

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2566

By: Anthony

AS INTRODUCED

An Act relating to public buildings and public works; amending 61 O.S. 1991, Sections 1, as amended by Section 1, Chapter 239, O.S.L. 1992, 102, 107, as last amended by Section 1, Chapter 293, O.S.L. 1993, 113, as amended by Section 3, Chapter 239, O.S.L. 1992, and 131 (61 O.S. Supp. 1993, Sections 1, 107 and 113), which relate to the Public Competitive Bidding Act of 1974; raising dollar amount of contract to be considered a public construction contract; modifying provisions relating thereto; and providing an effective date.

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

SECTION 1. AMENDATORY 61 O.S. 1991, Section 1, as amended by Section 1, Chapter 239, O.S.L. 1992 (61 O.S. Supp. 1993, Section 1), is amended to read as follows:

Section 1. A. Prior to the award of any contract exceeding the amount of ~~Thirteen Thousand Five Hundred Dollars (\$13,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) for the purpose of making any public improvements or constructing or repairing any public building, the person to whom said contract is awarded shall:

1. Furnish a bond with good and sufficient sureties payable to the state in a sum not less than the total sum of the contract; or

2. Cause an irrevocable letter of credit containing such terms as may be prescribed by the Department of Central Services to be issued for the benefit of the state by a financial institution insured by the Federal Deposit Insurance Corporation in a sum not less than the total sum of the contract.

B. The bond or irrevocable letter of credit shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness incurred by said contractor, his subcontractors, and all materialmen for such labor, material, rental of machinery or equipment, and repair of and parts for equipment as are used or consumed in the performance of said contract. Provided, notice in writing by certified mail must be given to the general contractor where rental of equipment is to be furnished to his subcontractor. The notice shall include the beginning date, the location where the equipment is to be used, the description of the equipment and the terms of the rental and be mailed so as to be received by the general contractor within ten (10) days of the effective date of said rental.

C. For any contract not exceeding the amount of ~~Thirteen Thousand Five Hundred Dollars (\$13,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00), in lieu of a bond or irrevocable letter of credit, the contractor shall submit an affidavit of the payment of all indebtedness incurred by the contractor, subcontractors, and all materialmen for labor, material, rental of machinery or equipment, and repair of and parts for equipment as are used or consumed in the performance of the contract. The execution of the affidavit with knowledge that any of the contents of the affidavit are false, upon conviction, shall constitute perjury, punishable as provided for by law.

SECTION 2. AMENDATORY 61 O.S. 1991, Section 102, is amended to read as follows:

Section 102. When used in this act, unless the context clearly indicates otherwise, the following words and terms shall be construed as having the meanings ascribed to them in this section:

1. "Awarding public agency" means the public agency which solicits and receives sealed bids on a particular public construction contract;

2. "Bidding documents" means the bid notice, plans and specifications, bidding form, bidding instructions, special provisions and all other written instruments prepared by or on behalf of an awarding public agency for use by prospective bidders on a public construction contract;

3. "Public agency" means the State of Oklahoma, and any county, city, town, school district or other political subdivision of the state, any public trust, any public entity specifically created by the statutes of the State of Oklahoma or as a result of statutory authorization therefor, and any department, agency, board, bureau, commission, committee or authority of any of the foregoing public entities;

4. "Public construction contract" or "contract" means any contract, exceeding ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) in amount, awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs to the same except where the improvements, construction of any building or repairs to the same are improvements or buildings leased to a person or other legal entity for private and not for public use and no public tax revenues shall be expended on or for said public construction contract;

5. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any

real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, equipment or supplies by a public agency; and

6. "Retainage" means the difference between the amount earned by the contractor on a public construction contract, with the work being accepted by the public agency, and the amount paid on said contract by the public agency.

SECTION 3. AMENDATORY 61 O.S. 1991, Section 107, as last amended by Section 1, Chapter 293, O.S.L. 1993 (61 O.S. Supp. 1993, Section 107), is amended to read as follows:

Section 107. A. Each bidder on a public construction contract exceeding ~~Thirteen Thousand Five Hundred Dollars (\$13,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) shall accompany his bid with:

1. A certified check, cashier's check or bid bond equal to five percent (5%) of the bid, which shall be deposited with the awarding public agency as a guaranty; or

2. An irrevocable letter of credit containing such terms as may be prescribed by 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 an amount equal to five percent (5%) of the bid. The awarding public agency shall deposit such irrevocable letter of credit with the Department of Central Services.

B. The cost of republication of the notice to bidders, all actual expenses incurred by reason of the bidder's default and the difference between the low bid of the defaulting bidder and the amount of the bid of the bidder to whom the contract is subsequently awarded, but not to exceed the amount of the certified check, cashier's check, bid bond or irrevocable letter of credit may, at

the discretion of the awarding public agency, be forfeited to the awarding public agency in the event the apparently successful bidder fails to execute the contract or fails to provide the required bonds or irrevocable letters of credit and insurance to the awarding public agency.

C. Said certified or cashier's check, bid bond or irrevocable letter of credit shall be returned to the successful bidder on execution and delivery of the contract and required bonds or irrevocable letters of credit and insurance. Checks of unsuccessful bidders shall be returned to them in accordance with the terms of the proposal.

SECTION 4. AMENDATORY 61 O.S. 1991, Section 113, as amended by Section 3, Chapter 239, O.S.L. 1992 (61 O.S. Supp. 1993, Section 113), is amended to read as follows:

Section 113. A. Except as otherwise provided by law, within such period of time, not to exceed sixty (60) days, as shall be 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, Section 101 et seq. of this title, until the contract has been fully executed by both the bidder and the awarding public agency.

B. Except as otherwise provided by law, within said period of time, the following shall be provided by the contractor to the awarding public agency for contracts exceeding ~~Thirteen Thousand Five Hundred Dollars (\$13,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00):

1. A bond or irrevocable letter of credit complying with the provisions of Section 1 of Title 61 of the Oklahoma Statutes; and

2. A good and sufficient bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit

containing such terms as may be prescribed by 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; and

3. A good and sufficient bond in a sum equal to the contract price or an irrevocable letter of credit containing such terms as may be prescribed by 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 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 said public agency and its architects and/or engineers as an additional assured under said public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.

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

D. Subsequent to 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 until the next regularly scheduled public business meeting of the governing body of the agency. At the next public business

meeting, the agency, upon the record, shall present to the governing body that such an error had 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 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. An awarding public agency which has entered into a public construction contract prior to the effective date of this act shall be permitted to amend such contract by change order or other lawful means to conform with the requirements of paragraph 3 of subsection B of this section.

SECTION 5. AMENDATORY 61 O.S. 1991, Section 131, is amended to read as follows:

Section 131. No contract involving sums in excess of ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) shall be split into partial contracts involving sums of below ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) for the purpose of avoiding the requirements of this act. All such partial contracts involving less than ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) shall be void.

SECTION 6. This act shall become effective September 1, 1994.

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