

THE HOUSE OF REPRESENTATIVES
Wednesday, March 31, 2010

Committee Substitute for
ENGROSSED
Senate Bill No. 1303

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1303 - By:
COATES of the Senate and LIEBMANN of the House.

[public buildings and public works - Public Competitive Bidding Act of 1974 -
effective date]

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

1 SECTION 1. AMENDATORY 61 O.S. 2001, Section 103, as amended by
2 Section 15, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009, Section 103), is amended to
3 read as follows:
4 Section 103. A. Unless otherwise provided by law, all public construction contracts
5 exceeding Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest
6 responsible bidder, by open competitive bidding after solicitation for sealed bids, in
7 accordance with the provisions of the Public Competitive Bidding Act of 1974. No work
8 shall be commenced until a written contract is executed and all required bonds and
9 insurance have been provided by the contractor to the awarding public agency.
10 B. Except as provided in subsection D of this section, public construction contracts
11 less than Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest

1 responsible bidder by receipt of written bids. No work shall be commenced until a
2 written contract is executed and proof of insurance has been provided by the contractor
3 to the awarding public agency.

4 C. Except as provided in subsection D of this section, public construction contracts
5 for less than ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Five Thousand Dollars
6 (\$5,000.00) for minor maintenance or minor repair work may be negotiated with a
7 qualified contractor. No work shall be commenced until a written contract is executed
8 and proof of insurance has been provided by the contractor to the awarding public
9 agency.

10 D. The provisions of this subsection shall apply to public construction for minor
11 maintenance or minor repair work to public school district property. Such public
12 construction contracts for less than Twenty-five Thousand Dollars (\$25,000.00) may be
13 negotiated with a qualified contractor. Such public construction contracts equal to or
14 greater than Twenty-five Thousand Dollars (\$25,000.00) but less than Fifty Thousand
15 Dollars (\$50,000.00) shall be let and awarded to the lowest responsible bidder by receipt
16 of written bids. No work shall be commenced on any such public construction contract
17 until a written contract is executed and proof of insurance has been provided by the
18 contractor to the awarding public agency.

19 SECTION 2. AMENDATORY 61 O.S. 2001, Section 107, as last amended by
20 Section 16, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009, Section 107), is amended to
21 read as follows:

1 Section 107. A. A bidder on a public construction contract exceeding Fifty
2 Thousand Dollars (\$50,000.00) shall accompany the bid with:

3 1. A certified check, cashier's check or bid bond equal to five percent (5%) of the bid,
4 which shall be deposited with the awarding public agency as a guaranty; or

5 2. An irrevocable letter of credit containing terms the Construction and Properties
6 Division of the Department of Central Services prescribes, issued by a financial
7 institution insured by the Federal Deposit Insurance Corporation or the Federal Savings
8 and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding
9 public agency, in an amount equal to five percent (5%) of the bid. The awarding public
10 agency shall deposit the irrevocable letter of credit with the Division; or the State
11 Construction Administrator may waive the requirements of a bid security for any or all
12 bid packages on a public bid advertised for a construction management project awarded
13 by the Construction and Properties Division pursuant to Section 202.1 of this title.

14 B. The cost of republication of the notice to bidders, actual expenses incurred by
15 reason of the bidder's default and the difference between the low bid of the defaulting
16 bidder and the amount of the bid of the bidder to whom the contract is subsequently
17 awarded, but not to exceed the amount of the certified check, cashier's check, bid bond or
18 irrevocable letter of credit may, at the discretion of the awarding public agency, be
19 forfeited to the awarding public agency in the event the apparently successful bidder fails
20 to execute the contract or fails to provide the required bonds or irrevocable letters of
21 credit and insurance to the awarding public agency.

1 C. The public agency shall, upon receipt of notice from the awarding public agency,
2 return a certified or cashier's check, bid bond, or irrevocable letter of credit to the
3 successful bidder on execution and delivery of the contract and required bonds or
4 irrevocable letters of credit and insurance. Checks of unsuccessful bidders shall be
5 returned to them in accordance with the terms of the bid solicitation.

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

11 SECTION 3. AMENDATORY 61 O.S. 2001, Section 130, as last amended by
12 Section 1, Chapter 265, O.S.L. 2007 (61 O.S. Supp. 2009, Section 130), is amended to
13 read as follows:

14 Section 130. A. The provisions of the Public Competitive Bidding Act of 1974 with
15 reference to notice and bids shall not apply to an emergency if:

16 1. The governing body of a public agency declares by a two-thirds (2/3) majority
17 vote of all of the members of the governing body that an emergency exists;

18 2. The Transportation Commission and the Oklahoma Tourism and Recreation
19 Commission, by majority vote of all the members of each Commission, declare that an
20 emergency exists; or

21 3. The chief administrative officer of a public agency without a governing body
22 declares that an emergency exists.

1 B. The governing body of a public agency may, upon approval of two-thirds (2/3)
2 majority of all of the members of the governing body, delegate to the chief administrative
3 officer of a public agency the authority to declare an emergency whereby the provisions of
4 the Public Competitive Bidding Act of 1974 with reference to notice and bids shall not
5 apply to contracts less than Thirty-five Thousand Dollars (\$35,000.00) in amount;
6 provided, such authority of the Department of Transportation and the Oklahoma
7 Turnpike Authority shall not extend to any contract exceeding Five Hundred Thousand
8 Dollars (\$500,000.00) in amount.

9 C. Upon approval of a two-thirds (2/3) majority vote, the Oklahoma Conservation
10 Commission may delegate to the Executive Director the authority to declare an
11 emergency and set a monetary limit for such declaration. This provision may only be
12 used for the purpose of responding to an emergency involving the reclamation of
13 abandoned coal mines or the repair of damaged upstream floodwater retarding
14 structures.

15 D. An emergency declared by the Board of Corrections pursuant to subsection C of
16 Section 65 of this title shall exempt the Department of Corrections from the limits which
17 would otherwise be imposed pursuant to subsection B of this section for the contracting
18 and construction of new or expanded correctional facilities.

19 ~~D.~~ E. The chief administrative officer of a public agency with a governing body shall
20 notify the governing body within ten (10) days of the declaration of an emergency if the
21 governing body did not approve the emergency. The notification shall contain a

1 statement of the reasons for the action, and shall be recorded in the official minutes of
2 the governing body.

3 E. F. Emergency as used in this section shall be limited to conditions resulting from
4 a sudden unexpected happening or unforeseen occurrence or condition whereby the
5 public health or safety is endangered.

6 F. G. The chief administrative officer of a public agency shall report an emergency
7 within ten (10) days of the emergency declaration and include the official minutes of the
8 governing body of the public agency, if applicable, to the State Construction
9 Administrator of the Department of Central Services who shall compile an annual report
10 detailing all emergencies declared pursuant to this section during the previous calendar
11 year. The report shall be submitted to the Governor, the President Pro Tempore of the
12 Senate and the Speaker of the House of Representatives.

13 SECTION 4. AMENDATORY 61 O.S. 2001, Section 202.1, as last amended by
14 Section 28, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009, Section 202.1), is amended to
15 read as follows:

16 Section 202.1 A. The design-build and construction management project delivery
17 methods shall not be used without the written approval of the Director of Central
18 Services, or the Director's designee, when those projects are constructed for a state
19 agency or by an act of the Legislature specifying design-build or at-risk construction
20 management for a project. In all instances where the design-build project or at-risk
21 construction management delivery method is authorized, construction administration
22 shall be performed by the State Construction Administrator, the Administrator's

1 designee or designees, or otherwise by contract or contract provision approved by the
2 Director of Central Services for construction administration by another party.

3 ~~B. Municipalities, counties, public trusts, or any other political subdivision in this~~
4 ~~state shall not be required to get approval of any other state agency in order to use~~
5 ~~design-build construction management or at-risk construction management as a~~
6 ~~construction management delivery method. However, municipalities, counties, public~~
7 ~~trusts, and any other political subdivision shall be subject to all other provisions of the~~
8 ~~Public Building Construction and Planning Act.~~

9 ~~C.~~ The design-build and construction management project delivery methods shall
10 not be used for any project unless the project meets the criteria established by the
11 administrative rules promulgated as required by this act. Such methods shall not be
12 used unless there is a need for compressed construction time as required to respond to a
13 natural disaster or other emergency situation affecting public health and safety, or all of
14 the following criteria for designation are met:

- 15 1. The project benefits the public;
- 16 2. There is a need for cost control; and
- 17 3. The need exists for specialized or complex construction methods due to the
18 unique nature of the project.

