

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2889

By: Ferguson of the House

and

Dickerson and Wilkerson of
the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to governmental operations; authorizing a school district to use construction management for certain projects; providing definition for construction management; providing criteria for selection of a construction manager; making construction management contracts exempt from certain requirements; requiring certain contracts or subcontracts to be awarded in accordance with certain requirements; requiring competitive bidding for self-performing work; requiring proof of bonds and insurance; amending 62 O.S. 2001, Section 310.9, which relates to certain sworn statement requirements for political subdivisions; deleting sworn statement requirement for certain invoices; increasing contract amount; deleting notary requirement; deleting requirement for signed statement for each invoice; deleting an in lieu of the affidavit procedure; amending 70 O.S. 2001, Section 5-135.3, which relates to certain sworn statement requirements for school districts; deleting notary requirement; deleting sworn statement requirement for certain invoices; increasing contract amount; modifying sworn statement form; amending 74 O.S. 2001, Section 3109, which relates to certain sworn statement requirements for political subdivisions; deleting sworn statement requirement for certain invoices; increasing contract amount; modifying sworn statement form; deleting notary requirement; deleting requirement for signed statement for each invoice; deleting an in lieu of the affidavit procedure; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 220 of Title 61, unless there is created a duplication in numbering, reads as follows:

A. Any board of education of a school district may use construction management as a project delivery method for the building, altering, repairing, improving, maintaining or demolishing any structure or appurtenance thereto, or any other improvement to real property owned by that school district. For purposes of this section "construction management" shall be defined as set forth in Section 202 of Title 61 of the Oklahoma Statutes and shall include both agency construction management and at-risk construction management.

B. A school district shall select a construction manager based on the professional qualifications and technical experience of the construction manager. Selection criteria shall include the experience of the candidate, past performance, and certification of the company or individuals within the company of their knowledge of recognized standards of construction, construction management and project management. Recognition of the company as a qualified construction manager by the Department of Central Services pursuant to Section 62 of Title 61 of the Oklahoma Statutes, may be considered in evaluating the qualifications of a prospective construction manager by a school district.

C. Construction management contracts, for both agency construction management and at-risk construction management, entered into by a school district pursuant to this section shall not be considered a public construction contract pursuant to Section 102 of Title 61 of the Oklahoma Statutes and shall not be subject to competitive bidding requirements as set forth in the Public Competitive Bidding Act of 1974.

D. All construction contracts or subcontracts for work to be performed for any school district pursuant to a construction management project delivery method shall be awarded in accordance with the provisions of the Public Competitive Bidding Act of 1974. If a construction manager at-risk wishes to self-perform portions of

the construction work to be performed, the construction manager at-risk may self-perform portions of the work provided the construction manager at-risk competitively bids the work under the same terms and conditions as the other bidders and the construction manager at-risk is the lowest responsible bidder for the construction subcontract. No work shall commence until the school district executes a written contract and the contractor and subcontractors submit bonds and proofs of insurance as required by the appropriate contract.

SECTION 2. AMENDATORY 62 O.S. 2001, 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~~ contract entered into by 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)~~ Twenty-five Thousand Dollars (\$25,000.00) or more, the sworn statement required by Section 3109 of Title 74 of the Oklahoma Statutes shall be required.

B. Any county, 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~~ for in 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. In lieu of the affidavit required in subsection A of this section, the following procedures may be used:~~

~~1. A purchase order issued by a county or a political subdivision of the state shall require the signature of the vendor and include a notice to the vendor that the vendor's submission of the signed invoice or acceptance of payment pursuant to the purchase constitutes a statement by the vendor that:~~

- ~~a. the invoice or claim is true and correct,~~
- ~~b. the work, services or materials as shown by the invoice or claim have been completed or supplied in accordance with the plans, specifications, orders or requests furnished the vendor, and~~
- ~~c. the vendor has made no payment, directly or indirectly, to any elected official, officer or employee of this state or any county or political subdivision of the state, of money or any other thing of value to obtain payment;~~

~~2. Any vendor who submits the signed invoice or accepts payment pursuant to a purchase order containing the notice provided for in paragraph 1 of this subsection shall be deemed to adopt and affirm the statement contained in the notice unless the vendor states on the invoice that the statement is incorrect in whole or in part; and~~

~~3. The county or political subdivision may recover from the vendor the full amount paid pursuant to the purchase order if the statement adopted and affirmed by the vendor is false.~~

SECTION 3. AMENDATORY 70 O.S. 2001, Section 5-135.3, is amended to read as follows:

Section 5-135.3 The following signed ~~and notarized~~ statement shall be required on ~~an invoice submitted to~~ any contract entered into by any school district or technology center school district in the state, ~~for payment to~~ with an architect, contractor, engineer or supplier of ~~material~~ materials or services in the amount of ~~Two Thousand Dollars (\$2,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) 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~~ contract is true and correct. Affiant further states that the (work, services or materials) ~~as shown by this invoice or claim have been~~ will be (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 school district or technology center 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~~ Attested to before me this __ day of _____, 19 20 ____.

~~Notary Public (or Officer having Power to Administer Oaths)~~

SECTION 4. AMENDATORY 74 O.S. 2001, 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~~ contract entered into by 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)~~ Twenty-five Thousand Dollars (\$25,000.00) 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~~ contract is true and correct. Affiant further states that the (work, services or materials) ~~as shown by this invoice or claim have been~~ will be (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, architect, supplier or engineer)

~~Subscribed and sworn~~ Attested to before me this ____ day of _____, 19 20 ____.

=====

~~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~~ for in 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. In lieu of the affidavit required in subsection A of this section, the following procedures may be used:~~

~~1. A purchase order issued by a county or a local subdivision of the state shall require the signature of the vendor and include a notice to the vendor that the vendor's submission of the signed invoice or acceptance of payment pursuant to the purchase constitutes a statement by the vendor that:~~

- ~~a. the invoice or claim is true and correct,~~
- ~~b. the work, services or materials as shown by the invoice or claim have been completed or supplied in accordance with the plans, specifications, orders or requests furnished the vendor, and~~
- ~~c. the vendor has made no payment, directly or indirectly, to any elected official, officer or employee of this state or any county or local subdivision of the state, of money or any other thing of value to obtain payment;~~

~~2. Any vendor who submits the signed invoice or accepts payment pursuant to a purchase order containing the notice provided for in paragraph 1 of this subsection shall be deemed to adopt and affirm~~

~~the statement contained in the notice unless the vendor states on the invoice that the statement is incorrect in whole or in part; and~~

~~3. The county or local subdivision may recover from the vendor the full amount paid pursuant to the purchase order if the statement adopted and affirmed by the vendor is false or contracts.~~

SECTION 5. This act shall become effective July 1, 2002.

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.

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