

AN ACT

ENTITLED, An Act to revise certain design-build provisions.

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

Section 1. That § 5-18-1 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"Request for qualifications," the document or publication whereby a public corporation solicits interested design-builders to prequalify for a design-build contract.

Section 2. That § 5-18-31 be amended to read as follows:

5-18-31. Any request for proposals shall contain performance criteria developed by a performance criteria developer and approved by the public corporation. 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 not 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.

Section 3. That § 5-18-35 be amended to read as follows:

5-18-35. After a minimum of three design-builders have been prequalified in accordance with § 5-18-37, a request for proposals shall be mailed to each prequalified design-builder. The minimum number of prequalified 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 request for proposals shall be prepared for each design-build contract containing, at a minimum, the following elements:

- (1) The identity of the public corporation 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.

Section 4. That § 5-18-36 be amended to read as follows:

5-18-36. No 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 5-18-35(4). Each conceptual drawing shall contain the minimum information necessary to convey the requirements. No request for proposals may include detailed construction specifications. Any design and construction standards in the request for proposals shall be performance standards only.

Section 5. That § 5-18-37 be amended to read as follows:

5-18-37. A public corporation shall prequalify design-builders for design-build contracts by advertising its request for qualifications in accordance with § 5-18-3. A request for qualifications shall contain the following elements:

- (1) The identity of the public corporation;
- (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.

Section 6. That § 5-18-42 be amended to read as follows:

5-18-42. After obtaining and evaluating proposals according to the criteria and procedures set forth in the request for proposals, a public corporation may accept the proposal it considers most advantageous to the public corporation. 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 public corporation 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 when a contract is awarded to the design-builder.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1118

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1118

File No. _____

Chapter No. _____

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Received at this Executive Office
this ____ day of _____ ,

20__ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State