



PMB 01231
BUREAU OF ADMINISTRATION
OFFICE OF PROCUREMENT MANAGEMENT
523 EAST CAPITOL
PIERRE, SD 57501-3182
(605) 773-3405
FAX (605) 773-4840



DEBT COLLECTION SERVICES

CONTRACT RENEWAL NOTICE

ADDENDUM #: 1

VENDOR:

The Affiliated Group
3055 41st St. NW
Suite 100
Rochester, MN 55901
Contact: Mike Korte
Phone: 800-391-6460
Fax: 800-872-9040
E-mail: mkorte@theaffiliatedgroup.com

Date: February 10th, 2015

1. The contract for furnishing debt collection services to the State of South Dakota, resulting from RFP #2189 has been renewed for a period of one (1) year, beginning March 01, 2015 through February 29, 2016.
2. All terms, conditions and specifications of this contract are firm for the extended period.

Steven L. Berg, Director
Office of Procurement Management

**STATE OF SOUTH DAKOTA
CONTRACT FOR DEBT COLLECTION SERVICES**

AGREEMENT made and entered into this **1st** day of **March 2014**, by and between the Bureau of Administration, Office of Procurement Management, a state agency, of 523 E. Capitol Avenue, Pierre, SD 57501-3182, (the "State") and The Affiliated Group, of 7381 Airport View Drive SW, Rochester, MN. 55902 (The "Consultant").

The State hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant will perform those services described in the Work Plan, attached hereto as Exhibit A, and the consultant's response to **RFP 2189**, and by this reference incorporated herein. The Contract Number for this Agreement is **State Contract Number 16575**.
2. The Consultant's services under this Agreement shall commence on **March 1, 2014** and end on **February 28, 2015**, unless sooner terminated pursuant to the terms hereof.
3. The Consultant will not use State equipment, supplies or facilities. The Consultant's Employer Identification Number is **41-1852503**. The Consultant's vendor number in the State's Accounting System is **12235211**.
4. The Consultant agrees to perform delinquent debt collection services for the State of South Dakota, in accordance with the fee schedule below:

Fee schedule for primary placements of debt.

ACCOUNT BALANCE	FEE
\$1,000 or less	15% of amount collected
\$1,001 to \$2,500	15% of amount collected
\$2,501 to \$5,000	15% of amount collected
\$5,001 to \$10,000	15% of amount collected
Over \$10,000	15% of amount collected
If litigated	35% of amount collected

Fee schedule for second placements of debt (accounts that have been previously placed to collection agencies).

ACCOUNT BALANCE	FEE
\$1,000 or less	22.5% of amount collected
\$1,001 to \$2,500	22.5% of amount collected
\$2,501 to \$5,000	22.5% of amount collected
\$5,001 to \$10,000	22.5% of amount collected
Over \$10,000	22.5% of amount collected
If litigated	35% of amount collected

Unless otherwise negotiated and agreed upon by the parties, The State will make payment in compliance with the Prompt Payment Act, SDCL 5-26 for services provided under the contract.

5. **Renewal Options:** The Consultant agrees that the State can renew this Agreement, at its option, (unless otherwise modified by a special contract term, condition, or specification), under the same terms and conditions, for up to four (4) additional one-year option periods. Notice of intent to renew shall be given by the State to the Consultant within 90 days of the end of the current contract term. If the notice of intent to renew is given, the Agreement shall renew unless terminated by either party pursuant to the Termination Provision of this agreement.
6. The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents and employees.
7. The Consultant, at the times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 for each occurrence and two times the aggregate. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall include South Dakota state employees as additional insured's 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 agreement.

B. Worker's Compensation Insurance:

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, the Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the State. The Consultant shall furnish copies of insurance policies if requested by the State.

8. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.
9. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State 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 requirement of any applicable law.

10. **Termination Provision:** This Agreement may be terminated by either party hereto upon one-hundred-twenty (120) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State termination for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

In the event of contract termination, the Consultant shall discontinue collection action as of the contract termination date. The Consultant will retain any accounts that in repayment status for a period not to exceed two years from contract termination date. Any moneys received by the Consultant on behalf of the State, not in an established repayment plan prior to the contract termination date, shall be forwarded to the State immediately and shall not be subject to collection fee. The Consultant shall apprise the State, at the department or agency level, of the current status of each account being returned. Further, the Consultant agrees that it will provide any and all information that it has on all accounts and referrals that had been assigned to it by the State in an electronic format that will allow for the information to be transferred to another collection agency. The Consultant will retain all of the State's account activity and referral information for not less than a two-year period after contract termination.

11. This Agreement 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 of expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.
12. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.
13. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
14. The Consultant will comply with a federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.
15. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

16. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.
17. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to **Missy Schuetzle, Contract Administrator**, on behalf of the State, and by and to **Mark Neeb, President/CEO**, on behalf of 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. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The 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.

