

Senate Engrossed

procurement; information disclosure; bidders

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SENATE BILL 1104

AN ACT

AMENDING SECTION 41-2533, ARIZONA REVISED STATUTES; RELATING TO THE
PROCUREMENT CODE.

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

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

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

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

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

10 G. 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
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. 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. 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.