

REFERENCE TITLE: public construction; bidding; best value

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2592

Introduced by
Representatives Prezelski, Lujan: Farley, Gallardo, Sinema, Thrasher

AN ACT

AMENDING TITLE 34, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7; AMENDING
TITLE 41, CHAPTER 23, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 14;
RELATING TO PUBLIC CONSTRUCTION CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 34, Arizona Revised Statutes, is amended by adding
3 chapter 7, to read:

4 CHAPTER 7

5 BEST VALUE BIDDING SYSTEM FOR PUBLIC CONSTRUCTION CONTRACTS

6 ARTICLE 1. GENERAL PROVISIONS

7 34-701. Application of chapter

8 THIS CHAPTER APPLIES IN ADDITION TO THE OTHER REQUIREMENTS OF THIS
9 TITLE.

10 34-702. Best value approach for contracts involving
11 construction services

12 AN AGENT SHALL USE A BEST VALUE APPROACH IN AWARDING A BID FOR A
13 CONTRACT FOR CONSTRUCTION SERVICES.

14 34-703. Notice of evaluation of bids

15 A. ALL EVALUATION FACTORS THAT WILL AFFECT THE CONTRACT AWARD SHALL BE
16 CLEARLY STATED IN THE SOLICITATION FOR BEST VALUE BID. THE SOLICITATION
17 SHALL STATE WHETHER ALL EVALUATION FACTORS OTHER THAN COST OR PRICE, WHEN
18 COMBINED, ARE SIGNIFICANTLY MORE IMPORTANT THAN, APPROXIMATELY EQUAL TO OR
19 SIGNIFICANTLY LESS IMPORTANT THAN COST OR PRICE.

20 B. ADEQUATE PUBLIC NOTICE OF THE BEST VALUE SOLICITATION OF BIDS SHALL
21 BE GIVEN.

22 C. COST INFORMATION SHALL BE PROVIDED AFTER THE RANKING OF BIDDERS AND
23 THE ISSUANCE OF THE AWARD.

24 34-704. Factors involved in determining best value

25 A. THE BEST VALUE SOLICITATION OF BIDS SHALL USE THE FACTORS
26 PRESCRIBED IN THIS SUBSECTION, EACH OF WHICH IS ENTITLED TO ONE POINT IN THE
27 DETERMINATION OF AN AWARD. COST OR PRICE SHALL BE A FACTOR IN THE
28 DETERMINATION OF AN AWARD. THE BID EVALUATION FACTORS TO BE CONSIDERED SHALL
29 INCLUDE THE FOLLOWING, AS DETERMINED BY THE AGENT IN ITS SOLE DISCRETION AND
30 NOT SUBJECT TO PROTEST:

31 1. PRICE.

32 2. THE QUALITY OF CONSTRUCTION SERVICES TO BE PROVIDED BY THE BIDDER,
33 BASED ON ITS PRIOR RECORD OF PERFORMANCE AS TO:

34 (a) TIMELY COMPLETION OF PROJECTS.

35 (b) COMPLETION OF PROJECTS ON OR UNDER BUDGET.

36 (c) ACTIONS TAKEN AGAINST THE BIDDER BY ANY COURT OR GOVERNMENTAL
37 AGENCY.

38 3. ABILITY OF THE BIDDER TO MEET CONSTRUCTION SCHEDULES IMPOSED BY THE
39 AGENT.

40 4. ADEQUACY OF FINANCIAL RESOURCES TO PERFORM THE CONTRACT.

41 5. EXPERTISE AND EXPERIENCE OF THE BIDDER IN THE CONSTRUCTION
42 INDUSTRY.

43 6. EXPERTISE AND EXPERIENCE OF THE BIDDER ON SIMILAR PROJECTS.