In Witness whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

BY: 

Steven L. Berg, Director

Office of Procurement Management

2/26/2014

Date

CONSULTANT

BY: 

Mark Neeb, President/CEO

The Affiliated Group

2/26/2014

Date

- Each Department will appoint their own point of contact to manage their account. Additional information regarding the overall contract administration can be obtained by contacting **Missy Schuetzle, (605) 773-4277**.

Exhibit A Work Plan

1. Introduction

The a Consultant agrees to provide comprehensive services for the collection of debt. The Consultant will provide all labor and materials, including but not limited to, office space, equipment and computer programs necessary to complete the required services for the State. The Consultant shall work with all State Departments referring accounts for collection on an individual basis.

2. Rule and Regulation Training

- The Consultant shall provide their staff with training regarding the Departments' collection policies and procedures, rules, regulations and state laws. The Departments shall furnish the Consultant:
- Direction to obtain electronic version of Administrative Rules and Regulations of the Department for all accounts referred to the Consultant.
- Supply all applicable South Dakota Codified Law and the sites to view in an electronic format
- Access of any and all Department forms needed to resolve the collection of the debt
- Provide necessary staff and/or resources for training purposes

3. Prompt Undertaking

The Consultant must agree to promptly undertake the collection of all accounts assigned by the Department without regard to the amount of debt to achieve maximum recovery of debts. The Consultant must agree to update all debtor account information within two (2) workdays of receiving such information from the Department.

- Upon receiving the accounts referred from the Department, the Consultant shall use its best effort to locate the debtor and collect the total amount due on each account. The Consultant shall use the following guide as the **minimum** acceptable standard of collection activity:
- Notify the debtor within five (5) workdays of receipt of the account from the Department that the debt has been referred to them for collection. Attempt at least one mailing effort and one telephone contact attempt within 10 days of assignment of each account, regardless of the dollar value.
- Attempt within 60 days of assignment at a minimum, unless payment is received and/or debt is otherwise resolved during this time period, the following number of mailing efforts per referred account:

Debt Value	Number of Notices
\$5 to \$99.99	1
\$99.99 to \$499.99	2
\$500 and up	3

Attempt within 60 days of assignment at a minimum, unless payment is received and/or debt is otherwise resolved during this time period, the following number of telephone contacts per referred account:

Debt Value	Number of Calls
\$5 to \$99.99	1
\$99.99 to \$499.99	2
\$500 and up	3

4. Perform skip-tracing efforts on all accounts when the information provided by the Department does not provide a confirmed mailing or telephone contact with the debtor.
5. The Consultant shall monitor their employees to ensure compliance with state, federal and local laws as well as the policies and procedures of each department.
6. The Consultant is to keep records that will verify that collection activities are being performed as agreed. Upon written request by the Department, Consultant shall provide proof of all collection activity on the requested accounts.

7. Specific Consultant Tasks

A testing and acceptance period will take place during the 30-day period following the initial referral of test data to the Consultant. The test will consist of the Consultant loading the data to their automated collection system and their ability to:

- Generate acceptable collection notices from this data.
- Make adjustments such as payments, penalty compromises and retrievals to the Department's account data loaded to the Consultant's collection system, resulting in accurate account balance information.
- The test will be considered successful when these functions have been accomplished and approved by the Department during this 30-day period.
- Once an account has been referred by a Department to the Consultant, the Department agrees there shall be no further dunning by the Department. The Consultant shall be the sole collector for that account.
- The Consultant shall acknowledge receipt of referred accounts within five (5) business days of receipt in a report as described in the Reporting Requirements section of this RFP.

8. The Department will refer accounts by, but not limited to, the following methods:
 - Compact Disk
 - Electronically
 - Paper
9. The Consultant must be able to adapt to any changes that might occur in the referral method/format.
10. Any account referred will include the total amount of debt, penalty, interest and fees (where applicable) due the Department.
11. If, after the beginning of collection activities, the debtor disputes the amount owed thus preventing the Consultant from proceeding, the Consultant shall obtain from the debtor a thorough written explanation as to their reasons for dispute. This information shall be forwarded to the proper Department personnel for review and resolution.
12. If the debtor makes a reasonable offer to settle, the Consultant shall provide the settlement information to the Department within two (2) workdays to determine if the settlement proposed should be considered. The Consultant will provide their analysis of the debtor's financial status and make recommendation on the settlement offer. The Department will respond to the offer proposed in the settlement request.
13. Only those agreements accepted by the Department shall be valid. Without approval from the Department, the Consultant is not authorized to accept any settlement of any account for less than the entire amount due. Should the Consultant accept an unauthorized settlement of an account for less than the entire amount due, the Department reserves the right to demand payment of the balance from the Consultant.
14. Any claims the Consultant determines to be best pursued through litigation require prior approval from the Department. If approved, the Consultant shall collect accounts from said debtors in the name of the Consultant and at the expense of the Consultant. Reasonable asset location will be performed by the Consultant, which shall be deemed to include discovery in the aid of execution, to satisfy judgments.
15. The Consultant shall temporarily or permanently suspend collection activity on an erroneously referred account upon verbal or written notification by the Department. The term "erroneous referral" means situations where the Department would not typically refer the account. When the Department deems it necessary, the Consultant shall immediately return to the Department any accounts requested. Consultant agrees that the Department's determination that accounts were erroneously referred shall be final and conclusive for purposes of this RFP. The Department will owe no fee for any payments received by the Consultant or Department on such erroneously referred accounts. There will be no collection fee charged on the uncollected portion of the account returned.

