

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

SNAP EBT PLANNING CONSULTANT RFP
PROPOSALS ARE DUE NO LATER THAN July 15, 2016 5:00 PM CDT

RFP #: 518

BUYER: Department of
Social Services

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: _____

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1.0 GENERAL INFORMATION

1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)

The South Dakota Department of Social Services (DSS) in conjunction with and on behalf of the North Dakota Department of Human Services (States) are issuing a Request for Proposal (RFP) for a professional Electronic Benefit Transfer (EBT) Consulting vendor to provide the services as described below in Section 3.0, Scope of Work. Each State's Supplemental Nutrition Assistance Program (SNAP) EBT contract for EBT services expires on June 30, 2019. It is the intent of the States to function as a consortium with the mutual objectives and goals for the re-procurement of SNAP EBT processing services in each State. The States share in the procurement to achieve economies of scale in volumes of transactions and standard processing platforms for States and retailers. In addition, the States cooperate in the development and implementation of new federal regulations and technological changes. The successful EBT planning or consulting firm and its principal officers are prohibited from competing for the re-procurement of EBT services.

The States are contracting for professional planning and consulting services in preparation of issuing a SNAP EBT Services RFP. The desired services are listed in Section 3.0 Scope of Work.

1.2 ISSUING OFFICE AND RFP REFERENCE NUMBER

The Division of Finance and Management, EBT, is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota, Department of Social Services, 700 Governors Drive, Pierre, SD 57501; and the State of North Dakota, Department of Human Services, Judicial Wing – Third Floor, 600 East Boulevard Ave, Dept 325, Bismarck, ND 58505-0250. The reference number for the transaction is RFP # 518. 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, amendments, changes to schedule of activities, etc.

1.3 LETTER OF INTENT

All interested Offerors must submit a **Letter of Intent** to respond to this RFP.

The letter of intent must be received by DDS via email no later than 5:00 p.m. CDT, May 6, 2016, and must be addressed to Mark.Close@state.sd.us. Place the following in the subject line of your email: **“Letter of Intent for RFP # 518.”** Be sure to reference the RFP number in any attached letter or document.

1.4 SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)

RFP Publication	<u>April 15, 2016</u>
Letter of Intent to Respond Due	<u>NLT 5:00 p.m. CDT, May 6, 2016</u>
Deadline for Submission of Written Inquiries	<u>May 27, 2016</u>
Responses to Offeror Questions	<u>June 20, 2016</u>
Proposal Submission	<u>NLT 5:00 p.m. CDT, July 15, 2016</u>
Oral Presentations/discussions (if required)	<u>To be announced, if needed</u>
Anticipated Award Decision/Contract Negotiation	<u>August 31, 2016</u>

1.5 SUBMITTING YOUR PROPOSAL

All proposals must be completed and received in the offices listed below 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, 12 identical copies, and one (1) digital copy of the proposal shall be submitted to each office listed below. At a minimum, the digital copy (CD preferred) must include the entire proposal broken down into single chapter documents, each in Portable Document Format (PDF). For instructions regarding submission of the cost proposal, see Paragraph 5.2.4.

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 Offeror. 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 # 518 Proposal Due July 15, 2016
South Dakota Department of Social Services
Attention: Mark Close
700 Governors Drive
Pierre SD 57501-2291

REQUEST FOR PROPOSAL #325-15-410-086 Proposal Due July 15, 2016
ND Dept of Human Services
SNAP – EBT
Attn: Deb Kramer
Judicial Wing – Third Floor
600 East Boulevard Ave Dept 325
Bismarck ND 58505-0250

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 the State of North Dakota, or that otherwise may be deemed irresponsible or unreliable by the States of North Dakota or 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 States require 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 its proposal, the Offeror certifies it does not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin, marital status, pregnancy, parenthood, political affiliations, or disability.

1.8 ASSISTANCE TO OFFERORS WITH DISABILITY

Offerors with a disability who need an accommodation should contact the Point of Contact prior to the deadline for receipt of proposals so that reasonable accommodation can be made.

1.9 MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn, in writing, 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.

1.10 OFFEROR INQUIRIES

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after May 27, 2016. Email inquiries must be sent to Mark.Close@state.sd.us with the subject line "RFP # 518 – "Question".

The States will respond to offeror inquiries by posting the Offeror aggregated questions and States' responses on the DSS website at <http://dss.sd.gov/keyresources/rfp.aspx> no later than June 20, 2016. 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.

1.11 PREFERENCE LAWS

The preference given to a resident North Dakota or South Dakota Offeror will be equal to the preference given or required by the State of the nonresident bidder. A "resident" North Dakota or South Dakota Offeror is one that has maintained a bona fide place of business within either North Dakota or South Dakota for at least one year prior to the date on which a contract was awarded. For a listing of State preference laws, visit the following website: <http://www.nd.gov/spo/legal/> or contact the North Dakota State Procurement Office at 701-328-2680.

