

REFERENCE TITLE: public construction; bidding; best value.

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

## **HB 2350**

Introduced by  
Representatives Prezelski, Gallardo, Sinema: Lujan

AN ACT

AMENDING TITLE 34, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7; AMENDING  
TITLE 41, CHAPTER 23, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 14;  
RELATING TO PUBLIC CONSTRUCTION CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 34, Arizona Revised Statutes, is amended by adding  
3 chapter 7, to read:

4 CHAPTER 7

5 BEST VALUE BIDDING SYSTEM FOR PUBLIC CONSTRUCTION CONTRACTS

6 ARTICLE 1. GENERAL PROVISIONS

7 34-701. Application of chapter

8 THIS CHAPTER APPLIES IN ADDITION TO THE OTHER REQUIREMENTS OF THIS  
9 TITLE.

10 34-702. Best value approach for contracts involving  
11 construction services

12 AN AGENT SHALL USE A BEST VALUE APPROACH IN AWARDING A BID FOR A  
13 CONTRACT FOR CONSTRUCTION SERVICES.

14 34-703. Notice of evaluation of bids

15 A. ALL EVALUATION FACTORS THAT WILL AFFECT THE CONTRACT AWARD SHALL BE  
16 CLEARLY STATED IN THE SOLICITATION FOR BEST VALUE BID. THE SOLICITATION  
17 SHALL STATE WHETHER ALL EVALUATION FACTORS OTHER THAN COST OR PRICE, WHEN  
18 COMBINED, ARE SIGNIFICANTLY MORE IMPORTANT THAN, APPROXIMATELY EQUAL TO OR  
19 SIGNIFICANTLY LESS IMPORTANT THAN COST OR PRICE.

20 B. ADEQUATE PUBLIC NOTICE OF THE BEST VALUE SOLICITATION OF BIDS SHALL  
21 BE GIVEN.

22 C. COST INFORMATION SHALL BE PROVIDED AFTER THE RANKING OF BIDDERS AND  
23 THE ISSUANCE OF THE AWARD.

24 34-704. Factors involved in determining best value

25 A. THE BEST VALUE SOLICITATION OF BIDS SHALL USE THE FACTORS  
26 PRESCRIBED IN THIS SUBSECTION, EACH OF WHICH IS ENTITLED TO ONE POINT IN THE  
27 DETERMINATION OF AN AWARD. COST OR PRICE SHALL BE A FACTOR IN THE  
28 DETERMINATION OF AN AWARD. THE BID EVALUATION FACTORS TO BE CONSIDERED SHALL  
29 INCLUDE THE FOLLOWING, AS DETERMINED BY THE AGENT IN ITS SOLE DISCRETION AND  
30 NOT SUBJECT TO PROTEST:

31 1. PRICE.

32 2. THE QUALITY OF CONSTRUCTION SERVICES TO BE PROVIDED BY THE BIDDER,  
33 BASED ON ITS PRIOR RECORD OF PERFORMANCE AS TO:

34 (a) TIMELY COMPLETION OF PROJECTS.

35 (b) COMPLETION OF PROJECTS ON OR UNDER BUDGET.

36 (c) ACTIONS TAKEN AGAINST THE BIDDER BY ANY COURT OR GOVERNMENTAL  
37 AGENCY.

38 3. ABILITY OF THE BIDDER TO MEET CONSTRUCTION SCHEDULES IMPOSED BY THE  
39 AGENT.

40 4. ADEQUACY OF FINANCIAL RESOURCES TO PERFORM THE CONTRACT.

41 5. EXPERTISE AND EXPERIENCE OF THE BIDDER IN THE CONSTRUCTION  
42 INDUSTRY.

43 6. EXPERTISE AND EXPERIENCE OF THE BIDDER ON SIMILAR PROJECTS.

