

Ray Cardona

School Board Member

Refrig. & Maint. Manager DP

Licensed HVAC Contractor

P: (605) 354-9034

Date: Monday, November 25, 2024

To: School Board Members

Dr. Kraig Steinhoff, Superintendent

Kelly Christopherson, Business Manager

From: Ray Cardona

RE: Middle School Boiler Replacement – Associated Engineering Consulting

It is my position that we do not need to hire Associated Engineering Consulting to engineer or oversee the replacement of the middle school boiler. I have two main points for this decision.

1. There is no need to engineer or redesign the boiler because no changes have been made to the heat load or building. Essentially, we are doing a “replacement in kind”. If a 1,000,000 BTU boiler is needed, a 1,000,000 BTU capacity boiler should be installed. Efficiency has no bearing on capacity.
2. SDLRC 5-18A and 5-18B seems to be more geared towards new construction and not so much to equipment replacement when read in its entirety.

I will now discuss the referenced laws to support the hiring of AEC.

- CHAPTER 5-18A PUBLIC AGENCY PROCUREMENT--GENERAL PROVISIONS

5-18A-14. Public improvement contracts--Supplies and services contracts--Advertisement for bids or proposals.

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 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.

- **I agree. This is necessary to get the best pricing and give equal opportunity to contractors.**

- CHAPTER 5-18B - PROCUREMENT OF PUBLIC IMPROVEMENTS

5-18B-1. Plans and specifications--Advertisement--Availability.

If a contract is for the **construction** of a public improvement, the required advertisement shall state where the plans and specifications may be examined. The plans and specifications for the **construction** of any public improvement shall be and remain on file in the office of the purchasing agency at all times from the beginning of the publication of the advertisement for bids until the completion of the public improvement. The purchasing agency shall, upon request, furnish at least one copy of the plans and specifications, without charge, to each contractor resident in South Dakota who intends, in good faith, to bid upon the public improvement. The copy shall be available at the date of the first publication of the advertisement for bids. The purchasing agency may require the return of the copy at the time of the opening of the bids.

- **This is where it starts to gear towards new construction. We are not constructing anything but replacing existing equipment that has been engineered in 1999.**
- **The plans mentioned here, I interpret as blueprints for new construction.**
- **Specifications can be provided by gathering the data from the existing boiler and pumps.**

5-18B-45. Active involvement of licensed design professional required.

Each contract for a public improvement shall have a licensed design professional actively involved in the project from the start of design through final completion as required by chapter [36-18A](#).

- **In my opinion, a Licensed Plumber can fill this role. [SDCL36-25-1](#). Definition of terms. (6) "Plumbing contractor," any person qualified and skilled in the planning, superintending, and the practical installation of plumbing, and otherwise qualified and registered to contract for plumbing installations and conduct the business of plumbing, and familiar with the laws and rules governing plumbing.**
- **If you start reading the chapter starting at 5-18B-29, you can see that it is referring to new construction.**
- **No changes to the building or heating system have been made so the engineering in 1999 should be adequate.**

- CHAPTER 36-18A - TECHNICAL PROFESSIONS

36-18A-1. Definition of terms.

Terms used in this chapter mean:

(1) "Alteration," for the purpose of determining exemptions, any remodeling, renovation, or reconstruction to a building which changes the use, occupancy classification, or occupant load, or the exiting, structural, mechanical, or electrical systems of a building as defined by the building code;

(12) "Engineer," a person who is qualified to practice engineering by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience;

- **No alterations have been made.**
- **5-18B-45 does not specifically call for an engineer.**

Thank you for your time and consideration.

Respectfully,

Ray Cardona

Tuesday, November 12, 2024

Mechanical Contractor:

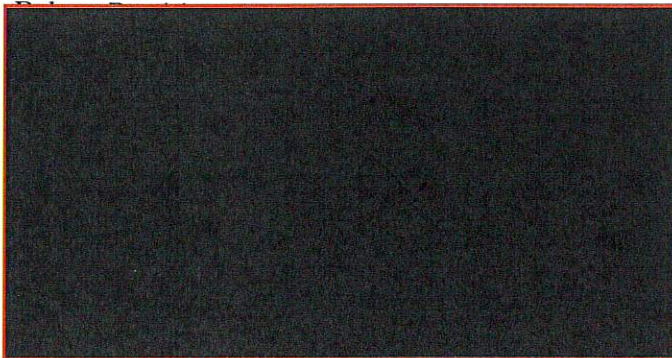
[REDACTED] is currently soliciting bids to replace a hot water boiler rated at 10,000,000 BTU per hour (see attached sheets). We would like to see pricing for the recommended parts lists listed as a separate line item. Also, show pricing matching the existing efficiency rating but show pricing for more efficient units, if available. Please note work will be performed at our [REDACTED]
[REDACTED]

When submitting your bid, we request that you (address all that apply):

- Provide a detailed description of work to be performed. Identifying your role as a contractor and your expectations or requirements from Dakota Provisions during the proposed work. For example: lifts, staging area, garbage disposal, plant support...etc.....
- Explain how your company handles change orders and rates that apply.
- Provide a detailed description of major components and safety devices. Submit or be prepared to submit design information and materials of construction.
- We require that if in your scope work of involves connecting to or modifying any existing equipment or safeties that they be brought to code as well or sufficiency verified. Please provide safety labeling and process labeling to match or exceed the existing labeling.
- Disclose in writing all warranties on workmanship and equipment used.
- Update PI&D's
- Manuals both paper and digital
- Identify who will be responsible for permits and taxes.
- Please provide a timeline for work to be completed.
- Disclose in writing if you will be using any subcontractors and payment arrangements with them.
- Provide weekend rates.
- Proof of insurance

I would like to have all bids submitted by 12.12.2024, if you feel that you need more time, please make your request in writing. We do require an onsite visit prior to submitting your bid.

Robert "Ray" Cardona





Specifications Sheet

Model 10.0TT NSF

6-22-05 rev 2

Sales order #: So0501924

Design Parameters:

Design Flow: **142 GPM**
 Inlet Temperature: **40 Degrees F**
 Outlet Temperature: **180 Degrees F**
 Temperature Rise: **140 Degrees F**

Unit Parameters:

Heater Rating: **10,000,000 BTU per hour**
 Derated For Elev: **9,892,000 BTU per hour**
 Required BTU/HR: **9,940,000 BTU per hour**
 Elevation: **1,270 Feet**

Unit Dimensions:

Unit Length: **144 Inches**
 Unit Width: **120 Inches**
 Unit Height: **148 Inches**
 Unit Storage Tank: **1000 Gallons**
 Unit Dry Weight: **6,956 Pounds**

Panel Controls:

PLC: **GE Fanuc**
 Primary Controller: **Honeywell RM7800L**
 Temperature Controller: **Honeywell T775G1039**
 Enclosure: **NEMA 1**
 Panel Location: **Tank-Right Side**

Required Utilities:

Fuel Type: **Natural Gas**
 Inlet Size: **(2) ea. 1.50" MNPT**
 Pressure: **2 - 10 PSIG**
 Flow: **10000 CFH**
Water Inlet Size: **(2) ea. 2" FNPT**
 Inlet Pressure: **16 PSIG**
 Nozzle Pressure: **10 PSIG**
 Inlet Flow: **142 GPM**
Water Outlet 1 Size: **2 1/2" 150# Flange**
 Outlet Pressure: **50 PSIG**
 Outlet Flow: **150 GPM**
Water Outlet 2 Size: **2" FNPT**
 Outlet Pressure: **210 PSIG**
 Outlet Flow: **100 GPM**
Electrical Supply: **460 Volts**
 Phase: **3 Phase**
 Hertz: **60 Hertz**
 Fused Amps: **150 Amps**
Control Voltage*: **120 Volts**
 Phase: **1 Phase**
 Hertz: **60 Hertz**
Stack Tie-in: **(2) ea. 22 O.D.**
Combustion Air: **2167 SCFM**
Compressed Air: **60-80 PSIG**

***Control Voltage Transformer Included**

Major Equipment:

Burner: **(2) ea. Maxon 456M**

Burner Blower 1: **Packaged Blower**
 Horsepower: **1.50 HP**
 Amps: **2.6 Amps**

Burner Blower 2: **Packaged Blower**
 Horsepower: **1.50 HP**
 Amps: **2.6 Amps**

Transfer pump 1: **Scot model: 54FB NSF**
 Impeller: **5.63 Inch**
 Horsepower: **10.00 HP**
 Amps: **14.0 Amps**

Transfer pump 2: **Scot model: 54FB NSF**
 Impeller: **5.63 Inch**
 Horsepower: **10.00 HP**
 Amps: **14.0 Amps**

Recirc pump 1: **Scot model: 121B NSF**
 Impeller: **4.75 Inch**
 Horsepower: **5.00 HP**
 Amps: **7.6 Amps**

Recirc pump 2: **Scot model: 121B NSF**
 Impeller: **4.75 Inch**
 Horsepower: **5.00 HP**
 Amps: **7.6 Amps**

Transfer pump 3: **Grundfos: CR20-10**
 Horsepower: **25.00 HP**
 Amps: **34.0 Amps**

Transfer pump 4: **Grundfos: CR20-10**
 Horsepower: **25.00 HP**
 Amps: **34.0 Amps**

Non-Standard Features:

1. Circulating pump capable of 10gpm @ 15psig-*shipped Loose*
2. Starter installed in panel for circulating pump
3. Temp switch and solenoid for return loop-*shipped loose*
4. Two flow control valves one for each transfer line-*Shipped loose*
6. Automatic low pressure backup transfer pump with VFD capable of 150 gpm @ 50 psi pre piped and pre wired
7. High pressure pump package with automatic backup capable of 100gpm @ 210 psi pre piped and pre wired-*shipped loose*
8. Two inlet flow control valves-*shipped loose*

