialist's name, as specified in the IFB or RFP.

Bids or proposals submitted through the electronic procurement system are considered sealed, and cannot be opened until the date and time of the bid opening or proposal due date. Bidders/offerors must ensure they have submitted their bid or proposal through the system prior to the bid opening or proposal due date and time. The electronic procurement system will not allow a bid or proposal to be submitted once the bid opening or proposal due date and time has been reached.

For an invitation for bids, bidders and the public are invited, but not required, to attend the formal opening of bids. To be able to accommodate participants at bid openings, it would be appreciated if attendees would give prior notice. No decisions related to an award of a contract or purchase order will be made at the opening. Buyers will not communicate prices, after the opening, in response to a telephone request. The tabulation of bids received through the electronic procurement system will be available to participating bidders through the system after the opening. Bids submitted by regular mail will not appear on the eprocurement system. After an award has been made, a copy of the bid tabulation will be sent to any bidder who provides a self-addressed, stamped envelope, or by email upon request.

For a request for proposals, there is no public bid opening. All information related to a request for proposals, including the number and names of offerors submitting proposals, is confidential until an award has been made.

## **Award Policy**

For an invitation for bids, the contract shall be awarded within thirty days of the bid opening by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. SDOPM may reject any and all bids and readvertise for bids if none of the bids are satisfactory, or if the SDOPM believes an agreement has been entered into by the bidders to prevent competition. If the low bidder is not responsible or the bid is not made in accordance with the requirements SDCL 5-18A and 5-18D or the low bid is withdrawn as authorized by law, the bid of the next lowest responsible and responsive bidder may be accepted. SDOPM reserves the right to award single items, groups of items or total bid; to reject any and all bids in whole or in part; to waive technical irregularities, if the best interests of the State will be served and to give reasonable consideration to past performance.

For a request for proposals, awards will be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the purchasing agency taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation.

## Open Competition

It is the intent of Procurement Management that specifications are provided in order to encourage free and open competition. The bidder has, however, a responsibility to advise Procurement Management if, in the bidder's opinion, the language of the specification inadvertently restricts or limits the procurement to a single source. Such notification must be submitted in writing at least two (2) business days prior to the official bid opening date. In addition, Procurement Management strives to design specifications for compatibility with standard trade practices and to use procedures that will accomplish its mission in accordance with the law and prudent business practices. Potential bidders are encouraged to notify Procurement Management whenever, in their judgment, specifications are not considered as permitting open competition, complying with standard trade practices or imposing an impractical or unreasonable burden.

## General Information for the Bidder

- Any oral agreement or arrangement by a bidder or vendor with an agency or buyer will have no force or effect unless reduced to writing and executed by the Director of SDOPM.

## **Submission of Bid or Proposal**

Bids, proposals, amendments to submitted bids or proposals, or withdrawal of bids or proposals submitted, when received by SDOPM after the time specified for the bid opening or submission of proposals, will not be considered. All information requested in the Invitation for Bids or Request for Proposals must be provided to establish a responsive bid or offer.

- All vendors submitting paper bids or proposals must place on the face of the sealed bid or proposal, the solicitation number, opening date or proposal due date, and name of the purchasing specialist, as shown on solicitation.
- Paper bids or proposals are to be signed in ink; bids or proposals completed with pencil will not be accepted. **Bids or proposals that are not properly signed may be rejected.**
- Bids or proposals submitted through the electronic procurement system are considered to be signed by the person registered with Mercury Commerce Solutions to submit bids or proposals to the State of South Dakota.

Bidders are cautioned to check quantities, units and prices carefully. Errors may not be corrected after bids are opened. Unit prices must be shown even though a lot bid may be offered. Unit prices will prevail in the event of a discrepancy. Bidders must extend unit price to fractions: to be net, including **transportation and delivery charges fully prepaid by contractor to destination**; and subject only to cash discount. Unless otherwise specified in the bid proposal, all items are bid F.O.B. (end of tailgate) destination.

Bids may be accepted for all or any part of the invitation for bids or for any agency requirements listed in the IFB unless stated otherwise in the solicitation. SDOPM may increase/decrease quantities ordered.

