

ENROLLED SENATE
BILL NO. 1507

By: Fisher of the Senate

and

Carey of the House

An Act relating to public buildings and public works; amending 61 O.S. 2001, Section 113, as amended by Section 17, Chapter 294, O.S.L. 2002, (61 O.S. Supp. 2003, Section 113), which relates to execution of public contracts; providing alternative for complying with certain requirements; amending 62 O.S. 2001, Section 318, which relates to execution of public contracts; modifying certain requirements for bonds; and providing an effective date.

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

SECTION 1. AMENDATORY 61 O.S. 2001, Section 113, as amended by Section 17, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2003, Section 113), is amended to read as follows:

Section 113. A. Except as otherwise provided by law, within the period of time, not to exceed sixty (60) days, 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 of 1974 until the contract has been fully executed by both the bidder and the awarding public agency.

B. Except as otherwise provided by law, within the period of time specified in subsection A of this section, the following shall be provided by the contractor to the awarding public agency for contracts exceeding Twenty-five Thousand Dollars (\$25,000.00):

1. A bond or irrevocable letter of credit complying with the provisions of Section 1 of this title;

2. A bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing terms prescribed by the Construction and Properties Division of 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;

3. A bond in a sum equal to the contract price or an irrevocable letter of credit containing terms as prescribed by the Division 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 the public agency and its architects or engineers, or both, as an additional assured under the public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.

C. A single irrevocable letter of credit may be used to satisfy paragraphs 1, 2 and 3 of subsection B of this section, provided such single irrevocable letter of credit meets all applicable requirements of subsection B of this section.

If the contractor needs additional time in which to obtain the bond required pursuant to subsection B of this section, the contractor may request and the awarding agency may allow the contractor an additional sixty (60) days in which to obtain the bond.

D. 1. After 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. The agency may rescind the award and readvertise for bids, or may direct correction of the error and award the contract to the lowest responsible bidder, whichever shall be in the best interests of the state.

2. If the awarding public agency has a governing body, the agency shall, at the next regularly scheduled public business meeting of the governing body of the agency, upon the record, present to the governing body that an error has 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 may 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. No public agency shall require for any public construction project, nor shall any general contractor submit a project bid based on acquiring or participating in, any wrap-up, wrap-around, or controlled insurance program. For the purposes of this subsection, "wrap-up, wrap-around, or controlled insurance program" means any insurance program that has the effect of disabling or rendering inapplicable any workers' compensation, commercial general liability, builders' risk, completed operations, or excess liability insurance coverage carried by a subcontractor that is engaged or to be engaged on a public construction project.

F. This act shall not apply to the public construction projects of constitutional agencies which had authorized a wrap-up, wrap-around, or controlled insurance program on or before April 11, 2000.

SECTION 2. AMENDATORY 62 O.S. 2001, Section 318, is amended to read as follows:

Section 318. A. For purposes of this section:

1. "Public entity" means any political subdivision of this state, or a public trust which has as a beneficiary a political subdivision of this state, or any institution of higher education which is part of The Oklahoma State System of Higher Education~~;~~;

2. "Performance-based efficiency contract" means a contract for the design, development, financing, installation and service of any improvement, repair, alteration or betterment of any building or facility owned, operated or planned by a public entity; or any equipment, fixture or furnishing to be added to or used in any such building or facility; or any maintenance or operational strategy that is designed and implemented that will reduce utility consumption or lower operating costs, and may include, but is not limited to, one or more of the following:

- a. utility services,
- b. heating, ventilating or air conditioning system modifications or replacements and automated control systems,
- c. replacement or modifications of lighting fixtures,
- d. indoor air quality improvements to increase air quality that conform to the applicable state or local building code requirements when done in conjunction with other cost-saving measures,
- e. any additional building infrastructure improvement, cost saving, life safety or any other improvement that provides long-term operating cost reductions and ~~are~~ is in compliance with state and local codes, or
- f. any facility operation and support programs that reduce operating cost~~;~~; and

3. "Qualified provider" means a person or business experienced or trained in the design, analysis and installation of energy conservation and facility management measures. A qualified provider must employ a professional engineer registered in the State of Oklahoma.

B. In addition to any other legally permissible alternatives of entering into contracts, any public entity may enter into performance-based efficiency contracts with a qualified provider pursuant to the provisions of this section. Further, any public entity may enter into an installment contract, lease purchase

agreement or other contractual obligation for the purpose of financing performance-based efficiency projects for a term not to exceed twenty (20) years or the useful life of the project. A qualified provider to whom the contract is awarded shall be required to give a sufficient bond to the public entity for its faithful performance of the contract ~~and the accomplishment of guaranteed savings. Multi-year~~ In addition, the public entity may require performance bonds covering the aggregate annual amount of guaranteed savings over the contract term shall be required, and shall remain in full force and effect until the termination of the contract.

The contract's cost savings to the public entity must be guaranteed each year during the term of the agreement. The savings must be sufficient to offset the annual costs of the contract. The contract shall provide for reimbursement to the public entity annually for any shortfall of guaranteed savings. Savings must be measured, verified and documented during each year of the term and may be utilized to meet the annual debt service. This section shall constitute the sole authority necessary to enter into performance-based efficiency contracts, without regard to compliance with other laws which may specify additional procedural requirements for execution of contracts.

SECTION 3. This act shall become effective November 1, 2004.

Passed the Senate the 5th day of May, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the 13th day of April, 2004.

Presiding Officer of the House
of Representatives

