

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 535

BY: LONG (Lewis), EASLEY,
HENDRICK, STIPE, LEFTWICH,
GUSTAFSON, HOOPER,
WILLIAMS (Don), TAYLOR,
FORD, HERBERT, SHURDEN,
SNYDER, CHANDLER,
FRANKLIN, TALIAFERRO,
DICKERSON, LAWLER, WEEDN,
MICKLE, HOBSON, HARRISON,
ROBERTS, CAIN, CAPPS,
GILES, MUEGGE, COLE,
FISHER and BROWN of the
SENATE

and

HUDSON, HAMILTON (Jeff),
ROBERTS (Walt), BASTIN,
RICE, MADDOX (Jim),
COZART, ADAIR,
LITTLEFIELD, STEIDLEY,
YORK, CULVER, BATES, KEY,
GRIESER, COTNER, FALLIN,
TYLER, HOLT, COMBS,
VAUGHN, McCORKELL,
THOMPSON, ROACH, CAMPBELL,
SETTLE, MAXEY, BENSON,
MONKS, STOTTLEMYRE, GLOVER
and HEFNER of the HOUSE

AS INTRODUCED

AN ACT RELATING TO PUBLIC BUILDINGS AND PUBLIC WORKS;

AMENDING 61 O.S. 1981, SECTION 102, AS AMENDED BY
SECTION 1, CHAPTER 158, O.S.L. 1990 (61 O.S. SUPP.
1990, SECTION 102), WHICH RELATES TO THE PUBLIC
COMPETITIVE BIDDING ACT OF 1974; DEFINING TERMS;
REQUIRING PUBLIC AGENCIES TO AWARD CONTRACTS FOR
PUBLIC WORKS TO RESIDENT CONTRACTOR, DEFINING
TERMS; PROVIDING EXCEPTIONS; STATING REQUIREMENTS
FOR RESIDENT CONTRACTORS; PROVIDING BIDDING
PROCEDURES FOR CERTAIN CONTRACTORS; REQUIRING

RESIDENT CONTRACTORS TO QUALIFY WITH THE OFFICE OF PUBLIC AFFAIRS; REQUIRING OFFICE OF PUBLIC AFFAIRS TO PROVIDE APPLICATION FOR CERTIFICATION; REQUIRING RESIDENT CONTRACTOR TO SUBMIT CERTAIN FORM PRIOR TO SUBMISSION OF CERTAIN BIDS; REQUIRING OFFICE OF PUBLIC AFFAIRS TO EXAMINE APPLICATION BEFORE ISSUING CERTIFICATION OF RESIDENT CONTRACTOR; STATING SUCH CERTIFICATION SHALL BE VALID UNTIL REVOKED; AUTHORIZING OFFICE OF PUBLIC AFFAIRS TO REVOKE CERTIFICATION UPON CERTAIN DETERMINATIONS; STATING PROHIBITIONS FOR SUCCESSFUL BIDDERS; STATING EXCEPTION; STATING SUCCESSFUL BIDDERS SHALL GIVE PREFERENCE TO CERTAIN PURCHASES OF SUPPLIES, MATERIALS AND SERVICES MANUFACTURED OR PROVIDED IN THE STATE OF OKLAHOMA NOT TO EXCEED FIVE PERCENT OF COST; STATING APPLICABILITY; PROVIDING PENALTY FOR PROVIDING FALSE INFORMATION; VOIDING CONTRACTS EXECUTED IN VIOLATION OF THIS ACT; 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 102, as amended by Section 1, Chapter 158, O.S.L. 1990 (61 O.S. Supp. 1990, Section 102), is amended to read as follows:

Section 102. ~~When~~ As 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~~ Section 101 et seq. of this title:

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

2. "Beneficially owned" or "beneficial interest" means exercising actual management and control of all operations including but not limited to financial decisions, financial liability, labor relations, supervision of field operations, purchase of goods, supplies and services, marketing and sales;

~~2.~~ 3. "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;

4. "Lowest responsible bid" means the lowest bid which conforms to the specifications and requests for bids;

~~3.~~ 5. "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.~~ 6. "Public construction contract" or "contract" means any contract, exceeding Seven Thousand Five Hundred Dollars (\$7,500.00) 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.~~ 7. "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;

~~6.~~ 8. "Resident business" means any business authorized to do business under the laws of the State of Oklahoma and which maintains its principal place of business in this state or which offers materials grown, produced, processed or manufactured substantially in this state;

9. "Resident contractor" means any person, firm, corporation or other legal entity, certified by the Office of Public Affairs pursuant to the provisions of this act; and

10. "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 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103.1A of Title 61, unless there is created a duplication in numbering, reads as follows:

A. Except as provided by this section each public agency of the State of Oklahoma shall award contracts for public improvements to the lowest responsible bidder.