Although manufacturer trade names, brand names or manufacturer numbers may be specified, they are only provided to suggest the quality of merchandise desired. When a bid contains a brand name or equal specification, and the bidder proposes to furnish a commodity other than that specifically named in the specifications, but equal thereto, **such fact shall be noted on the bid response sheet or on a separate page attached to the bid.** Any communication or descriptive literature explanatory of the article submitted as a variation or a substitution for that called for in the proposal must be attached to the bid. There are occasions when an agency cannot accept substitutions. This usually occurs only when the item specified must be compatible with or fit into an existing installation. In most instances, more than one bidder can furnish the item required by the agency. Failure to provide literature for alternative products offered may be grounds for rejection of the bid.

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 bid prices. (Exception: State tax will be included in bids for gasoline.) State of South Dakota Federal Exemption Registry number is 46-73-0079K. Retailers and other types of suppliers are exempt from paying sales tax on the gross receipts from the sales of tangible personal property and services to the State of South Dakota and its cities, counties, townships, and other political subdivisions. (See Special Information to Contractors)

The purchases are exempt if the purchase is made by an authorized official of the exempt entity and the payment is made directly from the funds of that entity, and the title to the property is retained in the name of the entity. The retailer making the sale must retain records supporting the exempt purchase. Along with normal business records, such documentation should include a copy of the government voucher or warrant, a copy of an exemption certificate. Special sales tax exemption numbers are not normally issued to the State and its political subdivisions, the supporting record mentioned previously would substantiate the exempt sale. Further reference must be made to the South Dakota Codified Laws and the Administrative Rules of South Dakota regarding the contractor's tax responsibilities.

All bids will be opened publicly and are subject to public inspection after awards; bidders are invited to be present at openings. RFP responses are not opened publicly and only the register of proposals and the response of any offeror selected for contract proposal are subject to public inspection after an award has been made.

**A "No Bid" response does not need to be returned to Procurement Management in order for a bidder to remain on the bidder list.**

#### **Requirement for Bid or Award Security**

SDOPM may require a bond, surety, cash, bank cashier's check, bank money order, or approved security in any invitation for bids or request for proposals. The solicitation will indicate the security required. When required by Procurement Management, the security shall be a bond, cash, approved security, certified check, bank cashier's check or bank money order. **All bonds or other forms of security must be original documents. Photocopies or facsimile copies are not acceptable. Non-certified personal or company checks are not acceptable as security.**

Standard bond forms will be furnished by Procurement Management on request.

## **Samples**

Samples required in a specification, invitation for bids or request for proposals must be submitted prior to bid opening or proposal due date, unless otherwise directed, accompanied by a descriptive invoice indicating if bidder/offeror desires return of sample or samples, provided they have not been used or made useless through tests. Return of samples submitted will be at the bidder/offeror's risk and expense. All samples submitted are subject to test. Award samples may be held for comparison with deliveries. Failure to submit samples when requested may result in rejection of bid. Samples not picked up by bidder within 30 days will become the property of the State.

## **Laboratory Tests**

All laboratory tests will be made under the direction of SDOPM.

## **Local Government Purchasing**

Procurement Management, pursuant to state law, has established a State Contracts List (List). The List is furnished to units of local government within South Dakota. Contained therein is a listing of supplies that are in contracts executed by SDOPM. South Dakota law provides that local units of government may purchase items on state contracts directly from the contractor, without competitive bidding.

## **Bidding Chemical Substances**

When a procurement has as its purpose the purchase of a chemical substance (includes, but is not limited to, herbicides, pesticides, fertilizer, cleaning supplies, paint, solvents and toners) the bidder maybe required to submit the Manufacturer's Safety Data Sheet (MSDS). The MSDS is required with the initial delivery of each product and must be maintained on file by the agencies. Substitution of a product requires a new MSDS.

Any person wishing to sell pesticides within the State of South Dakota must register with the SD Department of Agriculture in accordance with SDCL 38-20A-4. A pesticide is defined as "...any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant". Broadly defined, a pesticide is any agent used to kill or control undesired insects, weeds, rodents, fungi, bacteria, or other organisms.

## **Sale of Contractor's Business**

If the contractor's business or firm is sold during the term of a contract, the SDOPM Director must be notified at least thirty (30) days prior to sale. Failure to provide said notice may result in the forfeiture of performance surety until all outstanding orders, deliveries, performance and payments are satisfied.

## **Non-Discrimination Statement**

### **State**

The State of South Dakota requires that all contractors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-discrimination. By signing a paper bid or proposal, or submitting a bid or proposal through the electronic procurement system, 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.

