

House Engrossed

competitive sealed bidding; questions; answers

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HOUSE BILL 2625

AN ACT

AMENDING SECTIONS 41-2533, 41-2535 AND 41-2573, ARIZONA REVISED STATUTES;
RELATING TO PROCUREMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-2533, Arizona Revised Statutes, is amended to
3 read:

4 41-2533. Competitive sealed bidding

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

7 B. An invitation for bids shall be issued and shall include a
8 purchase description and all contractual terms and conditions applicable
9 to the procurement.

10 C. THE DIRECTOR SHALL PROVIDE A QUESTION AND ANSWER PERIOD FOR
11 BIDDERS AND INTERESTED PARTIES OUTSIDE OF THE PROCUREMENT PROCESS. BIDDERS
12 AND INTERESTED PARTIES SHALL SUBMIT QUESTIONS IN WRITING AND THE DIRECTOR
13 SHALL PROVIDE WRITTEN RESPONSES FOR EACH QUESTION. THE DIRECTOR SHALL ALSO
14 PROVIDE ALL QUESTIONS RAISED AND ANSWERS PROVIDED IN WRITING, INCLUDING
15 QUESTIONS THAT ARISE DURING SITE VISITS AND PRE-BID CONFERENCES, TO ALL
16 BIDDERS AND INTERESTED PARTIES.

17 ~~E.~~ D. Adequate public notice of the invitation for bids shall be
18 given a reasonable time before the date set forth in the invitation for
19 the opening of bids, in accordance with rules adopted by the director.
20 The notice may include publication one or more times in a newspaper of
21 general circulation a reasonable time before bid opening. If the
22 invitation for bids is for the procurement of services other than those
23 described in sections 41-2513, 41-2578, 41-2579 and 41-2581, the notice
24 shall include publication in a single newspaper or in multiple newspapers
25 within this state. The publication shall be not less than two weeks
26 before bid opening and shall be circulated within the affected
27 governmental jurisdiction. The notice may also be posted at a designated
28 site on a worldwide public network of interconnected computers.

29 ~~D.~~ E. Bids shall be opened publicly at the time and place
30 designated in the invitation for bids. The amount of each bid, and such
31 other relevant information as may be specified by rule, together with the
32 name of each bidder shall be recorded. This record shall be open to
33 public inspection at the bid opening in a manner prescribed by rule. The
34 bids shall not be open for public inspection until after a contract is
35 awarded. To the extent the bidder designates and the state concurs, trade
36 secrets or other proprietary data contained in the bid documents shall
37 remain confidential in accordance with rules adopted by the director.

38 ~~E.~~ F. Bids shall be unconditionally accepted without alteration or
39 correction, except as authorized in this chapter. Bids shall be evaluated
40 based on the requirements set forth in the invitation for bids, including
41 criteria to determine acceptability such as inspection, testing, quality,
42 workmanship, delivery and suitability for a particular purpose, as
43 prescribed in rules adopted by the director. Evaluation criteria shall
44 not be used for construction and no criteria may be used in bid evaluation
45 that are not set forth in the invitation for bids.

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

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

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

~~I.~~ J. If the price of a recycled paper product that conforms to specifications is within five per cent of a low bid product that is not recycled and the recycled product bidder is otherwise the lowest responsible and responsive bidder, the award shall be made to the bidder offering the recycled product. The director may adopt rules requiring a five per cent preference for other products made from recycled materials.

Sec. 2. Section 41-2535, Arizona Revised Statutes, is amended to read:

41-2535. Procurements not exceeding a prescribed amount; small businesses; simplified construction procurement program

A. Any procurement that does not exceed the aggregate dollar amount of one hundred thousand dollars may be made in accordance with rules adopted by the director, except that the procurements shall be made with such competition as is practicable under the circumstances.