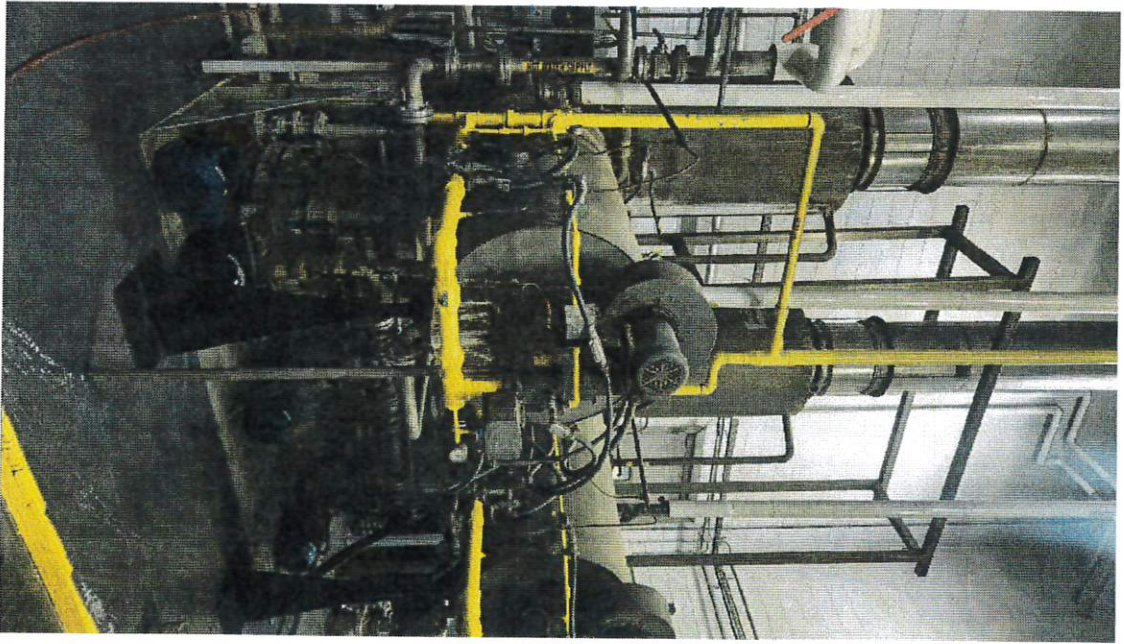
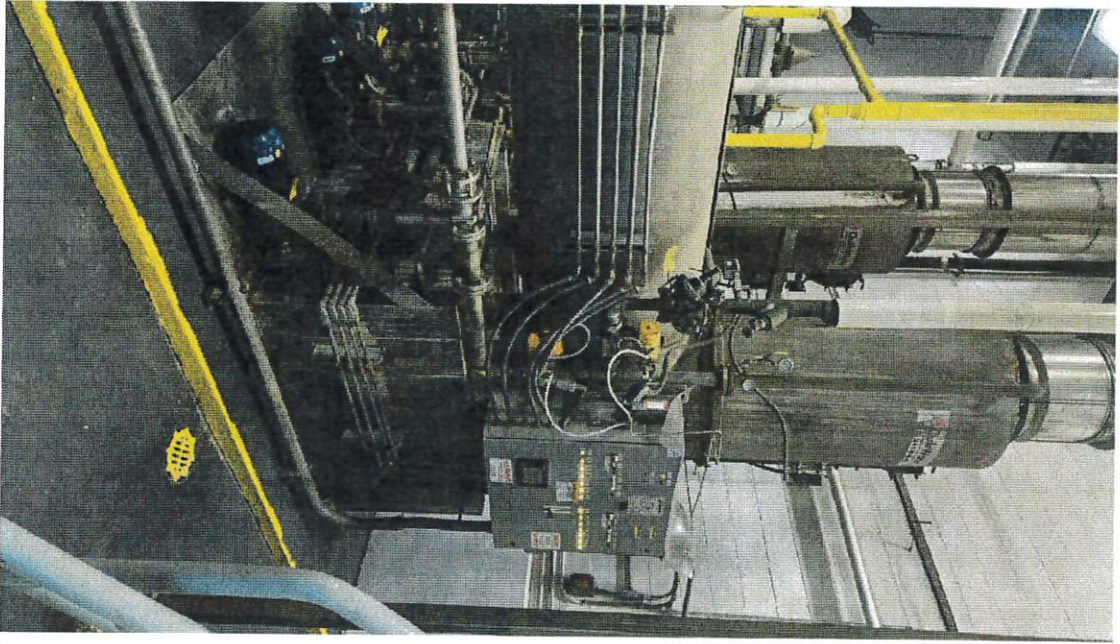
Specifications are approved and accepted by: _____

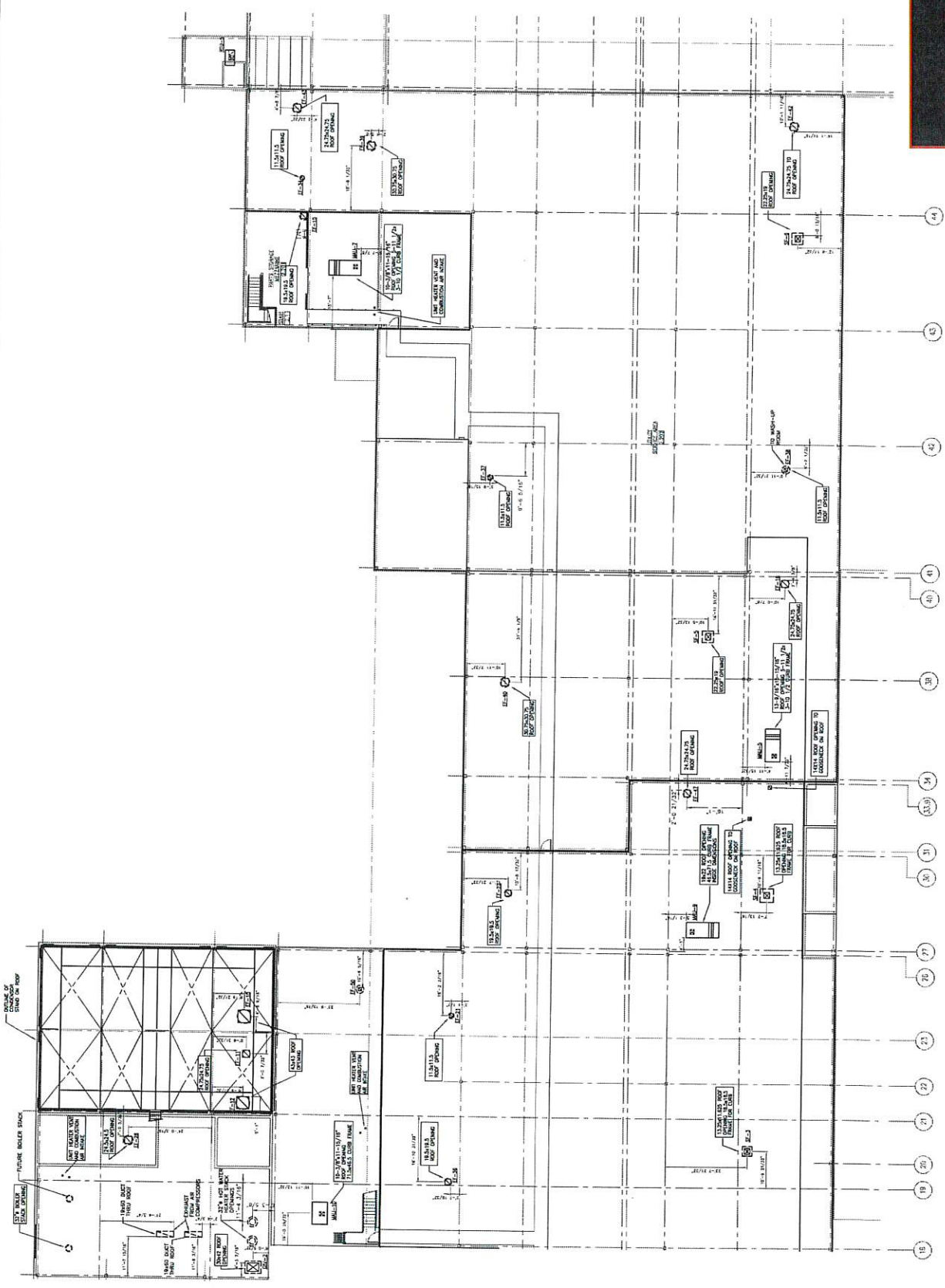
Phone: (918) 241-8880

Website: www.Quikwater.com

Date: _____

Fax: (918) 241-8718





MECHANICAL ROOF PLAN (UNIT 2)



CHAPTER 5-18A
PUBLIC AGENCY PROCUREMENT--GENERAL PROVISIONS

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5-18A-1. Definitions.

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;
- (19A) "Prohibited entity," an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled by:
 - (a) A foreign parent entity from the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela; or
 - (b) The government of the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

A prohibited entity does not include a citizen or legal permanent resident of the United States, or an individual foreign national;
- (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.

Source: SL 2010, ch 31, § 2; SL 2013, ch 29, § 4; SL 2023, ch 17, § 1; SL 2023, ch 18, § 1.

5-18A-2. Application to purchasing agency contracts.

Unless otherwise authorized by law, the provisions of this chapter and chapters [5-18B](#), [5-18C](#), and [5-18D](#) apply to all contracts issued by any purchasing agency.

Source: SL 2010, ch 31, § 3.

5-18A-3. Methods of awarding contracts.

Unless otherwise authorized by law, each contract for supplies, services, and construction shall be awarded by one of the following methods:

- (1) Competitive sealed bids as provided in § [5-18A-5](#);
- (2) Competitive sealed proposals as provided in §§ [5-18A-6](#) and [5-18A-7](#);
- (3) Small purchases as provided in § [5-18A-11](#);
- (4) Sole source procurement as provided in § [5-18A-8](#); or
- (5) Emergency procurement as provided in § [5-18A-9](#).

Source: SL 2010, ch 31, § 4.

5-18A-4. Competitive sealed bids required.

Contracts shall be awarded by the use of competitive sealed bids except as otherwise provided in this chapter and chapters [5-18B](#), [5-18C](#), and [5-18D](#).

Source: SL 2010, ch 31, § 5.

