

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 13, 2011

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 96

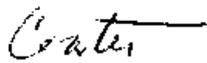
By: Coates of the Senate and Liebmann of the House

Title: Public Competitive Bidding Act of 1974; modifying limit amount; removing certain requirement. Effective date.

together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recedes from all Amendments.
2. That the attached Conference Committee Substitute be adopted:

Respectfully submitted,
SENATE CONFEREES



Coates



Sparks

Aldridge


Brown

Ellis


Brecheen

HOUSE CONFEREES:

Conference Committee on Insurance and Economic Development

ADOPTED & PASSED **MAY 18 2011**
Senate Action _____ Date _____ House Action _____ Date _____

HOUSE CONFEREES

Dank

David M. Dank

Key

Charles Key

Kirby

McDaniel
(Randy)

McNiel

Skye McDaniel

Morrisette

Mulready

John Mulready

Ortega

Charles Ortega

Ownbey

Pat Ownbey

Pittman

Shelton

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 96

6 By: Coates of the Senate

7 and

8 Liebmann of the House

9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to the Public Competitive Bidding Act
11 of 1974; amending 61 O.S. 2001, Sections 103, as last
12 amended by Section 2, Chapter 98, O.S.L. 2010, 113,
13 as last amended by Section 18, Chapter 271, O.S.L.
14 2006, and 130, as last amended by Section 1, Chapter
15 265, O.S.L. 2007 (61 O.S. Supp. 2010, Sections 103,
16 113, and 130), which relate to solicitation and
17 awarding of contracts, execution of contract, and
18 emergencies; modifying limit amount for certain
19 negotiated contracts; authorizing the award of
20 certain contracts using best value proposals;
21 defining term; authorizing the Department of Central
22 Services to promulgate certain rules; modifying
23 definition; allowing the Oklahoma Conservation
24 Commission to delegate power to declare certain
emergencies; 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 last
amended by Section 2, Chapter 98, O.S.L. 2010 (61 O.S. Supp. 2010,
Section 103), is amended to read as follows:

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

9 B. Except as provided in subsection D of this section, other
10 construction contracts for the purpose of making any public
11 improvements or constructing any public building or making repairs
12 to the same for Fifty Thousand Dollars (\$50,000.00) or less shall be
13 let and awarded to the lowest responsible bidder by receipt of
14 written bids or awarded on the basis of competitive quotes to the
15 lowest responsible qualified contractor. Work may be commenced in
16 accordance with the purchasing policies of the public agency.

17 C. Except as provided in subsection D of this section, other
18 construction contracts for less than ~~Two Thousand Five Hundred~~
19 ~~Dollars (\$2,500.00)~~ Five Thousand Dollars (\$5,000.00) may be
20 negotiated with a qualified contractor. Work may be commenced in
21 accordance with the purchasing policies of the public agency.

22 D. The provisions of this subsection shall apply to public
23 construction for minor maintenance or minor repair work to public
24 school district property. Other construction contracts for less

1 than Twenty-five Thousand Dollars (\$25,000.00) may be negotiated
2 with a qualified contractor. Construction contracts equal to or
3 greater than Twenty-five Thousand Dollars (\$25,000.00) but less than
4 Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the
5 lowest responsible bidder by receipt of written bids. No work shall
6 be commenced on any construction contract until a written contract
7 is executed and proof of insurance has been provided by the
8 contractor to the awarding public agency.

9 E. The Construction and Properties Division of the Department
10 of Central Services may award contracts using best value competitive
11 proposals. As used in this subsection, "best value" means an
12 optional contract award system which can evaluate and rank submitted
13 competitive performance proposals to identify the proposal with the
14 greatest value to the state. The Department of Central Services,
15 pursuant to the Administrative Procedures Act, shall promulgate
16 rules necessary to implement the provisions of this subsection.

17 SECTION 2. AMENDATORY 61 O.S. 2001, Section 113, as last
18 amended by Section 18, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2010,
19 Section 113), is amended to read as follows:

20 Section 113. A. Except as otherwise provided by law, within
21 the period of time, not to exceed sixty (60) days, specified in the
22 bid notice by the awarding public agency, a contract embodying the
23 terms set forth in the bidding documents shall be executed by the
24 awarding public agency and the successful bidder. No bidder shall

1 obtain any property right in a contract awarded under the provisions
2 of the Public Competitive Bidding Act of 1974 until the contract has
3 been fully executed by both the bidder and the awarding public
4 agency.

