

REFERENCE TITLE: counties; employment of contractors; bids

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1428

Introduced by
Senator Nelson

AN ACT

AMENDING SECTION 34-201, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2009, CHAPTER 101, SECTION 6; AMENDING SECTION 34-201, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 244, SECTION 23; AMENDING SECTION 34-201, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 244, SECTION 24; REPEALING SECTION 34-201, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 117, SECTION 12; RELATING TO EMPLOYMENT OF CONTRACTORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 34-201, Arizona Revised Statutes, as amended by
3 Laws 2009, chapter 101, section 6, is amended to read:

4 34-201. Notice of intention to receive bids and enter contract;
5 procedure; doing work without advertising for bids;
6 county compliance

7 A. Except as provided in subsections B through G and L of this
8 section, every agent, on acceptance and approval of the working drawings and
9 specifications, shall publish a notice to contractors of intention to receive
10 bids and contract for the proposed work. This notice shall be published by
11 advertising in a newspaper of general circulation in the county in which the
12 agent is located for two consecutive publications if it is a weekly newspaper
13 or for two publications that are at least six but no more than ten days apart
14 if it is a daily newspaper. The notice shall state:

15 1. The nature of the work required, the type, purpose and location of
16 the proposed building and where the plans, specifications and full
17 information as to the proposed work may be obtained.

18 2. That contractors desiring to submit proposals may obtain copies of
19 full or partial sets of plans and specifications for estimate on request or
20 by appointment. The return of such plans and specifications shall be
21 guaranteed by a deposit of a designated amount which shall be refunded on
22 return of the plans and specifications in good order.

23 3. That every proposal shall be accompanied by a certified check,
24 cashier's check or surety bond for ten per cent of the amount of the bid
25 included in the proposal as a guarantee that the contractor will enter into a
26 contract to perform the proposal in accordance with the plans and
27 specifications. Notwithstanding any other statute, the surety bond shall be
28 executed solely by a surety company or companies holding a certificate of
29 authority to transact surety business in this state issued by the director of
30 the department of insurance pursuant to title 20, chapter 2, article 1. The
31 surety bond shall not be executed by an individual surety or sureties, even
32 if the requirements of section 7-101 are satisfied. The certified check,
33 cashier's check or surety bond shall be returned to the contractors whose
34 proposals are not accepted, and to the successful contractor on the execution
35 of a satisfactory bond and contract as provided in this article. The
36 conditions and provisions of the surety bid bond regarding the surety's
37 obligations shall follow the following form:

38 Now, therefore, if the obligee accepts the proposal of the
39 principal and the principal enters into a contract with the
40 obligee in accordance with the terms of the proposal and gives
41 the bonds and certificates of insurance as specified in the
42 standard specifications with good and sufficient surety for the
43 faithful performance of the contract and for the prompt payment
44 of labor and materials furnished in the prosecution of the
45 contract, or in the event of the failure of the principal to

1 enter into the contract and give the bonds and certificates of
2 insurance, if the principal pays to the obligee the difference
3 not to exceed the penalty of the bond between the amount
4 specified in the proposal and such larger amount for which the
5 obligee may in good faith contract with another party to perform
6 the work covered by the proposal then this obligation is void.
7 Otherwise it remains in full force and effect provided, however,
8 that this bond is executed pursuant to the provisions of section
9 34-201, Arizona Revised Statutes, and all liabilities on this
10 bond shall be determined in accordance with the provisions of
11 the section to the extent as if it were copied at length herein.

12 4. That the right is reserved to reject any or all proposals or to
13 withhold the award for any reason the agent determines.

14 B. If the agent believes that any construction, building addition or
15 alteration contemplated at a public institution can be advantageously done by
16 the inmates of the public institution and regularly employed help, the agent
17 may cause the work to be done without advertising for bids.

18 C. Any building, structure, addition or alteration may be constructed
19 either with or without the use of the agent's regularly employed personnel
20 without advertising for bids, provided that the total cost of the work,
21 excluding materials and equipment previously acquired by bid, does not
22 exceed:

23 1. In fiscal year 1994-1995, fourteen thousand dollars.

