ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 242 By: Stipe of the Senate

and

Glover of the House

An Act relating to public buildings and works; amending 61 O.S. 1991, Section 107, as last amended by Section 1, Chapter 293, O.S.L. 1993 (61 O.S. Supp. 1994, Section 107), which relates to the Public Competitive Bidding Act of 1974; * * * providing an effective date; and declaring an emergency.

AUTHOR: Add the following House Coauthor: Perry

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"An Act relating to public buildings and works; amending 61 O.S. 1991, Section 107, as last amended by Section 1, Chapter 293, O.S.L. 1993 (61 O.S. Supp. 1994, Section 107), which relates to the Public Competitive Bidding Act of 1974; providing for exoneration from liability; providing an effective date; 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 last amended by Section 1, Chapter 293, O.S.L. 1993 (61 O.S. Supp. 1994, 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 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.

D. Nothing contained herein shall be construed so as to prevent the awarding public agency or the courts from exonerating the bidder and other parties to the bid security document from liability upon a timely showing that the bidder committed what the courts have determined under the common law to be an excusable bidding error and for that reason it would not be equitable to enforce the bid security.

SECTION 2. This act shall become effective July 1, 1995.

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 House of Representatives the 12th day of April, 1995.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate