

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 79

BY: LONG (Lewis) of the SENATE

and

STOTTLEMYRE of the HOUSE

COMMITTEE SUBSTITUTE AN ACT RELATING TO PUBLIC BUILDINGS AND PUBLIC WORKS; AMENDING 61 O.S. 1981, SECTION 113, AS LAST AMENDED BY SECTION 12, CHAPTER 191, O.S.L. 1987 (61 O.S. SUPP. 1990, SECTION 113), WHICH RELATES TO CONTRACTS FOR PUBLIC PROJECTS; MODIFYING AMOUNT OF AND TIME PERIOD TO OBTAIN CERTAIN SURETIES; PROHIBITING THE INTENTIONAL USE OF FAULTY OR DEFECTIVE METHODS, PARTS OR MATERIALS ON PUBLIC WORKS PROJECTS; PROVIDING PENALTIES; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 61 O.S. 1981, Section 113, as last amended by Section 12, Chapter 191, O.S.L. 1987 (61 O.S. Supp. 1990, 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

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:

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 Office of Public Affairs 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 Office of Public Affairs 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 completion and acceptance of the project and fifteen percent (15%) of that amount for two (2) additional years; 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 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 137 of Title 61, unless there is created a duplication in numbering, reads as follows:

Any person or company intentionally supplying or using faulty or defective methods, parts or materials in any public works project, upon conviction, shall be guilty of:

1. A misdemeanor, on a first offense when no grievous bodily injury or death has resulted from the use of the faulty or defective

methods, parts or materials, and shall be punished by the imposition of a fine not to exceed One Thousand Dollars (\$1,000.00); or

2. A felony, on a first offense when any grievous bodily injury or death has resulted from the use of the faulty or defective methods, parts or materials, and shall be punished by the imposition of a fine not to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment in the State Penitentiary not to exceed two (2) years, or by both such fine and imprisonment; or

3. A felony, on a second or subsequent offense, and shall be punished by the imposition of a fine not to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment in the State Penitentiary not to exceed two (2) years, or by both such fine and imprisonment.

Upon conviction of a felony offense pursuant to this section, the person or company shall be forever ineligible to bid on any public contract within the State of Oklahoma.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-6421

MCD