

BIDDING REQUIREMENTS

Compliance with the bid laws is required, unless exempt by law, when a purchase for supplies or services of \$50,000 or more is anticipated, or if the contract is for the construction of a public improvement in excess of \$100,000.

Definitions:

- “Services” refers to the 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;
- “Supplies” refers to any property, including equipment, materials, and printing;
- “Public Improvement” refers to the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any 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 School District, including any local improvement for which a special assessment is to be levied.

The District may enter into contracts with vendors selected by a purchasing cooperative, of which the District is a member, if the intergovernmental purchasing cooperative is utilizing a procurement process authorized by South Dakota Law.

Competitive Sealed Bids: Contracts shall be awarded by utilizing the competitive sealed bid process except as otherwise provided in law (i.e., competitive sealed proposals, sole source procurements, emergency procurements, and procurements exempt from the bid process). The procedures for using competitive sealed bids are set forth in SDCL 5-18A-5.

Competitive Sealed Proposals: A contract may be entered into by competitive sealed proposals if the Board determines in writing that the use of the competitive sealed bids is either not practicable or not advantageous. The procedures for using competitive sealed proposals are set forth in SDCL 5-18A-7.

Advertising for Bids or Proposals: The District 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 District, and the second publication may be in any legal newspaper of the state chosen by the Board. 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 Board shall reserve the right to reject any or all bids or proposals.

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

Contracts Exempt from Bidding:

1. Any contract for the purchase of supplies from the United States or its agencies or any contract issued by the General Services Administration;
2. Any purchase of supplies or services, other than professional services, by the District 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;
3. Any equipment repair contract;

4. 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;
5. Any property or liability insurance or performance bonds;
6. Any purchase of surplus property from another purchasing agency;
7. Any animals purchased;
8. Any purchase by the District of perishable food, raw materials used in construction or manufacture of products for resale, or for transportation of students;
9. 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;
10. 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;
11. A contract may be awarded for supplies or services without competition if the Board 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, based on either the uniqueness of the supplies or services or the sole availability at the location required;
12. 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. The basis for the emergency and for the selection of the particular contractor will be in writing.

Legal References:

SD DLA (Department of Legislative Audit - Bid Booklet - Local government guide for acquisitions, disposals & exchanges)
SDCL 1-33B-9 (Contracts not subject to Chap 5-18A)
SDCL 13-16-6.1 (Bidders agreement to state rate and schedule)
SDCL 13-20 (School district purchases and contracts)
SDCL 5-18A-5 (Procedures for competitive sealed bids)
SDCL 5-18A-7 (Procedures for competitive sealed proposals)
SDCL 5-18A-8 (Unique supplies or services)
SDCL 5-18A-9 (Emergency procurement)
SDCL 5-18A-11 (Purchases of supplies and services under fifty thousand dollars)
SDCL 5-18A-14 (Public improvement contracts - Supplies and services)
SDCL 5-18A-15 (Time for entering into contract)
SDCL 5-18A-22 (Exempt procurements)
SDCL 5-18A-37 (Cooperation and agreements with other state and federal purchasing agencies)
SDCL 5-18B (Procurement of Public Improvements)
SDCL 5-18C (Procurement by Local Government Units)
SDCL 5-18D (Procurement by State Agencies)

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