

REFERENCE TITLE: public contracts; procurement

State of Arizona
House of Representatives
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HB 2143

Introduced by
Representatives Leach: Bowers, Finchem, Lawrence, Livingston, Payne,
Rivero, Weninger

AN ACT

AMENDING SECTIONS 28-6713, 32-1121 AND 34-201, ARIZONA REVISED STATUTES;
RELATING TO PUBLIC CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 28-6713, Arizona Revised Statutes, is amended to
3 read:

4 28-6713. Bids for construction, reconstruction, equipment or
5 supplies; procedure; bond; exceptions

6 A. Except as provided in subsection G of this section, in a county
7 with a population of ~~two hundred~~ fifty thousand persons or more as
8 determined by the most recent United States decennial census or the most
9 recent special census as provided in section 28-6532, bids for all items
10 of construction or reconstruction involving an expenditure equal to or
11 greater than the amount determined pursuant to subsection B of this
12 section, all purchases or other acquisition of equipment involving an
13 expenditure of more than five thousand dollars and all purchases of
14 supplies and materials involving an expenditure of two thousand five
15 hundred dollars or more shall be called for by advertising in a newspaper
16 of general circulation in the county for two consecutive publications if
17 it is a weekly newspaper, or for two publications of at least six but not
18 more than ten days apart if it is a daily newspaper. The advertisement
19 shall state specifically the character of the work to be done and the kind
20 and quality of materials or supplies to be furnished.

21 B. Bids shall be called pursuant to subsection A of this section
22 for all items of construction, ~~or~~ reconstruction ~~involving~~ OR MAINTENANCE
23 SERVICES, AS DEFINED IN SECTION 34-101, OF ANY STREET, ROAD OR BRIDGE THAT
24 INVOLVE an expenditure of:—

25 ~~1. In fiscal year 1985-1986, thirty-five thousand dollars.~~

26 ~~2. In fiscal year 1986-1987 and each fiscal year thereafter, the~~
27 ~~amount provided in paragraph 1 of this subsection adjusted by the annual~~
28 ~~percentage change in the GDP price deflator as defined in section 41-563~~
29 TWENTY-FIVE THOUSAND DOLLARS, INCLUDING MATERIALS AND EQUIPMENT.

30 C. If the board of supervisors receives a satisfactory bid, it
31 shall contract with the lowest responsible bidder after the contractor or
32 supplier gives any bond required by title 34, chapter 2, article 2, except
33 that in counties with a population of more than one million persons
34 according to the most recent United States decennial census, in
35 determining the lowest responsible bidder under this section, the board
36 may consider, for no more than five projects, the time of completion
37 proposed by the bidder, the value over time of completed services and
38 facilities and the value over time of interrupted services, if the board
39 determines that this procedure will serve the public interest by providing
40 a substantial fiscal benefit or that the use of the traditional awarding
41 of contracts is not practicable for meeting desired construction standards
42 or delivery schedules and if the formula for considering the time of
43 completion is specifically stated in the bidding information. The board
44 may reject any or all bids and readvertise.

1 D. The board of supervisors, a member of the board of supervisors
2 or any other official or agent of a county affected by this section shall
3 not segregate or divide into separate units a contiguous or continuous
4 portion of highway construction or reconstruction or divide into separate
5 portions an item of equipment or generally recognized unit of supplies or
6 material to avoid the restrictions imposed by subsection A of this
7 section.

8 E. The board of supervisors, a member of the board of supervisors
9 or any other official or agent of a county affected by this section shall
10 make every effort to combine the following:

11 1. Separate portions of highway construction or reconstruction
12 projects.

13 2. Items of equipment, supplies and materials.

14 F. After a contract has been awarded, the board of supervisors'
15 authorized representative may authorize change orders to the contract if
16 necessary pursuant to guidelines set by the board of supervisors. This
17 authority does not permit the board of supervisors' authorized
18 representative to act independently to award new contracts.

19 G. A building, structure, addition or alteration may be constructed
20 without complying with the bidding requirements of this section if the
21 construction, including construction of buildings or structures on public
22 or private property, is required as a condition of development of private
23 property and is authorized by section 9-463.01 or 11-822. For the
24 purposes of this subsection, building does not include any police, fire,
25 school, library or other public building.

26 H. Subsections A, B and C of this section do not apply to
27 procurement of construction-manager-at-risk, design-build and
28 job-order-contracting construction services pursuant to title 34,
29 chapter 6.

