

THE DRAIN CODE OF 1956 (EXCERPT)
Act 40 of 1956

CHAPTER 9.
LETTING OF CONTRACTS.

280.221 Construction of drain; advertisement and receipt of bids; sealed bids; contracts; bonds; abandonment of petition; order; notice; affidavit; board of county road commissioners authorized to bid.

Sec. 221. (1) The drain commissioner or drainage board shall advertise for sealed bids for projects petitioned for under section 71, 121, 191, or 192. The drain commissioner or drainage board shall receive sealed bids. All sealed bids received by the drain commissioner or drainage board shall be publicly opened at a meeting held at a time and place established by the notice under this act and may be examined at the meeting by any person interested. As soon as practical after the opening of bids, the drain commissioner or drainage board shall do the following:

(a) Determine the lowest responsible bidder and award contracts, or reject all proposals and readvertise.

(b) If the drain commissioner or drainage board determined that the special assessments for benefits shall be collected in more than 1 installment, subject to section 275, determine the amount, form, maturity, mandatory redemption requirements, if any, and rate of interest of bonds to be issued.

(2) The drain commissioner or drainage board shall also receive sealed bids as provided in subsection (1) for nonpetitioned maintenance work under section 196, unless the drain commissioner or drainage board utilizes 1 of the following to perform the work:

(a) County staff, including staff of the board of county road commissioners.

(b) A prequalified contractor. To proceed under this subdivision, the drain commissioner or drainage board must maintain a list of all prequalified contractors for nonpetitioned maintenance work under section 196. The determination whether to list a contractor shall comply with prequalification criteria adopted by the drain commissioner or drainage board. The drain commissioner or drainage board shall make the list and criteria available on request. If a drain commissioner maintains an official internet presence, the drain commissioner shall post and maintain the drain commissioner's or drainage board's list and criteria on a portion of the website that is fully accessible to the public. If the drain commissioner does not maintain an official internet presence, the list shall be so posted and maintained on the county website.

(3) If a contract is not let within 5 years after the date of filing the petition to locate, establish, and construct, or deepen, widen, straighten, tile, extend or clean out a drain, the drain commissioner or drainage board may determine that the petition shall be considered abandoned and no further action shall be taken to construct the drain. The running of the 5-year period is suspended during any litigation to contest the validity of the proceedings. If, after the 5-year period, the drain commissioner or drainage board determines that the petition shall be considered abandoned, the drain commissioner or drainage board shall issue an order to that effect. Notice of the order shall be published in a newspaper of general circulation in the drainage district or sent by first-class mail to each person whose name appears on the last city, village, or township tax roll as owning land within the drainage district. The respective drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the notice was mailed to all of the persons whose names and addresses appear upon the tax rolls as owning land within the drainage district in that county. The affidavit is conclusive proof that notice was mailed to each person to whom notice is required to be mailed by that drain commissioner under this subsection. The failure to receive a notice by mail is not a jurisdictional defect invalidating the abandonment of a petition if notice was sent by first-class mail as provided in this subsection.

(4) The board of county road commissioners may bid on projects as provided in this section and, if a bid is accepted, may perform the work described in the bid and receive payment for the work performed. A bid tendered by a board of county road commissioners shall not be accepted unless the bid is at least 15% lower than any other bid tendered. The money received by the board of county road commissioners shall be credited to the county road fund. Expenditures incurred by the board of county road commissioners in performing work under this subsection are proper disbursements from the county road fund.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1960, Act 4, Imd. Eff. Mar. 8, 1960;—Am. 1973, Act 16, Imd. Eff. Apr. 30, 1973;—Am. 2016, Act 27, Imd. Eff. Mar. 1, 2016;—Am. 2020, Act 291, Eff. Mar. 24, 2021.

