

# **South Dakota Energy Infrastructure Authority**

## **Request for Proposal # 2006 - 01**

### **Consulting Services to Assist the South Dakota Energy Infrastructure Authority In Conducting Electrical Generation and Transmission Information Gathering Meetings and Report Preparation As Required By South Dakota Codified Law Chapter 1-16I**

South Dakota Energy Infrastructure Authority (SDEIA)  
711 East Wells Avenue  
Pierre, SD 57501-3369

Inquires can be directed to:

Bill Even  
SDEIA Interim Executive Director  
605-773-3301 - Office  
605-773-3256 – Fax

[Bill.Even@state.sd.us](mailto:Bill.Even@state.sd.us)

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**1.0 GENERAL INFORMATION**

**1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)**

The South Dakota Energy Infrastructure Authority (Authority) is soliciting proposals from qualified consultants to assist in conducting information gathering meetings and interviews with entities that generate, transmit, or distribute electricity within South Dakota and with preparation of a report summarizing the findings.

**1.2 ISSUING OFFICE AND RFP REFERENCE NUMBER**

The Authority is the issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is RFP # 2006-01. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

**1.3 TIMELINE (SUBJECT TO CHANGE)**

RFP Publication	June 26, 2006
<b>Proposal Submission Deadline</b>	<b>July 14, 2006</b>
Anticipated Award Decision	July 21, 2006
Timeframe for Information Gathering	July 24 – Sept. 1, 2006
Presentation of Preliminary Outline by Consultant at Board Meeting	September 14, 2006
Report First Draft Submitted to Authority	October 13, 2006
Teleconference with Consultant and Board on First Draft	October 16, 2006
Report Final Draft Submitted to Authority	November 1, 2006
Discussion of Final Draft with Consultant at Board Meeting	November 9, 2006

**1.4 SUBMITTING YOUR PROPOSAL**

All proposals must be completed and received by the Authority no later than 5:00 p.m., CDT July 14, 2006.

Submittals may be submitted via telefax or email, but must be followed up with a copy by U.S mail or express mail.

Proposals received after the deadline will be late and ineligible for consideration.

Proposals will be judged based on qualifications, expertise, experience, cost and other relevant factors. If a proposal is accepted, it will be that which, in the Authority’s judgment, will be most advantageous to the Authority, cost and other factors considered. The Authority may reject any and all proposals.

An original and six (6) identical copies of the proposal shall be submitted.

All proposals must be signed, in ink, by an officer of the Consulting Firm, legally authorized to bind the Consulting Firm to the proposal. Proposals that are not properly signed may be rejected.

**Emailed Proposals must be followed up with written copies and can be emailed to:**

[Bill.Even@state.sd.us](mailto:Bill.Even@state.sd.us) no later than 5:00 p.m., CDT July 14, 2006.

The Subject Line must read: “SDEIA RFP #2006-01”

**Written proposals must be addressed and labeled as follows:**

South Dakota Energy Infrastructure Authority  
Request For Proposal # 2006-01  
711 East Wells Avenue  
Pierre, SD 57501-3369

## **1.5 MODIFICATION OR WITHDRAWAL OF PROPOSALS**

Proposals may be modified or withdrawn by the Consultant prior to the established due date and time. No oral responses or modifications to proposals will be considered.

## **1.6 CONSULTANT INQUIRIES**

Consultants may make written, fax or email inquiries concerning this RFP to obtain clarification of requirements. Email inquiries must be sent to Bill Even at [Bill.Even@state.sd.us](mailto:Bill.Even@state.sd.us) with the subject line “RFP #2006-01 Inquiry”. Inquires may also be faxed to (605) 773-3256. If inquiries are submitted by mail the envelope should be addressed to: Bill Even, SDEIA Interim Director, 711 East Wells Avenue, Pierre, SD 57501-3369. Be sure to reference the RFP number in your letter.

The Authority will respond to Consultant’s inquiries via e-mail only. All Consultants will have access to inquiries and the Authority’s response. Consultants may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this

RFP. Consultants will be notified in the same manner as indicated above regarding any modifications to this RFP.

## **1.7 CONSULTANT'S CONTACTS WITH THE AUTHORITY**

Consultants and their agents (including subcontractors, employees, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP to the SDEIA Interim Executive Director indicated in Section 1.6. Consultants and their agents may not contact any Authority Board member or employee other than the Interim Executive Director regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements.

