

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1475

By: Murphey

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6 AS INTRODUCED

7 An Act relating to public buildings and public works;
8 creating the Large Service Contracts Public Bid Act
9 of 2009; providing for certain contracts to be
10 competitively bid; providing for conditions;
11 providing for notice; providing for bid procedure;
12 providing for awarding of bid; prohibiting certain
13 actions; providing penalties; providing for
14 codification; providing for noncodification; and
15 providing an effective date.

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

17 SECTION 1. NEW LAW A new section of law not to be
18 codified in the Oklahoma Statutes reads as follows:

19 This act shall be known and may be cited as the "Large Service
20 Contracts Public Bid Act of 2009".

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 80 of Title 61, unless there is
23 created a duplication in numbering, reads as follows:

24 Unless otherwise provided by law, all janitorial or custodial
contracts awarded by a public school district for performance on
public school district property exceeding Fifty Thousand Dollars

1 (\$50,000.00) shall be awarded to the lowest responsible bidder by
2 open competitive bidding after solicitation for sealed bids pursuant
3 to the following conditions:

4 1. Notice of the opportunity to bid shall be given by
5 publication in a newspaper of general circulation and published in
6 the county where a substantial part of the work is to be performed.
7 The notice by publication shall be published in two consecutive
8 weekly issues of the newspaper, with the first publication to be at
9 least twenty (20) days prior to the date set for opening bids; and

10 2. All bid notices shall set forth the following information:

11 a. the character of the proposed janitorial or custodial
12 contract. The bid notice shall provide either in the
13 bid notice itself or by reference in the bid notice to
14 bidding documents on file in the main office of the
15 awarding public school district, sufficient details so
16 that all bidders shall know exactly what their
17 obligation will be,

18 b. the name of the officer, agent or employee of the
19 awarding public school district and the office
20 location and address of such person from whom a
21 complete set of bidding documents regarding such
22 proposed contract may be obtained, along with the
23 amount of the cost deposit required, if any,

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- 1 c. the date, time and place of opening of the sealed
2 bids,
3 d. the name and office location and address of the office
4 of the awarding public school district to whom the
5 sealed bids should be submitted, and
6 e. any additional information regarding such proposed
7 contract deemed by the awarding public school district
8 to be of beneficial interest to prospective bidders or
9 the public.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 81 of Title 61, unless there is
12 created a duplication in numbering, reads as follows:

13 At least one complete set of bidding documents regarding a
14 proposed janitorial or custodial contract shall be on file in the
15 main office of the awarding public school district at least twenty
16 (20) days prior to the date set for opening bids. The officer,
17 agent or employee of the awarding public school district designated
18 in the bid notice shall have a sufficient number of complete sets of
19 bidding documents and shall provide a complete set of bidding
20 documents to any prospective bidder, upon request; provided however,
21 that the awarding public school district may require a reasonable
22 deposit for each set of bidding documents; provided, further that
23 the deposit shall not exceed the actual cost of duplicating or
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1 printing. The public school district may retain all or part of the
2 deposit if stated in the notice for bids.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 82 of Title 61, unless there is
5 created a duplication in numbering, reads as follows:

6 A. A bidder on a janitorial or custodial services contract
7 shall accompany the bid with a certified check, cashier's check or
8 bid bond equal to the cost of republication of the notice to
9 bidders, and reasonable estimated expenses that would be incurred by
10 a public school district due to reason of the bidder's default.

11 1. The public school district, shall return a certified or
12 cashier's check, bid bond, or irrevocable letter of credit to the
13 successful bidder on execution and delivery of the contract and any
14 required bonds or irrevocable letters of credit and insurance.
15 Checks of unsuccessful bidders shall be returned to them in
16 accordance with the terms of the bid solicitation.

17 2. Nothing contained herein shall be construed to prevent the
18 awarding public school districts or the courts from exonerating the
19 bidder and other parties to the bid from liability upon a timely
20 showing that the bidder committed what the courts have determined
21 under the common law to be an excusable bidding error and for that
22 reason it would not be equitable to enforce the bid security.

23 B. Any bid received by the awarding public school district or
24 an officer or employee thereof, more than ninety-six (96) hours

1 excluding Saturdays, Sundays and holidays before the time set for
2 the opening of bids, or any bid received after the time set for
3 opening of bids, shall not be considered by the awarding public
4 school district and shall be returned unopened to the bidder
5 submitting same.

6 C. All bids shall be sealed and opened only at the time and
7 place mentioned in the bidding documents, and read aloud in the
8 presence of an administrative officer of the awarding public school
9 district. Such bid opening shall be open to the public and to all
10 bidders.

11 D. The awarding of a janitorial or custodial contract to the
12 lowest responsible bidder or bidders shall be made within thirty
13 (30) days after the opening of bids unless the governing body of the
14 awarding public school district, by formal recorded action and for
15 good cause shown, provides for a reasonable extension of that
16 period.

17 E. All bids, both successful and unsuccessful, and all
18 contracts and required bonds shall be placed on file in electronic
19 form and maintained in the main office of the awarding public school
20 district for a period of five (5) years from the date of opening of
21 bids or for a period of three (3) years from the date of completion
22 of the contract, whichever is longer, shall be open to public
23 inspection, and shall be matters of public record.

