

**Oklahoma Public Competitive Bidding Act
State Statute 61 (101-138)
(That Pertains to CDBG projects)**

§61-101. Short title.

This act shall be known and may be cited as the "Public Competitive Bidding Act of 1974".

Added by Laws 1974, c. 298, § 1, operative Aug. 1, 1974.

§61-102. Definitions.

As used in the Public Competitive Bidding Act of 1974:

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

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

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

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

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

6. "Public construction contract" or "contract" means any contract, exceeding Fifty Thousand Dollars (\$50,000.00) in amount, awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs to or performing maintenance on the same except where the improvements, construction of any building or repairs to the same are improvements or buildings leased to a person or other legal entity exclusively for private and not for public use and no public tax revenues shall be expended on or for the contract unless the public tax revenues used for

the project are authorized by a majority of the voters of the applicable public agency voting at an election held for that purpose and the public tax revenues do not exceed twenty-five percent (25%) of the total project cost. The amount of public tax dollars committed to the project will not exceed a fixed amount established by resolution of the governing body prior to or concurrent with approval of the project;

7. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, equipment or supplies by a public agency, or any personal property, including property as defined in paragraphs 1 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma Statutes; and

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

Added by Laws 1974, c. 298, § 2, operative Aug. 1, 1974.

Amended by Laws 1975, c. 266, § 1, emerg. eff. June 5, 1975; Laws 1977, c. 74, § 1, eff. Oct. 1, 1977; Laws 1979, c. 28, § 1, emerg. eff. April 3, 1979; Laws 1990, c. 158, § 1, emerg. eff. May 1, 1990; Laws 1994, c. 7, § 5, emerg. eff. March 29, 1994; Laws 1998, c. 365, § 2, eff. July 1, 1998; Laws 1999, c. 149, § 2, eff. July 1, 1999; Laws 2000, c. 363, § 8, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 13, eff. Nov. 1, 2002; Laws 2004, c. 97, § 1, emerg. eff. April 14, 2004; Laws 2005, c. 1, § 89, emerg. eff. March 15, 2005; Laws 2006, c. 271, § 14, eff. July 1, 2006; Laws 2009, c. 257, § 2, eff. Nov. 1, 2009; Laws 2012, c. 304, § 311.

NOTE: Laws 2004, c. 52, § 1 repealed by Laws 2005, c. 1, § 90, emerg. eff. March 15, 2005.

§61-103. Governing law - Solicitation and award of contracts.

A. Unless otherwise provided by law, all public 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 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.

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

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

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

E. The Construction and Properties Division of the Office of Management and Enterprise Services may award contracts using best value competitive proposals. As used in this subsection, "best value" means an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the state. The Office of Management and Enterprise Services, pursuant to the Administrative Procedures Act, shall promulgate rules necessary to implement the provisions of this subsection. Added by Laws 1974, c. 298, § 3, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 2, emerg. eff. June 5, 1975; Laws 2001, c. 298, § 2, emerg. eff. May 31, 2001; Laws 2006, c. 271, § 15, eff. July 1, 2006; Laws 2010, c. 98, § 2, eff. Nov. 1, 2010; Laws 2011, c. 362, § 1, eff. Nov. 1, 2011; Laws 2012, c. 304, § 312.

§61-103.1. Repealed by Laws 1984, c. 101, § 1, eff. July 1, 1984.

§61-103.2. Political subdivision may appoint purchasing agent.

The governing body of any political subdivision of this state may duly appoint as its agent any individual or individual of a legal entity, with whom the political subdivision has duly entered into a public contract pursuant to law, to make purchases necessary for carrying out the public contract.

Added by Laws 1981, c. 243, § 2, emerg. eff. June 23, 1981.

§61-103.3. Repealed by Laws 2002, c. 294, § 35, eff. Nov. 1, 2002.

§61-103.4. School districts - Erection of building or making improvements on force account basis - Emergency asbestos abatement - Exemptions.

Nothing in the Public Competitive Bidding Act of 1974 shall be construed to prohibit a school district from erecting a building or making improvements on a force account basis. Contracts between a state agency and a school district for the purpose of emergency asbestos abatement shall be exempt from the provisions of the Public Competitive Bidding Act of 1974.

Added by Laws 1999, c. 86, § 2, eff. July 1, 1999.

§61-103.5. Right-of-way clearance by Transportation Commission and Authority - Competitive bidding not required.

For purposes of the provisions of the Public Competitive Bidding Act of 1974, contracts not exceeding Fifty Thousand Dollars (\$50,000.00) entered into solely for right-of-way clearance by the Transportation Commission and the Oklahoma Transportation Authority for the exclusive purpose of demolition and removal of buildings, foundations, slab floors, stem walls, steps, brush, shrubs, brickbats or stone and all rubbish, scrap iron, fencing, and debris, and the installation of new right-of-way fencing, shall not be considered to be public construction contracts and shall not be required to be open for competitive bidding.