- 1 7. EXISTENCE OF A FORMAL APPRENTICESHIP TRAINING PROGRAM PURSUANT TO
- 2 STANDARDS ESTABLISHED BY THE UNITED STATES DEPARTMENT OF LABOR OR APPROPRIATE
- 3 STATE AGENCY.
- 4 8. ABILITY OF THE BIDDER TO PROVIDE A SAFE PROJECT, INCLUDING THE
- 5 EXISTENCE OF AN ESTABLISHED SAFETY TRAINING PROGRAM AND A FORMAL SAFETY
- 6 SUPERVISION PROGRAM FOR THE PROJECT.
- 7 9. AGREEMENT TO PAY PREVAILING WAGES, INCLUDING THE BIDDER'S RECORD OF
- 8 PAYMENT OR NONPAYMENT OF PREVAILING WAGES ON PAST PROJECTS.
- 9 10. AGREEMENT THAT ALL LABOR ON THE PROJECT SHALL BE COVERED BY
- 10 APPROVED HEALTH INSURANCE AND PENSION PLANS.
- 11 11. ABILITY OF THE BIDDER TO FURNISH LABOR THAT CAN WORK IN HARMONY
- 12 WITH ALL OTHER ELEMENTS OF LABOR EMPLOYED OR TO BE EMPLOYED ON THE PROJECT.
- 13 12. ABILITY OF THE BIDDER TO ASSURE THE ABSENCE OF WORK STOPPAGES OR
- 14 LOCKOUTS FOR THE DURATION OF THE PROJECT.
- 15 13. COMMITMENT THAT A MINIMUM PERCENTAGE OF THE WORKERS ON THE PROJECT
- 16 ARE RESIDENTS OF THE APPROPRIATE CITY, TOWN OR COUNTY AS DETERMINED BY THE
- 17 AGENT.
- 18 B. IN ORDER TO COMPLY WITH SUBSECTION A, PARAGRAPH 2, SUBDIVISION (c),
- 19 EACH BIDDER SHALL DISCLOSE TO THE AGENT THE FOLLOWING INFORMATION:
- 20 1. DEBARMENTS OR SUSPENSIONS BY ANY GOVERNMENT AGENCY FROM PUBLIC
- 21 CONTRACTING.
- 22 2. DEFAULTS, CANCELLATIONS OR TERMINATIONS FOR CAUSE ON ANY CONTRACT.
- 23 3. FINDINGS OF NONRESPONSIBILITY BY ANY GOVERNMENT AGENCY.
- 24 4. FINDINGS OF VIOLATION OF ANY ADMINISTRATIVE, STATUTORY OR
- 25 REGULATORY PROVISION.
- 26 5. PENDING, OR PREVIOUS, CIVIL, CRIMINAL OR GOVERNMENTAL
- 27 INVESTIGATIONS OF THE BIDDER AND THE RESULT OF THE INVESTIGATIONS.
- 28 6. REVOCATIONS OF ANY PERMIT OR LICENSE ISSUED TO THE BIDDER.
- 29 7. SANCTIONS IMPOSED ON THE BIDDER WITH RESPECT TO ITS PERMITS OR
- 30 LICENSES.
- 31 8. INSTANCES WHERE THE BIDDER WAS UNABLE TO OBTAIN BONDING.
- 32 9. INSTANCES WHERE THE BIDDER WAS SUBJECT TO ANY GOVERNMENT JUDGMENT
- 33 OR LIEN.
- 34 10. IDENTITIES OF ALL OWNERS, OFFICERS, AFFILIATES, PARENTS,
- 35 SUBSIDIARIES AND CONTROLLING OR CONTROLLED ENTITIES OF THE BIDDER.
- 36 11. IDENTITIES OF ALL SUBCONTRACTORS PROPOSED FOR THE PROJECT.
- 37 12. ALL PREVIOUS CONTRACTS PERFORMED BY THE BIDDER FOR THE AGENT.
- 38 34-705. Evaluation of bids
- 39 A. DISCUSSION MAY BE CONDUCTED WITH THE APPARENT RESPONSIBLE BIDDERS
- 40 TO ASSURE UNDERSTANDING OF THEIR BEST VALUE BIDS.
- 41 B. BIDS SHALL BE EVALUATED BY USING THE CRITERIA PRESCRIBED IN SECTION
- 42 34-704. ALL EVALUATION FACTORS SHALL BE CONSIDERED IN DETERMINING THE
- 43 NUMERICAL SCORE FOR EACH PARTICIPATING BIDDER. ONCE THE EVALUATION IS
- 44 COMPLETE, ALL RESPONSIBLE BIDDERS SHALL BE RANKED FROM MOST ADVANTAGEOUS TO
- 45 LEAST ADVANTAGEOUS TO THE AGENT.

1 34-706. Award of bid

2 AN AWARD SHALL BE MADE TO THE RESPONSIVE AND RESPONSIBLE BIDDER WHOSE
3 BID IS DETERMINED, IN WRITING, TO BE MOST ADVANTAGEOUS TO THE AGENT, TAKING
4 INTO CONSIDERATION ALL EVALUATION FACTORS PRESCRIBED IN THE BEST VALUE BID.
5 THE CONTRACT FILE SHALL CONTAIN THE BASIS ON WHICH THE AWARD IS MADE AND MUST
6 BE SUFFICIENT TO SATISFY EXTERNAL AUDIT.