## **2.0 STANDARD CONTRACT TERMS AND CONDITIONS**

Any contract or agreement resulting from this RFP will include the State of South Dakota's standard terms and conditions as listed below, along with any additional terms and conditions as negotiated by the parties:

- 2.1** The Consultant will perform those services described in the RFP Section 3.0 Scope of Work.
- 2.2** The services to be provided under the contract shall commence and terminate on dates listed in the Section 1.3 Timeline. Terms for early termination shall be included in the agreement as negotiated by the parties.
- 2.3** Unless otherwise negotiated and agreed upon by the parties, the Authority will make payment in compliance with the Prompt Payment Act, SDCL 5-26 for services provided under the contract.
- 2.4** The Consultant agrees to indemnify and hold the Authority, 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 Authority, its officers, agents and employees.

- 2.5** While performing services under agreement with the Authority, the Consultant is an independent contractor and not an officer, agent, or employee of the Authority or the State of South Dakota.
- 2.6** Consultant agrees to report to the Authority any event encountered in the course of performance of this Agreement which results in injury, or death, to the person or property of third parties, or which may otherwise subject Consultant or the Authority to liability. Consultant shall report any such event to the Authority immediately upon discovery.
- 2.7 Termination Provision:** The Agreement may be terminated by either party by providing written notice as mutually agreed and specified in the Agreement. In the event the Consultant breaches any of the terms or conditions of the Agreement, the Agreement may be terminated by the Authority at any time with or without notice. If termination for such a default is effected by the Authority, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the Authority because of Consultant's default. Upon termination the Authority may take over the work and may award another party an agreement to complete the work under the Agreement. If after the Authority 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.
- 2.8** The Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for the intended purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, the Agreement will be terminated by the Authority. Termination for any of these reasons is not a default by the Authority nor does it give rise to a claim against the Authority.
- 2.9** The Agreement may not be assigned without the express prior written consent of the Authority. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part thereof, and be signed by an authorized representative of each of the parties thereto.
- 2.10** The Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting the Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

- 2.11** The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to the Agreement, and will be solely responsible for obtaining current information on such requirements.
- 2.12** In the event that any court of competent jurisdiction shall hold any provision of the Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision thereof.
- 2.13** All other prior discussions, communications and representations concerning the subject matter of the Agreement are superseded by the terms of the Agreement, and except as specifically provided therein, the Agreement constitutes the entire agreement with respect to the subject matter thereof.
- 2.14** Any notice or other communication required under the Agreement shall be in writing and sent to the appropriate address and individuals indicated in the Agreement, 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.

### **3.0 SCOPE OF WORK**

#### **3.1 BACKGROUND**

The South Dakota Energy Infrastructure Authority was created by the 2005 session of the South Dakota Legislature and is codified in South Dakota Codified Laws Chapter 1-16I (SDCL 1-16I). The primary purpose of the Authority is to:

“... diversify and expand the state’s economy by developing in this state the energy production facilities and the energy transmission facilities necessary to produce and transport energy to markets within the state and outside the state.”<sup>1</sup>

Section 6 of SDCL 1-16I requires the Authority to:

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<sup>1</sup> Although the name of the sponsoring state entity is the “Energy Infrastructure Authority”, for purposes of definition, this effort will focus on the electric system infrastructure only. Natural gas or other energy sources will not be examined, except to the extent those energy sources are used to enable or support the electric infrastructure.

(1) Meet with any interested owner of transmission lines in South Dakota and any interested generator and distributor of electricity to consumers in South Dakota by August first each year to understand the generation of electricity in South Dakota and the transmission enhancements needed for the transmission of electricity to, from, and within South Dakota, and to analyze how the authority could proactively assist in developing the generation and transmission infrastructure;

(2) Report its findings and make recommendations to the Governor, the Legislature, and the South Dakota congressional delegation by December first of each year concerning what the private sector, the state, and the federal government can do to create, and enhance the generation of electricity in South Dakota and the transmission of electricity to, from, and within South Dakota....

(3) Annually evaluate state laws and rules affecting electric generation and electric transmission and make recommendations to the Governor and Legislature for improvements by December first of each year;

(4) Annually identify federal laws and rules affecting electric generation and electric transmission and make recommendations to the South Dakota congressional delegation for improvements by December first of each year.

### **3.2 SCOPE OF SERVICES REQUESTED**

#### **Task 1: Assistance in Conducting Meetings and Interviews**

Working from a list of suggested entities provided by the Authority (See Appendix A), the consultant will develop the meeting format (questions to be asked, and types of information required by the Authority) to enable the Authority to obtain the information required to comply with the requirements of SDCL 1-16I, Section 6(1-4) in a consistent, uniform manner. The question format will be submitted to the Authority for approval prior to initiation of interviews.

