

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 1767

5 By: Representatives Reep, Overbey, Medley
6
7

For An Act To Be Entitled

9 AN ACT TO ALLOW CITIES AND TOWNS THE OPTION OF
10 REVERSE INTERNET AUCTIONS FOR GENERAL PUBLIC
11 IMPROVEMENTS; AND FOR OTHER PURPOSES.
12

Subtitle

14 AN ACT TO ALLOW CITIES AND TOWNS THE
15 OPTION OF REVERSE INTERNET AUCTIONS FOR
16 GENERAL PUBLIC IMPROVEMENTS.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 22-9-203 is amended to read as follows:

22 22-9-203. Public improvements generally - Award procedure.

23 (a) No contract providing for the making of major repairs or
24 alterations, for the erection of buildings or other structures, or for making
25 other permanent improvements shall be entered into by the state or any agency
26 thereof, any county, municipality, school district, or other local taxing
27 unit with any contractor in instances where all estimated costs of the work
28 shall exceed the sum of twenty thousand dollars (\$20,000) unless:

29 (1) The state or any agency of the state shall have first
30 published notice of its intention to receive bids one (1) time each week for
31 not less than two (2) consecutive weeks for projects more than the amount of
32 fifty thousand dollars (\$50,000) and published notice of its intention to
33 receive bids one (1) time each week for not less than one (1) week for
34 projects more than the quote bid limit, as provided under the Arkansas
35 Building Authority minimum standards and criteria, but less than or equal to
36 fifty thousand dollars (\$50,000) in a newspaper of general circulation



1 published in the county in which the proposed improvements are to be made or
2 in a trade journal reaching the construction industry; and

3 (2) Any county, municipality, school district, or other local
4 taxing unit shall have first published notice of its intention to receive
5 bids one (1) time each week for not less than two (2) consecutive weeks in a
6 newspaper of general circulation published in the county in which the
7 proposed improvements are to be made or in a trade journal reaching the
8 construction industry.

9 (b)(1) The date of publication of the last notice shall be not less
10 than one (1) week before the day fixed therein for the receipt of bids.

11 (2) If there is no newspaper regularly published in the county
12 in which the proposed work is to be done, the notices may be published in any
13 newspaper having a general circulation in the county.

14 (3) Nothing in this section shall be construed as limiting to
15 two (2) the number of weeks the notices may be published for projects over
16 the amount of fifty thousand dollars (\$50,000), limiting to one (1) the
17 number of weeks the notices may be published for projects more than the quote
18 bid limit, as provided under subsection (a) of this section, and less than or
19 equal to fifty thousand dollars (\$50,000), and as limiting to two (2) the
20 number of weeks the notices may be published for all other projects.

21 (c)(1) All notices shall contain:

22 (A) A brief description of the kind or type of work
23 contemplated;

24 (B) The approximate location thereof;

25 (C) The place at which prospective bidders may obtain
26 plans and specifications;

27 (D) The date, time, and place at which sealed bids will be
28 received;

29 (E) The amount, which may be stated in a percentage, of
30 the bid bond required;

31 (F) A statement of the taxing unit's reservation of the
32 right to reject any or all bids and to waive any formalities; and

33 (G) Such other pertinent facts or information which to it
34 may appear necessary or desirable.

35 (2)(A)(i) Every bid submitted on public construction contracts
36 for any political subdivision of the state shall be void unless accompanied

1 by a cashier's check drawn upon a bank or trust company doing business in
2 this state or by a corporate bid bond.

3 (ii) Every bid submitted on public construction
4 contracts for the state or any agency or department of the state shall be
5 void unless accompanied by a cashier's check drawn upon a bank or trust
6 company doing business in this state or by a corporate bid bond, except for
7 projects under twenty thousand dollars (\$20,000).

8 (iii) No bid bond shall be required for public
9 construction contracts for the state or any agency or department of the state
10 under or equal to twenty thousand dollars (\$20,000).

11 (B) This bid security shall indemnify the public against
12 failure of the contractor to execute and deliver the contract and necessary
13 bonds for faithful performance of the contract.

14 (C) The bid security shall provide that the contractor or
15 surety must pay the damage, loss, cost, and expense subject to the amount of
16 the bid security directly arising out of the contractor's default in failing
17 to execute and deliver the contract and bonds.

18 (D) Liability under this bid security shall be limited to
19 five percent (5%) of the amount of the bid.

20 (d) On the date and time fixed in the notice, the board, commission,
21 officer, or other authority in which or in whom authority is vested to award
22 contracts shall open and compare the bids and thereafter award the contract
23 to the lowest responsible bidder but only if it is the opinion of the
24 authority that the best interests of the taxing unit would be served thereby.

25 (e) In the event that all bids submitted exceed the amount
26 appropriated for the award of the contract, the state agency or its
27 designated representatives shall have the authority to negotiate an award
28 with the apparent responsible low bidder but only if the low bid is within
29 twenty-five percent (25%) of the amount appropriated.

30 (f)(1) In the event that all bids submitted exceed the amount
31 appropriated for the award of the contract and if bidding on alternates was
32 not required by the plans and specifications, the county, municipality,
33 school district, or other local taxing unit shall have the authority to
34 negotiate an award with the apparent responsible low bidder but only if the
35 low bid is within twenty-five percent (25%) of the amount appropriated.

36 (2) If the plans and specifications for the project require bids

1 on alternates in addition to a base bid, there shall be no more than three
 2 (3) alternates, and the alternates shall:

- 3 (A) Be deductive; and
- 4 (B) Be set forth in the plans and specifications in
 5 numerical order.

