

ENROLLED SENATE
BILL NO. 689

BY: STIPE and MILES-LaGRANGE of the
SENATE

and

BENSON of the HOUSE

AN ACT RELATING TO PUBLIC BUILDINGS AND PUBLIC WORKS; AMENDING 61 O.S. 1991, SECTIONS 1, 107, 113, 116 AND 118, WHICH RELATE TO BOND REQUIREMENTS FOR PUBLIC WORKS CONTRACTS AND THE PUBLIC COMPETITIVE BIDDING ACT; INCREASING DOLLAR VALUE OF CONTRACTS TO WHICH BOND REQUIREMENTS APPLY; PROHIBITING THE RELEASE OF CERTAIN INFORMATION; REQUIRING CERTAIN FINANCIAL INFORMATION BE KEPT CONFIDENTIAL; PROVIDING PROCEDURES FOR THE TERMINATION OF CONTRACTS; DIRECTING STATE TREASURER TO HOLD CERTAIN FUNDS IN SEPARATE ACCOUNT FOR DESIGNATED PERIOD OF TIME; DELETING OBSOLETE LANGUAGE; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 61 O.S. 1991, Section 1, is amended to read as follows:

Section 1. A. Prior to the award of any contract exceeding the amount of ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Thirteen Thousand Five Hundred Dollars (\$13,500.00) 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~~ 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~~ Cause an irrevocable letter of credit containing such terms as may be prescribed by the ~~Office of Public Affairs~~ Department of Central Services to be issued for the benefit of the state by a financial institution insured by the Federal Deposit Insurance Corporation ~~or the Federal Savings and Loan 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 ~~said~~ the equipment, and

the terms of ~~said~~ 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.

~~B.~~ C. For any contract not exceeding the amount of ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Thirteen Thousand Five Hundred Dollars (\$13,500.00), in lieu of a bond or irrevocable letter of credit, the contractor shall submit an affidavit of the payment of all indebtedness incurred by ~~said~~ the 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~~ the contract. The execution of ~~said~~ 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 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) 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 ~~Office of Public Affairs~~ 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 ~~Office of Public Affairs~~ 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 shall 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 3. AMENDATORY 61 O.S. 1991, 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):

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~~ 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 ~~Office of Public Affairs~~ 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 4. AMENDATORY 61 O.S. 1991, Section 116, is amended to read as follows:

Section 116. Any disclosure by an employee of a public agency of the terms of a bid submitted in response to a bid notice issued by a public agency in advance of the time set for opening of all bids so submitted shall be unlawful. It shall also be unlawful for any person to solicit, possess or receive information which is to be contained in a bid notice of a public agency, for use in preparing a

bid, in advance of the date on which said bid notice is to be made equally and uniformly known to all prospective bidders and the public, and it shall further be unlawful for any employee of a public agency to withhold or impede the distribution of said information after notice of the bid has been given, unless the solicitation of bids has been withdrawn or the particular information in question has been deleted or replaced through alteration of the bid notice and said withdrawal or alteration has been made equally and uniformly known. The public agency's engineering estimate of the actual cost of the project shall remain confidential until the bids have been opened. Any violation of this section shall constitute a felony and shall render the proceedings void and require solicitation and award anew.

SECTION 5. AMENDATORY 61 O.S. 1991, Section 118, is amended to read as follows:

Section 118. In order to determine the responsibility of bidders, the awarding public agency may require prospective bidders to prequalify as responsible bidders prior to submitting bids on a public construction contract. Notice of any such prequalification requirement shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the same manner as proposals to award public construction contracts as set forth in Section ~~4 hereof~~ 104 of this title. Financial information including, but not limited to, audited financial statements required by the awarding public agency as part of prequalification shall remain confidential.

SECTION 6. 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 contract which has been bid under the provisions of the Public Competitive Bidding Act, Section 101 et seq. of Title 61 of the Oklahoma Statutes, and on which no work has been performed and no formal claim or litigation has been pending within the last twenty-four (24) months shall be terminated by the public agency which awarded the contract. After termination, the public agency shall determine the amount of any final payment due to the contractor and shall make such payment to the contractor at the contractor's last-known address, or if the public agency is unable to locate the contractor, the amount due shall be held in a separate account by the State Treasurer in the name of the contractor. Termination of the contract and payment to the contractor or deposit of the funds due to the contractor as determined by the public agency shall release the public agency from any further liability to the contractor or surety company. Any such funds held by the State Treasurer for the contractor which are not claimed by the contractor within thirty-six (36) months from the date of deposit with the State Treasurer shall be deposited in the General Revenue Fund and the state shall have no further liability on the project to the contractor or surety company.

SECTION 7. 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.

Passed the Senate the 5th day of May, 1992.

President of the Senate

Passed the House of Representatives the 13th day of May, 1992.

Speaker of the House of
Representatives