

Part 3 Contracts for Improvements

11-42-301 Improvements made only under contract let to lowest responsive, responsible bidder -- Publishing notice -- Sealed bids -- Procedure -- Exceptions to contract requirement.

- (1) Except as otherwise provided in this section, a local entity may make improvements in an assessment area only under contract let to the lowest responsive, responsible bidder for the kind of service, material, or form of construction that the local entity's governing body determines in compliance with any applicable local entity ordinances.
- (2) A local entity may:
 - (a) divide improvements into parts;
 - (b)
 - (i) let separate contracts for each part; or
 - (ii) combine multiple parts into the same contract; and
 - (c) let a contract on a unit basis.
- (3)
 - (a) A local entity may not let a contract until after publishing notice as provided in Subsection (3)
 - (b):
 - (i) at least one time in a newspaper of general circulation within the boundaries of the local entity at least 15 days before the date specified for receipt of bids; and
 - (ii) in accordance with Section 45-1-101, at least 15 days before the date specified for receipt of bids.
 - (b) Each notice under Subsection (3)(a) shall notify contractors that the local entity will receive sealed bids at a specified time and place for the construction of the improvements.
 - (c) Notwithstanding a local entity's failure, through inadvertence or oversight, to publish the notice or to publish the notice within 15 days before the date specified for receipt of bids, the governing body may proceed to let a contract for the improvements if the local entity receives at least three sealed and bona fide bids from contractors by the time specified for the receipt of bids.
 - (d) A local entity may publish a notice required under this Subsection (3) at the same time as a notice under Section 11-42-202.
- (4)
 - (a) A local entity may accept as a sealed bid a bid that is:
 - (i) manually sealed and submitted; or
 - (ii) electronically sealed and submitted.
 - (b) The governing body or project engineer shall, at the time specified in the notice under Subsection (3), open and examine the bids.
 - (c) In open session, the governing body:
 - (i) shall declare the bids; and
 - (ii) may reject any or all bids if the governing body considers the rejection to be for the public good.
 - (d) The local entity may award the contract to the lowest responsive, responsible bidder even if the price bid by that bidder exceeds the estimated costs as determined by the project engineer.
 - (e) A local entity may in any case:
 - (i) refuse to award a contract;

- (ii) obtain new bids after giving a new notice under Subsection (3);
 - (iii) determine to abandon the assessment area; or
 - (iv) not make some of the improvements proposed to be made.
- (5) A local entity is not required to let a contract as provided in this section for:
- (a) an improvement or part of an improvement the cost of which or the making of which is donated or contributed;
 - (b) an improvement that consists of furnishing utility service or maintaining improvements;
 - (c) labor, materials, or equipment supplied by the local entity;
 - (d) the local entity's acquisition of completed or partially completed improvements in an assessment area;
 - (e) design, engineering, and inspection costs incurred with respect to the construction of improvements in an assessment area; or
 - (f) additional work performed in accordance with the terms of a contract duly let to the lowest responsive, responsible bidder.
- (6) A local entity may itself furnish utility service and maintain improvements within an assessment area.
- (7)
- (a) A local entity may acquire completed or partially completed improvements in an assessment area, but may not pay an amount for those improvements that exceeds their fair market value.
 - (b) Upon the local entity's payment for completed or partially completed improvements, title to the improvements shall be conveyed to the local entity or another public agency.
- (8) The provisions of Title 11, Chapter 39, Building Improvements and Public Works Projects, and Section 72-6-108 do not apply to improvements to be constructed in an assessment area.
- (9)
- (a) Except as provided in Subsection (9)(b), this section does not apply to a voluntary assessment area designated for the purpose of levying an assessment for an energy efficiency upgrade, a renewable energy system, or electric vehicle charging infrastructure.
 - (b)
 - (i) A local entity that designates a voluntary assessment area described in Subsection (9)(a) shall provide to each owner of property to be assessed a list of service providers authorized by the local entity to provide the energy efficiency upgrade, renewable energy system, or electric vehicle charging infrastructure.
 - (ii) A property owner described in Subsection (9)(b)(i) shall select a service provider from the list to provide the energy efficiency upgrade, renewable energy system, or electric vehicle charging infrastructure for the owner's property.

Amended by Chapter 371, 2016 General Session

11-42-302 Contracts for work in an assessment area -- Sources of payment -- Payments as work progresses.

- (1) A contract for work in an assessment area or for the purchase of property required to make an improvement in an assessment area may require the contract obligation to be paid from proceeds from the sale of assessment bonds, interim warrants, or bond anticipation notes.
- (2)
- (a) To the extent that a contract is not paid from the sources stated in Subsection (1), the local entity shall advance funds to pay the contract obligation from other legally available money, according to the requirements of the contract.

- (b) A local entity may reimburse itself for an amount paid from its general fund or other funds under Subsection (2)(a) from:
 - (i) the proceeds from the sale of assessment bonds, interim warrants, or bond anticipation notes; or
 - (ii) assessments or improvement revenues that are not pledged for the payment of assessment bonds, interim warrants, or bond anticipation notes.
 - (c) A local entity may not reimburse itself for costs of making an improvement that are properly chargeable to the local entity or for which an assessment may not be levied.
- (3)
- (a) A contract for work in an assessment area may provide for payments to the contractor as the work progresses.
 - (b) If a contract provides for periodic payments:
 - (i) periodic payments may not exceed 90% of the value of the work done to the date of the payment, as determined by estimates of the project engineer; and
 - (ii) a final payment may be made only after the contractor has completed the work and the local entity has accepted the work.
 - (c) If a local entity retains money payable to a contractor as the work progresses, the local entity shall retain or withhold and release the money as provided in Section 13-8-5.

Enacted by Chapter 329, 2007 General Session