

**STATE OF SOUTH DAKOTA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER 2020-01**

Whereas, Israel is a critical and invaluable ally of the United States and a faithful friend of the State of South Dakota; and,

Whereas, The ability to engage and promote the prosperity of South Dakota's economy is best served by receiving goods and services from entities who are engaged in the broadest market available and may be hindered by entities exercising restrictive trade practices; and,

Whereas, The termination of or refusal to transact business activities with people or entities because of their national origin is not a commercial decision made for business or economic reasons and limits market options for that business; and,

Whereas, Business entities that employ such unsound business practices have reduced market participation, have impaired commercial viability, pose undue risks as contracting partners, and may not provide the best possible goods or services to the State at the best prices; and,

Whereas, Boycotts based on religion, national origin, or ethnicity amount to invidious discrimination; and,

Whereas, The State has a broad policy to refrain from contracting with business entities that unlawfully discriminate in the solicitation, selection, hiring, or commercial treatment of commercial customers such as vendors, supplies, or subcontractors; and,

Whereas, Contracting with business entities that discriminate makes the State a passive participant in private-sector commercial discrimination; and,

Whereas, The State of South Dakota requires contractors, vendors, suppliers, and subcontractors doing business with any executive branch agency to provide a statement of non-discrimination and certify that it does not discriminate in compliance with a variety of antidiscrimination and equal opportunity laws; and,

Whereas, In 2019, the South Dakota House of Representatives of the Ninety-Fourth Legislature, the Senate concurring, passed House Concurrent Resolution 1005 that declared opposition to and condemned the BDS movement; and,

Whereas, The State of South Dakota should act to secure its economic activities, and thereby the welfare of its citizens, by availing itself to the broadest market possible and renouncing restrictive trade practices based upon discrimination:

NOW, THEREFORE, I, KRISTI NOEM, Governor of the State of South Dakota, by the authority vested in me by the Constitution and the Laws of this State, do hereby Order and Direct the following:

Section 1 Definition: These words shall have the meanings indicated:

- A. "Boycott of Israel" or "BDS movement" means engaging in conduct of refusing to deal, terminating business activities, or other similar actions that are intended to penalize, inflict economic harm, or otherwise limit commercial relations specifically with the State of Israel, companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or persons or entities doing business in the State of Israel, in a discriminatory manner, but does not include an action taken for a bona fide business or economic purpose or an individual's personal consumer purchasing decision;

B. "Executive branch agencies" means each state agency, authority, bureau, board, commission, department, or institution of the State of South Dakota that is controlled by the governor;

C. "Contract" means any type of agreement by or on behalf of the State with a business entity to sell or lease supplies or goods, or to provide services, professional services, construction, or public improvements, to the State in return for a fee, or any other form of compensation to be paid or provided by the State; and,

D. "Contractor" means a vendor, supplier, or subcontractor which is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, having five (5) or more employees, that has submitted a bid or offer for or has been selected to engage in providing goods or services to the State, but does not mean a sole proprietorship or individual.

Section 2 Prohibition: No executive branch agency may execute a Contract with a Contractor engaged in a Boycott of Israel when the subject matter of that Contract is related to the boycott activity of the Contractor. An executive branch agency may rely on a Contractor's certification made under this Order without conducting any further investigative research or inquiry. Each executive branch agency shall reserve the right to terminate a Contract with a Contractor that submits a false certification.

Section 3 Certification: All Contractors must certify in writing when a bid or offer is submitted or when a Contract is awarded or renewed, that (a) it has not engaged in any Boycott of Israel activity related to the subject matter of the Contract; and (b) if at any time after making this certification the Contractor engages in a Boycott of Israel related to the subject matter of the Contract, the Contractor must notify the contracting executive branch agency in writing and may be subject to contract termination. All competitive sealed bids and proposals issued for contracts with executive branch agencies shall include the text of the following certification to be completed by the bidder or offeror:

"For contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by submitting a response to this solicitation or agreeing to contract with the State, the bidder or offeror certifies and agrees that the following information is correct:

"The bidder or offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the bid or offer, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response. The successful bidder or offeror further agrees to provide immediate written notice to the

contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.”

Section 4 Notice: A request for proposal, invitation to bid, or other document issued by an executive branch agency with the intent of soliciting responses for the potential award of a Contract shall include notice of the certification requirement of this Order.

Section 5 Oversight: The Commissioner of the Bureau of Administration, or his designee, shall oversee this Order to ensure implementation and enforcement.

Section 6 Limited Waiver: The Commissioner of the Bureau of Administration, or his designee, may waive application of this Order for a bid or offer if it is determined that compliance is not practicable, that the subject goods or services are unique or would be otherwise unavailable, that there is no other market participant, or that the Contract is otherwise in the best interests of the State.

Section 7 Execution: Executive branch agencies shall implement this Order in a manner that is consistent with all applicable state or federal law or regulation. Nothing in this Order shall operate to contravene any state or federal law or to affect the State’s receipt of federal funding.

Section 8 Severability: If any provision of this Order or its application to any entity or circumstance is held invalid by any court of competent jurisdiction, all other provisions or applications of this Order shall remain in effect to the extent possible without the invalid provision or application, and this Order is severable.

Section 9 Application: This Order applies to Contractors with more than five (5) employees who enter into a Contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more.


Section 10 Effective Date: This Order is prospective, effective thirty days after signature, and shall continue in effect until amended, modified, terminated, or rescinded by the governor.

Dated in Pierre, South Dakota this 14th day of January, 2020.




Kristi Noem
Governor of South Dakota

ATTEST:


Steve Barnett
Secretary of State