

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

291W0171

## HOUSE BILL NO. 1139

Introduced by: Representatives Campbell and Hawks and Senators Tieszen, Ewing, Heinert,  
and Sutton

1 FOR AN ACT ENTITLED, An Act to revise certain procedures for competitive sealed bids by  
2 public purchasing agencies.

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

4 Section 1. That § 5-18A-5 be amended to read as follows:

5 5-18A-5. The following procedures apply to the use of competitive sealed bids:

- 6 (1) Public notice of the invitation for bids shall be given pursuant to § 5-18A-14;
- 7 (2) The invitation for bids shall include a purchase description, and all contractual terms  
8 and conditions applicable to the procurement;
- 9 (3) A bid may be submitted either manually or electronically in a manner authorized by  
10 the purchasing agency;
- 11 (4) Each bid shall be opened publicly in the presence of one or more witnesses at the  
12 time and place designated in the invitation for bids. The amount of each bid, and such  
13 other relevant information as may be specified, together with the name of each bidder  
14 shall be recorded. Except as otherwise provided by law, the record and each bid shall  
15 be open to public inspection;



1       (5) Each bid shall be unconditionally accepted without alteration or correction, except  
2       as authorized in this section. Each bid shall be evaluated based on the requirements  
3       set forth in the invitation for bids, which may include criteria to determine  
4       acceptability such as inspection, testing, quality, workmanship, delivery, and  
5       suitability for a particular purpose. Those criteria that will affect the bid price and be  
6       considered in evaluation for award shall be objectively measurable, such as  
7       discounts, transportation costs, and total or life cycle costs. The invitation for bids  
8       shall set forth the evaluation criteria to be used. No criteria may be used in bid  
9       evaluation that are not set forth in the invitation for bids;

10       (6) Any bid may be withdrawn by letter or by electronic communications or in person  
11       before the time specified in the advertisement therefor. The purchasing agency may  
12       allow modification of bids by mail, facsimile, or electronic notice received at the  
13       place designated in the invitation to bid not later than the time set for the opening of  
14       bids. A modification may not reveal the bid price but shall provide the addition or  
15       subtraction or the modification so that the final prices or terms will not be known to  
16       the purchasing agency until the sealed bid is opened. A modification may not be  
17       withdrawn after the time set for the opening of bids. Each modification shall be  
18       confirmed in writing by the successful bidder before award of the contract. No bid  
19       made may be changed or altered by telephone. After bid opening, no withdrawal of  
20       a bid or change in bid prices or other provisions of bids prejudicial to the interest of  
21       the purchasing agency or fair competition is permitted. The purchasing agency may  
22       waive technical irregularities in the bid or proposal of the low bidder or offeror which  
23       irregularities do not alter the price, quality, or quantity of the services, or items of  
24       tangible personal property bid or offered. Any decision to permit the correction or

1 withdrawal of a bid, or to cancel an award or a contract based on a bid mistake, shall  
2 be supported by a written determination made by the purchasing agency, and  
3 included in the bid file;

4 (7) ~~The~~ Unless otherwise stated in the invitation for the bids, the contract shall be  
5 awarded within thirty days of the bid opening by written notice to the lowest  
6 responsible and responsive bidder whose bid meets the requirements and criteria set  
7 forth in the invitation for bids. The purchasing agency may reject any and all bids and  
8 readvertise for bids if none of the bids are satisfactory, or if the purchasing agency  
9 believes an agreement has been entered into by the bidders to prevent competition.  
10 If the low bidder is not responsible or the bid is not made in accordance with the  
11 requirements of this chapter and chapters 5-18B, 5-18C, and 5-18D or the low bid is  
12 withdrawn as authorized by this section, the bid of the next lowest responsible and  
13 responsive bidder may be accepted;

14 (8) If it is considered impractical to initially prepare a purchase description to support an  
15 award based on price, an invitation for bids may be issued requesting the submission  
16 of unpriced offers to be followed by an invitation for bids limited to those bidders  
17 whose offers have been qualified under the criteria set forth in the first solicitation;

18 (9) If, after advertising for bids, no firm bids are received, the purchasing agency may  
19 negotiate a contract for the purchase of the supplies, services, or public improvement  
20 projects at the most advantageous price, if the specifications of the original bid are  
21 met;

22 (10) If two or more competitive sealed bids submitted are identical in price and product  
23 quality, the bids are the low bid, and no resident bidder preference is applicable, the  
24 purchasing agency may:

- 1 (a) Award the bid by lottery to one of the identical low bidders; or
- 2 (b) Reject all the bids and resolicit bids for the required supplies, services, or
- 3 public improvement.