

# Grant for the Construction of a Specialty Rehabilitation Pediatric Hospital

The South Dakota Department of Social Services is soliciting applications from organizations interested in providing professional services and a construction project for a pediatric facility in accordance with House Bill 1093. This grant opportunity envisions continuation of support for the construction of a facility that will provide the following: specialty rehabilitation pediatric hospital, specialty school for children under twenty-one, intermediate care facility for children under twenty-one, and outpatient rehabilitation pediatric services. Total award will not exceed \$6,000,000.

## SECTION I: SPONSORSHIP OVERVIEW

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### ISSUING OFFICE

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

### ELIGIBLE APPLICANTS

- *Grants cannot be made to individuals.*
- Grant Recipient shall direct services and supports to children and young adults through age 21 with complex developmental, behavioral, medical, and/or intellectual disabilities, including individuals with mental health conditions. The following services will be provided by the grant recipient.
  - Medically-Complex
    - Post-NICU
    - Respiratory support & ventilator weaning
    - IV therapy
    - Palliative care
  - Rehabilitation services for the medically stable
  - Residential care
    - Individualized support and services twenty-four (24) hours a day
    - Trauma informed care
    - Brain injury
    - Psychiatric services
    - Mental health services
    - Intermediate care for Individuals with Intellectual and Developmental Disabilities (ICF)
    - Health services (Medical, Dental, and Vision)
    - Case management
    - Day treatment/education
  - Family engagement

Each child/youth will receive services based on assessment and determination of identified individual needs.

## SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)

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Grant Announcement	<u>January 31, 2025</u>
Deadline for Submission of Written Inquiries	<u>February 10, 2025</u>
Responses to Offeror Questions	<u>February 18, 2025</u>
Application Submission	<u>February 28, 2025</u>
Anticipated Award Decision/Contract Negotiation	<u>March 10, 2025</u>

## AVAILABLE FUNDING AND CHECKLIST

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### Application Deadline:

Applications will be accepted through Close of Business 5:00 PM on February 28, 2025.

Funding for this project is through House Bill 1093. The Enrolled version of this bill can be found here: [2024 House Bill 1093 | South Dakota Legislature](#)

Sponsored activities may begin upon notice of award (see Application and Award Cycle above for Anticipated Award/Contract Dates). No pre-award costs will be eligible for reimbursement. Completion of activities is subject to the scope of what is being proposed for this project.

**Budget Limitations: The project has a Not-To-Exceed (NTE) amount of \$6,000,000. The NTE amount is final.**

### How to Submit an Application:

Send the completed application form in a PDF format along with all attachments. and required attachments (see below) to: Kirsten Blachford at [Kirsten.Blachford@state.sd.us](mailto:Kirsten.Blachford@state.sd.us).

Please indicate in the subject line: **DSS Pediatric Construction Grant Application**.

### Application:

The following documents should be provided to ensure your application is received as complete. Responses to Section B. of the Application can be attached as a PDF.

- Completed, signed Application Form

## ADDITIONAL QUESTIONS?

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Applicants may email inquiries concerning this announcement to obtain clarification of requirements. No inquiries will be accepted after **February 10, 2025**. Email inquiries must be sent to [Kirsten.Blachford@state.sd.us](mailto:Kirsten.Blachford@state.sd.us) with the following wording, exactly as written, in the subject line: **DSS Pediatric Construction Grant Questions**.

The Department of Social Services (DSS) will respond to applicants' questions by posting aggregated questions and Department's responses on the DSS website at <https://dss.sd.gov/keyresources/rfp.aspx> no later than February 17, 2025. For expediency, DSS may combine similar questions. 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 announcement. Applicants should refer to DSS website as indicated above regarding any modifications to this grant announcement.

