

THE HOUSE OF REPRESENTATIVES  
Wednesday, February 24, 2010

Committee Substitute for  
House Bill No. 2600

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2600 - By: MORRISSETTE of the House.

An Act relating to public buildings and public works; amending 61 O.S. 2001, Sections 102, as last amended by Section 2, Chapter 257, O.S.L. 2009 and 103, as amended by Section 15, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009, Sections 102 and 103), which relate to the Public Competitive Bidding Act of 1974; defining term; modifying requirements for the awarding of certain contracts; and providing an effective date.

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

- 1 SECTION 1. AMENDATORY 61 O.S. 2001, Section 102, as last amended by  
2 Section 2, Chapter 257, O.S.L. 2009 (61 O.S. Supp. 2009, Section 102), is amended to  
3 read as follows:
- 4 Section 102. As used in the Public Competitive Bidding Act of 1974:
- 5 1. "Administrator" means the State Construction Administrator of the Construction  
6 and Properties Division of the Department of Central Services;
- 7 2. "Awarding public agency" means the public agency which solicits and receives  
8 sealed bids on a particular public construction contract;
- 9 3. "Best value" means a system for evaluation and ranking of information provided  
10 by a bidder which may include, but is not limited to, the following:

- 1           a.     price proposal,  
2           b.     past performance information,  
3           c.     project management, personnel and subcontractors,  
4           d.     proposed technical approach,  
5           e.     ability to deliver the project on time and within the budget,  
6           f.     ability to minimize project risk to owner,  
7           g.     additional project value that would be realized by the owner,  
8           h.     ability to develop a plan for project execution that establishes  
9                     performance measures and outcomes, and provides for regular  
10                    performance reporting to the owner,  
11          i.     safety record, and  
12          j.     interview with key personnel;

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

17           ~~4.~~ 5. “Chief administrative officer” means an individual responsible for directing  
18 the administration of a public agency. The term does not mean one or all of the  
19 individuals that make policy for a public agency;

20           ~~5.~~ 6. “Public agency” means the State of Oklahoma, and any county, city, town,  
21 school district or other political subdivision of the state, any public trust, any public  
22 entity specifically created by the statutes of the State of Oklahoma or as a result of

1 statutory authorization therefor, and any department, agency, board, bureau,  
2 commission, committee or authority of any of the foregoing public entities;

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

15 ~~7.~~ 8. “Public improvement” means any beneficial or valuable change or addition,  
16 betterment, enhancement or amelioration of or upon any real property, or interest  
17 therein, belonging to a public agency, intended to enhance its value, beauty or utility or  
18 to adapt it to new or further purposes. The term does not include the direct purchase of  
19 materials, equipment or supplies by a public agency, or any personal property, including  
20 property as defined in paragraphs 1 and 4 of subsection B of Section 430.1 of Title 62 of  
21 the Oklahoma Statutes; and

1       §. 9. “Retainage” means the difference between the amount earned by the  
2 contractor on a public construction contract, with the work being accepted by the public  
3 agency, and the amount paid on said contract by the public agency.

4       SECTION 2. AMENDATORY 61 O.S. 2001, Section 103, as amended by  
5 Section 15, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009, Section 103), is amended to  
6 read as follows:

7       Section 103. A. Unless otherwise provided by law, all public construction contracts  
8 exceeding Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest  
9 responsible or best value bidder, by open competitive bidding after solicitation for sealed  
10 bids, in accordance with the provisions of the Public Competitive Bidding Act of 1974. No  
11 work shall be commenced until a written contract is executed and all required bonds and  
12 insurance have been provided by the contractor to the awarding public agency.

13       B. Except as provided in subsection D of this section, public construction contracts  
14 less than Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest  
15 responsible or best value bidder by receipt of written bids. No work shall be commenced  
16 until a written contract is executed and proof of insurance has been provided by the  
17 contractor to the awarding public agency.

18       C. Except as provided in subsection D of this section, public construction contracts  
19 for less than Two Thousand Five Hundred Dollars (\$2,500.00) for minor maintenance or  
20 minor repair work may be negotiated with a qualified contractor. No work shall be  
21 commenced until a written contract is executed and proof of insurance has been provided  
22 by the contractor to the awarding public agency.

1 D. The provisions of this subsection shall apply to public construction for minor  
2 maintenance or minor repair work to public school district property. Such public  
3 construction contracts for less than Twenty-five Thousand Dollars (\$25,000.00) may be  
4 negotiated with a qualified contractor. Such public construction contracts equal to or  
5 greater than Twenty-five Thousand Dollars (\$25,000.00) but less than Fifty Thousand  
6 Dollars (\$50,000.00) shall be let and awarded to the lowest responsible or best value  
7 bidder by receipt of written bids. No work shall be commenced on any such public  
8 construction contract until a written contract is executed and proof of insurance has been  
9 provided by the contractor to the awarding public agency.

10 E. For award of any contract using a best value evaluation and ranking system, the  
11 awarding public agency may, in advance of issuing a bid solicitation, develop a written  
12 plan for criteria evaluation and ranking. Ranking criteria and requirements for bid  
13 submission information shall be stated in the bid documents. For any contract award to  
14 other than the lowest price bidder, the provisions of Section 117 of this title shall apply.

15 SECTION 3. This act shall become effective November 1, 2010.

16 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION,  
17 dated 02-23-10 - DO PASS, As Amended.