Meeting arrangements, including a recording secretary, and arranging for the attendance of participants will be the responsibility of the Authority. A member of the Authority will be in attendance at all meetings. Participants will be informed in advance concerning what information is being sought in order to have as productive and efficient meeting as possible. Having a uniform approach will help in the analysis of data and preparation of the final report. The consultant will be required to attend all meetings and be responsible for taking his/her own appropriate notes and summarizing information presented. It is anticipated that individual meetings will include more than one entity and may take the form of a panel discussion.

The consultant will recommend which entities should receive a follow up confidential interview by the consultant, if necessary, by phone or in person. It is

likely that additional entities will be identified for the interview list as the effort proceeds.

Responses to the RFP should be based on a total of five (5), one day, in-person meetings in Pierre, SD – three interviewing energy entities and two with the Authority Board for reviewing report drafts, and one teleconference with the Board – estimated at two hours. The Consultant should also bid separate costs for three additional follow up interviews with energy entities (which could be conducted by phone or in person).

### **Task 2: Draft Report Preparation**

Based on the information obtained from the meetings and interviews, and following the intent of SDCL 1-16I Sections 1 through 6, the consultant will prepare and submit to the Board (in MS Word format): 1) a summary of the interview findings and an initial outline of the report; 2) a first draft report; and 3) a final draft report. The consultant will present and discuss Items 1 and 3 in person at a Board meeting and Item 2 via conference call.

Following presentations and discussions with the Board, the consultant will modify the report as necessary to prepare and submit a final draft report in Microsoft Word format. The Authority will final edit, format, publish and distribute the final draft report to the Governor, the Legislature, the South Dakota Congressional delegation, other public officials and the public at large.

### **3.3 PROJECT TIMING**

Consultant activities shall be timed to fulfill the Project Timeline listed in Section 1.3. Prior to starting work, the selected Consultant shall provide the Authority, for the Authority's approval, a work plan corresponding to this schedule, and designed to accomplish the Objectives listed above.

### **3.4 REPORTING RELATIONSHIP**

For purposes of this project, the consultant will report directly to the Authority Board of Directors, or its designated representative.

### **3.5 TERMS**

The Consultant will be employed as an independent contractor by the Authority. The contract will be based on a firm, fixed price. The Authority will work with Consultant with regard to the Project scope of work in such a manner as to enable completion of the Project within the timing and financial resources the Authority has allocated to it.

### **3.6 GENERAL EXPERTISE REQUIRED**

Familiarity with electric utility planning and operations, including understanding of electric transmission system issues, both technical and regulatory is required.

### **3.7 OWNERSHIP OF THE WORK PRODUCT**

Any work product produced by the Consultant will be the property of the Authority.

### **3.8 LOCATION OF MEETINGS**

It is anticipated that meetings between the consultant and energy entities will be held in Pierre, SD, unless a more convenient location is determined. Meetings with the Authority Board will be held in Pierre, SD.

### **3.9 COST OF PROPOSAL PREPARATION**

No reimbursement will be made by the Authority for any costs incurred prior to a formal notice to proceed under a contract.

### **3.10 REFERENCES**

A copy of SDCL 1-16I is attached for reference (See Appendix B).

## **4.0 CONSULTANT REFERENCES**

**4.1 REFERENCES:** Provide the following information related to at least three previous and/or current contracts performed by the Consultant's firm, which are similar to the requirements of this RFP.

- a. Name, address and telephone number of client and a representative of that agency who may be contacted for verification of all information submitted;
- b. Dates of the contract; and
- c. A brief, written description of the specific services performed.

## **5.0 PROPOSAL RESPONSE FORMAT**

**5.1** An original and six (6) copies shall be submitted according to details in Section 1.4.

5.1.1 In addition, the Consultant should provide one (1) copy of their entire proposal, including all attachments, in Microsoft Word

electronic format. Consultants may send the electronically formatted copy of their proposal via email provided they simultaneously send the written copies via US mail or express mail.

5.1.2 The proposal should be page numbered and should have an index and/or a table of contents referencing the appropriate page number.

**5.2** All proposals must be organized and tabbed with labels for the following headings:

5.2.1 **Executive Summary.** The one or two page executive summary is to briefly describe the Consultant's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the Consultant. The reader should be able to determine the essence of the proposal by reading the executive summary.

