

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1530

By: Morrissette

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8 COMMITTEE SUBSTITUTE

9 An Act relating to public buildings and public works;
10 amending 61 O.S. 2001, Sections 102, as last amended
11 by Section 2, Chapter 257, O.S.L. 2009 and 103, as
12 last amended by Section 2, Chapter 98, O.S.L. 2010
13 (61 O.S. Supp. 2010, Sections 102 and 103), which
14 relate to the Public Competitive Bidding Act of 1974;
15 defining term; modifying requirements for the
16 awarding of certain contracts; and providing an
17 effective date.

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

19 SECTION 1. AMENDATORY 61 O.S. 2001, Section 102, as last
20 amended by Section 2, Chapter 257, O.S.L. 2009 (61 O.S. Supp. 2010,
21 Section 102), is amended to read as follows:

22 Section 102. As used in the Public Competitive Bidding Act of
23 1974:

1 1. "Administrator" means the State Construction Administrator
2 of the Construction and Properties Division of the Department of
3 Central Services;

4 2. "Awarding public agency" means the public agency which
5 solicits and receives sealed bids on a particular public
6 construction contract;

7 3. "Best value" means an optimal competitive bidding system for
8 objective evaluation and ranking of competitive proposals submitted
9 by bidders, where such competitive proposals are used to identify
10 the lowest price bidder that can best complete the proposed contract
11 with a minimum of deviation from the owner's cost and schedule
12 requirements. Information requested by the awarding public agency
13 and provided by the bidder for evaluation and ranking purposes
14 includes:

15 a. a price proposal, which shall be the basis of a lump
16 sum contract,

17 b. past performance information, which shall be used to
18 determine that the bidder has successfully completed
19 similar work in the past,

20 c. proposed technical work approach, along with a
21 milestone schedule, which shall be used to establish
22 that the bidder has sufficient experience and can
23 identify a logical plan to complete the work,

- 1 d. risk assessment plan, which shall be used to establish
2 that the bidder can identify project risks and manage
3 those risks to minimize cost and schedule deviation,
4 e. additional attributes of the bidder that may be
5 unique, which shall be used to identify additional
6 project value that would be realized by the owner,
7 f. interview with key personnel, which shall be used to
8 establish that the bidder's personnel assigned to the
9 project possess the experience and expertise to plan
10 and manage the work,
11 g. after project award, but prior to contract execution,
12 ability to develop a plan for risk minimization and
13 performance measures to establish performance
14 outcomes, and provide for regular performance
15 reporting to the owner, and
16 h. when applicable, additional technical or operational
17 criteria unique to the project which would be used to
18 establish that the bidder's proposal has addressed
19 such special project requirements;

20 4. "Bidding documents" means the bid notice, instruction to
21 bidders, plans and specifications, bidding form, bidding
22 instructions, general conditions, special conditions and all other
23 written instruments prepared by or on behalf of an awarding public

1 agency for use by prospective bidders on a public construction
2 contract;

3 ~~4.~~ 5. "Chief administrative officer" means an individual
4 responsible for directing the administration of a public agency.
5 The term does not mean one or all of the individuals that make
6 policy for a public agency;

7 ~~5.~~ 6. "Public agency" means the State of Oklahoma, and any
8 county, city, town, school district or other political subdivision
9 of the state, any public trust, any public entity specifically
10 created by the statutes of the State of Oklahoma or as a result of
11 statutory authorization therefor, and any department, agency, board,
12 bureau, commission, committee or authority of any of the foregoing
13 public entities;

14 ~~6.~~ 7. "Public construction contract" or "contract" means any
15 contract, exceeding Fifty Thousand Dollars (\$50,000.00) in amount,
16 awarded by any public agency for the purpose of making any public
17 improvements or constructing any public building or making repairs
18 to or performing maintenance on the same except where the
19 improvements, construction of any building or repairs to the same
20 are improvements or buildings leased to a person or other legal
21 entity exclusively for private and not for public use and no public
22 tax revenues shall be expended on or for the contract unless the
23 public tax revenues used for the project are authorized by a

1 majority of the voters of the applicable public agency voting at an
2 election held for that purpose and the public tax revenues do not
3 exceed twenty-five percent (25%) of the total project cost. The
4 amount of public tax dollars committed to the project will not
5 exceed a fixed amount established by resolution of the governing
6 body prior to or concurrent with approval of the project;

7 ~~7.~~ 8. "Public improvement" means any beneficial or valuable
8 change or addition, betterment, enhancement or amelioration of or
9 upon any real property, or interest therein, belonging to a public
10 agency, intended to enhance its value, beauty or utility or to adapt
11 it to new or further purposes. The term does not include the direct
12 purchase of materials, equipment or supplies by a public agency, or
13 any personal property, including property as defined in paragraphs 1
14 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma
15 Statutes; and

16 ~~8.~~ 9. "Retainage" means the difference between the amount
17 earned by the contractor on a public construction contract, with the
18 work being accepted by the public agency, and the amount paid on
19 said contract by the public agency.

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

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 Section 103. A. Unless otherwise provided by law, all public
2 construction contracts exceeding Fifty Thousand Dollars (\$50,000.00)
3 shall be let and awarded to the lowest responsible or best value
4 bidder, by open competitive bidding after solicitation for sealed
5 bids, in accordance with the provisions of the Public Competitive
6 Bidding Act of 1974. No work shall be commenced until a written
7 contract is executed and all required bonds and insurance have been
8 provided by the contractor to the awarding public agency.

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

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

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

12 E. For award of any contract using a best value evaluation and
13 ranking system, the awarding public agency may, in advance of
14 issuing a bid solicitation, develop a written plan for criteria
15 evaluation and ranking. Ranking criteria and requirements for bid
16 submission information shall be stated in the bid documents. For
17 any contract award to other than the lowest price bidder, the
18 provisions of Section 117 of this title shall apply.

19 SECTION 3. This act shall become effective November 1, 2011.

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21 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 02-24-
22 2011 - DO PASS, As Amended.
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