24 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
25 amount provided in paragraph 1 of this subsection adjusted by the annual
26 percentage change in the GDP price deflator as defined in section 41-563.

27 D. Notwithstanding subsection C of this section, any street, road,
28 bridge, water or sewer work, other than a water or sewer treatment plant or
29 building, may be constructed either with or without the use of the agent's
30 regularly employed personnel without advertising for bids, provided that the
31 total cost of the work does not exceed:

32 1. IN A COUNTY WITH A POPULATION OF TWO HUNDRED FIFTY THOUSAND OR MORE
33 PERSONS:

34 ~~1-~~ (a) In fiscal year 1994-1995, one hundred fifty thousand dollars.

35 ~~2-~~ (b) In fiscal year 1995-1996 and each fiscal year thereafter, the
36 amount provided in ~~paragraph 1~~ SUBDIVISION (a) of this ~~subsection~~ PARAGRAPH
37 adjusted by the annual percentage change in the GDP price deflator as defined
38 in section 41-563.

39 2. IN A COUNTY WITH A POPULATION OF LESS THAN TWO HUNDRED FIFTY
40 THOUSAND PERSONS:

41 (a) IN FISCAL YEAR 2011-2012, TWO HUNDRED FIFTY THOUSAND DOLLARS.

42 (b) IN FISCAL YEAR 2012-2013 AND EACH FISCAL YEAR THEREAFTER, THE
43 AMOUNT PROVIDED IN SUBDIVISION (a) OF THIS PARAGRAPH ADJUSTED BY THE ANNUAL
44 PERCENTAGE CHANGE IN THE GDP PRICE DEFLATOR AS DEFINED IN SECTION 41-563.

1 E. For the purposes of subsection D of this section, the total cost of
2 water or sewer work does not include services provided by volunteers or
3 donations made for the water or sewer project.

4 F. Notwithstanding this section, an agent may:

5 1. Construct, reconstruct, install or repair a natural gas or electric
6 utility and distribution system, owned or operated by such agent, with
7 regularly employed personnel of the agent without advertising for bids,
8 unless otherwise prohibited by charter or ordinance.

9 2. Construct recreational projects, including trails, playgrounds,
10 ballparks and other similar facilities and excluding buildings, structures,
11 building additions and alterations to buildings, structures and building
12 additions, with volunteer workers or workers provided by a nonprofit
13 organization without advertising for bids for labor and materials, provided
14 that the total cost of the work does not exceed:

15 (a) In fiscal year 2001-2002, one hundred fifty thousand dollars.

16 (b) In fiscal year 2002-2003 and each fiscal year thereafter, the
17 amount provided in subdivision (a) adjusted by the annual percentage change
18 in the GDP price deflator as defined in section 41-563.

19 G. A contribution by an agent for the financing of public
20 infrastructure made pursuant to a development agreement is exempt from this
21 section if such contribution for any single development does not exceed:

22 1. In fiscal year 1994-1995, one hundred thousand dollars.

23 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
24 amount provided in paragraph 1 of this subsection adjusted by the annual
25 percentage change in the GDP price deflator as defined in section 41-563.

26 H. In addition to other state or local requirements relating to the
27 publication of bids, each agent shall provide at least one set of all plans
28 and specifications to any construction news reporting service that files an
29 annual request with the agent. For the purposes of this subsection,
30 "construction news reporting service" means a service that researches,
31 gathers and disseminates news and reports either in print or electronically,
32 on at least a weekly basis for building projects, construction bids, the
33 purchasing of materials, supplies or services and other construction bidding
34 or planned activity to the allied construction industry. The allied
35 construction industry includes both general and specialty contractors,
36 builders, material and service suppliers, architects and engineers, owners,
37 developers and government agencies.

38 I. Any construction by a county under this section shall comply with
39 the uniform accounting system prescribed for counties by the auditor general
40 under section 41-1279.21. Any construction by a city or town under this
41 section shall comply with generally accepted accounting principles.

