

Stricken language would be deleted from and underlined language would be added to present law.
Act 1075 of the Regular Session

State of Arkansas

As Engrossed: S4/3/19 S4/5/19 S4/8/19

92nd General Assembly

A Bill

Regular Session, 2019

SENATE BILL 409

By: Senators Flippo, Hickey

By: Representative Richmond

For An Act To Be Entitled

AN ACT TO AMEND THE PURCHASING REQUIREMENTS AND PROCEDURES FOR CERTAIN ENTITIES; TO ALLOW FOR THE ELECTRONIC NOTIFICATION OF AN INVITATION FOR BIDS AND *THE ELECTRONIC SUBMISSION OF BIDS; TO CREATE THE FAIR NOTICE AND EFFICIENCY IN PUBLIC WORKS ACT*; AND FOR OTHER PURPOSES.

Subtitle

TO ALLOW FOR THE ELECTRONIC NOTIFICATION OF AN INVITATION FOR BIDS AND ELECTRONIC SUBMISSION OF BIDS; AND TO CREATE THE FAIR NOTICE AND EFFICIENCY IN PUBLIC WORKS ACT.

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

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

(1) There is a need for a statewide system for the online advertisement of notices of an intention to receive bids by local governmental units;

(2) Legislation is necessary to provide for the efficient procurement of services to provide for the online advertisement of notices of an intention to receive bids by local governmental units;

(3) There is a need for an impartial selection process in selecting statewide vendors to administer online advertisements of notices of



an intention to receive bids by local governmental units; and

(4) The Office of State Procurement has the authority and infrastructure to issue requests for qualifications to effectuate this act.

SECTION 2. Arkansas Code Title 22, Chapter 9, is amended to add an additional subchapter to read as follows:

Subchapter 9 – Fair Notice and Efficiency in Public Works Act

22-9-901. Title.

This subchapter shall be known and may be cited as the "Fair Notice and Efficiency in Public Works Act".

22-9-902. Legislative intent.

The General Assembly intends for this subchapter to:

(1) Provide for the efficient procurement of services to provide for the online advertisement of notices of an intention to receive bids by local governmental units;

(2) Promote the economical and efficient administration and completion of public works construction projects;

(3) Provide for an impartial selection process in selecting statewide vendors to administer online advertisements of notices of an intention to receive bids by local governmental units;

(4) Provide for fair and open competition in selecting vendors to accomplish the goals of this subchapter;

(5) Prohibit anticompetitive conduct in vendors, including without limitation a vendor's having a direct interest in one (1) or more of the other vendors awarded a contract under this subchapter; and

(6) Provide significant penalties for an individual or entity that violates this subchapter.

22-9-903. Definitions.

As used in this subchapter:

(1) "Public agency" means:

(A) A county, city, town, and school district in this state; and

(B) A department, agency, board, bureau, commission,

committee, or authority of a county, city, town, or school district; and

(2) "Vendor" means an individual, association, corporation, company, firm, organization, partnership, governmental entity, or any other entity that can provide an online system for the online advertisement of notice of an intention to receive bids under §§ 22-9-203 and 22-9-209.

22-9-904. Public Works Committee – Creation – Duties – Immunity.

(a)(1) The Public Works Committee is created and, except as provided in subdivision (a)(2) of this section, shall have the following members:

(A) The State Procurement Director or his or her designee;

(B) The Executive Director of the Arkansas Press Association, Inc. or his or her designee;

(C) The Executive Director of the Association of Arkansas Counties or his or her designee;

(D) The President of the Arkansas Municipal League or his or her designee; and

(E) The Executive Director of the Arkansas Association of Educational Administrators or his or her designee.

(2) If a member of the committee elects not to participate:

(A) The Governor shall appoint a replacement; and

(B) The member who elects not to participate is not part of the committee.

(b) The committee shall meet as needed but at least one (1) time each year.