6 (3) If all bids submitted exceed the amount appropriated for the
 7 award of the contract, then the county, municipality, school district, or
 8 other local taxing unit may determine the apparent responsible low bidder by
 9 deducting the alternates in numerical order.

10 (4) After making the deductions, if the cost of the project is
 11 less than twenty-five percent (25%) above the amount appropriated, then and
 12 only in that event, the county, municipality, school district, or other local
 13 taxing unit may negotiate an award with the low bidder so determined.

14 (g) Whenever it is obvious from examination of the bid document that
 15 it was the intent of a bidder to submit a responsive bid and that the bid, if
 16 accepted, would create a serious financial loss to the bidder because of
 17 scrivener error, such as the transposition of figures, the board, commission,
 18 officer, or other authority in which or in whom authority is vested has the
 19 authority to relieve the bidder from responsibility under the bond and may
 20 reject the bid.

21 (h) For projects of this state or any agency of the state, "amount
 22 appropriated" within this section means funds currently available for the
 23 project as determined by the state or any agency or department of the state
 24 or any county, municipality, school district, or other local taxing unit
 25 prior to the opening of any bids.

26 (i) No contract providing for the making of major repairs or
 27 alterations, for the erection of buildings or other structures, or for making
 28 other permanent improvements shall be entered into by the state, any agency
 29 of the state, any county, municipality, school district, or other local
 30 taxing unit with any contractor in instances where all estimated costs of the
 31 work shall exceed the sum of seventy-five thousand dollars (\$75,000) unless
 32 the bid documents contain statements which encourage the participation of
 33 small, minority, and women's business enterprises.

34 (j)(1) Notwithstanding any other provision of law to the contrary, any
 35 municipality or sanitation authority may enter into contracts with private
 36 persons, firms, associations, corporations, joint ventures, or other legal

1 entities, including a combination of any of those entities, to provide for
 2 the design, building, operation, and maintenance of all or any portion of its
 3 wastewater treatment system, storm water treatment system, or water treatment
 4 system, or any combination of those systems.

5 (2) The contracts may include provisions for the design,
 6 financing, construction, repair, reconditioning, replacement, operation, and
 7 maintenance of the system, or any combination of those services and
 8 functions.

9 (3) Prior to entering into a contract under this section, the
 10 governing authority shall solicit qualifications-based competitive sealed
 11 proposals.

12 (4) The governing authority shall first establish criteria for
 13 evaluation of any entity submitting proposals on the contracts for the
 14 purpose of assisting the governing authority in making a review of the
 15 entity's previous performance on projects of comparable nature and magnitude
 16 and the environmental compliance record of the entity during the five (5)
 17 years immediately preceding the execution of the contract.

18 (5) The governing authority shall take into consideration the
 19 information to assist in determining the eligibility of any entity.

20 (6) The award of a contract under this section shall be made to
 21 the responsible and responsive entity whose proposal is determined in writing
 22 to be the most advantageous to the governmental authority, taking into
 23 consideration the evaluation factors set forth in the request for proposals.

24 (7) The governing authority of the municipality or the
 25 sanitation authority shall employ an appropriately licensed professional who
 26 is independent of the contractor to monitor and perform an independent review
 27 and inspection of the design-build-operate-maintenance contract, or any part
 28 thereof, during its performance.

29 (8) Before soliciting proposals for a design-build-operation-
 30 maintenance project, the governing authority of the municipality or the
 31 sanitation authority shall employ an appropriate licensed professional to
 32 perform the necessary studies and preliminary design to clearly establish the
 33 parameters for the project, including:

- 34 (A) Acceptable processes and structural alternatives; and
- 35 (B) Cost estimates for the acceptable alternatives.

36 (k)(1) In a city of the first class, a city of the second class, or an

1 incorporated town, the governing body by ordinance shall have the option to
2 award contracts for public improvements by participation in a reverse
3 Internet auction.

4 (2) The ordinance shall include, but is not limited to, the
5 following procedures:

6 (A) Bidders shall be provided instructions and
7 individually secured passwords for access to the reverse Internet auction by
8 either the city, town, or reverse Internet auction vendor;

9 (B) The bidding process shall be timed and the time shall
10 be part of the reverse Internet auction specifications;

11 (C) The reverse Internet auction shall be held at a
12 specific date and time;

13 (D) The reverse Internet auction and bidding process shall
14 be interactive, with each bidder able to make multiple bids during the
15 allotted time;

16 (E) Each bidder shall be continually signaled his or her
17 relative position in the bidding process;

18 (F) Bidders shall remain anonymous and shall not have
19 access to other bidders or bids; and

20 (G) The governing body shall have access to real-time data
21 including all bids and bid amounts.

22 (3) The governing body may create by an additional ordinance
23 reverse Internet auction specifications for the anticipated purchase of a
24 specific item or purchase.

25 (4)(A) The governing body is authorized to pay a reasonable fee
26 to the reverse Internet auction vendor.

27 (B) The fee may be included as part of the bids received
28 during the reverse Internet auction and paid by the winning bidder or paid
29 separately by the governing body.

30 (C) The governing body retains the right to:

31 (i) Refuse all bids made during the reverse Internet
32 auction; and

33 (ii) Begin the reverse Internet auction process anew
34 if the governing body determines it is in the best interest of the city or
35 town.

36 (5) For purposes of this section:

1 (A) "Reverse Internet auction" means an Internet-based
2 process in which bidders:

3 (i) Are given specifications for items and services
4 being sought for purchase by a municipality; and

5 (ii) Bid against themselves in order to lower the
6 price of the item or service to the lowest possible level; and

7 (B) "Reverse Internet auction vendor" means an Internet-
8 based entity that hosts a reverse Internet auction.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36