42 J. Any construction, building addition or alteration project that is
43 financed by monies of this state or its political subdivisions shall not use
44 endangered wood species unless an exemption is granted by the director of the
45 department of administration. The director shall only grant an exemption if

1 the use of endangered wood species is deemed necessary for historical
2 restoration or to repair existing facilities and the use of any substitute
3 material is not practical. Any lease-purchase agreement entered into by this
4 state or its political subdivisions for construction shall specify that no
5 endangered wood species may be used in the construction unless an exemption
6 is granted by the director. For the purposes of this subsection, "endangered
7 wood species" includes those listed in appendix I of the convention on
8 international trade in endangered species of wild flora and fauna.

9 K. All bonds given by a contractor and surety pursuant to this
10 article, regardless of their actual form, will be deemed by law to be the
11 form required and set forth in this article and no other.

12 L. Any building, structure, addition or alteration may be constructed
13 without complying with this article if the construction, including
14 construction of buildings or structures on public or private property, is
15 required as a condition of development of private property and is authorized
16 by section 9-463.01 or 11-806.01. For the purposes of this subsection,
17 building does not include police, fire, school, library or other public
18 buildings.

19 M. Notwithstanding section 34-221, any agent may enter into a
20 guaranteed energy cost savings contract with a qualified provider for the
21 purchase of energy cost savings measures without complying with this article
22 and may procure a guaranteed energy cost savings contract through the
23 competitive sealed proposal process prescribed in title 41, chapter 23 or any
24 similar competitive proposal process adopted by the agent.

25 Sec. 2. Section 34-201, Arizona Revised Statutes, as amended by Laws
26 2010, chapter 244, section 23, is amended to read:

27 34-201. Notice of intention to receive bids and enter contract:
28 procedure; doing work without advertising for bids:
29 county compliance

30 A. Except as provided in subsections B through G and L of this
31 section, every agent, on acceptance and approval of the working drawings and
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33 bids and contract for the proposed work. This notice shall be published by
34 advertising in a newspaper of general circulation in the county in which the
35 agent is located for two consecutive publications if it is a weekly newspaper
36 or for two publications that are at least six but no more than ten days apart
37 if it is a daily newspaper. The notice shall state:

38 1. The nature of the work required, the type, purpose and location of
39 the proposed building and where the plans, specifications and full
40 information as to the proposed work may be obtained.

41 2. That contractors desiring to submit proposals may obtain copies of
42 full or partial sets of plans and specifications for estimate on request or
43 by appointment. The return of such plans and specifications shall be
44 guaranteed by a deposit of a designated amount which shall be refunded on
45 return of the plans and specifications in good order.

1 3. That every proposal shall be accompanied by a certified check,
2 cashier's check or surety bond for ten per cent of the amount of the bid
3 included in the proposal as a guarantee that the contractor will enter into a
4 contract to perform the proposal in accordance with the plans and
5 specifications. Notwithstanding any other statute, the surety bond shall be
6 executed solely by a surety company or companies holding a certificate of
7 authority to transact surety business in this state issued by the director of
8 the department of insurance pursuant to title 20, chapter 2, article 1. The
9 surety bond shall not be executed by an individual surety or sureties, even
10 if the requirements of section 7-101 are satisfied. The certified check,
11 cashier's check or surety bond shall be returned to the contractors whose
12 proposals are not accepted, and to the successful contractor on the execution
13 of a satisfactory bond and contract as provided in this article. The
14 conditions and provisions of the surety bid bond regarding the surety's
15 obligations shall follow the following form:

16 Now, therefore, if the obligee accepts the proposal of the
17 principal and the principal enters into a contract with the
18 obligee in accordance with the terms of the proposal and gives
19 the bonds and certificates of insurance as specified in the
20 standard specifications with good and sufficient surety for the
21 faithful performance of the contract and for the prompt payment
22 of labor and materials furnished in the prosecution of the
23 contract, or in the event of the failure of the principal to
24 enter into the contract and give the bonds and certificates of
25 insurance, if the principal pays to the obligee the difference
26 not to exceed the penalty of the bond between the amount
27 specified in the proposal and such larger amount for which the
28 obligee may in good faith contract with another party to perform
29 the work covered by the proposal then this obligation is void.
30 Otherwise it remains in full force and effect provided, however,
31 that this bond is executed pursuant to the provisions of section
32 34-201, Arizona Revised Statutes, and all liabilities on this
33 bond shall be determined in accordance with the provisions of
34 the section to the extent as if it were copied at length herein.

