

STATE OF SOUTH DAKOTA
OFFICE OF PROCUREMENT MANAGEMENT
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3182

Legal Services for Victims of Crime

PROPOSALS ARE DUE NO LATER THAN MARCH 15, 2017, 5:00 pm CST

RFP #863

Division of Adult Services
and Aging

POC: Mark Close
Mark.close@state.sd.us

READ CAREFULLY

FIRM NAME: _____ AUTHORIZED SIGNATURE: _____

ADDRESS: _____ TYPE OR PRINT NAME: _____

CITY/STATE: _____ TELEPHONE NO: _____

ZIP (9 DIGIT): _____ FAX NO: _____

FEDERAL TAX ID#: _____ E-MAIL: _____

PRIMARY CONTACT INFORMATION

CONTACT NAME: _____ TELEPHONE NO: _____

FAX NO: _____ E-MAIL: _____

1.0 GENERAL INFORMATION

1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)

The Department of Social Services (DSS) is initiating this RFP with up to \$750,000 available to obtain legal services for victims of crime throughout South Dakota. Proposals will be accepted for services provided statewide or regionally as designated in Attachment (A). Proposals can provide services to one of the seven regions or multiple regions. Applicants are encouraged to collaborate with other vendors to provide services, if needed. Victims of Crime Act (VOCA) funding made available to South Dakota through the United States Department of Justice (DOJ), Office of Justice Programs (OJP), and Office for Victims of Crime (OVC) will support any project funded through this RFP.

1.2 ISSUING OFFICE AND RFP REFERENCE NUMBER

The Department of Social Services is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota. The reference number for the transaction is RFP #863. Refer to this number on all proposals, correspondence, and documentation relating to the RFP.

Please refer to the Department of Social Services website link <http://dss.sd.gov/keyresources/rfp.aspx> for the RFP, any related questions/answers, changes to schedule of activities, amendments, etc.

1.3 LETTER OF INTENT

All interested offerors are requested to submit a non-binding **Letter of Intent** to respond to this RFP. While preferred, a Letter of Intent is not mandatory to submit a proposal.

The letter of intent must be received by email in the Department of Social Services by no later than January 23, 2017 and must be addressed to Mark.Close@state.sd.us. Place the following, exactly as written, in the subject line of your email: **Letter of Intent for RFP #863**. Be sure to reference the RFP number in any attached letter or document.

1.4 SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)

RFP Publication	<u>January 6, 2017</u>
Letter of Intent to Respond Due	<u>January 23, 2017</u>
Deadline for Submission of Written Inquiries	<u>January 30, 2017</u>
Responses to Offeror Questions	<u>February 13, 2017</u>
Proposal Submission	<u>March 15, 2017, 5:00 pm CST</u>
Oral Presentations/discussions (if required)	<u>TBD if necessary</u>
Anticipated Award Decision/Contract Negotiation	<u>April 5, 2017</u>

1.5 SUBMITTING YOUR PROPOSAL

All proposals must be completed and received in the Department of Social Services by the date and time indicated in the Schedule of Activities.

Proposals received after the deadline will be late and ineligible for consideration.

An original, six (6) identical copies, and one (1) copy of entire proposal, including all attachments and cost proposal(s), in PDF digital format loaded on a USB flashdrive. Offerors may not send the electronically formatted copy of their proposal via email.

All proposals must be signed in ink by an officer of the responder legally authorized to bind the responder to the proposal, and sealed in the form intended by the respondent. Proposals that are not properly signed may be rejected. The sealed envelope must be marked with the appropriate RFP Number and Title. The words "Sealed Proposal Enclosed" must be prominently denoted on the outside of the shipping container.
Proposals must be addressed and labeled as follows:

**Request For Proposal #863 Proposal Due March 15, 2017
South Dakota Department of Social Services
Attention: Mark Close
700 Governors Drive
Pierre SD 57501-2291**

No punctuation is used in the address. The above address as displayed should be the only information in the address field.

No proposal may be accepted from, or any contract or purchase order awarded to any person, firm or corporation that is in arrears upon any obligations to the State of South Dakota, or that otherwise may be deemed irresponsible or unreliable by the State of South Dakota.

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

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

1.7 NON-DISCRIMINATION STATEMENT

The State of South Dakota requires that all contractors, vendors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-discrimination. By signing and submitting their proposal, the offeror certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.

1.8 MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn by the offeror prior to the established due date and time.

No oral, telephonic, telegraphic or facsimile responses or modifications to informal, formal bids, or Request for Proposals will be considered.

