

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

804X0264

HOUSE LOCAL GOVERNMENT ENGROSSED NO. **HB 1102** - 02/02/2016

Introduced by: Representatives Brunner and Soli and Senators Tieszen and Heinert

1 FOR AN ACT ENTITLED, An Act to allow for additional time to review certain competitive
2 sealed bids.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 5-18A-5 be amended to read:

5 5-18A-5. The following procedures apply to the use of competitive sealed bids:

- 6 (1) Public notice of the invitation for bids shall be given pursuant to § 5-18A-14;
- 7 (2) The invitation for bids shall include a purchase description, ~~and~~ all contractual terms
8 and conditions applicable to the procurement and the length of time, not to exceed
9 forty-five days, between the bid opening and one award of the bid;
- 10 (3) A bid may be submitted either manually or electronically in a manner authorized by
11 the purchasing agency;
- 12 (4) Each bid shall be opened publicly in the presence of one or more witnesses at the
13 time and place designated in the invitation for bids. The amount of each bid, and ~~such~~
14 other relevant information as may be specified, together with the name of each bidder
15 shall be recorded. Except as otherwise provided by law, the record and each bid shall



- 1 be open to public inspection;
- 2 (5) Each bid shall be unconditionally accepted without alteration or correction, except
3 as authorized in this section. Each bid shall be evaluated based on the requirements
4 set forth in the invitation for bids, which may include criteria to determine
5 acceptability such as inspection, testing, quality, workmanship, delivery, and
6 suitability for a particular purpose. Those criteria that will affect the bid price and be
7 considered in evaluation for award shall be objectively measurable, such as
8 discounts, transportation costs, and total or life cycle costs. The invitation for bids
9 shall set forth the evaluation criteria to be used. No criteria may be used in bid
10 evaluation that are not set forth in the invitation for bids;
- 11 (6) Any bid may be withdrawn by letter ~~or~~, by electronic communications, or in person
12 before the time specified in the advertisement ~~therefor~~ for bid. The purchasing agency
13 may allow modification of bids by mail, facsimile, or electronic notice received at the
14 place designated in the invitation to bid not later than the time set for the opening of
15 bids. A modification may not reveal the bid price but shall provide the addition ~~or~~,
16 subtraction, or the modification so ~~that~~ the final prices or terms will not be known to
17 the purchasing agency until the sealed bid is opened. A modification may not be
18 withdrawn after the time set for the opening of bids. Each modification shall be
19 confirmed in writing by the successful bidder before award of the contract. No bid
20 made may be changed or altered by telephone. After bid opening, no withdrawal of
21 a bid or change in bid prices or other provisions of bids prejudicial to the interest of
22 the purchasing agency or fair competition is permitted. The purchasing agency may
23 waive technical irregularities in the bid or proposal of the low bidder or offeror ~~which~~
24 ~~irregularities~~ that do not alter the price, quality, or quantity of the services, or items

1 of tangible personal property bid or offered. Any decision to permit the correction or
2 withdrawal of a bid, or to cancel an award or a contract based on a bid mistake, shall
3 be supported by a written determination made by the purchasing agency, and
4 included in the bid file;

5 (7) The contract shall be awarded within ~~thirty~~ forty-five days of the bid opening by
6 written notice to the lowest responsible and responsive bidder whose bid meets the
7 requirements and criteria set forth in the invitation for bids. The purchasing agency
8 may reject any and all bids and readvertise for bids if none of the bids are
9 satisfactory, or if the purchasing agency believes an agreement has been entered into
10 by the bidders to prevent competition. If the low bidder is not responsible or the bid
11 is not made in accordance with the requirements of this chapter and chapters 5-18B,
12 5-18C, and 5-18D or the low bid is withdrawn as authorized by this section, the bid
13 of the next lowest responsible and responsive bidder may be accepted;

14 (8) If it is considered impractical to initially prepare a purchase description to support an
15 award based on price, an invitation for bids may be issued requesting the submission
16 of unpriced offers to be followed by an invitation for bids limited to those bidders
17 whose offers have been qualified under the criteria set forth in the first solicitation;

18 (9) If, after advertising for bids, no firm bids are received, the purchasing agency may
19 negotiate a contract for the purchase of the supplies, services, or public improvement
20 projects at the most advantageous price, if the specifications of the original bid are
21 met;

22 (10) If two or more competitive sealed bids submitted are identical in price and product
23 quality, the bids are the low bid, and no resident bidder preference is applicable, the
24 purchasing agency may:

- 1 (a) Award the bid by lottery to one of the identical low bidders; or
- 2 (b) Reject all the bids and resolicit bids for the required supplies, services, or
- 3 public improvement.

4 Section 2. That § 5-18A-35 be amended to read:

5 5-18A-35. In the procurement of supplies or services, a purchasing agency may require a
6 bond or an approved security to be submitted with any bid or proposal as a guarantee that the
7 bidder will enter into a contract with the purchasing agency. No offeror or bidder may be
8 required to leave the bond or security posted for a longer period than ~~thirty~~ forty-five days if the
9 bid or proposal is not accepted. The bond or approved security of the successful offeror or
10 bidder shall be returned upon the signing of the contract.

11 Section 3. That § 5-18B-9 be amended to read:

12 5-18B-9. No bidder on a public improvement contract may be required, either in the
13 invitation for bids or otherwise, to leave a certified check or cashier's check, or bid bond, posted
14 for a longer period than ~~thirty~~ forty-five days if the bid is not accepted. The check or bid bond
15 of the successful bidder shall be returned upon the execution of the contract and surety hereafter
16 provided for. The checks or bid bonds of all unsuccessful bidders shall be, by the purchasing
17 agency, immediately returned to the respective makers thereof and not more than ~~thirty~~ forty-
18 five days shall elapse between the opening of the bids and either the acceptance of the bid of the
19 lowest responsible bidder or the rejection of all of the bids presented.