30 Sec. 2. Section 32-1121, Arizona Revised Statutes, is amended to
31 read:

32 32-1121. Persons not required to be licensed; penalties;
33 applicability

34 A. This chapter shall not be construed to apply to:

35 1. An authorized representative of the United States government,
36 this state or any county, incorporated city or town, reclamation district,
37 irrigation district or other municipality or political subdivision of this
38 state, EXCEPT THAT FOR AN AUTHORIZED REPRESENTATIVE OF A COUNTY,
39 INCORPORATED CITY OR TOWN THE EXEMPTION APPLIES ONLY TO CONSTRUCTION
40 PROJECTS OR MAINTENANCE SERVICE PROJECTS THAT DO NOT EXCEED THE LIMITS
41 PRESCRIBED IN SECTION 28-6713 OR 34-201.

42 2. Trustees of an express trust that is not formed for the purpose
43 of conducting business as a contractor or officers of a court, if they are
44 acting within the terms of their trust or office.

1 3. Public utilities operating under regulation of the corporation
2 commission or construction, repair or operation incidental to discovering
3 or producing petroleum or gas, or the drilling, testing, abandoning or
4 other operation of a petroleum or gas well, if performed by an owner or
5 lessee.

6 4. Any materialman, manufacturer or retailer who furnishes finished
7 products, materials or articles of merchandise and who does not install or
8 attach such items or installs or attaches such items if the total value of
9 the sales contract or transaction involving such items and the cost of the
10 installation or attachment of such items to a structure does not exceed
11 one thousand dollars, including labor, materials and all other items, but
12 excluding any electrical fixture or appliance that was designed by the
13 manufacturer, that is unaltered, unchanged or unmodified by any person,
14 that can be plugged into a common household electrical outlet utilizing a
15 two-pronged or three-pronged electrical connector and that does not use
16 any other form of energy, including natural gas, propane or other
17 petroleum or gaseous fuel, to operate or is attached by a nail, screw or
18 other fastening device to the frame or foundation of any residential
19 structure. The materialman, manufacturer or retailer shall inform the
20 purchaser that the installation may also be performed by a licensed
21 contractor whose name and address the purchaser may request.

22 5. Owners of property who improve such property or who build or
23 improve structures or appurtenances on such property and who do the work
24 themselves, with their own employees or with duly licensed contractors, if
25 the structure, group of structures or appurtenances, including the
26 improvements thereto, are intended for occupancy solely by the owner and
27 are not intended for occupancy by members of the public as the owner's
28 employees or business visitors and the structures or appurtenances are not
29 intended for sale or for rent. In all actions brought under this chapter,
30 except an action against an owner-occupant as defined in section 33-1002,
31 proof of the sale or rent or the offering for sale or rent of any such
32 structure by the owner-builder within one year after completion or
33 issuance of a certificate of occupancy is prima facie evidence that such
34 project was undertaken for the purpose of sale or rent. For the purposes
35 of this paragraph, "sale" or "rent" includes any arrangement by which the
36 owner receives compensation in money, provisions, chattels or labor from
37 the occupancy or the transfer of the property or the structures on the
38 property.

39 6. Owners of property who are acting as developers and who build
40 structures or appurtenances to structures on their property for the
41 purpose of sale or rent and who contract for such a project with a general
42 contractor licensed pursuant to this chapter and owners of property who
43 are acting as developers, who improve structures or appurtenances to
44 structures on their property for the purpose of sale or rent and who
45 contract for such a project with a general contractor or specialty

1 contractors licensed pursuant to this chapter. To qualify for the
2 exemption under this paragraph, the licensed contractors' names and
3 license numbers shall be included in all sales documents.

4 7. Architects or engineers who are engaging in their professional
5 practice as defined in chapter 1 of this title and who hire or offer to
6 hire the services of a contractor for preconstruction activities relating
7 to investigation and discovery, including:

8 (a) Subsurface utility location and designation services.

9 (b) Potholing.

10 (c) Drilling for any of the following:

11 (i) Soil samples.

12 (ii) Rock samples.

13 (iii) Pavement samples.

14 (d) Locating existing features of a building or structure,
15 including existing electrical, mechanical, plumbing and structural
16 members.

17 8. A person licensed, certified or registered pursuant to title 3,
18 chapter 20 or a person working under the direct supervision of a person
19 certified or qualified pursuant to title 3, chapter 20 to the extent the
20 person is engaged in pest management.