Added by Laws 1999, c. 341, § 1, eff. Nov. 1, 1999.

NOTE: Editorially renumbered from § 103.4 of this title to avoid a duplication in numbering.

§61-103.6. Expired.

NOTE: This section, from Laws 2009, c. 273, § 1, expired July 1, 2011. Laws 2009, c. 273, § 5 provides: "Sections 1 and 2 of this act shall cease to have the force and effect of law on July 1, 2011."

§61-104. Bid notices.

All proposals to award public construction contracts shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the following manner:

1. Notice thereof shall be given by publication in a newspaper of general circulation and published in the county where the work, or the major part of it, is to be done, such notice by publication to be published in two consecutive weekly issues of the newspaper, with the first publication thereof to be at least twenty (20) days prior to the date set for opening bids; and

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

Added by Laws 1974, c. 298, § 4, operative Aug. 1, 1974.

Amended by Laws 1975, c. 266, § 3, emerg. eff. June 5, 1975; Laws 2002, c. 294, § 14, eff. Nov. 1, 2002; Laws 2012, c. 40, § 1, emerg. eff. April 13, 2012.

§61-105. Contents of bid notices.

All bid notices shall set forth the following information:

1. The character of the proposed public construction contract in sufficient details that all bidders shall know exactly what their obligation will be, either in the bid notice itself or by reference to bidding documents on file in the main office of the awarding public agency; and

2. The name of the officer, agent or employee of the awarding public agency and the office location and address of such person, from whom a complete set of bidding documents regarding such proposed contract may be obtained, together with the amount of the cost deposit required therefor, if any; and

3. The date, time and place of opening of the sealed bids; and

4. The name and office location and address of the office of the awarding public agency to whom the sealed bids should be submitted; and

5. Any additional information regarding such proposed contract deemed by the awarding public agency to be of beneficial interest to prospective bidders or the public. Added by Laws 1974, c. 298, § 5, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 4, emerg. eff. June 5, 1975.

§61-106. Bidding documents to be on file.

At least one complete set of bidding documents regarding a proposed public construction contract shall be on file in the main office of the awarding public agency at least twenty (20) days prior to the date set for opening bids. The officer, agent or employee of the awarding public agency designated in the bid notice shall have a sufficient number of complete sets of said bidding documents and shall provide a complete set of same to any prospective bidder, upon request; provided, however, that the awarding public agency may require a reasonable deposit for each such set; provided, that such deposit shall not exceed the actual cost of duplicating or printing. The public agency may retain all or part of said deposit if so stated in the notice for bids.

Added by Laws 1974, c. 298, § 6, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 5, emerg. eff. June 5, 1975.

§61-107. Check, bond or irrevocable letter of credit to accompany bid.

A. A bidder on a public construction contract exceeding Fifty Thousand Dollars (\$50,000.00) shall accompany the bid with:

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

2. An irrevocable letter of credit containing terms the Construction and Properties Division of the Office of Management and Enterprise Services prescribes, 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 an amount equal to five percent (5%) of the bid. The awarding public agency shall deposit the irrevocable letter of credit with the Division.

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

C. The public agency shall, upon receipt of notice from the awarding public agency, return a certified or cashier's check, bid bond, or irrevocable letter of credit to the successful bidder on execution and delivery of the contract and required bonds or irrevocable letters of credit and insurance. Checks of unsuccessful bidders shall be returned to them in accordance with the terms of the bid solicitation.

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

Added by Laws 1974, c. 298, § 7, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 6, emerg. eff. June 5, 1975; Laws 1986, c. 110, § 2, emerg. eff. April 9, 1986; Laws 1992, c. 239, § 2, emerg. eff. May 19, 1992; Laws 1993, c. 293, § 1, emerg. eff. June 3, 1993; Laws 1995, c. 156, § 1, eff. July 1, 1995; Laws 1998, c. 365, § 3, eff. July 1, 1998; Laws 2000, c. 363, § 9, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 15, eff. Nov. 1, 2002; Laws 2006, c. 271, § 16, eff. July 1, 2006; Laws 2012, c. 304, § 313.

§61-108. Written statement under oath to accompany bid.

Each bidder shall accompany the bid with a written statement under oath disclosing the following information:

1. The nature of any partnership, joint venture or other business relationships then in effect or which existed within one (1) year prior to the date of such statement with the architect, engineer or other party to the project;

2. Any such business relationship then in effect or which existed within one (1) year prior to the date of such statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project; and

3. The names of all persons having any such business relationships and the positions they hold with their respective companies or firms. If none of the business relationships hereinabove mentioned exist, then a statement to that effect.

Added by Laws 1974, c. 298, § 8, operative Aug. 1, 1974.

Amended by Laws 2008, c. 212, § 1, emerg. eff. May 19, 2008.

§61-109. Late bids.

Any bid received by the awarding public agency or an officer or employee thereof, more than ninety-six (96) hours excluding Saturdays, Sundays and holidays before the time set for the opening of bids, or any bid so received after the time set for opening of bids, shall not be considered by the awarding public agency and shall be returned unopened to the bidder submitting same.