### **Federal**

#### **Equal Employment Opportunity**

(Section 202, Executive Order 11246, September 24, 1965, 30 FR 11269)

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin or sex. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin or sex.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965 as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965 as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting (or Federal Administering Agency\*) agency and the Secretary of

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965 as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965 as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965 as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting (or Federal Administering Agency\*) agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however That in litigation with a subcontractor or vendor as a result of such direction by the contracting (or Federal Administering Agency\*) agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

### **Utilization of Minority Business Enterprises**

(applicable if contract exceeds \$5,000 and services are not personal in nature)

- (a) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.
- (b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly owned business, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are African American, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American Aleuts. Contractors may rely on written representatives by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

### **Assurance of Compliance Under Title VI of the Civil Rights Act of 1964**

The bidder, with his signature on this proposal, HEREBY AGREES THAT he will comply with the title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to that title, to the end that, in accordance with title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, national origin or sex, be

excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the bidder receives Federal financial assistance; and HEREBY GIVES ASSURANCE THAT he will immediately take any measures necessary to effectuate this agreement.

\*(added to insure Federal Administering Agency access, authority, and responsibility)

## **Contract**

### **Formation**

Each bid or proposal is submitted with the understanding that acceptance of the bid or proposal, in writing, by the SDOPM Director, approved as to form by the Attorney General for South Dakota, shall constitute a contract between the bidder or offeror and the State. The bidder or offeror on its part will furnish and deliver the supplies at the prices given and in accordance with the conditions of the solicitation and specifications; and the State on its part will order from such contract, but does not guarantee to purchase a minimum or maximum amount, and pay for, at the agreed prices, all supplies ordered and delivered unless otherwise specifically stated; reserving however, the right to buy similar supplies from other vendor(s) when it is in the best interests of the State.

The State generally does not sign standard contract forms submitted by bidders or offerors. The bid or proposal with the bidder or offeror's signature affixed thereto, or submitted through the electronic procurement system, shall constitute an offer to sell to the State under the terms and conditions contained therein. The delivery of a purchase order, notice of award or contract with the signature of the SDOPM Director or designee constitutes acceptance of the offer to sell and consummates the contractual agreement.

### **Waiving of Formal Contract**

SDOPM may, at its discretion, waive the execution of a formal contract; in which case, the notice of awards, schedules and specifications, bids or proposals and/or purchase order shall constitute the entire contract.

### **Agencies Eligible**

Agencies, although not specifically mentioned, are eligible to purchase from the contracts. State law authorizes local units of government to purchase from state contracts.

Agencies may not purchase from contracts that have expired.

### **Alterations**

No alterations or variations of the terms of a contract shall be valid or binding upon the State unless made in writing and executed by the SDOPM Director.

## **Terms and Extension**

Contracts will remain in force for the term specified and all supplies ordered before the date of termination shall have been satisfactorily delivered and accepted unless:

- a. Terminated prior to expiration by satisfactory delivery against orders of entire quantities.
- b. Extended upon written authorization of the SDOPM Director and accepted by contractor to permit ordering of unordered balances or additional quantities at contract price and in accordance with contract terms.
- c. **Option to extend:** The State will have the option to:
  - extend a contract for an additional 2 months past the original contract expiration date; and/or
  - extend a contract for a period not to exceed one year. Notice shall be given by the State to the contractor at least 60 days prior to the termination of the contract, and the contractor shall agree to such extension within 30 days thereafter, before such extension period shall become effective.

## **Assignment**

No contract may be assigned, sublet, or transferred without written consent of the SDOPM Director. Contractors will be responsible for any subcontractor work payment.

## **Termination**

The State reserves the right to terminate any contract in accordance with either of the following:

- A. The failure of the State Legislature to provide funds and expenditure authority relative to the procurement which is the subject of the contract. Contractor agrees that a termination because of a lack of funds or expenditure authority will not result in a claim against the State or any officer or employee thereof. Notice from SDOPM will be given to the contractor in the event of termination.
- B. In the event a contractor fails to perform in good faith or in accordance with the terms of the contract, and cannot furnish good and sufficient cause for its failure to perform, the contract shall be terminated and the State shall take the necessary action to recover any damage to the State from the defaulting vendor and/or its surety. Written notice shall be given to the contractor and/or its surety stating the reason(s) for termination. Circumstances such as strikes and/or fire over which the contractor has no control will not be considered sufficient cause for termination.

