

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 51

By: Cole of the Senate

and

Gray of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public buildings and public works; defining terms; limiting application of act; requiring the board of county commissioners to maintain certain file; stating contents of file; stating time period for completion of certain evaluation; requiring evaluation be sent to consultants within certain time period and incorporated in certain file; stating time period in which certain firm shall be included in file; allowing counties to solicit certain evaluations from the private sector; requiring departments to define the scope of certain projects; requiring certain plans be approved by board of county commissioners; requiring certain notification; requiring consultants to meet certain requirements; requiring consultants to submit certain letter within certain time period; limiting time period of consultant's application; stating duration of contracts; providing procedure after expiration of expression of interest period; requiring forwarding certain files; allowing the director to include other data which may be beneficial to the department; providing procedure if expression of interest is inadequate; requiring the department to review consultant files and select certain number of consultants for consideration; providing procedure if more than one contract is being considered at the same time; requiring evaluation sheet be considered at initial screening; allowing other factors to be considered at initial screening; requiring certain in-state preference; requiring the department to negotiate contracts with selected consultants and providing procedure thereto; requiring the department to report fee negotiations to the board of county commissioners for approval; providing procedure if certain agreement cannot be reached; requiring certain drawings, plans, specifications and models to be property of the county and delivered to the board; requiring certain plans to be included in certain library system and providing access thereto; stating penalty for violation of county bidding procedures; negating application of certain section of law when emergency is declared; requiring consultant selected as result of emergency be selected by board of county commissioners; limiting amount of contract resulting during emergency; providing exception for emergency selection of consultants; limiting cost of emergency consultant contracts; requiring reason for emergency contract to be

recorded in department's official records; limiting emergencies to certain conditions; stating what constitutes an emergency; amending 61 O.S. 1991, Section 62, which relates to state consultants; clarifying language; limiting certain procedures to counties of certain population; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 66 of Title 61, unless there is created a duplication in numbering, reads as follows:

A. As used in Sections 1 through 5 of this act:

1. "Consultant" means any individual, firm, corporation, association, partnership, copartnership, or any other legal entity possessing the required qualifications to provide licensed architectural, registered engineering, and registered land surveying services for any public work improvement project;

2. "Department" means any agency or department of a county responsible for a public improvement work project;

3. "Director" means the director, commissioner or administrative head of any department of a county which seeks public work improvement through contracting with a consultant; and

4. "Public work improvement" means any highway, street, sewer, pavement, waterline, sidewalk or any other improvement or structure which is constructed, altered, repaired, or maintained under contract with a county and any building, highway, street, sewer, pavement, waterline, sidewalk, or any other improvement or structure which a county will assume possession or ownership of by contract, option to purchase agreement, or other agreement.

B. The provisions of Sections 1 through 5 of this act shall apply only to counties with a population of more than five hundred fifty thousand (550,000) according to the latest Federal Decennial Census.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 67 of Title 61, unless there is created a duplication in numbering, reads as follows:

A. A comprehensive file for all consultants interested in and capable of performing architectural, engineering, and land surveying services for a county shall be maintained by the board of county commissioners. These files shall include a completed application form, a resume of the consultant's staff and capability, completed performance evaluation form for past projects on which the consultants provided professional services, and a list of past contracts with the county. A performance evaluation shall be completed within thirty (30) days after final acceptance of the project. A copy of the performance evaluation shall be sent to the consultant within a thirty-day period for review and comment, if any, and shall be incorporated in the file. The file shall include the mailing address of each consultant firm.

Any firm wishing to be a consultant for a public work improvement contract may request at any time to be included in the comprehensive file, and must be included within twenty (20) days of the request.

A county may solicit evaluation of work done by consultants from members of the private sector, which shall be part of the comprehensive file.

B. The department shall define the scope of a proposed project, determine the various project components, phases and timetables, and prepare detailed project descriptions for the board of county commissioners. Before any contract is awarded for the construction, reconstruction or improvement of any county building, the plans must be approved by the board of county commissioners.

C. If the county intends to secure consultant services, all firms included in the file shall be notified through the mail of the intent. The notification shall contain the following information:

1. Description and scope of the project or projects;
2. Estimated construction cost and time schedule for the project;

3. Funds available, including federal, state or other participation;

4. Last date for submitting notice of interest in performing services to the director; and

5. Other pertinent data.

Consultants desiring consideration must meet the requirements of this act and must submit a letter to the department within thirty (30) days of the postmark date of the letter of notification mailed by the department. Consultants must have on file an application form not over twelve (12) months old. Any consultant contracts shall not exceed one (1) year in duration and shall be written on a nonencumbered basis.

