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PROPOSAL NO. 09-0106

ADVERTISEMENT FOR PROPOSALS

The City of Sioux Falls requests design/build proposals for playground structures in the City of Sioux Falls, South Dakota.

Proposals shall be received by Budgeting/Purchasing, Third Floor, City Hall, 224 W. 9th St., Sioux Falls, SD 57117-7402, not later than 2 p.m., September 3, 2009.

The proposal request documents, including all requirements of the request for proposal, the financial proposal form, and the performance criteria, are available from the Budgeting/Purchasing Office, 224 W. 9th St., Sioux Falls, SD 57117-7402.

The City of Sioux Falls reserves the right to reject any or all bids, waive technicalities, and make award(s) as deemed to be in the best interest of Sioux Falls, SD.

A preproposal conference will be held at 9:30 a.m. on August 12, 2009, at Oyate CC located at 2421 W. 15th St., Sioux Falls, SD.

Request for Proposal

RFP—1: Defined Terms

- 1.01 Terms used in this Request for Proposals have the meanings below:
- A. Owner: The City of Sioux Falls, South Dakota
 - B. Proposal Request Documents: The Advertisement or Invitation, Request for Proposal, Financial Proposal Form, and the Performance Criteria (including all Addenda issued prior to the Proposal date and time).
 - C. Proposer: One who submits a Proposal to the Owner.
 - D. Successful Proposer: The Proposer to whom the Owner (on the basis of Owner's evaluation as hereinafter provided makes an award).
 - E. Proposal: The entire package Proposer submits, including all technical exhibits (designs, specifications, schedules, qualifications, financial proposal, etc.).
 - F. Financial Proposal Form: The form bound in the Proposal Request documents which shall be submitted with the Proposal in a separate, sealed, opaque envelope.
 - G. Project Documents: Drawings and specifications of the existing construction, plus Proposal Request documents.

RFP—2: Copies of Proposal Request Documents

- 2.01 Address for Obtaining Proposal Request Documents
- A. Complete sets of Proposal Request documents may be obtained from the Owner at the following address: Budget/Purchasing, City Hall, 224 West Ninth Street, Sioux Falls, SD 57104. Questions relating to the proposals should be directed to the Owner's Representative, Scott Rust, Purchasing Manager, City Hall, 224 West Ninth Street, Sioux Falls, SD 57104, Telephone (605) 367-8836.
- 2.02 Purpose and Use of Proposal Request Documents
- A. Complete sets of Proposal Request Documents must be used in preparing Proposals. Neither the Owner nor Owner's consultant assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Proposal Request Documents.

- B. The Owner and the Owner's consultant make copies of Proposal Request Documents available on the above terms only for the purpose of obtaining Proposals for the work and do not confer a license or grant for any other use.

2.03 Identification of Conceptual Diagrams

- A. Conceptual Diagrams are identified and included in the Proposal Request Documents as follows:
 - CD-1 City Map with Location of sites.
 - CD-2 Site Map for all sites.

RFP—3: Qualifications of Proposers

3.01 Proposers Qualifications

- A. To demonstrate qualifications to perform the work, each Proposer must submit with the Proposal written evidence, such as financial data, previous experience, present commitments, and other such data as may be requested herein. Each Proposal must contain evidence of Proposer's qualifications to do business in the state of South Dakota or covenant to obtain such qualifications prior to award of the contract.

3.02 Designation of Professional Design Services

- A. The individuals or entities that will be providing professional design services shall be listed in the Proposal.

3.03 Designation of Prime Construction Services

- A. The individuals or entities that will be providing the prime construction services shall be listed in the Proposal.

RFP—4: Examination of Project Documents and Site Conditions

4:01 Proposer's Responsibilities

- A. It is the responsibility of each Proposer before submitting a Proposal to:
 - 1. Examine thoroughly the Project Request Documents and other related data identified in the Proposal Documents;
 - 2. Visit the site to become familiar with and satisfy Proposer as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the work;

3. Consider federal, state, and local laws, codes, and regulations that may affect cost, progress, performance, or furnishing of the work;
4. Promptly notify Owner of all conflicts, errors, ambiguities, or discrepancies which Proposer has discovered in the Proposal Request Documents.

RFP—5: Availability of Lands for Work

5:01 General

- A. The lands upon which the work is to be performed, rights-of-way and easements for access thereto, and other lands designated for use by Design/Builder in performing the work are identified in the Proposal Request Documents.

RFP—6: Interpretations and Addenda

6:01 General

- A. All questions about the meaning or intent of the Proposal Request Documents are to be directed to the Owner's representative. Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Owner as having received the Proposal Request Documents. Questions received less than ten days prior to the date for submittal of Proposals may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Addenda may also be issued to modify the Proposal Request Documents as deemed advisable by Owner.

RFP—7: Proposal Security

7:01 Submittal and Return of Proposal Security

- A. Each Proposal must be accompanied by Proposal security made payable to Owner in an amount of 5 percent of Proposer's maximum Proposal price and in the form of a Certified or Cashier's Check or a 10 percent Surety Bond issued by a surety licensed by the State of South Dakota.
- B. The Proposal security of the Successful Proposer will be retained until such Proposer has executed the Agreement, furnished any required security, and met the other conditions of the Notice of Award, whereupon the Proposal security will be returned. If the Successful Proposer fails to execute and deliver the Agreement and furnish the required security within 15 days after the Notice of Award, Owner may annul the Notice of

Award and the Proposal security of that Proposer will be forfeited. The Proposal security of other Proposers whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the effective date of the Agreement or the 23rd day after opening of Financial Proposals, whereupon Proposal security furnished by such Proposers will be returned. Proposal security with Proposals, which are not competitive, will be returned within seven days after the Proposal opening.