1.12 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 States. All materials submitted become the property of the States and may be returned only at the States' option.

For the State of North Dakota

All proposals and other material submitted become the property of the State of North Dakota, North Dakota Department of Human Services, and may be returned only at State's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with North Dakota Century Code (N.D.C.C.) § 54-44.4-10(2). "Award" means the selection of a successful offeror or offeror for presentation of a contract resulting from this RFP. After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer, in consultation with the Office of the Attorney General, will determine whether the requested information must be disclosed under the North Dakota open records law, and the request will be processed accordingly.

An offeror may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. An offeror must include in their proposal a statement that clearly identifies specific page numbers and sections of their proposal considered confidential, or are copyrighted and may not duplicate, or are exempt under N.D.C.C. § 44-04-18.4 for trade secret proprietary, commercial, and financial information, and a brief statement that sets out the reasons for the confidentiality request. In addition to the confidentiality statement, each identified page must be marked "Confidential" in the proposal.

For additional information, visit the following web site at:

- North Dakota Office of the Attorney General
Web site: <http://www.ag.nd.gov/OpenRecords/ORM.htm>

1.13 LENGTH OF CONTRACT

The length of this contract shall be effective from the date of signature until the successful conversion to the subsequent EBT contractor or June 30, 2019, whichever occurs first.

1.14 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.

1.15 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 States. However, the States 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 Offeror shall be available for negotiation meetings at the States' request. The States reserve 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 States' standard terms and conditions as specified in Addendums C and D.

3.0 SCOPE OF WORK

The following deliverables are required to be submitted in Offeror's proposal in response to this RFP. The Offeror will obtain any additional individual State information via email. The States will arrange for conference calls, as needed, for discussions and information pertinent to both States.

The Offeror's proposal should include its approach to meeting each of the following requirements and should include when telephonic and electronic support would be utilized versus on-site assistance. Offerors should provide an itemization of the task time, travel time, and the rate per hour in the cost proposal.

- 3.1** Review and provide recommended changes and updated drafts of the SNAP EBT Services RFP to ensure it addresses current Federal requirements regarding SNAP EBT, including regulations, policy, guidance, procedures, requirements, and provisions of the Agricultural Act of 2014 and industry technical standards, including the Quest operating rules applicable to SNAP.
 - Prepare updated drafts of the RFP based on Consultant's research, identification, and inclusion of business and technical requirements for each State.
 - Participate on project calls with USDA/FNS concerning the re-procurement RFP and the APD.
 - Assist the Agency with evaluation and implementation of UDA/FNS recommendations and changes.

The following websites contain materials that are relevant to this project but are not practical to include as part of this RFP:

- 7 CFR 274 SNAP Issuance Regulations - <https://www.gpo.gov/fdsys/pkg/CFR-2015-title7-vol4/pdf/CFR-2015-title7-vol4-sec274-1.pdf>
- FNS 901 Handbook - <http://www.fns.usda.gov/apd/fns-handbook-901-advance-planning-documents>
- SNAP EBT Document Library - <http://www.fns.usda.gov/apd/snap-ebt-document-library>
SNAP EBT Request for Proposal (RFP) Guidance
FSP EBT System Security Guidelines
- ISO – <http://www.iso.org/iso/home.htm>
- ANSI – <http://www.ansi.org/>
- QUEST – <http://quest.nacha.org/operatingrules>
- ASAP – <http://www.fms.treas.gov/asap>
- Americans with Disabilities Act (ADA) – <http://www.ada.gov/>

3.2 Develop and write an evaluation plan for team evaluation of the RFP responses that will include the design of pricing evaluation structure, training of evaluators, and compilation of scores for purposes of awarding the bid available to each State separately or combined. The plan shall include, but not be limited to:

- Technical and cost bid evaluation criteria, scoring guidelines to enable the States to select the most qualified offeror, utilizing, but not limited to, the States' statutorily required RFP evaluation criteria.
- Training materials to be used in training the evaluation team.
- Scoring documents and summary documents to assist the States in making a final determination of award.

The successful Offeror will provide on-site training to the evaluation team in the use of the evaluation tools. The States would prefer on-site training within each State. The States will work with the successful Offeror to arrive at cost efficiencies with respect to training for the evaluation team. The Offeror's preference to hold training at a single site should be reflected in the Offeror's cost proposal.

3.3 Develop and submit for USDA/FNS approval the Implementation Advanced Planning Documents (IAPD) for each State and Program based on the RFP for SNAP EBT Services drafted by the States. The IAPD will follow all requirements of FNS Handbook 901, Advance Planning Document Handbook. Each IAPD must meet all needs of the specific State program in order to be approved by FNS prior to release of the procurement RFP. The IAPD will include the following:

- Transmittal Letter
- Executive Summary
- Functional Requirements
- General System Design
- Capacity Study
- Project Management Plan and Resource Requirements
- Security Planning
- Training Plan

- Schedule of Activities, Milestones, and Deliverables
- Cost Allocation Plan
- Proposed Budget

3.4 Test administration, to include regression testing, fail safe testing, acceptance testing, and review and development of test scripts necessary to fulfill federal testing requirements; and submission of a written evaluation of the test results. The Consultant will coordinate with the EBT processor in testing tasks and oversight. Testing requirements must be in accordance with the 2014 FNS Regulation on System Testing and FNS Handbook 901.

