House Engrossed Senate Bill

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 137

SENATE BILL 1124

AN ACT

AMENDING SECTION 28-6923, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 20, ARTICLE 13, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-7369; AMENDING SECTION 28-7704, ARIZONA REVISED STATUTES; RELATING TO PROCUREMENT BY THE DEPARTMENT OF TRANSPORTATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 28-6923, Arizona Revised Statutes, is amended to read:

28-6923. Bid requirements; procedure; bond

A. All items of construction or reconstruction of department facilities involving an expenditure of one hundred eighty-nine thousand dollars or more shall be called for by advertising in a newspaper of general circulation published in this state for either:

1. Two consecutive publications if it is a weekly newspaper.

2. Two publications at least six but not more than ten days apart if it is a daily newspaper.

B. In fiscal year 2008-2009 and each fiscal year thereafter, the amount provided in subsection A of this section shall be adjusted by the annual percentage change in the GDP price deflator as defined in section 41-563.

C. The advertisement shall state specifically the character of the work to be done and where a person may obtain copies of the plans, specifications and complete information as to the proposed work.

D. The bidding information provided shall state specifically the character of the work to be performed and the kind, quantity and quality of materials or supplies to be furnished. The plans and specifications:

1. Shall be sufficiently complete, definite and explicit to permit informed, free, open and competitive bidding on a common basis.

2. May require performance on the basis of either means and methods specifications or end result specifications.

3. If end result specifications are used, shall provide an objective or standard to be achieved with the successful bidder expected to exercise the bidder's skill and ingenuity in achieving that objective or standard of performance by selecting the means and manner of performance and by assuming a corresponding responsibility for that selection.

E. IF CONTRACTOR INSURANCE IS REQUIRED FOR CONSTRUCTION OR RECONSTRUCTION PURSUANT TO THIS SECTION, THE INSURANCE SHALL BE PLACED WITH AN INSURER AUTHORIZED TO TRANSACT INSURANCE IN THIS STATE PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 1 OR A SURPLUS LINES INSURER APPROVED AND IDENTIFIED BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 5.

~~E.~~ F. A bid shall be accompanied by a certified check, cashier's check or surety bond for ten per cent of the amount of the bid included in the proposal as a guarantee that the contractor will enter into a contract to perform the proposal pursuant to the plans and specifications.

~~F.~~ G. The certified check, cashier's check or surety bond shall be returned to the contractors whose proposals are not accepted and to the successful contractor on the execution of a satisfactory bond and contract as provided in this article.

~~G.~~ H. The surety bond provided pursuant to subsection ~~D~~ F of this section shall be executed and furnished as required by title 34, chapter 2, and the conditions and provisions of the surety bid bond regarding the surety's obligations shall follow the form required under section 34-201, subsection A, paragraph 3.

~~H.~~ I. If a bid that is satisfactory to the board is received, it shall let a contract to the lowest responsible bidder, on the contractor giving performance and payment bonds that follow the form and include the provisions required by title 34, chapter 2, article 2.

~~I.~~ J. If the bids received for construction or reconstruction are not satisfactory to the board, a second call shall be made. If they are again rejected by the board, it may authorize the state engineer to construct or reconstruct the item as it deems most advantageous.

~~J.~~ K. In determining the lowest responsible bidder under this section, the department and the board may consider the time of completion proposed by the bidder if the department and the board determine that this procedure will serve the public interest by providing a substantial fiscal benefit or that the use of the traditional awarding of contracts is not practicable for meeting desired construction standards or delivery schedules and if the formula for considering the time of completion is specifically stated in the bidding information.

~~K.~~ L. This section does not prohibit a change to a construction contract that either:

1. Does not alter the scope of the work under a contract and the cost of the change does not exceed ten per cent of the contract amount or fifty thousand dollars, whichever is greater.

2. Does alter the scope of the work if the cost of the change does not exceed ten per cent of the contract amount or fifty thousand dollars, whichever is greater, and the changed work is within twenty per cent of the total project length.

~~L.~~ M. If a project is funded completely with private monies, the private entity is not required to comply with subsections A through ~~K~~ L of this section if the private entity complies with all of the following:

1. Before advertising for bids, submits to the department a bond that is issued by a surety insurer authorized to do business in this state and that is in an amount equal to one hundred twenty-five per cent of the anticipated construction cost of the project, including construction management and contractor costs.

2. Solicits sealed bids from at least four contractors who are prequalified by the department to perform a contract of the anticipated dollar amount of the construction.