1.9 OFFEROR INQUIRIES

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after January 30, 2017. Email inquiries must be sent to Mark Close with the following wording, exactly as written, in the subject line: **RFP #863 Questions**.

The Department of Social Services will respond to offerors inquiries by posting all offeror aggregated questions and Department responses on the DSS website at <http://dss.sd.gov/keyresources/rfp.aspx> no later than February 13, 2017. Offerors may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this RFP. Offerors will be notified in the same manner as indicated above regarding any modifications to this RFP.

1.10 PROPRIETARY INFORMATION

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

1.11 LENGTH OF CONTRACT

The initial contract will begin April 2017 thru May 2018 with an option to renew thereafter.

1.12 GOVERNING LAW

Venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in Hughes County, State of South Dakota. The laws of South Dakota shall govern this transaction.

1.13 DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION/NEGOTIATIONS)

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

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

2.0 STANDARD AGREEMENT TERMS AND CONDITIONS

Any contract or agreement resulting from this RFP will include, at minimum, the State's standard terms and conditions as seen in Attachment B. As part of the negotiation process, the contract terms listed in Attachment B may be altered or deleted. The Offeror should indicate in their response any issues they have with any specific contract terms. If the Offeror does not indicate any contract term issues, then the State will assume the terms are acceptable.

3.0 SCOPE OF WORK

Background

In 2013 the US Department of Justice released *Vision 21*, a four-year strategic planning initiative that systematically evaluated the state of victim services nationally and set a guidepost for each state's victim service programming. The *Vision 21* report identified the following overarching goal:

Every state will establish wraparound legal networks that will help ensure that crime victims' rights are enforced and that victims of crime receive the broad range of legal services needed to help rebuild their lives in the aftermath of crime.

The purpose of the RFP is to provide victims of crime in South Dakota with access to legal services in relation to their victimization. Victims often receive confusing, incomplete and sometimes incorrect information regarding their legal options or cannot afford representation. This lack of knowledge profoundly influences their decision-making and the fair outcome of their case. The intention is to ensure victims' rights are enforced and, if needed, they obtain legal representation in the aftermath of their crimes.

- Provide legal services for victims of crime in South Dakota who are eligible for support with VOCA victim assistance funds.
 - Emergency legal assistance such as filing restraining orders and obtaining emergency custody/visitation rights when such actions are directly connected to family violence cases and are taken to ensure the health and safety of the victim.
 - Assistance with Participation in Criminal Justice Proceedings. These services may include (but are not limited to):
 - Advocacy on behalf of crime victims during criminal proceedings; accompaniment to criminal justice offices and court; transportation to court;
 - Child care or respite care to enable a victim to attend court;
 - Notification of victims regarding trial dates, case disposition information and parole consideration procedures;
 - Assistance with victim impact statements;
 - Projects devoted to criminal restitution advocacy on behalf of specific crime victims;
 - Asserting Crime Victims' Rights in criminal proceedings directly related to the victimization;
 - Advocacy to protect victims' safety, privacy, or other interests as a victim in criminal proceedings.

Legal services may be provided when reasonably needed as a direct result of the victimization, but do not include tort actions, divorce or criminal defense.

To be eligible for legal assistance, victims must be referred by one of our sub-grantee agencies. The sub-grantee agency will have the victim complete an application that will then be forwarded on to the offeror providing services in the region.

Legal Needs of a Victim

In the civil proceeding context, legal assistance expenses may include legal services that are reasonably needed as a direct result of the victimization, but do not include tort actions, divorce or criminal defense. The following areas have been identified as legal service needs of crime victims that may arise as the direct result of the victimization that would be within the scope of the current VOCA rules. This is not an exhaustive list.

With regard to criminal proceedings:

- Strengthening prosecution efforts and acting as an intermediary
- Protection of crime victim records-motion to quash
- Advice on court ordered restitution, insurance claims and civil suits
- ADA accommodations
- Legal advocacy for victims with mental health diagnosis
- Representation in depositions
- Disability benefits when disability was caused by victimization
- Children as witnesses
- Enforcement of Victim's Rights
- Return of property taken as evidence
- Advocacy to protect victims' safety, privacy or other interests as a victim

Family Law:

- Child custody, visitation and support
- Parentage
- Guardianship

Abuse:

- Obtaining and enforcing protection orders: Sexual, Domestic and Stalking
- Actions taken on behalf of exploited or abused elder/vulnerable adults
- Restraining orders

Housing:

- Eviction when crime-related
- Denial of housing benefits and housing opportunities due to victim status

Employment/Financial:

- Loss of employment opportunities due to identity theft issues
- Loss of employment due to victimization
- Consumer issues (incurring debt incurred by the victim's abuser)
- Financial exploitation
- Public Benefits (only when directly related to criminal victimization)
- Fair Labor Standards

Immigration:

- T- and U-Visas
- Deportation actions
- Asylum
- Removal defense

Respondent will provide a detailed description of how they intend to perform the work in sections 3.1 through 3.7. The information should include name and title of staff assigned and a detailed description of duties they will perform.

