

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3879

By: Wallace

AS INTRODUCED

An Act relating to competitive bidding; amending 61 O.S. 2011, Sections 102, as last amended by Section 1, Chapter 186, O.S.L. 2013, 103, as last amended by Section 2, Chapter 405, O.S.L. 2019, 103.5, Section 1, Chapter 288, O.S.L. 2014, 104, as last amended by Section 1, Chapter 40, O.S.L. 2017, 107, as last amended by Section 313, Chapter 304, O.S.L. 2012, 113, as last amended by Section 3, Chapter 299, O.S.L. 2019, 119.1 and 130, as last amended by Section 1, Chapter 293, O.S.L. 2016 (61 O.S. Supp. 2019, Sections 102, 103, 103.7, 104, 107, 113 and 130), which relate to the Public Competitive Bidding Act of 1974; modifying certain monetary limits for public construction contracts; and providing an effective date.

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 102, as last amended by Section 1, Chapter 186, O.S.L. 2013 (61 O.S. Supp. 2019, Section 102), is amended to read as follows:

Section 102. As used in the Public Competitive Bidding Act of 1974:

1 1. "Administrator" means the State Construction Administrator
2 of the Construction and Properties Division of the Office of
3 Management and Enterprise Services;

4 2. "Awarding public agency" means the public agency which
5 solicits and receives sealed bids on a particular public
6 construction contract;

7 3. "Bidding documents" means the bid notice, instruction to
8 bidders, plans and specifications, bidding form, bidding
9 instructions, general conditions, special conditions and all other
10 written instruments prepared by or on behalf of an awarding public
11 agency for use by prospective bidders on a public construction
12 contract;

13 4. "Chief administrative officer" means an individual
14 responsible for directing the administration of a public agency.
15 The term does not mean one or all of the individuals that make
16 policy for a public agency;

17 5. "Public agency" means the State of Oklahoma, and any county,
18 city, town, school district or other political subdivision of the
19 state, any public trust, any public entity specifically created by
20 the statutes of the State of Oklahoma or as a result of statutory
21 authorization therefor, and any department, agency, board, bureau,
22 commission, committee or authority of any of the foregoing public
23 entities;

1 6. "Public construction contract" or "contract" means any
2 contract, exceeding ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred
3 Thousand Dollars (\$100,000.00) in amount, awarded by any public
4 agency for the purpose of making any public improvements or
5 constructing any public building or making repairs to or performing
6 maintenance on the same except where the improvements, construction
7 of any building or repairs to the same are improvements or buildings
8 leased to a person or other legal entity exclusively for private and
9 not for public use and no public tax revenues shall be expended on
10 or for the contract unless the public tax revenues used for the
11 project are authorized by a majority of the voters of the applicable
12 public agency voting at an election held for that purpose and the
13 public tax revenues do not exceed twenty-five percent (25%) of the
14 total project cost. The amount of public tax dollars committed to
15 the project will not exceed a fixed amount established by resolution
16 of the governing body prior to or concurrent with approval of the
17 project;

18 7. "Public improvement" means any beneficial or valuable change
19 or addition, betterment, enhancement or amelioration of or upon any
20 real property, or interest therein, belonging to a public agency,
21 intended to enhance its value, beauty or utility or to adapt it to
22 new or further purposes. The term does not include the direct
23 purchase of materials, equipment or supplies by a public agency, or
24 any personal property, including property as defined in paragraphs 1

1 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma
2 Statutes;

3 8. "Purchasing cooperative" means an association of public
4 entities working together to provide leverage in achieving best
5 value and/or the best terms in contracts awarded through a
6 competitive bidding process; and

7 9. "Retainage" means the difference between the amount earned
8 by the contractor on a public construction contract, with the work
9 being accepted by the public agency, and the amount paid on said
10 contract by the public agency.

11 SECTION 2. AMENDATORY 61 O.S. 2011, Section 103, as last
12 amended by Section 2, Chapter 405, O.S.L. 2019 (61 O.S. Supp. 2019,
13 Section 103), is amended to read as follows:

14 Section 103. A. Unless otherwise provided by law, all public
15 construction contracts exceeding ~~Fifty Thousand Dollars (\$50,000.00)~~
16 One Hundred Thousand Dollars (\$100,000.00) shall be let and awarded
17 to the lowest responsible bidder, by open competitive bidding after
18 solicitation for sealed bids, in accordance with the provisions of
19 the Public Competitive Bidding Act of 1974. No work shall be
20 commenced until a written contract is executed and all required
21 bonds and insurance have been provided by the contractor to the
22 awarding public agency.

