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February 9, 2023

By: Hall

An Act relating to public buildings and public works; amending 61 O.S. 2021, Section 103, as amended by Section 23, Chapter 228, O.S.L. 2022 (61 O.S. Supp. 2022, Section 103), which relates to competitive bidding; designating exemption; and providing an effective date.

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

SECTION 1. AMENDATORY 61 O.S. 2021, Section 103, as amended by Section 23, Chapter 228, O.S.L. 2022 (61 O.S. Supp. 2022, Section 103), is amended to read as follows:

Section 103. A. Unless otherwise provided by law, all public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) or construction management trade contracts or subcontracts 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 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 One Hundred Thousand Dollars  
3 (\$100,000.00) or construction management trade contracts or  
4 subcontracts exceeding Fifty Thousand Dollars (\$50,000.00),  
5 counties, cities, other local units of government and any public  
6 trust with a county or a municipality as its sole beneficiary may  
7 provide for a local bid preference of not more than five percent  
8 (5%) of the bid price if the awarding public agency determines that  
9 there is an economic benefit to the local area or economy.  
10 Provided, however, the local bidder or contractor must agree to  
11 perform the contract for the same price and terms as the bid  
12 proposed by the nonlocal bidder or contractor. Any bid preference  
13 granted hereunder must be in accordance with an established policy  
14 adopted by the governing body of the awarding public agency to  
15 clearly demonstrate the economic benefit to the local area or  
16 economy. Provided, further, no local bid preference shall be  
17 granted unless the local bidding entity is the second lowest  
18 qualified bid on the contract. The bid specifications shall clearly  
19 state that the bid is subject to a local bidder preference law. For  
20 purposes of this section, "local bid" means the bidding person is  
21 authorized to transact business in this state and maintains a bona  
22 fide establishment for transacting such business within this state.  
23 This provision does not apply to any construction contract for which  
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1 federal funds are available for expenditure when its provisions may  
2 be in conflict with federal law 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 One Hundred Thousand Dollars (\$100,000.00) or less  
7 shall be let and awarded to the lowest responsible bidder by receipt  
8 of 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 Ten Thousand Dollars  
13 (\$10,000.00) may be negotiated with a qualified contractor. Work  
14 may 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 Fifty Thousand Dollars (\$50,000.00) but less than One  
22 Hundred Thousand Dollars (\$100,000.00) shall be let and awarded to  
23 the lowest responsible bidder by receipt of written bids. No work  
24 shall be commenced on any construction contract until a written

1 contract 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 One Hundred Thousand Dollars  
14 (\$100,000.00) or a construction management trade contract or  
15 subcontract exceeding Fifty Thousand Dollars (\$50,000.00) to any  
16 contractor affiliated with a purchasing cooperative unless the  
17 purchasing cooperative and the contractor have complied with all of  
18 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 Ten Thousand Dollars  
22 (\$10,000.00) up to One Hundred Thousand Dollars (\$100,000.00) 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 One Hundred Thousand Dollars (\$100,000.00) or any  
7 construction management trade contract or subcontract exceeding  
8 Fifty Thousand Dollars (\$50,000.00) unless the purchasing  
9 cooperative and its affiliated contractors have complied with all of  
10 the provisions of the Public Competitive Bidding Act of 1974,  
11 including but not limited to open competitive bidding after  
12 solicitation for sealed bids. A purchasing cooperative and its  
13 affiliated contractors shall not be allowed to bid on any public  
14 construction contract exceeding Five Thousand Dollars (\$5,000.00)  
15 unless the purchasing cooperative and its affiliated contractors  
16 have complied with all of the provisions of the Public Competitive  
17 Bidding Act of 1974, including submission of a written bid upon  
18 notice of open competitive bidding.

19 3. Local governmental units, or local governmental units  
20 cooperating under the terms of any interlocal cooperative agreement  
21 authorized by state law, may create a purchasing cooperative or  
22 contract with a purchasing cooperative to provide leverage in  
23 achieving best value or the best terms in contracts. To encourage  
24 intergovernmental collaboration, any purchasing cooperative or

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

17 H. The provisions of the Public Competitive Bidding Act of 1974  
18 shall not apply to a monetary donation made to a municipality for a  
19 specific public purpose which has been approved by the municipal  
20 government.

21 SECTION 2. This act shall become effective November 1, 2023.

22 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
23 February 9, 2023 - DO PASS  
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