

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 1753

By: Martin (Scott) of the House

and

Barrington of the Senate

7  
8  
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to government; amending 11 O.S. 2001,  
11 Section 10-112, as last amended by Section 2, Chapter  
12 304, O.S.L. 2008 (11 O.S. Supp. 2008, Section 10-  
13 112), which relates to city managers; modifying  
14 residency requirement; amending 61 O.S. 2001,  
15 Sections 102, as last amended by Section 14, Chapter  
16 271, O.S.L. 2006 and 121, as last amended by Section  
17 23, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2008,  
18 Sections 102 and 121), which relates to the Public  
19 Competitive Bidding Act of 1974; modifying  
20 definition; modifying approval of change orders; and  
21 providing an effective date.

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

23 SECTION 1. AMENDATORY 11 O.S. 2001, Section 10-112, as  
24 last amended by Section 2, Chapter 304, O.S.L. 2008 (11 O.S. Supp.  
2008, Section 10-112), is amended to read as follows:

Section 10-112. The council shall appoint a city manager or a  
part-time city manager, pursuant to this act, by a vote of a

1 majority of all its members subject to the terms of employment  
2 established by the council. It shall choose the city manager or  
3 part-time city manager solely on the basis of executive and  
4 administrative qualifications with special reference to the actual  
5 experience in, or the knowledge of, accepted practice in respect to  
6 the duties of the office. At the time of appointment, the city  
7 manager need not be a resident of the city or state; but during the  
8 tenure of holding office the city manager shall reside within the  
9 boundaries of the city, the school district or districts that  
10 overlap the city boundaries, or within ten (10) miles of the city or  
11 school district. City managers or part-time city managers may  
12 appoint themselves, or the council or other authority may appoint or  
13 elect the city manager or part-time city manager, to other offices  
14 and positions in the city government, subject to regulations  
15 prescribed by ordinance; but the city manager or part-time city  
16 manager may not receive compensation for service in such other  
17 offices or positions. Neither the mayor nor any members of the city  
18 council may be appointed city manager or part-time city manager  
19 during the term for which they shall have been elected nor within  
20 two (2) years after they cease to hold such office.

21 SECTION 2. AMENDATORY 61 O.S. 2001, Section 102, as last  
22 amended by Section 14, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2008,  
23 Section 102), is amended to read as follows:

24

1 Section 102. As used in the Public Competitive Bidding Act of  
2 1974:

3 1. "Administrator" means the State Construction Administrator  
4 of the Construction and Properties Division of the Department of  
5 Central Services;

6 2. "Awarding public agency" means the public agency which  
7 solicits and receives sealed bids on a particular public  
8 construction contract;

9 3. "Bidding documents" means the bid notice, instruction to  
10 bidders, plans and specifications, bidding form, bidding  
11 instructions, general conditions, special conditions and all other  
12 written instruments prepared by or on behalf of an awarding public  
13 agency for use by prospective bidders on a public construction  
14 contract;

15 4. "Chief administrative officer" means an individual  
16 responsible for directing the administration of a public agency.  
17 The term does not mean one or all of the individuals that make  
18 policy for a public agency;

19 5. "Public agency" means the State of Oklahoma, and any county,  
20 city, town, school district or other political subdivision of the  
21 state, any public trust, any public entity specifically created by  
22 the statutes of the State of Oklahoma or as a result of statutory  
23 authorization therefor, and any department, agency, board, bureau,  
24

1 commission, committee or authority of any of the foregoing public  
2 entities;

3 6. "Public construction contract" or "contract" means any  
4 contract, exceeding Fifty Thousand Dollars (\$50,000.00) in amount,  
5 awarded by any public agency for the purpose of making any public  
6 improvements or constructing any public building or making repairs  
7 to or performing maintenance on the same except where the  
8 improvements, construction of any building or repairs to the same  
9 are improvements or buildings leased to a person or other legal  
10 entity exclusively for private and not for public use and no public  
11 tax revenues shall be expended on or for the contract unless the  
12 public tax revenues used for the project are authorized by a  
13 majority of the voters of the applicable public agency voting at an  
14 election held for that purpose and the public tax revenues do not  
15 exceed twenty-five percent (25%) of the total project cost. The  
16 amount of public tax dollars committed to the project will not  
17 exceed a fixed amount established by resolution of the governing  
18 body prior to or concurrent with approval of the project;

19 7. "Public improvement" means any beneficial or valuable change  
20 or addition, betterment, enhancement or amelioration of or upon any  
21 real property, or interest therein, belonging to a public agency,  
22 intended to enhance its value, beauty or utility or to adapt it to  
23 new or further purposes. The term does not include the direct  
24 purchase of materials, ~~provided that the materials are not purchased~~

1 ~~in increments for an amount of less than Fifty Thousand Dollars~~  
2 ~~(\$50,000.00) and used for the purposes of completing a single~~  
3 ~~project,~~ equipment or supplies by a public agency, or any personal  
4 property, including property as defined in paragraphs 1 and 4 of  
5 subsection B of Section 430.1 of Title 62 of the Oklahoma Statutes;  
6 and

7 8. "Retainage" means the difference between the amount earned  
8 by the contractor on a public construction contract, with the work  
9 being accepted by the public agency, and the amount paid on said  
10 contract by the public agency.

