ENGROSSED HOUSE
BILL NO. 1991

By: Hamilton of the House

and

Rozell of the Senate

An Act relating to public property administration; amending 61 O.S. 1991, Sections 102, as amended by Section 5, Chapter 7, O.S.L. 1994, 107, as last amended by Section 1, Chapter 156, O.S.L. 1995, 113, as amended by Section 3, Chapter 239, O.S.L. 1992 and 131 (61 O.S. Supp. 1996, Sections 102, 107 and 113), which relate to public competitive bidding; modifying definitions; modifying dollar amount of contract for certain purposes; amending 62 O.S. 1991, Section 310.9, as last amended by Section 1, Chapter 205, O.S.L. 1995 (62 O.S. Supp. 1996, Section 310.9), which relates to sworn statements for certain invoices; deleting reference to school districts; deleting certain requirement for school districts; limiting application of section; amending 70 O.S. 1991, Section 5-117, as last amended by Section 1, Chapter 121, O.S.L. 1996 (70 O.S. Supp. 1996, Section 5-117), which relates to powers and duties of boards of education; deleting requirement that certain expenses be itemized; modifying powers to allow adoption of certain food allowance policy; requiring certain invoices to have a signed and notarized statement attached; providing form and content of statement;

amending 74 O.S. 1991, Sections 110.1, as last amended by Section 7, Chapter 283, O.S.L. 1994 and 3109, as amended by Section 3, Chapter 205, O.S.L. 1995 (74 O.S. Supp. 1996, Sections 110.1 and 3109), which relate to inventory by the Department of Central Services and requirement for certain affidavits; modifying references; increasing monetary limit for maintaining certain inventory; providing exception to certain affidavit requirement; providing for codification; 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 102, as amended by Section 5, Chapter 7, O.S.L. 1994 (61 O.S. Supp. 1996, Section 102), is amended to read as follows:

Section 102. When 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:

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

2. "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;

3. "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. "Public construction contract" or "contract" means any contract, exceeding ~~Seven Thousand Five Hundred Dollars ($7,500.00)~~ Twelve Thousand Five Hundred Dollars ($12,500.00) 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 exclusively for private and not for public use and no public tax revenues shall be expended on or for said contract unless the public tax revenues used for the project are authorized by a majority of the voters of the applicable public agency voting at an election held for that purpose and the public tax revenues do not exceed twenty-five percent (25%) of the total project cost. The amount of public tax dollars committed to the project will not exceed a fixed amount established by resolution of the governing body prior to or concurrent with approval of the project;

5. "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; and

6. "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. AMENDATORY 61 O.S. 1991, Section 107, as last amended by Section 1, Chapter 156, O.S.L. 1995 (61 O.S. Supp. 1996, 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)~~ Fifteen Thousand Dollars ($15,000.00) 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 3. AMENDATORY 61 O.S. 1991, Section 113, as amended by Section 3, Chapter 239, O.S.L. 1992 (61 O.S. Supp. 1996, 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)~~ Fifteen Thousand Dollars ($15,000.00):

1. A bond or irrevocable letter of credit complying with the provisions of Section 1 of ~~Title 61 of the Oklahoma Statutes~~ this title; 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 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 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 131, is amended to read as follows:

Section 131. No contract involving sums in excess of ~~Seven Thousand Five Hundred Dollars ($7,500.00)~~ Twelve Thousand Five Hundred Dollars ($12,500.00) shall be split into partial contracts involving sums of below ~~Seven Thousand Five Hundred Dollars ($7,500.00)~~ Twelve Thousand Five Hundred Dollars ($12,500.00) for the purpose of avoiding the requirements of this act. All such partial contracts involving less than ~~Seven Thousand Five Hundred Dollars ($7,500.00)~~ Twelve Thousand Five Hundred Dollars ($12,500.00) shall be void.

SECTION 5. AMENDATORY 62 O.S. 1991, Section 310.9, as last amended by Section 1, Chapter 205, O.S.L. 1995 (62 O.S. Supp. 1996, Section 310.9), is amended to read as follows:

Section 310.9 A. Except as provided in ~~subsections~~ subsection B ~~and C~~ of this section, on every invoice submitted to any county or political subdivision of the state, for payment of an architect, contractor, engineer or supplier of materials of One Thousand Dollars ($1,000.00) or more, the sworn statement required by Section 3109 of Title 74 of the Oklahoma Statutes shall be required.