5-18A-5. Procedures for competitive sealed bids.

The following procedures apply to the use of competitive sealed bids:

- (1) Public notice of the invitation for bids shall be given pursuant to § [5-18A-14](#);
- (2) The invitation for bids shall include a purchase description, all contractual terms and conditions applicable to the procurement. The invitation for bids for supplies shall include the length of time, not to exceed forty-five days, between the bid opening and the award of the bid;
- (3) A bid may be submitted either manually or electronically in a manner authorized by the purchasing agency;
- (4) Each bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and other relevant information as may be specified, together with the name of each bidder shall be recorded. Except as otherwise provided by law, the record and each bid shall be open to public inspection;
- (5) Each bid shall be unconditionally accepted without alteration or correction, except as authorized in this section. Each bid shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids;
- (6) Any bid may be withdrawn by letter, by electronic communications, or in person before the time specified in the advertisement for bid. The purchasing agency may allow modification of bids by mail, facsimile, or electronic notice received at the place designated in the invitation to bid not later than the time set for the opening of bids. A modification may not reveal the bid price but shall provide the addition, subtraction, or modification so the final prices or terms will not be known to the purchasing agency until the sealed bid is opened. A modification may not be withdrawn after the time set for the opening of bids. Each modification shall be confirmed in writing by the successful bidder before award of the contract. No bid made may be changed or altered by telephone. After bid opening, no withdrawal of a bid or change in bid prices or other provisions of bids prejudicial to the interest of the purchasing agency or fair competition is permitted. The purchasing agency may waive technical irregularities in the bid or proposal of the low bidder or offeror that do not alter the price, quality, or quantity of the services, or items of tangible personal property bid or offered. Any decision to permit the correction or withdrawal of a bid, or to cancel an award or a contract based on a bid mistake, shall be supported by a written determination made by the purchasing agency, and included in the bid file;
- (7) The contract for services or public improvement shall be awarded within thirty days and the contract for supplies shall be awarded within forty-five days of the bid opening by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The purchasing agency may reject any and all bids and readvertise for bids if none of the bids are satisfactory, or if the purchasing agency believes an agreement has been entered into by the bidders to prevent competition. If the low bidder is not responsible or the bid is not made in accordance with the requirements of this chapter and chapters [5-18B](#), [5-18C](#), and [5-18D](#) or the low bid is withdrawn as authorized by this section, the bid of the next lowest responsible and responsive bidder may be accepted;
- (8) If it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

- (9) If, after advertising for bids, no firm bids are received, the purchasing agency may negotiate a contract for the purchase of the supplies, services, or public improvement projects at the most advantageous price, if the specifications of the original bid are met;
- (10) If two or more competitive sealed bids submitted are identical in price and product quality, the bids are the low bid, and no resident bidder preference is applicable, the purchasing agency may:
 - (a) Award the bid by lottery to one of the identical low bidders; or
 - (b) Reject all the bids and resolicit bids for the required supplies, services, or public improvement.

Source: SL 2010, ch 31, § 6; SL 2016, ch 39, § 1.

5-18A-6. Competitive sealed proposals--When permitted.

A contract may be entered into by competitive sealed proposals if the purchasing agency determines in writing that the use of competitive sealed bids is either not practicable or not advantageous.

Source: SL 2010, ch 31, § 7.

5-18A-7. Procedures for competitive sealed proposals.

The procedures for issuing a contract through competitive sealed proposals are as follows:

- (1) The proposals shall be solicited through a request for proposals. The request for proposals shall state the relative importance of price and other factors, if any;
- (2) Public notice of the request for proposals shall be given pursuant to § [5-18A-14](#);
- (3) A proposal may be submitted either manually or electronically in a manner authorized by the purchasing agency;
- (4) Each proposal shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared documenting the name and address of each offeror and identifying each offeror awarded a contract. The register shall be open for public inspection after contract award;
- (5) As provided in the request for proposals, a discussion may be conducted with any responsible offeror who submitted a proposal determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Each offeror shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of a proposal. A revision may be permitted after a submission and prior to an award for the purpose of obtaining the best and final offer. In conducting any discussion, there may be no disclosure of any information derived from any proposal submitted by a competing offeror;
- (6) An award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the purchasing agency taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to each offeror. The purchasing agency may reject any and all proposals and readvertise for proposals if none of the proposals are satisfactory, or if the purchasing agency believes any agreement has been entered into by the offerors to prevent competition; and
- (7) This section does not apply to state professional service contracts issued pursuant to § [5-18A-37](#) and §§ [5-18D-17](#) to [5-18D-24](#), inclusive.

Source: SL 2010, ch 31, § 8.

5-18A-8. Unique supplies or services--Sole source procurement--Negotiations.

A contract may be awarded for supplies or services without competition if the purchasing agency determines in writing that the supplies or services are of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the supplies or services. The determination that the contractor selected is justifiably the sole source shall be based on either the uniqueness of the supplies or services or the sole availability at the location required. In such cases, the purchasing agency shall conduct negotiations, including price, delivery, and quantity to obtain the most advantageous price and shall include the written verification of the sole source in the contract file. This section does not apply to construction services or construction equipment.

Source: SL 2010, ch 31, § 9.

5-18A-9. Emergency procurement.

A purchasing agency may make or authorize others to make an emergency procurement without advertising the procurement if rentals are not practicable and there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons. Failure to abide by the bid provisions of this chapter and chapters [5-18B](#), [5-18C](#), and [5-18D](#) in a timely manner is not an emergency. An emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

Source: SL 2010, ch 31, § 10.

5-18A-10. Records of sole source procurement and emergency procurement contracts.

The purchasing agency shall maintain a record listing each contract made under sole source procurement and emergency procurement for a minimum of five years. The record shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the supplies, services, and public improvements procured under each contract.

Source: SL 2010, ch 31, § 11.

5-18A-11. Purchases of supplies and services under fifty thousand dollars.

Unless otherwise specified by statute, purchases of supplies and services under fifty thousand dollars must be made as follows:

- (1) Notwithstanding other provisions of chapter [5-18A](#) or [5-18D](#), the Bureau of Human Resources and Administration may authorize state agencies and institutions to make purchases of supplies over four thousand dollars and under fifty thousand dollars by obtaining three quotes from different vendors. If three quotes cannot be obtained, the Bureau of Human Resources and 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 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 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.

Source: SL 2010, ch 31, § 12; SL 2011, ch 31, § 2; SL 2023, ch 17, § 2; SL 2024, ch 1 (Ex. Ord. 24-1), § 34, eff. Apr. 8, 2024.

5-18A-12. Cancellation of invitation for bids or request for proposals and rejection of bids or proposals.

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, if the purchasing agency determines it is in the best interests of the agency. The reasons for the cancellation or rejection shall be made part of the contract file.

Source: SL 2010, ch 31, § 13.

5-18A-13. Centralized public bid exchange created.

There is hereby created a centralized public bid exchange. The Bureau of Human Resources and Administration shall establish the exchange either within the bureau or within another public or private organization. The purpose of the exchange is to facilitate the publishing of official state and political subdivision bids to provide greater notice to bidders and to the state and its political subdivisions. The exchange shall maintain a list of all state bids and proposals and all bids and proposals provided by political subdivisions which participate in the exchange. The exchange shall set and charge each bidder, offeror, or political subdivision or both a fee for participation in the exchange to defray the cost of administering the exchange.

Source: SL 2010, ch 31, § 14; SL 2024, ch 1 (Ex. Ord. 24-1), § 34, eff. Apr. 8, 2024.

5-18A-14. Public improvement contracts--Supplies and services contracts--Advertisement for bids or proposals.

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 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.

Source: SL 2010, ch 31, § 15; SL 2020, ch 22, § 1; SL 2023, ch 17, § 3.

5-18A-15. Time for entering into contract.

After receiving notice of a contract award, the successful bidder or offeror shall enter into a contract with the purchasing agency within the time specified in the invitation for bids or request for proposals. If any bidder or offeror fails to enter into a contract within the time specified, the contract may be awarded to the next lowest responsive and responsible bidder or offeror for the same kind of work and material, unless all bids or proposals are rejected. The defaulting bidder or offeror shall be responsible for the difference in price.

Source: SL 2010, ch 31, § 16.

5-18A-16. Recovery from defaulting bidder or offeror.

If any successful bidder or offeror fails to fulfill the conditions of an awarded contract, the purchasing agency may proceed to recover from the defaulting party whatever damages may have been sustained as a result of the default. The purchasing agency shall have all remedies provided in the contract and provided by law.

Source: SL 2010, ch 31, § 17.

5-18A-17. Self-dealing by state officer or employee in award or terms of agency contract prohibited.

No state officer or employee who approves, awards, or administers a contract on behalf of a state agency, may have an interest in a contract or derive a direct benefit from a contract that is within the scope of the officer's or employee's official duties, nor for a one-year period following the end of their employment or position as a state officer may the officer or employee derive a direct benefit as a result of such contract except as provided in § [5-18A-17.2](#). In addition, no such officer or employee may enter into any contract, other than a contract of employment, with any state agency for a period of one year following their leaving office or employment except as provided in § [5-18A-17.3](#). This prohibition includes any state officer or employee who, in his or her official capacity, recommends the approval or award of the contract or who supervises a person who approves, awards, or administers the contract. This prohibition does not include any state officer who serves without compensation or who may be paid per diem pursuant to § [4-7-10.4](#).

Source: SL 2010, ch 31, § 18; SL 2011, ch 2, § 154; SL 2015, ch 30, § 2.

5-18A-17.1. Direct benefit from contract.

A state officer or employee derives a direct benefit from a contract if the state officer or employee, the officer's or employee's spouse, or other persons with whom the state officer or employee lives and commingles assets:

- (1) Has more than a five percent ownership or other interest in an entity that is a party to the contract;
- (2) Derives income, compensation, or commission directly from the contract or from the entity that is a party to the contract;
- (3) Acquires property under the contract; or
- (4) Serves on the board of directors of a for-profit entity that derives income or commission directly from the contract or acquires property under the contract.