# Application Form

Instructions: Applicants must complete all sections below. Applications must be submitted to the Division of Social Services, EMAIL ADDRESS, subject line: **DSS Pediatric Construction Grant Application**

## SECTION A: APPLICANT INFORMATION

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### APPLICANT ORGANIZATION

APPLICANTS NAME:

ADDRESS:

CITY/STATE:

ZIP:

E-MAIL:

PRIMARY CONTACT:

TELEPHONE NO:

FAX NO:

### AUTHORIZED COMPANY REPRESENTATIVE

NAME:

TITLE:

E-MAIL:

TELEPHONE NO:

The Authorized Company Representative must be someone who has the authority to negotiate a contract on behalf of the applicant. If additional individuals should be included in contract-related correspondence, please provide their contact information below.

## SECTION B: APPLICANTS DESIRING TO BE CONSIDERED FOR THIS PEDIATRIC GRANT SHOULD SUBMIT RESPONSES TO THE FOLLOWING LIST OF CRITERIA THAT WILL BE USED TO EVALUATE APPLICATIONS.

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Applicants will be evaluated on their qualifications and experience for this project. Applicants are encouraged to clearly address each of the following criteria:

1. Applicant Qualifications:
  - The applicant must be enrolled and in good standing with South Dakota Medicaid.
  - Applicant must provide specialty hospital, residential and rehabilitation services to Medicaid eligible pediatric population with complex behavioral and medical care needs.
  
2. Project Narrative (1-page or less):
  - Describe project approach for how grant funding aligns with or extends existing state and community investments made.
  - Provide a description of the proposed activities to which grant funds will be applied and how these activities advance the completion of facility construction.
  - Describe how the organization has assured that the building will meet South Dakota licensure requirements as a specialty rehabilitation pediatric hospital and intermediate health care facility for children under twenty-one.
  - Describe how the grant opportunity will support improved outcomes for Medicaid-supported individuals and families. Applicants must include proposed metrics for measuring outcome improvements.

- Describe how this grant opportunity will assist your organization to increase capacity to serve Medicaid-supported individuals.

3. Project Timeline:

- Please provide a narrative or a diagram depicting your anticipated project work plan and deliverables timeline. If preferred, a timeline can be provided as an attachment to this application. Be sure to review the anticipated award timeline guidance in the program description as you develop your implementation plan.

4. Additional Information: Include any information or documentation that may support your application.

A technical review committee will select an applicant for grant award based on the criteria shown.

## SECTION C: TERMS AND CONDITIONS

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By signing this application form, applicants understand and will adhere to the following terms:

- The State reserves the right to reject any or all applications and proposals, waive technicalities, and make awards as deemed to be in the best interest of the State of South Dakota.
- The State, upon satisfactory review and notice of award to the Applicant, will execute a contract for services using its standard agreement terms and conditions (see attachments).
- If awarded, the Applicant acknowledges that it will submit for reimbursement of expenses as outlined in the executed contract schedule and that pre-payment for expenses is not allowable.
- Presumptive Placement: If awarded, any child referred by the State of South Dakota through its Department of Human Services and/or its Department of Social Services to the program(s) shall be served by the Grant Recipient provided one (or more) of the following criteria are met:

The youth/child

- has a medically-complex condition requiring specialized medical services;
- is in need of rehabilitative services;
- requires residential care;
- has an identified intellectual or developmental disability which is impairing the child/youth's functioning and preventing the child/youth from being able to access lower levels of care;
- has an identified mental health condition(s) which is impairing the child/youth's functioning and preventing the child/youth from being able to access lower levels of care; and/or
- otherwise requires the level of care provided by the program, as evidenced by the child/youth currently experiencing acute and severe behaviors, which may include but are not limited to: high levels of aggression and/or self-harming behaviors, emotional distress, impulsive behaviors, and/or emotional, behavioral, or mental health needs.

Referral of a child by the respective Departments shall keep within the stated purpose of the Grant Recipient's mission and shall be limited to those children for whom the facility is qualified by staff, program, equipment, and needs of children/youth already in residence to provide care deemed necessary. Care is to be provided by the Grant Recipient in the least restrictive, most appropriate setting to meet the child's needs.