16. The Consultant shall compute additional interest and collection fees based on the Department's policies for interest calculation and state laws regarding collection fees. The Department shall furnish these rates and policies to the Consultant as they change. The Consultant shall collect all penalties and fees stated by the Department as of the date the account is referred to the Consultant. The Consultant shall add no additional penalties. If a discrepancy occurs regarding the balance of an account, the Consultant shall provide to the Department a detailed analysis of the calculations necessary to arrive at the respective figures (interest, penalty, principal amount, etc.).
17. The Consultant will adjust all accounts with respect to retrievals, payments and compromises within two (2) days of receiving the information from the Department. The Consultant shall return accounts once they have been determined as uncollectible after the Consultant has attempted all collection efforts.
18. The Consultant may be required to conduct Credit Bureau Reporting (CBR) upon the Department's request.

19. Consultant Reporting Requirements:

- The Consultant shall provide online capabilities to the department to view accounts referred and the on-going activity on each account through a secure portal or site. The Consultant shall provide the following reports in a mutually agreed upon format and medium:
 - Acknowledgement Report
This report shall be provided each time a referral is made. The report will include all accounts that have been referred and received by the Consultant. Information provided should include but not be limited to the total number of accounts and the total dollar value of the accounts referred by debt type in any given referral.
 - Inventory Report
The Consultant shall provide the Department a quarterly inventory report by debt types, listing all accounts currently assigned to the Consultant. It shall be listed in chronological order by the date the account was referred, identify the account number, the status of the account, the original amount placed for collection and payment(s) made to date and balance owing.
 - Stipulated Payment Report
Upon request, the Consultant shall provide the Department a status report on all accounts currently assigned to the Consultant where stipulated or partial payment agreements have been approved by the Department. This information shall be reported in chronological order by referral date and shall include at least the following:
 - Referral date
 - Account number
 - Debtor/account name
 - Total amount of liability originally referred
 - Balance due

- Monthly payment amount due
 - Length of original agreement
 - Number of payments remaining
 - Status of agreement e.g. current, delinquent, etc.
- Closed Account Report
The Consultant will provide a monthly report listing the accounts that have been closed in the Consultant's system that month. The report shall include:
 - Referral date
 - Debtor/account name
 - Debtor/account number
 - Applied period
 - Debt type
 - Reason for closure (for example – paid in full, retrieved by the Department)

20. Consultant Responsibilities

- The Consultant shall comply with the provisions of federal, state and local regulations to ensure that no employee or applicant for employment is discriminated against because of race, religion, color, sex or national origin. The Consultant shall have an Affirmative Action plan and shall provide the appropriate state federal agencies with reports required to ensure compliance.
- The Consultant shall comply with the Americans with Disabilities Act. In the event of the Consultant's noncompliance with the nondiscrimination clauses, the Americans with Disabilities Act, or with any other such rules, regulations, or orders, the Contract resulting from this RFP may be canceled, terminated or suspended in whole or in part and the Consultant may be declared ineligible for further contracts.
- The Consultant will keep in effect an employee fidelity bond for the period of the contract plus one-hundred and eighty (180) calendar days thereafter in the amount of \$100,000.00 to protect the Department against loss through failure by the Consultant or any of its employees or agents to remit to the Department all monies due. This will be in a form approved by the Bureau of Administration and the Surety Company will be licensed to do business in South Dakota and will be a company approved and licensed by the South Dakota Division of Insurance.
- The Consultant shall have all licenses applicable and required to operate as a professional collection agency.

21. Customer Service

- Collection contacts must be performed in a professional and respectful manner. No harassment, verbal abuse or compromising the rights of the debtors will be tolerated and may result in recalling the debt and cancellation of the contract.

