



2021 South Dakota Legislature

Senate Bill 21

Introduced by: The Committee on Transportation at the request of the Department of Transportation

1 **An Act to revise contracting procedure options for certain highway construction**
 2 **contracts.**

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

4 **Section 1.** That § 31-5-10 be AMENDED.

5 **31-5-10. Improvements to trunk system--Manner of advertising for bids--**
 6 **Letting of contract--Rules.**

7 ~~When funds are available for any~~ For a highway improvement on the trunk highway
 8 system, and ~~when the plans and specifications have been finally prepared by the~~
 9 Department of Transportation, the work contemplated shall be ~~advertised for bids and~~
 10 shall be let to the lowest competent and responsible bidder unless such bid shall be
 11 ~~deemed to be unreasonable~~ delivered to contract by one of the following methods, in
 12 accordance with the provisions of this chapter:

13 (1) Design-bid-build;

14 (2) Indefinite delivery and indefinite quantity; or

15 (3) Emergency procurement.

16 Contracts for all road and bridge construction performed on the trunk highway system
 17 shall be between the state and the contractor and shall be approved by the ~~department~~
 18 Department of Transportation and the Transportation Commission.

19 The Transportation Commission may adopt rules pursuant to chapter 1-26 regarding
 20 advertisement for bids; bidder qualification, classification, and rating; bid submission; and
 21 bid acceptance for highway improvements on the trunk highway system.

22 **Section 2.** That a NEW SECTION be added:

23 **31-5-10.1. Design-bid-build.**

24 If construction plans and specifications for a highway improvement project have
 25 been completed by the Department of Transportation, the project may be advertised for

1 bids and awarded to the bidder with the lowest responsive bid unless the bid is rejected
2 by the Transportation Commission.

3 **Section 3.** That a NEW SECTION be added:

4 **31-5-10.2. Indefinite delivery and indefinite quantity.**

5 For a potential future highway improvement or repair involving an indefinite
6 quantity of a service for a fixed time, the department may contract for the service using
7 indefinite delivery and indefinite quantity contracting if the following conditions are met:

8 (1) The request for proposals for the contract includes:

9 (a) The scope of the service required;

10 (b) The geographic parameters within which the service is to be performed;

11 (c) A specific contract period for which the service will be required that does
12 not exceed five years, including extensions; and

13 (d) A bid schedule that includes the minimum quantity of the service that will
14 be required during the contract period; and

15 (2) The contract is awarded to the lowest responsive bidder, unless the bid is rejected
16 by the Transportation Commission.

17 **Section 4.** That a NEW SECTION be added:

18 **31-5-10.3. Emergency procurement.**

19 The department may contract for a highway improvement service by emergency
20 procurement without advertising the procurement if there exists a threat to public health,
21 welfare, or safety or for any other urgent and compelling reason. Failure to abide by the
22 bid provisions of this chapter in a timely manner is not an emergency. An emergency
23 procurement shall be made with such competition that is practicable under the
24 circumstances. A written determination of the basis of the emergency and for the selection
25 of the particular contractor shall be included in the contract file, and the Transportation
26 Commission shall be notified thereof at the commission's next regular meeting.