System Acceptance Test: The system acceptance test provides both State and Federal representatives the opportunity to test the EBT system functionality and ensure compliance with the system design requirements. This test shall consist minimally of functional requirements, security, recovery, system controls, and “what if” testing.

The successful Offeror will take primary responsibility for preparing an acceptance test plan for the States, to include test documents and scenarios and evaluation documents. Successful Offeror staff will train States’ staff to conduct acceptance testing using the prepared documents and test scenarios. System Acceptance testing must include:

- Review of specifications and plans;
- Attendance at meetings;
- Provision of written comments on all reviews;
- Provision of user acceptance training for State personnel;
- Attendance at each test and test result walk-throughs;
- Review of interface specifications and functionalities;
- Evaluation of overall testing;
- Review of testing report;
- Attendance at regression testing; and
- Review of output reports.

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 States are 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 MUST submit audited financial statements, by an independent Certified Public Accountant (CPA), SEC Form 10-K's, and other important documents for the prime Offeror's (and co-offeror/subcontractors) for the past two (2) years. Audited financial statements need to be included in the response. An Offeror without audited financial statements should provide a letter signed by a company officer stating that audited financial statements are not available. In lieu of audited financial statements, the States will consider a copy of the Offeror's internal financial statements along with a letter from a financial institution stating that the Offeror appears to have sufficient financial resources to (1) assume the responsibilities required by the RFP, and (2) maintain financial viability throughout the period during which the Offeror proposes to provide services pursuant to this RFP.
- 4.4 Provide the following information related to at least three previous and current service/contracts performed by the Offeror's organization, co-offerors, and subcontractors that are similar to the requirements of this RFP. Provide this information for any service/contract that has been successfully completed, 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 shall provide an organizational chart that describes the task group organization structure for each of the design and development, installation, and operation phases of the project.
- a. Give the titles of key positions, including a single point of contact, and the lines of reporting.
 - b. For each organizational unit on the project organization chart, describe the major functions that will be performed.
 - c. List the job responsibilities for each major job title involved in each phase.
- The Offeror shall identify a single point of contact, an employee who will function, if the Offeror becomes the Consultant, as the Project Manager. The Offeror must demonstrate the Project Manager's experience with similar projects, to include a summary of related project management experience, resume, and references.
- 4.6 The Offeror shall provide an overview of its company, its capabilities, and why it should be selected for this project. Offeror shall also provide a list of corporate officers, number of employees by classification or work assignment, listing of people who will work on this project, their qualifications, and their experience with SNAP EBT projects.
- 4.7 The States reserve the right to contact any reference to assist in the evaluation of the proposal, to verify information contained in the proposal, and to discuss the Offeror's qualifications and the qualifications of any subcontractor identified in the proposal.
- 4.8 The Offeror must submit information that demonstrates their availability and familiarity with the locale in which the project(s) are to be implemented.
- 4.9 The Offeror must detail examples that document their ability and proven history in handling special project constraints.
- 4.10 If an Offeror's proposal is not accepted by the States, the proposal will not be reviewed/evaluated. An Offeror's proposal will not be accepted for the following reason(s):
- 4.10.1 The proposal was not received by the date as specified in 1.4.
 - 4.10.2 The proposal was not addressed or labeled correctly.
 - 4.10.3 The proposal was not signed by the proposer.

- 4.10.4 The correct number of copies and/or the electronic version was not provided.
- 4.10.5 An audit of the financial statements provided by the proposer indicates financial non-viability.

5.0 PROPOSAL RESPONSE FORMAT

- 5.1 An original and 12 copies shall be submitted.
 - 5.1.1 In addition, the Offeror must provide one (1) copy of their entire proposal, including all attachments and cost proposal, in PDF electronic format on compact disk or flash drive. Offerors may not send the electronically formatted copy of their proposal via email.
 - 5.1.2 The proposal should be submitted in ring binders, page numbered, and should have an index and/or a table of contents referencing the appropriate page number to match the RFP, and single-spaced with a font not less than size 12.
- 5.2 All proposals must be organized and tabbed with labels for the following headings:
 - 5.2.1 **RFP Form.** The States' 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 detailed in sections 3 and 4 of the RFP. 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.** One clearly marked original and four digital copies of the cost proposal must be submitted to the POC in a separate sealed envelope labeled "Cost Proposal", and enclosed within the proposal submitted under Paragraph 1.5. 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. No specific costs or fees should be identified outside the separately-packaged cost proposal.