Grant Recipient shall provide services to any child referred by the Department of Human Services or the Department of Social Services, unless Grant Recipient and the referring Department mutually agrees that an exclusion applies.

Determination of exclusions shall be made jointly by the Grant Recipient and designated members of the respective Departments after a thorough consideration of a completed application has been made. Time passed and interventions made after any disqualifying behaviors shall be given their due and rightful consideration when reviewing referrals. Grant Recipient acknowledges that youth remain in a constant state of development and maturation.

Any contract or agreement resulting from this announcement and selection will include, at minimum, the State's standard terms and conditions as seen in Attachment A. As part of the negotiation process, the contract terms listed in Attachment A may be altered or deleted. The applicant should indicate in their response any issues they have with any specific

contract terms. If the applicant does not indicate any contract term issues, then the State will assume the terms are acceptable.

Date Application Submitted: \_\_\_\_\_ Organization's Authorizing Official Signature \_\_\_\_\_

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES  
DIVISION OF MEDICAL SERVICES**

**Sub-Recipient Agreement  
Between**

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

\_\_\_\_\_  
Referred to as Sub-Recipient

\_\_\_\_\_  
Referred to as State

The State and Sub-Recipient hereby enter into this agreement (the “Agreement” hereinafter) for a grant award of Federal financial assistance to Sub-Recipient.

**A. REQUIRED AUDIT PROVISIONS FOR GRANT AWARDS**

**1. FEDERAL AWARD IDENTIFICATION:**

The pass-through entity requirements, as described in 2 CFR 200.332(b), are attached hereto as Exhibit A and incorporated herein. The information in Exhibit A may change without Sub-Recipient’s consent if there is a change in the award or funding stream. In the event of a change, the State will provide updated information at least annually.

**2. PERIOD OF PERFORMANCE OF THIS AGREEMENT:**

This agreement shall be effective on June 1, 2024 and will end on May 31, 2025, unless sooner terminated pursuant to the terms hereof.

**3. SCOPE OF WORK AND PERFORMANCE PROVISIONS (add an addendum if needed; if an addendum is used it is incorporated herein):**

A. The Sub-Recipient will undertake and complete the work or performance described as:

B. If the State will undertake or complete any work or performance under this Agreement it is described as follows:

**4. BASIS FOR SUBAWARD AMOUNTS:**

This grant is made for the purpose of \_\_\_\_\_ .

Amount provided by State/Grantor is	\$
Amount matched by Grantee	\$
Total Grant Amount	\$

Dollars provided by State/Grantor consist of the following:

Non-Federal State dollars	\$
Federal Pass-Through dollars	\$

Federal ALN # \_\_\_\_\_

5. RISK ASSESSMENTS, MONITORING AND REMEDIES:

Risk assessments will be ongoing throughout the project period. Sub-Recipient agrees to allow the State to monitor Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award and to facilitate the same. At the discretion of the State, monitoring may include but is not limited to the following: On-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. As appropriate, the cooperative audit resolution process may be applied.

Sub-Recipient agrees to comply with ongoing risk assessments, to facilitate the monitoring process, and further, Sub-Recipient understands and agrees that the requirements and conditions under the grant award may change as a result of the risk assessment/monitoring process.

The State shall evaluate each subrecipient's fraud risk and risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring.

In the event of noncompliance or failure to perform under the grant award, the State has the authority to apply remedies, including but not limited to: temporarily withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by Sub-Recipient, debarment, or other remedies including civil and/or criminal penalties as appropriate.

6. RETENTION AND INSPECTION OF RECORDS:

The Sub-Recipient 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, and statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Sub-Recipient shall retain such records for a period of three years after the date of the submission of the final expenditure report.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three-year retention period may be extended upon written notice by the State. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition. When records are transferred to or maintained by the Federal awarding agency or the State, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records pertaining to the earning of the program income starts from the end of Sub-Recipient's fiscal year in which the program income is earned. In the event the documents and their supporting records consist of indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies: (1) If submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the State) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission. (2) If not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the State) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Sub-Recipient's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

The State, through any authorized representative, shall have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement and shall have access to personnel of the Sub-Recipient for purposes of interview and discussion related to the records, books, papers and documents. State Proprietary Information, which shall include all information disclosed to the Sub-Recipient by the State, shall be retained in Sub-Recipient's secondary and backup systems and shall remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Sub-Recipient's established record retention policies.

