

An Act

ENROLLED SENATE
BILL NO. 96

By: Coates of the Senate

and

Liebmann of the House

An Act relating to the Public Competitive Bidding Act of 1974; amending 61 O.S. 2001, Sections 103, as last amended by Section 2, Chapter 98, O.S.L. 2010, 113, as last amended by Section 18, Chapter 271, O.S.L. 2006, and 130, as last amended by Section 1, Chapter 265, O.S.L. 2007 (61 O.S. Supp. 2010, Sections 103, 113, and 130), which relate to solicitation and awarding of contracts, execution of contract, and emergencies; modifying limit amount for certain negotiated contracts; authorizing the award of certain contracts using best value proposals; defining term; authorizing the Department of Central Services to promulgate certain rules; modifying definition; allowing the Oklahoma Conservation Commission to delegate power to declare certain emergencies; and providing an effective date.

SUBJECT: Public Competitive Bidding Act of 1974

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 61 O.S. 2001, Section 103, as last amended by Section 2, Chapter 98, O.S.L. 2010 (61 O.S. Supp. 2010, Section 103), is amended to read as follows:

Section 103. A. Unless otherwise provided by law, all public construction contracts exceeding Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest responsible bidder, by open

competitive bidding after solicitation for sealed bids, in accordance with the provisions of the Public Competitive Bidding Act of 1974. No work shall be commenced until a written contract is executed and all required bonds and insurance have been provided by the contractor to the awarding public agency.

B. Except as provided in subsection D of this section, other construction contracts for the purpose of making any public improvements or constructing any public building or making repairs to the same for Fifty Thousand Dollars (\$50,000.00) or less shall be let and awarded to the lowest responsible bidder by receipt of written bids or awarded on the basis of competitive quotes to the lowest responsible qualified contractor. Work may be commenced in accordance with the purchasing policies of the public agency.

C. Except as provided in subsection D of this section, other construction contracts for less than ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Five Thousand Dollars (\$5,000.00) may be negotiated with a qualified contractor. Work may be commenced in accordance with the purchasing policies of the public agency.

D. The provisions of this subsection shall apply to public construction for minor maintenance or minor repair work to public school district property. Other construction contracts for less than Twenty-five Thousand Dollars (\$25,000.00) may be negotiated with a qualified contractor. Construction contracts equal to or greater than Twenty-five Thousand Dollars (\$25,000.00) but less than Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest responsible bidder by receipt of written bids. No work shall be commenced on any construction contract until a written contract is executed and proof of insurance has been provided by the contractor to the awarding public agency.

E. The Construction and Properties Division of the Department of Central Services may award contracts using best value competitive proposals. As used in this subsection, "best value" means an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the state. The Department of Central Services, pursuant to the Administrative Procedures Act, shall promulgate rules necessary to implement the provisions of this subsection.

SECTION 2. AMENDATORY 61 O.S. 2001, Section 113, as last amended by Section 18, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2010, Section 113), is amended to read as follows:

Section 113. A. Except as otherwise provided by law, within the period of time, not to exceed sixty (60) days, specified in the bid notice by the awarding public agency, a contract embodying the terms set forth in the bidding documents shall be executed by the awarding public agency and the successful bidder. No bidder shall obtain any property right in a contract awarded under the provisions of the Public Competitive Bidding Act of 1974 until the contract has been fully executed by both the bidder and the awarding public agency.

B. Except as otherwise provided by law, within the period of time specified in subsection A of this section, the following shall be provided by the contractor to the awarding public agency for contracts exceeding Fifty Thousand Dollars (\$50,000.00):

1. A bond or irrevocable letter of credit complying with the provisions of Section 1 of this title;

2. A bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing terms prescribed by the Construction and Properties Division of the Department of Central Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to ensure the proper and prompt completion of the work in accordance with the provisions of the contract and bidding documents;

3. A bond in a sum equal to the contract price or an irrevocable letter of credit containing terms as prescribed by the Division issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to protect the awarding public agency against defective workmanship and materials for a period of one (1) year after acceptance of the project; and

4. Public liability and workers' compensation insurance during construction in reasonable amounts. A public agency may require the contractor to name the public agency and its architects or engineers, or both, as an additional assured under the public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.

C. A single irrevocable letter of credit may be used to satisfy paragraphs 1, 2 and 3 of subsection B of this section, provided such single irrevocable letter of credit meets all applicable requirements of subsection B of this section.

If the contractor needs additional time in which to obtain the bond required pursuant to subsection B of this section, the contractor may request and the awarding agency may allow the contractor an additional sixty (60) days in which to obtain the bond.

D. 1. After the award of a contract, but prior to its execution, an awarding public agency, upon discovery of an administrative error in the award process that would void an otherwise valid award, may suspend the time of execution of the contract. The agency may rescind the award and readvertise for bids, or may direct correction of the error and award the contract to the lowest responsible bidder, whichever shall be in the best interests of the state.