Added by Laws 1974, c. 298, § 9, operative Aug. 1, 1974.

§61-110. Opening of bids.

All bids shall be sealed and opened only at the time and place mentioned in the bidding documents, and read aloud in the presence of an administrative officer of the awarding public agency. Such bid opening shall be open to the public and to all bidders.

Added by Laws 1974, c. 298, § 10, operative Aug. 1, 1974.

Amended by Laws 2002, c. 294, § 16, eff. Nov. 1, 2002.

§61-111. Time for awarding of contract.

The awarding of a contract to the lowest responsible bidder or bidders shall be made within thirty (30) days after the opening of bids unless the governing body of the awarding public agency, by formal recorded action and for good cause shown, provides for a reasonable extension of that period, which extension period shall not in any event exceed fifteen (15) days where only state or local funds are involved, or not to exceed ninety (90) days on any award of contract for the construction of a public improvement where funds are utilized which are furnished by an agency of the United States Government. Upon mutual written agreement between the lowest responsible bidder or bidders and the awarding public agency, the Division may

extend the contract award period no more than one hundred twenty (120) days from the bid opening date.

Added by Laws 1974, c. 298, § 11, operative Aug. 1, 1974.

Amended by Laws 2006, c. 271, § 17, eff. July 1, 2006.

§61-112. Bids, contracts, bonds open for public inspection.

All bids, both successful and unsuccessful, and all contracts and required bonds shall be placed on file and maintained in the main office of the awarding public agency for a period of five (5) years from the date of opening of bids or for a period of three (3) years from the date of completion of the contract, whichever is longer, shall be open to public inspection and shall be matters of public record.

Added by Laws 1974, c. 298, § 12, operative Aug. 1, 1974.

Amended by Laws 1975, c. 266, § 7, emerg. eff. June 5, 1975.

§61-113. Execution of contract.

A. Except as otherwise provided by law, within the period of time, not to exceed sixty (60) days, specified in the bid notice by the awarding public agency, a contract embodying the terms set forth in the bidding documents shall be executed by the awarding public agency and the successful bidder. No bidder shall obtain any property right in a contract awarded under the provisions of the Public Competitive 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):

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 awarding public agency, in a sum equal to the contract price, to protect the awarding public agency against defective workmanship and materials for a period of one (1) year after acceptance of the project; and

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

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

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

D. 1. After the award of a contract, but prior to its execution, an awarding public agency, upon discovery of an administrative error in the award process that would void an otherwise valid award, may suspend the time of execution of the contract. The agency may rescind the award and readvertise for bids, or may direct correction of the error and award the contract to the lowest responsible bidder, whichever shall be in the best interests of the state.

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

E. No public agency shall require for any public construction project, nor shall any general contractor submit a project bid based on acquiring or participating in, any wrap-up, wrap-around, or controlled insurance program. For the purposes of this subsection, "wrap-up, wrap-around, or controlled insurance program" means any insurance program that has the effect of disabling or rendering inapplicable any workers' compensation, commercial general liability, builders' risk, completed operations, or excess liability insurance coverage carried by a subcontractor that is engaged or to be engaged on a public construction project unless this is a cost savings to the public or the need exists for a specialized or complex insurance program and shall not apply to contracts less than Seventy-five Million Dollars (\$75,000,000.00).

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

Added by Laws 1974, c. 298, § 13, operative Aug. 1, 1974.
Amended by Laws 1975, c. 266, § 8, emerg. eff. June 5, 1975; Laws 1986, c. 110, § 3, emerg. eff. April 9, 1986; Laws 1987, c. 26, § 1, eff. Nov. 1, 1987; Laws 1987, c. 191, § 12, operative July 1, 1987; Laws 1992, c. 239, § 3, emerg. eff. May 19, 1992; Laws 1998, c. 365, § 4, eff. July 1, 1998; Laws 2000, c. 46, § 1, emerg. eff. April 11, 2000; Laws 2000, c. 363, § 10, emerg. eff. June 6, 2000; Laws 2001, c. 298, § 3, emerg. eff. May 31, 2001; Laws 2002, c. 294, § 17, eff. Nov. 1, 2002; Laws 2004, c. 299, § 1, eff. Nov. 1, 2004; Laws 2006, c. 271, § 18, eff. July 1, 2006; Laws 2011, c. 362, § 2, eff. Nov. 1, 2011; Laws 2012, c. 304, § 314.

§61-113.1. Partial payment - Retainage.

A. A public construction contract shall provide for partial payment based upon work completed. The contract shall provide that up to five percent (5%) of all partial payments made shall be withheld as retainage.

B. The Department of Transportation or the Oklahoma Turnpike Authority shall not withhold retainage on public construction contracts awarded by the Department or the Authority.

C. The Department of Transportation shall not withhold retainage or require any bond on projects awarded to railroads on the railroad's privately owned or operated rail property.

