

**STATE OF SOUTH DAKOTA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER 2023-02**

Whereas, Maintaining the cybersecurity of South Dakota state government is necessary to continue to serve South Dakota citizens; and,

Whereas, The Chinese Communist Party has increasingly purchased vital agricultural land necessary to the nation's food independence and real property near critical infrastructure, such as real property near a military base in Grand Forks, North Dakota; and,

Whereas, South Dakota is home to critical infrastructure vital to national security, such as the Ellsworth Airforce Base which will house and operate the B-21 Bomber; and,

Whereas, Cybersecurity vulnerabilities may lead to real-world consequences for South Dakota residents, including the targeted take-down of critical infrastructure by evil foreign governments; and,

Whereas, The Federal Energy Regulatory Commission, United States Department of Energy, United States Military, and the Securities and Exchange Commission have announced intentions to develop new cybersecurity rules to combat sophisticated cyber hacking capabilities by foreign governments; and,

Whereas, Countries including Russia, China, Iran, and North Korea have engaged in increasingly aggressive cyber-attacks on United States assets, including Iranian financially-motivated ransomware operations, Russian phishing attempts, Chinese targeted extractions of corporate data, cyber-attacks on crucial ports since 2013, and the cyber and physical targeting of electric grid stations in Washington, North Carolina, and other states in late 2022; and,

Whereas, FBI Director Christopher Wray warned of an all-out assault by countries like China on all facets of American life in an attempt to "ransack" intellectual property and cybersecurity "from big cities to small towns—from Fortune 100's to start-ups, . . . from aviation, to AI, to pharma"; and,

Whereas, In December 2022, Governor Noem issued Executive Order 2022-10, which prohibited the installation or use of the TikTok application or website on state-owned devices and networks due to the Chinese Communist Party's control over TikTok's parent company, ByteDance, which started a movement to ban TikTok from government devices nationwide; and,

Whereas, Recognizing these grave and imminent risks, the Federal Government is taking steps to prohibit the use of technology and assets compromised by these countries, such as prohibiting foreign-manufactured cranes at critical security ports of entry, and the United States Federal Communications Commission banning phones, routers, and other telecommunications equipment manufactured by the Chinese-owned companies Huawei Technologies and ZTE, surveillance

equipment produced by Dahua Technologies, video recording devices created by Hangzhou Hikvision Digital Technology, and telecommunications devices manufactured by Hytera Communications due to “unacceptable risk” to United States security; and,

Whereas, These countries pose ever-present cybersecurity risks to South Dakota’s critical infrastructure, including electric grids and utilities, internet infrastructure, and other cybersecurity targets such as critical supply chain components, healthcare information and other personal data, corporate secrets, patents, and other intellectual property, and many other vulnerabilities:

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

Section 1 Definitions: The words used in this Order shall mean:

- A. “Prohibited Entity,” an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela;
- B. “Executive branch agencies,” each state agency, authority, bureau, board, commission, department, or institution of the State of South Dakota that is controlled by the Governor;
- C. “Contract,” any type of agreement by or on behalf of the State 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,” a vendor, supplier, or subcontractor 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 natural U.S. citizen.

Section 2 Prohibition on State Contracts with Prohibited Entities: No executive branch agency may execute a Contract with a Prohibited Entity. 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 Prohibition on Purchase of Information or Communication Technologies from Prohibited Entities: No executive branch agency shall:

- A. Procure or utilize any information or communication technologies, including devices, services, components, networks, and systems created, owned, or controlled by a Prohibited

Entity, or by any other means made unsafe for South Dakota's cybersecurity by any connection to a Prohibited Entity;

- B. Procure or utilize any information or communication technologies, including devices, services, components, networks, and systems where any federal agency has prohibited the sale of, restricted the licensing of, or otherwise limited the dissemination of, information or communication technologies on the basis that the entity selling, licensing, or otherwise distributing the technology or service poses a risk to national or state security;
- C. Procure or utilize any information or communication technologies, including devices, services, components, networks, and systems that are designed, developed, or manufactured, or supplied by any affiliate, agent, or other actor working on behalf of, or for the benefit of a Prohibited Entity, as determined by any federal or state governmental agency; or
- D. Expose existing government information or communication technologies, services, equipment, components, networks, systems, or records to any Prohibited Entity, or to any company, firm, individual, affiliate, agent, or any other entity or actor made unsafe for South Dakota's cybersecurity by means of that entity's or actor's connection to a Prohibited Entity.