- 1           7. EXISTENCE OF A FORMAL APPRENTICESHIP TRAINING PROGRAM PURSUANT TO
- 2 STANDARDS ESTABLISHED BY THE UNITED STATES DEPARTMENT OF LABOR OR APPROPRIATE
- 3 STATE AGENCY.
- 4           8. ABILITY OF THE BIDDER TO PROVIDE A SAFE PROJECT, INCLUDING THE
- 5 EXISTENCE OF AN ESTABLISHED SAFETY TRAINING PROGRAM AND A FORMAL SAFETY
- 6 SUPERVISION PROGRAM FOR THE PROJECT.
- 7           9. AGREEMENT TO PAY PREVAILING WAGES, INCLUDING THE BIDDER'S RECORD OF
- 8 PAYMENT OR NONPAYMENT OF PREVAILING WAGES ON PAST PROJECTS.
- 9           10. AGREEMENT THAT ALL LABOR ON THE PROJECT SHALL BE COVERED BY
- 10 APPROVED HEALTH INSURANCE AND PENSION PLANS.
- 11           11. ABILITY OF THE BIDDER TO FURNISH LABOR THAT CAN WORK IN HARMONY
- 12 WITH ALL OTHER ELEMENTS OF LABOR EMPLOYED OR TO BE EMPLOYED ON THE PROJECT.
- 13           12. ABILITY OF THE BIDDER TO ASSURE THE ABSENCE OF WORK STOPPAGES OR
- 14 LOCKOUTS FOR THE DURATION OF THE PROJECT.
- 15           13. COMMITMENT THAT A MINIMUM PERCENTAGE OF THE WORKERS ON THE PROJECT
- 16 ARE RESIDENTS OF THE APPROPRIATE CITY, TOWN OR COUNTY AS DETERMINED BY THE
- 17 AGENT.
- 18           B. IN ORDER TO COMPLY WITH SUBSECTION A, PARAGRAPH 2, SUBDIVISION (c),
- 19 EACH BIDDER SHALL DISCLOSE TO THE AGENT THE FOLLOWING INFORMATION:
- 20           1. DEBARMENTS OR SUSPENSIONS BY ANY GOVERNMENT AGENCY FROM PUBLIC
- 21 CONTRACTING.
- 22           2. DEFAULTS, CANCELLATIONS OR TERMINATIONS FOR CAUSE ON ANY CONTRACT.
- 23           3. FINDINGS OF NONRESPONSIBILITY BY ANY GOVERNMENT AGENCY.
- 24           4. FINDINGS OF VIOLATION OF ANY ADMINISTRATIVE, STATUTORY OR
- 25 REGULATORY PROVISION.
- 26           5. PENDING, OR PREVIOUS, CIVIL, CRIMINAL OR GOVERNMENTAL
- 27 INVESTIGATIONS OF THE BIDDER AND THE RESULT OF THE INVESTIGATIONS.
- 28           6. REVOCATIONS OF ANY PERMIT OR LICENSE ISSUED TO THE BIDDER.
- 29           7. SANCTIONS IMPOSED ON THE BIDDER WITH RESPECT TO ITS PERMITS OR
- 30 LICENSES.
- 31           8. INSTANCES WHERE THE BIDDER WAS UNABLE TO OBTAIN BONDING.
- 32           9. INSTANCES WHERE THE BIDDER WAS SUBJECT TO ANY GOVERNMENT JUDGMENT
- 33 OR LIEN.
- 34           10. IDENTITIES OF ALL OWNERS, OFFICERS, AFFILIATES, PARENTS,
- 35 SUBSIDIARIES AND CONTROLLING OR CONTROLLED ENTITIES OF THE BIDDER.
- 36           11. IDENTITIES OF ALL SUBCONTRACTORS PROPOSED FOR THE PROJECT.
- 37           12. ALL PREVIOUS CONTRACTS PERFORMED BY THE BIDDER FOR THE AGENT.
- 38           34-705. Evaluation of bids
- 39           A. DISCUSSION MAY BE CONDUCTED WITH THE APPARENT RESPONSIBLE BIDDERS
- 40 TO ASSURE UNDERSTANDING OF THEIR BEST VALUE BIDS.
- 41           B. BIDS SHALL BE EVALUATED BY USING THE CRITERIA PRESCRIBED IN SECTION
- 42 34-704. ALL EVALUATION FACTORS SHALL BE CONSIDERED IN DETERMINING THE
- 43 NUMERICAL SCORE FOR EACH PARTICIPATING BIDDER. ONCE THE EVALUATION IS
- 44 COMPLETE, ALL RESPONSIBLE BIDDERS SHALL BE RANKED FROM MOST ADVANTAGEOUS TO
- 45 LEAST ADVANTAGEOUS TO THE AGENT.

1           34-706. Award of bid  
2           AN AWARD SHALL BE MADE TO THE RESPONSIVE AND RESPONSIBLE BIDDER WHOSE  
3           BID IS DETERMINED, IN WRITING, TO BE MOST ADVANTAGEOUS TO THE AGENT, TAKING  
4           INTO CONSIDERATION ALL EVALUATION FACTORS PRESCRIBED IN THE BEST VALUE BID.  
5           THE CONTRACT FILE SHALL CONTAIN THE BASIS ON WHICH THE AWARD IS MADE AND MUST  
6           BE SUFFICIENT TO SATISFY EXTERNAL AUDIT.