D. After expiration of the period for expression of interest, the board of county commissioners shall forward the applicants' files or extracts of the files to the department responsible for the project. The director shall forward the files of those seeking to contract services for the project for all consultants to be considered. The director may include other data, information or comments that may be beneficial to the department. Should there be an inadequate expression of interest in the project, the contracting department and the director shall confer to add additional consultants for consideration which are known to be appropriate for the project.

E. The department shall review the consultant files forwarded by the board, and shall select no less than three and no more than five consultants for more detailed consideration. In the event interviews for more than one contract are being considered at the same time, the number of consultants selected for more detailed consideration should be at least twice the number of contracts contemplated. The initial screening should consider the requirements of the consultant interview evaluation sheet as well as the following factors to be determined from the consultant file:

1. Specialized experience in the type of work contemplated;

2. Capacity of the consultant to accomplish the work in the required time; and

3. Past performance, from the performance evaluation form.

Preference shall be given to firms whose principal place of business is located within this state.

F. The department shall negotiate the contract with the selected consultant, which contract shall include a fair and reasonable fee. The negotiated scope and fee shall be reported to the board for the approval of the award of the consultant service contract. If the department and the first-choice consultant cannot reach an agreement, their negotiations shall be terminated and negotiations with the second-choice consultant shall commence. If the department and the second-choice consultant cannot reach an agreement, their negotiations shall be terminated and negotiations with the third-choice consultant shall commence. If the department and the third-choice consultant cannot reach an agreement, then all negotiations shall be terminated. Should the department be unable to negotiate a satisfactory contract with any of the three selected consultants, the department shall select additional consultants in order of their competency and qualifications and shall continue negotiations in accordance with the provisions of this section until an agreement is reached.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 68 of Title 61, unless there is created a duplication in numbering, reads as follows:

All drawings, plans, specifications, and models made by a consultant doing work for a county shall be the property of the county, and shall be delivered to the board of county commissioners. The consultant receiving payment for plans paid for in whole or in part with county funds shall file the plans or specifications with the board for inclusion in a library system to be maintained by the board. Any county department, board, commission, institution, or agency shall have access to the use of any plans or specifications filed with the board.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 69 of Title 61, unless there is created a duplication in numbering, reads as follows:

Any consultant or person doing engineering work for a county, their agents, servants or employees, who shall receive gratuity from any contractor or builder of any public work improvement, or solicit, receive or make any political contribution from or to a contractor or builder of any public work improvement, or who attempts to interfere with the competitive bidding process of a county in any manner, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), and by imprisonment in the county jail for not less than six (6) months nor more than one (1) year. Any contractor or builder of any public work improvement, or the agents, servants or employees of such contractor or builder, who shall offer any gratuity or political contribution to any consultant doing engineering work for a county, or who attempts to interfere with the competitive bidding process of a county in any manner, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), and by imprisonment in the county jail for not less than six (6) months nor more than one (1) year.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 70 of Title 61, unless there is created a duplication in numbering, reads as follows:

A. The provisions of Sections 1 through 3 of this act shall not apply whenever the board of county commissioners with concurrence of the chief administrative officer of the department affected declares that an emergency exists. The consultant shall be selected by the board of county commissioners. The resulting consultant contract shall not exceed Seven Thousand Five Hundred Dollars (\$7,500.00). The reasons for the emergency shall be recorded in the official records of the department.

B. Emergency as used in this section shall be limited to conditions resulting from any of the following:

1. A sudden unexpected happening or unforeseen occurrence if it is impossible for the provisions of this act to be observed

because of the time factor and if the public health or safety is endangered.

2. A condition or situation which, if allowed to continue, would lead to economic loss to the county or to further damage of county property.

SECTION 6. AMENDATORY 61 O.S. 1991, Section 62, is amended to read as follows:

Section 62. A. A comprehensive file for all consultants interested in and capable of performing architectural, engineering, and land surveying services for the state shall be maintained by the ~~Office of Public Affairs~~ Department of Central Services. These files shall include a completed application form, a resume of the consultant's staff and capability, completed performance evaluation form for past projects on which the consultants provided professional services, and a list of past contracts with this state. A performance evaluation shall be completed within thirty (30) days after final acceptance of the project. A copy of the performance evaluation shall be sent to the consultant within a thirty-day period for review and comments, if any, and shall be incorporated in the file.