35 4. That the right is reserved to reject any or all proposals or to
36 withhold the award for any reason the agent determines.

37 B. If the agent believes that any construction, building addition or
38 alteration contemplated at a public institution can be advantageously done by
39 the inmates of the public institution and regularly employed help, the agent
40 may cause the work to be done without advertising for bids.

41 C. Any building, structure, addition or alteration may be constructed
42 either with or without the use of the agent's regularly employed personnel
43 without advertising for bids, provided that the total cost of the work,
44 excluding materials and equipment previously acquired by bid, does not
45 exceed:

- 1 1. In fiscal year 1994-1995, fourteen thousand dollars.
- 2 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
- 3 amount provided in paragraph 1 of this subsection adjusted by the annual
- 4 percentage change in the GDP price deflator as defined in section 41-563.
- 5 D. Notwithstanding subsection C of this section, any street, road,
- 6 bridge, water or sewer work, other than a water or sewer treatment plant or
- 7 building, may be constructed either with or without the use of the agent's
- 8 regularly employed personnel without advertising for bids, provided that the
- 9 total cost of the work does not exceed:
- 10 1. IN A COUNTY WITH A POPULATION OF TWO HUNDRED FIFTY THOUSAND OR MORE
- 11 PERSONS:
- 12 ~~1.~~ (a) In fiscal year 1994-1995, one hundred fifty thousand dollars.
- 13 ~~2.~~ (b) In fiscal year 1995-1996 and each fiscal year thereafter, the
- 14 amount provided in ~~paragraph 1~~ SUBDIVISION (a) of this ~~subsection~~ PARAGRAPH
- 15 adjusted by the annual percentage change in the GDP price deflator as defined
- 16 in section 41-563.
- 17 2. IN A COUNTY WITH A POPULATION OF LESS THAN TWO HUNDRED FIFTY
- 18 THOUSAND PERSONS:
- 19 (a) IN FISCAL YEAR 2011-2012, TWO HUNDRED FIFTY THOUSAND DOLLARS.
- 20 (b) IN FISCAL YEAR 2012-2013 AND EACH FISCAL YEAR THEREAFTER, THE
- 21 AMOUNT PROVIDED IN SUBDIVISION (a) OF THIS PARAGRAPH ADJUSTED BY THE ANNUAL
- 22 PERCENTAGE CHANGE IN THE GDP PRICE DEFLATOR AS DEFINED IN SECTION 41-563.
- 23 E. For the purposes of subsection D of this section, the total cost of
- 24 water or sewer work does not include services provided by volunteers or
- 25 donations made for the water or sewer project.
- 26 F. Notwithstanding this section, an agent may:
- 27 1. Construct, reconstruct, install or repair a natural gas or electric
- 28 utility and distribution system, owned or operated by such agent, with
- 29 regularly employed personnel of the agent without advertising for bids,
- 30 unless otherwise prohibited by charter or ordinance.
- 31 2. Construct recreational projects, including trails, playgrounds,
- 32 ballparks and other similar facilities and excluding buildings, structures,
- 33 building additions and alterations to buildings, structures and building
- 34 additions, with volunteer workers or workers provided by a nonprofit
- 35 organization without advertising for bids for labor and materials, provided
- 36 that the total cost of the work does not exceed:
- 37 (a) In fiscal year 2001-2002, one hundred fifty thousand dollars.
- 38 (b) In fiscal year 2002-2003 and each fiscal year thereafter, the
- 39 amount provided in subdivision (a) adjusted by the annual percentage change
- 40 in the GDP price deflator as defined in section 41-563.
- 41 G. A contribution by an agent for the financing of public
- 42 infrastructure made pursuant to a development agreement is exempt from this
- 43 section if such contribution for any single development does not exceed:
- 44 1. In fiscal year 1994-1995, one hundred thousand dollars.