Refer to 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;

- 6.1.1.1 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.
- 6.1.1.2 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.
- 6.1.2 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 Cost proposal.
- 6.1.5 Proposed project management techniques;
- 6.1.6 Ability and proven history in handling special project constraints,
- 6.1.7 Availability to the project locale; and
- 6.1.8 Familiarity with the project locale.
Cost proposal.
- 6.2 The States reserve the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the States.
- 6.3 To determine whether a proposal is reasonably susceptible for award, communications by the Buyer or the proposal evaluation committee are permitted with the Offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the proposal. An initial evaluation may be adjusted because of a clarification made under this paragraph.
- 6.4 After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. If an amendment to this RFP is issued, it will be posted on the DSS RFP webpage and offerors who submitted proposals will be notified via e-mail and provided a link where they can locate and print the documentation. The amendment will incorporate the clarification or change, and a new date and time established for amended proposals. Evaluations may be adjusted as a result of receiving amended proposals.
- 6.5 Offeror must disclose any instances where the Offeror's firm or any individual to be working on the agreement on behalf of the Offeror has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by either State). The States reserve the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the Offeror's proposal. The States' determination regarding any questions of conflict of interest is final.
- 6.6 Proposals, including supplemental terms and conditions, may be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the States' rights under any agreement resulting from the RFP will be considered null and void. The States are not responsible for identifying conflicting supplemental terms and conditions before issuing an award. After award:

- 1) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- 2) a condition that the offer will remain open and valid for the period indicated in this solicitation; and
- 3) if the States' rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

6.7 By signature on the proposal, an Offeror certifies that it complies with:

- 1) The laws of North Dakota and South Dakota;
- 2) North Dakota Administrative Code;
- 3) all applicable local, state, and federal laws, codes, and regulations;
- 4) the applicable portion of the Federal Civil Rights Act of 1964;
- 5) the Equal Employment Opportunity Act and the regulations issued by the federal government;
- 6) the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- 7) all terms, conditions, and requirements set forth in this RFP;
- 8) a condition that the proposal submitted was independently arrived at, without collusion;
- 9) a condition that the offer will remain open and valid for the period indicated in this solicitation; and
- 10) a condition that the firm and any individuals working on the contract on behalf of the firm do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

6.8 After the completion of contract negotiation, the Buyer will issue a written Notice of Intent to Award and send copies to all Offerors. The Notice of Intent to Award will set out the names and addresses of all Offerors and identify the proposal selected for award. The scores and placement of other offerors will not be part of the Notice of Intent to Award.

The successful Offeror named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts relating to the project until both the successful Offeror and the States sign the Contract or Agreement.

6.9 North Dakota law requires that every person or entity that desires to bid or submit a proposal for contracts for commodities or services be an approved vendor to be placed on the North Dakota State's bidders' list. An Offeror that is not registered by the deadline for receipt of proposal will be determined to be non-responsive, and its proposal will be rejected.

To become an approved vendor, Offerors shall register with the North Dakota Secretary of State (fees apply), and shall submit a completed Bidders' List Application to the North Dakota Vendor Registry. Prospective Offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders' list. The bidders' list that will be used for this solicitation is commodity code # 946 Financial Services, Sub-Class, 35 Credit Card, Charge Card Services and 952 Human Services, Sub-Class 45 Food Stamps/Coupons.

The Procurement Vendor Database, registration instructions and forms are available on-line at <http://www.nd.gov/spo/vendor/registry/>. Contact the North Dakota Vendor Registry at 701-328-2773 or infospo@nd.gov for assistance.

6.10 **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.

6.10.1 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.

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

- 6.11 **Protest and Appeal:** North Dakota law provides that an interested party may protest a solicitation. If an interested party wishes to protest the content of this RFP, the protest must be received, in writing, by the Buyer at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract. If an Offeror wishes to protest the award of a contract or proposed award of a contract, the protest must be received, in writing, by the Buyer within seven calendar days after the date the Notice of Intent to Award was issued.

- 6.12 **Contract Changes – Unanticipated Amendments:** During the course of a contract resulting from this RFP, the successful Offeror may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, State will provide the successful Offeror with a written description of the additional work and request the successful Offeror to submit a time schedule for accomplishing the additional work and a price for the additional work. The successful Offeror must provide cost and pricing data to justify the cost of the additional work.

The successful Offeror will not begin the additional work until State has approved the additional work and signed a written contract amendment.

7.0 **COST PROPOSAL**

Refer to Schedule A for the Cost Proposal Format.

The Offeror shall provide the number of task hours and the hourly rate for each task listed in the service description. The States reserve the right to procure for any or all of the Service Description items based on cost and budget authority to meet those costs.