3.1 The Respondent must have graduated from an accredited school of law. Provide name of law school.

3.2 The Respondent must be certified to practice in the State of South Dakota. Provide date of certification.

3.3 The Respondent must have experience working with victims of sexual assault, domestic abuse and child abuse. Provide a summary of experience with victims of crime.

3.4 The Respondent will provide a description of the geographic area to be served within South Dakota. Indicate the specific region(s) to be served for the project. Regions can be found in Attachment A of this document.

3.5 The Respondent will provide a summary of existing staff and current workload. Describe the proposed project management techniques for implementation of this program. If collaborating with another agency to complete the proposed project, include the staff and current workload.

3.6 The Respondent will provide three brief scenarios (three different crimes and three different legal remedies) where a crime victim might be assisted by the legal services made available by this program, from first contact with the program to delivery of legal service.

3.7 Respondent will provide the following services:

3.7.1 Respondent shall provide services for which he/she will be entitled to receive compensation as specified in the contract and shall follow all state and Federal requirements and the South Dakota Rules of Professional Conduct.

3.7.2 Respondent will perform such other functions as may be consistent in meeting the duties and responsibilities contained within this Scope of Work, or as requested by DSS; and

3.7.3 Respondent agrees to adhere to, implement, and follow all DSS policies, procedures, and directives of DSS whether written or verbal;

3.8. In addition to the general services described above, respondent will also have the following specific responsibilities:

3.8.1 Respondent will provide DSS with monthly updates indicating status of cases. The Respondent and DSS will establish an agreed upon format for the updates. Not to breach the attorney client privilege;

3.8.2 Upon completion of all essential and necessary services, respondent will submit an itemized statement of work performed on each case and a claim for allowed expenses;

3.8.3 Respondent will maintain and permit access to all records, case files, and other records as requested by DSS, until completion of all audits initiated by DSS or federal auditors, or for a period of three years, whichever occurs earlier;

3.8.4 Respondent will comply with VOCA match requirements outlined in 28 CFR Part 94. Project match of not less than twenty percent of the total cost of the project is required. Project match may include but are not limited to: cash, volunteered professional or personal services, materials/equipment, space and facilities, non-VOCA funded victim assistance activities, and discounts;

3.8.5 Respondent will immediately advise DSS of any conflict of interest which may arise by reason of his/her private practice of law, or otherwise, with respect to specific individuals or cases being pursued on behalf of this grant;

3.8.6 Respondent will refund to DSS any amounts paid to him/her which are disallowed by audit procedures;

3.8.7 Respondent will comply with all pertinent policy memoranda, directives, and procedures which DSS may furnish from time to time; and

3.8.8 Respondent will meet any and all performance standards as contained in federal regulations or State law, and meet any and all performance standards which may be promulgated by DSS from time to time.

3.9 Mutual Duties and Responsibilities:

3.9.1 Both DSS and the respondent will comply with the Victims of Crime Act; any implementing regulations; and any other applicable State and Federal regulations, or requirements.

4.0 PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS

- 4.1 The offeror is cautioned that it is the offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.
- 4.2 **Offeror's Contacts:** Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to the point of contact of the buyer of record indicated on the first page of this RFP. Offerors and their agents may not contact any state employee other than the buyer of record regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record.
- 4.3 The offeror **MAY** be required to submit a copy of their most recent independently audited financial statements.
- 4.4 Provide the following information related to at least three previous and current service/contracts performed by the offeror's organization which are similar to the requirements of this RFP. Provide this information for any service/contract that has been terminated, expired or not renewed in the past three years:
- a. Name, address and telephone number of client/contracting agency and a representative of that agency who may be contacted for verification of all information submitted;
 - b. Dates of the service/contract; and
 - c. A brief, written description of the specific prior services performed and requirements thereof.
- 4.5 The offeror must submit information that demonstrates their availability and familiarity with the region(s) in which the project is to be implemented.
- 4.6 The offeror must detail examples that document their ability and proven history in handling special project constraints.
- 4.7 The offeror must describe their proposed project management techniques.
- 4.8 Proposals will not be accepted for the following reasons: a. Not received on time; b. Incorrectly addressed or labeled; c. Not signed by proposer; and d. Correct number of copies, electronic version not provided. If an offeror's proposal is not accepted by the State, the proposal will not be reviewed/evaluated.

