

A.C.A. § 22-9-203

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

(a) Except as provided under § 14-58-105, a contract providing for the making of major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements shall not be entered into by the state or an agency of the state or by a county, municipality, school district, or other local taxing unit with any contractor in instances in which all estimated costs of the work exceed the sum of thirty-five thousand dollars (\$35,000) unless:

(1) The state or any agency of the state shall have first published notice of its intention to receive bids one (1) time each week for not less than two (2) consecutive weeks for projects more than the amount of fifty thousand dollars (\$50,000) and published notice of its intention to receive bids one (1) time each week for not less than one (1) week for projects more than the quote bid limit, as provided under the minimum standards and criteria of the Building Authority Division, but less than or equal to fifty thousand dollars (\$50,000) in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry; and

(2)

(A) The county, municipality, school district, or other local taxing unit shall have first published notice of its intention to receive bids one (1) time each week for not less than two (2) consecutive weeks in a newspaper of general circulation published in the county in which the proposed improvements are to be made.

(B) In addition to the publication of notice required under subdivision (a)(2)(A) of this section, the county, municipality, school district, or other local taxing unit:

(i) May also publish notice in a trade journal reaching the construction industry; and

(ii) If the county, municipality, school district, or other local taxing unit is accepting electronically submitted bids, shall also post notice on the website of a vendor selected under the Fair Notice and Efficiency in Public Works Act, § 22-9-901 et seq.

(b)

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

(2)

(A) If there is not a newspaper regularly published in the county in which the proposed work is to be done, the notices may be published in any newspaper having a general circulation in the county.

(B) In addition to the publication of notice required under subdivision (b)(2)(A) of this section, the county, municipality, school district, or other local taxing unit:

(i) May also publish notice in a trade journal reaching the construction industry; and

(ii) If the county, municipality, school district, or other local taxing unit is accepting electronically submitted bids, shall also post notice on the website of a vendor selected under the Fair Notice and Efficiency in Public Works Act, § 22-9-901 et seq.

(3) This section does not limit to two (2) the number of weeks the notices may be published for projects over fifty thousand dollars (\$50,000), limit to one (1) the number of weeks the notices may be published for projects more than the quote bid limit, as provided under subsection (a) of this section, and less than or equal to fifty thousand dollars (\$50,000), or limit to two (2) the number of weeks the notices may be published for all other projects.

(c)

(1) All notices shall contain:

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

(B) The approximate location of the work contemplated;

(C) The place at which prospective bidders may obtain plans and specifications, including any websites on which a county, municipality, or school district is posting notice of its intention to receive bids under the Fair Notice and Efficiency in Public Works Act, § 22-9-901 et seq.;

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

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

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

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

(2)

(A)

(i) Every bid submitted on public construction contracts for any political subdivision of the state is void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in this state or by a corporate bid bond.

(ii) Every bid submitted on public construction contracts for the state or any agency or department of the state is void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in this state or by a corporate bid bond, except for projects under thirty-five thousand dollars (\$35,000).

(iii) A bid bond is not required for public construction contracts for the state or any agency or department of the state under or equal to thirty-five thousand dollars (\$35,000).

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

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

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

(d) 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 but only if it is the opinion of the authority that the best interests of the taxing unit would be served thereby.

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

(f)

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

(2) If the plans and specifications for the project require bids on alternates in addition to a base bid, there shall be no more than three (3) alternates, and the alternates shall:

(A) Be deductive; and

(B) Be set forth in the plans and specifications in numerical order.

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

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

(g) Whenever it is obvious from examination of the bid document that it was the intent of a bidder to submit a responsive bid and that the bid, if accepted, would create a serious financial loss to the bidder because of

scrivener error, such as the transposition of figures, the board, commission, officer, or other authority in which or in whom authority is vested has the authority to relieve the bidder from responsibility under the bond and may reject the bid.

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

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

(j)

(1) Notwithstanding any other provision of law to the contrary, a municipality, sanitation authority, water system, or consolidated waterworks system may enter into contracts with private persons, firms, associations, corporations, joint ventures, or other legal entities, including a combination of any of those entities, to provide for the design, building, operation, or maintenance, including a combination of those activities, of all or any portion of its wastewater system, stormwater system, water system, solar energy generation equipment and facilities, other capital asset, or any combination of those systems and assets.

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

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

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

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

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

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

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

(A) Acceptable processes and structural alternatives; and

(B) Cost estimates for the acceptable alternatives.

(k)

(1) The state, an agency of the state, a county, a municipality, a school district, or other local taxing unit shall not require in plans or specifications that a bidder or supplier:

(A) Hold membership in any professional or industry associations, societies, trade groups, or similar organizations;

(B) Possess certification from any professional or industry associations, societies, trade groups, or similar organizations as steel building fabricators; or

(C) Be endorsed by any professional or industry associations, societies, trade groups, or similar organizations.

(2) However, plans and specifications may include or reference standards adopted by professional or industry associations, societies, trade groups, or similar organizations.

(l) To the extent that the division includes minimum experience as part of the evaluation of a bidder's responsiveness, the standard being applied to the bidder's experience shall be stated in the invitation for bids.

- (m) A sealed bid under this section shall be submitted in one (1) of the following formats:
- (1) Written; or
 - (2) Electronic media.

History

History.

Acts 1949, No. 159, §§ 1, 2; 1977, No. 370, § 1; 1981, No. 266, § 1; A.S.A. 1947, §§ 14-611, 14-612; Acts 1987, No. 758, § 4; 1995, No. 1319, § 2; 1997, No. 1193, § 1; 1999, No. 219, § 3; 1999, No. 675, §§ 1, 2; 1999, No. 1309, § 1; 1999, No. 1310, § 1; 2001, No. 921, § 1; 2001, No. 1051, § 1; 2003, No. 1297, § 1; 2005, No. 859, § 4; 2009, No. 813, § 1; 2015, No. 1059, § 2; 2017, No. 725, §§ 3, 4; 2019, No. 422, § 3; 2019, No. 612, § 1; 2019, No. 910, § 6238; 2019, No. 1075, §§ 3-6.