

1 ENGROSSED HOUSE
2 BILL NO. 1789

By: Pae of the House

3 and

4 Howard of the Senate
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7 An Act relating to public buildings and public works;
8 amending 61 O.S. 2011, Section 103, as last amended
9 by Section 2, Chapter 405, O.S.L. 2019 (61 O.S. Supp.
10 2020, Section 103), which relates to competitive
11 bidding; authorizing certain local governmental units
12 to create purchasing cooperative; providing for
notice and publication; providing for compliance of
requirements; and providing an effective date.

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

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

17 Section 103. A. Unless otherwise provided by law, all public
18 construction contracts exceeding Fifty Thousand Dollars (\$50,000.00)
19 shall be let and awarded to the lowest responsible bidder, by open
20 competitive bidding after solicitation for sealed bids, in
21 accordance with the provisions of the Public Competitive Bidding Act
22 of 1974. No work shall be commenced until a written contract is
23 executed and all required bonds and insurance have been provided by
24 the contractor to the awarding public agency.

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

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

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

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

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

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

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

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

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

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

13 Passed the House of Representatives the 18th day of February,
14 2021.

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17 Presiding Officer of the House
18 of Representatives

19 Passed the Senate the ____ day of _____, 2021.

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22 Presiding Officer of the Senate

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