1 B. Any procurement that does not exceed the aggregate dollar amount
2 of less than one hundred thousand dollars shall be restricted, if
3 practicable, to small businesses as defined in rules adopted by the
4 director. The procurement officer shall rotate the small business
5 solicited to compete for any procurement of less than one hundred thousand
6 dollars. If it is impracticable to restrict a particular procurement to
7 small businesses, the procurement officer shall make a determination
8 setting forth the reasons and place it in the contract file.

9 C. Procurement requirements shall not be artificially divided or
10 fragmented so as to constitute a purchase under this section and to
11 circumvent the source selection procedures required by section 41-2533 or
12 41-2534 or be artificially combined to circumvent this section.

13 D. A procurement involving construction not exceeding one hundred
14 thousand dollars may be made pursuant to rules adopted by the director in
15 accordance with this section that shall be known as the simplified
16 construction procurement program. At a minimum the rules shall require
17 that:

18 1. A list be maintained of persons who desire to receive
19 solicitations to bid on construction projects to which additions shall be
20 permitted throughout the year.

21 2. The list of persons be available for public inspection.

22 3. Agreements for construction be on forms approved by the
23 director.

24 4. All information submitted by bidders pursuant to this section be
25 confidential according to section 41-2533, subsection ~~D~~ E.

26 5. All bids for construction be opened at a public opening.

27 6. All persons desiring to submit bids be treated equitably and the
28 information related to each project be available to all eligible persons.

29 7. Competition for construction projects under the simplified
30 construction procurement program be encouraged to the maximum extent
31 possible.

32 Sec. 3. Section 41-2573, Arizona Revised Statutes, is amended to
33 read:

34 41-2573. Bid security

35 A. As a guarantee that the contractor will enter into a contract,
36 bid security is required for all construction procured pursuant to section
37 41-2533 and all construction services procured pursuant to section
38 41-2578, subsection F or section 41-2579, subsection F if the purchasing
39 agency estimates that the budget for construction, excluding the cost of
40 any finance services, maintenance services, operations services, design
41 services, preconstruction services or other related services included in
42 the contract, will be more than the amount established by section 41-2535,
43 subsection D. Bid security shall be a certified check or surety bond.

44 B. Bid security shall be submitted in the following amounts:

1 1. For design-bid-build construction services, ten percent of the
2 contractor's bid.

3 2. For design-build construction services awarded by competitive
4 sealed proposals pursuant to section 41-2578, subsection F, ten percent of
5 the purchasing agency's construction budget for the project as stated in
6 the request for proposals, excluding finance services, maintenance
7 services, operations services, design services, preconstruction services
8 or any other related services included in the contract.

9 3. For job-order-contracting construction services awarded by
10 competitive sealed proposals pursuant to section 41-2578, subsection F or
11 section 41-2579, subsection F, the amount prescribed by the purchasing
12 agency in the request for proposals, but not more than ten percent of the
13 purchasing agency's reasonably estimated budget for construction that the
14 purchasing agency believes is likely to actually be done during the first
15 year under the contract, excluding any finance services, maintenance
16 services, operations services, design services, preconstruction services
17 or other related services included in the contract.

18 C. This section does not prevent a state governmental unit from
19 requiring such bid security in relation to any construction contract. The
20 surety bond shall be executed and furnished as required by title 34,
21 chapter 2 or chapter 6, as applicable, and the conditions and provisions
22 of the surety bond regarding the surety's obligations shall follow the
23 form required by section 34-201 or 34-608, as applicable.

24 D. If the invitation for bids or request for proposals requires
25 security, noncompliance requires that the bid be rejected unless, pursuant
26 to rules, it is determined that the bid fails to comply in a
27 nonsubstantial manner with the security requirements.

28 E. After the bids or proposals are opened, they are irrevocable for
29 the period specified in the invitation for bids or request for proposals,
30 except as provided in section 41-2533, subsection ~~F~~ G, section 41-2578,
31 subsection F and section 41-2579, subsection F. If a bidder is permitted
32 to withdraw its bid before award, no action may be had against the bidder
33 or the bid security.