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1 F. The chief administrative officer and members of the
2 governing body of the awarding public school district authorizing or
3 awarding or supervising the execution of a janitorial or custodial
4 contract, and their relatives within the third degree of
5 consanguinity or affinity, are forbidden to be interested directly
6 or indirectly through stock ownership, partnership interest or
7 otherwise in any such contract. Contracts entered into in violation
8 of this subsection shall be void.

9 G. Any agreement or collusion among bidders, prospective
10 bidders or material suppliers in restraint of freedom of competition
11 by agreement to bid at a fixed price or to refrain from bidding, or
12 otherwise, shall render the bids of such bidders void. Persons
13 willfully violating this paragraph shall be guilty of a felony.
14 Each bidder shall accompany his bid with a sworn statement that he
15 has not been a party to any such agreement. The form of the
16 statement shall be substantially as provided in Section 85.22 of
17 Title 74 of the Oklahoma Statutes, but modified in wording to refer
18 to the appropriate public school district requesting bids and may be
19 submitted in electronic format.

20 H. Any disclosure by an employee of a public agency of the
21 terms of a bid submitted in response to a bid notice issued by a
22 public school district in advance of the time set for opening of all
23 bids so submitted shall be unlawful. It shall also be unlawful for
24 any person to solicit, possess or receive information which is to be

1 contained in a bid notice of a public school district, for use in
2 preparing a bid, in advance of the date on which said bid notice is
3 to be made equally and uniformly known to all prospective bidders
4 and the public, and it shall further be unlawful for any employee of
5 a public school district to withhold or impede the distribution of
6 said information after notice of the bid has been given, unless the
7 solicitation of bids has been withdrawn or the particular
8 information in question has been deleted or replaced through
9 alteration of the bid notice and said withdrawal or alteration has
10 been made equally and uniformly known. Any violation of this
11 paragraph shall be a misdemeanor and shall render the proceedings
12 void and require solicitation and award anew.

13 The estimate of the actual cost of the project made by the
14 public school district or representatives of the public school
15 district shall not be considered confidential and shall be available
16 to the public in accordance with the Oklahoma Open Records Act.

17 I. If an award is made to other than the lowest bidder, the
18 awarding public school district shall accompany its action with a
19 publicized statement setting forth the reason for its action. Such
20 statement shall be placed on file, open to public inspection and be
21 a matter of public record.

22 J. In order to determine the responsibility of bidders, the
23 awarding public school district may require prospective bidders to
24 prequalify as responsible bidders prior to submitting bids on a

1 janitorial or custodial contract. Notice of any such
2 prequalification requirement shall be made equally and uniformly
3 known by the awarding public school district to all prospective
4 bidders and the public in the same manner as proposals to award
5 janitorial and custodial contracts as set forth in subsection I of
6 this section. Financial information including, but not limited to,
7 audited financial statements required by the awarding public agency
8 as part of prequalification shall remain confidential.

9 K. By majority action of the governing board of the awarding
10 school district, the district shall have the right to reject any or
11 all bids and solicit bidders again as herein provided if, in the
12 opinion of the board, the best interests of the residents of the
13 school district would be best served by so doing.

14 L. No janitorial or custodial contract shall be assignable by
15 the successful bidder without written consent of the governing body
16 of the public school district, evidenced by resolution.

17 M. Change orders or addenda to janitorial or custodial
18 contracts shall not exceed a fifteen-percent cumulative increase in
19 the original contract amount.

20 N. Any resident in the school district of the awarding public
21 school district, or any bona fide unsuccessful bidder on a
22 particular janitorial or custodial contract, within ten (10) days
23 after any such contract has been executed, is empowered to bring
24 suit in the district court of the county where the work, or the

1 major part of it, is to be done to enjoin the performance of such
2 contract if entered into in violation of the provisions of this act.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 83 of Title 61, unless there is
5 created a duplication in numbering, reads as follows:

6 This act shall not apply to contracts awarded or contracts for
7 which bids have been solicited on or before the effective date of
8 this act.

9 SECTION 6. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 84 of Title 61, unless there is
11 created a duplication in numbering, reads as follows:

12 No contract shall be split into partial contracts for the
13 purpose of avoiding the requirements of this act. All such partial
14 contracts shall be void. Any person who knowingly violates the
15 provisions of this subsection shall, upon conviction, be guilty of a
16 misdemeanor punishable by imprisonment in the county jail for not
17 more than one (1) year, or by a fine of not more than One Thousand
18 Dollars (\$1,000.00), or by both such fine and imprisonment.

19 SECTION 7. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 85 of Title 61, unless there is
21 created a duplication in numbering, reads as follows:

22 Janitorial or custodial contracts awarded for performance on
23 public school district property shall not be considered public
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1 construction contracts subject to the provisions of the Public
2 Competitive Bidding Act of 1974.

3 SECTION 8. This act shall become effective November 1, 2009.

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5 52-1-5270 LRB 12/22/08

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