

1 ENGROSSED SENATE
2 BILL NO. 127

By: Ellis of the Senate

3 and

4 Ritze of the House
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7 An Act relating to the Public Competitive Bidding Act
8 of 1974; amending 61 O.S. 2001, Sections 102, as last
9 amended by Section 2, Chapter 257, O.S.L. 2009 and
10 122 (61 O.S. Supp. 2010, Section 102), which relate
11 to definitions and taxpayer suits; modifying certain
12 definition; modifying certain time limitation; adding
13 penalty; and providing an effective date.

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

15 SECTION 1. AMENDATORY 61 O.S. 2001, Section 102, as last
16 amended by Section 2, Chapter 257, O.S.L. 2009 (61 O.S. Supp. 2010,
17 Section 102), is amended to read as follows:

18 Section 102. As used in the Public Competitive Bidding Act of
19 1974:

20 1. "Administrator" means the State Construction Administrator
21 of the Construction and Properties Division of the Department of
22 Central Services;

23 2. "Awarding public agency" means the public agency which
24 solicits and receives sealed bids on a particular public
construction contract;

1 3. "Bidding documents" means the bid notice, instruction to
2 bidders, plans and specifications, bidding form, bidding
3 instructions, general conditions, special conditions and all other
4 written instruments prepared by or on behalf of an awarding public
5 agency for use by prospective bidders on a public construction
6 contract;

7 4. "Chief administrative officer" means an individual
8 responsible for directing the administration of a public agency.
9 The term does not mean one or all of the individuals that make
10 policy for a public agency;

11 5. "Public agency" means the State of Oklahoma, and any county,
12 city, town, school district or other political subdivision of the
13 state, any public trust, any public entity specifically created by
14 the statutes of the State of Oklahoma or as a result of statutory
15 authorization therefor, and any department, agency, board, bureau,
16 commission, committee or authority of any of the foregoing public
17 entities;

18 6. "Public construction contract" or "contract" means any
19 contract, exceeding Fifty Thousand Dollars (\$50,000.00) in amount,
20 awarded by any public agency for the purpose of making any public
21 improvements or constructing any public building or making repairs
22 to or performing maintenance on the same except where the
23 improvements, construction of any building or repairs to the same
24 are improvements or buildings leased to a person or other legal

1 entity exclusively for private and not for public use and no public
2 tax revenues shall be expended on or for the contract unless the
3 public tax revenues used for the project are authorized by a
4 majority of the voters of the applicable public agency voting at an
5 election held for that purpose and the public tax revenues do not
6 exceed twenty-five percent (25%) of the total project cost. The
7 amount of public tax dollars committed to the project will not
8 exceed a fixed amount established by resolution of the governing
9 body prior to or concurrent with approval of the project. "Public
10 construction contract" or "contract" also means any contract that is
11 derived from other forms of consideration such as a promise of
12 performance, including, but not limited to, pledging a percentage of
13 revenues or toll charges due to a public agency, is funded with
14 public funds, and is awarded by any public agency for the purpose of
15 making any public improvements or constructing any public building,
16 road, or bridge whereby the public agency has an agreement to
17 authorize a private entity to make such improvements or construction
18 and transfer the improvement, building, road, or bridge to the
19 public agency at a later date. However, the term "public
20 construction contract" or "contract" shall not apply to nor shall
21 such term include any type of contract or agreement relating to,
22 involving, or associated with any type of establishment or
23 restaurant that sells food;

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1 7. "Public improvement" means any beneficial or valuable change
2 or addition, betterment, enhancement or amelioration of or upon any
3 real property, or interest therein, belonging to a public agency,
4 intended to enhance its value, beauty or utility or to adapt it to
5 new or further purposes. The term does not include the direct
6 purchase of materials, equipment or supplies by a public agency, or
7 any personal property, including property as defined in paragraphs 1
8 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma
9 Statutes; and

10 8. "Retainage" means the difference between the amount earned
11 by the contractor on a public construction contract, with the work
12 being accepted by the public agency, and the amount paid on said
13 contract by the public agency.

14 SECTION 2. AMENDATORY 61 O.S. 2001, Section 122, is
15 amended to read as follows:

16 Section 122. A. Any taxpayer of the State of Oklahoma, or any
17 bona fide unsuccessful bidder on a particular public construction
18 contract, within ~~ten (10)~~ fifteen (15) business days after any such
19 contract has been executed, is empowered to bring suit in the
20 district court of the county where the work, or the major part of
21 it, is to be done to enjoin the performance of such contract if
22 entered into in violation of the provisions of this act.

23 B. Any person who willfully violates any provision of the
24 Public Competitive Bidding Act of 1974, upon conviction, shall be

1 guilty of a felony and shall be punished by imprisonment in the
2 custody of the Department of Corrections for not more than two (2)
3 years or by a fine of not more than One Thousand Dollars
4 (\$1,000.00), or by both the imprisonment and the fine.

5 SECTION 3. This act shall become effective November 1, 2011.

6 Passed the Senate the 28th day of February, 2011.

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Presiding Officer of the Senate

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10 Passed the House of Representatives the ____ day of _____,

11 2011.

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Presiding Officer of the House
of Representatives

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