## **Performance Security**

The failure of the bidder, following notice of acceptance of its bid, to provide required security shall render the bid void. Failure to provide the required security could result in forfeiture of a bidder's bid security.

## **Failure to Deliver**

Liquidated damages may be assessed for failure of a contractor to deliver within the specified time or within reasonable time as interpreted by the SDOPM Director, or failure to make replacements on rejected articles when so requested or as directed by the SDOPM Director, will constitute authority for the SDOPM Director to purchase items in the open market to replace those rejected or not delivered. The SDOPM Director reserves the right to authorize immediate purchases in the open market against rejections of any contract. Additional costs to be deducted from invoice payments due to the vendor or the vendor shall reimburse the State within a reasonable time specified by the SDOPM Director for excess costs occasioned by such purchases. Such purchases will be deducted from contract quantities.

## **New Items**

All contracts, unless otherwise specifically stated, are for new items, latest model, designs, or pack and accepted by the contractor as such.

## **Vendor Guarantee**

Purchase contracts, leases, and license agreements executed by SDOPM, whether formed (1) as a result of the notice to bidders, schedules and specifications, proposals, purchase order and Vendor's Manual; or (2) by the execution of a separate contractual document, contain the following material terms:

- a. Vendor, lessor, or licensor agrees to perform the contract in accordance with the specifications and solicitation under which the contract was awarded.
- b. Vendor, lessor, or licensor agrees to provide a copy of the contract to all outlets authorized to distribute the vendor's products and insure said outlets are aware of all requirements and procedures. Failure of any one outlet to provide the products or services may result in the termination of the entire contract.
- c. Vendor, lessor, or licensor agrees to save the State, its officers and employees harmless from liability of any nature or kind for the use of any copyrighted or non-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used by the vendor in the performance of the contract.
- d. Vendor, lessor, or licensor guarantees its products against defective material or workmanship.
- e. Vendor, lessor, or licensor agrees to repair or replace any damage or marring occasioned in transportation and delivery of its product to the specified South Dakota location.
- f. Vendor, lessor, or licensor agrees to furnish adequate protection from damage for all work and to repair damages of any kind, for which he or his workmen are responsible, regardless of whether the damage is (1) to the State or its agencies' real or personal property, (2) to his own work, or (3) to the work of other contractors.

- g. **Purchases and Leases:** The vendor agrees, at its sole cost and expense, to maintain adequate general liability, workers compensation, professional liability (when applicable), and automobile liability insurance during the performance of the contract. The vendor agrees to provide the State with certificates of insurance, and, when requested, the insurance policy involved. Additional insurance requirements may be included in individual bid documents and/or contracts.

**Leases and Licenses:** Insurance requirements for leases and licenses are set forth on individual bid documents, contracts, or both.

- h. Vendor, lessor, or licensor agrees to procure and pay for all permits, licenses, and fees, and give all notices and comply with all applicable State statutes, agency rules, and city ordinances applying to products purchased or services provided under the contract.
- i. Vendor, 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.
- j. Vendor, lessor, or licensor is responsible for any damages or loss occurring prior to acceptance.

Deviations from the above terms are discouraged and will not be granted unless:

- 1) the vendor requests and is granted written approval prior to the opening of bids; and
- 2) the goods or services involved are so unique that one or all of the above listed terms are inapplicable.

Such requests for deviations must be submitted separately from bids or proposals sufficiently in advance of the bid opening or proposal due date in order to allow for legal and risk management review. (A minimum of 30 days is recommended.) The director may grant written authority for deviations to an individual or company with regard to groups of products, product lines, or groups of services without reference to a particular solicitation.

Delivery must be made in accordance with the solicitation requirements. In most cases, delivery is within 30 days from receipt of the order. If bidder cannot meet the delivery time specified in the proposal, it should take exception to this by stating a reasonable time he expects to meet. The decision of the SDOPM Director as to reasonable compliance with delivery terms shall be final. Any extension of time for delivery from that specified must be in writing, such extension applying only to the particular item or shipment.

Supplies shall be securely and properly packed for shipment, according to accepted commercial practice, without extra charge for packing cases, baling or sacks; the containers to remain the property of the agency unless otherwise stated in the bid. No delivery charges shall be added to invoices, except as provided by solicitation or contract.

Deliveries are subject to re-weighing over official sealed scales designated by the State and

payments will be made on the basis of the new weight of materials delivered. Inspection of material will be made by the agency to which the goods are consigned, and any delivery that is defective, or fails in any way to meet the terms of contract, will be rejected. The decision of the SDOPM Director will be final.

