

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2216

By: Murphey

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7 COMMITTEE SUBSTITUTE

8 An Act relating to public buildings and public works;
9 providing for certain contracts to be competitively
10 bid; providing for conditions; providing for notice;
11 providing for bid procedure; providing for awarding
of bid; prohibiting certain actions; providing
penalties; providing for codification; and providing
an effective date.

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

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 103.6 of Title 61, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Unless otherwise provided by law, all janitorial or
19 custodial contracts awarded by a public school district for
20 performance on public school district property exceeding Fifty
21 Thousand Dollars (\$50,000.00) shall be awarded to the lowest
22 responsible bidder, by open competitive bidding after solicitation
23 for sealed bids pursuant to the following conditions:

1 1. Notice of the opportunity to bid shall be given by
2 publication in a newspaper of general circulation and published in
3 the county where a substantial part of the work is to be performed.
4 The notice by publication shall be published in two consecutive
5 weekly issues of the newspaper, with the first publication to be at
6 least twenty (20) days prior to the date set for opening bids. All
7 bid notices shall set forth the following information:

8 a. the character of the proposed janitorial or custodial
9 contract in sufficient details that all bidders shall
10 know exactly what their obligation will be, either in
11 the bid notice itself or by reference to bidding
12 documents on file in the main office of the awarding
13 public school district,

14 b. the name of the officer, agent or employee of the
15 awarding public school district and the office
16 location and address of such person, from whom a
17 complete set of bidding documents regarding such
18 proposed contract may be obtained, along with the
19 amount of the cost deposit required, if any,

20 c. the date, time and place of opening of the sealed
21 bids,

22 d. the name and office location and address of the office
23 of the awarding public school district to whom the
24 sealed bids should be submitted, and

1 e. any additional information regarding such proposed
2 contract deemed by the awarding public school district
3 to be of beneficial interest to prospective bidders or
4 the public;

5 2. At least one complete set of bidding documents regarding a
6 proposed janitorial or custodial contract shall be on file in the
7 main office of the awarding public school district at least twenty
8 (20) days prior to the date set for opening bids. The officer,
9 agent or employee of the awarding public school district designated
10 in the bid notice shall have a sufficient number of complete sets of
11 bidding documents and shall provide a complete set of bidding
12 documents to any prospective bidder, upon request; provided,
13 however, that the awarding public school district may require a
14 reasonable deposit for each set of bidding documents; provided, that
15 such deposit shall not exceed the actual cost of duplicating or
16 printing. The public school district may retain all or part of the
17 deposit if stated in the notice for bids;

18 3. A bidder on a janitorial or custodial services contract
19 shall accompany the bid with a certified check, cashier's check or
20 bid bond equal to the cost of republication of the notice to
21 bidders, and reasonable estimated expenses that would be incurred by
22 a public school district due to reason of the bidder's default.

23 a. The public school district, shall return a certified
24 or cashier's check, bid bond, or irrevocable letter of

1 credit to the successful bidder on execution and
2 delivery of the contract and any required bonds or
3 irrevocable letters of credit and insurance. Checks
4 of unsuccessful bidders shall be returned to them in
5 accordance with the terms of the bid solicitation.

6 b. Nothing contained herein shall be construed to prevent
7 the awarding public school districts or the courts
8 from exonerating the bidder and other parties to the
9 bid from liability upon a timely showing that the
10 bidder committed what the courts have determined under
11 the common law to be an excusable bidding error and
12 for that reason it would not be equitable to enforce
13 the bid security;

14 4. Any bid received by the awarding public school district or
15 an officer or employee thereof, more than ninety-six (96) hours
16 excluding Saturdays, Sundays and holidays before the time set for
17 the opening of bids, or any bid received after the time set for
18 opening of bids, shall not be considered by the awarding public
19 school district and shall be returned unopened to the bidder
20 submitting same;

21 5. All bids shall be sealed and opened only at the time and
22 place mentioned in the bidding documents, and read aloud in the
23 presence of an administrative officer of the awarding public school
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1 district. Such bid opening shall be open to the public and to all
2 bidders;

3 6. The awarding of a janitorial or custodial contract to the
4 lowest responsible bidder or bidders shall be made within thirty
5 (30) days after the opening of bids unless the governing body of the
6 awarding public school district, by formal recorded action and for
7 good cause shown, provides for a reasonable extension of that
8 period;

9 7. All bids, both successful and unsuccessful, and all
10 contracts and required bonds shall be placed on file and maintained
11 in the main office of the awarding public school district for a
12 period of five (5) years from the date of opening of bids or for a
13 period of three (3) years from the date of completion of the
14 contract, whichever is longer, shall be open to public inspection,
15 and shall be matters of public record;