A state officer or employee does not derive a direct benefit from a contract based solely on the value associated with the officer's or employee's investments or holdings, or the investments or holdings of other persons with whom the state officer or employee lives and commingles assets.

Source: SL 2015, ch 30, § 3.

5-18A-17.2. Authorization of officer or employee to be a party to or derive direct benefit from contract.

A governing body may authorize an officer or employee whose responsibilities include approving, awarding, or administering a contract on behalf of a state agency or supervising any employee who has these responsibilities to be a party to or derive a direct benefit from a contract if:

- (1) The officer or employee has provided full written disclosure to the governing body;
- (2) The governing body has reviewed the essential terms of the transaction or contract and the state officer's or employee's role in the contract or transaction; and
- (3) The transaction and the terms of the contract are fair, reasonable, and not contrary to the public interest.

The authorization shall be in writing. Any authorization given pursuant to this section is a public record. Each authorization shall be filed with the commissioner of human resources and administration, who shall compile the authorizations and present them annually for review by the Government Operations and Audit Committee.

Source: SL 2015, ch 30, § 4; SL 2024, ch 1 (Ex. Ord. 24-1), §§ 13, 35, eff. Apr. 8, 2024.

5-18A-17.3. Authorization of contract with former officer or employee.

Within the one-year period prohibiting any contract with a state agency, the governing body of the state agency may approve a former officer or employee to contract with any state agency if the governing body determines that the transaction and the terms of the contract are fair, reasonable, and are in the best interests of the public. The authorization shall be in writing.

Any approval given pursuant to this section is a public record. Each approval shall be filed with the commissioner of human resources and administration, who shall compile the approvals and present them annually for review by the Government Operations and Audit Committee.

Source: SL 2015, ch 30, § 5; SL 2024, ch 1 (Ex. Ord. 24-1), §§ 13, 35, eff. Apr. 8, 2024.

5-18A-17.4. Self-dealing violation as misdemeanor--Removal--Forfeiture of benefit--Contract voidable.

A state officer or employee who knowingly violates the provisions of § [3-16-8](#) or [5-18A-17](#) commits malfeasance in office. The state officer or employee shall be removed from office or employment and such person is guilty of a Class 1 misdemeanor. Any benefit to a person or entity derived

from the person's knowing violation of § [3-16-8](#) or [5-18A-17](#) is subject to forfeiture. Any contract made in violation of § [3-16-8](#) or [5-18A-17](#) is voidable by the governing body.

Source: SL 2015, ch 30, § 6.

[5-18A-17.5. Specific conflict of interest prohibitions not affected.](#)

Nothing in §§ [5-18A-17](#) to [5-18A-17.6](#), inclusive, affects a specific conflict of interest prohibition that applies to specific employees.

Source: SL 2015, ch 30, § 7.

[5-18A-17.6. Definitions applicable to §§ 5-18A-17 to 5-18A-17.5.](#)

The terms used in §§ [5-18A-17](#) to [5-18A-17.5](#), inclusive, mean:

- (1) "State agency," each board, commission, committee, council, department, division, office, task force, or agency of state government. The term, state agency, does not include any authority created by the Legislature or executive order;
- (2) "State officer," a person who is elected or appointed to serve a state agency. The term does not include a member of the Legislature, a person who serves without compensation, or a person who is only paid per diem in accordance with § [4-7-10.4](#);
- (3) "Governing body," the Executive Board of the Legislative Research Council, the Supreme Court, the Board of Regents, the Public Utilities Commission, each constitutional officer, the Board of Trustees of the South Dakota Retirement System, the State Investment Council, or the Governor;
- (4) "Administer a contract," decision making or substantive influence on the decision making concerning the manner, method, or means of a contract's performance or enforcement such as the ability to terminate, suspend, change terms, or evaluate the counter-party's performance under the contract. The term does not include review and approval of contract documents for matters of style and form or conformity with authorizing legislation or rule, mere clerical tasks such as posting, making, or reconciling payments or accounts under the contract, collecting or reporting fiscal data or other information in relation to the contract's performance, or relaying substantive decisions made by another person or body as to the manner, method, or means of a contract's performance or enforcement.

Source: SL 2015, ch 30, § 8.

[5-18A-18. Specifications to promote economy and encourage competition--Circumstances under which brand name or equal specifications permitted.](#)

Any specification shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the purchasing agency's needs, and may not be unduly restrictive. Brand name or equal specifications may be used if the purchasing agency determines in writing that:

- (1) No other design or performance specification or qualified products list is available;
- (2) Time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (3) The nature of the product or the nature of the purchasing agency's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (4) Use of a brand name or equal specification is in the purchasing agency's best interests.

Source: SL 2010, ch 31, § 19.

[5-18A-19. Requirements for brand name or equal specifications.](#)

Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award. Unless the purchasing agency determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required. If a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

Source: SL 2010, ch 31, § 20.

[5-18A-20. Circumstances under which brand name only specifications permitted.](#)

Brand name specification may be used only if the purchasing agency makes a written determination that only the identified brand name item or items will satisfy the agency's needs. The agency shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under the sole source procurement provisions of § [5-18A-8](#).

Source: SL 2010, ch 31, § 21.

5-18A-21. Written contract required--Signatures.

Each contract shall be in writing, shall have the printed name of any individual signing the contract, and shall be signed on behalf of the purchasing agency by the authorized officials. Failure to comply with the requirement for a printed name under this section does not void the terms or purpose of the contract.

Source: SL 2010, ch 31, § 22; SL 2018, ch 46, § 1.

5-18A-22. Procurements exempt from chapters 5-18A through 5-18D.

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 Human Resources and 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.

Source: SL 2010, ch 31, § 23; SL 2011, ch 1 (Ex. Ord. 11-1), § 134, eff. Apr. 12, 2011; SL 2011, ch 2, § 153; SL 2011, ch 31, § 1; SL 2015, ch 35, § 2; SL 2016, ch 40, § 1; SL 2020, ch 4, § 30; SL 2023, ch 17, § 4; SL 2024, ch 1 (Ex. Ord. 24-1), § 34, eff. Apr. 8, 2024.

5-18A-23. Purchase of foreign meat food products prohibited.

Except for canned meat food products that are not available from a domestic source, no purchasing agency may purchase any meat food products that are the products of any foreign country or that are imported from outside the boundaries of the United States.

Source: SL 2010, ch 31, § 26.

5-18A-24. Grade A milk processors preferred.

Any milk processor licensed pursuant to § 39-6-7, bidding any milk or milk product under a competitive bid contract, shall receive the bid contract if the processor's bid is equal to, or within five percent or less, of any other bidder who is not a licensed processor.

Source: SL 2010, ch 31, § 27.

5-18A-25. Preferences to certain resident businesses, qualified agencies, and businesses using South Dakota supplies or services.

In awarding a contract, if all things are equal, including the price and quality of the supplies or services, a purchasing agency shall give preference:

- (1) To a qualified agency if the other equal low bid or proposal was submitted by a business that was not a qualified agency;
- (2) To a resident business if the other equal low bid or proposal was submitted by a nonresident business;
- (3) To a resident manufacturer if the other equal low bid or proposal was submitted by a resident business that is not a manufacturer;
- (4) To a resident business whose principal place of business is located in the State of South Dakota, if the other equal low bid or proposal was submitted by a resident business whose principal place of business is not located in the State of South Dakota; or
- (5) To a nonresident business providing or utilizing supplies or services found in South Dakota, if the other equal low bid or proposal was submitted by a nonresident business not providing or utilizing supplies or services found in South Dakota.

In computing price, the cost of transportation, if any, including delivery, shall be considered.

Source: SL 2010, ch 31, § 28.

5-18A-26. Resident bidder preferred over nonresident bidder from state or foreign province that has preference for resident bidders.

A resident bidder shall be allowed a preference on a contract against the bid of any bidder from any other state or foreign province that enforces or has a preference for resident bidders. The amount of the preference given to the resident bidder shall be equal to the preference in the other state or foreign province.

Source: SL 2010, ch 31, § 29.

5-18A-27. List of states with resident bidder preferences.

The Bureau of Human Resources and Administration shall maintain a current list of all states that have a resident bidder preference law and the amount or percent of preference taken by each state. The bureau shall make the list available upon request to any purchasing agency.

Source: SL 2010, ch 31, § 30; SL 2024, ch 1 (Ex. Ord. 24-1), § 34, eff. Apr. 8, 2024.

5-18A-28. List of supplies, custodial services, and maintenance services provided by qualified agency.

A qualified agency may submit a list of supplies, custodial services, and maintenance services, provided by the agency, to the Bureau of Human Resources and Administration. The bureau shall make the information available to purchasing agencies of the State of South Dakota on a website maintained by the bureau.

Source: SL 2010, ch 31, § 31; SL 2024, ch 1 (Ex. Ord. 24-1), § 34, eff. Apr. 8, 2024.

5-18A-29. Persons with disabilities.

No provision of this chapter or chapter [5-18B](#), [5-18C](#), or [5-18D](#) may be so construed as to prohibit any person with a disability from negotiating a contract for service or supplies or in any other manner doing business with any purchasing agency.

Source: SL 2010, ch 31, § 32.

5-18A-30. Supplies manufactured from recycled or biobased materials.

A purchasing agency may give preference to the purchase of supplies manufactured from recycled or biobased materials if the bids are within five percent of the lowest bid offering nonrecycled or nonbiobased materials.

Source: SL 2010, ch 31, § 33.

5-18A-31. Information regarding preferences to be provided.

Prior to the award of a contract, the purchasing agency may require of each bidder or offeror such information as shall allow the agency to determine whether a bidder or offeror is entitled to a preference or subject to having a preference enforced against it under this chapter and chapters [5-18B](#), [5-18C](#), and [5-18D](#).

Source: SL 2010, ch 31, § 34.

5-18A-32. Procurements utilizing federal funds.

In addition to the provisions of this chapter and chapters [5-18B](#), [5-18C](#), and [5-18D](#), any procurement utilizing federal funds is subject to any federal statutes and regulations governing the use and payment of such funds.

Source: SL 2010, ch 31, § 35.

