



2021 South Dakota Legislature
Senate Bill 21
ENROLLED

AN ACT

ENTITLED An Act to revise contracting procedure options for certain highway construction contracts.

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

Section 1. That § 31-5-10 be AMENDED.

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

For a highway improvement on the trunk highway system, the work contemplated shall be delivered to contract by one of the following methods, in accordance with the provisions of this chapter:

- (1) Design-bid-build;
- (2) Indefinite delivery and indefinite quantity; or
- (3) Emergency procurement.

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

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

Section 2. That a NEW SECTION be added:

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

If construction plans and specifications for a highway improvement project have been completed by the Department of Transportation, the project may be advertised for bids and awarded to the bidder with the lowest responsive bid unless the bid is rejected by the Transportation Commission.

Section 3. That a NEW SECTION be added:

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

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

- (1) The request for proposals for the contract includes:
 - (a) The scope of the service required;
 - (b) The geographic parameters within which the service is to be performed;
 - (c) A specific contract period for which the service will be required that does not exceed five years, including extensions; and
 - (d) A bid schedule that includes the minimum quantity of the service that will be required during the contract period; and
- (2) The contract is awarded to the lowest responsive bidder, unless the bid is rejected by the Transportation Commission.

Section 4. That a NEW SECTION be added:

31-5-10.3. Emergency procurement.

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

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

I certify that the attached Act originated in the:

Senate as Bill No. 21

Received at this Executive Office
this ____ day of _____,
2021 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby
approved this _____ day of
_____, A.D., 2021

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2021
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 21
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State