

1 STATE OF OKLAHOMA

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

3 SENATE BILL 127

By: Ellis

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5  
6 AS INTRODUCED

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;

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

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

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

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

21          6. "Public construction contract" or "contract" means any  
22 contract, exceeding Fifty Thousand Dollars (\$50,000.00) in amount,  
23 awarded by any public agency for the purpose of making any public  
24 improvements or constructing any public building or making repairs

1 to or performing maintenance on the same except where the  
2 improvements, construction of any building or repairs to the same  
3 are improvements or buildings leased to a person or other legal  
4 entity exclusively for private and not for public use and no public  
5 tax revenues shall be expended on or for the contract unless the  
6 public tax revenues used for the project are authorized by a  
7 majority of the voters of the applicable public agency voting at an  
8 election held for that purpose and the public tax revenues do not  
9 exceed twenty-five percent (25%) of the total project cost. The  
10 amount of public tax dollars committed to the project will not  
11 exceed a fixed amount established by resolution of the governing  
12 body prior to or concurrent with approval of the project. "Public  
13 construction contract" or "contract" also means any contract that is  
14 derived from other forms of consideration such as a promise of  
15 performance, including, but not limited to, pledging a percentage of  
16 revenues or toll charges due to a public agency, and is awarded by  
17 any public agency for the purpose of making any public improvements  
18 or constructing any public building, road, or bridge whereby the  
19 public agency has an agreement to authorize a private entity to make  
20 such improvements or construction and transfer the improvement,  
21 building, road, or bridge back to the public agency at a later date;

22 7. "Public improvement" means any beneficial or valuable change  
23 or addition, betterment, enhancement or amelioration of or upon any  
24 real property, or interest therein, belonging to a public agency,

1 intended to enhance its value, beauty or utility or to adapt it to  
2 new or further purposes. The term does not include the direct  
3 purchase of materials, equipment or supplies by a public agency, or  
4 any personal property, including property as defined in paragraphs 1  
5 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma  
6 Statutes; and

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

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

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

20 B. Any person who willfully violates any provision of the  
21 Public Competitive Bidding Act of 1974, upon conviction, shall be  
22 guilty of a felony and shall be punished by imprisonment in the  
23 custody of the Department of Corrections for not more than two (2)

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1 years or by a fine of not more than One Thousand Dollars  
2 (\$1,000.00), or by both the imprisonment and the fine.

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

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