7           Sec. 2. Title 41, chapter 23, Arizona Revised Statutes, is amended by  
8           adding article 14, to read:

9                           ARTICLE 14. BEST VALUE BIDDING SYSTEM  
10                           FOR PUBLIC CONSTRUCTION CONTRACTS

11           41-2681. Application of article  
12           THIS ARTICLE APPLIES IN ADDITION TO THE OTHER REQUIREMENTS OF THIS  
13           CHAPTER.

14           41-2682. Best value approach for contracts involving  
15                           construction services  
16           A STATE GOVERNMENTAL UNIT SHALL USE A BEST VALUE APPROACH IN AWARING  
17           BID FOR A CONTRACT FOR CONSTRUCTION SERVICES.

18           41-2683. Notice of evaluation of bids  
19           A. ALL EVALUATION FACTORS THAT WILL AFFECT THE CONTRACT AWARD SHALL BE  
20           CLEARLY STATED IN THE SOLICITATION FOR BEST VALUE BID. THE SOLICITATION  
21           SHALL STATE WHETHER ALL EVALUATION FACTORS OTHER THAN COST OR PRICE, WHEN  
22           COMBINED, ARE SIGNIFICANTLY MORE IMPORTANT THAN, APPROXIMATELY EQUAL TO OR  
23           SIGNIFICANTLY LESS IMPORTANT THAN COST OR PRICE.

24           B. ADEQUATE PUBLIC NOTICE OF THE BEST VALUE SOLICITATION OF BIDS SHALL  
25           BE GIVEN.

26           C. COST INFORMATION SHALL BE PROVIDED AFTER THE RANKING OF BIDDERS AND  
27           THE ISSUANCE OF THE AWARD.

28           41-2684. Factors involved in determining best value  
29           A. THE BEST VALUE SOLICITATION OF BIDS SHALL USE THE FACTORS  
30           PRESCRIBED IN THIS SUBSECTION, EACH OF WHICH IS ENTITLED TO ONE POINT IN THE  
31           DETERMINATION OF AN AWARD. COST OR PRICE SHALL BE A FACTOR IN THE  
32           DETERMINATION OF AN AWARD. THE BID EVALUATION FACTORS TO BE CONSIDERED SHALL  
33           INCLUDE THE FOLLOWING, AS DETERMINED BY THE STATE GOVERNMENTAL UNIT IN ITS  
34           SOLE DISCRETION AND NOT SUBJECT TO PROTEST:

- 35           1. PRICE.
- 36           2. THE QUALITY OF CONSTRUCTION SERVICES TO BE PROVIDED BY THE BIDDER,  
37           BASED ON ITS PRIOR RECORD OF PERFORMANCE AS TO:
  - 38           (a) TIMELY COMPLETION OF PROJECTS.
  - 39           (b) COMPLETION OF PROJECTS ON OR UNDER BUDGET.
  - 40           (c) ACTIONS TAKEN AGAINST THE BIDDER BY ANY COURT OR GOVERNMENTAL  
41           AGENCY.
- 42           3. ABILITY OF THE BIDDER TO MEET CONSTRUCTION SCHEDULES IMPOSED BY THE  
43           STATE GOVERNMENTAL UNIT.
- 44           4. ADEQUACY OF FINANCIAL RESOURCES TO PERFORM THE CONTRACT.