Added by Laws 1977, c. 74, § 2, eff. Oct. 1, 1977. Amended by Laws 1983, c. 67, § 1, emerg. eff. April 29, 1983; Laws 1995, c. 200, § 2, emerg. eff. May 19, 1995; Laws 1997, c. 278, § 4, emerg. eff. May 27, 1997; Laws 2006, c. 271, § 19, eff. July 1, 2006; Laws 2011, c. 99, § 1, eff. Nov. 1, 2011.

§61-113.2. Withdrawal of retainage - Deposit of securities.

The contractor may, from time to time, withdraw any part, or the whole, of the amount which has been retained from partial payments to the contractor pursuant to the terms of contract, upon depositing with or delivery to the awarding public agency, or other appropriate public official designated in the contract document: (1) United States Treasury bonds, United States Treasury notes, United States Treasury bills, or (2) general obligation bonds of the State of Oklahoma, or (3) certificates of deposit from a state or national bank having its principal office in the State of Oklahoma. No retained amount shall be withdrawn which would represent an amount in excess of the market value of the securities at the time of deposit or of the par value of such securities, whichever is lower.

At the time of deposit of any securities the same shall be endorsed, if necessary, and shall be accompanied by a conditional assignment to the awarding public agency, or to the other public body designated as "owner" in the contract documents, which will empower the awarding public agency, or other appropriate public official designated to have custody of same, to negotiate same at any time to the extent necessary to cause the contract to be fulfilled. The securities which remain on deposit at the time of completion of any contract and observance by the parties to the contract of any other statutory obligations relative thereto shall be returned to the contractor.

Added by Laws 1977, c. 74, § 3, eff. Oct. 1, 1977.

§61-113.3. Interest - Rate.

When interest is due the contractor, all awarding public agencies, other than school districts, shall pay to the contractor interest at the rate of one and one-half percent (1 1/2%) per month of the final payment due the contractor. When interest is due to the contractor, school districts shall pay to the contractor interest at the rate of three fourths percent (3/4%) per month of the final payment due the contractor. For lump sum contracts the interest shall commence thirty (30) days after the work

under the contract has been completed and accepted and all required material certifications and other documentation required by the contract have been furnished the awarding public agency by the contractor, and shall run until the date when the final payment or estimate is tendered to the contractor.

For contracts bid by unit prices the interest shall commence sixty (60) days after the above conditions are satisfied. When contract quantities or the final payment amount is in dispute, the interest-bearing period shall be suspended until the conclusion of arbitration and settlement of the dispute.

Added by Laws 1977, c. 74, § 4, eff. Oct. 1, 1977. Amended by Laws 2006, c. 271, § 20, eff. July 1, 2006.

§61-114. Conflict of interest.

The chief administrative officer and members of the governing body of the awarding public agency authorizing or awarding or supervising the execution of a public construction contract, and their relatives within the third degree of consanguinity or affinity, are forbidden to be interested directly or indirectly through stock ownership, partnership interest or otherwise in any such contract. Contracts entered into in violation of this section shall be void. Persons willfully violating this section shall be guilty of a felony and shall be subject to removal from office.

Added by Laws 1974, c. 298, § 14, operative Aug. 1, 1974. Amended by Laws 1997, c. 133, § 515, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 515 from July 1, 1998, to July 1, 1999.

§61-115. Collusion among bidders or material suppliers.

Any agreement or collusion among bidders, prospective bidders or material suppliers in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding, or otherwise, shall render the bids of such bidders void. Persons willfully violating this section shall be guilty of a felony. Each bidder shall accompany the bid with a sworn statement that the bidder has not been a party to any such agreement. The form of the statement shall be substantially as provided in Section 85.22 of Title 74 of the Oklahoma Statutes, but modified in wording to refer to the appropriate public agency requesting bids.

Added by Laws 1974, c. 298, § 15, operative Aug. 1, 1974.
Amended by Laws 1980, c. 339, § 1, emerg. eff. June 25, 1980; Laws 1997, c. 133, § 516, eff. July 1, 1999; Laws 2002, c. 294, § 18, eff. Nov. 1, 2002; Laws 2008, c. 212, § 2, emerg. eff. May 19, 2008.

NOTE: Laws 1998, 1st Ex. Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 516 from July 1, 1998, to July 1, 1999.

§61-116. Disclosure of terms of bids - Public agency engineering estimates.

A. Any disclosure by an employee of a public agency of the terms of a bid submitted in response to a bid notice issued by a public agency in advance of the time set for opening of all bids so submitted shall be unlawful. It shall also be unlawful for any person to solicit, possess or receive information which is to be contained in a bid notice of a public agency, for use in preparing a bid, in advance of the date on which said bid notice is to be made equally and uniformly known to all prospective bidders and the public, and it shall further be unlawful for any employee of a public agency to withhold or impede the distribution of said information after notice of the bid has been given, unless the solicitation of bids has been withdrawn or the particular information in question has been deleted or replaced through alteration of the bid notice and said withdrawal or alteration has been made equally and uniformly known. Any violation of this subsection shall be a felony and shall render the proceedings void and require solicitation and award anew.