RFP—8: Taxes

8:01 Sales and Use Taxes

- A. Work for this Owner is subject to State Sales Tax and Use Taxes on materials and equipment. Said taxes shall be included in the Contract price. Refer to Supplementary Conditions for additional information.

8:02 Contractor's Excise Tax

- A. Contractor's Excise Taxes will be due and payable by the Proposer to the South Dakota Department of Revenue. To verify collection and reporting requirements, call (605) 367-5800.

RFP—9: Preproposal Conference

9:01 General

- A. A preproposal conference will be held at 9:30 a.m., August 12, 2009, at the Oyate Community Center, 2421 West 15th Street. Representatives of Owner will be present to discuss the Project. Proposers are encouraged to attend and participate in the conference. Owner will transmit to all prospective Proposers of record such addenda as Owner considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

RFP—10: Technical Exhibits Required with Proposal

10:01 General

- A. Proposers shall submit with their Proposals all technical exhibits necessary to describe their concept and approach to the project. These may include, but not be limited to drawings, specifications, photographs, testing reports, renderings, and models.

RFP—11: Financial Proposal Form

11.01 Instructions for Completion

- A. The Financial Proposal Form is included with the Proposal Request Documents. Additional copies may be obtained from the Owner.
- B. All blanks on the Financial Proposal Form must be completed by printing in black ink or by typewriter. Erasures and/or corrections must be initialed by the preparer.
- C. Financial Proposals by corporations must be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by evidence of authority to sign), and the corporate seal must be affixed and attested by the secretary or assistant secretary. The corporate address and state of incorporation must be shown below the signature.
- D. Financial Proposals by partnerships must be executed in the partnership name and signed by a partner, whose *title must* appear under the signature and the official address of the partnership must be shown below the signature.
- E. All names must be typed or printed in black ink below the signature.
- F. The Financial Proposal *shall* contain an acknowledgement of receipt of all addenda (the numbers of which must be filled in on the Proposal Form).
- G. The address and telephone number for communications regarding the Financial Proposal must be shown.
- H. Evidence of authority to conduct business as an out-of-state corporation in the state where the work is to be performed shall be attached. State contractor license number, if any, and professional registration numbers must also be shown if required.

RFP—12: Submission of Proposals

12:01 General

- A. Nine copies of the Proposal shall be submitted at the following time and place:

Budgeting/Purchasing
Third Floor, City Hall
224 West Ninth Street
P.O. Box 7402
Sioux Falls, SD 57117-7402

Not later than 2 p.m., Thursday, September 3, 2009

Proposals shall be enclosed in an opaque sealed envelope or box, marked with the project title and name and address of the Proposer, and accompanied by the proposal security and other required documents.

The Financial Proposal shall be identified and shall be sealed in a separate opaque envelope within the Proposal envelope or box. If the Proposal is sent through the mail or other delivery system, the sealed envelope or box shall be enclosed in a separate envelope with the notation "Proposal Enclosed" on the face of it.

Receipts will be issued for hand delivered bids. Bids delivered by Federal Express, U.S. Mail, etc. will be receipted as they arrive in Budgeting/Purchasing.

RFP—13: Opening of Proposals

13:01 General

- A. The technical portion of the Proposals will be evaluated by the Technical Review Committee. The Technical Review Committee is comprised of the following members:

Diane Gildemaster, District Park Supervisor
Bryan Sargent, District Park Supervisor
3 Park Board Members: Sandra Pay
Pat Lloyd
Michelle Harvey-Erpenbach
Rod Harms, Civil Engineer
Gary Colwill, ADA Compliance Coordinator
Barb Hermanson, Recreation Manager

Proposers are hereby alerted that they should refrain from contacting individual members of the Technical Review Committee. All questions or other inquiries shall be made through the Owner's Representative, Scott Rust, Purchasing Manager, City Hall, 224 West Ninth Street, Sioux Falls, SD 57104, Telephone (605) 367-8836.

If the Technical Review Committee determines that interviews will be conducted, the interviews of selected Design/Build firms will occur on Friday, September 11, 2009, beginning at 9 a.m.

The Technical Review Committee, facilitated by the Criteria Developer, will evaluate all Proposals based on the criteria outlined in paragraph 16.01.

Financial Proposals will be opened publicly at 2:15 p.m., September 17, 2009, at the City Council Chambers. An abstract of the amounts of the base proposals will be made available to Proposers the Tuesday following the opening of the Financial Proposals. Technical Proposals will be reviewed by

the Technical Review Committee from September 8–11. Determination of the apparent *Best Value Proposal* will be made by the City's Purchasing Manager on September 17, 2009

For determination of *Best Value Proposal*, see paragraph 16.03(D).

RFP—14: Proposals to Remain Subject to Acceptance

14:01 General

- A. All Proposals, including Financial Proposals, shall remain subject to acceptance for 23 days after the day of the Financial Proposal opening, but Owner may, at its sole discretion, release any Proposal and return the Proposal security prior to that date.

RFP—15: Budget

15:01 The City has budgeted \$65,000 for Cherry Rock and \$174,800 for Sertoma installations for this Design/Build Agreement. Financial Proposals shall provide for a lump sum total.

RFP—16: Selection Criteria

16:01 Evaluation of Proposals

- A. In evaluating Proposals, Owner will consider the qualifications of Proposers, whether or not the Proposals comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Financial Proposal Form or prior to the Notice of Award.
- B. Owner may consider the qualifications and experience of designers, contractors, subcontractors, suppliers, and other individuals and entities proposed for portions of the work. Owner may also consider the operating costs, maintenance requirements, performance data, and guarantees of major items of materials and equipment proposed for incorporation in the work, when such data is submitted.
- C. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications, and financial ability of Proposers, proposed designers, contractors, subcontractors, suppliers, and other individuals and entities proposed to perform and furnish the work.