5 B. Except as otherwise provided by law, within the period of
6 time specified in subsection A of this section, the following shall
7 be provided by the contractor to the awarding public agency for
8 contracts exceeding Fifty Thousand Dollars (\$50,000.00):

9 1. A bond or irrevocable letter of credit complying with the
10 provisions of Section 1 of this title;

11 2. A bond in a sum equal to the contract price, with adequate
12 surety, or an irrevocable letter of credit containing terms
13 prescribed by the Construction and Properties Division of the
14 Department of Central Services issued by a financial institution
15 insured by the Federal Deposit Insurance Corporation or the Federal
16 Savings and Loan Insurance Corporation for the benefit of the state,
17 on behalf of the awarding public agency, in a sum equal to the
18 contract price, to ensure the proper and prompt completion of the
19 work in accordance with the provisions of the contract and bidding
20 documents;

21 3. A bond in a sum equal to the contract price or an
22 irrevocable letter of credit containing terms as prescribed by the
23 Division issued by a financial institution insured by the Federal
24 Deposit Insurance Corporation or the Federal Savings and Loan

1 Insurance Corporation for the benefit of the state, on behalf of the
2 awarding public agency, in a sum equal to the contract price, to
3 protect the awarding public agency against defective workmanship and
4 materials for a period of one (1) year after acceptance of the
5 project; and

6 4. Public liability and workers' compensation insurance during
7 construction in reasonable amounts. A public agency may require the
8 contractor to name the public agency and its architects or
9 engineers, or both, as an additional assured under the public
10 liability insurance, which requirement, if made, shall be
11 specifically set forth in the bidding documents.

12 C. A single irrevocable letter of credit may be used to satisfy
13 paragraphs 1, 2 and 3 of subsection B of this section, provided such
14 single irrevocable letter of credit meets all applicable
15 requirements of subsection B of this section.

16 If the contractor needs additional time in which to obtain the
17 bond required pursuant to subsection B of this section, the
18 contractor may request and the awarding agency may allow the
19 contractor an additional sixty (60) days in which to obtain the
20 bond.

21 D. 1. After the award of a contract, but prior to its
22 execution, an awarding public agency, upon discovery of an
23 administrative error in the award process that would void an
24 otherwise valid award, may suspend the time of execution of the

1 contract. The agency may rescind the award and readvertise for
2 bids, or may direct correction of the error and award the contract
3 to the lowest responsible bidder, whichever shall be in the best
4 interests of the state.

5 2. If the awarding public agency has a governing body, the
6 agency shall, at the next regularly scheduled public business
7 meeting of the governing body of the agency, upon the record,
8 present to the governing body that an error has been made in the
9 award process and shall state the nature of the error. The
10 governing body, upon presentation of the facts of the error, may
11 rescind the award and readvertise for bids, or may direct correction
12 of the error and award the contract to the lowest responsible
13 bidder, whichever shall be in the best interests of the state.

14 E. No public agency shall require for any public construction
15 project, nor shall any general contractor submit a project bid based
16 on acquiring or participating in, any wrap-up, wrap-around, or
17 controlled insurance program. For the purposes of this subsection,
18 "wrap-up, wrap-around, or controlled insurance program" means any
19 insurance program that has the effect of disabling or rendering
20 inapplicable any workers' compensation, commercial general
21 liability, builders' risk, completed operations, or excess liability
22 insurance coverage carried by a subcontractor that is engaged or to
23 be engaged on a public construction project unless this is a cost
24 savings to the public or the need exists for a specialized or

1 complex insurance program and shall not apply to contracts less than
2 Seventy-five Million Dollars (\$75,000,000.00).

3 F. This act shall not apply to the public construction projects
4 of constitutional agencies which had authorized a wrap-up, wrap-
5 around, or controlled insurance program on or before April 11, 2000.

6 SECTION 3. AMENDATORY 61 O.S. 2001, Section 130, as last
7 amended by Section 1, Chapter 265, O.S.L. 2007 (61 O.S. Supp. 2010,
8 Section 130), is amended to read as follows:

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

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

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

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

20 B. The governing body of a public agency may, upon approval of
21 two-thirds (2/3) majority of all of the members of the governing
22 body, delegate to the chief administrative officer of a public
23 agency the authority to declare an emergency whereby the provisions
24 of the Public Competitive Bidding Act of 1974 with reference to

1 notice and bids shall not apply to contracts less than Thirty-five
2 Thousand Dollars (\$35,000.00) in amount; provided, such authority of
3 the Department of Transportation and the Oklahoma Turnpike Authority
4 shall not extend to any contract exceeding Five Hundred Thousand
5 Dollars (\$500,000.00) in amount.

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

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

18 ~~D.~~ E. The chief administrative officer of a public agency with
19 a governing body shall notify the governing body within ten (10)
20 days of the declaration of an emergency if the governing body did
21 not approve the emergency. The notification shall contain a
22 statement of the reasons for the action, and shall be recorded in
23 the official minutes of the governing body.

24

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

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

14 SECTION 4. This act shall become effective November 1, 2011.

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