

Roll Call

Present: Rep. Ladner, Rep. Jamison, Rep. Overweg, Rep. Wittman, Rep. Aylward, Rep. Auch, Rep. Bahmuller, Rep. Olson, Rep. Lems, Rep. Sue Peterson, Rep. Sjaarda, Rep. Fitzgerald, and Rep. Drury

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Representative Drury

MOTION: TO APPROVE THE MINUTES OF WEDNESDAY, JANUARY 18TH

Moved by: Wittman
Second by: Ladner
Action: Prevailed by voice vote

HB 1060 : modify provisions related to procurement for the state and other purchasing agencies.

Presented by: Representative Byron Callies
Proponents: Yvonne Taylor, South Dakota Municipal League, Fort Pierre
Chris Hill, South Dakota Municipal Electric Association, Fort Pierre

MOTION: AMEND HB 1060

1060B

On page 1, after line 3, of the Introduced bill, insert: "

Section 1. That § 5-18A-1 be AMENDED:

5-18A-1. Terms used in this chapter and chapters 5-18B, 5-18C, and 5-18D mean:

- (1) "Acceptance," the formal resolution of a purchasing agency authorizing the execution of a design-build contract;
- (2) "Biobased," any materials composed wholly or in a significant part of biological products including renewable agricultural materials or forestry materials;
- (3) "Contract," any type of agreement, regardless of what the agreement may be called, for the procurement of supplies, services, or construction;
- (4) "Construction," and "constructed," in addition to their ordinary meaning, repair, demolition, and alteration;
- (5) "Construction management," any project delivery system based on an agreement whereby a construction manager provides leadership to the construction process through a series of services to the purchasing agency;
- (6) "Construction manager," any person or entity that provides construction management services for a purchasing agency, and is either a construction manager-agent or construction manager-at-risk;
- (7) "Construction manager-agent," any construction manager that provides construction management services to a purchasing agency in a fiduciary capacity;
- (8) "Construction manager-at-risk," any construction manager that assumes the risk for construction, rehabilitation, alteration, or repair of a public

- improvement and that provides construction management services to the purchasing agency;
- (9) "Design-build contract," any contract between a purchasing agency and a design-builder to furnish the architecture, engineering, and related services as required, and the labor, materials, and other construction services for a public improvement. A design-build contract may be conditioned upon future refinements in scope and price, and may permit the purchasing agency to make changes in the scope of the project without invalidating the design-build contract;
- (10) "Design-build proposal," an offer to enter into a design-build contract;
- (11) "Design-build request for proposals," any document or publication whereby a purchasing agency solicits proposals for a design-build contract;
- (12) "Design-builder," any person that proposes to design and construct a public improvement covered by the procedures of this chapter and chapters 5-18B, 5-18C, and 5-18D;
- (13) "Environmentally preferable product," any cleaning or maintenance product having properties that minimize potential impacts to human health and the environment, any product designed to conserve energy and water, any biobased product, and any product containing recycled materials or recovered materials;
- (14) "Internet," the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web;
- (15) "Invitation for bids," any document, whether attached or incorporated by reference, used for soliciting bids;
- (16) "Officer," any elected official or administrative officer appointed to that position by the governing body;
- (17) "Performance criteria," requirements for the public improvement, including as appropriate, capacity, durability, production standards, ingress and egress requirements, building code requirements, or other criteria for the intended use of the public improvement, expressed in performance-oriented specifications or drawings suitable to allow the design-builder to make a proposal;
- (18) "Performance criteria developer," any person and the person's subcontractors retained by the purchasing agency to develop performance criteria;
- (19) "Professional services," services arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual;
- (20) "Proposal," any offer to enter into contract in response to a request for proposals;
- (21) "Purchasing agency," any governmental body or officer authorized by law, administrative rule, or delegated authority, to enter into contracts;
- (22) "Public improvement," the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any utility infrastructure, structure, building, or other improvements of any kind to real property, the cost of which is payable from taxes or other funds under the control of the purchasing agency, and includes any local improvement for which a special assessment is to be levied;
- (23) "Qualified agency," any public or private nonprofit corporation geographically located in the State of South Dakota that provides services for persons with disabilities and is certified by the Department of Human Services;

- (24) "Request for proposals," any document, whether attached or incorporated by reference, utilized by a purchasing agency when soliciting proposals for contracts for the procurement of supplies, services, or construction;
- (25) "Request for qualifications," the document or publication whereby a purchasing agency solicits interested design-builders to pre-qualify for a design-build contract;
- (26) "Resident," any person, partnership, association, limited liability company, foreign limited liability company, corporation, or foreign corporation licensed to do business within this state that has maintained a substantial and bona fide place of business and has conducted business from within this state for at least one year prior to the date on which a contract was awarded. The members of the partnership or association shall have been bona fide residents of the state for one year or more immediately prior to bidding upon the contract. A foreign corporation licensed pursuant to §§ 47-1A-1501 to 47-1A-1532, inclusive, is not a resident as defined by this section if the state or country in which it is organized enforces or has a preference for resident bidders;
- (26A) "Reverse auction," a purchasing process in which bidders submit bids in competing to sell supplies or nonprofessional services in an open environment via the internet;
- (27) "Sealed bid or proposal," a response to an invitation for bids or request for proposals submitted in a manner where the contents of the bid or proposal cannot be opened or viewed before the date and time of the formal opening without leaving evidence that the bid or proposal has been opened or viewed;
- (28) "Services," furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than reports which are merely incidental to the required performance;
- (29) "Supplies," any property, including equipment, materials, and printing;
- (30) "Surety," a bond or undertaking executed by a surety company authorized to do business in the State of South Dakota and countersigned by an agent of the company resident in the State of South Dakota. However, nothing in this subdivision requires countersignature of a bid bond."

Moved by: Olson
 Second by: Sue Peterson
 Action: Prevailed by voice vote

MOTION: DO PASS HB 1060 AS AMENDED

Moved by: Fitzgerald
 Second by: Bahmuller
 Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Ladner, Jamison, Overweg, Wittman, Aylward, Auch, Bahmuller, Olson, Lems, Sue Peterson, Sjaarda, Fitzgerald, and Drury

HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED HB 1060 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.

MOTION: ADJOURN

Moved by: Olson
 Second by: Bahmuller

Action: Prevailed by voice vote

Julianne Graham, Committee Secretary

/s/ BECKY J. DRURY
Becky J. Drury, Chair