3. Awards the contract to the best bidder taking into account price and other criteria as provided in the bid documents.

4. Obtains bonds from the selected contractor that provide the same coverage as performance and payment bonds issued under title 34, chapter 2, article 2.

5. Uses department construction standards.

6. Pays all costs of department reviews of the contract and inspections of the project.

~~M.~~ N. For the purposes of this section, a project is funded completely with private monies if all of the following apply:

1. The contractor is paid entirely with monies from private entities.

2. The private entities hire a competent construction manager and contractor who do not have an affiliation with each other.

3. The private entities either pay all costs of design or reimburse the department for all costs of design.

Sec. 2. Title 28, chapter 20, article 13, Arizona Revised Statutes, is amended by adding section 28-7369, to read:

28-7369. Insurance requirements in procurements

IF CONTRACTOR INSURANCE IS REQUIRED FOR SERVICES PROCURED PURSUANT TO THIS ARTICLE, THE INSURANCE SHALL BE PLACED WITH AN INSURER AUTHORIZED TO TRANSACT INSURANCE IN THIS STATE PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 1 OR A SURPLUS LINES INSURER APPROVED AND IDENTIFIED BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 5.

Sec. 3. Section 28-7704, Arizona Revised Statutes, is amended to read:

28-7704. Procurements

A. The department:

1. May procure services under this chapter using any of the following:

(a) Requests for project proposals in which the department describes a class of transportation facilities or a geographic area in which private entities are invited to submit proposals to develop transportation facilities.

(b) Solicitations using requests for qualifications, short-listing of qualified proposers, requests for proposals, negotiations, best and final offers or other procurement procedures.

(c) Procurements seeking from the private sector development and finance plans most suitable for the project.

(d) Best value selection procurements based on price or financial proposals, or both, or other factors.

(e) Other procedures that the department determines may further the implementation of this chapter.

2. Shall procure services under this chapter using unsolicited proposals if the department determines that there is sufficient merit to pursue any unsolicited proposal and a reasonable opportunity for other entities to submit competing proposals for consideration and a possible contract award as appropriate.

B. For any procurement in which the department issues a request for qualifications, request for proposals or similar solicitation document, the request shall generally set forth the factors that will be evaluated and the manner in which responses will be evaluated. IF CONTRACTOR INSURANCE IS REQUIRED FOR SERVICES PROCURED PURSUANT TO THIS SECTION THE INSURANCE SHALL BE PLACED WITH AN INSURER AUTHORIZED TO TRANSACT INSURANCE IN THIS STATE PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 1 OR A SURPLUS LINES INSURER APPROVED AND IDENTIFIED BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 5.

C. In evaluating proposals, the department may accord such relative weight to factors such as cost, financial commitment, innovative financing, technical, scientific, technological or socioeconomic merit and other factors as the department deems appropriate to obtain the best value for this state.

D. The department may pay a stipend to a proposer based on the department's estimate, in its sole discretion, of the value of the work product received, but only if the department has determined that the proposal submitted was responsive to the department's request for proposals and met all requirements established by the department for the project. In exchange for the stipend, the department may require the recipient to grant to the department the right to use any work product contained in the recipient's proposal, including technologies, techniques, methods, processes and information contained in the recipient's project design.

E. The department may charge and retain an administrative fee for the evaluation of an unsolicited project proposal.

F. The department may procure services, award agreements and administer revenues as authorized in this section notwithstanding any requirements of any other state or local statute, regulation or law relating to public bidding or other procurement procedures or other provisions otherwise applicable to public works, services or utilities.

G. The department may retain financial, legal and other consultants and experts inside or outside the public sector to assist in the evaluation, negotiation and development of eligible facilities under this chapter with a minimum of five years' experience working in that capacity with public-private partnerships.

H. The department may spend monies that are reasonably necessary for the development of procurements, evaluation of concepts or proposals, negotiation of agreements and implementation of agreements for development or operation of eligible facilities under this chapter.

APPROVED BY THE GOVERNOR MARCH 29, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 29, 2012.

Passed the House March 22, 2012,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 2, 2012,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Steve Pierce LV

President of the Senate

Charmaine Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary of State

S.B. 1124

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate March 26, 2012

by the following vote: 26 Ayes,

0 Nays, 4 Not Voting

Steve Pierce
President of the Senate

Charmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

27 day of March, 2012

at 8:30 o'clock A M.

[signature]
Secretary to the Governor

Approved this 29th day of

March

at 10:30 o'clock A M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 29th day of March, 2012

S.B. 1124

at 4:58 o'clock P M.

Ken Bennett
Secretary of State