SCHEDULE A – COST PROPOSAL FORM

Offeror: _____ Date: _____

Service Description	# Task Hours & Rate	# Travel Hours & Rate	ND Total	SD Total	Total
Review and develop recommended changes to the draft EBT Services RFP for SNAP EBT.					
Section Totals					
Develop and write an evaluation plan for team evaluation of the RFP responses that will include:					
1. Development of evaluation plan;					
2. The design of pricing evaluation structure;					
3. Training of evaluators; and					
4. Compilation of scores for purposes of awarding the bid available to each State separately or combined.					
Section Totals					
Develop and submit for USDA/FNS approval the Implementation Advanced Planning Document (IAPD) with information separated by each State.					
1. IAPD Development.					
2. North Dakota specific SNAP EBT information.					
3. South Dakota specific SNAP EBT information.					
Section Totals					
Test administration and final report submission by each State to USDA/FNS for approval to include:					
1. Regression testing;					
2. Fail safe testing;					
3. Acceptance Testing;					
4. Review of Consultant test scripts and development of test scripts necessary to fulfill federal testing requirements; and					
5. Submission of a written evaluation of the test results.					
Section Totals					
TOTALS					

ADDENDUM A – CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization Name

Name and Title of Official Signing for Organization

Signature of Official / Date

03/96

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a covered federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include congressional district, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime federal recipient. Include congressional district, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation to Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "FRP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.
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ADDENDUM B – REQUEST FOR PROPOSAL FORM

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

SNAP EBT PLANNING CONSULTANT RFP
PROPOSALS WILL BE OPENED NLT 5:00 p.m. CDT, July 15, 2016

RFP #: 518

BUYER:

PHONE:

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: _____

ADDENDUM C – South Dakota Contract Terms and Conditions Template

DSS Purchase Order #16SC08 _____

Consultant Contract # 16-0800-_____

STATE OF SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF FINANCE AND MANAGEMENT

Consultant Contract
For Consultant Services
Between

State of South Dakota
Department of Social Services
DIVISION OF FINANCE AND MANAGEMENT
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 (Month Day, Year) and shall end on (Month Day, Year), 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)
 3. The consultant will use state equipment, supplies or facilities.
 - B. The Consultant agrees to perform those services described in the Consultant's Work Plan, which is attached to the Contract as Exhibit "x" and incorporated by reference. The Consultant's response to this RFP will be considered part of the Work Plan.
 - C. The State agrees to:
 1.
 1. Make payment for services upon satisfactory completion of services and receipt of bill. Payment will be in accordance with SDCL 5-26.
 2. 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 assurances: Lobbying Activity, Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension, Debarment and Suspension (Executive orders 12549 and 12689), 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, 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.

7.1 Certification Regarding Lobbying: The Consultant shall provide, and shall require all subcontractors to provide, the certification regarding lobbying included in Addendum A. Each subcontractor must include similar requirements in any subsequent contracts for services provided under this Contract. The Consultant shall provide the certification of the Consultant and all individuals and entities with ownership or control interest in the Consultant with the Consultant's Proposal. The Consultant shall provide the certification of current subcontractors within ten (10) days of execution of the Contract pursuant to this RFP or within ten (10) days of the execution of any new subcontract.

7.2 Drug-Free Workplace. The Consultant agrees to:

- 1) Make a good faith effort, on a continuing basis, to maintain a Drug Free Workplace (including taking specific actions described at 7 CFR Part 3021.200 through 3021.230);

2) Identify all workplace locations where work under the Federal award will be performed. Since Federal entities will no longer collect a paper certificate, this may include the following:

- a. Notifying all sub-grantees and contractors of the Drug Free Workplace rules;
- b. Making conforming changes to internal procedures, directives, training materials, etc.; and
- c. Incorporating the new rules into sub-grantee monitoring practices.

7.3 Other Provisions. The States and its selected Consultant agree to the Federal Procurement Clauses found at Appendix A:

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. 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 or sub-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 under 7 CFR Part 3017.300 and have checked the Excluded Parties List System (EPLS) at www.epls.gov. 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. Any potential conflict of interest must be disclosed in writing.

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 Deputy Secretary Brenda Tidball-Zeltinger	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 _____
 Phone 605 773-3586

Consultant Program Contact Person _____
 Phone _____

Consultant Fiscal Contact Person _____
 Phone _____
 Consultant Email Address _____

APPENDIX A:

Federal Procurement Clauses, January 14, 2014

Equal Employment Opportunity

Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by the Department of Labor Regulations (41 CFR Part 60): The Executive Order prohibits federal contractors and federally-assisted construction contractors and subcontractors who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. The Executive Order also requires Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

Clean Air Act

The Clean Air Act, Section 306 stipulates:

- a. No Federal agency may enter into any contract with any person who is convicted of any offense under section 113(c) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.
- b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).
- c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
- d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]
- e. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]

Clean Water Act

The Clean Water Act, Section 508 stipulates:

No Federal agency may enter into any contract with any person who has been convicted of any offense under Section 508 (c) of this Act for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than 180 days after the enactment of this Act, cause to be issued an order:

1. Requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and
2. Setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.

(2) In paragraph (1), the term "commercial item" has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

Anti-Lobbying Act

The Anti-Lobbying Act prohibits the recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the applicant certifies that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- c. The undersigned shall require that the language of this certification be include in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

Americans with Disabilities Act

This Act (28 CFR Part 35, Title II, Subtitle A) prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public and State and local governments, except public transportation services.

