

# State of South Dakota

NINETY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2016

804X0264

## HOUSE ENGROSSED NO. **HB 1102** - 02/08/2016

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. The invitation for bids for supplies  
9 shall include the length of time, not to exceed forty-five days, between the bid  
10 opening and the award of the bid;

11 (3) A bid may be submitted either manually or electronically in a manner authorized by  
12 the purchasing agency;

13 (4) Each bid shall be opened publicly in the presence of one or more witnesses at the  
14 time and place designated in the invitation for bids. The amount of each bid, and ~~such~~  
15 other relevant information as may be specified, together with the name of each bidder



1 shall be recorded. Except as otherwise provided by law, the record and each bid shall  
2 be open to public inspection;

3 (5) Each bid shall be unconditionally accepted without alteration or correction, except  
4 as authorized in this section. Each bid shall be evaluated based on the requirements  
5 set forth in the invitation for bids, which may include criteria to determine  
6 acceptability such as inspection, testing, quality, workmanship, delivery, and  
7 suitability for a particular purpose. Those criteria that will affect the bid price and be  
8 considered in evaluation for award shall be objectively measurable, such as  
9 discounts, transportation costs, and total or life cycle costs. The invitation for bids  
10 shall set forth the evaluation criteria to be used. No criteria may be used in bid  
11 evaluation that are not set forth in the invitation for bids;

12 (6) Any bid may be withdrawn by letter ~~or~~, by electronic communications, or in person  
13 before the time specified in the advertisement ~~therefor~~ for bid. The purchasing agency  
14 may allow modification of bids by mail, facsimile, or electronic notice received at the  
15 place designated in the invitation to bid not later than the time set for the opening of  
16 bids. A modification may not reveal the bid price but shall provide the addition ~~or~~,  
17 subtraction, or the modification so that the final prices or terms will not be known to  
18 the purchasing agency until the sealed bid is opened. A modification may not be  
19 withdrawn after the time set for the opening of bids. Each modification shall be  
20 confirmed in writing by the successful bidder before award of the contract. No bid  
21 made may be changed or altered by telephone. After bid opening, no withdrawal of  
22 a bid or change in bid prices or other provisions of bids prejudicial to the interest of  
23 the purchasing agency or fair competition is permitted. The purchasing agency may  
24 waive technical irregularities in the bid or proposal of the low bidder or offeror ~~which~~

1 ~~irregularities~~ that do not alter the price, quality, or quantity of the services, or items  
2 of tangible personal property bid or offered. Any decision to permit the correction or  
3 withdrawal of a bid, or to cancel an award or a contract based on a bid mistake, shall  
4 be supported by a written determination made by the purchasing agency, and  
5 included in the bid file;

6 (7) The contract for services or public improvement shall be awarded within thirty days  
7 and the contract for supplies shall be awarded within forty-five days of the bid  
8 opening by written notice to the lowest responsible and responsive bidder whose bid  
9 meets the requirements and criteria set forth in the invitation for bids. The purchasing  
10 agency may reject any and all bids and readvertise for bids if none of the bids are  
11 satisfactory, or if the purchasing agency believes an agreement has been entered into  
12 by the bidders to prevent competition. If the low bidder is not responsible or the bid  
13 is not made in accordance with the requirements of this chapter and chapters 5-18B,  
14 5-18C, and 5-18D or the low bid is withdrawn as authorized by this section, the bid  
15 of the next lowest responsible and responsive bidder may be accepted;

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

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

24 (10) If two or more competitive sealed bids submitted are identical in price and product

1 quality, the bids are the low bid, and no resident bidder preference is applicable, the  
2 purchasing agency may:

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

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

7 5-18A-35. In the procurement of supplies or services, a purchasing agency may require a  
8 bond or an approved security to be submitted with any bid or proposal as a guarantee that the  
9 bidder will enter into a contract with the purchasing agency. No offeror or bidder may be  
10 required to leave the bond or security posted for a longer period than ~~thirty days~~ that allowed  
11 by section 1 of this Act if the bid or proposal is not accepted. The bond or approved security of  
12 the successful offeror or bidder shall be returned upon the signing of the contract.

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

14 5-18B-9. No bidder on a public improvement contract may be required, either in the  
15 invitation for bids or otherwise, to leave a certified check or cashier's check, or bid bond, posted  
16 for a longer period than ~~thirty days~~ that allowed by section 1 of this Act if the bid is not  
17 accepted. The check or bid bond of the successful bidder shall be returned upon the execution  
18 of the contract and surety hereafter provided for. The checks or bid bonds of all unsuccessful  
19 bidders shall be, by the purchasing agency, immediately returned to the respective makers  
20 thereof and not more than ~~thirty~~ forty-five days shall elapse between the opening of the bids and  
21 either the acceptance of the bid of the lowest responsible bidder or the rejection of all of the bids  
22 presented.