21 9. The sale or installation of finished products, materials or
22 articles of merchandise that are not fabricated into and do not become a
23 permanent fixed part of the structure. This exemption does not apply if a
24 local building permit is required, if the total price of the finished
25 product, material or article of merchandise, including labor but excluding
26 any electrical fixture or appliance that was designed by the manufacturer,
27 that is unaltered, unchanged or unmodified by any person, that can be
28 plugged into a common household electrical outlet utilizing a two-pronged
29 or three-pronged electrical connector and that does not use any other form
30 of energy, including natural gas, propane or other petroleum or gaseous
31 fuel, to operate or is attached by a nail, screw or other fastening device
32 to the frame or foundation of any residential structure, is more than one
33 thousand dollars or if the removal of the finished product, material or
34 article of merchandise causes damage to the structure or renders the
35 structure unfit for its intended use.

36 10. Employees of the owners of condominiums, townhouses,
37 cooperative units or apartment complexes of four units or less or the
38 owners' management agent or employees of the management agent repairing or
39 maintaining structures owned by them.

40 11. Any person who engages in the activities regulated by this
41 chapter, as an employee of an exempt property owner or as an employee with
42 wages as the person's sole compensation.

43 12. A surety company or companies that are authorized to transact
44 business in this state and that undertake to complete a contract on which

1 they issued a performance or completion bond, provided all construction
2 work is performed by duly licensed contractors.

3 13. Insurance companies that are authorized to transact business in
4 this state and that undertake to perform repairs resulting from casualty
5 losses pursuant to the provisions of a policy, provided all construction
6 work is performed by duly licensed contractors.

7 14. Any person other than a licensed contractor engaging in any
8 work or operation on one undertaking or project by one or more contracts,
9 for which the aggregate contract price, including labor, materials and all
10 other items, but excluding any electrical fixture or appliance that was
11 designed by the manufacturer, that is unaltered, unchanged or unmodified
12 by any person, that can be plugged into a common household electrical
13 outlet utilizing a two-pronged or three-pronged electrical connector and
14 that does not use any other form of energy, including natural gas, propane
15 or other petroleum or gaseous fuel, to operate or is attached by a nail,
16 screw or other fastening device to the frame or foundation of any
17 residential structure, is less than one thousand dollars. The work or
18 operations that are exempt under this paragraph shall be of a casual or
19 minor nature. This exemption does not apply:

20 (a) In any case in which the performance of the work requires a
21 local building permit.

22 (b) In any case in which the work or construction is only a part of
23 a larger or major operation, whether undertaken by the same or a different
24 contractor, or in which a division of the operation is made in contracts
25 of amounts less than one thousand dollars, excluding any electrical
26 fixture or appliance that was designed by the manufacturer, that is
27 unaltered, unchanged or unmodified by any person, that can be plugged into
28 a common household electrical outlet utilizing a two-pronged or
29 three-pronged electrical connector and that does not use any other form of
30 energy, including natural gas, propane or other petroleum or gaseous fuel,
31 to operate or is attached by a nail, screw or other fastening device to
32 the frame or foundation of any residential structure, for the purpose of
33 evasion of this chapter or otherwise.

34 (c) To a person who utilizes any form of advertising to the public
35 in which the person's unlicensed status is not disclosed by including the
36 words "not a licensed contractor" in the advertisement.

37 15. A person who is licensed, certified or registered pursuant to
38 title 41, chapter 37, article 4 and who is not otherwise required to be
39 licensed under this chapter or an employee of such person.

40 16. A person who functions as a gardener by performing lawn,
41 garden, shrub and tree maintenance.

42 17. Alarm agents as defined in section 32-101.

43 B. A person who is licensed to perform work in a particular trade
44 pursuant to this chapter shall not be required to obtain and maintain a

1 separate license for mechanical or structural service work performed
2 within the scope of such trade by such person.

3 C. Any person who does not have an exemption from licensure
4 pursuant to subsection A, paragraph 14, subdivision (c) of this section is
5 subject to prosecution for a violation of section 44-1522. The attorney
6 general may investigate the act or practice and take appropriate action
7 pursuant to title 44, chapter 10, article 7.

8 D. The exemptions from licensure pursuant to subsection A,
9 paragraphs 4, 9 and 14 of this section do not apply to either of the
10 following:

11 1. All fire safety and mechanical, electrical and plumbing work
12 that is done in connection with fire safety installation and fire safety
13 maintenance and repair. For the purposes of this paragraph, "fire safety
14 installation" means hardwired or interconnected smoke alarms and fire
15 sprinklers and does not include an individual device that is attached by a
16 nail, screw or other fastening device to the frame or foundation of any
17 residential unit. For the purposes of this paragraph, fire safety
18 maintenance and repair does not include routine work that is conducted by
19 an employee of an apartment or condominium complex and that is incidental
20 to the fire safety equipment.