Drug-Free Workplace Statement

The Federal government implemented the Drug Free Workplace Act of 1988 in an attempt to address the problems of drug abuse on the job. It is a fact that employees who use drugs have less productivity, a lower quality of work, and a higher absenteeism, and are more likely to misappropriate funds or services. From this perspective, the drug abuser may endanger other employees, the public at large, or themselves. Damage to property, whether owned by this entity or not, could result from drug abuse on the job. All these actions might undermine public confidence in the services this entity provides. Therefore, in order to remain a responsible source for government contracts, the following guidelines have been adopted:

- a. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the work place.
- b. Violators may be terminated or requested to seek counseling from an approved rehabilitation service.
- c. Employees must notify their employer of any conviction of a criminal drug statute no later than five days after such conviction.
- d. Contractors of federal agencies are required to certify that they will provide drug-free workplaces for their employees.

Transactions subject to the suspension/debarment rules (covered transactions) include grants, subgrants, cooperative agreements, and prime contracts under such awards. Subcontracts are not included. Also, the dollar threshold for covered procurement contracts is \$25,000. Contracts for Federally required audit services are covered regardless of dollar amount.

Debarment and Suspension

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110. The applicant certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.

Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

Royalty-Free Rights to Use Software or Documentation Developed

The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant or any rights of copyright to which a contractor purchases ownership.

ADDENDUM D – North Dakota Contract Terms and Conditions Template

CONTRACT #{Contract Number}

PURCHASE OF SERVICE AGREEMENT

The State of North Dakota, acting through its North Dakota Department of Human Services, Economic Assistance Policy Division (State), has determined the services identified in the Scope of Service paragraph below should be purchased.

{Vendor} (Vendor), {Address}, {City}, {State} {Zip}, proposes to provide those services.

State and Vendor therefore enter into the following:

1. TERM OF THE AGREEMENT

This agreement runs from {Month} {Day}, {Year}, through {Month} {Day}, {Year}.

a. No Automatic Renewal

This agreement will not automatically renew.

b. Extension Option

State reserves the right to extend the agreement for an additional period of time, not to exceed _____ months, beyond the current termination date of the agreement.

c. Renewal Option

State may renew this agreement upon satisfactory completion of the initial agreement term. State reserves the right to execute up to _____ options to renew this agreement under the same terms and conditions for a period of _____ months each.

2. SCOPE OF SERVICE

Vendor shall provide professional Electronic Benefit Transfer (EBT) Consulting services as outlined in State's Request for Proposal (RFP) number 325-15-410-086, dated April 15, 2016, and Vendor's proposal, dated _____, which are both made a part of this agreement by their reference here.

3. COMPENSATION

State, upon receipt and approval of SFN 1763 Request for Reimbursement or other form required by State, shall pay Vendor \$_____ for completing the scope of service. Total payment under this agreement may not exceed \${Total amount}. Vendor shall submit its request for reimbursement to State monthly. Vendor shall submit its final payment request to State no later than 30 days after the expiration or termination of this agreement.

4. TERMINATION

a. Termination by Mutual Agreement or Notice

This agreement may be terminated at any time by mutual consent of both parties executed in writing.

b. Early Termination in the Public Interest

State is entering into this agreement for the purpose of carrying out the public policy of the state of North Dakota, as determined by its Governor, Legislative Assembly, and Courts. If this agreement ceases to further the public policy of the state of North Dakota, State, in its sole discretion, by written notice to Vendor, may terminate this agreement in whole or in part.

c. Termination for Lack of Funding or Authority

State may terminate the whole or any part of this agreement, effective upon delivery of written notice to Vendor or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this agreement, is for any reason denied, revoked, suspended, or not renewed.

Termination of this agreement under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

d. Termination for Cause

State may terminate this agreement effective upon delivery of written notice to Vendor, or any later date stated in the notice:

- 1) If Vendor fails to provide services required by this agreement within the time specified or any extension agreed to by State; or
- 2) If Vendor fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms.

The rights and remedies of State provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

5. NONPERFORMANCE

Failure by Vendor to perform the terms of this agreement constitutes a breach of contract and will result in the termination of the agreement. If a breach by Vendor renders the agreement impossible of performance by Vendor and is caused by circumstances beyond the control of Vendor, and through no fault of Vendor, the agreement will be terminated and State may set off, against any liability or obligations owed to Vendor under this agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach.

6. FORCE MAJEURE

Vendor shall not be held responsible for delay or default caused by fire, flood, riot, acts of God or war if the event is beyond Vendor's reasonable control, and Vendor gives notice to State immediately upon occurrence of the event that caused, or is reasonably expected to cause, the delay or default.

7. VENDOR'S UNDERSTANDING OF TERM OF FUNDING

Vendor understands that this agreement is a one-time agreement, and acknowledges that it has received no assurances that this agreement may be extended beyond its expiration date.

