

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: H2/19/97 S3/19/97

A Bill

HOUSE BILL 1667

5 By: Representative Stalnaker
6
7

For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE 22-9-203 PERTAINING TO THE
10 AWARD PROCEDURE FOR PUBLIC CONSTRUCTION CONTRACTS; TO
11 AMEND ARKANSAS CODE 19-4-1405 PERTAINING TO PUBLIC
12 CONSTRUCTION BIDDING PROCEDURES; AND FOR OTHER PURPOSES."
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Subtitle

14 "AN ACT TO AMEND ARKANSAS CODE 22-9-203
15 PERTAINING TO THE AWARD PROCEDURE FOR
16 PUBLIC CONSTRUCTION CONTRACTS; TO AMEND
17 ARKANSAS CODE 19-4-1405 PERTAINING TO
18 PUBLIC CONSTRUCTION BIDDING PROCEDURES;
19 AND FOR OTHER PURPOSES."
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code 22-9-203 is amended to read as follows:

25 "§ 22-9-203. Public improvements generally - Award procedure.

26 ~~—— (a) 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, or any agency~~
29 ~~thereof, any county, municipality, school district, or other local taxing unit~~
30 ~~with any contractor in those instances where all estimated costs of the work~~
31 ~~shall exceed the sum of ten thousand dollars (\$10,000) for counties and~~
32 ~~municipalities and the sum of thirty thousand dollars (\$30,000) for any school~~
33 ~~district. This sum of thirty thousand dollars (\$30,000) is to be adjusted~~
34 ~~annually by the Director of Arkansas State Building Services by issuing a new~~
35 ~~sum, adjusted according to the building costs increase for the previous twelve~~
36 ~~(12) months, by June 30 of each year, with his order being published in the~~

1 ~~Arkansas Register. These sums shall not be exceeded unless the taxing unit~~
2 ~~shall have first published notice of its intention to receive bids therefor~~
3 ~~one (1) time each week for not less than two (2) consecutive weeks in a~~
4 ~~newspaper of general circulation published in the county in which the proposed~~
5 ~~improvements are to be made or in a trade journal reaching the construction~~
6 ~~industry.~~

7 (a) No contract providing for the making of major repairs or
8 alterations for the erection of buildings or other structures, or for making
9 other permanent improvements shall be entered into by the state, or any agency
10 thereof, any county, municipality, school district, or other local taxing unit
11 with any contractor in instances where all estimated costs of the work shall
12 exceed the sum of ten thousand dollars (\$10,000) for counties and
13 municipalities and the sum of thirty thousand dollars (\$30,000) for any school
14 district unless:

15 (1) The state or any agency thereof shall have first published
16 notice of its intention to receive bids therefor one (1) time each week for
17 not less than two (2) consecutive weeks for projects over the amount of fifty
18 thousand dollars (\$50,000) and published notice of its intention to receive
19 bids therefor one (1) time each week for not less than one (1) week for
20 projects more than the quote bid limit, as provided under subsection (a) of
21 this section, but less than or equal to fifty thousand dollars (\$50,000) in a
22 newspaper of general circulation published in the county in which the proposed
23 improvements are to be made or in a trade journal reaching the construction
24 industry.

25 (2) Any county, municipality, school district, or other local
26 taxing unit shall have first published notice of its intention to receive bids
27 therefor one (1) time each week for not less than two (2) consecutive weeks in
28 a newspaper of general circulation published in the county in which the
29 proposed improvements are to be made or in a trade journal reaching the
30 construction industry. This sum of thirty thousand dollars (\$30,000) for any
31 school district is to be adjusted annually by the Director of Arkansas State
32 Building Services by issuing a new sum, adjusted according to the building
33 costs increase for the previous twelve (12) months, by June 30 of each year,
34 with the order stating the new sum being published in the Arkansas Register.

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

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

4 (3) Nothing in this section shall be construed as limiting to two
5 (2) the number of weeks the notices may be published for projects over the
6 amount of fifty thousand dollars (\$50,000), limiting to one (1) the number of
7 weeks the notices may be published for projects more than the quote bid limit,
8 as provided under subsection (a) of this section, and less than or equal to
9 fifty thousand dollars (\$50,000), and as limiting to two (2) the number of
10 weeks the notices may be published for all other projects.

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

12 (A) A brief description of the kind or type of work
13 contemplated;

14 (B) The approximate location thereof;

15 (C) The place at which prospective bidders may obtain plans and
16 specifications;

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

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

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

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

25 (2)(A) Every bid submitted on public construction contracts for
26 ~~the state or any agency or department of the state or any political~~
27 subdivision of the state shall be void unless accompanied by a certified check
28 or by a corporate bid bond. Every bid submitted on public construction
29 contracts for the state or any agency or department of the state shall be void
30 unless accompanied by a certified check or by a corporate bid bond, except for
31 projects under fifty thousand dollars (\$50,000). No bid bond shall be
32 required for public construction contracts for the state or any agency or
33 department of the state under or equal to fifty thousand dollars (\$50,000).