All payments to the Sub-Recipient by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment under this Agreement shall be returned to the State within thirty days after written notification to the Sub-Recipient.

7. AUDIT REQUIREMENTS:

If Sub-Recipient expends \$1,000,000 or more in federal awards during the Sub-Recipient's fiscal year (\$750,000 for fiscal years on or before September 30, 2024), the Sub-Recipient must have an audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit  
A-133 Coordinator  
427 South Chapelle  
% 500 East Capitol  
Pierre, SD 57501-5070

If the Sub-Recipient expends less than \$1,000,000 during any Sub-Recipient fiscal year, the State may perform a more limited program or performance audit related to the completion of the Agreement objects, the eligibility of services or costs, and adherence to Agreement provisions.

Audits shall be completed and filed with the Department of Legislative Audit by the end of the nine months following end of the fiscal year being audited.

For either an entity-wide, independent financial audit or an audit under 2 CFR Part 200 Subpart F, the Sub-Recipient shall resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the State or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely resolved.

The Sub-Recipient shall be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 200.84, at the discretion of the State.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Sub-Recipient must be made available if needed and upon request at the Sub-Recipient's regular place of business for audit by personnel authorized by the State. The State and/or federal agency has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

8. SUB-RECIPIENT ATTESTATION:

By signing this Agreement, Sub-Recipient attests to the following requirements as set forth in SDCL § 1-56-10:

- (A) A conflict of interest policy is enforced within the recipient's or Sub-Recipient's organization;
- (B) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or Sub-Recipient's website;
- (C) An effective internal control system is employed by the recipient's or Sub-Recipient's organization; and
- (D) If applicable, the recipient or Sub-Recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or Sub-Recipient's website.

Sub-Recipient certifies that its internal control system includes cybersecurity and other measures to safeguard information.



Sub-Recipient certifies that it will take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information.

Whenever applying for funds, requesting payment, and submitting financial reports, Sub-Recipient asserts the following:

I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729-3730 and 3801-3812.

Sub-Recipient further represents that any concerns or issues it had in complying with the foregoing attestations were provided to the State and resolved to their satisfaction prior to signing this Agreement.

In the event of a significant change in the conflict of interest policy, Sub-Recipient agrees to provide immediate notice of such change to the State and provide a copy of the new conflict of interest policy. Sub-Recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

9. CLOSEOUT:

- a. For purposes of this Agreement, "Date of Completion" shall mean the date when the Agreement expires pursuant to its terms or is terminated in accordance with paragraph 12.
- b. The Sub-Recipient shall submit a final financial report to the State. Within the limits of the Agreement amount, the State may make upward or downward cost adjustments based on the information contained in the report. Agreement obligations will remain in force until all final reports are reviewed and approved by the State.
- c. The Sub-Recipient, along with the final financial report, will refund to the State any unexpended funds or unobligated (unencumbered) cash advances.
- d. All outstanding obligations (encumbered funds) which have not been paid out as of the Date of Completion must be liquidated prior to the submission of the final report.
- e. Whether audits were conducted during the Agreement term, a final financial and compliance audit may be initiated up to three years after the date the State approves the final financial report.
- f. If either the final financial report or the final audit discloses an overpayment to the Sub-Recipient, the State may, at its option, either require the Sub-Recipient to repay the overpayment to the State or deduct the amount of overpayment from monies due the Sub-Recipient under this Agreement or under any other agreement between the Sub-Recipient and the State.
- g. The Sub-Recipient shall provide, along with the final financial report, a written accounting of property acquired with Agreement funds or received from the State.
- h. All close-out requirements must be completed within initial term. days after the "Date of Completion."
- i. If additional closeout requirements are needed, as described in 2 CFR 200.332(b), they are attached hereto as Attachment and incorporated herein.