8. VENDOR ASSURANCES

This agreement will be construed according to the laws of the State of North Dakota. In connection with furnishing supplies or performing work under this agreement, persons who contract with or receive funds to provide services to State are obligated and agree to comply with all local, state, and federal laws, regulations, and executive orders related to the performance of this agreement including the following: Fair Labor Standards Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the North Dakota Human Rights Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, the Drug Abuse Prevention, Treatment and Rehabilitation Act of 1970, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Drug-Free Workplace Act of 1988, the Americans with Disabilities Act of 1990, Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act of 1992, and the Pro-Children Act of 1994.

Consultant agrees to the Federal Procurement Clauses found at Appendix A.

By signing this agreement Vendor certifies that neither Vendor, Subcontractor, nor their principals, are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with the State or Federal Government by any Department or Agency of the State or Federal Government.

Vendor must be an approved Vendor with the Office of Management and Budget within the State of North Dakota as required by North Dakota Century Code § 54-44.4-09.

9. AUTHORITY TO CONTRACT

Vendor may subcontract with qualified vendors of services, provided that any subcontract acknowledges the binding nature of this agreement, and incorporates this agreement, together with its attachments as appropriate. Vendor is solely responsible for the performance of any subcontractor. Vendor may not contract for or on behalf of or incur obligations on behalf of State. Vendor may not assign or otherwise transfer or delegate any right or duty without State's express written consent.

10. INDEPENDENT ENTITY

Vendor is an independent entity under this agreement. Vendor, its employees, agents, or representatives are not employees of State for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. No part of this agreement may be construed to represent the creation of an employer/employee relationship between State and Vendor. Vendor retains sole and absolute discretion in the manner and means of carrying out Vendor's activities and responsibilities under this agreement, except to the extent specified in this agreement.

11. INDEMNITY

Vendor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Vendor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Vendor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against Vendor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

12. INSURANCE

Vendor shall secure and keep in force during the term of this agreement and Vendor shall require all subcontractors, prior to commencement of an agreement between Vendor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools, or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.

- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this agreement.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Vendor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverages of an additional insured under these policies.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
 - a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b) a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;
 - c) a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under North Dakota Century Code section 54-12-08;
 - d) a provision that Vendor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Vendor's insurance and shall not contribute with it;
 - e) cross liability/severability of interest for all policies and endorsements;
 - f) the legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
 - g) the insolvency or bankruptcy of the insured Vendor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Vendor from meeting the retention limit under the policy.
- 6) The Vendor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

13. NOTICE

Any notice or other communication required under this agreement must be given by registered or certified mail and is complete on the date mailed when addressed to the parties at the following addresses:

{Vendor}		ND Department of Human Services
{Address}	OR	Economic Assistance Policy Division
{City}, {State} {Zip}		600 East Boulevard Avenue, Dept. 325
		Bismarck, ND 58505-0250

Notice provided under this provision does not meet the notice requirements for monetary claims against State found at North Dakota Century Code § 32-12.2-04.

14. INTEGRATION, MODIFICATION, AND CONFLICT IN DOCUMENTS

This agreement, including the following documents, constitutes the entire agreement between Vendor and State. There are no understandings, agreements, or representations, oral or written, not specified within this agreement. No alteration, amendment, or modification of this agreement is effective unless it is reduced to writing, signed by the parties, and attached to the agreement.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this agreement, the documents must control in this order of precedence:

- a. The terms of this agreement as may be amended;
- b. State's Solicitation Amendment #1 to RFP number 325-15-410-086, dated _____;
- c. State's RFP number 325-15-410-086, dated _____;
- d. Vendor's proposal, dated _____, in response to RFP number 325-15-410-086.

If any inconsistency exists between this agreement and other provisions of collateral contractual agreements which are made a part of this agreement by reference or otherwise, the provisions of this agreement control.

15. SEVERABILITY

If any term of this agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the agreement does not contain the illegal or unenforceable term.

16. APPLICABLE LAW AND VENUE

This agreement is governed by and construed according to the laws of the State of North Dakota. Any action to enforce this agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

17. ASSIGNMENT

Neither party may assign this agreement or the party's rights under this agreement without the written approval of the other party. Approval to assign may not be unreasonably withheld. This agreement is equally binding on the respective parties, and their successors and assigns.

18. SPOILIATION – PRESERVATION OF EVIDENCE

Vendor shall promptly notify State of all potential claims that arise or result from this agreement. Vendor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to State the opportunity to review and inspect the evidence, including the scene of an accident.

19. WORKS FOR HIRE

Vendor acknowledges that all work(s) under this agreement is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to State all rights and interests Vendor may have in the work(s) it prepares under this agreement, including any right to derivative use of the work(s). All software and related materials developed by Vendor in performance of this agreement for State shall be the sole property of State, and Vendor hereby assigns and transfers all its right, title, and interest therein to State. Vendor shall execute all necessary documents to enable State to protect State's intellectual property rights under this section.

