

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

724Q0476

SENATE STATE AFFAIRS ENGROSSED NO. **HB 1260** - 3/4/2009

Introduced by: Representatives Hamiel, Carson, Cronin, Curd, Dennert, Faehn, Frerichs, Greenfield, Hoffman, Hunhoff (Bernie), Kirkeby, Krebs, Lederman, McLaughlin, Schlekeway, Sly, Vanneman, and Wink and Senators Gant, Abdallah, Hansen (Tom), Heidepriem, Knudson, Tieszen, and Vehle

1 FOR AN ACT ENTITLED, An Act to require that a request for proposals be issued for certain
2 state contracts for professional services.

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

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

6 For the purposes of this Act, the term, professional services, means services arising out of
7 a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill,
8 and the labor or skill involved is predominantly mental or intellectual, rather than physical or
9 manual.

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

12 For the purposes of this Act, the term, request for proposals, means the document or
13 publication whereby a state agency solicits proposals for a professional services contract.



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

3 No agency of the state may award or renew a contract for professional services exceeding
4 fifty thousand dollars without complying with the procedures set forth in this Act. Any agency
5 seeking such professional services shall issue a request for proposals. The agency shall publish
6 any request for proposals issued pursuant to this section on the electronic procurement system
7 maintained by the Bureau of Administration. The request for proposals shall include the
8 procedures for the solicitation and award of the contract.

9 Section 4. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The request for proposals shall state the relative importance of evaluation criteria to be used
12 in the ranking of prospective contractors. The agency shall include the following evaluation
13 criteria in any request for proposals:

- 14 (1) Specialized expertise, capabilities, and technical competence as demonstrated by the
15 proposed approach and methodology to meet the project requirements;
- 16 (2) Resources available to perform the work, including any specialized services, within
17 the specified time limits for the project;
- 18 (3) Record of past performance, including price and cost data from previous projects,
19 quality of work, ability to meet schedules, cost control, and contract administration;
- 20 (4) Availability to the project locale;
- 21 (5) Familiarity with the project locale;
- 22 (6) Proposed project management techniques; and
- 23 (7) Ability and proven history in handling special project constraints.

24 Section 5. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The agency and the highest ranked contractor shall mutually discuss and refine the scope of
3 services for the project and shall negotiate terms, including compensation and performance
4 schedule. The compensation level paid shall be reasonable and fair to the agency, as determined
5 by the agency. If the agency and the highest ranked contractor are unable for any reason to
6 negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency
7 shall, either orally or in writing, terminate negotiations with the contractor. The agency may then
8 negotiate with the next highest ranked contractor. The negotiation process may continue through
9 successive contractors, according to agency ranking, until an agreement is reached or the agency
10 terminates the contracting process.

11 Section 6. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 A register of proposals shall be prepared and maintained by any state agency issuing a
14 request for proposals for a professional service contract. The register shall contain the names
15 of any person whose qualifications were considered and the name of the person that was
16 awarded the contract. Any professional service contract and the documentation which was the
17 basis for the contract shall be public except for proprietary information which shall remain
18 confidential. The qualifications and any other documentation of any person not issued a contract
19 shall remain confidential.

20 Section 7. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The provisions of this Act do not apply to contracts issued for:

- 23 (1) Services of such a unique nature that the contractor selected is clearly and justifiably
24 the only practicable source to provide the service. Determination that the contractor

1 selected is justifiably the sole source is based on either the uniqueness of the service
2 or sole availability at the location required;

3 (2) Emergency services necessary to meet an urgent or unexpected requirement or when
4 health and public safety or the conservation of public resources is at risk;

5 (3) Services subject to federal law, regulation, or policy or state statute, under which a
6 state agency is required to use a different selection process or to contract with an
7 identified contractor or type of contractor;

8 (4) Services for professional legal services and services of expert witnesses, hearing
9 officers, or administrative law judges retained by state agencies for administrative or
10 court proceedings;

11 (5) Services involving state or federal financial assistance passed through by a state
12 agency to a political subdivision;

13 (6) Medical services and home and community-based services;

14 (7) Services to be performed for a state agency by another state or local government
15 agency or contracts made by a state agency with a local government agency for the
16 direct provision of services to the public; or

17 (8) Services to be provided by entertainers for the state fair and other events.

18 Section 8. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 Notwithstanding any other provisions of law, an agency that is required to issue a decision
21 in a contested case proceeding in one year or less may increase its statutory deadline for issuing
22 the agency decision by sixty days if the agency seeks to enter into a professional services
23 contract covered by this Act.