7 Sec. 2. Title 41, chapter 23, Arizona Revised Statutes, is amended by
8 adding article 14, to read:

9 ARTICLE 14. BEST VALUE BIDDING SYSTEM
10 FOR PUBLIC CONSTRUCTION CONTRACTS

11 41-2681. Application of article

12 THIS ARTICLE APPLIES IN ADDITION TO THE OTHER REQUIREMENTS OF THIS
13 CHAPTER.

14 41-2682. Best value approach for contracts involving
15 construction services

16 A STATE GOVERNMENTAL UNIT SHALL USE A BEST VALUE APPROACH IN AWARING
17 BID FOR A CONTRACT FOR CONSTRUCTION SERVICES.

18 41-2683. Notice of evaluation of bids

19 A. ALL EVALUATION FACTORS THAT WILL AFFECT THE CONTRACT AWARD SHALL BE
20 CLEARLY STATED IN THE SOLICITATION FOR BEST VALUE BID. THE SOLICITATION
21 SHALL STATE WHETHER ALL EVALUATION FACTORS OTHER THAN COST OR PRICE, WHEN
22 COMBINED, ARE SIGNIFICANTLY MORE IMPORTANT THAN, APPROXIMATELY EQUAL TO OR
23 SIGNIFICANTLY LESS IMPORTANT THAN COST OR PRICE.

24 B. ADEQUATE PUBLIC NOTICE OF THE BEST VALUE SOLICITATION OF BIDS SHALL
25 BE GIVEN.

26 C. COST INFORMATION SHALL BE PROVIDED AFTER THE RANKING OF BIDDERS AND
27 THE ISSUANCE OF THE AWARD.

28 41-2684. Factors involved in determining best value

29 A. THE BEST VALUE SOLICITATION OF BIDS SHALL USE THE FACTORS
30 PRESCRIBED IN THIS SUBSECTION, EACH OF WHICH IS ENTITLED TO ONE POINT IN THE
31 DETERMINATION OF AN AWARD. COST OR PRICE SHALL BE A FACTOR IN THE
32 DETERMINATION OF AN AWARD. THE BID EVALUATION FACTORS TO BE CONSIDERED SHALL
33 INCLUDE THE FOLLOWING, AS DETERMINED BY THE STATE GOVERNMENTAL UNIT IN ITS
34 SOLE DISCRETION AND NOT SUBJECT TO PROTEST:

35 1. PRICE.

36 2. THE QUALITY OF CONSTRUCTION SERVICES TO BE PROVIDED BY THE BIDDER,
37 BASED ON ITS PRIOR RECORD OF PERFORMANCE AS TO:

38 (a) TIMELY COMPLETION OF PROJECTS.

39 (b) COMPLETION OF PROJECTS ON OR UNDER BUDGET.

40 (c) ACTIONS TAKEN AGAINST THE BIDDER BY ANY COURT OR GOVERNMENTAL
41 AGENCY.

42 3. ABILITY OF THE BIDDER TO MEET CONSTRUCTION SCHEDULES IMPOSED BY THE
43 STATE GOVERNMENTAL UNIT.

44 4. ADEQUACY OF FINANCIAL RESOURCES TO PERFORM THE CONTRACT.