16 8. The chief administrative officer and members of the
17 governing body of the awarding public school district authorizing or
18 awarding or supervising the execution of a janitorial or custodial
19 contract, and their relatives within the third degree of
20 consanguinity or affinity, are forbidden to be interested directly
21 or indirectly through stock ownership, partnership interest or
22 otherwise in any such contract. Contracts entered into in violation
23 of this subsection shall be void;

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1 9. Any agreement or collusion among bidders, prospective
2 bidders or material suppliers in restraint of freedom of competition
3 by agreement to bid at a fixed price or to refrain from bidding, or
4 otherwise, shall render the bids of such bidders void. Persons
5 willfully violating this paragraph shall be guilty of a felony.
6 Each bidder shall accompany his bid with a sworn statement that he
7 has not been a party to any such agreement. The form of the
8 statement shall be substantially as provided in Section 85.22 of
9 Title 74 of the Oklahoma Statutes, but modified in wording to refer
10 to the appropriate public school district requesting bids and may be
11 submitted in electronic format;

12 10. Any disclosure by an employee of a public agency of the
13 terms of a bid submitted in response to a bid notice issued by a
14 public school district in advance of the time set for opening of all
15 bids so submitted shall be unlawful. It shall also be unlawful for
16 any person to solicit, possess or receive information which is to be
17 contained in a bid notice of a public school district, for use in
18 preparing a bid, in advance of the date on which said bid notice is
19 to be made equally and uniformly known to all prospective bidders
20 and the public, and it shall further be unlawful for any employee of
21 a public school district to withhold or impede the distribution of
22 said information after notice of the bid has been given, unless the
23 solicitation of bids has been withdrawn or the particular
24 information in question has been deleted or replaced through

1 alteration of the bid notice and said withdrawal or alteration has
2 been made equally and uniformly known. Any violation of this
3 paragraph shall be a misdemeanor and shall render the proceedings
4 void and require solicitation and award anew.

5 The estimate of the actual cost of the project made by the
6 public school district or representatives of the public school
7 district shall not be considered confidential and shall be available
8 to the public in accordance with the Oklahoma Open Records Act;

9 11. If an award is made to other than the lowest bidder, the
10 awarding public school district shall accompany its action with a
11 publicized statement setting forth the reason for its action. Such
12 statement shall be placed on file, open to public inspection and be
13 a matter of public record;

14 12. In order to determine the responsibility of bidders, the
15 awarding public school district may require prospective bidders to
16 prequalify as responsible bidders prior to submitting bids on a
17 janitorial or custodial contract. Notice of any such
18 prequalification requirement shall be made equally and uniformly
19 known by the awarding public school district to all prospective
20 bidders and the public in the same manner as proposals to award
21 janitorial and custodial contracts as set forth in paragraph 1 of
22 this subsection. Financial information including, but not limited
23 to, audited financial statements required by the awarding public
24 agency as part of prequalification shall remain confidential;

1 13. By majority action of the governing board of the awarding
2 school district the district shall have the right to reject any or
3 all bids and solicit bidders again as herein provided if, in the
4 opinion of the board, the best interests of the residents of the
5 school district would be best served by so doing;

6 14. No janitorial or custodial contract shall be assignable by
7 the successful bidder without written consent of the governing body
8 of the public school district, evidenced by resolution;

9 15. Change orders or addenda to janitorial or custodial
10 contracts shall not exceed a fifteen-percent cumulative increase in
11 the original contract amount; and

12 16. Any resident in the school district of the awarding public
13 school district, or any bona fide unsuccessful bidder on a
14 particular janitorial or custodial contract, within ten (10) days
15 after any such contract has been executed, is empowered to bring
16 suit in the district court of the county where the work, or the
17 major part of it, is to be done to enjoin the performance of such
18 contract if entered into in violation of the provisions of this act.

19 B. This act shall not apply to contracts awarded or contracts
20 for which bids have been solicited on or before the effective date
21 of this act.

22 C. No contract shall be split into partial contracts for the
23 purpose of avoiding the requirements of this section. All such
24 partial contracts shall be void. Any person who knowingly violates

1 the provisions of this subsection shall, upon conviction, be guilty
2 of a misdemeanor punishable by imprisonment in the county jail for
3 not more than one (1) year, or by a fine of not more than One
4 Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

5 D. Janitorial or custodial contracts awarded for performance on
6 public school district property shall not be considered public
7 construction contracts subject to the provisions of the Public
8 Competitive Bidding Act of 1974.

9 SECTION 2. This act shall become effective November 1, 2008.

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11 51-2-10481 LRB 03/03/08

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