5.0 PROPOSAL RESPONSE FORMAT

- 5.1 An original and 6 (six) copies shall be submitted.
- 5.1.1 In addition, the offeror must submit one (1) copy of their entire proposal, including all attachments and cost proposal(s), in PDF digital format loaded on a USB

flashdrive. Offerors may not send the electronically formatted copy of their proposal via email.

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

5.2 All proposals must be organized and tabbed with labels for the following headings:

- 5.2.1 **RFP Form.** The State's Request for Proposal form completed and signed.
- 5.2.2 **Executive Summary.** The one or two page executive summary is to briefly describe the offeror's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the offeror. The reader should be able to determine the essence of the proposal by reading the executive summary. Proprietary information requests should be identified in this section.
- 5.2.3 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:
 - 5.2.3.1 A complete narrative of the offeror's assessment of the work to be performed, the offeror's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the offeror's understanding of the desired overall performance expectations.
 - 5.2.3.2 A specific point-by-point response, in the order listed, to each requirement in the RFP as detailed in Sections 3 and 4. The response should identify each requirement being addressed as enumerated in the RFP.
 - 5.2.3.3 A clear description of any options or alternatives proposed.
- 5.2.4 **Cost Proposal.** Cost will be evaluated independently from the technical proposal. Offerors may submit multiple cost proposals. All costs related to the provision of the required services must be included in each cost proposal offered.

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

6.0 PROPOSAL EVALUATION AND AWARD PROCESS

- 6.1 After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use subjective judgment in conducting a comparative assessment of the proposal by considering each of the following criteria listed in order of importance:
 - 6.1.1 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
 - 6.1.2 Resources available to perform the work, including any specialized services, within the specified time limits for the project;
 - 6.1.3 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;

- 6.1.4 Availability to the project locale;
- 6.1.5 Familiarity with the project locale;
- 6.1.6 Proposed project management techniques;
- 6.1.7 Ability and proven history in handling special project constraints, and
- 6.1.8 Cost proposal.

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

6.3 The qualifications of the personnel proposed by the offeror to perform the requirements of this RFP, whether from the offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the offeror should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.

