

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1303

By: Coates

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5
6 AS INTRODUCED

7 An Act relating to public buildings and public works;
8 amending 61 O.S. 2001, Sections 103, as amended by
9 Section 15, Chapter 271, O.S.L. 2006, 107, as last
10 amended by Section 16, Chapter 271, O.S.L. 2006,
11 119.1, as amended by Section 22, Chapter 271, O.S.L.
12 2006, 202.1, as last amended by Section 28, Chapter
13 271, O.S.L. 2006, and Section 1, Chapter 414, O.S.L.
14 2002, as amended by Section 33, Chapter 271, O.S.L.
15 2006 (61 O.S. Supp. 2009, Sections 103, 107, 119.1,
16 202.1 and 220), which relates to the Public
17 Competitive Bidding Act of 1974; modifying bid limit
18 on certain contracts; authorizing certain waiver for
19 certain bids; increasing contract limit for public
20 construction contracts with no timely bid; deleting
21 certain requirement for certain entities; specifying
22 nonconsent for certain entities; and providing an
23 effective date.

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

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

22 Section 103. A. Unless otherwise provided by law, all public
23 construction contracts exceeding Fifty Thousand Dollars (\$50,000.00)
24 shall be let and awarded to the lowest responsible bidder, by open

1 competitive bidding after solicitation for sealed bids, in
2 accordance with the provisions of the Public Competitive Bidding Act
3 of 1974. No work shall be commenced until a written contract is
4 executed and all required bonds and insurance have been provided by
5 the contractor to the awarding public agency.

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

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

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

1 (\$25,000.00) but less than Fifty Thousand Dollars (\$50,000.00) shall
2 be let and awarded to the lowest responsible bidder by receipt of
3 written bids. No work shall be commenced on any such public
4 construction contract until a written contract is executed and proof
5 of insurance has been provided by the contractor to the awarding
6 public agency.

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

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

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

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

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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 119.1, as
9 amended by Section 22, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2009,
10 Section 119.1), is amended to read as follows:

11 Section 119.1 A. If no timely bid is received after bid
12 notices have been published on any proposed public construction
13 contract which does not exceed ~~Fifty Thousand Dollars (\$50,000.00)~~
14 One Hundred Thousand Dollars (\$100,000.00):

15 1. The governing body of a county, city, town or school
16 district may direct its employees or agents to negotiate the
17 contract with a prospective contractor; or

18 2. The state agency as defined in Section 202 of this title,
19 shall request the State Construction Administrator of the
20 Construction and Properties Division to negotiate a contract on its
21 behalf.

22 B. The amount of a contract which may be awarded by the
23 governing body pursuant to this section shall not exceed ~~Fifty~~
24 ~~Thousand Dollars (\$50,000.00)~~ One Hundred Thousand Dollars

1 (\$100,000.00) and the work to be performed shall be as specified in
2 the initial bidding documents. The contract shall be executed
3 within six (6) months after the date initially set for opening of
4 bids. The contract and contract procedure shall conform to all
5 other applicable provisions of the Public Competitive Bidding Act of
6 1974.

7 SECTION 4. AMENDATORY 61 O.S. 2001, Section 202.1, as
8 last amended by Section 28, Chapter 271, O.S.L. 2006 (61 O.S. Supp.
9 2009, Section 202.1), is amended to read as follows:

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

22 B. ~~Municipalities, counties, public trusts, or any other~~
23 ~~political subdivision in this state shall not be required to get~~
24 ~~approval of any other state agency in order to use design build~~

1 ~~construction management or at-risk construction management as a~~
2 ~~construction management delivery method. However, municipalities,~~
3 ~~counties, public trusts, and any other political subdivision shall~~
4 ~~be subject to all other provisions of the Public Building~~
5 ~~Construction and Planning Act.~~

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

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

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

22 ~~E.~~ D. The provisions of ~~subsections~~ subsection A and B of this
23 section shall not apply to projects by contract pursuant to an
24 interagency agreement under Section 581 of Title 74 of the Oklahoma

1 Statutes or to projects a state agency performs solely with the
2 staff of the agency.

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

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

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

15 SECTION 5. AMENDATORY Section 1, Chapter 414, O.S.L.
16 2002, as amended by Section 33, Chapter 271, O.S.L. 2006 (61 O.S.
17 2001, Section 220), is amended to read as follows:

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

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

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

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

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

3 E. Construction management contracts, for both agency
4 construction management and at-risk construction management, entered
5 into by a political subdivision or school district pursuant to this
6 section shall not be considered a public construction contract
7 pursuant to Section 102 of ~~Title 61 of the Oklahoma Statutes~~ this
8 title and shall not be subject to competitive bidding requirements
9 as set forth in the Public Competitive Bidding Act of 1974.

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

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

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

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