B. Any county~~,~~ or municipality ~~or school district~~ executing a contract with any architect, contractor, supplier or engineer for work, services or materials which are needed on a continual basis from such architect, contractor, supplier or engineer under the terms of such contract, or executing more than one contract during the fiscal year with such architect, contractor, supplier or engineer may require that the architect, contractor, supplier or engineer complete a signed and notarized affidavit in substantial form as provided by subsection A of this section which shall apply to all work, services or materials completed or supplied under the terms of the contract or contracts and shall be in lieu of all individual affidavits for each invoice submitted in relation to such contract or contracts as required in subsection A of this section.

C. The ~~sworn statement required by Section 3109 of Title 74 of the Oklahoma Statutes~~ provisions of this section shall ~~be required on every invoice submitted~~ not apply to ~~a~~ any school district in the state~~, for payment of an architect, contractor, engineer or supplier of materials of Two Thousand Dollars ($2,000.00) or more~~.

SECTION 6. AMENDATORY 70 O.S. 1991, Section 5-117, as last amended by Section 1, Chapter 121, O.S.L. 1996 (70 O.S. Supp. 1996, Section 5-117), is amended to read as follows:

Section 5-117. A. The board of education of each school district shall have power to:

1. Elect its own officers;

2. Make rules, not inconsistent with the law or rules of the State Board of Education, governing the board and the school system of the district;

3. Maintain and operate a complete public school system of such character as the board of education shall deem best suited to the needs of the school district;

4. Designate the schools to be attended by the children of the district;

5. Provide and operate, when deemed advisable, cafeterias or other eating accommodations, thrift banks or other facilities for the teaching and practice of thrift and economy, bookstores, print shops, and vocational and other shops;

6. Provide informational material concerning school bond elections and millage elections, including but not limited to all pertinent financial information relative to the bond issue, a statement of revenue sources necessary to retire proposed bonds, a statement of current bonded indebtedness of the school district, and a statement of proposed use of funds to be generated by the proposed bond issue. The informational material shall not contain the words "vote yes" or "vote no" or any similar words or statement any place on such informational material;

7. Purchase, construct or rent, and operate and maintain, classrooms, libraries, auditoriums, gymnasiums, stadiums, recreation places and playgrounds, teacherages, school bus garages, laboratories, administration buildings, and other schoolhouses and school buildings, and acquire sites and equipment therefor;

8. Have school district property insured;

9. Acquire property by condemnation proceedings in the same manner as land is condemned for railroad purposes. School district funds may be used to erect buildings on leased land on which other buildings have been erected prior to April 3, 1969, or on land which is leased from a governmental entity;

10. Lease real or personal property to the state or any political subdivision thereof for nominal cash consideration for so long as the use of the property by the lessee substantially benefits, in whole or in part, the same public served by the school district;

11. Dispose of personal or real property no longer needed by the district by sale, exchange, lease, lease-purchase, sale and partial lease back, or otherwise. Real property shall be conveyed

pursuant to a public sale, public bid, or private sale, provided however, unless otherwise prohibited by law, the board of education of a consolidated or annexed school district may convey real property to a local political subdivision without consideration. Prior to the sale of any real property, the board of education shall have the real property appraised. The appraisal shall be confidential until the real property is sold. When the real property is sold the board of education shall make the appraisal available for public inspection. Prior to the conveyance of any real property by private sale, the board of education shall have offered the real property for sale by public sale or public bid. Any conveyance of real property by private sale to a nonprofit organization, association, or corporation to be used for public purposes, unless for exchange, shall contain a reversionary clause which returns the real property to the board of education upon the cessation of the use without profit or for public purposes by the purchaser or the assigns of the purchaser;

12. Purchase necessary property, equipment, furniture, and supplies necessary to maintain and operate an adequate school system;

13. Incur all expenses, within the limitations provided for by law, necessary to perform all powers granted by the provisions of this section;

14. Contract with and fix the duties and compensation of physicians, dentists, optometrists, nurses, attorneys, superintendents, principals, teachers, bus drivers, janitors, and other necessary employees of the district and pay their necessary ~~itemized and~~ documented travel expenses, and pay necessary ~~itemized and~~ documented travel expenses of members of the board of education. The board of education of a school district may develop a policy allowing for payment of meal expenses incurred by employees of the district or members of the board during authorized travel on a per

diem allowance basis, supported by proper documentation as prescribed by such policy, rather than requiring meal expenses to be ~~itemized and~~ documented provided, however, no board of education of any school district may establish any per diem greater than the per diem allowance authorized by law for state employees in Section 500.8 of Title 74 of the Oklahoma Statutes;