16:02 Criteria Developer Review

The Criteria Developer shall first review the Proposals (except for the Financial Proposal) and shall render an opinion regarding the completeness of each, and compliance with the requirements of the Proposal Request

Documents. The Criteria Developer shall forward the Proposals and this opinion to the Owner's Technical Review Committee for evaluation.

16:03 Selection Process

A. Evaluation of (Non-Financial) Portions of the Proposal

1. Qualifications: Each Proposal will be evaluated by the Technical Review Committee based on the relative ability of the identified firms making up each Proposer based on:
 - a. Experience with comparable projects.
 - b. Financial and bonding capability.
 - c. Managerial resources.
 - d. Abilities of professional personnel.
 - e. Past performance for the City.
 - f. Capacity to meet time and budget requirements.
 - g. Demonstrated ability to complete work in timely and satisfactory manner.
 - h. Recent, current, and projected workload.

Maximum Possible Score: .20

2. Technical: Each Proposal will be evaluated based on the relative value of the following features:
 - a. Compliance with requirements of Proposal Request Documents.
 - b. Research and understanding of design and construction requirements.
 - c. Design concepts/drawings.
 - d. Outline specifications/proposed materials.
 - e. Durability of materials.
 - f. Management Plan.

Maximum Possible Score: .70

3. Project Schedule

- a. Construction.

Maximum Possible Score: .10

**Maximum Possible Score 1.00
Qualification/Technical Review Factor**

Factors will be assigned to each Proposal by the Technical Review Committee, and forwarded to the Purchasing Manager.

- B. Opening of the Financial Proposal and application of the Qualification/Technical Review Factor.
- C. Evaluation of the Financial Proposals.
 - 1. Each lump sum Financial Proposal will be evaluated (by the Purchasing Manager in consultation with the Technical Review Committee) to arrive at the appropriate number to which the Qualification/Technical Review Factor is applied.
- D. Determination of Best Value Proposal.

If a Financial Proposal must be modified (solely in the City's opinion), the Purchasing Manager shall make the adjustment and reapply the Qualification/Technical Review Factor. Adjusted totals shall determine the Best Value Proposal.

RFP—17: Award of Contract

17:01 Rejection of All Proposals, Discrepancies

- A. Owner reserves the right to reject any or all Proposals, including without limitation, the right to reject any or all nonconforming, nonresponsive, unbalanced, or conditional Proposals and to reject the Proposal of any Proposer if Owner believes that it would not be in the best interest of the City to make an award to that Proposer, whether because the Proposal is not responsive or the Proposer is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time, or changes, in the work and to negotiate terms with the Successful Proposer.
- B. If an award will be made, Owner will give Successful Proposer a Notice of Award within 23 days after the day of the Financial Proposal opening.

RFP—18: Contract Security

18:01 General

- A. Performance and Payment Bonds shall be provided in the total amount of the Financial Proposal. When the Successful Proposer delivers the executed Agreement to Owner, it must be accompanied by the required Performance and Payment Bonds.
- B. Proposer shall provide evidence of Professional Errors and Omissions Insurance, Liability Insurance, Automobile Insurance, and Workers' Compensation Insurance, in the minimum amounts specified in the Supplementary Conditions.

RFP—19: Signing of Agreement

19:01 General

- A. When Owner gives a Notice of Award to Successful Proposer, it will be accompanied by the required number of unsigned copies of the Agreement. Within 15 days thereafter, Design/Builder shall sign and deliver the required number of copies of the Agreement to Owner with the required insurance and bonds. Within 15 days thereafter, Owner shall deliver one fully signed copy to Design/Builder.

RFP—20: Proposal Compensation

The Successful Proposer may invoice the City for:

30 percent upon completion of Cherry Rock site.

70 percent upon completion of project.

RFP—21: Summary of Documents to be included in Proposal

1. Three drawings according to Drawing Schedule listed in PC 3.02 Item No. 7.
2. Resilient material samples.
3. Catalog and identified page and part numbers for proposed equipment.
4. Data information on specifications/proposed materials in written form. Disk form after award.
5. Documentation of compliance with current ADA/ABA Accessibility Guidelines, all ASTM public playground standards including surfacing, IPEMA, and Consumer Product Safety guidelines.
6. Outline of durability of materials.
7. Management plan.
8. Construction schedule.
9. Identify components as accessible, elevated, ground level, and freestanding. Each component can only be counted once.

Performance Criteria

Performance of this Design/Build contract shall be governed by the general and special conditions for City construction projects which are attached to and included in these documents by reference. The general and special conditions shall prevail except as modified by the Request for Proposals, the Performance Criteria, and the Supplementary Conditions. If there is a conflict between these documents, the order of precedence is as follows: Supplementary Conditions, Performance Criteria, Request for Proposals, General and Special Conditions.

PC-1—Defined Terms

1.01 Owner means the City of Sioux Falls, South Dakota.

PC-2—Owner's Review

2.01 The Owner may obtain independent review of the Contract Documents and on-site observation of the work in progress by a separate architect, engineer, contractor, or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the work.

PC-3—Design/Builder's Basic Services and Responsibilities

3.01 The Design/Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work.

3.02 The Design/Builder shall submit Construction Documents for review and approval by the Owner. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the work, and shall:

1. Be consistent with the intent of the Design/Builder's Proposal;
2. Provide information for the use of those in the building trades;
3. Include documents customarily required for regulatory agency approvals;
4. Include documents which will provide the owner with a clear written record of how the structural, mechanical, electrical, or special systems elements are constructed, and part numbers for each component. This information is to be provided in disk form after the bid is awarded.