The file shall include the mailing address of each firm.

Any firm wishing to be a consultant for public work or "construction" as defined by the Public Building Construction and Planning Act may request at any time to be included in the comprehensive file, and must be so included within twenty (20) days of the request.

The state may solicit evaluation of work done by consultants from members of the private sector, which evaluation shall be part of the comprehensive file.

B. The department shall define the scope of a proposed project, determine the various project components, phases and timetables, and prepare detailed project descriptions in cooperation with the Division to guide prospective consultants. Before the Division awards a contract for the construction, reconstruction or improvement of any state building, the plans must be approved by the department.

C. If the state intends to secure consultant services, all firms included in the file shall be notified through the mail of such intent. Such notification shall contain the following information:

1. Description and scope of the project or projects;
2. Estimated construction cost and time schedule for project;
3. Funds available, including federal, state or other participation;
4. Last date for submitting notice of interest in performing services to director; and
5. Other pertinent data.

Consultants desiring consideration must meet the requirements of this act and to be considered must submit a letter to the department within thirty (30) days of the postmark date of the letter of notification mailed by the department. Consultants must have on file an application form not over twelve (12) months old. Provided however, the requirements of this subsection shall not apply to consultant contracts entered into by the ~~Office of Public Affairs~~ Department of Central Services for the purpose of providing minor project design services to state agencies on a reimbursable basis. Any such consultant contracts shall not exceed one (1) year in duration and shall be written on a nonencumbered basis for not to exceed Twenty-five Thousand Dollars (\$25,000.00) per consultant or consulting firm per year.

D. After expiration of the period for expression of interest, the Director of ~~Public Affairs~~ the Department of Central Services shall forward the applicants' files or extracts of the files to the department responsible for the project. The Director shall forward the files of those seeking to contract services for the project for all consultants to be considered. He may include such other data, information or comments that he thinks will be beneficial to the department. Should there be an inadequate expression of interest in the project, the contracting department and the Director shall confer to add additional consultants for consideration which are known to be appropriate for the project.

E. The department shall review the consultant files forwarded by the ~~Board~~ Department of Central Services, and shall select no less than three and no more than five consultants for more detailed consideration. In the event interviews for more than one contract are being considered at the same time, the number of consultants selected for more detailed consideration should be at least twice the number of contracts contemplated. This initial screening should consider the requirements of the consultant interview evaluation sheet as well as the following factors to be determined from the consultant file, the department staff and replies to inquiries to former clients:

1. Specialized experience in the type of work contemplated;
2. Capacity of the consultant to accomplish the work in the required time; and
3. Past performance, from the performance evaluation form.

Preference shall be given to firms whose principal place of business is located within the state.

F. A full report of the evaluation procedures and recommendations of the department shall be prepared by the department and submitted to the Office of the Governor for the independent review of the entire process.

G. The department shall negotiate the contract with the selected consultant, which contract shall include a fair and reasonable fee. The negotiated scope and fee shall be reported to the ~~Board~~ board for the approval of the award of the consultant service contract. If the department and the first-choice consultant cannot reach an agreement, their negotiations shall be terminated and negotiations with the second-choice consultant shall commence. If the department and the second-choice consultant cannot reach an agreement, their negotiations shall be terminated and negotiations with the third-choice consultant shall commence. If the department and the third-choice consultant cannot reach an agreement, then all negotiations shall be terminated. Should the department be unable to negotiate a satisfactory contract with any of the three selected consultants, the department shall select additional consultants in order of

their competency and qualifications and shall continue negotiations in accordance with the provisions of this section until an agreement is reached.

H. In the selection of a consultant to provide architectural, engineering, or land surveying services, all political subdivisions of this state except counties with a population of more than five hundred thousand (500,000) according to the latest Federal Decennial Census may follow these procedures:

The subdivision shall select a consultant based upon the professional qualifications and technical experience of the consultant. The subdivision shall negotiate a contract with the highest qualified consultant provided that a fee can be negotiated that is fair and reasonable to both parties. In the event a reasonable fee cannot be negotiated with the selected consultant, the subdivision may negotiate with other consultants in order of their qualifications.

SECTION 7. This act shall become effective November 1, 1995.

45-1-1292

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