House Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

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

CHAPTER 77

HOUSE BILL 2367

AN ACT

AMENDING SECTION 28-6923, ARIZONA REVISED STATUTES; RELATING TO PUBLIC CONSTRUCTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 28-6923, Arizona Revised Statutes, is amended to read:

28-6923. Bid requirements; procedure; bond

A. All items of construction or reconstruction of department facilities involving an expenditure of ~~fifty~~ ONE HUNDRED EIGHTY-NINE thousand dollars or more shall be called for by advertising in a newspaper of general circulation published in this state for either:

1. Two consecutive publications if it is a weekly newspaper.

2. Two publications at least six but not more than ten days apart if it is a daily newspaper.

B. IN FISCAL YEAR 2008-2009 AND EACH FISCAL YEAR THEREAFTER, THE AMOUNT PROVIDED IN SUBSECTION A OF THIS SECTION SHALL BE ADJUSTED BY THE ANNUAL PERCENTAGE CHANGE IN THE GDP PRICE DEFLATOR AS DEFINED IN SECTION 41-563.

~~B.~~ C. The advertisement shall state specifically the character of the work to be done and where a person may obtain copies of the plans, specifications and complete information as to the proposed work.

~~C.~~ D. The bidding information provided shall state specifically the character of the work to be performed and the kind, quantity and quality of materials or supplies to be furnished. The plans and specifications:

1. Shall be sufficiently complete, definite and explicit to permit informed, free, open and competitive bidding on a common basis.

2. May require performance on the basis of either means and methods specifications or end result specifications.

3. If end result specifications are used, shall provide an objective or standard to be achieved with the successful bidder expected to exercise the bidder's skill and ingenuity in achieving that objective or standard of performance by selecting the means and manner of performance and by assuming a corresponding responsibility for that selection.

~~D.~~ E. A bid shall be accompanied by a certified check, cashier's check or surety bond for ten per cent of the amount of the bid included in the proposal as a guarantee that the contractor will enter into a contract to perform the proposal pursuant to the plans and specifications.

~~E.~~ F. The certified check, cashier's check or surety bond shall be returned to the contractors whose proposals are not accepted and to the successful contractor on the execution of a satisfactory bond and contract as provided in this article.

~~F.~~ G. The surety bond provided pursuant to subsection D of this section shall be executed and furnished as required by title 34, chapter 2, and the conditions and provisions of the surety bid bond regarding the surety's obligations shall follow the form required under section 34-201, subsection A, paragraph 3.

~~G.~~ H. If a bid that is satisfactory to the board is received, it shall let a contract to the lowest responsible bidder, on the contractor

giving performance and payment bonds that follow the form and include the provisions required by title 34, chapter 2, article 2.

~~H.~~ I. If the bids received for construction or reconstruction are not satisfactory to the board, a second call shall be made. If they are again rejected by the board, it may authorize the state engineer to construct or reconstruct the item as it deems most advantageous.

~~I.~~ J. In determining the lowest responsible bidder under this section, the department and the board may consider the time of completion proposed by the bidder if the department and the board determine that this procedure will serve the public interest by providing a substantial fiscal benefit or that the use of the traditional awarding of contracts is not practicable for meeting desired construction standards or delivery schedules and if the formula for considering the time of completion is specifically stated in the bidding information.

~~J.~~ K. This section does not prohibit a change to a construction contract that either:

1. Does not alter the scope of the work under a contract and the cost of the change does not exceed ten per cent of the contract amount or fifty thousand dollars, whichever is greater.

2. Does alter the scope of the work if the cost of the change does not exceed ten per cent of the contract amount or fifty thousand dollars, whichever is greater, and the changed work is within twenty per cent of the total project length.

~~K.~~ L. If a project is funded completely with private monies, the private entity is not required to comply with subsections A through ~~J~~ K of this section if the private entity complies with all of the following:

1. Before advertising for bids, submits to the department a bond that is issued by a surety insurer authorized to do business in this state and that is in an amount equal to one hundred twenty-five per cent of the anticipated construction cost of the project, including construction management and contractor costs.

2. Solicits sealed bids from at least four contractors who are prequalified by the department to perform a contract of the anticipated dollar amount of the construction.

3. Awards the contract to the best bidder taking into account price and other criteria as provided in the bid documents.

4. Obtains bonds from the selected contractor that provide the same coverage as performance and payment bonds issued under title 34, chapter 2, article 2.

5. Uses department construction standards.

6. Pays all costs of department reviews of the contract and inspections of the project.

~~L.~~ M. For the purposes of this section, a project is funded completely with private monies if all of the following apply:

1. The contractor is paid entirely with monies from private entities.

2. The private entities hire a competent construction manager and contractor who do not have an affiliation with each other.

3. The private entities either pay all costs of design or reimburse the department for all costs of design.

APPROVED BY THE GOVERNOR APRIL 16, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2007.