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THE STATE SENATE
Monday, February 22, 2010

Senate Bill No. 1303
As Amended

SENATE BILL NO. 1303 - By: Coates of the Senate and Liebmann of the House.

An Act relating to public buildings and public works; amending 61 O.S. 2001, Sections 103, as amended by Section 15, Chapter 271, O.S.L. 2006, 107, as last amended by Section 16, Chapter 271, O.S.L. 2006, 130, as last amended by Section 1, Chapter 265, O.S.L. 2007, 202.1, as last amended by Section 28, Chapter 271, O.S.L. 2006, and Section 1, Chapter 414, O.S.L. 2002, as amended by Section 33, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009, Sections 103, 107, 130, 202.1 and 220), which relate to the Public Competitive Bidding Act of 1974; modifying bid limit on certain contracts; authorizing certain waiver for certain bids; authorizing the Oklahoma Conservation Commission to declare an emergency in certain circumstances; deleting certain requirement for certain entities; specifying nonconsent for certain entities; and providing an effective date.

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

SECTION 1. AMENDATORY 61 O.S. 2001, Section 103, as amended by Section 15, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009, Section 103), is amended to read as follows:

Section 103. A. Unless otherwise provided by law, all public construction contracts exceeding Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest responsible bidder, by open competitive bidding after solicitation for sealed bids, in accordance with the provisions of the Public Competitive Bidding Act

1 of 1974. No work shall be commenced until a written contract is
2 executed and all required bonds and insurance have been provided by
3 the contractor to the awarding public agency.

4 B. Except as provided in subsection D of this section, public
5 construction contracts less than Fifty Thousand Dollars (\$50,000.00)
6 shall be let and awarded to the lowest responsible bidder by receipt
7 of written bids. No work shall be commenced until a written
8 contract is executed and proof of insurance has been provided by the
9 contractor to the awarding public agency.

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

17 D. The provisions of this subsection shall apply to public
18 construction for minor maintenance or minor repair work to public
19 school district property. Such public construction contracts for
20 less than Twenty-five Thousand Dollars (\$25,000.00) may be
21 negotiated with a qualified contractor. Such public construction
22 contracts equal to or greater than Twenty-five Thousand Dollars
23 (\$25,000.00) but less than Fifty Thousand Dollars (\$50,000.00) shall

1 be let and awarded to the lowest responsible bidder by receipt of
2 written bids. No work shall be commenced on any such public
3 construction contract until a written contract is executed and proof
4 of insurance has been provided by the contractor to the awarding
5 public agency.

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

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

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

15 2. An irrevocable letter of credit containing terms the
16 Construction and Properties Division of the Department of Central
17 Services prescribes, issued by a financial institution insured by
18 the Federal Deposit Insurance Corporation or the Federal Savings and
19 Loan Insurance Corporation for the benefit of the state, on behalf
20 of the awarding public agency, in an amount equal to five percent
21 (5%) of the bid. The awarding public agency shall deposit the
22 irrevocable letter of credit with the Division; or

1 3. The State Construction Administrator may waive the
2 requirements of a bid security for any or all bid packages on a
3 public bid advertised for a Construction Management project awarded
4 by the Construction and Properties Division pursuant to Section
5 202.1 of this title.

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

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

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

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

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

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

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

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

22 B. The governing body of a public agency may, upon approval of
23 two-thirds (2/3) majority of all of the members of the governing

1 body, delegate to the chief administrative officer of a public
2 agency the authority to declare an emergency whereby the provisions
3 of the Public Competitive Bidding Act of 1974 with reference to
4 notice and bids shall not apply to contracts less than Thirty-five
5 Thousand Dollars (\$35,000.00) in amount; provided, such authority of
6 the Department of Transportation and the Oklahoma Turnpike Authority
7 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
10 Oklahoma Conservation Commission may delegate to the Executive
11 Director the authority to declare an emergency and set a monetary
12 limit for such declaration. This provision may only be used for the
13 purpose of responding to an emergency involving the reclamation of
14 abandoned coal mines or the repair of damaged upstream floodwater
15 retarding structures.