5. Include current catalog and page numbers/part numbers for each play component for review and approval by the Owner; and
6. Include samples of resilient materials proposed for review and approval by the Owner.
7. Drawings shall be submitted according to the following schedule:

Drawings Required

Drawing 1

For Site A—Cherry Rock

Drawing 3

Site C—Sertoma (east with retaining wall)

Drawing 2

Site B—Sertoma (west site)

- 3.03 The Design/Builder, with the assistance of the Owner, shall file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.
- 3.04 The Design/Builder shall pay all sales, consumer, use, and similar taxes which had been legally enacted the time the Design/Builder's Proposal was first submitted to the Owner, and shall secure and pay for building and other permits and governmental fees, licenses, and inspections necessary for the proper execution and completion of the work which are either customarily secured after execution of a contract for construction or are legally required at the time the Design/Builder's Proposal was first submitted to the Owner.
- 3.05 The Design/Builder shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the work with exception of initial site grading work, removal of existing equipment at all sites. Owner will seed the areas. Backfilling, installation of resilient surfacing, and underneath aggregate are design/builder's responsibility.
- 3.06 Superintendent/Work Crew
 - A. The Design/Builder shall employ a competent superintendent who shall be in attendance at the Project site during performance of the work. The superintendent shall represent the Design/Builder, be familiar with installing equipment from proposed manufacturer, and communications given to the superintendent shall be as binding as if given to the Design/Builder. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.
 - B. Work crews shall be experienced in similar construction methods. Crews shall remain consistent.

3.07 Documents and Samples at the Site

A. The Design/Builder shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples, and similar submittals. These shall be available to the Owner and shall be delivered to the Owner upon completion of the work and prior to final payment.

3.08 The Design/Builder shall keep the Owner informed of the progress and quality of the work.

3.09 The Design/Builder shall be responsible for correcting work which does not conform to the Contract Documents.

3.10 The Design/Builder shall warrant to the Owner that materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the construction will be free from faults and defects, and that the construction will conform with the requirements of the Contract Documents.

3.11 The Design/Builder shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

3.12 The Design/Builder shall pay royalties and license fees for patented designs, processes, or products. The Design/Builder shall defend suits and claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Owner. However, if the Design/Builder has reason to believe the use of a required design, process, or product is an infringement of a patent, the Design/Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

3.13 The Design/Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations. At the completion of the work, the design/builder shall remove from the site waste materials, rubbish, the Design/Builder's tools, construction equipment, machinery, and surplus materials. This includes the containment and removal of trash/waste material including pallets at the storage area to be disclosed at a preconstruction meeting. A key will be given to the proposers. A forklift operator from the City will be available to assist in unloading with a 24-hour notice. The Design/Builder will need to be present to take delivery of shipped materials. The Design/Builder will check over and verify all shipments. The storage area will be

maintained and secured by the Design/Builder. The Owner shall designate the storage area at this location.

- 3.14 The Design/Builder shall notify the Owner when the Design/Builder believes that the work or an agreed upon portion thereof is substantially completed. If the Owner concurs, the Design/Builder shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion and shall state the responsibility of each party. The Design/Builder shall follow the completion schedule and the Design/Builder shall issue a Certificate of Substantial Completion:

Schedule: Completion of Site A by November 13, 2009
Completion of Sites B and C by November 27, 2009

PC-4—Time Requirements

- 4.01 Time limits are of the essence. The work shall commence upon receipt of a Notice to Proceed and following a preconstruction meeting with Owners. The facility must remain available for use to a limited degree per the approved management plan submitted by the Design/Builder. The schedule for work is as follows:

Site A to begin October 5, 2009. Completion of Site A on or before November 13, 2009. Work for Sites B and C may begin as soon as Site A is complete with completion on or before November 27, 2009.

Delivery of equipment for all Sites should not arrive more than two weeks prior to October 5, 2009.

- 4.02 Based on the Design/Builder's Proposal, a construction schedule shall be provided consistent with paragraph 4.01 above.
- 4.03 If the Time limits are not met, Liquidated Damages shall apply as outlined in the Supplementary Conditions. If the Design/Builder proposes a more aggressive schedule than required herein, the Owner will rely on it, and liquidated damages will begin after the declared critical dates have passed.

PC-5—Warranty

- 5.01 The Design/Builder shall warrant to the Owner that materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Owner in writing, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty shall extend for a period

of one year after the date of Substantial Completion or Occupancy of the work whichever occurs first. Longer Warranties shall be provided when manufacturers and/or installers provide longer standard warranties, or when the Design/Builder's Proposal included an offer for longer warranties. The Design/Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design/Builder, improper or insufficient maintenance, improper operation, or normal wear and tear, and normal usage.

- 5.02 The one-year warranty period shall be extended with respect to portions of work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the work.

PC-6—Protection of Persons and Property

- 6.01 The Design/Builder shall be responsible for initiating, maintaining, and providing supervision of all safety precautions and programs in connection with the performance of the work.
- 6.02 The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: 1) employees on the work and other persons who may be affected thereby; 2) the work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Design/Builder or the Design/Builder's contractors; and 3) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. The owner shall conduct a locate check for utilities prior to excavation and any other needs for locates will be the Design/Builder responsibility.
- 6.03 The Design/Builder shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

PC-7—Changes in the Work

- 7.01 Changes in the work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the work.
- 7.02 A Change Order shall be based upon agreement between the Owner and the Design/Builder; a Construction Change Directive may be issued by the Owner without the agreement of the Design/Builder; an order for a minor change in the work may be issued by the Design/Builder alone.

