

REFERENCE TITLE: RFP; advertising in newspapers; repeal

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1605

Introduced by
Senators Smith, Bundgaard: Biggs, Murphy, Pearce R

AN ACT

AMENDING SECTION 28-6713, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 244, SECTION 16; 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; AMENDING SECTION 41-2533, ARIZONA REVISED STATUTES; RELATING TO NOTICES REGARDING BIDDING FOR PUBLIC CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-6713, Arizona Revised Statutes, as amended by
3 Laws 2010, chapter 244, section 16, is amended to read:

4 28-6713. Bids for construction, reconstruction, equipment or
5 supplies; procedure; bond; exceptions

6 A. Except as provided in subsection G of this section, in a county
7 with a population of two hundred fifty thousand persons or more as determined
8 by the most recent United States decennial census or the most recent special
9 census as provided in section 28-6532, bids for all items of construction or
10 reconstruction involving an expenditure equal to or greater than the amount
11 determined pursuant to subsection B of this section, all purchases or other
12 acquisition of equipment involving an expenditure of more than five thousand
13 dollars and all purchases of supplies and materials involving an expenditure
14 of two thousand five hundred dollars or more shall be called for by
15 ~~advertising in a newspaper of general circulation in the county for two~~
16 ~~consecutive publications if it is a weekly newspaper, or for two publications~~
17 ~~of at least six but not more than ten days apart if it is a daily newspaper.~~
18 NOTICE GIVEN TO ANY PERSON WHO REQUESTS TO BE PLACED ON A LIST FOR THE
19 PURPOSES OF RECEIVING SUCH A NOTICE. THE NOTICE MAY ALSO BE POSTED AT A
20 DESIGNATED SITE ON A WORLDWIDE PUBLIC NETWORK OF INTERCONNECTED COMPUTERS.

21 The ~~advertisement~~ NOTICE shall state specifically the character of the work
22 to be done and the kind and quality of materials or supplies to be furnished.

23 B. Bids shall be called pursuant to subsection A of this section for
24 all items of construction or reconstruction involving an expenditure of:

25 1. In fiscal year 1985-1986, thirty-five thousand dollars.

26 2. In fiscal year 1986-1987 and each fiscal year thereafter, the
27 amount provided in paragraph 1 of this subsection adjusted by the annual
28 percentage change in the GDP price deflator as defined in section 41-563.

29 C. If the board of supervisors receives a satisfactory bid, it shall
30 contract with the lowest responsible bidder after the contractor or supplier
31 gives any bond required by title 34, chapter 2, article 2, except that in
32 counties with a population of more than one million persons according to the
33 most recent United States decennial census, in determining the lowest
34 responsible bidder under this section, the board may consider, for no more
35 than five projects, the time of completion proposed by the bidder, the value
36 over time of completed services and facilities and the value over time of
37 interrupted services, if the board determines that this procedure will serve
38 the public interest by providing a substantial fiscal benefit or that the use
39 of the traditional awarding of contracts is not practicable for meeting
40 desired construction standards or delivery schedules and if the formula for
41 considering the time of completion is specifically stated in the bidding
42 information. The board may reject any or all bids and readvertise.

43 D. The board of supervisors, a member of the board of supervisors or
44 any other official or agent of a county affected by this section shall not
45 segregate or divide into separate units a contiguous or continuous portion of

1 highway construction or reconstruction or divide into separate portions an
2 item of equipment or generally recognized unit of supplies or material to
3 avoid the restrictions imposed by subsection A of this section.

4 E. The board of supervisors, a member of the board of supervisors or
5 any other official or agent of a county affected by this section shall make
6 every effort to combine the following:

7 1. Separate portions of highway construction or reconstruction
8 projects.

9 2. Items of equipment, supplies and materials.

10 F. After a contract has been awarded, the board of supervisors'
11 authorized representative may authorize change orders to the contract if
12 necessary pursuant to guidelines set by the board of supervisors. This
13 authority does not permit the board of supervisors' authorized representative
14 to act independently to award new contracts.

15 G. A building, structure, addition or alteration may be constructed
16 without complying with the bidding requirements of this section if the
17 construction, including construction of buildings or structures on public or
18 private property, is required as a condition of development of private
19 property and is authorized by section 9-463.01 or ~~11-821 or~~ 11-822. For the
20 purposes of this subsection, building does not include any police, fire,
21 school, library or other public building.

22 H. Subsections A, B and C of this section do not apply to procurement
23 of construction-manager-at-risk, design-build and job-order-contracting
24 construction services pursuant to title 34, chapter 6.

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
32 specifications, shall ~~publish~~ PROVIDE a notice to contractors of intention to
33 receive bids and contract for the proposed work. This notice shall be
34 ~~published by advertising in a newspaper of general circulation in the county~~
35 ~~in which the agent is located for two consecutive publications if it is a~~
36 ~~weekly newspaper or for two publications that are at least six but no more~~
37 ~~than ten days apart if it is a daily newspaper.~~ GIVEN TO ANY PERSON WHO
38 REQUESTS TO BE PLACED ON A LIST FOR THE PURPOSES OF RECEIVING SUCH A NOTICE.
39 THE NOTICE MAY ALSO BE POSTED AT A DESIGNATED SITE ON A WORLDWIDE PUBLIC
40 NETWORK OF INTERCONNECTED COMPUTERS. The notice shall state:

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

44 2. That contractors desiring to submit proposals may obtain copies of
45 full or partial sets of plans and specifications for estimate on request or

1 by appointment. The return of such plans and specifications shall be
2 guaranteed by a deposit of a designated amount, which shall be refunded on
3 return of the plans and specifications in good order.