B. The estimate of the actual cost of the project made by the public agency, construction manager or consultant for the agency shall not be considered confidential and shall be available to the public in accordance with the Oklahoma Open Records Act.

Added by Laws 1974, c. 298, § 16, operative Aug. 1, 1974.
Amended by Laws 1976, c. 79, § 1, emerg. eff. May 3, 1976; Laws 1992, c. 239, § 4, emerg. eff. May 19, 1992; Laws 1997, c. 133, § 517, eff. July 1, 1999; Laws 1999, c. 341, § 2, eff. Nov. 1, 1999; Laws 2000, c. 66, § 1, emerg. eff. April 14, 2000; Laws 2002, c. 294, § 19, eff. Nov. 1, 2002; Laws 2006, c. 271, § 21, eff. July 1, 2006.

NOTE: Laws 1998, 1st Ex. Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 517 from July 1, 1998, to July 1, 1999.

§61-117. Award to other than lowest bidder.

If an award is made to other than the lowest bidder, the awarding public agency shall accompany its action with a publicized statement setting forth the reason for its action. Such statement shall be placed on file, open to public inspection and be a matter of public record. Added by Laws 1974, c. 298, § 17, operative Aug. 1, 1974.

§61-118. Prequalification of bidders.

A. In order to determine the responsibility of bidders, the awarding public agency may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify as responsible bidders prior to submitting bids on a public construction contract. Prequalification to bid or perform work pursuant to this section does not constitute a license. Except as provided in subsection B of this section, prequalification shall not serve as a substitute for a license otherwise required by law. Notice of any such prequalification requirement shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the same manner as proposals to award public construction contracts as set forth in Section 104 of this title. Financial information including, but not limited to, audited financial statements required by the awarding public agency as part of prequalification shall remain confidential.

B. The Oklahoma Transportation Commission and the Oklahoma Transportation Authority may establish a system for prequalifying prospective bidders on construction and maintenance contracts to be awarded by the Commission or Authority. The Commission and the Authority shall be the sole judge of the qualifications of prospective bidders and shall ascertain, to their exclusive satisfaction, the qualifications of each prequalified bidder. Any contractor or subcontractor prequalified as of the effective date of this act performing signing, highway lighting, or traffic signal installation or maintenance for the Oklahoma Department of Transportation or the Oklahoma Transportation Authority shall be allowed to continue to bid and perform such work without obtaining any additional license from this state or any political subdivision of this state. However, no contractor or subcontractor may transfer, convey or assign this exemption to any other person or entity.

Added by Laws 1974, c. 298, § 18, operative Aug. 1, 1974.
Amended by Laws 1992, c. 239, § 5, emerg. eff. May 19, 1992; Laws 1994, c. 203, § 2, eff. July 1, 1994; Laws 2000, c. 66, § 2, emerg. eff. April 14, 2000; Laws 2002, c. 294, § 20, eff. Nov. 1, 2002; Laws 2008, c. 212, § 3, emerg. eff. May 19, 2008.

§61-119. Rejection of bids.

By majority action of the governing board of the awarding public agency or the chief administrating officer of an awarding public agency without a governing board, the awarding public agency shall have the right to reject any or all bids and solicit bidders again as herein provided if, in the opinion of the governing body of the public agency, the best interests of the people of the State of Oklahoma would be best served by so doing.

Added by Laws 1974, c. 298, § 19, operative Aug. 1, 1974.
Amended by Laws 2002, c. 294, § 21, eff. Nov. 1, 2002.

§61-119.1. Certain contract to be negotiated when no bid is received.

A. If no timely bid is received after bid notices have been published on any proposed public construction contract which does not exceed Fifty Thousand Dollars (\$50,000.00):

1. The governing body of a county, city, town or school district may direct its employees or agents to negotiate the contract with a prospective contractor; or
2. The state agency as defined in Section 202 of this title, shall request the State Construction Administrator of the Construction and Properties Division to negotiate a contract on its behalf.

B. The amount of a contract which may be awarded by the governing body pursuant to this section shall not exceed Fifty Thousand Dollars (\$50,000.00) and the work to be performed shall be as specified in the initial bidding documents. The contract shall be executed within six (6) months after the date initially set for opening of bids. The contract and contract procedure shall conform to all other applicable provisions of the Public Competitive Bidding Act of 1974.

Added by Laws 1980, c. 339, § 3, emerg. eff. June 25, 1980.
Amended by Laws 1992, c. 9, § 1, eff. July 1, 1992; Laws 2006, c. 271, § 22, eff. July 1, 2006.

§61-120. Assignment of contracts.

No public construction contract shall be assignable by the successful bidder without written consent of the

governing body of the awarding public agency, evidenced by resolution. In no event shall such a contract be assigned to a bidder who was declared by the awarding public agency not to be a responsible bidder in the consideration of bids received for the particular contract.