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

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

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

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

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

18 (f)(1) Should the plans and specifications for the project require bids
19 on alternates in addition to a base bid, the alternates shall be deductive, as
20 distinguished from additive, and shall be set forth in the plans and
21 specifications in numerical order.

22 (2) In the event that all bids submitted exceed the amount
23 appropriated for the award of the contract, the state agency may determine the
24 apparent responsible low bidder by deducting the alternates in numerical
25 order.

26 (3) After making the deductions, if the cost of the project is
27 less than twenty percent (20%) above the amount appropriated, then, and only
28 in that event, the state agency may negotiate an award with the low bidder so
29 determined.

30 (g) Whenever it is obvious from examination of the bid document that it
31 was the intent of a bidder to submit a responsive bid, and the bid, if
32 accepted, would create a serious financial loss to the bidder because of
33 scrivener error such as transposition of figures, the board, commission,
34 officer, or other authority in which or in whom authority is vested has the
35 authority to relieve the bidder from responsibility under his bond and may
36 reject his bid.

1 (h) For projects of this state or any agency thereof amount
2 appropriated within this subsection means funds currently available for the
3 project as determined by the state or any agency or department of the state or
4 county, municipality, school district or other local taxing unit, prior to the
5 solicitation of any bids."

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7 SECTION 2. Arkansas Code 19-4-1405 is amended to read as follows:

8 "§ 19-4-1405. Bidding procedure.

9 (a)(1) After a state agency has caused the preparation and has approved
10 plans and specifications, it shall then proceed to advertise for bids for the
11 contemplated work by the publication of notice one (1) time each week, for not
12 less than two (2) consecutive weeks for projects over the amount of fifty
13 thousand dollars (\$50,000) and shall proceed to advertise for bids one (1)
14 time each week for not less than one (1) week for projects more than the quote
15 bid and less than or equal to fifty thousand dollars (\$50,000). This notice
16 shall be published ~~in one (1) or more newspapers of general circulation~~
17 ~~published in Little Rock, and in such other newspapers or trade or~~
18 ~~construction journals as, in the opinion of the agency, may be desirable in a~~
19 ~~newspaper of general circulation published in the country in which the~~
20 ~~proposed improvements are to be made or in a trade journal reaching the~~
21 ~~construction industry.~~ The last insertion shall be not less than one (1) week
22 prior to the date on which the bids are to be received.

23 (2) The notice shall:

24 (A) Provide for the receipt of sealed bids;

25 (B) Set forth the time and place in which the bids will be
26 received;

27 (C) Specify from whom copies of the plans and specifications
28 and a draft of the proposed contract may be obtained for examination;

29 (D) Contain the amount of the bid bond; and

30 (E) Contain such other information and requirements as, in the
31 opinion of the agency, may be necessary or desirable.

32 (b)(1) On the date and time fixed in the notice, the agency shall open,
33 tabulate, and compare bids, and award the contract to the lowest responsible
34 bidder.

35 (2) However, the agency shall have the right to reject any or all
36 bids.

1 (c)(1) The successful bidder shall be required to furnish bonds to the
2 State of Arkansas, with corporate guaranty or indemnity sureties thereon.

3 (2) The bonds shall be both for the completion of the construction
4 free of all liens and encumbrances, in an amount fixed by Arkansas State
5 Building Services, and for the protection of the agency and its members
6 against all liability for injury to persons or damage to, or loss of, property
7 arising, or claimed to have arisen, in the course of the work project, within
8 limits fixed by Arkansas State Building Services.

9 (d)(1) Every bid submitted on state agency construction contracts shall
10 be void unless accompanied by a certified check or by a corporate bid bond for
11 projects over the amount of fifty thousand dollars (\$50,000). No bid bond
12 shall be required for projects under or equal to the amount of fifty thousand
13 dollars (\$50,000).

14 (2) Such bid security shall indemnify the public against failure of
15 the contractor to execute and deliver the contract and necessary bonds for
16 faithful performance of the contract.

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

21 (4) Liability under this bid security shall be limited to five
22 percent (5%) of the amount of the bid.

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

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30 SECTION 3. All provisions of this act of a general and permanent nature
31 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
32 Revision Commission shall incorporate the same in the Code.

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34 SECTION 4. If any provision of this act or the application thereof to
35 any person or circumstance is held invalid, such invalidity shall not affect
36 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

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

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/s/Rep. Stalnaker

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