## **Purchasing Techniques**

It is the policy of Procurement Management to reduce the number of purchase transactions by combining items of common use, or items that are repetitively purchased. To this end, various types of contracts and orders are used, including but not limited to the following:

### **Firm Fixed Price Contract**

SDOPM procures many items on an "as needed" basis for a specific agency. A firm price is requested for fixed quantity with single or multiple delivery date. Depending on the estimated dollar amount of the purchase, the formal sealed bid method may be used. A purchase order is issued to the successful vendor.

### **Statewide Price Contracts**

SDOPM establishes statewide price agreements for supplies or services commonly used in volume by agencies or for participating local government units. These contracts are awarded by the formal advertised sealed bid or proposal method for definite periods of time, usually semiannual and annual. These contracts pose no obligation upon the State other than the requirement to purchase from a successful vendor such quantities as may be required by the State during the period of the contract. The successful vendor will be mailed a Notice of Award. Receipt of this Notice of Award does not authorize shipment. Shipment is only authorized by, and made after the vendor receives a contract order from an agency. The State reserves the right to purchase from other sources should market conditions cause the contract price to become excessive.

### **Agency Price Agreement**

SDOPM establishes term contracts for estimated quantities of items or a family of items or services for use by individual agencies. The formal sealed bid process is normally used. Receipt of the contract does not authorize shipment. Shipment is authorized and made after receipt of a contract order from the user agency.

### **Multiterm Contracts**

A multiterm contract may be entered into for any period of time deemed to be in the best interest of an agency, normally not to exceed five (5) years; provided that the terms of the contract and conditions of renewal or extension are included in the specifications and funds are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds.

### **Correspondence Concerning Bid Invitations**

Any questions concerning an Invitation for Bid, Request for Proposals or Request for Quotation

should be directed to the Purchasing Specialist whose name, telephone number, and electronic mail address are listed on the IFB, RFP, or RFQ document. The person corresponding should specify the IFB, RFP, or RFQ number and the bid opening date that appears in the invitation.

### **Bid Errors**

Prior to opening of bids, errors may be corrected. If the bidder has submitted a paper bid, the person signing the bid must initial the change in ink. No bid shall be altered or amended after the bid opening. In case of errors in the extension price, the unit price shall govern. Bids submitted through the electronic procurement system may be corrected by the bidder up to the date and time of the bid opening. The bidder must contact the Purchasing Specialist to request that their online bid be returned to them for modification. The bidder must then resubmit their bid through the electronic procurement system.

### **Modification or Withdrawal of Bids**

A bid may be modified or withdrawn by a bidder prior to the time set for bid opening. For the procedure to withdraw or modify a paper bid, contact the Purchasing Specialist listed on the solicitation. To modify or withdraw a bid submitted through the electronic procurement system; the bidder must contact the OPM Purchasing Specialist and request that their online bid be returned. The bidder must then resubmit their bid through the electronic procurement system if desired. After bid opening, a bidder will be permitted to withdraw its bid only at the discretion of the SDOPM Director, where there is an obvious error in the bid supported by cost data, or where enforcement of the bid would impose an undue hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Such withdrawal will be considered only after receipt of a written request from the bidder.

### **Late Bids or Proposals**

Bids or proposals must be received in SDOPM on or before the date and time designated for the bid opening or the submission of proposals. Paper bids or proposals received late will be rejected and returned to the bidder or offeror unopened. The electronic procurement system will not allow bids or proposals to be submitted after the bid opening or proposal submission due date and time.

### **Unidentified Bids or Proposals**

Paper bids or proposals that are not marked properly with the solicitation number, bid opening or proposal due date and the Purchasing Specialist's name on the sealed bid or proposal envelope will be returned.

### **Tie Bids or Proposals**

**When No Preference Applies:** If two or more competitive sealed bids submitted are identical in price and product quality, the bids are the low bid, and no resident bidder preference is applicable, SDOPM may:

- (1) Award the bid by lottery to one of the identical low bidders; or
- (2) Reject all the bids and resolicit bids for the required supplies, services, or public

improvement.