6.4 The State reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the State of South Dakota.

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

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

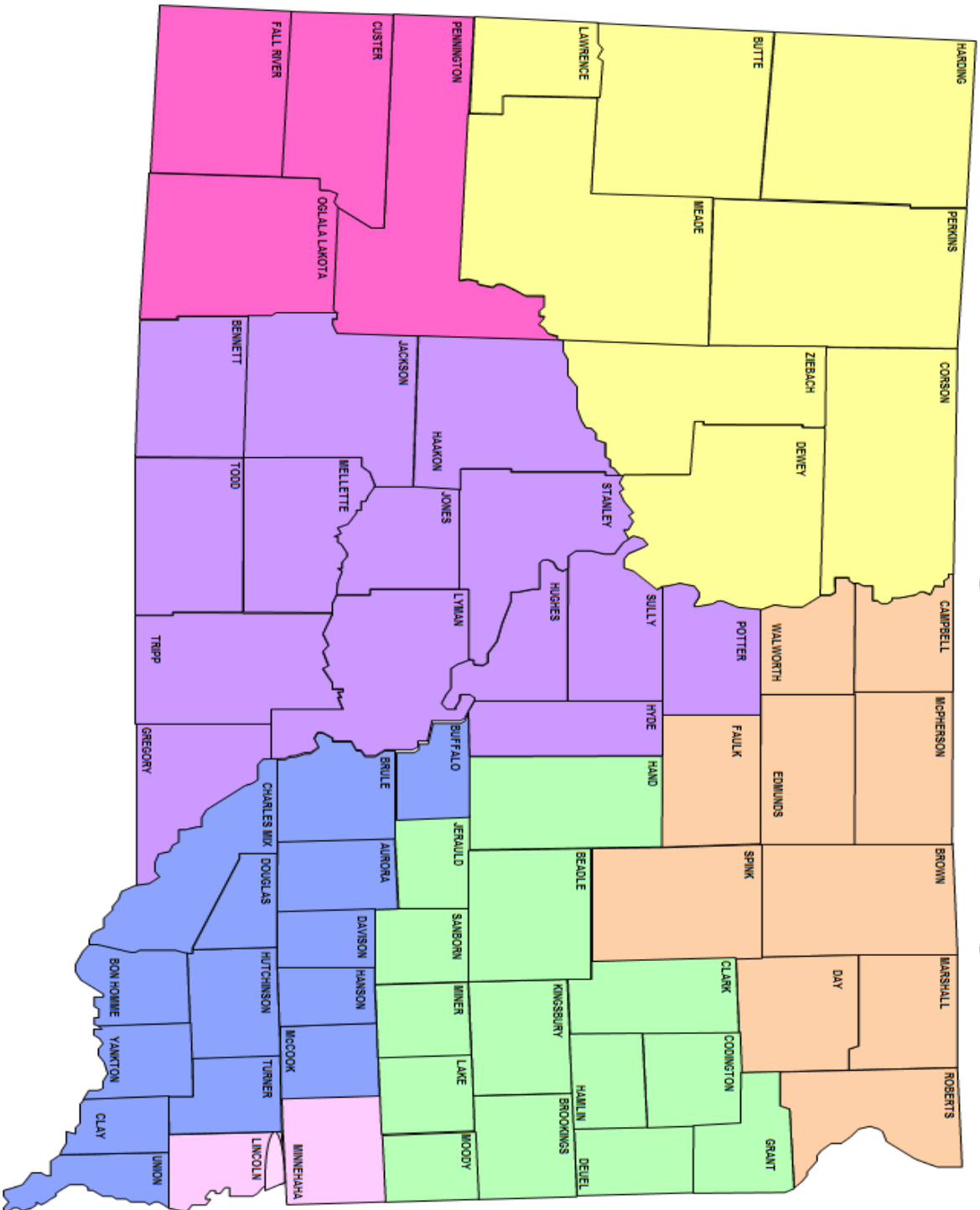
6.5.2 The negotiation process may continue through successive offerors, according to agency ranking, until an agreement is reached or the agency terminates the contracting process.

7.0 **COST PROPOSAL**

Offerors may submit multiple cost proposals for regions or statewide service as defined in 3.4 and Attachment A. The cost proposal should provide the proposed number of hours of service to be performed by each staff member and the hourly rate of each staff member's time to be billed under the contract.

Project match of not less than twenty percent of the total cost of the project is required. Project match may include but are not limited to: cash, volunteered professional or personal services, materials/equipment, space and facilities, non VOCA funded victim assistance activities, and discounts. Respondent shall maintain records that clearly show the source and amount of contributions, and period of time for which such contributions were allowed. The basis for determining the value of personal services, materials, equipment, and space and facilities shall be documented. Volunteer services shall be substantiated by the same methods used for paying employees (generally, this should include timesheets substantiating time worked on the project.)

Attachment A: Legal Services Regions



Attachment B

**STATE OF SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF ADULT SERVICES AND AGING**

**Consultant Contract
For Consultant Services
Between**

State of South Dakota
Department of Social Services
DIVISION OF ADULT SERVICES AND AGING
700 Governors Drive
Pierre, SD 57501-2291

Referred to as Consultant

Referred to as State

The State hereby enters into a contract for consultant services with the Consultant. While performing services hereunder, Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. **CONSULTANT'S South Dakota Vendor Number is _____.**
2. PERIOD OF PERFORMANCE:
 - A. This Agreement shall be effective as of June 1, 2016 and shall end on May 31, 2017, unless sooner terminated pursuant to the terms hereof.
 - B. Agreement is the result of request for proposal process, RFP #_____
3. PROVISIONS:
 - A. The Purpose of this Consultant contract:
 - 1.
 2. Does this agreement involve Protected Health Information (PHI)? YES () NO (X)
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the agreement (refer to attachment) .
 3. The consultant will use state equipment, supplies or facilities.
 - B. The Consultant agrees to perform the following services (add an attachment if needed.):
 - 1.
 - C. The State agrees to:
 - 1.
 2. Make payment for services upon satisfactory completion of services and receipt of bill. Payment will be in accordance with SDCL 5-26.
 3. Will the State pay Consultant expenses as a separate item?
YES () NO (X)
If YES, expenses submitted will be reimbursed as identified in this agreement.