B. If bids are received from nonresident contractors and resident contractors and the lowest responsible bid is from a nonresident contractor, the contract shall be awarded to the resident contractor whose bid is nearest to the otherwise low bid of the nonresident contractor if the bid price of the resident contractor is made lower than the bid price of the nonresident contractor when multiplied by a factor of .95.

C. The bid submitted by a nonresident contractor, who resides in a state which has a reciprocal agreement with the State of Oklahoma regarding nonresident bidding requirements, is less than the bid submitted by any resident contractor by that percentage which is at least equal to that required by the reciprocal state of a bidder from this state. Bidders residing in states not having such reciprocal agreements shall comply with the provisions of subsection B of this section.

D. All contracts executed in violation of this section shall be void and of no effect.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103.1B of Title 61, unless there is created a duplication in numbering, reads as follows:

A. No contractor shall be treated as a resident contractor in the awarding of public construction contracts by a public agency unless the contractor maintains its principal office and place of business in the State of Oklahoma, possesses all required licenses, has been certified with the Office of Public Affairs as a resident contractor at the time the bids are submitted and meets the following requirements:

1. If the bidder is a corporation, then it must:
 - a. be domesticated or incorporated in the State of Oklahoma and a majority of its outstanding shares must be beneficially owned by one or more individual citizens and residents of this state who pay income, real property or personal property taxes in this state, or
 - b. generate more than fifty percent (50%) of its total annual sales from transactions within the State of Oklahoma, or pay more than fifty percent (50%) of its total annual payroll to employees located in this state, or more than fifty percent (50%) of the total

real or personal property owned by such corporation must be located within this state;

2. If the bidder is a partnership, general or limited or other legal entity the partners or associates owning a majority beneficial interest therein must:

- a. be citizens and residents of the State of Oklahoma who pay income, real property or personal property taxes in this state, or
- b. if one or more partners or associates are corporations, then a majority of the outstanding shares of each corporation must be owned by individual citizens and residents of the State of Oklahoma who pay income, real property or personal property taxes in this state, or
- c. if the entity is a trust, then a majority of the beneficial interest thereof must be owned by individual citizens who are residents of the State of Oklahoma;

3. If the bidder is an individual, then he or she must be a citizen and resident of the State of Oklahoma who pays income, real property or personal property taxes in this state.

B. Contractors may make application to the Office of Public Affairs for a certification number as a resident contractor. Contractors who desire to be certified as a resident contractor shall make such application with the Office of Public Affairs annually. The procedure for such application and certification shall be as follows:

1. The Office of Public Affairs shall prepare an application form for certification as a resident contractor, requiring a copy of the most recently filed Oklahoma Income Tax Return showing the percentage of sales made, payroll paid and property owned within the

State of Oklahoma and any other such information and proof it deems necessary to qualify the applicant under the terms of this section;

2. The contractor seeking to qualify as a resident contractor shall complete the application form and submit it to the Office of Public Affairs prior to the submission of a bid on which the contractor desires to be given a preference;

3. The Office of Public Affairs shall examine the application and all required information, and if such application is found to be in proper form, said office shall issue the contractor a distinctive certification number which shall be valid until revoked or nonrenewed by said office, and when used on bids and other purchasing documents for public agencies shall entitle the contractor to treatment as a resident contractor under this act; and

4. The certification number issued pursuant to paragraph 3 of this subsection shall be revoked by the Office of Public Affairs upon making a determination that the contractor no longer meets the requirements of a resident contractor as defined by this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103.1C of Title 61, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this section, a successful bidder shall not:

1. Subcontract more than twenty percent (20%) of the work covered by the contract to nonresident contractors, including a nonresident parent corporation, a nonresident subsidiary of such corporation or a nonresident partnership; or

2. Use equipment, supplies or materials from any entity other than a resident business unless the equipment, supplies or materials are not economically available from resident businesses.

B. A successful bidder may subcontract more than twenty percent (20%) of the work covered by the contract if the bidder is unable to

complete the contract or some portion thereof because no qualified resident contractor is available.

C. A successful bidder shall give preference in all purchases made pursuant to the contract with the public agency to supplies, materials and services produced, manufactured or provided within the State of Oklahoma. Such preference shall not be for supplies, materials or services of inferior quality to those produced, manufactured or provided in another state, but a differential of not to exceed five percent (5%) may be allowed in the cost of Oklahoma materials, supplies and provisions of equal quality.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 103.1D of Title 61, unless there is created a duplication in numbering, reads as follows:

Any person who knowingly provides false information to the Office of Public Affairs or to any other public agency in connection with submitting a bid for the award of a public contract as provided in this act shall, upon conviction, be deemed guilty of a felony and may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00), by imprisonment not to exceed three (3) years, or by both such fine and imprisonment.

SECTION 6. 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.

43-1-418

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