23 B. Notwithstanding subsection A of this section, in awarding
24 public construction contracts exceeding ~~Fifty Thousand Dollars~~

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

23 C. Except as provided in subsection E of this section, other
24 construction contracts for the purpose of making any public

1 improvements or constructing any public building or making repairs
2 to the same for ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred
3 Thousand Dollars (\$100,000.00) or less shall be let and awarded to
4 the lowest responsible bidder by receipt of written bids or awarded
5 on the basis of competitive quotes to the lowest responsible
6 qualified contractor. Work may be commenced in accordance with the
7 purchasing policies of the public agency.

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

13 E. The provisions of this subsection shall apply to public
14 construction for minor maintenance or minor repair work to public
15 school district property. Other construction contracts for less
16 than ~~Twenty-five Thousand Dollars (\$25,000.00)~~ Fifty Thousand
17 Dollars (\$50,000.00) may be negotiated with a qualified contractor.
18 Construction contracts equal to or greater than ~~Twenty-five Thousand~~
19 ~~Dollars (\$25,000.00)~~ Fifty Thousand Dollars (\$50,000.00) but less
20 than ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred Thousand
21 Dollars (\$100,000.00) shall be let and awarded to the lowest
22 responsible bidder by receipt of written bids. No work shall be
23 commenced on any construction contract until a written contract is
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1 executed and proof of insurance has been provided by the contractor
2 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 ~~Fifty Thousand Dollars (\$50,000.00)~~
14 One Hundred Thousand Dollars (\$100,000.00) to any contractor
15 affiliated with a purchasing cooperative unless the purchasing
16 cooperative and the contractor have complied with all of the
17 provisions of the Competitive Bidding Act of 1974, including but not
18 limited to open competitive bidding after solicitation for sealed
19 bids. A public agency shall not let or award a public construction
20 contract exceeding ~~Five Thousand Dollars (\$5,000.00)~~ Ten Thousand
21 Dollars (\$10,000.00) up to ~~Fifty Thousand Dollars (\$50,000.00)~~ One
22 Hundred Thousand Dollars (\$100,000.00) to any contractor affiliated
23 with a purchasing cooperative unless the purchasing cooperative and
24 the contractor have complied with all of the provisions of the

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

3 2. A purchasing cooperative and its affiliated contractors
4 shall not be allowed to bid on any public construction contract
5 exceeding ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred Thousand
6 Dollars (\$100,000.00) unless the purchasing cooperative and its
7 affiliated contractors have complied with all of the provisions of
8 the Public Competitive Bidding Act of 1974, including but not
9 limited to open competitive bidding after solicitation for sealed
10 bids. A purchasing cooperative and its affiliated contractors shall
11 not be allowed to bid on any public construction contract exceeding
12 ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Five Thousand Dollars
13 (\$5,000) 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 SECTION 3. AMENDATORY 61 O.S. 2011, Section 103.5, is
18 amended to read as follows:

19 Section 103.5 For purposes of the provisions of the Public
20 Competitive Bidding Act of 1974, contracts not exceeding ~~Fifty~~
21 ~~Thousand Dollars (\$50,000.00)~~ One Hundred Thousand Dollars
22 (\$100,000.00) entered into solely for right-of-way clearance by the
23 Transportation Commission and the Oklahoma Transportation Authority
24 for the exclusive purpose of demolition and removal of buildings,

1 foundations, slab floors, stem walls, steps, brush, shrubs,
2 brickbats or stone and all rubbish, scrap iron, fencing, and debris,
3 and the installation of new right-of-way fencing, shall not be
4 considered to be public construction contracts and shall not be
5 required to be open for competitive bidding.

