Chapter 17

(House Bill 1060)

An Act to modify provisions related to procurement for the state and other purchasing agencies.

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

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.

Section 2. That § 5-18A-11 be AMENDED:

5-18A-11. Unless otherwise specified by statute, purchases of supplies and services under ~~twenty-five~~ fifty thousand dollars ~~shall~~ must be made as follows:

(1) Notwithstanding other provisions of chapter 5-18A or 5-18D, the Bureau of Administration may authorize state agencies and institutions to make purchases of supplies over four thousand dollars and under ~~twenty-five~~ fifty thousand dollars by obtaining three quotes from different vendors. If three quotes cannot be obtained, the Bureau of Administration may approve the purchase if in the best interest of the state, require additional quotes to be obtained, or require the purchase be advertised for bids;

(2) State purchases of supplies under four thousand dollars may be made in accordance with procedures established by the purchasing agency in the best interests of the state;

(3) State purchases of services under ~~twenty-five~~ fifty thousand dollars may be made in accordance with procedures established by the purchasing agency in the best interests of the state; and

(4) For all other purchasing agencies, purchases under ~~twenty-five~~ fifty thousand dollars may be made in accordance with procedures established by the purchasing agency.

No purchases may be artificially divided to constitute a small purchase under this section.

Section 3. That § 5-18A-14 be AMENDED:

5-18A-14. If the purchasing agency intends to enter into a contract for any public improvement that involves the expenditure of one hundred thousand dollars or more, or a contract for the purchase of supplies or services, other than professional services, that involves the expenditure of ~~twenty-five~~ fifty thousand dollars or more, the purchasing agency shall advertise for bids or proposals. The advertisement shall appear as a legal notice in the appointed legal newspaper. The advertisement shall be printed at least twice, with the first publication at least ten days before opening of bids or the deadline for the submission of proposals. The first publication shall be in each official newspaper of the purchasing agency, and the second publication may be in any legal newspaper of the state chosen by the purchasing agency. If the purchasing agency has no official newspaper, the first publication shall be made in a legal newspaper with general circulation in the

jurisdiction of the purchasing agency to be selected by the purchasing agency. The advertisement shall state the time and place where the bids will be opened or the deadline for the submission of proposals. In each notice, the purchasing agency shall reserve the right to reject any or all bids or proposals.

Section 4. That § 5-18A-22 be AMENDED:

5-18A-22. The provisions of this chapter and chapters 5-18B, 5-18C, and 5-18D do not apply to:

(1) Any highway construction contract entered into by the Department of Transportation;

(2) Any contract for the purchase of supplies from the United States or its agencies or any contract issued by the General Services Administration;

(3) Any purchase of supplies or services, other than professional services, by purchasing agencies from any active contract that has been awarded by any government entity by competitive sealed bids or competitive sealed proposals or from any contract that was competitively solicited and awarded within the previous twelve months;

(4) Any equipment repair contract;

(5) Any procurement of electric power, water, or natural gas; chemical and biological products; laboratory apparatus and appliances; published books, maps, periodicals and technical pamphlets; works of art for museum and public display; medical supplies; communications technologies, computer hardware and software, peripheral equipment, and related connectivity; tableware or perishable foods;

(6) Any supplies, services, and professional services required for externally funded research projects at institutions under the control of the Board of Regents;

(7) Any property or liability insurance or performance bonds, except that the actual procurement of any insurance or performance bonds by any department of the state government, state institution, and state agency shall be made under the supervision of the Bureau of Administration;

(8) Any supplies needed by the Department of Human Services or the Department of Social Services or prison industries for the manufacturing of products;

(9) Any printing involving student activities, conducted by student organizations and paid for out of student fees, at institutions under the control of the Board of Regents. However, nothing in this subdivision exempts, from the requirements of this chapter and chapters 5-18B, 5-18C, and 5-18D, purchases that involve printing for other activities at institutions under the control of the Board of Regents;

(10) Any purchase of surplus property from another purchasing agency;

(11) Any animals purchased;

(12) Any purchase by a school district of perishable food, raw materials used in construction or manufacture of products for resale, or for transportation of students;

(13) Any authority authorized by chapters 1-16A, 1-16B, 1-16G, 1-16H, 1-16J, 5-12, or 11-11;

(14) Any seeds, fertilizers, herbicides, pesticides, feeds, and supplies used in the operation of farms by institutions under the control of the Board of Regents;

(15) Any purchase of supplies for any utility owned or operated by a municipality if the purchase does not exceed the limits established in § 5-18A-14;

(16) For political subdivisions, any contract for asbestos removal in emergency response actions and any contract for services provided by individuals or firms for consultants, audits, legal services, ambulance services, architectural services and engineering, insurance, real estate services, or auction services;

(17) Any purchase of supplies or services from a contract established through a Midwestern Higher Education Compact group purchasing program by a competitive sealed bid or a competitive sealed proposal; or

(18) Any contract concerning the custody, management, purchase, sale, and exchange of fund investments and research by the State Investment Council or Division of Investment~~; or~~

~~(19) For political subdivisions, any purchase of equipment involving the expenditure of less than fifty thousand dollars~~.

Signed February 22, 2023