15. Pay necessary ~~itemized and~~ documented travel expenses and other related expenses of prospective employees for sponsored visits to the school district;

16. Provide for employees' leaves of absence without pay;

17. Exercise sole control over all the schools and property of the district, subject to other provisions of the Oklahoma School Code;

18. Allow district-owned school buses to be used for transportation of students from other districts or educational institutions while within the district on educational tours. This shall not restrict the authority of the board to authorize any other use of such buses which may now be permitted by law or rule of the State Board of Education; and

19. Enter into contractual agreements with the board of trustees of a multicounty library system, as defined in Section 4-103 of Title 65 of the Oklahoma Statutes, a city-county library commission, as defined in Section 152 of Title 65 of the Oklahoma Statutes, or a rural single county library system, as defined in Section ~~1~~ 1-104 of ~~this act~~ Title 65 of the Oklahoma Statutes, on such terms as may be mutually agreed, except no district board of education may enter into any agreement under which the library services for the school would be provided at any site other than the school site or which would result in library services that do not meet accreditation standards as required by law or rule.

B. The board of education of any school district may rent, on a monthly basis, equipment and furniture, if such items are necessary

for the operation of the school, and pay the rental charges for said usage during any fiscal year, or portion thereof, out of appropriations made and approved for current expense purposes during said fiscal year. Any such rental contract extending beyond June 30 of such fiscal year shall be void unless it contains provisions for mutual ratification of renewal pursuant to the conditions provided for in this subsection. It is the intent of this subsection to authorize boards of education to enter into lease contracts but not to incur any obligation against the school district in excess of the income and revenue provided for such purposes for the fiscal year in which such lease contract is operative. Any lease agreement entered into by any board of education shall state the purchase price of equipment or furniture so leased. The lease shall not be extended so as to cause payment of more than the original purchase price of said equipment or furniture, plus interest not to exceed the legal rate. When said purchase price plus interest has been paid, the property shall belong to the lessee and the lessor shall deliver a deed or bill of sale to said property to the lessee. When any equipment or furniture has been leased or rented during any fiscal year pursuant to the provisions of any contract which permits continuance of such rental for the remainder of such fiscal year, the renting or leasing thereof must be continued for the remainder of said fiscal year unless the board of education renting or leasing the same certifies by proper resolution entered in the minutes of said board of education that the continuance of such rental is unnecessary and contrary to the public interest.

C. The boards of education of two or more school districts may enter into cooperative agreements and maintain joint programs including but not limited to, courses of instruction for handicapped children, courses of instruction in music and other subjects, practical instruction for trades and vocations, practical instruction in driver training courses, and health programs

including visual care by persons legally licensed for such purpose, without favoritism as to either profession. The revenues necessary to operate a joint program approved in cooperative agreements, whether from federal, state or local sources, including the individual contributions of participating school districts, shall be deposited into a fund separate from all other appropriated funds. The beginning fund balance each year, combined with all actual revenues, including collected and estimated revenues, must be appropriated before being expended. Purchase orders shall be issued against available appropriations and, once goods or services have been received, either payable or nonpayable warrants shall be issued in payment of all purchase orders. The fund shall be reported as a separate appropriated fund in all the financial reports of the school district which is chosen by the other school districts to keep the accounting records of the joint program.

D. Any school district may operate or maintain a school or schools on any military reservation which is within the boundaries of the school district or which is adjacent to the school district, and provide the instruction in the school or schools to children of personnel on the military reservation and, in doing so, shall conform to all federal laws and requirements.

E. The board of education of each school district shall adopt and maintain on file in the office of the superintendent of schools appropriate personnel policy and sick leave guide. The guide shall be made available to the public.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-135.3 of Title 70, unless there is created a duplication in numbering, reads as follows:

The following signed and notarized statement shall be required on an invoice submitted to any school district or area vocational-technical school district in the state, for payment to an architect,

contractor, engineer or supplier of material of Two Thousand Dollars ($2,000.00) or more:

STATE OF OKLAHOMA)

) ss

COUNTY OF_____)

The undersigned (architect, contractor, supplier or engineer), of lawful age, being first duly sworn, on oath says that this invoice or claim is true and correct. Affiant further states that the (work, services or materials) as shown by this invoice or claim have been (completed or supplied) in accordance with the plan, specifications, orders or requests furnished the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the school district or area vocational-technical school district, of money or any other thing of value to obtain payment of the invoice or procure the contract or purchase order pursuant to which an invoice is submitted.

