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|  | ABERDEEN SCHOOL DISTRICT | NEPN Code: FEG |
| | POLICIES AND REGULATIONS | |

CONSTRUCTION CONTRACTS BIDDING AND AWARD

Time for Preparation of Bids

Time periods for bidding are in accordance with state law. If the size and complexity of a project are such that additional time shall be required, this recommendation shall be made to the Superintendent.

Advertisements and Solicitations

All bids shall be advertised through the Finance Office. This district will advertise in the newspaper officially recognized at the annual School Board meeting or other newspapers of general circulation in the area as the School Board may designate. All contractors who have indicated an interest in school district work shall receive notices of bid openings on projects. Additional notifications shall be given in appropriate publications as they may be available.

Procedures for Receiving Bids

The School Board establishes the following procedure for the receiving of bids:

1. The School Board shall designate the time and place for receiving bids.
2. The bid opening will be designated at a specific time and location open to the public in the presence of two of the following School District employees:
 - A. The Superintendent or designee
 - B. The Finance Director or designee(s)
 - C. The Operations Director or designee(s)

Withdrawal and Modification of Bids

Any bid may be withdrawn by letter, electronic communications or in person, before the time specified in the advertisement. Any bid may be modified by mail or electronic communication, provided such notice is received no later than the time set for the opening of bids. The electronic communication cannot reveal the bid price but only the addition or subtraction of the bid price. An electronic communication may not be withdrawn after the opening of the bid and all electronic communications must be confirmed in writing before the awarding of the contract.

Awarding Contracts

If any of the proposals received shall be reasonable and satisfactory, the School Board shall award the contract to the lowest responsible bidder, but in case all the proposals shall be rejected, the School Board, before contracting for the construction of a public improvement, shall advertise anew in the same manner as before until a reasonable and satisfactory bid is submitted.

Bid Bonds

If the invitation for bids is for the construction of a public improvement that involves the expenditure of \$100,000 or more, or for the furnishing of any material or labor therefore, each bid shall contain a certified check or a cashier's check for five percent (5%) of the amount of the bid. The check shall be certified or issued by either a state or a national bank and payable to the District. In lieu of a check, a bid may contain a bid bond for ten percent (10%) of the amount of the bid. The bond must be issued by a surety authorized to do business in South Dakota payable to the District, as a guaranty that the bidder will enter into a contract with the District.

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 longer than 30 days after the bid opening 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. The checks of all unsuccessful bidders shall be immediately returned by the District to the respective bidders and the bid bonds of all unsuccessful bidders shall be immediately destroyed by the District. 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.

In the procurement of supplies or services, the Board 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 District. No offeror or bidder may be required to leave the bond or security posted for longer than 30 days after the bid opening 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.

The requirement of a bid bond, certified or cashier's check, cash, or other security may be waived by the District if the bid submitted does not exceed \$100,000 or in case of an emergency procurement as authorized by law.

Performance and Payment Bonds

When any contract is entered into for the construction of a public improvement or the furnishing of any material or labor for the improvement, the contractor must furnish a performance bond in an amount equal to the contract price. This bond guarantees the faithful performance and the payment for labor and materials by the contractor.

If the contract includes total cost bidding, the District may require a performance bond for the cost of repairs and guaranteed repurchase cost.

The requirement of a performance bond may be waived by the Board if the bid submitted does not exceed \$100,000. The requirement of a performance bond may also be waived by the Board in the case of an emergency procurement authorized by law.

The Board may require performance bonds for purchases of supplies or services.

Contracts

Contract forms shall be prepared by the administrative staff in cooperation with an architect, engineer, and/or attorney. Such forms shall be designed in accordance with the state law as to format, terminology and methods of execution.

Contracts - General Conditions

When based upon plans and specifications prepared by an architect or engineer, the contract shall contain no general provisions at variance with the general conditions of the latest edition of the standard form of the American Institute of Architects, except when in conflict with the laws of this state.

Contracts - Signing of Documents

All contracts shall be made and set forth in writing and shall be signed by the Superintendent and Finance Director or by such other persons authorized to do so by the School Board in accordance with statutes regulating the signing of contracts.

Contracts with Architect

A separate contract shall be signed for each project with the architect selected by the School Board. The contract shall include statements outlining specific district requirements and procedures which must be followed by the architect.

Change Orders - Justification

The school district may make changes in the scope of the work required to be performed by the contractor by making additions or omissions without invalidating the contract, without relieving or releasing the contractor from any obligations under the contract or any guarantee given pursuant to the contract provisions, without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of the bonds. All such work shall be executed under the items of the original contract unless expressly provided otherwise.