5-18A-33. Disallowance of noncomplying bid or offer--Contracts in violation void.

Any bidder or offeror who fails to comply with the provisions of this chapter or chapter [5-18B](#), [5-18C](#), or [5-18D](#), or who provides any false information in the submission of any bid or offer is subject to having the bid or offer disallowed by the purchasing agency soliciting the bid or offer. Any contract entered into in violation of this chapter or chapter [5-18B](#), [5-18C](#), or [5-18D](#) is null and void.

Source: SL 2010, ch 31, § 36.

5-18A-34. Bureau of Human Resources and Administration to serve as state's central procurement agency.

The Bureau of Human Resources and Administration shall serve as the central procurement agency of the State of South Dakota. Except for the legislative and judicial branches and as otherwise specifically provided in this chapter and chapters [5-18B](#), [5-18C](#), and [5-18D](#), the Bureau of Human Resources and Administration shall procure, or authorize the procurement of all supplies and public improvements for state government. No claim for any such procurement may be paid unless authorization has been issued by the bureau. All state agencies and institutions are responsible for the procurement of services for their respective governmental unit. The governing body of all other purchasing agencies, including the legislative and judicial branches of state government, is responsible for procuring or authorizing the procurement of supplies, services, and public improvements for their respective governmental unit.

Source: SL 2010, ch 31, § 37; SL 2024, ch 1 (Ex. Ord. 24-1), § 34, eff. Apr. 8, 2024.

5-18A-35. Bond or approved security.

In the procurement of supplies or services, a purchasing agency may require a bond or an approved security to be submitted with any bid or proposal as a guarantee that the bidder will enter into a contract with the purchasing agency. No offeror or bidder may be required to leave the bond or security posted for a longer period than that allowed by § [5-18A-5](#) if the bid or proposal is not accepted. The bond or approved security of the successful offeror or bidder shall be returned upon the signing of the contract.

Source: SL 2010, ch 31, § 38; SL 2016, ch 39, § 2.

5-18A-36. Performance and payment bond or approved security.

For any public improvement contract, a performance and payment bond is required pursuant to chapter [5-21](#). For any other contract, a purchasing agency may require a bond or an approved security to be provided by the successful offeror or bidder as a guarantee of faithful performance of the contract. In any case, the bond or approved security of the successful offeror or bidder shall be returned upon satisfactory completion of the contract.

Source: SL 2010, ch 31, § 39.

5-18A-37. Cooperation and agreements with other state and federal purchasing agencies.

Any purchasing agency may enter into agreements with purchasing agents in this or any other state or the United States government under which any of the parties may agree to participate in, administer, sponsor, or conduct purchasing transactions under a joint agreement or contract for the purchase of supplies or contractual services. A purchasing agency may cooperate with purchasing agencies and other interested parties in any other state or the United States government to develop uniform purchasing specifications on a regional or national level to facilitate cooperative interstate purchasing transactions.

Source: SL 2010, ch 31, § 110.

5-18A-38. Environmentally preferable products to be selected.

The Bureau of Human Resources and Administration, any other designated state purchasing agent, and any agency making purchases shall, to the extent practicable, make purchasing selections to maximize the purchase of environmentally preferable products. The Bureau of Human Resources and Administration shall promulgate rules, pursuant to chapter [1-26](#), to establish specifications, requirements, and certification standards for the purchase for use by state government agencies of environmentally preferable products. The certification standards established by the bureau shall be based on standards established by the United States Environmental Protection Agency's Design for the Environment program, the TerraChoice EcoLogo program, the United States Department of Agriculture's Biopreferred program, the Green Seal program, or any other certification program or comparable data, including life cycle assessment data, approved by the bureau. No rule may prohibit the use of disinfectants, disinfecting cleaners, sanitizers, or any other antimicrobial product regulated by the federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Sec. 136 et seq.), as amended to January 1, 2010, if the use is necessary to protect public health and if the use is in accordance with responsible cleaning procedure requirements.

Source: SL 2010, ch 31, § 120; SL 2024, ch 1 (Ex. Ord. 24-1), § 34, eff. Apr. 8, 2024.

5-18A-39. Reverse auction permitted for certain procurements.

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.

Source: SL 2013, ch 29, § 1.

5-18A-40. Procedures applicable to reverse auctions.

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](#).

Source: SL 2013, ch 29, § 2.

5-18A-41. Bureau of Human Resources and Administration to conduct reverse auction for supplies for state agency.

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

Source: SL 2013, ch 29, § 3; SL 2024, ch 1 (Ex. Ord. 24-1), § 34, eff. Apr. 8, 2024.

5-18A-42. Fair and open competition in government contracts.

Sections [5-18A-43](#) to [5-18A-47](#), inclusive, are intended to provide for more economical, nondiscriminatory, neutral, and efficient procurement of construction-related goods and services by this state and political subdivisions of this state as market participants by providing for fair and open competition in government contracts.

Source: SL 2014, ch 40, § 1.

5-18A-43. Terms prohibited in construction contracts.

Subject to the provisions of § [5-18A-45](#), no governmental unit awarding a contract after July 1, 2014, for the construction, repair, remodel, or demolition of a facility and no construction manager acting on behalf of the governmental unit may include any of the following in a bid specification, project agreement, or other controlling document:

- (1) A term that requires or prohibits a bidder, offeror, contractor, or subcontractor from entering into or adhering to an agreement with one or more labor organizations in regard to that project or a related construction project; or
- (2) A term that otherwise discriminates against a bidder, offeror, contractor, or subcontractor for becoming, remaining, or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, an agreement with one or more labor organizations in regard to that project or a related construction project.

Source: SL 2014, ch 40, § 2.

5-18A-44. Conditional grant, tax abatement, and tax credit prohibited in construction contracts.

Subject to the provisions of § [5-18A-45](#), no governmental unit may award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term described in § [5-18A-43](#) in a contract or document for any construction, improvement, maintenance, or renovation to real property or fixture that is the subject of the grant, tax abatement, or tax credit.

Source: SL 2014, ch 40, § 3.

5-18A-45. Conditions related to agreements with labor organizations.

Nothing in §§ [5-18A-42](#) to [5-18A-47](#), inclusive, prohibits a governmental unit from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization, if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement, or tax credit, and if the governmental unit does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, tax abatement, or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

Nothing in §§ [5-18A-42](#) to [5-18A-47](#), inclusive, prohibits a contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract with a governmental unit or funded in whole or in part from a grant, tax abatement, or tax credit from the governmental unit.

Source: SL 2014, ch 40, § 4.

5-18A-46. Exemptions for special circumstances.

The head of a governmental unit may exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the provisions of §§ [5-18A-43](#) and [5-18A-44](#) only if the governmental unit finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this section may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

Source: SL 2014, ch 40, § 5.

5-18A-47. Construction with National Labor Relations Act.

Nothing in §§ [5-18A-42](#) to [5-18A-46](#), inclusive, prohibits an employer or other party from entering into an agreement or engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C. 151 to 169.

Nothing in §§ [5-18A-42](#) to [5-18A-46](#), inclusive, interferes with labor relations of parties that are not regulated by the National Labor Relations Act, 29 U.S.C. 151 to 169.

Source: SL 2014, ch 40, § 6.

5-18A-48. Persons involved in grant or contract determinations ineligible for grant or contract--Performance evaluation by recipients and sub-recipients prohibited.

No person involved in the determination of the recipient of a grant or contract from a state agency may be awarded the grant or contract. No recipient or sub-recipient of a grant or contract from a state agency may conduct any external evaluation of the performance of the grant or contract.

Source: SL 2018, ch 44, § 4.

5-18A-49. Forms for acknowledging review of conflict of interest policy and disclosing conflicts.

Any person holding a statewide office as defined in § [12-27-1](#), and any head of an agency in the executive branch, shall annually sign a form, as created by the Bureau of Human Resources and Administration, acknowledging that the person has reviewed the state conflict of interest policy and disclosing any conflicts that have not previously been disclosed. The Bureau of Human Resources and Administration shall compile the forms and present them annually for review by the Government Operations and Audit Committee.

Source: SL 2018, ch 44, § 5; SL 2024, ch 1 (Ex. Ord. 24-1), § 35, eff. Apr. 8, 2024.

5-18A-50. Prohibited foreign contracts--Certification.

A purchasing agency may not execute a contract that is subject to § [5-18A-14](#), [5-18A-40](#), [5-18B-29](#), [5-18B-44](#), or [5-18D-17](#) with a prohibited entity. A purchasing agency may rely on a contractor's certification, made pursuant to § [5-18A-51](#), without conducting any further investigative research or inquiry.

Source: SL 2023, ch 18, § 2.

[5-18A-51. Prohibited foreign contracts--Notice--Certify on offer--Termination permitted.](#)

A request for proposal, an invitation to bid, or any other document issued by a purchasing agency, with the intent of soliciting responses for the potential award of a contract, must include notice of the certification requirement of this section.

Each bidder or offeror shall, at the time a bid or offer is submitted, or at the time a contract that is subject to § [5-18A-14](#), [5-18A-40](#), [5-18B-29](#), [5-18B-44](#), or [5-18D-17](#) is awarded or renewed, certify, in writing, that the bidder or offeror is not a prohibited entity.

If at any time thereafter, any party to a contract subject to § [5-18A-14](#), [5-18A-40](#), [5-18B-29](#), [5-18B-44](#), or [5-18D-17](#) becomes a prohibited entity, that party must provide written notification to the purchasing agency. Upon receiving the notification, the agency may terminate the contract.

Source: SL 2023, ch 18, § 3.

[5-18A-52. Prohibited foreign contracts--Grounds for waiver.](#)

The commissioner of the Bureau of Human Resources and Administration, or the commissioner's designee, or the governing board of a unit of local government, as applicable, may waive the prohibition set forth in § [5-18A-50](#) and the certification required in § [5-18A-51](#), except as prohibited by federal law, if:

- (1) Compliance is not possible;
- (2) The supplies or services subject to the contract are unique or would be otherwise unavailable; or
- (3) There is no other market participant.