D. The TOTAL CONTRACT AMOUNT will not exceed \$.

4. **BILLING:**

Consultant agrees to submit a bill for services within (30) days following the month in which services were provided. Consultant will prepare and submit a monthly bill for services. Consultant agrees to submit a final bill within 45 days of the contract end date to receive payment for completed services. If a final bill cannot be submitted in 45 days, then a written request for extension of time and explanation must be provided to the State.

5. **TECHNICAL ASSISTANCE:**

The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Consultant and to assist in the correction of problem areas identified by the State's monitoring activities.

6. **LICENSING AND STANDARD COMPLIANCE:**

The Consultant agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Consultant will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Consultant's failure to ensure the safety of all individuals served is assumed entirely by the Consultant.

7. **ASSURANCE REQUIREMENTS:**

The Consultant agrees to abide by all applicable provisions of the following: , Byrd Anti Lobbying Amendment (31 USC 1352), Executive orders 12549 and 12689 (Debarment and Suspension), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable.

8. **RETENTION AND INSPECTION OF RECORDS:**

The Consultant agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Consultant shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Consultant agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Consultant's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Consultant's established record retention policies.

All payments to the Consultant by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this contract shall be returned to the State within thirty days after written notification to the Consultant.

9. **WORK PRODUCT:**

Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source

code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Consultant in connection with its performance of service under this Contract shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State.

Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Contract will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Consultant agrees to return all information received from the State to State's custody upon the end of the term of this contract, unless otherwise agreed in a writing signed by both parties.

10. **TERMINATION:**

This contract may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Contract may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

11. **FUNDING:**

This Contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Contract 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.

12. **AMENDMENTS:**

This Contract may not be assigned without the express prior written consent of the State. This Contract may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

13. **CONTROLLING LAW:**

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

14. **SUPERCESSION:**

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

15. **IT STANDARDS:**

Consultant warrants that the software and hardware developed or purchased for the state will be in compliance with the BIT Standards including but not limited to the standards for security, file naming conventions, executable module names, Job Control Language, systems software, and systems software release levels, temporary work areas, executable program size, forms management, network access, tape management, hosting requirements, administrative controls, and job stream procedures prior to the installation and acceptance of the final project. BIT standards can be found at <http://bit.sd.gov/standards/>.

16. **SEVERABILITY:**

In the event that any provision of this Contract shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this contract, which shall remain in full force and effect.

17. **NOTICE:**

Any notice or other communication required under this Contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Consultant, 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.

18. **SUBCONTRACTORS:**

The Consultant may not use subcontractors to perform the services described herein without express prior written consent from the State. The State reserves the right to reject any person from the contract presenting insufficient skills or inappropriate behavior.

The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Contract, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Contract. The Consultant 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. The State, at its option, may require the vetting of any subcontractors. The Consultant is required to assist in this process as needed.

19. **HOLD HARMLESS:**

The Consultant 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 which may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

20. **INSURANCE:**

Before beginning work under this Contract, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. The Consultant, at all times during the term of this Contract, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

A. **Commercial General Liability Insurance:**

Consultant shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Contract or be no less than two times the occurrence limit.

B. **Business Automobile Liability Insurance:**

Consultant shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Worker's Compensation Insurance:

Consultant shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

Consultant agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

(Medical Health Professional shall maintain current general professional liability insurance with a limit of not less than one million dollars for each occurrence and three million dollars in the aggregate. Such insurance shall include South Dakota state employees as additional insureds in the event a claim, lawsuit, or other proceeding is filed against a state employee as a result of the services provided pursuant to this Contract. If insurance provided by Medical Health Professional is provided on a claim made basis, then Medical Health Professional shall provide "tail" coverage for a period of five years after the termination of coverage.)

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

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

22. CONFLICT OF INTEREST:

Consultant agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Consultant expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

23. REPORTING PROVISION:

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

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

24. CONFIDENTIALITY OF INFORMATION:

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who

have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Consultant without the benefit or influence of the State's information; (v) becomes known to Consultant without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Consultant understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party's rights under this contract. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.

25. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

_____	_____
Consultant Signature	Date
_____	_____
State - DSS Division Director	Date
_____	_____
State - DSS Chief Financial Officer Laurie Mikkonen	Date
_____	_____
State - DSS Cabinet Secretary Lynne A. Valenti	Date

State Agency Coding:

CFDA #	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____

DSS Program Contact Person _____
 Phone _____

DSS Fiscal Contact Person Contract Accountant
 Phone 605 773-3586

Consultant Program Contact Person _____
 Phone _____

Consultant Fiscal Contact Person _____
 Phone _____
 Consultant Email Address _____

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the State agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.