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

19 Now, therefore, if the obligee accepts the proposal of the
20 principal and the principal enters into a contract with the
21 obligee in accordance with the terms of the proposal and gives
22 the bonds and certificates of insurance as specified in the
23 standard specifications with good and sufficient surety for the
24 faithful performance of the contract and for the prompt payment
25 of labor and materials furnished in the prosecution of the
26 contract, or in the event of the failure of the principal to
27 enter into the contract and give the bonds and certificates of
28 insurance, if the principal pays to the obligee the difference
29 not to exceed the penalty of the bond between the amount
30 specified in the proposal and such larger amount for which the
31 obligee may in good faith contract with another party to perform
32 the work covered by the proposal then this obligation is void.
33 Otherwise it remains in full force and effect provided, however,
34 that this bond is executed pursuant to the provisions of section
35 34-201, Arizona Revised Statutes, and all liabilities on this
36 bond shall be determined in accordance with the provisions of
37 the section to the extent as if it were copied at length herein.

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

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

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

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

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

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

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

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

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

22 F. Notwithstanding this section, an agent may:

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

27 2. Construct recreational projects, including trails, playgrounds,
28 ballparks and other similar facilities and excluding buildings, structures,
29 building additions and alterations to buildings, structures and building
30 additions, with volunteer workers or workers provided by a nonprofit
31 organization without advertising for bids for labor and materials, provided
32 that the total cost of the work does not exceed:

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

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

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

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

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

1 H. In addition to other state or local requirements relating to the
2 publication of bids, each agent shall provide at least one set of all plans
3 and specifications to any construction news reporting service that files an
4 annual request with the agent. For the purposes of this subsection,
5 "construction news reporting service" means a service that researches,
6 gathers and disseminates news and reports either in print or electronically,
7 on at least a weekly basis for building projects, construction bids, the
8 purchasing of materials, supplies or services and other construction bidding
9 or planned activity to the allied construction industry. The allied
10 construction industry includes both general and specialty contractors,
11 builders, material and service suppliers, architects and engineers, owners,
12 developers and government agencies.

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

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

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

32 L. Any building, structure, addition or alteration may be constructed
33 without complying with this article if the construction, including
34 construction of buildings or structures on public or private property, is
35 required as a condition of development of private property and is authorized
36 by section 9-463.01 or 11-822. For the purposes of this subsection, building
37 does not include police, fire, school, library or other public buildings.

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

1 Sec. 3. Section 34-201, Arizona Revised Statutes, as amended by Laws
2 2010, chapter 244, section 24, is amended to read:

3 34-201. Notice of intention to receive bids and enter contract:
4 procedure; doing work without advertising for bids;
5 county compliance

6 A. Except as provided in subsections B through G and L of this
7 section, every agent, on acceptance and approval of the working drawings and
8 specifications, shall ~~publish~~ PROVIDE a notice to contractors of intention to
9 receive bids and contract for the proposed work. This notice shall be
10 ~~published by advertising in a newspaper of general circulation in the county~~
11 ~~in which the agent is located for two consecutive publications if it is a~~
12 ~~weekly newspaper or for two publications that are at least six but no more~~
13 ~~than ten days apart if it is a daily newspaper.~~ GIVEN TO ANY PERSON WHO
14 REQUESTS TO BE PLACED ON A LIST FOR THE PURPOSES OF RECEIVING SUCH A NOTICE.
15 THE NOTICE MAY ALSO BE POSTED AT A DESIGNATED SITE ON A WORLDWIDE PUBLIC
16 NETWORK OF INTERCONNECTED COMPUTERS. The notice shall state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 F. Notwithstanding this section, an agent may:

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

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

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

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

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

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

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

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

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

34 J. Any construction, building addition or alteration project that is
35 financed by monies of this state or its political subdivisions shall not use
36 endangered wood species unless an exemption is granted by the director of the
37 department of administration. The director shall only grant an exemption if
38 the use of endangered wood species is deemed necessary for historical
39 restoration or to repair existing facilities and the use of any substitute
40 material is not practical. Any lease-purchase agreement entered into by this
41 state or its political subdivisions for construction shall specify that no
42 endangered wood species may be used in the construction unless an exemption
43 is granted by the director. For the purposes of this subsection, "endangered
44 wood species" includes those listed in appendix I of the convention on
45 international trade in endangered species of wild flora and fauna.

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

4 L. Any building, structure, addition or alteration may be constructed
5 without complying with this article if the construction, including
6 construction of buildings or structures on public or private property, is
7 required as a condition of development of private property and is authorized
8 by section 9-463.01 or 11-822. For the purposes of this subsection, building
9 does not include police, fire, school, library or other public buildings.