21 2. All work that is done, including the installation, maintenance
22 and repair of devices, appliances or equipment, that involves the
23 connecting to any supply of natural gas, propane or other petroleum or
24 gaseous fuel. Nothing in this paragraph impacts the effect of section
25 36-1624.01.

26 Sec. 3. Section 34-201, Arizona Revised Statutes, is amended to
27 read:

28 34-201. Notice of intention to receive bids and enter
29 contract; procedure; doing work without advertising
30 for bids; county compliance; enforcement

31 A. Except as provided in subsections B through G and L of this
32 section, every agent, on acceptance and approval of the working drawings
33 and specifications, shall publish a notice to contractors of intention to
34 receive bids and contract for the proposed work. This notice shall be
35 published by advertising in a newspaper of general circulation in the
36 county in which the agent is located for two consecutive publications if
37 it is a weekly newspaper or for two publications that are at least six but
38 no more than ten days apart if it is a daily newspaper. The notice shall
39 state:

40 1. The nature of the work required, the type, purpose and location
41 of the proposed building and where the plans, specifications and full
42 information as to the proposed work may be obtained.

43 2. That contractors desiring to submit proposals may obtain copies
44 of full or partial sets of plans and specifications for estimate on
45 request or by appointment. The return of such plans and specifications

1 shall be guaranteed by a deposit of a designated amount ~~which~~ THAT shall
2 be refunded on return of the plans and specifications in good order.

3 3. That every proposal shall be accompanied by a certified check,
4 cashier's check or surety bond for ten ~~per cent~~ PERCENT of the amount of
5 the bid included in the proposal as a guarantee that the contractor will
6 enter into a contract to perform the proposal in accordance with the plans
7 and specifications. Notwithstanding any other statute, the surety bond
8 shall be executed solely by a surety company or companies holding a
9 certificate of authority to transact surety business in this state issued
10 by the director of the department of insurance pursuant to title 20,
11 chapter 2, article 1. The surety bond shall not be executed by an
12 individual surety or sureties, even if the requirements of section 7-101
13 are satisfied. The certified check, cashier's check or surety bond shall
14 be returned to the contractors whose proposals are not accepted, and to
15 the successful contractor on the execution of a satisfactory bond and
16 contract as provided in this article. The conditions and provisions of
17 the surety bid bond regarding the surety's obligations shall follow the
18 following form:

19 Now, therefore, if the obligee accepts the proposal of the
20 principal and the principal enters into a contract with the
21 obligee in accordance with the terms of the proposal and gives
22 the bonds and certificates of insurance as specified in the
23 standard specifications with good and sufficient surety for
24 the faithful performance of the contract and for the prompt
25 payment of labor and materials furnished in the prosecution of
26 the contract, or in the event of the failure of the principal
27 to enter into the contract and give the bonds and certificates
28 of insurance, if the principal pays to the obligee the
29 difference not to exceed the penalty of the bond between the
30 amount specified in the proposal and such larger amount for
31 which the obligee may in good faith contract with another
32 party to perform the work covered by the proposal then this
33 obligation is void. Otherwise it remains in full force and
34 effect provided, however, that this bond is executed pursuant
35 to the provisions of section 34-201, Arizona Revised Statutes,
36 and all liabilities on this bond shall be determined in
37 accordance with the provisions of the section to the extent as
38 if it were copied at length herein.

39 4. That the right is reserved to reject any or all proposals or to
40 withhold the award for any reason the agent determines.

41 B. If the agent believes that any construction, building addition
42 or alteration contemplated at a public institution can be advantageously
43 done by the inmates of the public institution and regularly employed help,
44 the agent may cause the work to be done without advertising for bids.

1 C. Any building, structure, addition or alteration may be
2 constructed either with or without the use of the agent's regularly
3 employed personnel without advertising for bids, ~~provided that~~ IF the
4 total cost of the work, excluding materials and equipment previously
5 acquired by bid, does not exceed:

- 6 1. in fiscal year 1994-1995, fourteen thousand dollars.
7 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
8 amount provided in paragraph 1 of this subsection adjusted by the annual
9 percentage change in the GDP price deflator as defined in section 41-563.

