STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

SENATE BILL 1164 By: Ellis

AS INTRODUCED

An Act relating to the Public Competitive Bidding Act of 1974; amending 61 O.S. 2011, Sections 102, as last amended by Section 1, Chapter 186, O.S.L. 2013, and 122 (61 O.S. Supp. 2013, Section 102), which relate to definitions and taxpayer suits; modifying certain definition; modifying certain time limitation; adding penalty; and providing an effective date.

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 102, as last amended by Section 1, Chapter 186, O.S.L. 2013 (61 O.S. Supp. 2013, Section 102), is amended to read as follows:

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

1. "Administrator" means the State Construction Administrator of the Construction and Properties Division of the Office of Management and Enterprise Services;

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

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

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

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

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

entity exclusively for private and not for public use and no public tax revenues shall be expended on or for the contract unless the public tax revenues used for the project are authorized by a majority of the voters of the applicable public agency voting at an election held for that purpose and the public tax revenues do not exceed twenty-five percent (25%) of the total project cost. The amount of public tax dollars committed to the project will not exceed a fixed amount established by resolution of the governing body prior to or concurrent with approval of the project. "Public construction contract" or "contract" also means any contract that is derived from other forms of consideration such as a promise of performance, including, but not limited to, pledging a percentage of revenues or toll charges due to a public agency, and is awarded by any public agency for the purpose of making any public improvements or constructing any public building, road or bridge whereby the public agency has an agreement to authorize a private entity to make such improvements or construction and transfer the improvement, building, road, or bridge back to the public agency at a later date;

7. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, equipment or supplies by a public agency, or

any personal property, including property as defined in paragraphs 1 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma Statutes;

8. "Purchasing cooperative" means an association of public entities working together to provide leverage in achieving best value and/or the best terms in contracts awarded through a competitive bidding process; and

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

SECTION 2. AMENDATORY 61 O.S. 2011, Section 122, is amended to read as follows:

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

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

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

SECTION 3. This act shall become effective November 1, 2014.

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