2. If the awarding public agency has a governing body, the agency shall, at the next regularly scheduled public business meeting of the governing body of the agency, upon the record, present to the governing body that an error has been made in the award process and shall state the nature of the error. The governing body, upon presentation of the facts of the error, may rescind the award and readvertise for bids, or may direct correction of the error and award the contract to the lowest responsible bidder, whichever shall be in the best interests of the state.

E. No public agency shall require for any public construction project, nor shall any general contractor submit a project bid based on acquiring or participating in, any wrap-up, wrap-around, or controlled insurance program. For the purposes of this subsection,

"wrap-up, wrap-around, or controlled insurance program" means any insurance program that has the effect of disabling or rendering inapplicable any workers' compensation, commercial general liability, builders' risk, completed operations, or excess liability insurance coverage carried by a subcontractor that is engaged or to be engaged on a public construction project unless this is a cost savings to the public or the need exists for a specialized or complex insurance program and shall not apply to contracts less than Seventy-five Million Dollars (\$75,000,000.00).

F. This act shall not apply to the public construction projects of constitutional agencies which had authorized a wrap-up, wrap-around, or controlled insurance program on or before April 11, 2000.

SECTION 3. AMENDATORY 61 O.S. 2001, Section 130, as last amended by Section 1, Chapter 265, O.S.L. 2007 (61 O.S. Supp. 2010, Section 130), is amended to read as follows:

Section 130. A. The provisions of the Public Competitive Bidding Act of 1974 with reference to notice and bids shall not apply to an emergency if:

1. The governing body of a public agency declares by a two-thirds (2/3) majority vote of all of the members of the governing body that an emergency exists;

2. The Transportation Commission and the Oklahoma Tourism and Recreation Commission, by majority vote of all the members of each Commission, declare that an emergency exists; or

3. The chief administrative officer of a public agency without a governing body declares that an emergency exists.

B. The governing body of a public agency may, upon approval of two-thirds (2/3) majority of all of the members of the governing body, delegate to the chief administrative officer of a public agency the authority to declare an emergency whereby the provisions of the Public Competitive Bidding Act of 1974 with reference to notice and bids shall not apply to contracts less than Thirty-five Thousand Dollars (\$35,000.00) in amount; provided, such authority of the Department of Transportation and the Oklahoma Turnpike Authority

shall not extend to any contract exceeding Five Hundred Thousand Dollars (\$500,000.00) in amount.

C. Upon approval of a two-thirds (2/3) majority vote, the Oklahoma Conservation Commission may delegate to the Executive Director the authority to declare an emergency and set a monetary limit for the declaration. The provisions of this subsection may only be used for the purpose of responding to an emergency involving the reclamation of abandoned coal mines or the repair of damaged upstream floodwater retarding structures.

D. An emergency declared by the Board of Corrections pursuant to subsection C of Section 65 of this title shall exempt the Department of Corrections from the limits which would otherwise be imposed pursuant to subsection B of this section for the contracting and construction of new or expanded correctional facilities.

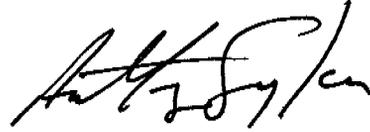
~~D.~~ E. The chief administrative officer of a public agency with a governing body shall notify the governing body within ten (10) days of the declaration of an emergency if the governing body did not approve the emergency. The notification shall contain a statement of the reasons for the action, and shall be recorded in the official minutes of the governing body.

~~E.~~ F. Emergency as used in this section shall be limited to conditions resulting from a sudden unexpected happening or unforeseen occurrence or condition whereby the public health or safety is endangered.

~~F.~~ G. The chief administrative officer of a public agency shall report an emergency within ten (10) days of the emergency declaration and include the official minutes of the governing body of the public agency, if applicable, to the State Construction Administrator of the Department of Central Services who shall compile an annual report detailing all emergencies declared pursuant to this section during the previous calendar year. The report shall be submitted to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

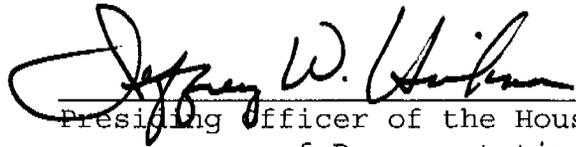
SECTION 4. This act shall become effective November 1, 2011.

Passed the Senate the 18th day of May, 2011.



Presiding Officer of the Senate

Passed the House of Representatives the 20th day of May, 2011.



Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 20th
day of May, 2011,
at 3:06 o'clock P.M.

By: Jessie R. Peyer

Approved by the Governor of the State of Oklahoma the 26th day of
May, 2011, at 3:26 o'clock P.M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this _____
26th day of May, 2011,
at 6:01 o'clock P.M.

By: Michelle R. Day