20. WORK PRODUCT, EQUIPMENT, AND MATERIALS

All work product, equipment, and materials created for State or purchased by State under this agreement belong to State and must be delivered to State at State's request upon expiration or termination of this agreement.

21. CONFIDENTIAL INFORMATION

Vendor shall not use or disclose any information it receives from State under this agreement that State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this agreement or as authorized in advance by State. State shall not disclose any information it receives from Vendor that Vendor has previously identified as confidential and that State determines, in its sole discretion, is protected from mandatory public disclosure under a specific exception to the North Dakota open records law found in North Dakota Century Code chapter 44-04. The duty of State and Vendor to maintain confidentiality of information under this section continues beyond the term of this agreement, including any extensions or renewals.

22. COMPLIANCE WITH PUBLIC RECORDS LAWS

Vendor understands that, except for disclosures prohibited in this agreement, State must disclose to the public upon request any records it receives from Vendor. Vendor further understands that any records obtained or generated by Vendor under this agreement, except for records that are confidential under this agreement, may be open to the public

upon request under certain circumstances under the North Dakota open records law. Vendor agrees to contact State immediately upon receiving a request for information under the open records law and to comply with State's instructions on how to respond to the request.

23. ATTORNEY FEES

If a lawsuit is filed by State to obtain performance due under this agreement, and State is the prevailing party, Vendor shall pay State's reasonable attorney fees and costs in connection with the lawsuit, except when prohibited by North Dakota Century Code § 28-26-04.

24. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties may enforce their rights and remedies in judicial proceedings. State does not waive any right to a jury trial.

25. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Vendor shall comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. Vendor shall timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation, and workers' compensation premiums. Vendor also shall have and keep current at all times during the term of this agreement all licenses and permits required by law.

26. ACCESS TO BOOKS AND RECORDS

Vendor shall provide State, the federal government, and their duly authorized representatives access to the books, documents, papers, and records of Vendor which are pertinent to the services provided under this agreement for the purpose of making an audit or examination, or for making excerpts and transcripts. All records, regardless of physical form, and the accounting practices and procedures of Vendor relevant to this agreement are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. Vendor shall maintain all of these records for at least three (3) years following completion of this agreement and be able to provide them at any reasonable time. State, State Auditor, or Auditor's designee shall provide reasonable notice.

{VENDOR}

By _____ DATE

Its _____

APPENDIX A:

Federal Procurement Clauses, January 14, 2014

Equal Employment Opportunity

Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented by the Department of Labor Regulations (41 CFR Part 60): The Executive Order prohibits federal contractors and federally-assisted construction contractors and subcontractors who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. The Executive Order also requires Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

Clean Air Act

The Clean Air Act, Section 306 stipulates:

- a. No Federal agency may enter into any contract with any person who is convicted of any offense under section 113(c) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.
- b. The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).
- c. In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.
- d. The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]
- e. The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section. [42 U.S.C. 7606]

Clean Water Act

The Clean Water Act, Section 508 stipulates:

No Federal agency may enter into any contract with any person who has been convicted of any offense under Section 508 (c) of this Act for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than 180 days after the enactment of this Act, cause to be issued an order:

1. Requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and
2. Setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance.

- (1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.
- (2) In paragraph (1), the term "commercial item" has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

Anti-Lobbying Act

The Anti-Lobbying Act prohibits the recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the applicant certifies that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- c. The undersigned shall require that the language of this certification be include in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

Americans with Disabilities Act

This Act (28 CFR Part 35, Title II, Subtitle A) prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public and State and local governments, except public transportation services.

Drug-Free Workplace Statement

The Federal government implemented the Drug Free Workplace Act of 1988 in an attempt to address the problems of drug abuse on the job. It is a fact that employees who use drugs have less productivity, a lower quality of work, and a higher absenteeism, and are more likely to misappropriate funds or services. From this perspective, the drug abuser may endanger other employees, the public at large, or themselves. Damage to property, whether owned by this entity or not, could result from drug abuse on the job. All these actions might undermine public confidence in the services this entity provides. Therefore, in order to remain a responsible source for government contracts, the following guidelines have been adopted:

- a. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the work place.
- b. Violators may be terminated or requested to seek counseling from an approved rehabilitation service.
- c. Employees must notify their employer of any conviction of a criminal drug statute no later than five days after such conviction.
- d. Contractors of federal agencies are required to certify that they will provide drug-free workplaces for their employees.

Transactions subject to the suspension/debarment rules (covered transactions) include grants, subgrants, cooperative agreements, and prime contracts under such awards. Subcontracts are not included. Also, the dollar threshold for covered procurement contracts is \$25,000. Contracts for Federally required audit services are covered regardless of dollar amount.

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The applicant certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 2. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 4. Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.
- Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

Royalty-Free Rights to Use Software or Documentation Developed

The federal government reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes, the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant or any rights of copyright to which a contractor purchases ownership.