**When Preference Applies:** In awarding a contract, if all things are equal, including the price and quality of the supplies or services, SDOPM shall give preference:

- (1) To a qualified agency if the other equal low bid or proposal was submitted by a business that was not a qualified agency;
- (2) To a resident business if the other equal low bid or proposal was submitted by a nonresident business;
- (3) To a resident manufacturer if the other equal low bid or proposal was submitted by a resident business that is not a manufacturer;
- (4) To a resident business whose principal place of business is located in the State of South Dakota, if the other equal low bid or proposal was submitted by a resident business whose principal place of business is not located in the State of South Dakota; or
- (5) To a nonresident business providing or utilizing supplies or services found in South Dakota, if the other equal low bid or proposal was submitted by a nonresident business not providing or utilizing supplies or services found in South Dakota.

In computing price, the cost of transportation, if any, including delivery, shall be considered.

### **Cancellation of Invitation for Bids or Request for Proposals**

SDOPM may cancel an Invitation for Bids or Request for Proposals in whole or in part when it is in the best interest of the State.

### **Specifications**

Unless a bidder or offeror specifies otherwise in its bid or proposal, it is assumed that the bidder or offeror is responding in strict accordance with the specifications in the solicitation. When items are received that do not meet these specifications, they will be returned to the bidder or offeror, shipping charge collect, and the bidder or offeror will be required to immediately provide items meeting the specifications.

### **New Items**

All items offered and furnished must be new and of current production unless the solicitation specifically permits the offering of used or reconditioned items.

### **Back Orders**

If it is necessary to back order an item, the vendor must notify the ordering agency in writing and advise of expected delivery date or shipment date. If this date is not acceptable, the State may seek remedies for default.

## **Default by Vendor**

In the case of default by the vendor, the State of South Dakota may procure the item or service from other sources and hold the vendor responsible for any damages incurred.

## **Inspection**

All items are subject to inspection and testing. Items that do not meet specifications will be rejected. Failure to reject upon receipt, however, does not relieve the vendor of liability. When subsequent tests, after receipt, are conducted and when such tests reveal failure to meet specifications, the State may seek damages regardless of whether a part or all of the items have been consumed.

## **Loaned Equipment**

No equipment may be on loan unless authorized by the SDOPM Director.

## **Preferences**

South Dakota law gives a preference to resident businesses and to goods manufactured in South Dakota, if price, quality and service are substantially equal. Purchase or lease of motor vehicles is to be from licensed South Dakota dealers only. Preference law also exists for meat products, milk processors and the use of soybean - based inks. The State may give preference to recycled and biobased products. Specific South Dakota code references may be obtained from Procurement Management.

## **Correspondence - Regarding Purchase Orders**

All communication concerning changes in a purchase order or the cancellation of a purchase order will be handled by SDOPM. SDOPM will make appropriate changes or cancellations.

SDOPM reserves the right to cancel prior to shipment and delivery if the using agency informs SDOPM that a lack of funding exists, or that the item is no longer needed.

## **Contract Payments – “Prompt Payment Act”**

The State will make payments to the contract as outlined in South Dakota Codified Law 5-26, “Prompt Payment Act” (see Appendix C).

## *Appendix A*

### **Special Information to Contractors**

#### **Contractors - Contracts with Governmental Agencies**

Contractors who have contracts with the United States, the State of South Dakota, and governmental subdivisions have the same sales or use tax liability on their purchases and materials as contractors have with private concerns. They are not entitled to any refund of any South Dakota sales or use tax that they may have paid. Where the contractor does not buy in his own right but is the purchasing agent for the government with title passing directly from the seller to the government, such sales or purchases are not subject to sales tax, however the contractor or subcontractor becomes liable for use tax when such materials are used or consumed in construction projects in this state. If a governmental body, or sales tax exempt entity, furnishes construction materials used by the contractor in a contract, the contractor has a use tax liability even though title never rested with the contractor. In addition to the sales and use tax on materials, the contractor is also subject to the contractor's excise tax on his gross receipts resulting from realty improvements for governmental agencies.

On bids made after April 30, 1984, the value of the governmental furnished materials, plus the use tax must be included in the contract price in order to determine the contractors excise tax liability.

#### **Contractors' Excise Tax**

The contractors' excise tax is imposed upon the gross receipts of contractors who are engaged in realty improvements. The tax applies to the total contract price, including all labor and material, whether or not the work is by the hour or by formal bids. Gross receipts resulting from public entities are taxable. Projects for the State, counties, cities, schools, hospitals, churches, and private individuals are subject to the contractors' excise tax.