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3 percentage change in the GDP price deflator as defined in section 41-563.

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6 and specifications to any construction news reporting service that files an
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11 purchasing of materials, supplies or services and other construction bidding
12 or planned activity to the allied construction industry. The allied
13 construction industry includes both general and specialty contractors,
14 builders, material and service suppliers, architects and engineers, owners,
15 developers and government agencies.

16 I. Any construction by a county under this section shall comply with
17 the uniform accounting system prescribed for counties by the auditor general
18 under section 41-1279.21. Any construction by a city or town under this
19 section shall comply with generally accepted accounting principles.

20 J. Any construction, building addition or alteration project that is
21 financed by monies of this state or its political subdivisions shall not use
22 endangered wood species unless an exemption is granted by the director of the
23 department of administration. The director shall only grant an exemption if
24 the use of endangered wood species is deemed necessary for historical
25 restoration or to repair existing facilities and the use of any substitute
26 material is not practical. Any lease-purchase agreement entered into by this
27 state or its political subdivisions for construction shall specify that no
28 endangered wood species may be used in the construction unless an exemption
29 is granted by the director. For the purposes of this subsection, "endangered
30 wood species" includes those listed in appendix I of the convention on
31 international trade in endangered species of wild flora and fauna.

32 K. All bonds given by a contractor and surety pursuant to this
33 article, regardless of their actual form, will be deemed by law to be the
34 form required and set forth in this article and no other.

35 L. Any building, structure, addition or alteration may be constructed
36 without complying with this article if the construction, including
37 construction of buildings or structures on public or private property, is
38 required as a condition of development of private property and is authorized
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40 does not include police, fire, school, library or other public buildings.

41 M. Notwithstanding section 34-221, any agent may enter into a
42 guaranteed energy cost savings contract with a qualified provider for the
43 purchase of energy cost savings measures without complying with this article
44 and may procure a guaranteed energy cost savings contract through the

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3 Sec. 3. Section 34-201, Arizona Revised Statutes, as amended by Laws
4 2010, chapter 244, section 24, is amended to read:

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 8 international trade in endangered species of wild flora and fauna.

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 14 construction of buildings or structures on public or private property, is
 15 required as a condition of development of private property and is authorized
 16 by section 9-463.01 or 11-822. For the purposes of this subsection, building
 17 does not include police, fire, school, library or other public buildings.

18 M. Notwithstanding section 34-221, any agent may enter into a
 19 guaranteed energy cost savings contract with a qualified provider, as those
 20 terms are defined in section 15-213.01, for the purchase of energy cost
 21 savings measures without complying with this article and may procure a
 22 guaranteed energy cost savings contract through the competitive sealed
 23 proposal process prescribed in title 41, chapter 23, article 3 or any similar
 24 competitive proposal process adopted by the agent as long as the agent
 25 follows any additional requirements set forth in section 15-213.01.

26 Sec. 4. Repeal

27 Section 34-201, Arizona Revised Statutes, as amended by Laws 2010,
 28 chapter 117, section 12, is repealed.

29 Sec. 5. Retroactivity

30 Section 34-201, Arizona Revised Statutes, as amended by Laws 2009,
 31 chapter 101, section 6 and this act, applies retroactively to from and after
 32 June 30, 2011.

33 Sec. 6. Effective date

34 A. Section 34-201, Arizona Revised Statutes, as amended by Laws 2010,
 35 chapter 244, section 23 and this act, is effective from and after September
 36 30, 2011.

37 B. Section 34-201, Arizona Revised Statutes, as amended by Laws 2010,
 38 chapter 244, section 24 and this act, is effective from and after June
 39 30, 2013.