

ENROLLED HOUSE
BILL NO. 1753

By: Martin (Scott) of the House

and

Barrington of the Senate

An Act relating to government; amending 11 O.S. 2001, Section 10-112, as last amended by Section 2 of Enrolled House Bill No. 1420 of the 1st Session of the 52nd Oklahoma Legislature, which relates to city managers; modifying residency requirement; amending 61 O.S. 2001, Sections 102, as last amended by Section 14, Chapter 271, O.S.L. 2006 and 121, as last amended by Section 23, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2008, Sections 102 and 121), which relates to the Public Competitive Bidding Act of 1974; modifying definition; modifying approval of change orders; and providing an effective date.

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 10-112, as last amended by Section 2 of Enrolled House Bill No. 1420 of the 1st Session of the 52nd Oklahoma Legislature, is amended to read as follows:

Section 10-112. The council shall appoint a city manager, a part-time city manager, or a part-time city planner, pursuant to this act, by a vote of a majority of all its members subject to the terms of employment established by the council. It shall choose the city manager, part-time city manager, or part-time city planner solely on the basis of executive and administrative qualifications with special reference to the actual experience in, or the knowledge of, accepted practice in respect to the duties of the office. At the time of appointment, the city manager need not be a resident of the city or state; but during the tenure of holding office the city manager shall reside within the boundaries of the city, the school district or districts that overlap the city boundaries, or within

ten (10) miles of the city or school district. City managers, part-time city managers, or part-time city planners may appoint themselves, or the council or other authority may appoint or elect the city manager, part-time city manager, or part-time city planner to other offices and positions in the city government, subject to regulations prescribed by ordinance; but the city manager, part-time city manager, or part-time city planner may not receive compensation for service in such other offices or positions. Neither the mayor nor any members of the city council may be appointed city manager, part-time city manager, or part-time city planner during the term for which they shall have been elected nor within two (2) years after they cease to hold such office.

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

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

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

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

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

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

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

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

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

7. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, ~~provided that the materials are not purchased in increments for an amount of less than Fifty Thousand Dollars (\$50,000.00) and used for the purposes of completing a single project,~~ equipment or supplies by a public agency, or any personal property, including property as defined in paragraphs 1 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma Statutes; and

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

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

Section 121. A. Change orders or addenda to public construction contracts of One Million Dollars (\$1,000,000.00) or

less shall not exceed a fifteen percent (15%) cumulative increase in the original contract amount.

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

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

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

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

F. The governing body of the Oklahoma Tourism and Recreation Department is authorized, upon approval of a majority of all of the members of the Oklahoma Tourism and Recreation Commission, to delegate to the Director of the agency the authority to approve change orders on a construction contract provided that the individual change order does not exceed Twenty-five Thousand Dollars (\$25,000.00) in expenditure and complies with the limits established by this section. The Administrator of the Division shall sign and execute all contracts and change orders.

G. The Transportation Commission may, by rule, authorize the Director of the Department of Transportation to approve change orders in an amount of not to exceed Five Hundred Thousand Dollars (\$500,000.00). Change orders approved by the Director shall be

presented to the Transportation Commission during the next regular meeting and the reasons therefor recorded in the permanent records. The Oklahoma Turnpike Authority may authorize the Director of the Authority to approve change orders in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00). Change orders approved by the Director of the Authority shall be presented to the Authority during the next regular meeting and the reasons for the orders recorded in permanent records.

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

1. All materials with cost per item;
2. Itemization of all labor with number of hours per operation and cost per hour;
3. Itemization of all equipment with the type of equipment, number of each type, cost per hour for each type, and number of hours of actual operation for each type;
4. Itemization of insurance cost, bond cost, social security, taxes, workers' compensation, employee fringe benefits and overhead cost; and
5. Profit for the contractor.

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

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

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

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

Passed the House of Representatives the 14th day of May, 2009.

Presiding Officer of the House of
Representatives

Passed the Senate the 18th day of May, 2009.

Presiding Officer of the Senate