

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1789

By: Pae

4  
5  
6 AS INTRODUCED

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  
13 notice and publication; providing for compliance of  
14 requirements; and providing an effective date.

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

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

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

24

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 a single legal newspaper  
21 of this state or a nationally distributed newspaper to serve as the  
22 sole public notice to meet notice and publication requirements as  
23 required under state and local law. Any local governmental unit  
24 that enters into membership or contracts with a purchasing

1 cooperative or interlocal cooperative entity may enter into  
2 purchases or contracts under the terms negotiated by the purchasing  
3 cooperative or interlocal cooperative entity. If the purchasing  
4 cooperative or interlocal cooperative entity complies with the  
5 requirements of this section, all local governmental units shall be  
6 deemed in compliance with the requirements set forth in this section  
7 for bid notices.

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

9  
10 58-1-5608 LRB 01/04/21  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24