

CHAPTER 722

H.B. No. 662

AN ACT

relating to safety standards for construction projects and consideration of safety records when awarding bids on construction projects.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 5.26, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsections (a-1) and (a-2) to read as follows:

*(a-1) On construction projects in which trench excavation will exceed a depth of five feet, the uniform set of general conditions must require that the bid documents and the contract include detailed plans and specifications for adequate safety systems that meet Occupational Safety and Health Administration standards and that these plans and specifications include a pay item for these same safety systems.*

*(a-2) The contract requirements of Subsection (a-1) of this section do not apply to contracts entered into with persons subject to the safety standards of Article 6053-1, Revised Statutes, and the administrative penalty provisions of Article 6053-2, Revised Statutes.*

SECTION 2. (a) On all projects for a political subdivision of the state in which trench excavation will exceed a depth of five feet, the bid documents and the contract must include detailed plans and specifications for adequate safety systems that meet Occupational Safety and Health Administration standards and must include requirements for a safety program for a trench system.

(b) This section does not apply to persons subject to the safety standards adopted under Article 6053-1, Revised Statutes, and the administrative penalty provisions of Article 6053-2, Revised Statutes.

SECTION 3. Section 2(b), Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The competitive sealed bidding procedure as provided herein shall be used for the award of all contracts subject to the provisions of this section, except that in the case of high technology procurements the city may follow the competitive sealed proposal procedure provided in Subsection (c) of this section.

Whenever the competitive sealed bidding procedure applies to a proposed contract, notice of the time and place when and where such a contract shall be let shall be published in such city once a week for two (2) consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least fourteen (14) days prior to the date set for letting said contract; and said contract shall be let to the lowest responsible bidder. *In determining who is a responsible bidder, the governing body may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership, or institution, provided, however, that the governing body has adopted a written definition and criteria for accurately determining the safety record of a bidder and has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the responsibility of that bidder and, provided further, that such determinations are not arbitrary and capricious.* The governing body shall have the right to reject any and all bids, and if the contract is for the construction of public works, then the successful bidder shall be required to give a good and sufficient bond in the full amount of the contract price, for the faithful performance of such contract, executed by some surety company authorized to do business in this state in accordance with the provisions of Article 5160, Revised Statutes, and the amendments thereto. However, the city in making any contract calling for or requiring the expenditure or payment of less than \$100,000 may, in lieu of the bond requirement, provide in the contract that no money will be paid to the contractor until completion and acceptance of the work by the city. If there is no newspaper published in such city, then the notice of letting such contract shall be given by causing notice thereof to be posted at the city hall for 14 days prior to the time of letting such contract. Trade secrets and confidential information contained in the competitive sealed bids shall not be open for public inspection.

SECTION 4. Section 5, Chapter 770, Acts of the 66th Legislature, 1979 (Article 2368a.3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. A governmental entity shall have the right to reject any and all bids. Contracts covered by this Act shall be awarded to the lowest, responsible bidder, but a contract may not be awarded to a bidder who is not the lowest bidder unless prior to the award each lower bidder is given notice of the proposed award and is given an opportunity to appear before the governing body of the governmental entity or the designated representative of the governing body and present evidence concerning the bidder's responsibility. *In determining who is a responsible bidder, the governing body may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership, or institution, provided, however, that the governing body has adopted a written definition and criteria for accurately determining the safety record of a bidder and has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the responsibility of that bidder and, provided further, that such determinations are not arbitrary and capricious.*

SECTION 5. Section 7(c), County Purchasing Act (Article 2368a.5, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) A contract may not be awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award and is given an opportunity to appear before the commissioners court and present evidence concerning the lower bidder's responsibility. *In determining who is a responsible bidder, the commissioners court may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership, or institution, provided, however, that the commissioners court has adopted a written definition and*

*criteria for accurately determining the safety record of a bidder and has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the responsibility of that bidder and, provided further, that such determinations are not arbitrary and capricious.*

SECTION 6. Section 3.11(e), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) Award of Contract. The commission shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required. Complying with the specified time limit for submission of written data, samples, or models on or before bid opening time is essential to the materiality of a bid, provided, however, that the commission shall have the authority to waive this provision if the failure to comply is beyond control of the bidder. *In determining who is the lowest and best bidder, the commission may take into account the safety record of the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership, or institution, provided, however, that the commission has adopted a written definition and criteria for accurately determining the safety record of a bidder and has given notice to prospective bidders, in the bid specifications, that the safety record of a bidder may be considered in determining the lowest and best bidder and, provided further, that such determinations are not arbitrary and capricious.* In determining who is the lowest and best bidder, in addition to price, the commission shall consider:

- (1) the quality, availability, and adaptability of the supplies, materials, equipment, or contractual services, to the particular use required;
- (2) the number and scope of conditions attached to the bid;
- (3) the ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- (4) whether the bidder can perform the contract or provide the service promptly, or within the time required, without delay or interference;
- (5) the character, responsibility, integrity, reputation, and experience of the bidder;
- (6) the quality of performance of previous contracts or services;
- (7) the previous and existing compliance by the bidder with laws relating to the contract or service;
- (8) any previous or existing noncompliance by the bidder with specification requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;
- (9) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service; and
- (10) the ability of the bidder to provide future maintenance, repair parts, and service for the use of the subject of the contract.

SECTION 7. This Act takes effect September 1, 1987.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 12, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 662 on May 29, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 27, 1987, by a viva-voce vote.

Approved June 19, 1987.

Effective Sept. 1, 1987.