

House Engrossed

competitive sealed bidding; questions; answers

State of Arizona
House of Representatives
Fifty-seventh Legislature
Second Regular Session
2026

HOUSE BILL 2873

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

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

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

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

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

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

40 41-2535. Procurements not exceeding a prescribed amount;
41 small businesses; simplified construction
42 procurement program

43 A. Any procurement that does not exceed the aggregate dollar amount
44 of ~~one hundred thousand dollars~~ \$100,000 may be made in accordance with

1 rules adopted by the director, except that the procurements shall be made
2 with such competition as is practicable under the circumstances.

3 B. Any procurement that does not exceed the aggregate dollar amount
4 of less than ~~one hundred thousand dollars~~ \$100,000 shall be restricted, if
5 practicable, to small businesses as defined in rules adopted by the
6 director. The procurement officer shall rotate the small business
7 solicited to compete for any procurement of less than ~~one hundred thousand~~
8 ~~dollars~~ \$100,000. If it is impracticable to restrict a particular
9 procurement to small businesses, the procurement officer shall make a
10 determination setting forth the reasons and place it in the contract file.

11 C. Procurement requirements shall not be artificially divided or
12 fragmented so as to constitute a purchase under this section and to
13 circumvent the source selection procedures required by section 41-2533 or
14 41-2534 or be artificially combined to circumvent this section.

15 D. A procurement involving construction not exceeding ~~one hundred~~
16 ~~thousand dollars~~ \$100,000 may be made pursuant to rules adopted by the
17 director in accordance with this section that shall be known as the
18 simplified construction procurement program. At a minimum the rules shall
19 require that:

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

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

24 3. Agreements for construction be on forms approved by the
25 director.

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

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

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

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

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

36 41-2573. Bid security

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

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

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

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

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

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

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

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