

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1789

By: Pae of the House

and

7 **Howard** of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to public buildings and public works;
12 amending 61 O.S. 2011, Section 103, as last amended
13 by Section 2, Chapter 405, O.S.L. 2019 (61 O.S. Supp.
14 2020, Section 103), which relates to competitive
15 bidding; authorizing certain local governmental units
16 to create purchasing cooperative; providing for
17 notice and publication; providing for compliance of
18 requirements; and providing an effective date.

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

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

23 Section 103. A. Unless otherwise provided by law, all public
24 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

1 accordance with the provisions of the Public Competitive Bidding Act
2 of 1974. No work shall be commenced until a written contract is
3 executed and all required bonds and insurance have been provided by
4 the contractor to the awarding public agency.

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

1 within this state. This provision does not apply to any
2 construction contract for which federal funds are available for
3 expenditure when its provisions may be in conflict with federal law
4 or regulation.

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

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

18 E. The provisions of this subsection shall apply to public
19 construction for minor maintenance or minor repair work to public
20 school district property. Other construction contracts for less
21 than Twenty-five Thousand Dollars (\$25,000.00) may be negotiated
22 with a qualified contractor. Construction contracts equal to or
23 greater than Twenty-five Thousand Dollars (\$25,000.00) but less than
24 Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the

1 lowest responsible bidder by receipt of written bids. No work shall
2 be commenced on any construction contract until a written contract
3 is executed and proof of insurance has been provided by the
4 contractor to the awarding public agency.

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

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

1 the provisions of the Public Competitive Bidding Act of 1974,
2 including submission of a written bid upon notice of competitive
3 bidding.

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

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

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

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

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17 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION AND
18 EFFICIENCY, dated 02/10/2021 - DO PASS, As Amended and Coauthored.
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