(c) The committee shall:

(1) Administer this subchapter;

(2) Prepare an annual report on the performance of the vendors selected under this subchapter and submit the report to the Office of State Procurement;

(3) Hear any complaints from interested individuals or entities relating to vendors selected under this subchapter;

(4) Prepare an annual report concerning the success of this subchapter and submit the report to the Office of State Procurement; and

(5) Perform an annual review and remove any noncompliant vendors under § 22-9-907.

(d) A majority vote of the members of the committee is required for

the committee to take action.

(e)(1) The committee has the same immunity granted to state agencies under the Arkansas Constitution.

(2) The individual members of the committee are immune to the same extent as state employees under § 19-10-305.

22-9-905. Online notice for bids.

A public agency may contract with a vendor selected under this subchapter to provide online advertisements of notices of an intention to receive bids under §§ 22-9-203 and 22-9-209.

22-9-906. Selection of vendors.

(a)(1) The Office of State Procurement shall select three (3) vendors using the procedures for the procurement of professional services under § 19-11-801 et seq.

(2) The office may use the responses from a previous request for qualifications under this subchapter for up to five (5) years to replace any vendors that are removed under this subchapter.

(3) If fewer than three (3) vendors respond to the request for qualifications or if there are fewer than three (3) qualified vendors, the office shall select as many qualified vendors as possible.

(b) The vendors selected under this subchapter shall be the only vendors with which a public agency may contract for the online advertisement of notices of an intention to receive bids under §§ 22-9-203 and 22-9-209.

(c) A vendor selected under this subchapter shall:

(1) Maintain on its website a clearly designated area for public notices that is accessible through a prominently displayed and clearly labeled link from the homepage of the website; and

(2) Primarily publish in the English language.

(d) A vendor selected under this subchapter shall not:

(1) Have a common owner, shareholder, member of a board of directors, employee, or any other similar interest with another vendor selected under this subchapter;

(2)(A) Require payment or a subscription to view an advertisement of a notice of an intention to receive bids or any other posting authorized in this section.

(B) A vendor may require payment or a subscription to view any other document; or

(3) Provide services under this subchapter for a public agency until the public agency has complied with subsections (e) and (f) of this section.

(e) Before using the online advertisement of notices of an intention to receive bids as a form of notification, a county, city, or town shall:

(1) Provide notice through publication in a newspaper concurrently with notification through an online advertisement of notice of an intention to receive bids under this subchapter for five (5) weeks;

(2) Adopt a resolution at the beginning of each calendar year that identifies each website designated by ordinance for the online posting of advertisements for notices of an intention to receive bids;

(3) Publish notice in a newspaper of general circulation within the county identifying each website designated for the online posting of advertisements for notices of an intention to receive bids; and

(4) Adopt an ordinance that identifies each website designated for the online posting of advertisements for notices of an intention to receive bids.

(f) Before using the online advertisement of bids as a form of notification, a school district shall:

(1) Provide notice through publication in a newspaper concurrently with notification through an online advertisement of notices of an intention to receive bids under this subchapter for five (5) weeks;

(2) Adopt a resolution at the beginning of each calendar year that identifies each website designated for the online posting of advertisements for notices of an intention to receive bids; and

(3) Publish notice in a newspaper of general circulation within the county in which the school district is located that identifies each website designated for the online posting of advertisements for notices of an intention to receive bids.

22-9-907. Annual review – Removal of vendor – Penalties.

(a) The Public Works Committee shall review the performance and compliance of vendors selected under this subchapter.

(b) After reasonable notice to the vendor and a reasonable opportunity

for the vendor to have a hearing, the committee may remove a vendor's authority to perform the services provided for under this subchapter if the committee determines that the vendor's performance does not meet the goals of this subchapter.

(c)(1) A vendor who knowingly violates this subchapter:

(A) Upon conviction is guilty of a Class B misdemeanor;

(B) Is prohibited from performing services under this subchapter or being selected as a vendor under this subchapter for five (5) years; and

(C) Shall pay damages to any public agency, person, or entity that is found to have ascertainable damages as a result of the vendor's violation of this subchapter.