11 SECTION 3. AMENDATORY 61 O.S. 2001, Section 121, as last  
12 amended by Section 23, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2008,  
13 Section 121), is amended to read as follows:

14 Section 121. A. Change orders or addenda to public  
15 construction contracts of One Million Dollars (\$1,000,000.00) or  
16 less shall not exceed a fifteen percent (15%) cumulative increase in  
17 the original contract amount.

18 B. Change orders or addenda to public construction contracts of  
19 over One Million Dollars (\$1,000,000.00) shall not exceed the  
20 greater of One Hundred Fifty Thousand Dollars (\$150,000.00) or a ten  
21 percent (10%) cumulative increase in the original contract amount.

22 C. Change orders or cumulative change orders which exceed the  
23 limits of subsection A or B of this section shall require a  
24 readvertising for bids on the incomplete portions of the contract.

1 D. If the awarding public agency does not have a governing  
2 body, the chief administrative officer of the awarding public agency  
3 shall approve change orders. The State Construction Administrator  
4 of the Construction and Properties Division of the Department of  
5 Central Services, or the administrator's designee, shall sign and  
6 execute all contracts and change orders, as they relate to state  
7 agencies.

8 E. If the awarding public agency has a governing body, all  
9 change orders shall be formally approved by the governing body of  
10 the awarding public agency and the reasons for approval recorded in  
11 the permanent records of the governing body. The governing body of  
12 a municipality may delegate approval of change orders up to Forty  
13 Thousand Dollars (\$40,000.00) or ten percent (10%) of any contract,  
14 whichever is less, to the chief administrative officer of the  
15 municipality or their designee, with any approved change orders  
16 reported to the governing body at the next regularly scheduled  
17 meeting.

18 F. The governing body of the Oklahoma Tourism and Recreation  
19 Department is authorized, upon approval of a majority of all of the  
20 members of the Oklahoma Tourism and Recreation Commission, to  
21 delegate to the Director of the agency the authority to approve  
22 change orders on a construction contract provided that the  
23 individual change order does not exceed Twenty-five Thousand Dollars  
24 (\$25,000.00) in expenditure and complies with the limits established

1 by this section. The Administrator of the Division shall sign and  
2 execute all contracts and change orders.

3 G. The Transportation Commission may, by rule, authorize the  
4 Director of the Department of Transportation to approve change  
5 orders in an amount of not to exceed Five Hundred Thousand Dollars  
6 (\$500,000.00). Change orders approved by the Director shall be  
7 presented to the Transportation Commission during the next regular  
8 meeting and the reasons therefor recorded in the permanent records.  
9 The Oklahoma Turnpike Authority may authorize the Director of the  
10 Authority to approve change orders in an amount not to exceed Two  
11 Hundred Fifty Thousand Dollars (\$250,000.00). Change orders  
12 approved by the Director of the Authority shall be presented to the  
13 Authority during the next regular meeting and the reasons for the  
14 orders recorded in permanent records.

15 H. All change orders for the Department of Transportation or  
16 the Authority shall contain a unit price and total for each of the  
17 following items:

- 18 1. All materials with cost per item;
- 19 2. Itemization of all labor with number of hours per operation  
20 and cost per hour;
- 21 3. Itemization of all equipment with the type of equipment,  
22 number of each type, cost per hour for each type, and number of  
23 hours of actual operation for each type;

24

1 4. Itemization of insurance cost, bond cost, social security,  
2 taxes, workers' compensation, employee fringe benefits and overhead  
3 cost; and

4 5. Profit for the contractor.

5 I. 1. If a construction contract contains unit pricing, and  
6 the change order pertains to the unit price, the change order will  
7 not be subject to subsection A or B of this section.

8 2. When the unit price change does not exceed Ten Thousand  
9 Dollars (\$10,000.00), the unit price change order computation may be  
10 based on an acceptable unit price basis in lieu of cost itemization  
11 as required in paragraphs 1, 2, 3, 4 and 5 of subsection H of this  
12 section.

13 J. Alternates or add items bid with the original bid and  
14 contained in the awarded contract as options of the awarding public  
15 agency shall not be construed as change orders under the provisions  
16 of the Public Competitive Bidding Act of 1974.

17 SECTION 4. This act shall become effective November 1, 2009.

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