

## AN ACT

ENTITLED, An Act to authorize the use of an online reverse auction for the procurement of certain goods and services by governmental agencies.

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

Section 1. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any other provision of this chapter, a purchasing agency may conduct an online reverse auction for the procurement of supplies or nonprofessional services, if the purchasing agency determines in writing that a reverse auction is appropriate for the specific procurement. No reverse auction may be used to establish contracts for public improvements, professional services, or indefinite quantity supply purchases.

Section 2. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

The following procedures apply to the use of an online reverse auction:

- (1) The purchasing agency shall pre-qualify bidders to participate in the reverse auction event. The pre-qualification shall be completed by issuing an invitation to qualify. The factors used to determine a vendor qualified for the reverse auction shall be clearly stated in the invitation to qualify. No other factors may be used to qualify a vendor for the reverse auction than those stated in the invitation to qualify;
- (2) Public notice shall be given pursuant to § 5-18A-14 of the invitation to qualify;
- (3) The purchasing agency shall notify any responding vendor as to whether the vendor has qualified. The purchasing agency may not disclose to the public or other vendors, the name of any vendor that has been invited to the reverse auction until after the reverse auction has occurred;

- (4) A bidder shall directly enter bids on the internet to participate in the reverse auction. The purchasing agency may not accept bids via any alternate method;
- (5) Any clarification, negotiation, and acceptance of all specifications, requirements, and terms and conditions shall occur before the purchasing agency decides whether to invite a vendor to the reverse auction. After the reverse auction, the purchasing agency may permit changes only if the changes do not affect the justification that was used to eliminate any other vendor from being qualified;
- (6) During any reverse auction, the online view of the bids presented to the bidders may not identify who has placed a particular bid. Each bidder may see only the amount of the bid;
- (7) If a bidder loses the ability to place bids during an auction for any reason, the auction shall be suspended until all bidders regain the ability to place bids via the internet auction site. If no resolution to the problem is imminent, the reverse auction may be terminated and rescheduled by the purchasing agency. In addition, the auction may be suspended or terminated for any reason by the purchasing agency or the reverse auction service provider. Upon resuming an auction after a suspension, the time remaining shall be the time remaining when the auction was suspended or ten minutes, whichever is greater;
- (8) In conducting a reverse auction, the agency may establish an extension activation period, which is the number of minutes before the end of the auction during which, if a bid is received, the auction will be extended by a pre-defined number of additional minutes. The minimum extension activation period that may be used is ten minutes; and
- (9) After the reverse auction is completed, the award shall be made in accordance with § 5-18A-5.

Section 3. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as follows:

The Bureau of Administration shall conduct any online reverse auction that is for the procurement of supplies on behalf of any state agency.

Section 4. That § 5-18A-1 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"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;

An Act to authorize the use of an online reverse auction for the procurement of certain goods and services by governmental agencies.

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I certify that the attached Act  
originated in the

SENATE as Bill No. 33

\_\_\_\_\_  
Secretary of the Senate  
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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 33  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor  
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STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State