

3003 Public Bidding

Applicability of this policy. Construction and contracts undertaken with federal funds, whether those funds are derived directly from the federal government (e.g. award of a federal grant) or are derived by pass-through awards from the South Dakota Department of Education (e.g. special education funds, school lunch funds, Title I funds) are subject to the Policy 3003.1 on Construction with Federal Funds. Procurement of supplies is covered by Policy 3004.

This policy applies to all other purchases and contracts made by Teachwell for public improvements.

When Formal Bidding Required. Teachwell will use the bidding process in this policy when the public improvement involves the expenditure of \$100,000 or more.

Advertising for Bids. The director or designee will arrange to advertise the invitation for bids in the legal newspaper designated at the annual meeting. The advertisement must appear at least twice, and Teachwell will accept submissions until at least ten days have passed since the first appearance. Nothing in this policy shall prevent the director or designee from advertising in additional media outlets or for a longer period of time.

Bid Invitation. The invitation for bids must include:

- a description of the work to be performed, including objectively measurable criteria which will affect the bid price. The description may also include criteria to determine acceptability of the work such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.
- all contractual terms and conditions applicable to the procurement;
- deadline for bid withdrawals;
- when and where the bids will be opened;
- If the bid is for supplies, the invitation must also include the length of time between bid opening and the award of the bid (which will not exceed 45 days); and
- An assertion of Teachwell's right to reject any or all bids.

Bid Documents. The bid documents will identify:

- the time and place of the opening of the bids;
- the time between bid opening and when the bid will be awarded;

- where potential bidders may examine the plans and specifications;

Bid Modification. Bidders may withdraw or modify bids by letter, electronically, or in person prior to the time specified in the bid advertisement. Bids cannot be modified or withdrawn by telephone. Teachwell will support any decision to allow bid modifications or withdrawals with a written determination explaining the decision which will be included in the bid file.

Bid Opening. Teachwell will open bids publicly with at least one witness at the time and place stated in the bid advertisement. Teachwell will record the name of each bidder and amount of each bid. Teachwell may waive technical irregularities in the low bid if the irregularities do not alter the price, quality, or quantity of the services.

Bid Award. Teachwell will award the contract to the lowest responsible bidder within 30 days of opening for construction projects and 45 days for supplies or services. Teachwell will award the bid to the lowest responsible bidder in accordance with state law, and may give preference to a resident bidder in accordance with state and federal law. Teachwell may reject any and all bids if none are satisfactory, but will document the reasons for the rejection.

Bid Bond Requirements. Each bid must include a certified or cashier's check for five percent of the bid, made payable to Teachwell. Alternatively, a bid may include a bid bond for ten percent of the bid amount issued by a surety authorized to do business in South Dakota. Teachwell can waive this requirement if the bid does not exceed \$50,000. Teachwell will return all checks and destroy all bonds of unsuccessful bidders after bid opening.

Performance Bond Required. After awarding a contract, the successful bidder will furnish a performance bond for not less than the amount of the contract price. Teachwell can waive this requirement if the improvement does not require the formal bidding process.

No Bids Received. If Teachwell receives no firm bids, it may negotiate a contract at the most advantageous price. Teachwell may negotiate such a contract with a construction manager pursuant to state law.

Emergency Procurement. Teachwell may bypass the procedures in this policy if there is a threat to public health, welfare, or safety or for other urgent and compelling reasons. For every contract awarded under

emergency conditions and for a period of five years, Teachwell will maintain documentation of:

- the contractor's name;
- the amount of and type of contract; and
- a listing of service for each contract made under these conditions.

Local Preference. Teachwell may, in accordance with South Dakota law, give preference to South Dakota bidders over nonresident bidders to the same extent resident bidders receive preferential treatment in the nonresident bidder's state of residence.

Change Orders. Changes to an existing contract do not need to use the formal bidding process if:

- The contract and proposed change both contain unit prices for the same type or class of work;
- The change is related to soils, utilities, or unknown conditions directly affecting the performance of the work not reasonably foreseeable at the time the contract was executed and the project cannot be completed without the change; or
- The total of the proposed change order plus the total of all other prior unbid change orders does not exceed the following (not including changes under the other subsections of this paragraph):
 - For contracts not more than \$500,000, \$25,000 or 15% of the base contract; whichever is greater;
 - For contracts exceeding \$500,000 but not more than \$2,500,000, \$75,000 or 10% of the base contract; whichever is greater; and
 - For contracts exceeding \$2,500,000, the greater of \$250,000 or 5% of the base contract.

Final Payment Conditions. Before Teachwell makes a final payment on a contract for a public improvement, it will require the contractor to provide a certificate from the South Dakota Department of Labor stating that all contributions and interest due to the Department in the performance of the contract have been paid.

Adopted on: 8/15/2023

Revised on: _____

Reviewed on: _____