- 1           5. EXPERTISE AND EXPERIENCE OF THE BIDDER IN THE CONSTRUCTION
- 2 INDUSTRY.
- 3           6. EXPERTISE AND EXPERIENCE OF THE BIDDER ON SIMILAR PROJECTS.
- 4           7. EXISTENCE OF A FORMAL APPRENTICESHIP TRAINING PROGRAM PURSUANT TO
- 5 STANDARDS ESTABLISHED BY THE UNITED STATES DEPARTMENT OF LABOR OR APPROPRIATE
- 6 STATE AGENCY.
- 7           8. ABILITY OF THE BIDDER TO PROVIDE A SAFE PROJECT, INCLUDING THE
- 8 EXISTENCE OF AN ESTABLISHED SAFETY TRAINING PROGRAM AND A FORMAL SAFETY
- 9 SUPERVISION PROGRAM FOR THE PROJECT.
- 10          9. AGREEMENT TO PAY PREVAILING WAGES, INCLUDING THE BIDDER'S RECORD OF
- 11 PAYMENT OR NONPAYMENT OF PREVAILING WAGES ON PAST PROJECTS.
- 12          10. AGREEMENT THAT ALL LABOR ON THE PROJECT SHALL BE COVERED BY
- 13 APPROVED HEALTH INSURANCE AND PENSION PLANS.
- 14          11. ABILITY OF THE BIDDER TO FURNISH LABOR THAT CAN WORK IN HARMONY
- 15 WITH ALL OTHER ELEMENTS OF LABOR EMPLOYED OR TO BE EMPLOYED ON THE PROJECT.
- 16          12. ABILITY OF THE BIDDER TO ASSURE THE ABSENCE OF WORK STOPPAGES OR
- 17 LOCKOUTS FOR THE DURATION OF THE PROJECT.
- 18          13. COMMITMENT THAT A MINIMUM PERCENTAGE OF THE WORKERS ON THE PROJECT
- 19 ARE RESIDENTS OF THIS STATE AS DETERMINED BY THE STATE GOVERNMENTAL UNIT.
- 20          B. IN ORDER TO COMPLY WITH SUBSECTION A, PARAGRAPH 2, SUBDIVISION (c),
- 21 EACH BIDDER SHALL DISCLOSE TO THE STATE GOVERNMENTAL UNIT THE FOLLOWING
- 22 INFORMATION:
- 23           1. DEBARMENTS OR SUSPENSIONS BY ANY GOVERNMENT AGENCY FROM PUBLIC
- 24 CONTRACTING.
- 25           2. DEFAULTS, CANCELLATIONS OR TERMINATIONS FOR CAUSE ON ANY CONTRACT.
- 26           3. FINDINGS OF NONRESPONSIBILITY BY ANY GOVERNMENT AGENCY.
- 27           4. FINDINGS OF VIOLATION OF ANY ADMINISTRATIVE, STATUTORY OR
- 28 REGULATORY PROVISION.
- 29           5. PENDING, OR PREVIOUS, CIVIL, CRIMINAL OR GOVERNMENTAL
- 30 INVESTIGATIONS OF THE BIDDER AND THE RESULT OF THE INVESTIGATIONS.
- 31           6. REVOCATIONS OF ANY PERMIT OR LICENSE ISSUED TO THE BIDDER.
- 32           7. SANCTIONS IMPOSED ON THE BIDDER WITH RESPECT TO ITS PERMITS OR
- 33 LICENSES.
- 34           8. INSTANCES WHERE THE BIDDER WAS UNABLE TO OBTAIN BONDING.
- 35           9. INSTANCES WHERE THE BIDDER WAS SUBJECT TO ANY GOVERNMENT JUDGMENT
- 36 OR LIEN.
- 37           10. IDENTITIES OF ALL OWNERS, OFFICERS, AFFILIATES, PARENTS,
- 38 SUBSIDIARIES AND CONTROLLING OR CONTROLLED ENTITIES OF THE BIDDER.
- 39           11. IDENTITIES OF ALL SUBCONTRACTORS PROPOSED FOR THE PROJECT.
- 40           12. ALL PREVIOUS CONTRACTS PERFORMED BY THE BIDDER FOR THIS STATE.
- 41          41-2685. Evaluation of bids
- 42          A. DISCUSSION MAY BE CONDUCTED WITH THE APPARENT RESPONSIBLE BIDDERS
- 43 TO ASSURE UNDERSTANDING OF THEIR BEST VALUE BIDS.

1           B. BIDS SHALL BE EVALUATED BY USING THE CRITERIA PRESCRIBED IN SECTION  
2 41-2684. ALL EVALUATION FACTORS SHALL BE CONSIDERED IN DETERMINING THE  
3 NUMERICAL SCORE FOR EACH PARTICIPATING BIDDER. ONCE THE EVALUATION IS  
4 COMPLETE, ALL RESPONSIVE BIDDERS SHALL BE RANKED FROM MOST ADVANTAGEOUS TO  
5 LEAST ADVANTAGEOUS TO THE STATE GOVERNMENTAL UNIT.  
6           41-2686. Award of bid  
7           AN AWARD SHALL BE MADE TO THE RESPONSIVE AND RESPONSIBLE BIDDER WHOSE  
8 BID IS DETERMINED, IN WRITING, TO BE MOST ADVANTAGEOUS TO THE STATE  
9 GOVERNMENTAL UNIT, TAKING INTO CONSIDERATION ALL EVALUATION FACTORS  
10 PRESCRIBED IN THE BEST VALUE BID. THE CONTRACT FILE SHALL CONTAIN THE BASIS  
11 ON WHICH THE AWARD IS MADE AND MUST BE SUFFICIENT TO SATISFY EXTERNAL AUDIT.