5.2.2 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:

5.2.2.1 **Narrative.** A complete narrative of the Consultant's assessment of the work to be performed, the Consultant's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the Consultant's understanding of the desired overall performance expectations.

5.2.2.2 **Work Plan.** The response should identify each requirement being addressed as enumerated in the RFP with a timeline for accomplishing each tasks.

5.2.2.3 **Alternatives.** A clear description of any options or alternatives proposed and their cost.

5.2.2.4 **Itemized Cost listing.** A table showing the total project cost and hours to be devoted to each task and total hours based on the proposed work plan is required. Hourly rates for each person involved in the submittal are required.

**Appendix A. Suggested List of Electric Entities to be Interviewed** (not exclusive)

**Investor Owned Electric**

Black Hills Power & Light Co  
PO Box 1400  
Rapid City SD 57709-1400  
(605) 348-1700  
<http://www.blackhillscorp.com>

Midamerican Energy  
PO Box 778  
Sioux City IA 51101-0778  
(712) 277-7500  
<http://www.midamericanenergy.com>

Montana-Dakota Utilities Co  
400 N 4th St  
Bismarck ND 58501-4092  
(701) 222-7900  
<http://www.mdu.com>

Xcel Energy  
PO Box 988  
Sioux Falls SD 57101-0988  
(605) 339-8200  
<http://www.xcelenergy.com>

Northwestern Energy  
PO Box 1318  
Huron SD 57350-1318  
(605) 352-8411  
<http://www.northwestern.com>

Otter Tail Power Co  
215 S Cascade St  
Fergus Falls MN 56537-2897  
(218) 739-8200  
<http://www.otpc.com>

**Cooperatives**

Rushmore Electric Power Coop. Inc.  
1715 Cambell St.  
Rapid City, SD  
800-344-4759  
<http://www.rushelec.com>

East River Electric Power Coop. Inc.  
PO Box 227  
121 SE First Street  
Madison, SD 57042-0227  
Phone: (605) 256-4536  
<http://www.eastriver.coop>

Basin Electric Power Cooperative  
1717 East Interstate Ave.  
Bismarck, ND 58503-0564  
(701) 223-0441  
<http://www.basinelectric.com>

**Public Power**

Heartland Consumer Power District  
PO Box 248  
Madison, SD 57042-0248  
(605) 256-6536  
<http://www.hcpd.com>

Missouri River Energy Services  
3724 West Avera Drive  
P.O. Box 88920  
Sioux Falls, SD 57109-8920  
(605) 338-4042  
<http://www.mrenergy.com>

Nebraska Public Power District  
Box 499  
Columbus NE 68601-0499  
(402)564-2821  
<http://www.nppd.com>

## Other

Western Area Power Administration  
P.O. Box 35800  
Billings, Montana 59107-5800  
(406) 247-7405  
<http://www.wapa.gov>

Midwest Independent System Operator  
1125 Energy Park Drive  
St. Paul, MN 55108  
(651) 632-8400  
<http://www.midwestiso.org>

ITC Transmission  
39500 Orchard Hill Place  
Suite 200  
Novi, Michigan 48375  
(248) 374-7100  
<http://www.itctransco.com>

**Appendix B. South Dakota Codified Law 1-16I (2005)**

**SOUTH DAKOTA ENERGY INFRASTRUCTURE AUTHORITY**

Section 1. Terms used in this Act mean as follows:

- (1) "Authority," the South Dakota Energy Infrastructure Authority created pursuant to this Act;
- (2) "Board," the board of directors of the authority.

Section 2. The South Dakota Energy Infrastructure Authority is created to diversify and expand the state's economy by developing in this state the energy production facilities and the energy transmission facilities necessary to produce and transport energy to markets within the state and outside of the state.

Section 3. The authority may provide for the financing, construction, development, maintenance, and operation of new or upgraded energy transmission facilities. The authority may own, lease, or rent such facilities. The authority may enter into partnerships with public and private entities to develop and operate such facilities.

Section 4. If the authority becomes the owner or partial owner of any energy transmission facility, the authority shall divest itself of ownership as soon as economically practical. Recovery by the authority of its net investment in the energy production facility or energy transmission facility is deemed to be economically practical.

Section 5. In order to finance energy transmission facilities authorized pursuant to this Act, the authority may issue and have outstanding bonds to finance such facilities in an amount not to exceed one billion dollars. However, no bonds may be issued until the issuance of the bonds is specifically approved by an act of the Legislature. The authority shall have contracts sufficient to justify the issuance of bonds.