B. STANDARD CLAUSES

10. ASSURANCE REQUIREMENTS:

(For Federally funded contracts only). The Sub-Recipient agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, 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; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

11. COST PRINCIPLES:

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

12. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Sub-Recipient breaches any of the terms or conditions hereof, this agreement may be terminated by the State 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. If termination for breach is effected by the State, any payments due to Sub-Recipient at the time of termination may be adjusted to cover any additional costs to the State as a result of Sub-Recipient's breach. Upon termination the State may take over the work and may award another party a contract to complete the work contemplated by this Agreement. If the State terminates for a breach by Sub-Recipient and it is determined that the Sub-Recipient was not at fault, then Sub-Recipient shall be paid for eligible services rendered and expenses incurred up to the date of termination.

Any terms of this Agreement that would, by their nature or through the express terms of this Agreement, survive the expiration or termination of this Agreement shall so survive, including but not limited to the terms of sections 6, 15, 20,21,32, 34, 35.

13. 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 Agreement will be terminated by the State upon five days written notice. Sub-Recipient agrees that termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State or any officer, agent or employee of the State and Sub-Recipient waives any claim against the same.

14. ASSIGNMENT AND AMENDMENT:

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

15. CONTROLLING LAW AND VENUE:

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 in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

16. SUPERSESSION:

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

17. SEVERABILITY:

In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

18. NOTICE:

Any notice or other communication required under this Agreement 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 Sub-Recipient, 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.

19. SUBCONTRACTORS/SUB-RECIPIENTS:

The Sub-Recipient may not use subcontractors or subgrantees to perform the services described herein without the express prior written consent of the State. Sub-Recipient will include provisions in its subcontracts requiring its subgrantees to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage in a manner consistent with this Agreement. Sub-Recipient will cause its subcontractors, subgrantees, agents, and employees to comply with applicable federal, tribal, state, and local laws, regulations, ordinances, guidelines, permits and other standards 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 and or subgrantees. The Sub-recipient shall assist in the vetting process.

20. STATE'S RIGHT TO REJECT:

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior, or is considered by the state to be a security risk.

21. CONFLICT OF INTEREST:

Sub-Recipient agrees to establish safeguards to prohibit any employee or other person from using their position for a purpose that constitutes or presents the appearance of personal or 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 and approved, in writing, by the State. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict of interest resolution process set forth in SDCL § 5-18A-17 through 5-18A-17.6.

22. TERMS:

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State shall be a violation of the terms of this Agreement, and the Agreement shall be subject to termination.

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

Sub-Recipient certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Sub-Recipient further agrees that it will immediately notify the State if during the term of this Agreement 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.

C. AGENCY OR GRANT SPECIFIC CLAUSES

24. This agreement is the result of request for proposal process, RFP # \_\_\_\_\_

25. 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).

26. COMPLIANCE WITH EXECUTIVE ORDER 2020-01:

Executive Order 2020-01 provides that for contractors, vendors, suppliers or subcontractors with five (5) or more employees who enter into a contract with the State that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this Agreement Contractor certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Contractor further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

27. COMPLIANCE WITH SDCL ch 5-18A:

Sub-Recipient certifies and agrees that the following information is correct:

The bidder or offeror is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

The successful bidder or offeror further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

28. CERTIFICATION OF NO STATE LEGISLATOR INTEREST:

Sub-Recipient (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, Sub-Recipient hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

29. PROPERTY MANAGEMENT STANDARDS:

The Sub-Recipient agrees to observe Federal Government uniform standards governing the utilization of property whose cost was charged to a project supported by a federal grant.

30. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding the State's rules, regulations and policies to the Sub-Recipient and to assist in the correction of problem areas identified by the State's monitoring activities.