- 7.03 If conditions are encountered at the site which are 1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or 2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Contract Sum shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either party made within 21 days after the claimant becomes aware of the conditions.
- 7.04 The Design/Builder shall be compensated for changes in the construction necessitated by the enactment or revision of codes, laws, or regulations subsequent to the submission of the Design/Builder's Proposal.

PC-8—Correction of Work

- 8.01 The Design/Builder shall promptly correct work rejected by the Owner or known by the Design/Builder to be defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. The Design/Builder shall bear costs of correcting such rejected work, including additional testing and inspections.
- 8.02 If, within one (1) year after the date of Substantial Completion of the work, or after the date for commencement of warranties established in a written agreement between the Owner and the Design/Builder, or by terms of an applicable special warranty required by the Contract Documents, any of the work is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Design/Builder a written acceptance of such condition.

PC-9—Design/Build Budget

- 9.01 The City has budgeted \$239,800 for this Design/Build Contract with the following breakout estimates. The Agreement must allow for a contingency in case of necessary changes.

Cherry Rock Park site at approximately \$65,000

Two Sertoma sites at approximately \$174,800 total for both sites.

PC-10—Functional Requirements

- 10.01 All signage required to properly direct users in continued use of Park facilities in a safe and orderly fashion during construction shall be furnished by the Design/Builder.
- 10.02 The Design/Builder shall follow good design and construction practices, consistent with the highest and best industry standards for methods, materials, and workmanship.
- 10.03 The proposed play sites will have dimension requirements listed and mapped (see CD-2).
- 10.04 Site A is a Park site with one(1) area shown in Attachment B and the scope of the playground for this site will need to include the following component features **but not limited to:**
1. Structure shall be similar to N-R-G, EVOS, AGITO, or approved equal.
 2. Minimum of one glider/rider (shall not be a standalone track rider).
 3. Minimum of four climbers. A vertical ladder will not be considered a climber.
 4. Minimum of one bridge/stepping stones or pods.
 5. Minimum of one overhead event/component
 6. Rubber Tile safety surface shall be used for this site. Concrete must extend one (1) foot beyond rubber tile surface. Transition from concrete to rubber tile must be ADA compliant.
 7. Comply with ADA/ABA Accessibility Guidelines.

Play structure 50' x 54' area available.

- 10.05 Site B is a Regional Park with areas shown in Attachment C and the scope of the play structure for this site will need to include the following component features **but not limited to:**
1. Structure shall be similar to N-R-G, EVOS, AGITO, or approved equal.
 2. Minimum of one glider/rider (shall not be a standalone track rider).
 3. Minimum of four climbers. A vertical ladder will not be considered a climber.
 4. Minimum of one bridge/stepping stones or pods.
 5. Minimum of one overhead event/component

6. Rubber Tile safety surface shall be used for this site. Concrete must fill to curbing surrounding the available area. Transition from concrete to rubber tile must be ADA compliant.
7. Comply with ADA/ABA Accessibility Guidelines.

Play structure 63' diameter area available.

10.06 Site C is a Regional Park with area shown in Attachment D and the scope of the play structure for this site will need to include the following component features **but not limited to:**

1. Minimum of two (2) decks at least 47 inches across; i.e., 47-inch diameter circle must fit horizontally on this deck.
2. Minimum of two (2) slides of various types, play value, and heights shall be provided to accommodate a variety of age groups. One must be a triple bed type, 6 feet high or higher with a critical height not to exceed 7 feet.
3. Minimum of one track ride feature with visible launch pad at take-off point.
4. Minimum of two (2) climbers one of which is a molded plastic climber. Horizontal climbers must have vertical ladder at outward termination. A vertical ladder will not be considered a climber.
5. A transfer point for structure accessibility. This transfer point must be adjacent to an accessible entry point access ramp.
6. Minimum of three outlying/freestanding play events. These elements must be accessible and have significant play value. Sand diggers will not be considered play elements. Use zones for freestanding play events shall not be considered internal to the composite structure.
7. A minimum of one roof unit.
8. A minimum of two (2) play activity panels. Play value must be significant.
9. Current tire swings shall remain in place.
10. Comply with ADA/ABA Accessibility guidelines.
11. It is desirable that the opening in the railing at the top of the retaining wall be incorporated into the new play system.
12. Engineered wood fiber system must be included in each system (see Attachment A).

Play structure 68' diameter area available

PC-11—Technical Requirements

- 11.01 All materials shall be structurally sound, suitable for safe play, and must conform to ASTM F1487-07
- 11.02 Any color options available for various parts of equipment shall be submitted for review and selection by the Owner.
- 11.03 Whenever an article or material is defined by describing a proprietary product or by using the name of a manufacturer, the term “or equal” if not inserted shall be implied. The specified article or material shall be understood as indicating the type, function, minimum standard of design, efficiency, and quality desired and shall not be construed as to exclude other manufactured products of comparable quality, design, and efficiency.

The evaluation of Proposals and determination as to equality of the products shall be the responsibility of the City and will be based on information furnished by the Design/Builder or identified in his/her Proposal, as well as other information reasonably available to the City.

- 11.04 All playground structures and installation must meet the current ASTM, Consumer Product Safety Commission Guidelines, and ADA/ABA Accessibility Guidelines, and IPEMA Certification. Certificate of Compliance from Design/Builder must be received within 25 days of completion of project. The compliance will be reviewed by the Technical Review Committee during selection. The designs shall illustrate the safety zones required.

Financial Proposal Form

P-1—Project Identification: Playground Structures

P-2—This Financial Proposal is Submitted to: The City of Sioux Falls

P-3—Proposer’s Obligations and Representations

3.01 The undersigned Proposer proposes and agrees, if his/her Proposal is accepted, to enter into an Agreement with Owner in the form included in the Proposal Request Documents, to perform and furnish all work as specified or indicated in the Proposal Request Documents and in the Proposal Documents submitted by the Proposer, for the Price and within the Times indicated and in accordance with the other terms and conditions of the Proposal Request Documents.

3.02 This Financial Proposal will remain subject to acceptance for 23 days after the day of Financial Proposal opening. Proposer will sign and deliver the required number of counterparts of the Agreement with any Bonds and other documents required by the Proposal Request Documents within 15 days after the date of Owner’s Notice of Award.

3.03 In submitting this Proposal, Proposer represents and agrees, as more fully set forth in the Agreement, that:

A. Proposer has examined and carefully studied the Proposal Request Documents and the following Addenda (receipt of all which is hereby acknowledged).

Addendum No.

Addendum Date

B. Proposer has visited the Site and become familiar with the general, local, and site conditions that may affect cost, progress, performance, and furnishing of the work.

C. Proposer is familiar with all applicable federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the work.

D. Proposer has correlated the information known to Proposer, information and observations obtained from visits to the Site, reviewing existing reports and drawings, and all additional examinations, investigations, explorations, tests, studies, and data he/she has performed or discovered.

E. Proposer has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in the Proposal Request Documents and the written resolution thereof by Owner is acceptable to Proposer, and the Proposal Request Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the work for which this Proposal is submitted.

- F. This Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Proposer has not directly or indirectly induced or solicited an other Proposer to submit a false or sham Proposal; Proposer has not sought by collusion to obtain for itself any advantage over any other Proposer or over Owner.

P-4—Price

4.01 Proposer will complete the work in accordance with the Proposal Request Documents and the Proposer's Technical Submittals for the following price(s):

A. Lump Sum Price

1. _____ (\$ _____)
(figures)

B. Unit Prices

Required Base Proposal quantities of the items listed below are included in the Lump Sum Price. If increases or decreases in these quantities occur due to a change request by the Owner, the Contract Sum shall be adjusted on the basis of the following:

- 1. Cherry Rock Park Site \$ _____
- 2. Sertoma Park Sites \$ _____

P-5—Times

5.01 Proposer agrees that the work will be as follows:

Site A to begin October 5, 2009. Completion of Site A on or before November 13, 2009. Work for Sites B and C may begin as soon as Site A is completed with completion on or before November 27, 2009.

Refer to PC-4 4.01 for delivery of equipment times.

5.02 Proposer accepts the provisions of the Supplementary Conditions of the Agreement as to liquidated damages in the event of failure to complete the work within the times specified in the Agreement.

P-6—Exhibits

6.01 The following documents are included elsewhere in the submitted Proposal, and made a condition of this Financial Proposal:

- A. Required Proposal Security in the form of Bid Bond or Cashier's Check.

- B. A tabulation of Engineers, Subcontractors, Suppliers and other persons and organizations required to be identified in the Proposal.
- C. Required PROPOSER's Qualification Statement with supporting data.
- D. Technical Exhibits.

P-7—Communications

7.01 Communications concerning this Financial Proposal shall be directed to the address, phone number, and facsimile number of PROPOSER indicated below.

P-8—Terminology

8.01 The terms used in this Proposal shall be defined in other sections of the Proposal Request Documents.

P-9—Certification

SUBMITTED on _____, 2009.

Proposer certifies that he/she is qualified to do business in the state of South Dakota, is properly registered and/or licensed with the Secretary of State and the South Dakota Department of Revenue, or covenants to obtain such registrations and licenses prior to beginning the work.

PROPOSER certifies this Financial Proposal and his/her total Proposal submittal as:

An Individual

By _____ (SEAL)
 (Individual's Name)

doing business as _____

Business address: _____

Phone No.: _____

Facsimile No.: _____

Federal I.D. No.: _____

A Partnership

By _____ (SEAL)
(Firm Name)

(General Partner)

Business address: _____

Phone No.: _____

Facsimile No.: _____

Federal I.D. No.: _____

A Corporation

By _____ (SEAL)
(Corporation Name)

(State of Incorporation)

By _____ (SEAL)
(Name of Person Authorized to Sign)

(Title)

(Corporation Seal)

Attest _____
(Secretary)

Business address: _____

Phone No.: _____

Facsimile No.: _____

Date of Qualification to do Business as a foreign
(out-of-state) corporation in state where

Project is located: _____

Federal I.D. No.: _____

A Joint Venture

By _____ (SEAL)
(Name)

(Address)

By _____ (SEAL)
(Name)

(Address)

Business address: _____

Phone No.: _____

Facsimile No.: _____

Federal I.D. No.: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above).

Supplementary Conditions

Article 1—General Provisions

- 1.1 The Contract Documents shall include the General Conditions, Proposal Request Documents, including the Design/Build Request for Proposals, the Supplementary Conditions, the Performance Criteria, and the Proposal Forms.

Article 2—Owner

- 2.1 Defined Holidays: January 1 (New Year's Day); the third Monday in January (Martin Luther King Day); the third Monday in February (Presidents' Day); the last Monday in May (Memorial Day); July 4 (Independence Day); the first Monday in September (Labor Day); the second Monday in October (Native American Day); November 11 (Veterans Day); the fourth Thursday in November (Thanksgiving Day); and December 25 (Christmas Day). These will not be considered working days for purposes of calculating Liquidated Damages.

Article 3—Design/Builder Services and Responsibilities

- 3.1 **Environmental Protection**—The Design/Builder shall comply with all Federal, State, and City laws and regulations controlling pollution of the environment. Precautions shall be taken to prevent pollution of streams, lakes, ponds, and reservoirs from harmful materials and to prevent pollution of the atmosphere.
- 3.2 **Sound Control Requirements**—The Design/Builder shall comply with all City noise ordinances. All engines used for any purposes on the job or related to the job shall be equipped with a muffler of a type recommended by the manufacturer and maintained in a satisfactory working condition. City ordinance requires a noise permit for any work between the hours of 10 p.m. to 6 a.m. Permit may be acquired at the City Health Department (367-7079).
- 3.3 **Human Relations**—
 - 3.3.1 With respect to any and all business conducted or acts performed pursuant to the contract, the Design/Builder shall be deemed an Employer within the meaning of Chapter 21½ of the Revised Ordinances of Sioux Falls and shall be subject to its provisions.
 - 3.3.2 If the Design/Builder fails to perform the contractual provisions, the Contract may be terminated in whole or in part by the City and the Design/Builder shall be liable for any costs or expense incurred by it in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the Contract to be terminated.

- 3.3.3 Should the Commission on Human Relations in a proceeding brought as provided by ordinance find that the Design/Builder has engaged in discrimination in connection with such contract and issue a cease and desist order with respect thereto, the City shall withhold up to 15 percent of the contract price until the Commission's order has been complied with or the Design/Builder has been adjudicated not guilty of such discrimination.
- 3.3.4 The Design/Builder will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission on Human Relations, its agencies or representatives, to ascertain compliance with the provisions of City ordinance applicable to the Design/Builder.
- 3.3.5 The above shall be binding on all Subcontractors or Suppliers.

Article 4—Failure to Complete On Time/Liquidated Damages

- 4.1 Time is an essential element of the Agreement. It is important that the work be pressed vigorously to completion. The cost to the City of the administration of the Agreement, including engineering, inspection, and supervision, will be increased as the time occupied in the work is lengthened. The public is subject to detriment and inconvenience when full use cannot be made of an incomplete project.

Should the Design/Builder fail to complete the work according to the scheduled timeline agreed upon in the Agreement or as allowed in increases in the Agreement or by formally approved extensions granted by the City, there shall be deducted from monies or amounts due or that may become due the Design/Builder, the sum of \$1,000.00 for each and every calendar day that the work shall remain uncompleted. This sum shall be considered and treated not as a penalty but as liquidated damages due the City from the Design/Builder by reason of inconveniences to the public, added cost of engineering and supervision, and other items which have caused an expenditure of public funds resulting from failure to complete the work within the time specified in the Agreement. Liquidated Damages shall compound should the Design/Builder fail to meet one time limit to the extent that it overlaps an additional time limit.

- 4.2 Permitting the Design/Builder to continue and complete the work covered by the terms of the Agreement after the expiration of the working time provided for therein and inclusive of any extensions granted, shall in no way be construed as a waiver by the City of its rights under the Agreement.

Article 5—Payments

- 5.1 Partial payment for structural and reinforcing steel or for piping, ductwork, and equipment will not be made prior to fabrication.

Materials for which an allowance is requested shall be stored in an approved manner. If at any time stored materials are lost or damaged, the Design/Builder will be responsible for repair and replacement of such damaged materials. If payment has been made prior to such damage, the amount allowed or a proportionate part thereof, shall be deducted from the next partial payment and withheld until satisfactory repairs or replacement have been made.

Payment will not be allowed for materials stored outside the Owner's property.

Article 6—Protection of Persons and Property

6.1 Work Near Energized Electrical Lines or Other Utilities:

It shall be the Design/Builder's sole and exclusive responsibility: (a) to provide personnel capable of working adjacent to energized electrical lines or other utilities, (b) to provide adequate, safe, and properly maintained equipment, (c) to conduct all of his work in accordance with the safety rules and regulations prescribed by the National Electrical Code, National Electric Safety Code, H30 and Safety Rules and Installation and Maintenance of Electrical Supply and Communications Lines Handbook 81, Occupational Safety and Health Act of 1970, as well as other safety codes in effect at the site of construction and as specified elsewhere here, and as are generally applicable to the type of work being performed, and (d) to continuously supervise and inspect the work being performed to assure the requirements of (a), (b), and (c) above are complied with and nothing in these Contract Documents shall be held to mean that any such responsibility is the obligation of the Owner.

6.2 Notwithstanding any reference to any rules or regulations above or in any other parts of the Contract Documents, the Owner and anyone employed by the Owner and anyone for whose acts the Owner may be liable, are not assuming, neither jointly nor separately, any duty to provide supervision of construction methods or processes or safety measures. Any supervision shall be the sole and exclusive responsibility of the Design/Builder.

6.3 Design/Builder shall provide traffic secure area as required by the City of Sioux Falls. The Design/Builder shall submit a Traffic Control Plan (for any portion of the site affected) to the City for approval prior to the start of Construction.

Article 7—Insurance and Bonds

7.1 Design/Builder's Liability Insurance

The Design/Builder shall secure the insurance specified below and shall cause all its consultants/ subcontractors to do likewise. All insurance shall be issued by an insurance company(s) acceptable to the City. The insurance specified in this policy directive may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance shall be provided to the City upon execution of a contract.

Exceptions to this policy must be approved by the City Attorney's Office and Risk Management. The following coverages shall be minimums, and the premiums paid by the Design/Builder shall not be construed as reimbursable by the Owner per paragraph 2.8.

- A. Workers' Compensation. The policy shall provide the statutory limits required by South Dakota law. In addition, it shall provide Coverage B, Employer's Liability coverage of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limits. The required limit may be met by excess liability (umbrella) coverage.
- B. Commercial General Liability. The policy shall provide occurrence form contractual, personal injury, bodily injury, and property damage liability coverage with limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. The required limit may include excess liability (umbrella) coverage. The policy shall name the City and its representatives as an additional insured. If "occurrence form" insurance is not available, "claims made" insurance will be acceptable. The policy shall be maintained for three years after completion of this contract.
- C. Automobile Liability. The policy shall cover all owned, non-owned, and hired automobiles, trucks, and trailers. The coverage shall be as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.
- D. Professional Liability insurance providing occurrence basis coverage for the claims that arise from the errors of the Design/Builder or its consultants, omissions of the Design/Builder or its consultants, failure to render a service by the Design/Builder or its consultants, or the negligent rendering of the service by the Design/Builder or its consultants in the amount of \$250,000 each occurrence and \$250,000 annual aggregate. If occurrence form insurance is not available, claims made coverage shall be maintained for two years after final completion of the services. The City does not represent that the above coverage and limits are adequate to protect the Design/Builder or its consultants' interest and assumes no responsibility therefore.
- E. The Design/Builder will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The Design/Builder agrees to hold the City harmless from any liability, including additional premium due because of the Design/Builder's failure to maintain the coverage limits required.
- F. The City's approval or acceptance of certificates of insurance does not constitute City assumption of responsibility for the validity of any insurance policies nor does the City represent that the above coverage and limits are adequate to protect any individual/group/business, its consultants' or subcontractors' interests, and assumes no liability therefore.

- 7.2 **Unemployment Compensation**—In accordance with SDCL-5-18-17, all Design/Builders for public improvements shall furnish the City prior to final payment, certification from the Department of Labor indicating payment of unemployment compensation contributions and interest due in the performance of the Agreement. The Design/Builders may obtain certification by contacting the address below:

South Dakota Department of Labor
Employment Insurance Division
P.O. Box 1730
Aberdeen, SD 57401
Phone: (605) 622-2312

Article 8—Correction of Work

- 8.1 **No Waiver of Legal Rights**—The City shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefor from showing the true amount and character of the work performed and materials furnished by the Design/Builder, nor from showing that any such measurement, estimate, or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the contract. The City shall not be precluded or stopped, notwithstanding any such measurement, estimate, or certificate, and payment in accordance therewith, from recovering from the Design/Builder or his sureties, or both, such damages as it may sustain by reason of his failure to comply with terms of the contract. Neither the acceptance of the City, or any representative of the City, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the City, shall operate as a waiver of any portion of the contract or of any power herein reserved, or of any right to damages. A waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

Article 9—Basis of Compensation

- 9.1 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the work.

Attachment A

System	Description	Use
312	12" Fibar, FibarDrain, FibarFelt	Playground
310	10" Fibar, FibarDrain, FibarFelt	Playground
308	8" Fibar, FibarDrain, FibarFelt	Playground
306	6" Fibar, FibarDrain, FibarFelt	Jogging track

Depth measurements are after compaction

Part 1: General

A license to construct a Fibar System according to these specifications must first be obtained from Fibar, Inc., as licensor of the patent rights of Fibar Systems reflected in U.S. Patent numbers 4,679,963; 5,026,207; 5,076,726; and other patents pending. Note: To preserve warranty, FibarMat wear mats must be installed under all swings and slide exits.

1. Provide Fibar System Playground Safety Surface in areas indicated on plans.
2. Provide safety surface immediately after installing playground equipment or 3" pea rock.
3. Fibar System, FibarMat, and FibarDrain are provided by Proposer or directly from Fibar, Inc., Suite 300, 80 Business Park Dr., Armonk, NY 10504-1705. You can call 800-342-2721 or 914-273-8770.

Part 2: Materials

1. Provide Fibar System No. 312 wood fibers to a compacted depth of approximately 12" over FibarFelt (100% polyester, nonwoven geotextile fabric) and 3" of pea gravel.
2. Provide one (1) FibarMat (minimum size: rubber mat) under each slide exit, and sliding pole. (36" x 36" x 1.5" under slide exit and sliding pole).

Part 3: Quality Control

1. Surfacing shall be a mix of random-sized, engineered wood fibers. Standard wood chips or bark mulch **will not be acceptable**.
2. Supplier must provide test results for impact attenuation in accordance with ASTM F1292 Standard Specification for Impact Attenuation for Surface Systems Under and Around Playground

Equipment. Results must be provided for new material and for 12-year-old material.

3. Testing must show “g” ratings of not more than 155g for the 8" thick system, or 120g for the 12" system at 12' fall heights, and HIC values of less than 1,000 for both new and 12-year-old material.
4. Supplier must provide test results in accordance with ASTM F1951 (formerly PS83) Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment.
5. Supplier must certify that the surface meets the intent of the Americans with Disabilities Act.
6. Supplier must provide written manufacturer's 10-year warranty against loss of resiliency, lifetime warranty of FibarFelt fabric and FibarDrain material.
7. Supplier must provide \$10 million product liability insurance certificate with project owner named as certificate holder, prior to delivery.
8. In Canada, supplier must meet CSA guidelines.

Part 4: Installation

1. Install the FibarDrain System, FibarMats, and the Fibar material in accordance with manufacturer's instructions and specification drawings.
2. Avoid contamination of the Fibar material with sand, gravel, mud, or native soil.

Attachment B—Site A



Attachment C—Site B



Attachment D—Site C