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

21 ~~D.~~ E. The chief administrative officer of a public agency with
22 a governing body shall notify the governing body within ten (10)
23 days of the declaration of an emergency if the governing body did

1 not approve the emergency. The notification shall contain a
2 statement of the reasons for the action, and shall be recorded in
3 the official minutes of the governing body.

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

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

17 SECTION 4. AMENDATORY 61 O.S. 2001, Section 202.1, as
18 last amended by Section 28, Chapter 271, O.S.L. 2006 (61 O.S. Supp.
19 2009, Section 202.1), is amended to read as follows:

20 Section 202.1 A. The design-build and construction management
21 project delivery methods shall not be used without the written
22 approval of the Director of Central Services, or the Director's
23 designee, when those projects are constructed for a state agency or

1 by an act of the Legislature specifying design-build or at-risk
2 construction management for a project. In all instances where the
3 design-build project or at-risk construction management delivery
4 method is authorized, construction administration shall be performed
5 by the State Construction Administrator, the Administrator's
6 designee or designees, or otherwise by contract or contract
7 provision approved by the Director of Central Services for
8 construction administration by another party.

9 B. ~~Municipalities, counties, public trusts, or any other~~
10 ~~political subdivision in this state shall not be required to get~~
11 ~~approval of any other state agency in order to use design-build~~
12 ~~construction management or at-risk construction management as a~~
13 ~~construction management delivery method. However, municipalities,~~
14 ~~counties, public trusts, and any other political subdivision shall~~
15 ~~be subject to all other provisions of the Public Building~~
16 ~~Construction and Planning Act.~~

17 C. The design-build and construction management project
18 delivery methods shall not be used for any project unless the
19 project meets the criteria established by the administrative rules
20 promulgated as required by this act. Such methods shall not be used
21 unless there is a need for compressed construction time as required
22 to respond to a natural disaster or other emergency situation

1 affecting public health and safety, or all of the following criteria
2 for designation are met:

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

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

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

16 ~~F.~~ E. The State Construction Administrator shall file an annual
17 report to the ~~legislature~~ Legislature summarizing cost information
18 for each construction management project completed the preceding
19 year.

20 ~~G.~~ F. The Department of Central Services shall, pursuant to the
21 Administrative Procedures Act, promulgate rules to effect
22 procedures, processes and design-build/construction management fee

1 guidelines necessary to the fulfillment of its responsibilities
2 under this section.

3 ~~H.~~ G. As used in the Public Building Construction and Planning
4 Act, public trusts shall not include state beneficiary public
5 trusts.

6 SECTION 5. AMENDATORY Section 1, Chapter 414, O.S.L.
7 2002, as amended by Section 33, Chapter 271, O.S.L. 2006 (61 O.S.
8 2001, Section 220), is amended to read as follows:

9 Section 220. A. Any political subdivision or board of
10 education of a school district may use construction management as a
11 project delivery method for the building, altering, repairing,
12 improving, maintaining or demolishing any structure or appurtenance
13 thereto, or any other improvement to real property owned by that
14 political subdivision or school district. For purposes of this
15 section "construction management" shall be defined as set forth in
16 Section 202 of this title and shall include both agency construction
17 management and at-risk construction management.

18 B. A political subdivision or school district shall select a
19 construction manager based on the professional qualifications and
20 technical experience of the construction manager. Selection
21 criteria shall include the experience of the candidate, past
22 performance, and certification of the company or individuals within
23 the company of their knowledge of recognized standards of

1 construction, construction management and project management. Only
2 firms recognized as qualified construction managers by the
3 Construction and Properties Division of the Department of Central
4 Services pursuant to Section 62 of this title, may be considered for
5 selection as a construction manager by a political subdivision or
6 school district.

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

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

18 E. Construction management contracts, for both agency
19 construction management and at-risk construction management, entered
20 into by a political subdivision or school district pursuant to this
21 section shall not be considered a public construction contract
22 pursuant to Section 102 of ~~Title 61 of the Oklahoma Statutes~~ this

1 title and shall not be subject to competitive bidding requirements
2 as set forth in the Public Competitive Bidding Act of 1974.

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

17 G. Nothing in this section shall require a public school system
18 or political subdivision of the State of Oklahoma to obtain
19 permission from the Department of Central Services to utilize
20 construction management for any project.

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

22 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 2-15-10
23 - DO PASS, As Amended and Coauthored.