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

18 Sec. 4. Repeal

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

21 Sec. 5. Section 41-2533, Arizona Revised Statutes, is amended to read:

22 41-2533. Competitive sealed bidding

23 A. Contracts shall be awarded by competitive sealed bidding except as
24 otherwise provided in section 41-2532.

25 B. An invitation for bids shall be issued and shall include a purchase
26 description and all contractual terms and conditions applicable to the
27 procurement.

28 C. Adequate public notice of the invitation for bids shall be given a
29 reasonable time before the date set forth in the invitation for the opening
30 of bids, in accordance with rules adopted by the director. ~~The notice may
31 include publication one or more times in a newspaper of general circulation a
32 reasonable time before bid opening. If the invitation for bids is for the
33 procurement of services other than those described in sections 41-2513,
34 41-2578, 41-2579 and 41-2581, the notice shall include publication in a
35 single newspaper or in multiple newspapers within this state. The
36 publication shall be not less than two weeks before bid opening and shall be
37 circulated within the affected governmental jurisdiction. THE NOTICE SHALL
38 BE GIVEN TO ANY PERSON WHO REQUESTS TO BE PLACED ON A LIST FOR THE PURPOSES
39 OF RECEIVING SUCH A NOTICE.~~ The notice may also be posted at a designated
40 site on a worldwide public network of interconnected computers.

41 D. Bids shall be opened publicly at the time and place designated in
42 the invitation for bids. The amount of each bid, and such other relevant
43 information as may be specified by rule, together with the name of each
44 bidder shall be recorded. This record shall be open to public inspection at
45 the bid opening in a manner prescribed by rule. The bids shall not be open

1 for public inspection until after a contract is awarded. To the extent the
2 bidder designates and the state concurs, trade secrets or other proprietary
3 data contained in the bid documents shall remain confidential in accordance
4 with rules adopted by the director.

5 E. Bids shall be unconditionally accepted without alteration or
6 correction, except as authorized in this chapter. Bids shall be evaluated
7 based on the requirements set forth in the invitation for bids, including
8 criteria to determine acceptability such as inspection, testing, quality,
9 workmanship, delivery and suitability for a particular purpose, as prescribed
10 in rules adopted by the director. The invitation for bids shall set forth
11 the evaluation criteria to be used, including the weighting of identified
12 criteria. Evaluation criteria shall not be used for construction and no
13 criteria may be used in bid evaluation that are not set forth in the
14 invitation for bids.

15 F. The correction or withdrawal of erroneous bids before or after bid
16 opening, based on bid mistakes, may be permitted in accordance with rules
17 adopted by the director. After bid opening, no corrections in bid prices or
18 other provisions of bids prejudicial to the interest of this state or fair
19 competition shall be permitted. Except as otherwise provided by rule, all
20 decisions to permit the correction or withdrawal of bids, or to cancel awards
21 or contracts based on bid mistakes, shall be supported by a written
22 determination made by the director.

23 G. The contract shall be awarded to the lowest responsible and
24 responsive bidder whose bid conforms in all material respects to the
25 requirements and criteria set forth in the invitation for bids. The amount
26 of any applicable transaction privilege or use tax of a political subdivision
27 of this state is not a factor in determining the lowest bidder. If all bids
28 for a construction project exceed available monies as certified by the
29 appropriate fiscal officer, and the low responsive and responsible bid does
30 not exceed such monies by more than five per cent, the director may in
31 situations in which time or economic considerations preclude resolicitation
32 of work of a reduced scope negotiate an adjustment of the bid price,
33 including changes in the bid requirements, with the low responsive and
34 responsible bidder, to bring the bid within the amount of available monies.

35 H. The multistep sealed bidding method may be used if the director
36 determines in writing that it is not practicable to initially prepare a
37 definitive purchase description ~~which~~ THAT is suitable to permit an award
38 based on competitive sealed bidding. An invitation for bids may be issued
39 requesting the submission of technical offers to be followed by an invitation
40 for bids limited to those bidders whose offers are determined to be
41 technically acceptable under the criteria set forth in the first
42 solicitation, except that the multistep sealed bidding method may not be used
43 for construction contracts.

44 I. If the price of a recycled paper product ~~which~~ THAT conforms to
45 specifications is within five per cent of a low bid product ~~which~~ THAT is not

1 recycled and the recycled product bidder is otherwise the lowest responsible
2 and responsive bidder, the award shall be made to the bidder offering the
3 recycled product. The director may adopt rules requiring a five per cent
4 preference for other products made from recycled materials.

5 Sec. 6. Effective date

6 A. Section 28-6713, Arizona Revised Statutes, as amended by Laws 2010,
7 chapter 244, section 16 and this act, and section 34-201, Arizona Revised
8 Statutes, as amended by Laws 2010, chapter 244, section 23 and this act, are
9 effective from and after September 30, 2011.

10 B. Section 34-201, Arizona Revised Statutes, as amended by Laws 2010,
11 chapter 244, section 24 and this act, is effective from and after June 30,
12 2013.