If applicable unit prices are not contained in the agreement, the architect or owner shall, before ordering the contractor to proceed with desired changes, request an itemized proposal covering the work involved in the change after which the procedure shall be as follows:

1. If the proposal is acceptable, the architect shall prepare the change order for acceptance by the contractor.
2. Each change order shall include in its final form:
 - A. A detailed description of the change in the work
 - B. The contractor's proposal (if any) or a conformed copy
 - C. A definite statement as to the resulting change in the contract price and/or time
 - D. The statement that all work involved in the change shall be performed in accordance with contract requirements except as modified by the change order
3. Change orders to an existing construction contract need not be bid if one of two circumstances exist: the contract contains unit prices for the same type or class of work; or the change or extra work is necessitated by circumstances not reasonably foreseeable at the time the underlying contract was let and the change or extra work is necessary to the completion of the project. All other contracts are subject to statutory bidding requirements.
4. Change orders exceeding \$10,000 need School Board approval.
5. Change orders less than \$10,000 will be reported to the School Board at the next regular meeting immediately following receipt of the change order.

Periodic Payments to Contractors

Contracts with contractors may permit progress payments, but if so, shall provide for retention of sums as prescribed by law until the contract is fully completed and accepted by date established by the School Board or by use and occupancy.

Lien Waiver from Subcontractors

Before making payments to contractors who have furnished skill, labor, materials, machinery, or supplies, services, or equipment, in connection with the carrying on of any work of construction, alteration, or repair of any public improvement work of the School District, the officers of the district may require that the contractor provide lien waivers, waiving any and all liens permitted by SDCL 5-22 or by other provision of law, signed by a subcontractor or supplier of skill, labor, materials, machinery, or supplies, services, or equipment, in connection with the project for which the contractor is seeking payment. A copy of this policy may be incorporated into all construction or repair contracts of the District which are subject to the requirements for advertised bidding, and into other contracts, in the discretion of the officers of the District.

LEGAL REFERENCES:

SD DLA Department of Legislative Audit--Bid Booklet--Local Government Guide for Acquisitions, Disposals & Exchanges.

SDCL 5-18A Public Agency Procurement--General Provisions

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

SDCL 5-18A-9 Emergency procurement.

SDCL 5-18A-14 Public Improvement Contracts--Supplies and Services.

SDCL 5-18A-35 Bond or Approved Security.

SDCL 5-18A-36 Performance and Payment Bond or Approved Security.

SDCL 5-18B Procurement of Public Improvements

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

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

SDCL 5-18B-3 Waiver of check or bid bond requirement.

SDCL 5-18B-9 Return of certified check, cashier's check, or bid bond.

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

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

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

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

SDCL 5-21-1 Surety Bond Required - Obligations of Prompt Payment of Laborers and Material Men

SDCL 5-21-1.1 Waiver of Performance Security Requirement on Contracts less than Certain Amount

SDCL 5-21-1.3 Waiver of Performance Security Requirement for Emergency Procurement.

SDCL 5-21-2 Public Corporations, Civil Liability for Failure to Require Bonds for Protection of Laborers and Material Men

SDCL 5-21-4 Notice of Surety Bonds to Secretary of Revenue - Termination of Surety, Liability for Use and Excise Tax

SDCL 5-21-5 Laborers and Material Men Rights to Intervene in Action Against Public Contractor -- Prorata Distribution If Surety Liability Insufficient

SDCL 5-22 - Liens Relating to Public Improvement Contracts

SDCL 9-42-12 Approval and Adoption of Work Required Before Payment - Progress Payments - Interest on Delayed Payments

SDCL 9-42-13 Payment Due on Occupancy of Improvement Before Completion

SDCL 13-8-39 Management of Schools by Board - General Powers

SDCL 13-10-2 General Power of School Boards to Employ Personnel

SDCL 13-20-1 Board approval required for contracts

SDCL 13-20-3 Contracts let in accordance with public agency procurement law.

SDCL 13-20-4 Emergency maintenance needs corrected in accordance with public agency procurement law.

SDCL 13-20-5 Purchases from another school district without advertising for bids.

SDCL 13-20-6 Purchase of Copyrighted Material Without Advertising for Bids

SDCL 13-20-7 Deposit and Performance Bond Required of Supply and Equipment Bidders - Right to Reject Bids

SDCL 13-20-7.1 Deposit and performance bond by school improvement bidders--Rejection of bids.

SDCL 13-20 School District Purchases and Contracts

SDCL 13-24-9 School board power to erect, acquire, equip and dispose of school and accessory buildings--Dormitories for postsecondary students prohibited.

Attorney General Opinion # 72-77 Public Contracts, Competitive Bidding, Opening of Bids.

Attorney General Opinion # 86-01 Total Cost Bidding

ABERDEEN SCHOOL DISTRICT POLICY REFERENCES:

Aberdeen School District Policy DJ Purchasing Procedures

Aberdeen School District Policy DJE Bidding Procedures

APPROVED: December 11, 2000

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