6 SECTION 4. AMENDATORY Section 1, Chapter 288, O.S.L. 2014
7 (61 O.S. Supp. 2019, Section 103.7), is amended to read as follows:

8 Section 103.7 For purposes of the provisions of the Public
9 Competitive Bidding Act of 1974, contracts entered into solely for
10 projects and activities by the Oklahoma Department of Wildlife
11 Conservation relating to fish and wildlife conservation shall be let
12 and awarded using the competitive bidding process as set forth in
13 the Public Competitive Bidding Act of 1974. However, for contracts
14 of ~~Twenty-five Thousand Dollars (\$25,000.00)~~ Fifty Thousand Dollars
15 (\$50,000.00) or less the Department may administer the competitive
16 bidding process and let and award the contract itself rather than
17 the Construction and Properties Division of the Office of Management
18 and Enterprise Services.

19 SECTION 5. AMENDATORY 61 O.S. 2011, Section 104, as last
20 amended by Section 1, Chapter 40, O.S.L. 2017 (61 O.S. Supp. 2019,
21 Section 104), is amended to read as follows:

22 Section 104. All proposals to award public construction
23 contracts shall be made equally and uniformly known by the awarding
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1 public agency to all prospective bidders and the public in the
2 following manner:

3 1. Notice thereof shall be given by publication in a newspaper
4 of general circulation and published in the county where the work,
5 or the major part of it, is to be done, such notice by publication
6 to be published in two consecutive weekly issues of the newspaper,
7 with the first publication thereof to be at least twenty-one (21)
8 days prior to the date set for opening bids; and

9 2. Notice thereof shall be sent to one in-state trade or
10 construction publication for their use and information whenever the
11 estimated cost of the contract exceeds ~~Fifty Thousand Dollars~~
12 ~~(\$50,000.00)~~ One Hundred Thousand Dollars (\$100,000.00); provided,
13 however, this section shall not be construed to require the
14 publication of the notice in such trade or construction publication
15 or the requirement to provide the notice to more than one in-state
16 trade or construction publication or to any out-of-state trade or
17 construction publications.

18 SECTION 6. AMENDATORY 61 O.S. 2011, Section 107, as last
19 amended by Section 313, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
20 2019, Section 107), is amended to read as follows:

21 Section 107. A. A bidder on a public construction contract
22 exceeding ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred Thousand
23 Dollars (\$100,000.00) shall accompany the bid with:

1 1. A certified check, cashier's check or bid bond equal to five
2 percent (5%) of the bid, which shall be deposited with the awarding
3 public agency as a guaranty; or

4 2. An irrevocable letter of credit containing terms the
5 Construction and Properties Division of the Office of Management and
6 Enterprise Services prescribes, issued by a financial institution
7 insured by the Federal Deposit Insurance Corporation or the Federal
8 Savings and Loan Insurance Corporation for the benefit of the state,
9 on behalf of the awarding public agency, in an amount equal to five
10 percent (5%) of the bid. The awarding public agency shall deposit
11 the irrevocable letter of credit with the Division.

12 B. The cost of republication of the notice to bidders, actual
13 expenses incurred by reason of the bidder's default and the
14 difference between the low bid of the defaulting bidder and the
15 amount of the bid of the bidder to whom the contract is subsequently
16 awarded, but not to exceed the amount of the certified check,
17 cashier's check, bid bond or irrevocable letter of credit may, at
18 the discretion of the awarding public agency, be forfeited to the
19 awarding public agency in the event the apparently successful bidder
20 fails to execute the contract or fails to provide the required bonds
21 or irrevocable letters of credit and insurance to the awarding
22 public agency.

23 C. The public agency shall, upon receipt of notice from the
24 awarding public agency, return a certified or cashier's check, bid

1 bond, or irrevocable letter of credit to the successful bidder on
2 execution and delivery of the contract and required bonds or
3 irrevocable letters of credit and insurance. Checks of unsuccessful
4 bidders shall be returned to them in accordance with the terms of
5 the bid solicitation.

6 D. Nothing contained herein shall be construed so as to prevent
7 the awarding public agency or the courts from exonerating the bidder
8 and other parties to the bid security document from liability upon a
9 timely showing that the bidder committed what the courts have
10 determined under the common law to be an excusable bidding error and
11 for that reason it would not be equitable to enforce the bid
12 security.

13 SECTION 7. AMENDATORY 61 O.S. 2011, Section 113, as last
14 amended by Section 3, Chapter 299, O.S.L. 2019 (61 O.S. Supp. 2019,
15 Section 113), is amended to read as follows:

16 Section 113. A. Except as otherwise provided by law, within
17 the period of time, not to exceed sixty (60) days, specified in the
18 bid notice by the awarding public agency, a contract embodying the
19 terms set forth in the bidding documents shall be executed by the
20 awarding public agency or, where construction management at-risk is
21 the project delivery method, by the construction manager and the
22 successful bidder. No bidder shall obtain any property right in a
23 contract awarded under the provisions of the Public Competitive
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Bidding Act of 1974 until the contract has been fully executed by both the bidder and the awarding public agency.

B. Except as otherwise provided by law, within the period of time specified in subsection A of this section, the following shall be provided by the contractor to the awarding public agency for contracts exceeding ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred Thousand Dollars (\$100,000.00):

1. A bond or irrevocable letter of credit complying with the provisions of Section 1 of this title;

2. A bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing terms prescribed by the Construction and Properties Division of the Office of Management and Enterprise Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to ensure the proper and prompt completion of the work in accordance with the provisions of the contract and bidding documents;

3. A bond in a sum equal to the contract price or an irrevocable letter of credit containing terms as prescribed by the Division issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the

1 awarding public agency, in a sum equal to the contract price, to
2 protect the awarding public agency against defective workmanship and
3 materials for a period of one (1) year after acceptance of the
4 project, except when the awarding public agency is the Department of
5 Transportation or the Oklahoma Turnpike Authority, in such case the
6 period shall be for one (1) year after project completion; and

7 4. Public liability and workers' compensation insurance during
8 construction in reasonable amounts. A public agency may require the
9 contractor to name the public agency and its architects or
10 engineers, or both, as an additional assured under the public
11 liability insurance, which requirement, if made, shall be
12 specifically set forth in the bidding documents.

13 C. A single irrevocable letter of credit may be used to satisfy
14 paragraphs 1, 2 and 3 of subsection B of this section, provided such
15 single irrevocable letter of credit meets all applicable
16 requirements of subsection B of this section.

17 If the contractor needs additional time in which to obtain the
18 bond required pursuant to subsection B of this section, the
19 contractor may request and the awarding agency may allow the
20 contractor an additional sixty (60) days in which to obtain the
21 bond.

22 D. 1. After the award of a contract, but prior to its
23 execution, an awarding public agency, upon discovery of an
24 administrative error in the award process that would void an

1 otherwise valid award, may suspend the time of execution of the
2 contract. The agency may rescind the award and readvertise for
3 bids, or may direct correction of the error and award the contract
4 to the lowest responsible bidder, whichever shall be in the best
5 interests of the state.

6 2. If the awarding public agency has a governing body, the
7 agency shall, at the next regularly scheduled public business
8 meeting of the governing body of the agency, upon the record,
9 present to the governing body that an error has been made in the
10 award process and shall state the nature of the error. The
11 governing body, upon presentation of the facts of the error, may
12 rescind the award and readvertise for bids, or may direct correction
13 of the error and award the contract to the lowest responsible
14 bidder, whichever shall be in the best interests of the state.

15 E. No public agency shall require for any public construction
16 project, nor shall any general contractor submit a project bid based
17 on acquiring or participating in, any wrap-up, wrap-around, or
18 controlled insurance program. For the purposes of this subsection,
19 "wrap-up, wrap-around, or controlled insurance program" means any
20 insurance program that has the effect of disabling or rendering
21 inapplicable any workers' compensation, commercial general
22 liability, builders' risk, completed operations, or excess liability
23 insurance coverage carried by a subcontractor that is engaged or to
24 be engaged on a public construction project unless this is a cost

1 savings to the public or the need exists for a specialized or
2 complex insurance program and shall not apply to contracts less than
3 Seventy-five Million Dollars (\$75,000,000.00).

4 F. This act shall not apply to the public construction projects
5 of constitutional agencies which had authorized a wrap-up, wrap-
6 around, or controlled insurance program on or before April 11, 2000.

7 SECTION 8. AMENDATORY 61 O.S. 2011, Section 119.1, is
8 amended to read as follows:

9 Section 119.1 A. If no timely bid is received after bid
10 notices have been published on any proposed public construction
11 contract which does not exceed ~~Fifty Thousand Dollars (\$50,000.00)~~
12 One Hundred Thousand Dollars (\$100,000.00):

13 1. The governing body of a county, city, town or school
14 district may direct its employees or agents to negotiate the
15 contract with a prospective contractor; or

16 2. The state agency, as defined in Section 202 of this title,
17 shall request the State Construction Administrator of the
18 Construction and Properties Division to negotiate a contract on its
19 behalf.