Section 6. The authority shall:

- (1) Meet with any interested owner of transmission lines in South Dakota and any interested generator and distributor of electricity to consumers in South Dakota by August first each year to understand the generation of electricity in South Dakota and the transmission enhancements needed for the transmission of electricity to, from, and within South Dakota, and to analyze how the authority could proactively assist in developing the generation and transmission infrastructure;

- (2) Report its findings and make recommendations to the Governor, the Legislature, and the South Dakota congressional delegation by December first of each year concerning what the private sector, the state, and the federal government can do to create and enhance the generation of electricity in South Dakota and the

transmission of electricity to, from, and within South Dakota. The report due December 1, 2005, shall address and quantify market opportunities for the development, use in-state, and export of South Dakota's enormous wind power resource;

(3) Annually evaluate state laws and rules affecting electric generation and electric transmission and make recommendations to the Governor and the Legislature for improvements by December first of each year;

(4) Annually evaluate federal laws and rules affecting electric generation and electric transmission and make recommendations to the South Dakota congressional delegation for improvements by December first of each year;

(5) Identify opportunities where owners of transmission lines in South Dakota and generators and distributors of electricity to consumers in South Dakota can cooperate to improve and increase electric transmission in South Dakota and communicate those opportunities to owners, generators, and distributors of electricity in South Dakota;

(6) Assist any entity that wants to build new or upgrade existing electric transmission facilities to, from, and within South Dakota by helping the entity develop a business plan and identify financing options; and

(7) Assist other state transmission authorities and any federal or regional entity wanting to build new or upgrade existing transmission facilities to deliver electricity to, from, and within South Dakota.

Section 7. The governing and administrative powers of the authority are vested in its board of directors consisting of five members. The Governor shall appoint the directors, with the advice and consent of the Senate. Not all members of the board may be of the same political party. The terms of the members of the board may not exceed six years. The terms of the initial board of directors shall be staggered by the drawing of lots so that not more than two of the director's terms shall end at the same time. Members of the board may serve more than one term.

Section 8. The Governor may remove any member of the board for cause, including incompetence, neglect of duty, or malfeasance in office.

Section 9. Members of the board shall receive compensation for the performance of their duties as established by the Legislature in accordance with § 4-7-10.4 from the funds of the authority. Members may be reimbursed at rates established by the Bureau of Personnel for necessary expenses, including travel and lodging expenses, incurred in connection with the performance of their duties as members.

Section 10. Each member of the board shall, before entering upon the duties of office, take and subscribe the constitutional oath of office.

Section 11. The board may appoint an executive director. The executive director may not be a member of the board. The executive director shall hold office at the discretion of the board. The executive director shall be the chief administrative and operational officer of the authority, shall direct and supervise its administrative affairs and general management, shall perform such other duties as may be prescribed from time to time by the board, and shall receive compensation fixed by the board. The executive director shall attend all meetings of the board. However, no action of the board or the authority is invalid on account of the absence of the executive director from a meeting. The board may engage the services of such other agents and employees as they deem appropriate, including attorneys, appraisers, scientists, researchers, engineers, accountants, credit analysts, and other consultants, and may prescribe their duties and fix their compensation.

Section 12. The board shall meet on the call of the chair, upon the written request of four members of the board, or upon the request of the executive director.

Section 13. A majority of the members of the board constitute a quorum for the transaction of business. All official acts of the authority shall require the affirmative vote of at least four members of the board at a meeting of the board at which the members casting those affirmative votes are present.

Section 14. Notwithstanding any other law to the contrary it is not a conflict of interest for a trustee, director, officer, or employee of any financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architectural firm, utility company, engineering firm, mining firm, insurance company, energy company, or any other firm, person, or corporation to serve as a member of the authority, if the trustee, director, officer, or employee abstains from deliberation, action, and vote by the authority in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

Section 15. Each meeting of the authority for any purpose whatsoever shall be open to the public as required by chapter 1-25. Notice of meetings shall be as provided in the bylaws of the authority. Resolutions need not be published or posted.

Section 16. The executive director or other person designated by the authority shall keep a record of the proceedings thereof and shall be custodian of all books, documents, and papers filed with the authority, the minute books or journal of the authority and its official seal. The executive director or other person designated by the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates.

Section 17. The authority shall establish and collect fees, schedules of fees, rentals and other charges for the use of the transmission facilities of the authority as the board

may determine, and may borrow funds for the execution of the purposes of the authority, and mortgage and pledge any lease or leases granted, assigned, or subleased by the authority.