_____

(Contractor, supplier, engineer or architect)

Subscribed and sworn to before me this __ day of ____, 19__.

_____

Notary Public (or Officer having Power to Administer Oaths)

SECTION 8. AMENDATORY 74 O.S. 1991, Section 110.1, as last amended by Section 7, Chapter 283, O.S.L. 1994 (74 O.S. Supp. 1996, Section 110.1), is amended to read as follows:

Section 110.1 A. The ~~Office of Public Affairs~~ Department of Central Services shall maintain a current inventory of all equipment owned by state departments, boards, commissions, institutions, or agencies of the state except equipment used in medical education and

research costing less than ~~One Hundred Dollars ($100.00)~~ Five Hundred Dollars ($500.00).

B. Except for the institutions comprising The Oklahoma State System of Higher Education, and the University Hospitals, the ~~Office of Public Affairs~~ Department of Central Services inventory shall consist of machinery, implements, tools, furniture, livestock, vehicles, and other apparatus that may be used repeatedly without material impairment of its physical condition and which has a calculable period of service and a value of over ~~One Hundred Dollars ($100.00)~~ Five Hundred Dollars ($500.00).

C. For the institutions comprising The Oklahoma State System of Higher Education and the University Hospitals, the ~~Office of Public Affairs~~ Department of Central Services inventory shall consist of machinery, implements, tools, furniture, livestock, vehicles and other apparatus that may be used repeatedly without material impairment of its physical condition and has a calculable period of service and a value of over Five Hundred Dollars ($500.00).

D. The ~~Office of Public Affairs~~ Department of Central Services shall cause all such articles to be properly coded, tagged, or marked in such a manner that they may be readily identified as property of the State of Oklahoma and that statistical records may be maintained thereof. All state departments, boards, commissions, institutions, or agencies of the State of Oklahoma will make available to the ~~Office of Public Affairs~~ Department of Central Services, support personnel to check inventories.

SECTION 9. AMENDATORY 74 O.S. 1991, Section 3109, as amended by Section 3, Chapter 205, O.S.L. 1995 (74 O.S. Supp. 1996, Section 3109), is amended to read as follows:

Section 3109. A. Except as provided in ~~subsections~~ subsection B ~~and C~~ of this section, on every invoice submitted to any county or local subdivision of the state, for payment to an architect, contractor, engineer or supplier of material of One Thousand Dollars

($1,000.00) or more shall be the following signed and notarized statement:

STATE OF OKLAHOMA)

) ss

COUNTY OF_____)

The undersigned (architect, contractor, supplier or engineer), of lawful age, being first duly sworn, on oath says that this invoice or claim is true and correct. Affiant further states that the (work, services or materials) as shown by this invoice or claim have been (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the State of Oklahoma, any county or local subdivision of the state, of money or any other thing of value to obtain payment of the invoice or procure the contract or purchase order pursuant to which an invoice is required.

_____

(Contractor, supplier or engineer)

Subscribed and sworn to before me this ____ day of _____, 19__.

_____

Notary Public (or Clerk or Judge)

_____

Architect

Subscribed and sworn to before me this ____ day of _____, 19__.

_____

Notary Public (or Clerk or Judge)

A notarized statement of noncollusion shall not be required on purchase orders to procure materials and equipment, provided this provision shall not exempt the requirement for a notarized statement of noncollusion on invoices for services or materials and equipment.

B. Any municipality ~~or school district~~ executing a contract with any architect, contractor, supplier or engineer for work, services or materials which are needed on a continual basis from such architect, contractor, supplier or engineer under the terms of such contract, may require that the architect, contractor, supplier or engineer complete a signed and notarized affidavit in substantial form as provided by subsection A of this section which shall apply to all work, services or materials completed or supplied under the terms of the contract and shall be in lieu of all individual affidavits for each invoice submitted in relation to such contract as required in subsection A of this section.

C. The ~~sworn statement required in subsection A~~ provisions of this section shall ~~be on every invoice submitted~~ not apply to ~~a~~ any school district in ~~the~~ this state~~, for payment to an architect, contractor, engineer or supplier of material of Two Thousand Dollars ($2,000.00) or more~~.

SECTION 10. This act shall become effective July 1, 1997.

SECTION 11. 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 11th day of March, 1997.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate