

STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

FLOOR SUBSTITUTE
FOR ENGROSSED

SENATE BILL NO. 1714

By: Justice of the Senate

and

Morrisette of the House

FLOOR SUBSTITUTE

An Act relating to public buildings and public works;
amending 61 O.S. 2001, Sections 102, as last amended
by Section 2, Chapter 257, O.S.L. 2009 and 103, as
amended by Section 15, Chapter 271, O.S.L. 2006 (61
O.S. Supp. 2009, Sections 102 and 103), which relate
to the Public Competitive Bidding Act of 1974;
defining term; modifying requirements for the
awarding of certain contracts; and providing an
effective date.

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

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

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

1 1. "Administrator" means the State Construction Administrator
2 of the Construction and Properties Division of the Department of
3 Central Services;

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

7 3. "Best value" means an optional competitive bidding system
8 for objective evaluation and ranking of competitive proposals
9 submitted by bidders, where such competitive proposals are used to
10 identify the lowest price bidder that can best complete the proposed
11 contract with a minimum of deviation from the owner's cost and
12 schedule requirements. Information requested by the awarding public
13 agency and provided by the bidder for evaluation and ranking
14 purposes includes:

15 a. a price proposal, which shall be the basis of a lump
16 sum contract,

17 b. past performance information, which shall be used to
18 determine that the bidder has successfully completed
19 similar work in the past,

20 c. proposed technical work approach, along with a
21 milestone schedule, which shall be used to establish
22 that the bidder has sufficient experience and can
23 identify a logical plan to complete the work,
24

- 1 d. risk assessment plan, with shall be used to establish
2 that the bidder can identify project risks and manage
3 those risks to minimize cost and schedule deviation,
4 e. additional attributes of the bidder that may be
5 unique, which shall be used to identify additional
6 project value that would be realized by the owner,
7 f. interview with key personnel, which shall be used to
8 establish that the bidder's personnel assigned to the
9 project possess the experience and expertise to plan
10 and manage the work,
11 g. after project award, but prior to contract execution,
12 ability to develop a plan for risk minimization and
13 performance measures to establish performance
14 outcomes, and provide for regular performance
15 reporting to the owner, and
16 h. when applicable, additional technical or operational
17 criteria unique to the project which would be used to
18 establish that the bidder's proposal has addressed
19 such special project requirements;

20 4. "Bidding documents" means the bid notice, instruction to
21 bidders, plans and specifications, bidding form, bidding
22 instructions, general conditions, special conditions and all other
23 written instruments prepared by or on behalf of an awarding public
24

1 agency for use by prospective bidders on a public construction
2 contract;

3 ~~4.~~ 5. "Chief administrative officer" means an individual
4 responsible for directing the administration of a public agency.
5 The term does not mean one or all of the individuals that make
6 policy for a public agency;

7 ~~5.~~ 6. "Public agency" means the State of Oklahoma, and any
8 county, city, town, school district or other political subdivision
9 of the state, any public trust, any public entity specifically
10 created by the statutes of the State of Oklahoma or as a result of
11 statutory authorization therefor, and any department, agency, board,
12 bureau, commission, committee or authority of any of the foregoing
13 public entities;

14 ~~6.~~ 7. "Public construction contract" or "contract" means any
15 contract, exceeding Fifty Thousand Dollars (\$50,000.00) in amount,
16 awarded by any public agency for the purpose of making any public
17 improvements or constructing any public building or making repairs
18 to or performing maintenance on the same except where the
19 improvements, construction of any building or repairs to the same
20 are improvements or buildings leased to a person or other legal
21 entity exclusively for private and not for public use and no public
22 tax revenues shall be expended on or for the contract unless the
23 public tax revenues used for the project are authorized by a
24 majority of the voters of the applicable public agency voting at an

1 election held for that purpose and the public tax revenues do not
2 exceed twenty-five percent (25%) of the total project cost. The
3 amount of public tax dollars committed to the project will not
4 exceed a fixed amount established by resolution of the governing
5 body prior to or concurrent with approval of the project;

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

15 ~~8.~~ 9. "Retainage" means the difference between the amount
16 earned by the contractor on a public construction contract, with the
17 work being accepted by the public agency, and the amount paid on
18 said contract by the public agency.

19 SECTION 2. 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 or best value

1 bidder, by open competitive bidding after solicitation for sealed
2 bids, in accordance with the provisions of the Public Competitive
3 Bidding Act of 1974. No work shall be commenced until a written
4 contract is executed and all required bonds and insurance have been
5 provided by 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 or best value
9 bidder by receipt of written bids. No work shall be commenced until
10 a written contract is executed and proof of insurance has been
11 provided by the 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) for minor maintenance or minor repair work may
15 be negotiated with a qualified contractor. No work shall be
16 commenced until a written contract is executed and proof of
17 insurance has been provided by the contractor to the awarding public
18 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 or best value bidder by
3 receipt of written bids. No work shall be commenced on any such
4 public construction contract until a written contract is executed
5 and proof of insurance has been provided by the contractor to the
6 awarding public agency.

7 E. The Department of Central Services is authorized to use best
8 value construction contracting. For award of any contract using a
9 best value evaluation and ranking system, the Department of Central
10 Services shall, in advance of issuing a bid solicitation, develop a
11 scoring matrix for the evaluation and ranking of attributes
12 described in subparagraph a of paragraph 3 of Section 102 of this
13 title. Requirements for bid submission information shall be stated
14 in the bid documents. The bid price shall be publicly opened and
15 read aloud at the time and place stated in the competitive proposal
16 solicitation. Other than the price proposal, interviews with
17 shortlisted firms and preproject planning data, information
18 submitted with a sealed competitive proposal shall be evaluated and
19 ranked by the awarding agency's selection committee without
20 knowledge of the bidder's identity. Requirements for bonds and
21 insurance to accompany the competitive proposal shall be in
22 accordance with Section 113 of this title. For any contract award
23 to other than the lowest price bidder, the provisions of Section 117
24 of this title shall apply.

SECTION 3. This act shall become effective November 1, 2010.

52-2-10721 LRB 04/20/10