Section 18. The authority may:

- (1) Have perpetual succession as a body politic and corporate exercising essential public functions;
- (2) Sue and be sued in its own name;
- (3) Have an official seal and alter the seal at will;
- (4) Maintain an office at such places within the state as the authority may designate;
- (5) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this Act;
- (6) Employ fiscal consultants, engineers, attorneys, and such other consultants and employees as may be required and contract with agencies of the state to provide staff and support services;
- (7) Procure insurance against any loss in connection with its property and other assets, including loans and notes in such amounts and from such insurers as it may deem advisable;
- (8) Borrow money and issue bonds as provided by this Act;
- (9) Procure insurance, letters of credit, guarantees, or other credit enhancement arrangements from any public or private entities, including any department, agency, or instrumentality of the United States or the state, for payment of all or any portion of any bonds issued by the authority, including the power to pay premiums, fees, or other charges on any such insurance, letters of credit, guarantees, or credit arrangements;
- (10) Receive and accept from any source financial aid or contributions of moneys, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this Act subject to the conditions upon which the grants or contributions are made, including, gifts or grants from any department, agency, or instrumentality of the United States for any purpose consistent with the provisions of this Act;
- (11) To the extent permitted under its contract with the holders of bonds of the authority, consent to any modification with respect to the rate of interest, time, and

payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease, or agreement of any kind to which the authority is a party;

(12) To make loans and grants to, and enter into financing agreements with, any governmental agency or any person for the costs incurred in connection with the development, construction, acquisition, improvement, maintenance, operation, or decommissioning of electric transmission facilities, or for the maintenance of the physical or structural integrity of real or personal property incorporated or which may be incorporated into such facilities, in accordance with a written agreement between the authority and such governmental agency or person. However, no such loan or grant may exceed the total cost of such facilities as determined by the governmental agency or person and approved by the authority;

(13) Cooperate with and exchange services, personnel, and information with any governmental agency;

(14) Enter into agreements for management on behalf of the authority of any of its properties upon such terms and conditions as may be mutually agreeable;

(15) Sell, exchange, lease, donate, and convey any of its properties whenever the authority finds such action to be in furtherance of the purposes for which it was organized;

(16) Acquire, hold, lease, and dispose of real and personal property, and construct, develop, maintain, operate, and decommission electric transmission facilities;

(17) Indemnify any person or governmental agency for such reasonable risks as the authority deems advisable if the indemnification is a condition of a grant, gift, or donation to the authority. However, any such obligation to indemnify may only be paid from insurance or from revenues of the authority, and such obligation does not constitute a debt or obligation of the State of South Dakota;

(18) Do any act and execute any instrument which in the authority's judgment is necessary or convenient to the exercise of the powers granted by this Act or reasonably implied from it;

(19) After consultation with the Public Utilities Commission and any other relevant governmental authority, establish and charge reasonable fees, rates, tariffs, or other charges for the use of all facilities administered by the authority and for all services rendered by it;

(20) Investigate, plan, prioritize, and establish corridors for the transmission of electricity; and

(21) Acquire by condemnation, in accordance with chapter 21-35, within the state any properties necessary or useful for the authority's purposes. However, the authority may not condemn any existing facilities.

Section 19. The authority may invest any funds not needed for immediate investment in the following:

(1) Bonds, notes, certificates of indebtedness, treasury bills, or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully guaranteed or insured by, the United States of America;

(2) Obligations issued by or obligations the principal of and interest on which are fully guaranteed or insured by any agency or instrumentality of the United States of America;

(3) Certificates of deposit or time deposits constituting direct obligations of any bank which is a qualified public depository or any savings and loan association which is a savings and loan depository under the Public Deposit Insurance Act pursuant to chapter 4-6A, unless sufficient volume of such certificates is not available at competitive interest rates. In that event, the authority may purchase noncollateralized direct obligations of any bank or savings institution or holding company if such institution or holding company is rated in the highest two quality categories by a nationally recognized rating agency;

(4) Obligations of any solvent insurance company or other corporation or business entity existing under the laws of the United States or any state thereof, if the obligation of the insurance company or other corporation or business entity is rated in the two highest classifications established by a standard rating service of insurance companies or a nationally recognized rating agency;

(5) Short term discount obligations of the Federal National Mortgage Association;

(6) Obligations issued by any state of the United States or any political subdivision, public instrumentality, or public authority of any state of the United States, which obligations are not callable before the date the principal thereof will be required to be paid and which obligations are fully secured as to both sufficiency and timely payment by, and payable solely from, securities described in subdivision (1) and which obligations are rated in the highest investment classification by at least two standard rating services of such obligations.

