

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

COMMITTEE SUBSTITUTE  
FOR

HOUSE BILL NO. 1789

By: Pae

COMMITTEE SUBSTITUTE

An Act relating to public buildings and public works;  
amending 61 O.S. 2011, Section 103, as last amended  
by Section 2, Chapter 405, O.S.L. 2019 (61 O.S. Supp.  
2020, Section 103), which relates to competitive  
bidding; authorizing certain local governmental units  
to create purchasing cooperative; providing for  
notice and publication; providing for compliance of  
requirements; and providing an effective date.

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 103, as last  
amended by Section 2, Chapter 405, O.S.L. 2019 (61 O.S. Supp. 2020,  
Section 103), is amended to read as follows:

Section 103. A. Unless otherwise provided by law, all public  
construction contracts exceeding Fifty Thousand Dollars (\$50,000.00)  
shall be let and awarded to the lowest responsible bidder, by open  
competitive bidding after solicitation for sealed bids, in  
accordance with the provisions of the Public Competitive Bidding Act  
of 1974. No work shall be commenced until a written contract is

1 executed and all required bonds and insurance have been provided by  
2 the contractor to the awarding public agency.

3 B. Notwithstanding subsection A of this section, in awarding  
4 public construction contracts exceeding Fifty Thousand Dollars  
5 (\$50,000.00), counties, cities, other local units of government and  
6 any public trust with a county or a municipality as its sole  
7 beneficiary may provide for a local bid preference of not more than  
8 five percent (5%) of the bid price if the awarding public agency  
9 determines that there is an economic benefit to the local area or  
10 economy. Provided, however, the local bidder or contractor must  
11 agree to perform the contract for the same price and terms as the  
12 bid proposed by the nonlocal bidder or contractor. Any bid  
13 preference granted hereunder must be in accordance with an  
14 established policy adopted by the governing body of the awarding  
15 public agency to clearly demonstrate the economic benefit to the  
16 local area or economy. Provided, further, no local bid preference  
17 shall be granted unless the local bidding entity is the second  
18 lowest qualified bid on the contract. The bid specifications shall  
19 clearly state that the bid is subject to a local bidder preference  
20 law. For purposes of this section, "local bid" means the bidding  
21 person is authorized to transact business in this state and  
22 maintains a bona fide establishment for transacting such business  
23 within this state. This provision does not apply to any  
24 construction contract for which federal funds are available for

1 expenditure when its provisions may be in conflict with federal law  
2 or regulation.

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

11 D. Except as provided in subsection E of this section, other  
12 construction contracts for less than Five Thousand Dollars  
13 (\$5,000.00) may be negotiated with a qualified contractor. Work may  
14 be commenced in accordance with the purchasing policies of the  
15 public agency.

16 E. The provisions of this subsection shall apply to public  
17 construction for minor maintenance or minor repair work to public  
18 school district property. Other construction contracts for less  
19 than Twenty-five Thousand Dollars (\$25,000.00) may be negotiated  
20 with a qualified contractor. Construction contracts equal to or  
21 greater than Twenty-five Thousand Dollars (\$25,000.00) but less than  
22 Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the  
23 lowest responsible bidder by receipt of written bids. No work shall  
24 be commenced on any construction contract until a written contract

1 is executed and proof of insurance has been provided by the  
2 contractor to the awarding public agency.

3 F. The Construction and Properties Division of the Office of  
4 Management and Enterprise Services may award contracts using best  
5 value competitive proposals. As used in this subsection, "best  
6 value" means an optional contract award system which can evaluate  
7 and rank submitted competitive performance proposals to identify the  
8 proposal with the greatest value to the state. The Office of  
9 Management and Enterprise Services, pursuant to the Administrative  
10 Procedures Act, shall promulgate rules necessary to implement the  
11 provisions of this subsection.

12 G. 1. A public agency shall not let or award a public  
13 construction contract exceeding Fifty Thousand Dollars (\$50,000.00)  
14 to any contractor affiliated with a purchasing cooperative unless  
15 the purchasing cooperative and the contractor have complied with all  
16 of the provisions of the Public Competitive Bidding Act of 1974,  
17 including but not limited to open competitive bidding after  
18 solicitation for sealed bids. A public agency shall not let or  
19 award a public construction contract exceeding Five Thousand Dollars  
20 (\$5,000.00) up to Fifty Thousand Dollars (\$50,000.00) to any  
21 contractor affiliated with a purchasing cooperative unless the  
22 purchasing cooperative and the contractor have complied with all of  
23 the provisions of the Public Competitive Bidding Act of 1974,  
24

1 including submission of a written bid upon notice of competitive  
2 bidding.

3 2. A purchasing cooperative and its affiliated contractors  
4 shall not be allowed to bid on any public construction contract  
5 exceeding Fifty Thousand Dollars (\$50,000.00) unless the purchasing  
6 cooperative and its affiliated contractors have complied with all of  
7 the provisions of the Public Competitive Bidding Act of 1974,  
8 including but not limited to open competitive bidding after  
9 solicitation for sealed bids. A purchasing cooperative and its  
10 affiliated contractors shall not be allowed to bid on any public  
11 construction contract exceeding Two Thousand Five Hundred Dollars  
12 (\$2,500.00) unless the purchasing cooperative and its affiliated  
13 contractors have complied with all of the provisions of the Public  
14 Competitive Bidding Act of 1974, including submission of a written  
15 bid upon notice of open competitive bidding.

16 3. Local governmental units, or local governmental units  
17 cooperating under the terms of any interlocal cooperative agreement  
18 authorized by state law, may create a purchasing cooperative or  
19 contract with a purchasing cooperative to provide leverage in  
20 achieving best value or the best terms in contracts. To encourage  
21 intergovernmental collaboration, any purchasing cooperative or  
22 interlocal cooperative entity may utilize any single legal newspaper  
23 of this state to serve as sufficient compliance for bid notice  
24 requirements of competitive bidding or solicitation of bids. If the

purchasing cooperative or interlocal cooperative entity is engaging  
in a project exclusive to a county or group of counties of this  
state, and not open to all governmental units or public trusts that  
wish to participate statewide, the bid notice shall be published in  
a legal newspaper located within the county or group of counties.  
Any local governmental unit or public trust that enters into  
membership or contracts with a purchasing cooperative or interlocal  
cooperative entity may enter into purchases or contracts under the  
terms negotiated by the purchasing cooperative or interlocal  
cooperative entity. If the purchasing cooperative or interlocal  
cooperative entity complies with the requirements of this section of  
law, all local governmental units shall be deemed in compliance with  
the requirements set forth for bid notices and publication.

SECTION 2. This act shall become effective November 1, 2021.

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