- 1 5. EXPERTISE AND EXPERIENCE OF THE BIDDER IN THE CONSTRUCTION
- 2 INDUSTRY.
- 3 6. EXPERTISE AND EXPERIENCE OF THE BIDDER ON SIMILAR PROJECTS.
- 4 7. EXISTENCE OF A FORMAL APPRENTICESHIP TRAINING PROGRAM PURSUANT TO
- 5 STANDARDS ESTABLISHED BY THE UNITED STATES DEPARTMENT OF LABOR OR APPROPRIATE
- 6 STATE AGENCY.
- 7 8. ABILITY OF THE BIDDER TO PROVIDE A SAFE PROJECT, INCLUDING THE
- 8 EXISTENCE OF AN ESTABLISHED SAFETY TRAINING PROGRAM AND A FORMAL SAFETY
- 9 SUPERVISION PROGRAM FOR THE PROJECT.
- 10 9. AGREEMENT TO PAY PREVAILING WAGES, INCLUDING THE BIDDER'S RECORD OF
- 11 PAYMENT OR NONPAYMENT OF PREVAILING WAGES ON PAST PROJECTS.
- 12 10. AGREEMENT THAT ALL LABOR ON THE PROJECT SHALL BE COVERED BY
- 13 APPROVED HEALTH INSURANCE AND PENSION PLANS.
- 14 11. ABILITY OF THE BIDDER TO FURNISH LABOR THAT CAN WORK IN HARMONY
- 15 WITH ALL OTHER ELEMENTS OF LABOR EMPLOYED OR TO BE EMPLOYED ON THE PROJECT.
- 16 12. ABILITY OF THE BIDDER TO ASSURE THE ABSENCE OF WORK STOPPAGES OR
- 17 LOCKOUTS FOR THE DURATION OF THE PROJECT.
- 18 13. COMMITMENT THAT A MINIMUM PERCENTAGE OF THE WORKERS ON THE PROJECT
- 19 ARE RESIDENTS OF THIS STATE AS DETERMINED BY THE STATE GOVERNMENTAL UNIT.
- 20 B. IN ORDER TO COMPLY WITH SUBSECTION A, PARAGRAPH 2, SUBDIVISION (c),
- 21 EACH BIDDER SHALL DISCLOSE TO THE STATE GOVERNMENTAL UNIT THE FOLLOWING
- 22 INFORMATION:
- 23 1. DEBARMENTS OR SUSPENSIONS BY ANY GOVERNMENT AGENCY FROM PUBLIC
- 24 CONTRACTING.
- 25 2. DEFAULTS, CANCELLATIONS OR TERMINATIONS FOR CAUSE ON ANY CONTRACT.
- 26 3. FINDINGS OF NONRESPONSIBILITY BY ANY GOVERNMENT AGENCY.
- 27 4. FINDINGS OF VIOLATION OF ANY ADMINISTRATIVE, STATUTORY OR
- 28 REGULATORY PROVISION.
- 29 5. PENDING, OR PREVIOUS, CIVIL, CRIMINAL OR GOVERNMENTAL
- 30 INVESTIGATIONS OF THE BIDDER AND THE RESULT OF THE INVESTIGATIONS.
- 31 6. REVOCATIONS OF ANY PERMIT OR LICENSE ISSUED TO THE BIDDER.
- 32 7. SANCTIONS IMPOSED ON THE BIDDER WITH RESPECT TO ITS PERMITS OR
- 33 LICENSES.
- 34 8. INSTANCES WHERE THE BIDDER WAS UNABLE TO OBTAIN BONDING.
- 35 9. INSTANCES WHERE THE BIDDER WAS SUBJECT TO ANY GOVERNMENT JUDGMENT
- 36 OR LIEN.
- 37 10. IDENTITIES OF ALL OWNERS, OFFICERS, AFFILIATES, PARENTS,
- 38 SUBSIDIARIES AND CONTROLLING OR CONTROLLED ENTITIES OF THE BIDDER.
- 39 11. IDENTITIES OF ALL SUBCONTRACTORS PROPOSED FOR THE PROJECT.
- 40 12. ALL PREVIOUS CONTRACTS PERFORMED BY THE BIDDER FOR THIS STATE.
- 41 41-2685. Evaluation of bids
- 42 A. DISCUSSION MAY BE CONDUCTED WITH THE APPARENT RESPONSIBLE BIDDERS
- 43 TO ASSURE UNDERSTANDING OF THEIR BEST VALUE BIDS.

1 B. BIDS SHALL BE EVALUATED BY USING THE CRITERIA PRESCRIBED IN SECTION
2 41-2684. ALL EVALUATION FACTORS SHALL BE CONSIDERED IN DETERMINING THE
3 NUMERICAL SCORE FOR EACH PARTICIPATING BIDDER. ONCE THE EVALUATION IS
4 COMPLETE, ALL RESPONSIVE BIDDERS SHALL BE RANKED FROM MOST ADVANTAGEOUS TO
5 LEAST ADVANTAGEOUS TO THE STATE GOVERNMENTAL UNIT.
6 41-2686. Award of bid
7 AN AWARD SHALL BE MADE TO THE RESPONSIVE AND RESPONSIBLE BIDDER WHOSE
8 BID IS DETERMINED, IN WRITING, TO BE MOST ADVANTAGEOUS TO THE STATE
9 GOVERNMENTAL UNIT, TAKING INTO CONSIDERATION ALL EVALUATION FACTORS
10 PRESCRIBED IN THE BEST VALUE BID. THE CONTRACT FILE SHALL CONTAIN THE BASIS
11 ON WHICH THE AWARD IS MADE AND MUST BE SUFFICIENT TO SATISFY EXTERNAL AUDIT.