Source: SL 2023, ch 18, § 4; SL 2024, ch 1 (Ex. Ord. 24-1), § 34, eff. Apr. 8, 2024.

[5-18A-53. Prohibited foreign contracts--False certification--Cause to suspend or debar.](#)

Any certification that falsely indicates a person is not a prohibited entity at the time of certification, and any failure to provide written notification to the purchasing agency that a person has become a prohibited entity as required by § [5-18A-51](#), is cause to suspend or debar a business under § [5-18D-12](#).

Source: SL 2023, ch 18, § 5.

CHAPTER [5-18B](#)
PROCUREMENT OF PUBLIC IMPROVEMENTS

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5-18B-1. Plans and specifications--Advertisement--Availability.

If a contract is for the construction of a public improvement, the required advertisement shall state where the plans and specifications may be examined. The plans and specifications for the construction of any public improvement shall be and remain on file in the office of the purchasing agency at all times from the beginning of the publication of the advertisement for bids until the completion of the public improvement. The purchasing agency shall, upon request, furnish at least one copy of the plans and specifications, without charge, to each contractor resident in South Dakota who intends, in good faith, to bid upon the public improvement. The copy shall be available at the date of the first publication of the advertisement for bids. The purchasing agency may require the return of the copy at the time of the opening of the bids.

Source: SL 2010, ch 31, § 40.

5-18B-2. Certified check or cashier's check for percentage of bid or bid bond required.

If the invitation for bids is for the construction of a public improvement, each bid shall contain a certified check or a cashier's check, for five percent of the amount of the bid. Such check shall be certified or issued by either a state or a national bank and payable to the purchasing agency or to an officer of the purchasing agency letting the contract and inviting bids. In lieu of a check, a bid may contain a bid bond for ten percent of the amount of the bid. Such bond to be issued by a surety authorized to do business in this state payable to the purchasing agency, as a guaranty that the bidder

will enter into a contract with the purchasing agency, its board or officers thereof, in accordance with the terms of the letting and bid in case the bidder be awarded the contract.

Source: SL 2010, ch 31, § 41.

5-18B-3. Check or bid bond requirement--Waiver.

Notwithstanding the provisions of § [5-18B-2](#), the requirement of a bid bond, certified or cashier's check, cash, or other security may be waived by the purchasing agency if the bid submitted does not exceed the limit established pursuant to § [5-18A-14](#) for a public improvement.

Source: SL 2010, ch 31, § 42; SL 2021, ch 33, § 1.

5-18B-4. Surety bond or insurance contract required in bid, in contract, or by law.

No purchasing agency may, directly or indirectly, require or direct a bidder on any public improvement contract that is about to be or has been competitively bid to obtain from a particular insurer or insurance producer any surety bond or contract of insurance required in the bid or contract or required by any law, ordinance, or rule. However, the surety insurer shall be an authorized insurer under Title 58. Nothing in this section prevents any purchasing agency from exercising the right to approve or reject a surety bond or contract of insurance as to its form or sufficiency.

Source: SL 2010, ch 31, § 43.

5-18B-5. Negotiations if lowest responsive and responsible bid exceeds final estimated project cost.

If the lowest responsive and responsible bid for a public improvement project exceeds the final estimated project cost, the Bureau of Human Resources and Administration, acting on behalf of the state, or any other purchasing agency may negotiate with that low bidder for the construction of a public improvement at the most advantageous price.

Source: SL 2010, ch 31, § 44; SL 2024, ch 1 (Ex. Ord. 24-1), § 34, eff. Apr. 8, 2024.

5-18B-6. Certification regarding labor provided by nonresident subcontractors.

Prior to execution of a public improvement contract, a successful bidder shall certify:

- (1) That no more than twenty percent of the cost of labor included in the contract is being provided by nonresident subcontractors; or
- (2) That more than twenty percent of the cost of labor included in the contract is being provided by nonresident subcontractors because resident contractors are not available and at competitive prices.

The bidder shall also provide any information requested by the purchasing agency to verify the certification.

Source: SL 2010, ch 31, § 45.

5-18B-7. Contractor's use tax liability.

If a purchasing agency is to supply tangible personal property to be used in performance of the contract and the personal property is taxable to the contractor under § [10-46-5](#), the specifications or notice to bidders shall state the purchase price or fair market value of the tangible personal property, whichever is the greater. The stated amount shall be the basis for determining the contractor's liability for tax.

Source: SL 2010, ch 31, § 46.

5-18B-8. Forfeited funds accrue to funds provided for construction.

Any funds forfeited by a bidder or surety shall accrue to the funds provided for construction of the public improvement.

Source: SL 2010, ch 31, § 47.

5-18B-9. Time limits--Return of checks--Return or destruction of bid bonds.

No bidder on a public improvement contract may be required, either in the invitation for bids or otherwise, to leave a certified check or cashier's check, or bid bond, posted for a longer period than allowed in § [5-18A-5](#) if the bid is not accepted. The check or bid bond of the successful bidder shall be returned upon the execution of the contract and surety hereafter provided for. The checks of all unsuccessful bidders shall be, by the purchasing agency, immediately returned to the respective makers thereof and the bid bonds of all unsuccessful bidders shall be, by the purchasing agency, immediately destroyed. No more than forty-five days may elapse between the opening of the bids and either the acceptance of the bid of the lowest responsible bidder or the rejection of all of the bids presented.

Source: SL 2010, ch 31, § 48; SL 2016, ch 39, § 3; SL 2019, ch 48, § 1.

5-18B-10. Plans and specifications prepared by architect or engineer.

If a contract is based upon plans and specifications prepared by an architect or engineer, the contract's terms and conditions shall comply with the provisions provided in the "AIA Document A201, General Conditions of the Contract for Construction," by the American Institute of Architects in effect on January 1, 2020, the "ConsensusDOCS 200 Standard Agreement and General Conditions Between Owner and Contractor," by ConsensusDOCS LLC in effect January 1, 2020, or the "Standard General Conditions of the Construction Contract," 1990 Edition, by the Engineer's Joint Contract Documents Committee, in effect January 1, 2020, except when in conflict with the laws of this state. However, the purchasing agency may modify or delete, on a contract by contract basis, any portion of the "AIA Document A201, General Conditions of the Contract for Construction," "ConsensusDOCS 200 Standard Agreement and General Conditions Between Owner and Contractor," or the "Standard General Conditions of the Construction Contract."

Source: SL 2010, ch 31, § 49; SL 2020, ch 23, § 1.

5-18B-11. Progress payments--Retention of funds from final payment--Interest.

The contract may permit progress payments, but an amount necessary to complete the improvement shall be retained from the final payment until the contract is executed in full and the public improvement completed to the satisfaction and acceptance of the purchasing agency. However, if the contractor has furnished the purchasing agency all required records and reports and a final inspection has been made, the purchasing agency shall pay to the contractor interest as set by the governing body at a rate of not less than the category E rate of interest as established by § [54-3-16](#) on the amounts retained and on the final payment due the contractor beginning thirty days after the work under the contract has been completed, as evidenced either by the completion date established by the architect's or engineer's letter of acceptance or by the use and occupancy of the public improvement. The interest shall continue until the date when payment is tendered to the contractor unless delay in payment has been the result of federal participation in the contract in which event interest may not begin until thirty days after payment by the federal authority involved. If a portion of a progress payment is retained, other than the final payment, the purchasing agency shall pay to the contractor interest as set by the purchasing agency at a rate of not less than the category E rate of interest as established by § [54-3-16](#) on the amount retained beginning thirty days after the contractor has furnished the purchasing agency with all required records and reports and a progress inspection.

Source: SL 2010, ch 31, § 50.

5-18B-12. Bond or deposit of securities in lieu of retention of sums due for work performed.

The purchasing agency may include in any contract for a public improvement provisions for a bond or the deposit of securities in lieu of sums retained from payments due a contractor for work performed pursuant to the terms of the contract. The contract document shall state the types of bond or securities to be accepted and the procedural requirements for the deposits.

Source: SL 2010, ch 31, § 51.

5-18B-13. Occupancy before completion and acceptance.

If a purchasing agency elects to use and occupy the public improvement before acceptance, the purchasing agency shall pay all amounts due under the contract except double the amount that the architect or engineer estimates to be necessary to complete the improvement in accordance with the plans and specifications or one percent of the contract price, or in any event not less than three hundred dollars. No interest may commence until thirty days after the work has been fully completed.

Source: SL 2010, ch 31, § 52.

5-18B-14. Project superintendent--Installment payments--Final payment.

The purchasing agency may appoint a competent superintendent who may be the architect or engineer furnishing the plans and specifications for the public improvement. The superintendent shall report to the purchasing agency or board every thirty days as to the progress and character of the work done by the contractor. Upon the reports of the superintendent, the purchasing agency shall make payments promptly to the contractor during the process of construction to the extent provided by the contract based on the value of the work done and materials furnished. The payments shall be divided into such installments as the board and the contractor may agree upon at the time of entering into the contract, and which shall be included in and be a part of the terms of the contract. No payment, however, constitutes an acceptance, in whole or in part, by the purchasing agency prior to making of the final payment and acceptance in full completion of the contract. Final payment of any sums due to the contractor shall be made within thirty days after the completion and acceptance of the public improvement by the purchasing agency.

Source: SL 2010, ch 31, § 53.

5-18B-15. Architect or engineer may not be contractor or construction manager on project exceeding one hundred thousand dollars--Exemption.

No person, firm, or corporation may act as architect or engineer and also as contractor or construction manager on any public improvement project if the amount to be expended exceeds one hundred thousand dollars. Any public improvement of an emergency nature that affects the public health and safety of the state and is funded through the use of an emergency appropriation or special appropriation, and any full-service firm that specializes in the design, fabrication, or installation of cultural or educational exhibits is exempt from this section.

Source: SL 2010, ch 31, § 54; SL 2017, ch 45, § 1.

5-18B-16. Unemployment compensation.

Each purchasing agency, on entering into a contract for a public improvement, shall provide in the contract that the contractor is required to pay the Department of Labor and Regulation of South Dakota all contributions and interest due under the provisions of chapter [61-5](#), on wages paid to individuals employed in performance of the contract.