- The Consultant must provide detailed information on its customer service record and provisions in place to ensure that:
 - Customer contacts are handled appropriately and professionally
 - Accurate and timely information is always provided to clientele
 - Processes are in place for recording and resolving customer complaints

22. Payments

- The sole consideration/compensation to be paid to the Consultant for its services shall be the percentage of collections for Consultant's fee as set forth in section four (4) of the contract . The Fee Schedule is designed to allow the Consultant to offer variable rates based on the dollar value of an account. However, Consultants are not required to vary rates based on the value of an account.
- All accounts assigned for collection shall be on a contingency basis; there will be no charge to the Department if the Consultant is unable to recover monies on accounts so assigned during the referral period.
- The Consultant may not be compensated for services on accounts where the collection is the result of independent actions by the Department, including, but not limited to, lottery application approval, beverage license approval, lien payoffs and criminal investigations, where monies are collected without direct involvement by the Consultant. The Department will owe no fee for any payments received by the Consultant or the Department from the bankruptcy estate.
- Any payment received by the Department within ten (10) calendar days after the account was referred to the Consultant shall not ordinarily be subject to the collection fee. Should exceptions to this arise; the Department will have the final decision on fees due the Consultant when collections are remitted after this ten (10) day period. Thereafter, payments received by the Department for accounts referred to the Consultant shall be reported to the Consultant and shall be subject to the collection fee.
- The Consultant shall not ordinarily be entitled to the collection fee for accounts when the collection is remitted to the Consultant or the Department after thirty (30) days from the date the account was retrieved or returned to the Department. Should exceptions to this arise; the Department will have the final decision on fees due the Consultant when collections are remitted after this thirty (30) day period. Any payment made to the Consultant after this thirty (30) day period will be forwarded directly to the Department.

23. Gross Remittance of Collection

- The consultant agrees that all funds collected, shall be remitted or electronically transferred to the Department with ten (10) days following the last day of the month in which the funds were collected from a debtor. In turn the Department will pay any applicable collection fees in accordance with the

Prompt Payment Act, 5-26. The processes and forms to be used by such remittance shall be prescribed by the Department.

24. Audit or Examination of Records

- The Consultant agrees the Department or any authorized representative of the State shall have access to and the right to examine, audit excerpt and transcribe any directly pertinent books, documents, records, paper or electronic, of the Consultant relating to orders, invoices or payments of this contract.
- All records relating to this contract shall be retained for five (5) years following the date of final payment or completion of any required audit, whichever is earlier. The Consultant should retain records reflecting collection activity such as, but not limited to, the debtors name, account number, date of payment, amount of payment and date the payment was remitted to the Department.
- Compliance with this clause does not relieve the Consultant from retaining any records required by other laws or regulation of federal, state or local government units.

25. Security of Data

- Information, accounts and data available from the Departments are of a confidential nature. The Consultant's employees shall be allowed access to this information only as needed for their duties related to the contract.
- In performance of the contract, Consultant agrees that it will comply with all laws and regulations relating to the privacy and confidentiality of data received as a result of the contract. Consultant agrees and assures that it, its officers, employees and agents will be bound by the same privacy and confidentiality laws and regulations in the same manner and to the same extent as the officials and employees of the Department. Consultant agrees that neither it, nor its officers, employees or agents will disclose or make public any information received by the Consultant on behalf of the Department other than that authorized by law.
- The Consultant agrees that any debt related information will be treated as confidential and will be maintained in accordance with state and federal confidentiality requirements and will be used solely for purposes of administering this contract, unless otherwise required by law. All such information will be stored in a secure environment, with access given only to authorized personnel, as deemed appropriate and necessary by the Consultant. The Consultant further agrees that all personnel authorized to handle such debt-related information will have signed confidentiality agreements. The Consultant will maintain a list of these employees with authorized access and such list will be provided to the Department and updated annually.
- The Consultant will be required to assume responsibility for the safety and security of confidential records, whether they are hard copy or electronic.

Electronic transfer of accounts and information will be facilitated through a type of secure file transfer as agreed with each Department. Neither Consultant nor its employees will browse the debtors' records or any return or debtor information. All confidential information must be securely stored in a manner to prevent unauthorized access. Failure to comply with these provisions may result in contract termination and other actions as appropriate.

- Any Department hard copy documents and printouts that may result during the processing of data or collection process will be either returned to the Department or shredded prior to disposal. When it is not possible to return the documents to the Department the Consultant will be responsible for the destruction of the documents and printouts and will provide the Department with a statement containing the date of destruction, description of material destroyed and the method used to destroy the documents.
- Consultant must indemnify and hold the Department harmless from any and all liabilities arising from the disclosure by Consultant, its officers, employees or agents of any information required to be held private, confidential or not-public under the provisions of the contract and law.

26. Department Responsibilities

- Department will provide a point of contact/manager of the process.
- Department will provide meeting sites when necessary.
- Department will initially respond to inquiries or requests from the Consultant within 24 hours or as otherwise agreed.
- Department will provide information specific to the Department and the accounts referred to aid Consultant in collection of account.
- Department will be available for consultation throughout the contract.