19 ~~D.~~ C. The use of design-build and construction management project delivery
20 methods shall not interfere or inhibit the opportunity for subcontractors to openly and
21 freely compete for subcontracts pursuant to the ~~Public Competitive Bidding Act of 1974.~~

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 ~~E. D.~~ The provisions of ~~subsections~~ subsection A and B of this section shall not
2 apply to projects by contract pursuant to an interagency agreement under Section 581 of
3 Title 74 of the Oklahoma Statutes or to projects a state agency performs solely with the
4 staff of the agency.

5 ~~F. The State Construction Administrator shall file an annual report to the~~
6 ~~legislature summarizing cost information for each construction management project~~
7 ~~completed the preceding year.~~

8 ~~G. E.~~ The Department of Central Services shall, pursuant to the
9 Administrative Procedures Act, promulgate rules to effect procedures, processes and
10 design-build/construction management fee guidelines necessary to the fulfillment of its
11 responsibilities under this section.

12 ~~H. F.~~ As used in the Public Building Construction and Planning Act, public trusts
13 shall not include state beneficiary public trusts.

14 SECTION 5. AMENDATORY Section 1, Chapter 414, O.S.L. 2002, as amended
15 by Section 33, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009, Section 220), is amended to
16 read as follows:

17 Section 220. A. Any political subdivision or board of education of a school district
18 may use construction management as a project delivery method for the building, altering,
19 repairing, improving, maintaining or demolishing any structure or appurtenance thereto,
20 or any other improvement to real property owned by that political subdivision or school
21 district. For purposes of this section “construction management” shall be defined as set

1 forth in Section 202 of this title and shall include both agency construction management
2 and at-risk construction management.

3 B. A political subdivision or school district shall select a construction manager
4 based on the professional qualifications and technical experience of the construction
5 manager. Selection criteria shall include the experience of the candidate, past
6 performance, and certification of the company or individuals within the company of their
7 knowledge of recognized standards of construction, construction management and project
8 management. Only firms recognized as qualified construction managers by the
9 Construction and Properties Division of the Department of Central Services pursuant to
10 Section 62 of this title, may be considered for selection as a construction manager by a
11 political subdivision or school district.

12 C. The construction management project delivery method may only be used for
13 public construction contracts when the construction project meets the criteria established
14 by subsection B of Section 202.1 of this title, ~~except that a political subdivision or school~~
15 ~~district shall not be required to obtain permission from the Director of Central Services.~~

16 D. When bids for a public construction project have been received from general
17 contractors pursuant to the Public Competitive Bidding Act of 1974 and the lowest
18 responsible bid is within the awarding agency's available funding, the awarding agency
19 shall not reject all bids and award the project to a construction manager.

20 E. Construction management contracts, for both agency construction management
21 and at-risk construction management, entered into by a political subdivision or school
22 district pursuant to this section shall not be considered a public construction contract

1 pursuant to Section 102 of ~~Title 61 of the Oklahoma Statutes~~ this title and shall not be
2 subject to competitive bidding requirements as set forth in the Public Competitive
3 Bidding Act of 1974.

4 F. All construction contracts or subcontracts for work to be performed for any
5 political subdivision or school district pursuant to a construction management project
6 delivery method shall be awarded in accordance with the provisions of the Public
7 Competitive Bidding Act of 1974. If a construction manager at-risk wishes to self-
8 perform portions of the construction work to be performed, the construction manager at-
9 risk may self-perform portions of the work provided the construction manager at-risk
10 competitively bids the work under the same terms and conditions as the other bidders
11 and the construction manager at-risk is the lowest responsible bidder for the
12 construction subcontract. No work shall commence until the school district executes a
13 written contract and the contractor and subcontractors submit bonds and proofs of
14 insurance as required by the appropriate contract.

15 G. Except for subsection B of Section 202.1 of this title, public school systems and
16 political subdivisions of the State of Oklahoma are exempt from the provisions of Section
17 202.1 of this title.

18 SECTION 6. This act shall become effective November 1, 2010.

19 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION,
20 dated 03-30-10 - DO PASS, As Amended.