Source: SL 2010, ch 31, § 55; SL 2011, ch 1 (Ex. Ord. [11-1](#)), § 33, eff. Apr. 12, 2011.

5-18B-17. Contractor's excise tax license.

No purchasing agency may award any contract for the construction of any public improvement unless the purchasing agency has verified with the Department of Revenue that the contractor has a contractor's excise tax license pursuant to chapter [10-46A](#) or [10-46B](#).

Source: SL 2010, ch 31, § 56; SL 2011, ch 1 (Ex. Ord. [11-1](#)), § 35, eff. Apr. 12, 2011.

5-18B-18. Contributions and interest due the Department of Labor and Regulation.

Before final payment may be made on any contract for public improvement, the purchasing agency awarding the contract shall require the contractor to furnish a certificate from the Department of Labor and Regulation that all contributions and interest due to the Department of Labor and Regulation in the performance of the contract have been paid.

Source: SL 2010, ch 31, § 57; SL 2011, ch 1 (Ex. Ord. [11-1](#)), § 33, eff. Apr. 12, 2011.

5-18B-19. Amendment or change order to existing contract.

Any amendment or change order to an existing contract for construction, reconstruction, or remodeling of a public improvement does not need to be bid if:

- (1) The contract contains unit prices for the same type or class of work;
- (2) The change or extra work is necessitated by circumstances related to soils, utilities, or unknown conditions directly affecting the performance of the work that were not reasonably foreseeable at the time the underlying contract was let and the change or extra work is necessary to the completion of the public improvement; or
- (3) The sum of the proposed amendment or change order plus the sum of all other prior unbid amendments or change orders, exclusive of change orders issued under subdivisions (1) and (2) of this section, does not exceed the following:
 - (a) For contracts not more than five hundred thousand dollars, the greater of twenty-five thousand dollars or fifteen percent of the base contract;
 - (b) For contracts exceeding five hundred thousand dollars but not more than two million five hundred thousand dollars, the greater of seventy-five thousand dollars or ten percent of the base contract; and
 - (c) For contracts exceeding two million five hundred thousand dollars, the greater of two hundred fifty thousand dollars or five percent of the base contract.

Source: SL 2010, ch 31, § 58.

5-18B-20. Design-build contracts.

A purchasing agency may enter into design-build contracts for public improvements, if the following conditions are met:

- (1) The purchasing agency shall, prior to issuing any design-build request for proposals, establish and publish procedures for the solicitation and award of design-build contracts. The Bureau of Human Resources and Administration shall establish the procedures for the state. The procedures shall include the following:
 - (a) The procedure to select or designate a performance criteria developer utilizing a qualification based process and the procedure to prepare performance criteria;
 - (b) The procedures for the preparation and contents of a design-build request for proposals;
 - (c) The procedure and standards to be used to qualify or pre-qualify design-builders;
 - (d) The procedures for preparing and submitting proposals;
 - (e) The procedures for evaluating proposals;
 - (f) The procedures for negotiations between the purchasing agency and those submitting proposals prior to the acceptance of a proposal. The procedures shall contain safeguards to preserve confidential information and proprietary information supplied by those submitting proposals, consistent with § [5-18B-34](#);
 - (g) The procedures for awarding and executing design-build contracts;

- (h) The procedures for awarding design-build contracts in the event of public emergencies as defined in § [5-18A-9](#); and
 - (i) The procedures for acting on formal protests relating to the solicitation or award of design-build contracts;
- (2) The purchasing agency shall, for each public improvement under this section, make a determination that it is in the best interest of the public to enter into a design-build contract to complete the public improvement. The determination to utilize design-build and the basis for the determination shall be recorded in the project file or the minutes of the meeting of the governing board of the purchasing agency. In making this determination, design-build projects shall meet one or more of the following criteria:
- (a) The purchasing agency requires a project design and construction time line that is faster than the traditional design/bid/build process would allow;
 - (b) The complexity of the project requires close coordination of design and construction expertise or an extreme amount of coordination;
 - (c) The purchasing agency requires early cost commitments; or
 - (d) The project can be defined at an early stage and the purchasing agency is able to specify all requirements; and
- (3) The purchasing agency shall follow the procedures of other laws governing public improvement construction contracts to the extent such laws are compatible with the use of design-build contracts.

Source: SL 2010, ch 31, § 59; SL 2024, ch 1 (Ex. Ord. 24-1), § 34, eff. Apr. 8, 2024.

5-18B-21. Design-builder to be authorized.

No design-builder may do business in this state unless authorized as either an architect, engineer, or general contractor.

Source: SL 2010, ch 31, § 60.

5-18B-22. Subletting of design services.

A design-builder may sublet responsibility for professional design services to any person licensed and registered to provide professional design services in this state. Nothing in this section limits or eliminates the responsibility or liability of any person registered pursuant to chapter [36-18A](#), on a design-build project to the purchasing agency or other third parties under existing law.

Source: SL 2010, ch 31, § 61.

5-18B-23. Subletting construction or other services.

A design-builder may sublet responsibility for construction or other services to persons registered, licensed, or otherwise qualified to provide those services in this state.

Source: SL 2010, ch 31, § 62.

5-18B-24. Contracts with unlicensed or unqualified design-builder permitted if services sublet to licensed or qualified person.

A design-builder may contract with the purchasing agency to provide professional services or construction services for which the design-builder is not licensed, registered, or qualified to perform, as long as the design-builder sublets all such services required under the design-build contract to a licensed, registered, or otherwise qualified person.

Source: SL 2010, ch 31, § 63.

5-18B-25. Request for proposals to contain performance criteria--Qualifications of developer.

Any request for proposals shall contain performance criteria developed by a performance criteria developer and approved by the purchasing agency. For projects not exempted under chapter [36-18A](#) from using a registered design professional, the performance criteria developer shall be a design professional registered under chapter [36-18A](#). For projects exempt under chapter [36-18A](#) from using a registered design professional, the performance criteria developer shall be hired on the basis of qualifications related to projects of similar scope.

Source: SL 2010, ch 31, § 64.

5-18B-26. Performance criteria developer and design builder to perform separate roles.

The performance criteria developer may not submit a proposal to enter into the design-build contract and the design-builder may not delegate or contract services under the design-build contract to the performance criteria developer.

Source: SL 2010, ch 31, § 65.

5-18B-27. Performance criteria developer to be purchasing agency employee or engaged in accordance with statutory procedures--Delegation.

The performance criteria developer shall be either an employee of the purchasing agency or shall be engaged in accordance with statutory procedures for contracting with professional services. With the approval of the purchasing agency, the developer may delegate or contract for the development of specific aspects of the design criteria to other consultants. The performance criteria developer may be retained at the purchasing agency's option through to the completion of the design-build contract.

Source: SL 2010, ch 31, § 66.

5-18B-28. Development of performance criteria.

The purchasing agency, in consultation with the performance criteria developer, shall determine the scope and level of detail required for the performance criteria. The performance criteria shall be detailed enough to permit a person to submit a proposal in accordance with the design-build request for proposals, given the nature of the public project and the level of design to be provided in the proposal.

Source: SL 2010, ch 31, § 67.

5-18B-29. Elements of design-build request for proposals--Time for mailing to pre-qualified design-builders.

After a minimum of three design-builders have been pre-qualified in accordance with § [5-18B-31](#), a design-build request for proposals shall be mailed to each pre-qualified design-builder. The minimum number of pre-qualified design-builders is not required for any improvement project that is complex in nature, requires close coordination of design and construction expertise, and does not require significant structural changes, additions, reconstruction, or new construction. The design-build request for proposals shall be prepared for each design-build contract containing the following elements:

- (1) The identity of the purchasing agency which will award the design-build contract and the identity of the performance criteria developer;
- (2) The procedures to be followed for submitting proposals, the criteria for evaluation of a proposal and its relative weight, and the procedures for making awards;
- (3) The proposed terms and conditions for the design-build contract;
- (4) The performance criteria, which shall include the following:
 - (a) The owners preliminary program of space needs and special requirements;
 - (b) Performance standards for materials and equipment; and
 - (c) Minimum system requirements and efficiencies;
- (5) A description of the drawings, specifications, or other submittals to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or submittals that is acceptable;
- (6) A schedule for planned commencement and completion of the design-build contract;
- (7) Budget limits for the design-build contract;
- (8) Affirmative action, disadvantaged business, or set-aside goals or requirements for the design-build contract, if any;
- (9) Requirements for performance and payment bonds, and insurance. These requirements shall meet the requirements of § [5-21-1](#);
- (10) The compensation, if any, to be given to design-builders submitting proposals who are not awarded the project;
- (11) Whether project financing is in place;
- (12) A schedule for payments to the design-builder;
- (13) Site identification and geotechnical information if the site is owner-provided;
- (14) Location of existing utilities and their capacity if the site is owner-provided; and
- (15) Warranty and guarantee requirements.

Source: SL 2010, ch 31, § 68.

5-18B-30. Design-build request not to be detailed--Drawings--Specifications--Standards.

No design-build request for proposals may include detailed designs or detailed drawings prepared by the criteria developer. The request may, however, include drawings of existing conditions and any preliminary conceptual sketches necessary to illustrate the information required by subdivision 5-18B-29(4). Each conceptual drawing shall contain the minimum information necessary to convey the requirements. No design-build request for proposals may include detailed construction specifications. Any design and construction standards in the request for proposals shall be performance standards only.

Source: SL 2010, ch 31, § 69.

5-18B-31. Pre-qualification of design-builders--Elements of request for qualifications.

A purchasing agency shall pre-qualify design-builders for design-build contracts by advertising its request for qualifications in accordance with § [5-18A-14](#). A request for qualifications shall contain the following elements:

- (1) The identity of the purchasing agency;
- (2) A description of the proposed public improvement;
- (3) Budget limits for the proposed public improvement;
- (4) The requirements the design-builder will be required to have; and
- (5) The criteria and their relative weight for prequalification.

Source: SL 2010, ch 31, § 70.

5-18B-32. Deposit or bond submitted with proposal--Forfeiture.