20 B. The amount of a contract which may be awarded by the
21 governing body pursuant to this section shall not exceed ~~Fifty~~
22 ~~Thousand Dollars (\$50,000.00)~~ One Hundred Thousand Dollars
23 (\$100,000.00) and the work to be performed shall be as specified in
24 the initial bidding documents. The contract shall be executed

1 within six (6) months after the date initially set for opening of
2 bids. The contract and contract procedure shall conform to all
3 other applicable provisions of the Public Competitive Bidding Act of
4 1974.

5 SECTION 9. AMENDATORY 61 O.S. 2011, Section 130, as last
6 amended by Section 1, Chapter 293, O.S.L. 2016 (61 O.S. Supp. 2019,
7 Section 130), is amended to read as follows:

8 Section 130. A. The provisions of the Public Competitive
9 Bidding Act of 1974 with reference to notice and bids shall not
10 apply to an emergency if:

11 1. The governing body of a public agency declares by a two-
12 thirds (2/3) majority vote of all of the members of the governing
13 body that an emergency exists;

14 2. The Transportation Commission and the Oklahoma Tourism and
15 Recreation Commission, by majority vote of all the members of each
16 Commission, declare that an emergency exists; or

17 3. The chief administrative officer of a public agency without
18 a governing body declares that an emergency exists.

19 B. The governing body of a public agency may, upon approval of
20 two-thirds (2/3) majority of all of the members of the governing
21 body, delegate to the chief administrative officer of a public
22 agency the authority to declare an emergency whereby the provisions
23 of the Public Competitive Bidding Act of 1974 with reference to
24 notice and bids shall not apply to contracts less than ~~Seventy-five~~

1 ~~Thousand Dollars (\$75,000.00)~~ One Hundred Fifty Thousand Dollars
2 (\$150,000.00) in amount; provided, such authority of the Department
3 of Transportation and the Oklahoma Turnpike Authority shall not
4 extend to any contract exceeding Seven Hundred Fifty Thousand
5 Dollars (\$750,000.00) in amount and such authority of the Department
6 of Corrections shall not extend to any contract exceeding Two
7 Hundred Fifty Thousand Dollars (\$250,000.00) in amount for
8 situations in which the emergency impacts the conditions of
9 confinement, health and safety of correctional officers and inmates
10 in the custody of the Department of Corrections.

11 C. Upon approval of a two-thirds (2/3) majority vote, the
12 Oklahoma Conservation Commission may delegate to the Executive
13 Director the authority to declare an emergency and set a monetary
14 limit for the declaration. The provisions of this subsection may
15 only be used for the purpose of responding to an emergency involving
16 the reclamation of abandoned coal mines or the repair of damaged
17 upstream floodwater retarding structures.

18 D. An emergency declared by the Board of Corrections pursuant
19 to subsection C of Section 65 of this title shall exempt the
20 Department of Corrections from the limits which would otherwise be
21 imposed pursuant to subsection B of this section for the contracting
22 and construction of new or expanded correctional facilities.

23 E. The chief administrative officer of a public agency with a
24 governing body shall notify the governing body within ten (10) days

1 of the declaration of an emergency if the governing body did not
2 approve the emergency. The notification shall contain a statement
3 of the reasons for the action, and shall be recorded in the official
4 minutes of the governing body.

5 F. Emergency as used in this section shall be limited to
6 conditions resulting from a sudden unexpected happening or
7 unforeseen occurrence or condition whereby the public health or
8 safety is endangered.

9 G. The chief administrative officer of a public agency shall
10 report an emergency within ten (10) days of the emergency
11 declaration and include the official minutes of the governing body
12 of the public agency, if applicable, to the State Construction
13 Administrator of the Construction and Properties Division of the
14 Office of Management and Enterprise Services who shall compile an
15 annual report detailing all emergencies declared pursuant to this
16 section during the previous calendar year. The report shall be
17 submitted to the Governor, the President Pro Tempore of the Senate,
18 and the Speaker of the House of Representatives.

19 SECTION 10. This act shall become effective November 1, 2020.
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21 57-2-9567 AB 01/13/20
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