10 D. Notwithstanding subsection C of this section, **THE CONSTRUCTION,**
11 **RECONSTRUCTION OR MAINTENANCE OF** any street, road, bridge, water or sewer
12 work, other than a water or sewer treatment plant or building, may be
13 ~~constructed~~ **PERFORMED** either with or without the use of the agent's
14 regularly employed personnel without advertising for bids, ~~provided that~~
15 **IF** the total cost of the work does not exceed: ~~—~~

- 16 ~~1. In fiscal year 1994-1995, one hundred fifty thousand dollars.~~
17 ~~2. In fiscal year 1995-1996 and each fiscal year thereafter, the~~
18 ~~amount provided in paragraph 1 of this subsection adjusted by the annual~~
19 ~~percentage change in the GDP price deflator as defined in section 41-563~~
20 **TWENTY-FIVE THOUSAND DOLLARS, INCLUDING MATERIALS AND EQUIPMENT.**

21 E. For the purposes of subsection D of this section: ~~—~~

- 22 1. The total cost of water or sewer work does not include services
23 provided by volunteers or donations made for the water or sewer project.
24 2. **PROJECTS MAY NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED TO**
25 **CIRCUMVENT THE PRESCRIBED LIMITS.**

26 F. Notwithstanding this section, an agent may:

27 1. Construct, reconstruct, install or repair a natural gas or
28 electric utility and distribution system, owned or operated by such agent,
29 with regularly employed personnel of the agent without advertising for
30 bids, unless otherwise prohibited by charter or ordinance.

31 2. Construct recreational projects, including trails, playgrounds,
32 ballparks and other similar facilities and excluding buildings,
33 structures, building additions and alterations to buildings, structures
34 and building additions, with volunteer workers or workers provided by a
35 nonprofit organization without advertising for bids for labor and
36 materials, ~~provided that~~ IF the total cost of the work does not exceed:

- 37 (a) In fiscal year 2001-2002, one hundred fifty thousand dollars.
38 (b) In fiscal year 2002-2003 and each fiscal year thereafter, the
39 amount provided in subdivision (a) adjusted by the annual percentage
40 change in the GDP price deflator as defined in section 41-563.

41 G. A contribution by an agent for the financing of public
42 infrastructure made pursuant to a development agreement is exempt from
43 this section if such contribution for any single development does not
44 exceed:

1 1. In fiscal year 1994-1995, one hundred thousand dollars.

2 2. In fiscal year 1995-1996 and each fiscal year thereafter, the
3 amount provided in paragraph 1 of this subsection adjusted by the annual
4 percentage change in the GDP price deflator as defined in section 41-563.

5 H. In addition to other state or local requirements relating to the
6 publication of bids, each agent shall provide at least one set of all
7 plans and specifications to any construction news reporting service that
8 files an annual request with the agent. For the purposes of this
9 subsection, "construction news reporting service" means a service that
10 researches, gathers and disseminates news and reports either in print or
11 electronically, on at least a weekly basis for building projects,
12 construction bids, the purchasing of materials, supplies or services and
13 other construction bidding or planned activity to the allied construction
14 industry. The allied construction industry includes both general and
15 specialty contractors, builders, material and service suppliers,
16 architects and engineers, owners, developers and government agencies.

17 I. Any construction by a county under this section shall comply
18 with the uniform accounting system prescribed for counties by the auditor
19 general under section 41-1279.21. Any construction by a city or town
20 under this section shall comply with generally accepted accounting
21 principles.

22 J. Any construction, building addition or alteration project that
23 is financed by monies of this state or its political subdivisions shall
24 not use endangered wood species unless an exemption is granted by the
25 director of the department of administration. The director shall only
26 grant an exemption if the use of endangered wood species is deemed
27 necessary for historical restoration or to repair existing facilities and
28 the use of any substitute material is not practical. Any lease-purchase
29 agreement entered into by this state or its political subdivisions for
30 construction shall specify that no endangered wood species may be used in
31 the construction unless an exemption is granted by the director. For the
32 purposes of this subsection, "endangered wood species" includes those
33 listed in appendix I of the convention on international trade in
34 endangered species of wild flora and fauna.

35 K. All bonds given by a contractor and surety pursuant to this
36 article, regardless of their actual form, will be deemed by law to be the
37 form required and set forth in this article and no other.

38 L. Any building, structure, addition or alteration may be
39 constructed without complying with this article if the construction,
40 including construction of buildings or structures on public or private
41 property, is required as a condition of development of private property
42 and is authorized by section 9-463.01 or 11-822. For the purposes of this
43 subsection, building does not include police, fire, school, library or
44 other public buildings.

1 M. Notwithstanding section 34-221, any agent may enter into a
2 guaranteed energy cost savings contract with a qualified provider for the
3 purchase of energy cost savings measures without complying with this
4 article and may procure a guaranteed energy cost savings contract through
5 the competitive sealed proposal process prescribed in title 41, chapter 23
6 or any similar competitive proposal process adopted by the agent.
7 N. A VIOLATION OF SUBSECTION C OR SUBSECTION E, PARAGRAPH 2 OF THIS
8 SECTION MAY BE ENFORCED PURSUANT TO SECTION 41-194.01.