#### **State Sales and Use Tax Liability**

The sales or use tax liability of a contractor who completes a contract for the U.S. Government, the State of South Dakota or one of its subdivisions, is no different than contracting with an individual. The contractor is the consumer of the material and liable for the sales or use tax. Where a contractor or subcontractor uses tangible personal property in the performance of his contract or subcontract obligations regardless of who holds title to the property, such contractor or subcontractor shall pay the sales or use tax measured by the cost or fair market value of such property, whichever is greater, unless such property has been previously subjected to a sales or use tax in this state and the tax due has been paid.

#### **Application of Taxes for Carpet Laying for the Dealer**

When a dealer sells carpeting or floor covering installed, the dealer becomes a prime contractor. As such, the dealer will be liable for 4% state use tax plus any applicable city use tax on their cost of the materials. Also, contractors' excise tax will be due at the rate of 2% on the total gross receipts. When a subcontractor is hired to actually install the carpeting, a prime contractor's exemption certificate should be furnished to the subcontractor, thereby, exempting the subcontractor's gross receipts.

## **For the Installer**

In the event a dealer sells carpeting or floor covering delivered to a job site, acting strictly as a retailer, applicable sales tax will be charged on the total selling price. The buyer, upon making arrangements with an installer to install the carpeting or floor covering must provide the installer with the total cost paid for the carpeting or floor covering. It is then necessary for the installer to add the total cost of the carpeting or floor covering to the installers labor charge to arrive at the amount subject to the 2% excise tax.

The above information is general in nature; should you have further questions concerning your tax liability, contact your local South Dakota Department of Revenue Field Office, Revenue Agent or the Sales Tax Division in Pierre.

Insert W-9 Form

## *Appendix C*

### **SDCL CHAPTER 5-26 PROMPT PAYMENT ACT**

**5-26-1. Definitions.** Terms used in this chapter mean:

(1) "**Agency**," each association, authority, board, branch, commission, committee, council, department, division, office, officer, system, task force, or other agent of the state government vested with the authority to exercise any portion of the state's sovereignty and any county, municipality, public school district, and any officer, board, or commission empowered by law to enter into contracts for the construction of public improvements or for providing public services;

(2) "**Business**," a business, institution, association, profession, occupation, or calling of every kind, whether or not conducted for profit;

(3) "**Contract**," invoice, purchase order, or vendor contract;

(4) "**Property**," anything of value, including but not limited to, real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, electric or other power and signatures which purport to create, maintain, or extinguish any legal obligation;

(5) "**Service**," labor that does not include a tangible commodity. The term includes, but is not limited to: labor; professional advice; telephone, cable television, and other utility service; accommodations in hotels, restaurants, or elsewhere; admissions to exhibits and entertainments; the use of machines designed to be operated by coin or other thing of value; and the use of rented real or personal property.

**5-26-2. Deadlines for payments.** An agency which acquires property or services pursuant to a contract with a business shall pay for each complete delivered item of property or service on the date required by contract between the business and agency or, if no date for payment is specified by contract, within forty-five days after receipt and written acceptance of property or services and receipt of the invoice covering the delivered items or services.

**5-26-3. Interest on overdue payments -- Rate -- Compounding.** 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 specified by contract.

Interest which is unpaid at the end of each sixty-day period or at the end of any specified period provided by contract shall be added to the principal amount of the debt and shall thereafter accumulate interest.

**5-26-3.1. Payment of less than five dollars in interest prohibited.** No agency is required to pay interest due because of late payment if the interest is less than five dollars.

**5-26-4. Additional appropriations for interest prohibited.** An agency may not seek additional appropriations to pay interest which accrues as a result of its failure to make timely payments required by § 5-26-2.

**5-26-5. Disputed payments exempt -- Notice of dispute required.** This chapter is not applicable if an agency's failure to timely pay interest required by § 5-26-3 is the result of a

dispute between the agency and the business over the amount due or over compliance with the contract. In case of dispute, the agency shall, within ten days of receipt of property or services and receipt of invoice, give written notice to the business of disagreement with property or services. The notice shall include the reasons for and other pertinent details of the dispute and a copy of the notice shall be timely filed with the state auditor or treasurer or finance officer of the agency.

**5-26-7. Citation of chapter.** This chapter may be cited as the South Dakota Prompt Payment Act.

**5-26-8. Exemptions of transactions between government agencies.** The provisions of this chapter do not apply to transactions between government agencies unless otherwise authorized by statute.

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