

ENROLLED SENATE
BILL NO. 414

By: Hendrick of the Senate

and

Bryant (John), Caldwell,
Phillips and Campbell of
the House

An Act relating to public buildings and public works; amending 61 O.S. 1991, Sections 107, as amended by Section 2, Chapter 239, O.S.L. 1992 and 121 (61 O.S. Supp. 1992, Section 107), which relate to the Public Competitive Bidding Act of 1974; allowing cost of republication of certain notice to be forfeited to awarding public agency under certain conditions; modifying limit of certain change orders or addendums; and declaring an emergency.

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

SECTION 1. AMENDATORY 61 O.S. 1991, Section 107, as amended by Section 2, Chapter 239, O.S.L. 1992 (61 O.S. Supp. 1992, 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 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 ~~shall~~ 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 2. AMENDATORY 61 O.S. 1991, Section 121, is amended to read as follows:

Section 121. Change orders or addendums to public construction contracts of One Million Dollars (\$1,000,000.00) or less shall not exceed a fifteen percent (15%) cumulative increase in the original contract amount. Change orders or addendums to public construction contracts of over One Million Dollars (\$1,000,000.00) shall not exceed the greater of One Hundred Fifty Thousand Dollars (\$150,000.00) or a ten percent (10%) cumulative increase in the original contract amount. Any change orders or cumulative change orders which exceed these limits shall require a readvertising for bids on that part of the contract. Change orders in any amount shall be formally approved by the governing body of the public agency involved and the reasons therefor recorded in the permanent records. All change orders shall contain a unit price and total for each of the following items:

1. All materials with cost per item; and
2. Itemization of all labor with number of hours per operation and cost per hour; and
3. Itemization of all equipment with the type of equipment, number of each type, cost per hour for each type, and number of hours of actual operation for each type; and
4. Itemization of insurance cost, bond cost, social security, taxes, workers' compensation, employee fringe benefits and overhead cost; and
5. Profit for the contractor.

If the construction contract was bid on a unit basis, and the change order is based exactly on the unit price or basis, such a change order will not be subject to this section. When the individual change orders are less than Ten Thousand Dollars (\$10,000.00), the change order may be based on an acceptable unit price(s) basis in lieu of cost itemization as required in ~~the above items~~ paragraphs 1, 2, 3, 4 and 5 of this section. Alternates or add items bid with the original bid and contained in the awarded contract as options of the awarding public agency shall not be construed as change orders under the provisions of this act, Section 101 et seq. of this title.

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.

Passed the Senate the 18th day of May, 1993.

President of the Senate

Passed the House of Representatives the 24th day of May, 1993.

Speaker of the House of Representatives