Added by Laws 1974, c. 298, § 20, operative Aug. 1, 1974.

§61-121. Change orders or addenda.

A. Change orders or addenda to public construction contracts of One Million Dollars (\$1,000,000.00) or less shall not exceed a fifteen percent (15%) cumulative increase in the original contract amount.

B. Change orders or addenda to public construction contracts of over One Million Dollars (\$1,000,000.00) shall not exceed the greater of One Hundred Fifty Thousand Dollars (\$150,000.00) or a ten percent (10%) cumulative increase in the original contract amount.

C. Change orders or cumulative change orders which exceed the limits of subsection A or B of this section shall require a readvertising for bids on the incomplete portions of the contract.

D. If the awarding public agency does not have a governing body, the chief administrative officer of the awarding public agency shall approve change orders. The State Construction Administrator of the Construction and Properties Division of the Office of Management and Enterprise Services, or the Administrator's designee, shall sign and execute all contracts and change orders, as they relate to state agencies.

E. If the awarding public agency has a governing body, all change orders shall be formally approved by the governing body of the awarding public agency and the reasons for approval recorded in the permanent records of the governing body. The governing body of a municipality or technology center may delegate approval of change orders up to Forty Thousand Dollars (\$40,000.00) or ten percent (10%) of any contract, whichever is less, to the chief administrative officer of the municipality or technology center or their designee, with any approved change orders reported to the governing body at the next regularly scheduled meeting.

F. The governing body of the Oklahoma Tourism and Recreation Department is authorized, upon approval of a majority of all of the members of the Oklahoma Tourism and Recreation Commission, to delegate to the Director of the agency the authority to approve change orders on a construction contract provided that the individual change

order does not exceed Twenty-five Thousand Dollars (\$25,000.00) in expenditure and complies with the limits established by this section. The Administrator of the Division shall sign and execute all contracts and change orders.

G. The Transportation Commission may, by rule, authorize the Director of the Department of Transportation to approve change orders in an amount of not to exceed Five Hundred Thousand Dollars (\$500,000.00). Change orders approved by the Director shall be presented to the Transportation Commission during the next regular meeting and the reasons therefor recorded in the permanent records. The Oklahoma Turnpike Authority may authorize the Director of the Authority to approve change orders in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00). Change orders approved by the Director of the Authority shall be presented to the Authority during the next regular meeting and the reasons for the orders recorded in permanent records.

H. All change orders for the Department of Transportation or the Authority shall contain a unit price and total for each of the following items:

1. All materials with cost per item;
2. Itemization of all labor with number of hours per operation and cost per hour;
3. Itemization of all equipment with the type of equipment, number of each type, cost per hour for each type, and number of hours of actual operation for each type;
4. Itemization of insurance cost, bond cost, social security, taxes, workers' compensation, employee fringe benefits and overhead cost; and
5. Profit for the contractor.

I. 1. If a construction contract contains unit pricing, and the change order pertains to the unit price, the change order will not be subject to subsection A or B of this section.

2. When the unit price change does not exceed Ten Thousand Dollars (\$10,000.00), the unit price change order computation may be based on an acceptable unit price basis in lieu of cost itemization as required in paragraphs 1, 2, 3, 4 and 5 of subsection H of this section.

J. Alternates or add items bid with the original bid and contained in the awarded contract as options of the awarding public agency shall not be construed as change orders under the provisions of the Public Competitive Bidding Act of 1974.

Added by Laws 1974, c. 298, § 21, operative Aug. 1, 1974.
Amended by Laws 1975, c. 266, § 9, emerg. eff. June 5, 1975; Laws 1989, c. 164, § 1, emerg. eff. May 8, 1989; Laws 1993, c. 293, § 2, emerg. eff. June 3, 1993; Laws 1995, c. 200, § 3, emerg. eff. May 19, 1995; Laws 1997, c. 72, § 1, eff. Nov. 1, 1997; Laws 1998, c. 118, § 1, eff. July 1, 1998; Laws 2000, c. 363, § 11, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 22, eff. Nov. 1, 2002; Laws 2004, c. 328, § 2, eff. July 1, 2004; Laws 2006, c. 271, § 23, eff. July 1, 2006; Laws 2009, c. 257, § 3, eff. Nov. 1, 2009; Laws 2011, c. 112, § 1, eff. Nov. 1, 2011; Laws 2012, c. 304, § 315.

§61-122. Taxpayer suits to enjoin execution of unlawful contracts.

Any taxpayer of the State of Oklahoma, or any bona fide unsuccessful bidder on a particular public construction contract, within ten (10) days after any such contract has been executed, is empowered to bring suit in the district court of the county where the work, or the major part of it, is to be done to enjoin the performance of such contract if entered into in violation of the provisions of this act.

Added by Laws 1974, c. 298, § 22, operative Aug. 1, 1974.

§61-123. Supervisor's certification to accompany invoices - Exception.