Popular name: Act 40

280.222 Letting contracts; rejection of bids; adjournment.

Sec. 222. The commissioner shall first let the section at the outlet of the drain and shall let each remaining section in its order up stream: Provided, That the commissioner may let the drain in sections or as a whole,

whichever appears to him the most practical: Provided further, That the commissioner shall reserve the right to reject any and all bids or proposals and proceed to let said drain in its entirety, and may adjourn such letting in the whole or in part, from time to time, to such other time or place to be by him at the time of such adjournment publicly announced as shall to him seem proper, but not in all more than 40 days from and after the time of letting as first advertised.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.223 Deposit with bid; purpose; retention of deposit; damages for nonexecuted contract; return of deposit; disposition of forfeited money; security; conditions and limitations of personal surety; failure to complete contract; bond or indemnity insurance; contracts to which section applicable; additional kinds of security.

Sec. 223. (1) A deposit in the form of a certified check or its equivalent in the amount that the commissioner considers reasonable may be required with each bid, whether on opening bidding or sealed proposals, as evidence of good faith and to reimburse the district in the event of failure on the part of the successful bidder to execute the necessary contracts or to furnish the required security or indemnity insurance. If the successful bidder does not execute the proper contracts or furnish the security or indemnity insurance required of him or her within 10 days after the acceptance of his or her bid, then the commissioner may retain the deposit as stipulated damages for the nonexecution of the contract and proceed to advertise for and let the job anew. If the successful bidder furnishes the security or indemnity insurance required and executes the required contracts, then the deposit shall be returned to him or her. All money forfeited to the commissioner under this subsection shall be deposited with the county treasurer to the credit of the drainage district fund.

(2) The successful bidder shall, within the time stated in subsection (1), file with the commissioner security considered necessary by the commissioner guaranteeing that the contract will be completed in accordance with the terms specified in the contract. The security shall be in a sum fixed by the commissioner, but shall not be less than the contract price. At the option of the commissioner, the security shall consist of 1 or more of the following:

- (a) Cash.
- (b) Certified check.
- (c) Performance bond executed by a surety company authorized to do business in this state.
- (d) Escrow agreement acceptable to the commissioner.
- (e) Irrevocable letter of credit issued by a state or federally regulated financial institution.
- (f) Personal surety acceptable to the commissioner.

(3) If a personal surety is used as security, the commissioner shall require all of the following conditions and limitations:

(a) That the personal surety be a contractor with the experience and ability to perform and complete, in a timely manner, the contract in the event of a default by the successful bidder.

(b) That the personal surety not act as the personal surety for more than 1 other principal during the term of the contract upon which he or she is giving security.

(c) That no more than 2 personal sureties be utilized as security on any 1 contract.

(d) That, the personal surety provide financial information requested by the commissioner and that, after a review of this information, the commissioner be satisfied with the surety's ability to perform the contract upon which he or she is giving security.

(e) That the personal surety provide to the commissioner a list of contracts upon which the surety is required to perform, naming the parties to each contract, the amount of each contract, the work to be performed under each contract and the time during which each contract is to be performed, and that the personal surety revise this listing during the term of the contract upon which he or she is giving security, adding or deleting information as contracts are entered or completed.

(f) That the personal surety agree that in the event the successful bidder defaults on the contract, the personal surety shall enter onto the project and complete the project pursuant to the terms of the contract within the time limitations specified by the commissioner or pay to the drainage district the amount of money specified by the commissioner as necessary to pay another contractor to complete the contract.

(4) If a contract is not completed in accordance with its written terms, the security provided to the commissioner shall be used to complete the contract.

(5) In addition to the security required in subsection (2), the commissioner shall require the successful bidder to furnish a bond or indemnity insurance in the sum required by the commissioner. This bond or indemnity insurance shall run to the people of the state of Michigan and shall be maintained in full force and

effect until the contract is terminated to indemnify the commissioner, the drainage district, and the county or other municipality against loss or damage resulting from injury to a worker on the drain, or the negligence or carelessness of the contractor in the construction of the drain. Indemnity insurance that terminates by expiration or cancellation shall be replaced prior to termination in the sum then required by the commissioner.

(6) The provisions of this section apply to contracts in excess of \$100,000.00. For all contracts equal to or less than \$100,000.00, the commissioner may require security that he or she considers adequate and necessary, consistent with the provisions of this section.

(7) The commissioner, at his or her option, may require the provision of additional kinds of security.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1960, Act 96, Imd. Eff. Apr. 26, 1960;—Am. 1989, Act 61, Imd. Eff. June 16, 1989.

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