31. LICENSING AND STANDARD COMPLIANCE:

The Sub-Recipient agrees to comply 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 Sub-Recipient 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 Sub-Recipient's failure to ensure the safety of all individuals served is assumed entirely by the Sub-Recipient.

32. WORK PRODUCT:

Sub-recipient hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by Sub-recipient in connection with the performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by Sub-recipient without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

33. IT STANDARDS:

Any service, software or hardware provided under this agreement will comply with state standards which can be found at [https://bit.sd.gov/bit?id=bit\\_standards\\_overview](https://bit.sd.gov/bit?id=bit_standards_overview).

34. INDEMNIFICATION:

Sub-Recipient agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief that may arise at least in part as a result of an act or omission in performing services under this Agreement. Sub-Recipient shall defend the State of South Dakota, its officers, agents, and employees against any claim, including any claim, action, suit, or other proceeding related to the claim. Sub-Recipient's obligation to indemnify includes the payment of attorney fees and other costs of defense. In defending the State of South Dakota, its officers, agents, and employees, Sub-Recipient shall engage other professionals, subject to the written approval of the State which shall not be unreasonably withheld. Notwithstanding the foregoing, the State may, in its sole discretion and at the expense of Sub-Recipient, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Sub-Recipient in the defense.

This section does not require Sub-Recipient to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of the State, its officers, agents or employees.

35. SOVEREIGN IMMUNITY:

Nothing in this Agreement is intended to constitute a waiver of sovereign immunity by or on behalf of the State of South Dakota, its agencies, officers or employees.

36. INSURANCE:

At all times during the term of this Agreement, Sub-recipient shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

Sub-recipient 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 Agreement or be no less than two times the occurrence limit. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

Sub-recipient agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than one million dollars \$1,000,000.

C. Business Automobile Liability Insurance:

Sub-recipient shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each accident. This insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

Sub-recipient shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota or federal law.

Before beginning work under this Agreement, Sub-recipient shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement including naming the State, its officers and employees, as additional insureds, as set forth above. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Sub-recipient agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Sub-recipient shall furnish copies of insurance policies if requested by the State.

37. CONFIDENTIALITY OF INFORMATION:

For the purpose of this Agreement, "Confidential Information" shall include all information, regardless of its format, disclosed to Sub-recipient by the State and all information, regardless of its format, obtained by Sub-

recipient through the provisions of services as contemplated by this Agreement. Sub-recipient, and any person or entity affiliated with Sub-recipient shall not disclose any Confidential 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. Sub-recipient, and any person or entity affiliated with Sub-recipient shall not: (i) disclose any Confidential Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of Confidential Information except to exercise rights and perform obligations under this Agreement; (iii) make Confidential Information available to any of its employees, officers, agents or sub-recipients except those who have agreed, by contract, to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information and who have been instructed that such information is or may be confidential under state or federal law. Sub-recipient, and any person or entity affiliated with Sub-recipient is held to the same standard of care in guarding Confidential Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding Confidential Information in the strictest confidence. Sub-recipient, and any person or entity affiliated with Sub-recipient shall protect the 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.

Confidential Information shall not include information that: (i) was in the public domain at the time it was disclosed to Sub-recipient or to any person or entity affiliated with Sub-recipient; (ii) was known to Sub-recipient, or to any person or entity affiliated with Sub-recipient, without restriction at the time of disclosure from the State; (iii) was disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Sub-recipient, or by any person or entity affiliated with Sub-recipient, without the benefit or influence of the State's information; or (v) becomes known to Sub-recipient, or to any person or entity affiliated with Sub-recipient, without restriction, from a source not connected to the State of South Dakota.

Confidential Information can include, but is not limited to, names, social security numbers, employer numbers, addresses and all other data about applicants, participants, employers or other clients to whom the State provides services of any kind. Sub-recipient understands that this information may be confidential and protected under state or federal law. Sub-recipient agrees to immediately notify the State if the information is disclosed, either intentionally or inadvertently.