A. All statements or invoices submitted to the awarding public agency for work performed shall contain a certification by the supervising architect or engineer, or other supervisory official if no supervisory architect or engineer is employed for the project, that work for which payment is claimed has been performed and that such work conforms to the plans and specifications for the project. No such statement or invoice shall be paid by the awarding public agency without such certification. The execution of a certificate, as herein provided, shall not constitute a defense or in any other manner affect any cause or causes of action which the awarding public agency might otherwise have against the contractor for nonperformance of a public construction contract.

B. If project progressive payments are based on the public agency's estimated quantities of materials provided and work performed, certifications are not required. Payment of progressive estimates shall not constitute a defense or in any manner affect any cause or causes of action which the awarding public agency might have against

the contractor for failure to properly perform in accordance with the project contract, plans, specifications, or special provisions. Final estimates shall contain a sworn certification signed by the contractor that the work performed and the material provided conform to the requirements of the contract, plans, specifications, and special provisions. Added by Laws 1974, c. 298, § 23, operative Aug. 1, 1974. Amended by Laws 2006, c. 271, § 24, eff. July 1, 2006; Laws 2007, c. 263, § 1, eff. Nov. 1, 2007.

§61-124. Inspections.

The awarding public agency shall make provision for the inspection of projects prior to acceptance by the said agency and shall approve claims for payment only after proper inspection has been made as provided in the plans and specifications for said project.

Added by Laws 1974, c. 298, § 24, operative Aug. 1, 1974.

§61-125. Accounting procedure.

The Director of the Office of Management and Enterprise Services shall prescribe the accounting procedure to be followed to pay costs and payments to contractors on public construction contracts with state agencies. The Director of the Office of Management and Enterprise Services is directed to include any procedures necessary to provide accountability for state funds and funds furnished by an agency of the United States Government.

Added by Laws 1974, c. 298, § 25, operative Aug. 1, 1974.

Amended by Laws 2012, c. 304, § 316.

§61-126. Construction on force account basis.

Nothing in this act shall be construed to prevent a public agency from doing public construction work on a force account basis.

Added by Laws 1974, c. 298, § 26, operative Aug. 1, 1974.

§61-127. Contracts made by a public entity - Applicability.

This act shall apply to contracts made by a public entity operating pursuant to the Local Industrial Development Act or the Local Development Act except where the public improvements, buildings, or repairs are being made or constructed as a part of an agreement to provide development financing assistance, and where the cost of such public improvements does not exceed twenty-five percent (25%) of the total amount of the estimated public

and private investment being made within the related increment district.

Added by Laws 1974, c. 298, § 27, operative Aug. 1, 1974.
Amended by Laws 2006, c. 271, § 25, eff. July 1, 2006; Laws 2011, c. 361, § 3.

§61-128. Builder's risk insurance.

The awarding public agency is authorized to require the contractor to carry builder's risk insurance against damage from fire and the elements during the process of construction to the extent of protecting said public agency's equity in said project until accepted by said agency.

Added by Laws 1974, c. 298, § 28, operative Aug. 1, 1974.
Amended by Laws 2002, c. 294, § 23, eff. Nov. 1, 2002.

§61-129. Contracts exempt.

A. The Public Competitive Bidding Act of 1974 shall not apply to contracts awarded or contracts for which bids have been solicited on or before August 1, 1974.

B. The Public Competitive Bidding Act of 1974 shall not apply to contracts awarded or contracts for which bids are solicited by CompSource Oklahoma if CompSource Oklahoma is operating pursuant to a pilot program authorized by Sections 1 and 2 of this act.

Added by Laws 1974, c. 298, § 29, operative Aug. 1, 1974.
Amended by Laws 2009, c. 454, § 5.

§61-130. Emergencies.

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

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

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

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

B. The governing body of a public agency may, upon approval of two-thirds (2/3) majority of all of the members of the governing body, delegate to the chief administrative officer of a public agency the authority to declare an emergency whereby the provisions of the Public Competitive Bidding Act of 1974 with reference to notice and bids shall

not apply to contracts less than Thirty-five Thousand Dollars (\$35,000.00) in amount; provided, such authority of the Department of Transportation and the Oklahoma Turnpike Authority shall not extend to any contract exceeding Five Hundred Thousand Dollars (\$500,000.00) in amount.

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

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

E. The chief administrative officer of a public agency with a governing body shall notify the governing body within ten (10) days of the declaration of an emergency if the governing body did not approve the emergency. The notification shall contain a statement of the reasons for the action, and shall be recorded in the official minutes of the governing body.

