

"AN ACT TO AMEND SUBSECTION C OF SECTION 22 OF ACT 876 OF 1973, AS AMENDED, [ARK. STAT. 13-348(c)], SECTIONS 2 AND 3 OF ACT 228 OF 1949, AS AMENDED, [ARK. STATS. 14-114 AND 14-115] AND SECTION 2 OF ACT 159 OF 1949, AS AMENDED [ARK. STAT. 14-612], CONCERNING CONSTRUCTION CONTRACT BIDDING PROCEDURES TO ALLOW THE BID BOND TO BE HELD WHEN NO PERFORMANCE BOND IS REQUIRED; TO RELIEVE A BIDDER DUE TO SCRIVENER ERROR; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Subsection C of Section 22 of Act 876 of 1973, as amended, the same being Arkansas Statutes 13-348(c), is hereby amended to read as follows:

"(C) BIDDING PROCEDURE. After the agency has caused the preparation and approved the plans and specifications it shall then proceed to advertise for bids for the contemplated work by the publication of notice once each week for not less than two (2) consecutive weeks in one or more newspapers of general circulation published in the city of Little Rock, Arkansas, and in such other newspapers, or trade or construction journals as may, in the opinion of the agency, be desirable; provided, that the last insertion shall be not less than one (1) week prior to the date on which such bids are to be received. Such notice shall provide for the receipts of sealed bids, shall set forth the time and place in which such bids will be received, shall specify from whom copies of the plans and specifications and draft of the proposed contract may be obtained for examination, shall contain the amount of the bid bond, and shall contain such other information and requirements as, in the opinion of the agency, may be necessary or desirable.

(1) On the date and time fixed in said notice, the agency shall open, tabulate and compare bids, and award the contract to the lowest responsible bidder. Provided, however, the agency shall have the right to reject any or all bids.

(2) The successful bidder shall be required to furnish bonds to the State of Arkansas, with corporate guaranty or indemnity sureties thereon, both for the completion of the construction free of all liens and encumbrances, in an amount fixed by the Arkansas State Building Services, and for the protection of the agency and its members against all liability for injury to person or damage to or loss of property arising or claimed to have arisen in the course of the work project, within limits fixed by the Arkansas State Building Services.

(3) On contracts which do not require a performance bond, the bid bond will be held until final acceptance and completion of the contract by payment in full.

(4) Whenever it is obvious from examination of the bid document that it was the intent of a bidder to submit a responsive bid, and such bid, because of scrivener error such as transposition of figures, if accepted would create a serious financial loss to the bidder, the Director of State Building Services has the authority to relieve said bidder from responsibility under his bond and may reject his bid."

SECTION 2. Section 2 of Act 228 of 1949, as amended, the same being Arkansas Statute 14-114, is hereby amended to read as follows:

"Section 2. (A) Every bid submitted on public construction contracts for

the State or any agency or department of the State or any political subdivision of the State, and every bid submitted for the furnishing of commodities or services to political subdivisions of the State, shall be absolutely void unless accompanied by a certified check or by a written bid or proposal bond of a responsible surety. Such bond shall indemnify the public against failure of the contractor to execute and deliver the contract and necessary bonds for faithful performance of the contract. The bond shall be conditioned upon the prompt payment of labor and material furnished in the prosecution of the contract, and shall provide that the contractor or surety must pay the damage, loss, cost, and expense subject to the amount of the bid bond directly arising out of the contractor's default in failing to execute and deliver the contract and bonds. Liability under this bond shall include but shall not be limited to the sum by which the amount of the contract, covering the proposal, executed with another third party may exceed the amount bid by the contractor.

(B) Whenever it is obvious from examination of the bid document that it was the intent of a bidder to submit a responsive bid, and such bid, because of scrivener error such as transposition of figures, if accepted would create a serious financial loss to the bidder, the Director of State Building Services has the authority to relieve said bidder from responsibility under his bond and may reject his bid."

SECTION 3. Section 3 of Act 228 of 1949, as amended, the same being Arkansas Statute 14-115, is hereby amended to read as follows:

"Section 3. (A) The successful bidder on each contract to which this Act is applicable shall provide a performance bond of a responsible surety for the full amount of the bid. This bond is to continue in force in its full amount until final acceptance and payment in full for completion of the contract, or until the State or State agency or political subdivision letting the contract is made whole for any breach or failure of the contractor.

(B) On contracts which do not require a performance bond, the bid bond will be held until final acceptance and completion of the contract by payment in full."

SECTION 4. Section 2 of Act 159 of 1949, as amended, the same being Arkansas Statute 14-612, is hereby amended to read as follows:

"Section 2. (A) All such notices shall contain a brief description of the kind or type of work contemplated, the approximate location thereof, the place at which prospective bidders may obtain plans and specifications, the date, time, and place at which sealed bids will be received and the amount (which may be stated in a percentage) of the bid bond required, a statement that on contracts which do not require a performance bond, the bid bond will be held until final acceptance and completion of the contract by payment in full, a statement of the taxing unit's reservation of the right to reject any or all bids and to waive any formalities, and such other pertinent facts or information which to it may appear necessary or desirable.

(B) On the date and time fixed in the notice, the Board, Commission, officer or other authority in which or in whom authority is vested to award contracts, shall open and compare the bids, and thereafter award the contract to the lowest responsible bidder, provided that it be the opinion of such authority that the best interests of the taxing unit would be served thereby.

(1) In the event that all bids submitted exceed the amount appropriated for the award of the contract and provided bidding on alternates was not required by the plans and specifications, the state agency or its designated representatives shall have the authority to negotiate an award with the apparent responsible low bidder provided the low bid is within twenty percent (20%) of the amount appropriated.

(2) Should the plans and specifications for the project require bids on alternates in addition to a base bid, such alternates shall be deductive as distinguished from additive and shall be set forth in the plans and specifications in numerical order. In the event that all bids submitted exceed the amount appropriated for the award of the contract, the state agency may determine the apparent responsible low bidder by deducting the alternates in numerical order. After making such deductions if the cost of the project is less than twenty percent (20%) above the amount appropriated, then and only in such event, the state agency may negotiate an award with the low bidder so determined.

(C) Whenever it is obvious from examination of the bid document that it was the intent of a bidder to submit a responsive bid, and such bid, because of scrivener error such as transposition of figures, if accepted would create a serious financial loss to the bidder, the Board, Commission, officer or other authority in which or in whom authority is vested has the authority to relieve said bidder from responsibility under his bond and may reject his bid."

SECTION 5. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 6. It is hereby found and declared that because of the large volume of proposed construction by taxing agencies and the confusion that now exists on a large scale concerning the handling of Bidding Procedures, to the detriment of contractors, subcontractors, the taxing agencies and the public, that the clarification made by this act is immediately needed to eliminate said confusion and resulting harmful effects on the public peace, health, safety and welfare. By reason thereof, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force and after its passage and approval.

APPROVED: April 7, 1987

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