If work assignments performed in the course of this Agreement require additional security requirements or clearance, Sub-recipient agrees that its officers, agents and employees may be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.

Sub-recipient will enforce the terms of this Confidentiality Provision to its fullest extent.

Sub-recipient agrees to remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision and to immediately notify the State of such matter.

Sub-recipient will comply with any other confidentiality measures and terms included in the Agreement.

Upon termination of this Agreement, if not already done so as part of the services performed under the Agreement, Sub-recipient agrees to return to the State, at Sub-recipient's cost, any Confidential Information or documentation maintained by Sub-recipient regarding the services provided hereunder in a format readily useable by the State as mutually agreed by Sub-recipient and State.

38. DAVIS-BACON ACT:

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

39. COMPLIANCE WITH 40 U.S.C. 3702 AND 3704:

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

40. FUNDING AGREEMENT AND "RIGHTS TO INVENTION":

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or Sub-Recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Sub-Recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

41. FORCE MAJEURE:

Notwithstanding anything in this Agreement to the contrary, neither party shall be liable for any delay or failure to perform under the terms and conditions of this Agreement, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake or any act of God, or any causes beyond the party's reasonable control provided, however that in order to be excused from delay or failure to perform, the party must act diligently to remedy the cause of such delay or failure and must give notice to the other party as provided in this Agreement as soon as reasonably possible of the length and cause of the delay in performance.

42. WAIVER OF BREACH:

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions in this Agreement.

43. HEADINGS:

The headings in this Agreement are for convenience and reference only and shall not govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

44. AUTHORITY TO EXECUTE:

Sub-recipient represents and warrants that:

- A. Sub-recipient is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- B. The execution, delivery and performance of this Agreement has been duly authorized by Sub-recipient and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Sub-recipient to enter into this Agreement and perform its obligations under this Agreement;
- C. Sub-recipient is duly authorized to conduct business in and is in good standing in each jurisdiction in which Sub-recipient will conduct business in connection with this Agreement; and
- D. Sub-recipient has obtained all licenses, certifications, permits, and authorizations necessary to perform the services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Sub-recipient's performance of the services. Sub-recipient will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

D. AUTHORIZED SIGNATURES:

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

NO SIGNATURE REQUIRED AT THIS TIME

\_\_\_\_\_  
Grantee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Grantee Printed Name

\_\_\_\_\_  
State - DSS Division Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
State - DSS Chief Financial Officer Jason Simmons

\_\_\_\_\_  
Date

\_\_\_\_\_  
State – DSS Cabinet Secretary Matthew K. Althoff

\_\_\_\_\_  
Date



**Vendor Number**                      **Group**

**State Agency Coding:**

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

State Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

State Fiscal Contact Person Contract Accountant  
Phone 605 773-3586

Sub-Recipient Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Sub-Recipient Program Email Address \_\_\_\_\_

Sub-Recipient Fiscal Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Sub-Recipient Fiscal Email Address \_\_\_\_\_

### Federal Award Identification Information

\* Sub-Recipient's name must match the name associated with its Unique Entity ID(SAM)

### Exhibit A

a. Sub-Recipient Name*			
b. Sub-Recipient's Unique Entity ID(SAM)			
c. Federal Award Identification Number (FAIN)			
d. Federal Award Date			
e. Sub-Award Period of Performance Start and End Date			
f. Amount of Federal Funds obligated to the Sub-recipient	\$		
g. Total amount of the Federal Funds obligated to the Sub-recipient including current obligation	\$		
h. Total Amount of Federal Award Committed to Sub-recipient	\$		
i. Federal Award Project Description			
j. Federal Awarding Agency			
State Agency			
Agency Division			
State Program Contact			
k. ALN #		ALN Name	
l. Award for Research & Development?			
m. Indirect Cost Rate for Federal Award			
n. Funding Source(s)		Federal Grant Year	