Any proposal, submitted pursuant to this section, shall be accompanied by a deposit or bond meeting the requirements of § [5-18B-2](#). The deposit or security may be forfeited if the proposal is accepted but the design-builder fails to execute the design-build contract.

Source: SL 2010, ch 31, § 71.

5-18B-33. Proposals to be sealed--Contents.

Any proposal shall be sealed and may not be opened until expiration of the time established for making proposals as set forth in the design-build request for proposals. To the extent required by the request for proposals, any proposal shall identify each person to whom the design-builder proposes to sublet obligations under the design-build contract. At a minimum, any proposal shall identify each person to whom the design-builder proposes to sublet any design obligations or general construction obligations. Any person so identified may not be replaced without the approval of the purchasing agency. Any proposal shall establish a cost of the design-build contract that may not be exceeded if the proposal is accepted without change. The maximum cost in the proposal may be converted to fixed prices by negotiated agreement between the purchasing agency and the selected design-builder.

Source: SL 2010, ch 31, § 72.

5-18B-34. Confidentiality of proposals.

Until a proposal is accepted, the drawings, specifications, and other information in the proposal remain the property of the person making the proposal. The purchasing agency shall make reasonable efforts to maintain the secrecy and confidentiality of any proposal and all information contained in any proposal and may not disclose any proposal or the information contained in a proposal to the design-builder's competitors. The purchasing agency may not disclose, except as may be permitted pursuant to chapter [1-27](#), confidential and proprietary information contained in any proposal to the public until such time as the purchasing agency takes final action to accept a proposal.

Source: SL 2010, ch 31, § 73.

5-18B-35. Review and opinion of performance criteria developer--Submission to governing body.

Once received, any proposal shall be submitted to the performance criteria developer for review. Clarifications may be required to ensure conformance of any proposal with the performance criteria. In seeking clarifications, the performance criteria developer may not reveal any aspect of any design-builder's proposal to any other design-builder. No proposal may be considered until the performance criteria developer issues a written opinion that the proposal is consistent with the performance criteria. Once the performance criteria developer has issued such an opinion, the proposal shall be submitted to the governing body of the purchasing agency for review and evaluation. No proposal or design-build contract may be accepted unless the purchasing agency determines there was adequate competition for such contract.

Source: SL 2010, ch 31, § 74.

5-18B-36. Acceptance of a proposal--Evaluation criteria scores.

After obtaining and evaluating proposals according to the criteria and procedures set forth in the design-build request for proposals, a purchasing agency may accept the proposal it considers most advantageous to the purchasing agency. Acceptance of a proposal shall be by written notice to the design-builder which submitted the accepted proposal. At the same time notice of acceptance is delivered, the purchasing agency shall also inform, in writing, the other design-builders that their proposals were not accepted. Unless all proposals are rejected, a detailed breakdown of the evaluation criteria scores for each proposal received shall be made available to the public after signature execution of the design-build contract. The contract for development of performance criteria shall terminate if a contract is awarded to the design-builder.

Source: SL 2010, ch 31, § 75.

5-18B-37. Rejection of design-build proposals--Solicitation of new proposals.

The purchasing agency may reject any and all design-build proposals. The purchasing agency may solicit new proposals using the same or different performance criteria, budget constraints, or qualifications.

Source: SL 2010, ch 31, § 76.

5-18B-38. Withdrawal of design-build proposal.

Any design-build proposal may be withdrawn by the proposer for any reason at any time prior to acceptance.

Source: SL 2010, ch 31, § 77.

5-18B-39. Construction manager engagement.

Any purchasing agency may engage a construction manager if planning, designing, or constructing a public improvement, or if improving, altering, or repairing a public improvement. However, no purchasing agency is required to engage a construction manager.

Source: SL 2010, ch 31, § 78.

5-18B-40. Services of construction manager.

Construction management services provided in the planning and design phases of a public improvement project may include:

- (1) Services provided in the planning and design phases of a public improvement project including the following:
 - (a) Consulting with, advising, assisting, and making recommendations to the public corporation and architect or engineer on all aspects of planning for project construction;
 - (b) Reviewing all plans and specifications as they are being developed and making recommendations with respect to construction feasibility, availability of material and labor, time requirements for procurement and construction, and projected costs;
 - (c) Making, reviewing, and refining budget estimates based on the public corporation's program and other available information;
 - (d) Making recommendations to the public corporation and the architect or engineer regarding the division of work in the plans and specifications to facilitate bidding and awarding of contracts;
 - (e) Soliciting the interest of capable contractors and assisting the public corporation in taking bids on the project;
 - (f) Analyzing the bids received and awarding contracts; and
 - (g) Preparing and monitoring a progress schedule during the design phase of the project and preparation of a proposed construction schedule; and
- (2) Services provided in the construction phase of the public improvement project including the following:
 - (a) Maintaining competent supervisory staff to coordinate and provide general direction of the work and progress of the contractors on the project;
 - (b) Observing the work as it is being performed for general conformance with working drawings and specifications;
 - (c) Establishing procedures for coordinating among the public corporation, architect or engineer, contractors, and construction manager with respect to all aspects of the project and implementing labor policy in conformance with the requirements of the public corporation's policy and making recommendations;
 - (d) Reviewing and processing all applications for payment by involved contractors and material suppliers in accordance with the terms of the contract;
 - (e) Making recommendations for and processing requests for changes in the work and maintaining records of change orders;
 - (f) Scheduling and conducting job meetings to ensure orderly progress of the work;
 - (g) Developing and monitoring a project progress schedule, coordinating and expediting the work of all contractors, and providing periodic status reports to the owner and the architect and engineer; and
 - (h) Establishing and maintaining a cost control system and conducting meetings to review costs.

Source: SL 2010, ch 31, § 79.

5-18B-41. Manager-agent.

No construction manager-agent may contract directly with any contractor or supplier for the project.

Source: SL 2010, ch 31, § 80.

5-18B-42. Manager-at-risk.

The construction manager-at-risk shall directly contract with subcontractors and suppliers for the project.

Source: SL 2010, ch 31, § 81.

5-18B-43. Criteria for construction manager engagement.

Unless the construction manager-agent is an employee of the purchasing agency and provides the construction management services pursuant to such employment, no purchasing agency may engage the services of a construction manager except as follows:

- (1) The purchasing agency shall first make the following determinations:
 - (a) That it is in the public interest to utilize the services of a construction manager; and
 - (b) That the construction management services would not unreasonably duplicate and would be in addition to the normal scope of separate architect or engineer contracts;
- (2) Notwithstanding any other provisions of this chapter, no construction manager may contract to perform actual construction on the project, except as follows:

- (a) The construction manager may perform general conditions of the construction contract as required by the owner;
 - (b) The construction manager is a construction manager-at-risk and was solicited through a qualification-based request for proposals method of procurement as provided in § [5-18B-44](#) and the construction manager-at-risk, for any actual construction contracted by the construction manager-at-risk to be performed on the project, provides payment and performance bonds and competitively bids the work as required by any statute governing bidding and bonding for public improvement projects;
 - (c) Pursuant to a contract awarded on an emergency basis, pursuant to § [5-18A-9](#); or
 - (d) Pursuant to a contract negotiated pursuant to subdivision 5-18A-5(9); and
- (3) No person, firm, or corporation may act as a construction manager-agent and also as a contractor on any public improvement, except as follows:
- (a) Pursuant to a contract awarded on an emergency basis, pursuant to § [5-18A-9](#); or
 - (b) Pursuant to a contract negotiated pursuant to subdivision 5-18A-5(9).

Source: SL 2010, ch 31, § 82.

5-18B-44. Criteria for construction manager-at-risk engagement.

Each qualification based request for proposals required by subsection 5-18B-43(2)(b) to enter into a construction manager-at-risk services contract where the construction manager-at-risk intends to actually perform construction on the project, shall meet the following criteria:

- (1) The purchasing agency shall, prior to issuing any request for proposals to enter in a construction management services contract, establish and publish procedures for the solicitation and award of such contracts, which procedures shall include the following:
 - (a) The procedures and standards to be used to qualify construction managers;
 - (b) The procedures for preparing and submitting proposals;
 - (c) The procedures for evaluating proposals;
 - (d) The procedures for negotiations between the purchasing agency and those submitting proposals prior to the acceptance of a proposal. The procedures shall contain safeguards to preserve the confidential information and proprietary information supplied by those submitting proposals; and
 - (e) The procedures for awarding construction management services contracts;
- (2) A request for proposals to enter into a construction management services contract shall contain the following elements:
 - (a) The identity of the purchasing agency;
 - (b) A description of the proposed public improvement;
 - (c) A description of the qualifications the construction manager will be required to have;
 - (d) The procedures to be followed for submitting proposals, the criteria for evaluation of a proposal and its relative weight, and procedures for making awards;
 - (e) The proposed terms and conditions for the construction management services contract, including a description of the scope of services to be provided;
- (3) Notice of any request for proposals shall be advertised in accordance with the provisions of § [5-18A-14](#);
- (4) After obtaining and evaluating proposals, a purchasing agency may accept the proposal it considers the most advantageous to the purchasing agency. Acceptance of a proposal shall be by written notice to the construction manager submitting the accepted proposal, and by simultaneously notifying in writing the other construction managers that their proposals were not accepted; and
- (5) The purchasing agency shall reserve the right to reject any or all proposals submitted.

Source: SL 2010, ch 31, § 83.

5-18B-45. Active involvement of licensed design professional required.

Each contract for a public improvement shall have a licensed design professional actively involved in the project from the start of design through final completion as required by chapter [36-18A](#).

Source: SL 2010, ch 31, § 84.

5-18B-46. Improvement projects that rely on federal funding from FAA.

If an invitation for a bid for airport improvements states that the requirement the bid be awarded within thirty days has been waived, the provisions of subdivision 5-18A-5(7) and § [5-18B-9](#) do not apply. If the bid award time exceeds thirty days, any bid may be withdrawn by the bidder without jeopardizing the bid bond. This section only applies to any improvement project that relies on federal funding from the federal aviation administration.

Source: SL 2015, ch 51, § 1.