

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3223

By: West (Kevin)

AS INTRODUCED

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. 2023, Section 103), which relates to solicitation of bids and award of contracts; modifying provisions related to local bid preference; requiring certain units of local government to utilize local bid preference; providing an effective date; and declaring an emergency.

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. 2023, 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

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

6 B. Notwithstanding subsection A of this section, in awarding
7 public construction contracts exceeding One Hundred Thousand Dollars
8 (\$100,000.00) or construction management trade contracts or
9 subcontracts exceeding Fifty Thousand Dollars (\$50,000.00),
10 counties, cities, other local units of government and any public
11 trust with a county or a municipality as its sole beneficiary ~~may~~
12 shall provide for a local bid preference of not more than five
13 percent (5%) of the bid price ~~if the awarding public agency~~
14 ~~determines that there is an economic benefit to the local area or~~
15 ~~economy~~. Provided, however, the local bidder or contractor must
16 agree to perform the contract for the same price and terms as the
17 bid proposed by the nonlocal bidder or contractor. ~~Any bid~~
18 ~~preference granted hereunder must be in accordance with an~~
19 ~~established policy adopted by the governing body of the awarding~~
20 ~~public agency to clearly demonstrate the economic benefit to the~~
21 ~~local area or economy~~. Provided, further, no local bid preference
22 shall be granted unless the local bidding entity is the second
23 lowest qualified bid on the contract. The bid specifications shall
24 clearly state that the bid is subject to a local bidder preference

1 law. For purposes of this section, "local bid" means the bidding
2 person is authorized to transact business in this state and
3 maintains a bona fide establishment for transacting such business
4 within this state. This provision does not apply to any
5 construction contract for which federal funds are available for
6 expenditure when its provisions may be in conflict with federal law
7 or regulation.

8 C. Except as provided in subsection E of this section, other
9 construction contracts for the purpose of making any public
10 improvements or constructing any public building or making repairs
11 to the same for One Hundred Thousand Dollars (\$100,000.00) or less
12 shall be let and awarded to the lowest responsible bidder by receipt
13 of written bids or awarded on the basis of competitive quotes to the
14 lowest responsible qualified contractor. Work may be commenced in
15 accordance with the purchasing policies of the public agency.

16 D. Except as provided in subsection E of this section, other
17 construction contracts for less than Ten Thousand Dollars
18 (\$10,000.00) may be negotiated with a qualified contractor. Work
19 may be commenced in accordance with the purchasing policies of the
20 public agency.

21 E. The provisions of this subsection shall apply to public
22 construction for minor maintenance or minor repair work to public
23 school district property. Other construction contracts for less
24 than Twenty-five Thousand Dollars (\$25,000.00) may be negotiated
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1 with a qualified contractor. Construction contracts equal to or
2 greater than Fifty Thousand Dollars (\$50,000.00) but less than One
3 Hundred Thousand Dollars (\$100,000.00) shall be let and awarded to
4 the lowest responsible bidder by receipt of written bids. No work
5 shall be commenced on any construction contract until a written
6 contract is executed and proof of insurance has been provided by the
7 contractor to the awarding public agency.

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

17 G. 1. A public agency shall not let or award a public
18 construction contract exceeding One Hundred Thousand Dollars
19 (\$100,000.00) or a construction management trade contract or
20 subcontract exceeding 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 including but not limited to open competitive bidding after
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1 solicitation for sealed bids. A public agency shall not let or
2 award a public construction contract exceeding Ten Thousand Dollars
3 (\$10,000.00) up to One Hundred Thousand Dollars (\$100,000.00) to any
4 contractor affiliated with a purchasing cooperative unless the
5 purchasing cooperative and the contractor have complied with all of
6 the provisions of the Public Competitive Bidding Act of 1974,
7 including submission of a written bid upon notice of competitive
8 bidding.

9 2. A purchasing cooperative and its affiliated contractors
10 shall not be allowed to bid on any public construction contract
11 exceeding One Hundred Thousand Dollars (\$100,000.00) or any
12 construction management trade contract or subcontract exceeding
13 Fifty Thousand Dollars (\$50,000.00) unless the purchasing
14 cooperative and its affiliated contractors have complied with all of
15 the provisions of the Public Competitive Bidding Act of 1974,
16 including but not limited to open competitive bidding after
17 solicitation for sealed bids. A purchasing cooperative and its
18 affiliated contractors shall not be allowed to bid on any public
19 construction contract exceeding Five Thousand Dollars (\$5,000.00)
20 unless the purchasing cooperative and its affiliated contractors
21 have complied with all of the provisions of the Public Competitive
22 Bidding Act of 1974, including submission of a written bid upon
23 notice of open competitive bidding.
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1 3. Local governmental units, or local governmental units
2 cooperating under the terms of any interlocal cooperative agreement
3 authorized by state law, may create a purchasing cooperative or
4 contract with a purchasing cooperative to provide leverage in
5 achieving best value or the best terms in contracts. To encourage
6 intergovernmental collaboration, any purchasing cooperative or
7 interlocal cooperative entity may utilize any single legal newspaper
8 of this state to serve as sufficient compliance for bid notice
9 requirements of competitive bidding or solicitation of bids. If the
10 purchasing cooperative or interlocal cooperative entity is engaging
11 in a project exclusive to a county or group of counties of this
12 state, and not open to all governmental units or public trusts that
13 wish to participate statewide, the bid notice shall be published in
14 a legal newspaper located within the county or group of counties.
15 Any local governmental unit or public trust that enters into
16 membership or contracts with a purchasing cooperative or interlocal
17 cooperative entity may enter into purchases or contracts under the
18 terms negotiated by the purchasing cooperative or interlocal
19 cooperative entity. If the purchasing cooperative or interlocal
20 cooperative entity complies with the requirements of this section of
21 law, all local governmental units shall be deemed in compliance with
22 the requirements set forth for bid notices and publication.

23 SECTION 2. This act shall become effective July 1, 2024.
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1 SECTION 3. It being immediately necessary for the preservation
2 of the public peace, health or safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.
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