

CHAPTER 81
SENATE BILL No. 94

AN ACT relating to roads and highways; concerning certain contracts; amending K.S.A. 68-521 and K.S.A. 2004 Supp. 68-1115 and 68-1117 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 68-521 is hereby amended to read as follows: 68-521. (a) The board of county commissioners before awarding any contract for the construction, surfacing, repairing or maintaining of any road as provided in K.S.A. 68-520, and amendments thereto, when the county engineer's estimated cost of such improvement is more than \$10,000, shall have ~~the estimate and~~ the approved plans and specifications which have been adopted by order of the board for such work filed in the county clerk's office or in some other county office designated by the board at least 20 days prior to the time of the letting.

The county clerk or some other county officer designated by the board shall give not less than 20 days' notice of the letting by publication in at least two consecutive weekly issues of the official county paper, the first publication of such notice to be not less than 20 days prior to such letting. The notice shall specify with reasonable minuteness the character of the improvement contemplated, where it is located, the kind of material to be used, the hour, date and place of letting of such contract, when the work is to be completed, and invite sealed proposals for the same. Such other notice may be given as the board may deem proper. All bids shall be made on the proposal blanks furnished by the county, signed by the bidder, sealed and delivered, or sent by mail, by the bidder, or the agent or attorney thereof, to the county clerk or to some other county officer designated by the board. The letting of all contracts shall be conducted in such manner as to give free, open competition, and all *qualified* bidders, shall be given an equal opportunity to bid upon the plans and specifications on file. Each bidder shall be required to accompany the submitted bid with a bid surety in an amount equal to 5% of the bid amount in the form prescribed by the board as a guarantee that, if the contract is awarded to the bidder, the bidder will enter into the contract with the board. If a bidder fails to enter into the contract when awarded to the bidder, the bid surety shall become the property of the county as its liquidated damages and shall be paid to the county treasurer for credit to the general fund of the county, and the board may award the contract to the next lowest responsible bidder. The bids shall be opened publicly by the board or a designee thereof at the place, *date* and hour named in the advertising notice, and all bids shall be considered, and accepted or rejected.

In case the work is let at such public letting or thereafter, the contract shall be awarded to the lowest responsible bidder, or the board, if it deems the proposals too high, may reject all bids, and readvertise the work as before. No such contract shall be let at an amount exceeding *110%* of the county engineer's estimated cost of the work. No such contract shall be considered as awarded unless the contractor shall within ~~10~~ 21 days after the letting enter into contract and shall give the bond required by K.S.A. 60-1111, and amendments thereto, and a performance bond to the county in a penal sum equal to the amount of the contract price, conditioned upon the faithful performance of the contract, payable to the county upon failure to comply with the terms of the contract. The contractor shall file with the county clerk the bonds, which shall be approved by the chairperson of the board and the county attorney by their signatures indorsed thereon.

(b) The provisions of subsection (a) shall not apply to contracts for the expenditure of county moneys for the reconstruction or repair of a road if:

- (1) The road has been damaged or destroyed as a result of a disaster;
- (2) the governor has declared the county, or that part of the county in which the road is located, a disaster area;
- (3) the board of county commissioners finds that a hardship would result if the road is not immediately reconstructed or repaired;
- (4) the board of county commissioners has obtained an estimate of the cost of the reconstruction or repair of the road from the county engineer. If there is no county engineer, the board shall obtain such estimate

from the Kansas department of transportation; and

(5) the contract for the reconstruction or repair of the road is awarded within 60 days of the governor's declaration required by paragraph (2).

(c) The county attorney *or county counselor* shall meet with and advise the board of county commissioners in all matters pertaining to letting and making of all contracts under this act. The board may make partial payments, on the written estimate of its county engineer, upon any contract work as the same progresses, but not more than ~~90%~~ 95% of the estimate of the materials furnished and work done, or of the contract price, shall be paid in advance of the full and satisfactory completion of the contract. Final payment shall not be made on any such contract until the county engineer has inspected the work and certified in writing that it has been properly done and completed in accordance with the contract, plans and specifications, and the county engineer's certificate to that effect has been filed in the office of the county clerk or some other county officer designated by the board.

Sec. 2. K.S.A. 2004 Supp. 68-1115 is hereby amended to read as follows: 68-1115. The bids received shall be opened publicly by the board or the board's designee at the place, date and hour named in the advertising notice, and shall be recorded in detail in the minutes of the board of county commissioners or a record kept for that purpose by the county clerk. All bids shall be considered and accepted or rejected. In case the work is let at such public letting *or thereafter*, the contract shall be awarded to the lowest responsible bidder, or the board may, if it deems the proposals too high, reject all bids and readvertise the work as before, or it may let the work privately by submitting the contract, with a statement of the reasons for rejecting the bids at the public letting, to the secretary of transportation for approval, except that no contract shall be let at an amount exceeding *110%* of the county engineer's estimated cost or at a higher price than the lowest responsible bid received at the public letting. The opening of any bid by any person after the bid has been filed with the county clerk and before the time appointed for the opening of bids shall be a class C misdemeanor.

Sec. 3. K.S.A. 2004 Supp. 68-1117 is hereby amended to read as follows: 68-1117. Within ~~30~~ 21 days after any public letting, the bidder to whom any contract shall be awarded shall enter into contract with the board of county commissioners and shall give bond to the county in a penal sum equal to the amount of the contract price, conditioned upon the faithful performance of the contract and guaranteeing the county against loss from defects of workmanship and materials. The sufficiency of the bond shall be approved by the chairperson of the board of county commissioners, but the county shall not be bound until the county attorney or county counselor approves the form as legal and binding upon both parties by the county attorney's or county counselor's signature endorsed thereon.

Sec. 4. K.S.A. 68-521 and K.S.A. 2004 Supp. 68-1115 and 68-1117 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 7, 2005.