Section 4 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 is not a Prohibited Entity; and (b) if at any time after making this certification the Contractor becomes a Prohibited Entity, the Contractor must notify the contracting executive branch agency in writing and shall 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 who enter into a contract with the State of South Dakota 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, is not an entity, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela, as defined by South Dakota Executive Order 2023-02. 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 5 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 6 Oversight: The Commissioner of the Bureau of Administration, or designee, shall oversee this Executive Order to ensure implementation and enforcement.

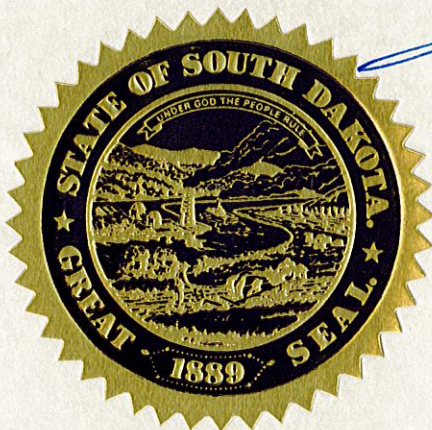
Section 7 Limited Waiver: The Commissioner of the Bureau of Administration, or designee, may waive application of this Order, except as prohibited by federal law, if it is determined that compliance is not possible, that the subject goods or services are unique or would be otherwise unavailable, or that there is no other market participant.

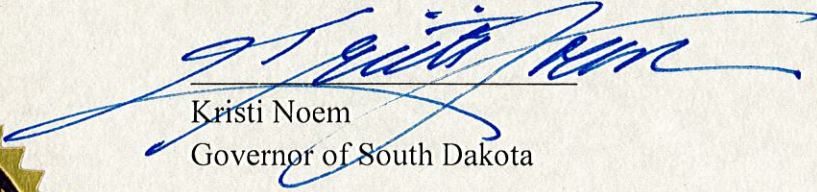
Section 8 Execution: Executive branch agencies shall implement this Order in a manner that is consistent with all applicable state or federal laws or regulations. Nothing in this Order shall operate to contravene any state or federal law or to affect the State’s receipt of federal funding.

Section 9 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.

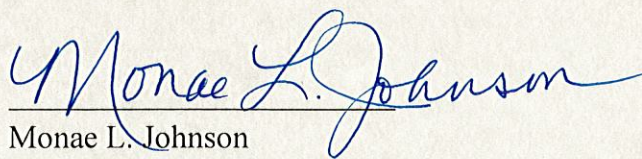
Section 10 Effective Date: This Order is prospective, effective five calendar days after signature, and shall continue in effect until amended, modified, terminated, or rescinded by the Governor.

Dated in Pierre, South Dakota, this 20th day of January 2023.




Kristi Noem
Governor of South Dakota

ATTEST:


Monae L. Johnson
Secretary of State

**CONTRACTOR CERTIFICATION REQUIRED BY
SOUTH DAKOTA EXECUTIVE ORDER 2023-02**

Section 1 Definitions. The words used in this Certification shall mean:

- 1.1. “Prohibited Entity,” an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela;
- 1.2. “Executive Branch Agencies,” each state agency, authority, bureau, board, commission, department, or institution of the State of South Dakota that is controlled by the Governor;
- 1.3. “Contract,” any type of agreement by or on behalf of the State 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
- 1.4. “Contractor,” a vendor, supplier, construction contractor, or subcontractor 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 natural U.S. citizen.

Section 2. Certification. The undersigned hereby certifies to the State of South Dakota that:

- 2.1. The undersigned is not a Prohibited Entity.
- 2.2. If at any time after making this certification the undersigned becomes a Prohibited Entity, the undersigned will provide immediate written notice to all Executive Branch Agencies with whom the undersigned has a Contract. The undersigned understands and agrees that if the undersigned becomes a Prohibited Entity, Executive Branch Agencies may terminate any Contract with the undersigned.
- 2.3. The undersigned acknowledges and agrees that Executive Branch Agencies have the right to terminate a Contract with any Contractor that submits a false certification.

Dated _____, 202__.

Contractor:

By: _____

Printed Name: _____

Title: _____