(2) The Office of State Procurement shall maintain a list of vendors that are prohibited from performing services.

22-9-908. Replacement of vendor.

(a) A vendor shall be replaced as soon as practicable using the procedure established under § 22-9-906 if the vendor:

(1) Is unable to perform the services required under this subchapter;

(2) Has its authority to perform the services provided for under this subchapter removed under § 22-9-907; or

(3) Is otherwise no longer performing the services required under this subchapter.

(b) If only one (1) vendor remains as a selected vendor under this subchapter as the result of action taken under § 22-9-907, the Public Works Committee shall meet and select at least one (1) additional vendor within ninety (90) days.

(c) An online posting to advertise the notice of an intention to receive bids by a public agency on a vendor's website at the time of a vendor's removal under § 22-9-907 shall be reposted on the website of another vendor selected under this subchapter under the same terms as the original online advertisement for notice of an intention to receive bids.

22-9-909. Multiyear contracts.

A contract with a vendor under this subchapter is subject to the

restrictions of § 19-11-238.

SECTION 3. Arkansas Code § 22-9-203(a)(2), concerning contracts for public improvements, is amended to read as follows:

(2)(A) ~~Any~~ 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. ~~or in a trade~~

(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.

SECTION 4. Arkansas Code § 22-9-203(b)(2) and (3), concerning contracts for public improvements, are amended to read as follows:

(2)(A) ~~If there is no~~ 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) ~~Nothing in this section shall be construed as limiting This section does not limit~~ to two (2) the number of weeks the notices may be published for projects over ~~the amount of~~ fifty thousand dollars (\$50,000),

~~limiting 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), ~~and as limiting or limit~~ to two (2) the number of weeks the notices may be published for all other projects.

SECTION 5. Arkansas Code § 22-9-203(c)(1), concerning contracts for public improvements, is amended to read as follows:

(c)(1) All notices shall contain:

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

(B) The approximate location ~~thereof~~ 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 ~~will~~ 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.

SECTION 6. Arkansas Code § 22-9-203, concerning contracts for public improvements, is amended to add an additional subsection to read as follows:

(1) A sealed bid under this section shall be submitted in one (1) of the following formats:

(1) Written; or

(2) Electronic media.

SECTION 7. Arkansas Code § 22-9-209(a), concerning the advertising of contracts for the renovation of historic sites, is amended to read as

follows:

(a)(1) A contract for the altering, repairing, or renovation of a recognized historic site or structure owned by the state or with title vested in the name of a state agency or of another taxing authority in which the estimated cost of the work equals or exceeds the sum of thirty-five thousand dollars (\$35,000) shall not be entered into between the state agency or taxing authority and any contractor unless the state agency or taxing authority has first published notice of intention to receive bids for improvements 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, ~~or in a trade~~

(2) In addition to the publication of notice required under subdivision (a)(1) of this section, the state agency or taxing authority:

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

(B) If the state agency or taxing authority 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.

SECTION 8. Arkansas Code § 22-9-209(b)(2), concerning the advertising of contracts for the renovation of historic sites, is amended to read as follows:

(2)(A) If there is ~~no~~ 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 state agency or taxing authority:

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

(ii) If the state agency or taxing authority 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.

SECTION 9. Arkansas Code § 22-9-209(c)(1), concerning the advertising of contracts for the renovation of historic sites, is amended to read as follows:

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

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

(B) The approximate location ~~thereof, the~~ of the work contemplated;

(C) The place at which prospective contractors may obtain plans and specifications, ~~the~~ including any websites on which a state agency or taxing authority 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 ~~will~~ shall be received, ~~and the~~

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

SECTION 10. Arkansas Code § 22-9-209, concerning the advertising of contracts for the renovation of historic sites, is amended to add an additional subsection to read as follows:

(e) A sealed bid under this section shall be submitted in one (1) of the following formats:

(1) Written; or

(2) Electronic media.

/s/Flippo

APPROVED: 4/17/19