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

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

Added by Laws 1974, c. 298, § 30, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 10, emerg. eff. June 5, 1975; Laws 1981, c. 51, § 1, emerg. eff. April 13, 1981; Laws 1982, c. 151, § 1, emerg. eff. April 12, 1982; Laws 1997, c. 133, § 84, eff. July 1, 1997; Laws 1998, c. 364, § 16, emerg. eff. June 8, 1998; Laws 2000, c. 6, § 32, emerg.

eff. March 20, 2000; Laws 2000, c. 363, § 12, emerg. eff. June 6, 2000; Laws 2001, c. 298, § 4, emerg. eff. May 31, 2001; Laws 2002, c. 294, § 24, eff. Nov. 1, 2002; Laws 2007, c. 265, § 1, eff. Nov. 1, 2007; Laws 2011, c. 362, § 3, eff. Nov. 1, 2011; Laws 2012, c. 304, § 317.

NOTE: Laws 1997, c. 72, § 2 repealed by Laws 2000, c. 6, § 34, emerg. eff. March 20, 2000.

§61-131. Splitting of contracts - Punishment and fine.

No contract shall be split into partial contracts for the purpose of avoiding the requirements of this act. All such partial contracts shall be void. Any person who knowingly violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

Added by Laws 1974, c. 298, § 31, operative Aug. 1, 1974. Amended by Laws 1979, c. 28, § 2, emerg. eff. April 3, 1979; Laws 1998, c. 365, § 5, eff. July 1, 1998; Laws 2000, c. 363, § 13, emerg. eff. June 6, 2000; Laws 2006, c. 78, § 1, eff. Nov. 1, 2006; Laws 2006, c. 271, § 26, eff. July 1, 2006.

§61-132. Repealed by Laws 1983, c. 304, § 182, eff. July 1, 1983.

§61-133. Law governing.

If a statute, charter or general ordinance provides more stringent standards or procedures than those provided by this act, then the statute, charter or general ordinance shall prevail.

Added by Laws 1974, c. 298, § 33, operative Aug. 1, 1974.

§61-134. Insurance or bond to be secured from carrier licensed in Oklahoma.

Any insurance or bond required by this act shall be secured from an insurance or indemnity carrier licensed to do business in the State of Oklahoma.

Added by Laws 1974, c. 298, § 34, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 11, emerg. eff. June 5, 1975.

§61-135. Public agencies or officers not to exert influence in procuring particular bond or insurance.

A. No public agency, nor any officer, agent or employee thereof, nor any person acting or purporting to

act on behalf of such public agency or an officer, agent or employee thereof, shall, with respect to any public construction contract require or attempt to require a contractor or any subcontractor to make application to or to procure or obtain from a particular insurance or surety company, agent or broker, any of the bonds or insurance required by this act.

B. Any provisions in a public construction contract or in the bidding documents in conflict herewith are hereby declared to be contrary to the public policy of this state and thereby void.

C. Any person who violates this section shall, upon conviction, be deemed guilty of a misdemeanor.
Added by Laws 1975, c. 266, § 12, emerg. eff. June 5, 1975.

§61-136. Conflicts with federal rules and regulations -
Laws governing.

In the event any provision of this act conflicts with or is inconsistent in any manner with the rules and regulations of any agency of the United States Government, which is providing all or any portion of the funds used to finance any public construction contract, the rules and regulations of said agency of the United States Government shall supersede and take precedence over such portion or portions of this act in conflict or inconsistent therewith, it being the intent of the Legislature to secure all of the benefits available to the people of the State of Oklahoma from federally assisted programs.
Added by Laws 1975, c. 266, § 13, emerg. eff. June 5, 1975.

§61-137. Termination of certain unperformed contracts.

Any contract which has been bid under the provisions of the Public Competitive Bidding Act, Section 101 et seq. of Title 61 of the Oklahoma Statutes, and on which no work has been performed and no formal claim or litigation has been pending within the last twenty-four (24) months shall be terminated by the public agency which awarded the contract. After termination, the public agency shall determine the amount of any final payment due to the contractor and shall make such payment to the contractor at the contractor's last-known address, or if the public agency is unable to locate the contractor, the amount due shall be held in a separate account by the State Treasurer in the name of the contractor. Termination of the contract and payment to the contractor or deposit of the funds due to the contractor as determined by the public agency shall release the public agency from any further liability to the contractor or

surety company. Any such funds held by the State Treasurer for the contractor which are not claimed by the contractor within thirty-six (36) months from the date of deposit with the State Treasurer shall be deposited in the General Revenue Fund and the state shall have no further liability on the project to the contractor or surety company. Added by Laws 1992, c. 239, § 6, emerg. eff. May 19, 1992.

§61-138. Noncollusion affidavit attached to bid submitted to school district, county or municipality.

Any competitive bid submitted pursuant to the Public Competitive Bidding Act of 1974 to a school district, county or municipality for furnishing of goods or services shall be accompanied by the sworn noncollusion statement contained in Section 85.22 of this title, modified in wording to refer to the school district, county or municipality instead of the state.

Added by Laws 1974, c. 43, § 3, emerg. eff. April 13, 1974. Amended by Laws 1980, c. 339, § 2, emerg. eff. June 25, 1980. Renumbered from Title 74, § 85.24 by Laws 1999, c. 289, § 18, eff. July 1, 1999.