

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1172

By: Robinson of the Senate

and

Paulk of the House

AS INTRODUCED

An Act relating to public buildings and public works; amending 61 O.S. 1991, Sections 1, as amended by Section 1, Chapter 239, O.S.L. 1992, and 107, as last amended by Section 3, Chapter 365, O.S.L. 1998 (61 O.S. Supp. 1999, Sections 1 and 107), which relate to public works bid and contract sureties; changing and standardizing value of contract at which different sureties are required; deleting notice requirement relating to rental equipment; deleting statement construing provisions of statutory section; providing for appeal of default decisions; and declaring an emergency.

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

SECTION 1. AMENDATORY 61 O.S. 1991, Section 1, as amended by Section 1, Chapter 239, O.S.L. 1992 (61 O.S. Supp. 1999, Section 1), is amended to read as follows:

Section 1. A. Prior to ~~the~~ an award of ~~any a~~ a contract exceeding ~~the amount of Thirteen Thousand Five Hundred Dollars (\$13,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) for ~~the purpose of making any public improvements or constructing construction or repairing any repair of a public building or structure, or improvement to real property,~~ the person to whom said contract is awarded that receives the award shall:

1. 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 an irrevocable letter of credit, containing ~~such~~ terms ~~as may be prescribed by~~ the Department of Central Services prescribes, to be issued for the benefit of the state by a financial

institution insured by the Federal Deposit 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~~ the contractor, ~~his~~ incurs for the contractor's subcontractors, ~~and all materialmen for such~~ suppliers of 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~~ requires the contractor to furnish. ~~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 the equipment and the terms of 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.~~

C. For ~~any a~~ a contract not exceeding ~~the amount of Thirteen Thousand Five Hundred Dollars (\$13,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00), in lieu of a bond or irrevocable letter of credit, the contractor shall submit an affidavit of the payment of all indebtedness incurred by the contractor, the contractor's subcontractors, and all ~~materialmen for~~ suppliers of labor, material, ~~rental of~~ rented machinery or equipment, and repair of and parts for equipment ~~as are~~ used or consumed in the performance of the contract. The execution of 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, as last amended by Section 3, Chapter 365, O.S.L. 1998 (61 O.S. Supp. 1999, Section 107), is amended to read as follows:

Section 107. A. ~~Each~~ A bidder on a public construction contract exceeding ~~Fifteen Thousand Dollars (\$15,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) shall accompany ~~his~~ the 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 prescribes, 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~~ the 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~~ The Department of Central Services shall, upon receipt of notice from the awarding public agency, return a 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~~ bid solicitation.

~~D. Nothing contained herein shall be construed so as to prevent the awarding public agency or the courts from exonerating the A defaulting 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 may, pursuant to provisions of the Administrative Procedures Act, appeal any decision of the awarding public agency related to the default.~~

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.

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