Any securities may be purchased at the offering or market price thereof at the time of the purchase. All securities so purchased shall mature or be redeemable on a date or dates prior to the time when, in the judgment of the authority, the funds so invested will be required for expenditure. The express judgment of the authority as to the time when any funds will be required for expenditure or be redeemable is final and conclusive. Investment in any obligation enumerated in this section may be made either directly or

in the form of securities of, or other interests in, an investment company registered under the Federal Investment Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and whose investments are limited to these obligations.

Section 20. The authority may issue revenue bonds, notes, or other evidences of indebtedness to pay the cost incurred in connection with developing, constructing, acquiring, improving, maintaining, operating, and decommissioning electric transmission facilities. For the purpose of evidencing the obligations of the authority to repay any money borrowed, the authority may, pursuant to resolution, from time to time issue and dispose of its interest bearing revenue bonds, notes, or other instruments and may also from time to time issue and dispose of such bonds, notes, or other instruments to refund, at maturity, at a redemption date or in advance of either, any revenue bonds, notes, or other instruments pursuant to redemption provisions or at any time before maturity. All such revenue bonds, notes, or other instruments shall be payable solely from the revenues or income to be derived with respect to such facilities, from the leasing or sale of such facilities, or from any other funds available to the authority for such purposes. The revenue bonds, notes, or other instruments may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at such rate or rates, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be made subject to redemption in such manner and upon such terms, with or without premium as is stated on the face thereof, may be authenticated in such manner, and may contain such terms and covenants as may be provided by an applicable resolution.

Section 21. Any holder of any revenue bonds, notes, or other instruments issued by the authority may bring suits at law or proceedings in equity to compel the performance and observance by any corporation or person or by the authority or any of its agents or employees of any contract or covenant made with the holders of such revenue bonds, notes, or other instruments, to compel such corporation, person, the authority, and any of its agents or employees to perform any duties required to be performed for the benefit of the holders of any such revenue bonds, notes, or other instruments by the provision of the resolution authorizing their issuance and to enjoin such corporation, person, the authority, and any of its agents or employees from taking any action in conflict with any such contract or covenant.

Section 22. If the authority fails to pay the principal of or interest on any of the revenue bonds or premium, if any, as the same become due, a civil action to compel payment may be instituted in the appropriate circuit court by the holder or holders of the revenue bonds on which such default of payment exists or by an indenture trustee acting on behalf of such holders. Delivery of a summons and a copy of the complaint to the chair of the board constitutes sufficient service to give the circuit court jurisdiction of the subject matter of such a suit and jurisdiction over the authority and its officers named as defendants for the purpose of compelling such payment.

Section 23. Notwithstanding the form and tenor of any such revenue bonds, notes, or other instruments and in the absence of any express recital on the face of any such

revenue bond, note, or other instruments that it is non-negotiable, all such revenue bonds, notes, and other instruments shall be negotiable instruments. Pending the preparation and execution of any such revenue bonds, notes, or other instruments, temporary revenue bonds, notes, or instruments may be issued as provided by resolution.

Section 24. To secure the payment of any or all of such revenue bonds, notes, or other instruments, the revenues to be received by the authority from a lease agreement or loan agreement shall be pledged, and, for the purpose of setting forth the covenants and undertakings of the authority in connection with the issuance thereof and the issuance of any additional revenue bonds, notes, or other instruments payable from such revenues, income, or other funds to be derived from electric transmission facilities, the authority may execute and deliver a trust agreement. A remedy for any breach or default of the terms of any such trust agreement by the authority may be by mandamus proceedings in the appropriate circuit court to compel the performance and compliance therewith, but the trust agreement may prescribe by whom or on whose behalf the action may be instituted.

Section 25. The revenue bonds or notes shall be secured as provided in the authorizing resolution which may, notwithstanding any other provision of this Act, include in addition to any other security a specific pledge or assignment of and lien on or security interest in any or all revenues or money of the authority from whatever source which may by law be used for debt service purposes and a specific pledge or assignment of and lien on or security interest in any funds or accounts established or provided for by resolution of the authority authorizing the issuance of such revenue bonds, notes, or other instruments. Any pledge made by the authority of revenues or other moneys received or to be received by the authority pursuant to an agreement with a governmental agency relating to a project to pay revenue bonds, notes, or other evidences of indebtedness of the authority shall be binding from the time the pledge is made. Revenues and other moneys received or to be received by the authority pursuant to an agreement with a governmental agency relating to a project so pledged to pay revenue bonds, notes, or other evidences of indebtedness of the authority shall be held outside of the state treasury and in the custody of the authority or a trustee or a depository appointed by the authority. Revenues or other moneys received or to be received by the authority pursuant to an agreement with a governmental agency relating to a project so pledged to pay revenue bonds, notes, or other evidences of indebtedness of the authority and thereafter received by the authority or such trustee or depository shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be binding against all parties having claims of any kind of tort, contract, or otherwise against the authority or the State of South Dakota, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded except in the records of the authority.

Section 26. The State of South Dakota pledges to and agrees with the holders of the revenue bonds and notes of the authority issued pursuant to this Act that the state

will not limit or decrease the rights and powers vested in the authority by this Act so as to impair the terms of any contract made by the authority with such holders or in any way impair the rights and remedies of such holders until such revenue bonds, notes, or other instruments, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged. The authority may include these pledges and agreements of the state in any contract with the holders of revenue bonds, notes, or other instruments issued pursuant to this section.

Section 27. Nothing in this Act may be construed to authorize the authority to create a debt of the state within the meaning of the Constitution or statutes of South Dakota and all revenue bonds, notes, other instruments and obligations issued by the authority pursuant to the provisions of this Act are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor. The state is not in any event liable for the payment of the principal of or interest on any bonds, notes, instruments, or obligations issued by the authority or for the performance of any pledge, mortgage, obligation, or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, mortgage, obligation, or agreement may impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

Section 28. The state and all counties, municipalities, political subdivisions, public bodies, public officers, banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, personal representatives, conservators, trustees, and other fiduciaries may legally invest any debt service funds, money, or other funds belonging to them or within their control in any bonds or notes issued pursuant to this Act.

Section 29. Any documentary material or data made or received by the authority for purposes under this Act, to the extent that such material or data consists of trade secrets, scientific or technical secrets, matters involving national security, or commercial or financial information regarding the operation of a business, may not be considered public records, and are exempt from disclosure. Any discussion or consideration of such information may be held by the authority in executive session.

Section 30. The authority may acquire title to any electric transmission facility with respect to which it exercises its authority.

Section 31. The authority may acquire by purchase, lease, gift, or otherwise any property or rights to any property from any person or any governmental agency, whether improved for the purposes of any prospective project or unimproved. The authority may also accept any donation of funds for its purposes from any of those sources.

Section 32. The authority may acquire, develop, construct, improve, maintain,

operate, and decommission any electric transmission facilities, either under its own direction or through collaboration with any approved applicant, or to acquire any project through purchase or otherwise, using for that purpose the proceeds derived from its sale of revenue bonds, notes, or other instruments or governmental loans, grants, or other funds and to hold title to those projects in the name of the authority.

Section 33. The authority may enter into intergovernmental agreements with any governmental agency.

Section 34. The authority may share employees with governmental agencies.

Section 35. The provisions of § 5-2-19 do not apply to real or personal property given to the authority.

Section 36. The authority shall designate a qualified public depository as defined in § 4-6A-1 as a depository of its money. Those depositories shall be designated only within the state and upon condition that bonds approved as to form and surety by the authority and at least equal in amount to the maximum sum expected to be on deposit at any one time shall be first given by the depositories to the authority, those bonds to be conditioned for the safekeeping and prompt repayment of the deposits. If any of the funds of the authority are deposited by the treasurer in any such depository, the treasurer and the sureties on the treasurer's official bond are, to that extent, exempt from liability for the loss of any of the deposited funds by reason of the failure, bankruptcy, or any other act or default of the depository. However, the authority may accept assignments of collateral by any depository of its funds to secure the deposits to the same extent and conditioned in the same manner as assignments of collateral are permitted by law to secure deposits of the funds consistent with the provisions of chapter 4-6A.

Section 37. The income of the authority and all land, improvements, equipment, fixtures, or other property interests owned by the authority are exempt from all taxation in the State of South Dakota. The authority is exempt from the provisions of chapter 47-31A.

Section 38. The authority is attached to the Department of Tourism and State Development for reporting purposes. The authority shall submit such records, information, and reports in the form and at such times as required by the secretary. However, the authority shall report at least annually.

Section 39. Notwithstanding any other provisions of law, all funds received by the authority shall be set forth in an informational budget as described in § 4-7-7.2.