STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 328

By: Herbert of the Senate

and

Dunegan of the House

COMMITTEE SUBSTITUTE

An Act relating to public buildings and public works and state government; amending 61 O.S. 1991, Sections 62, 102, as amended by Section 5, Chapter 7, O.S.L. 1994, 121, as last amended by Section 3, Chapter 200, O.S.L. 1995, 204 and 208 (61 O.S. Supp. 1996, Sections 102 and 121), which relate to the Public Bidding Construction and Planning Act of 1974; clarifying statutory reference; providing exceptions; authorizing the Oklahoma Tourism and Recreation Department to negotiate and award certain contracts; providing for selection of consultants; modifying definition; authorizing the Department to delegate certain authority under certain conditions; providing certain exemptions; amending 74 O.S. 1991, Section 85.12, as last amended by Section 19 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, which relates to the Oklahoma Central Purchasing Act; exempting the Oklahoma Tourism and Recreation Department from the purview of the Oklahoma Central Purchasing Act under certain

conditions; requiring approval of the Oklahoma Tourism and Recreation Commission for certain contracts; requiring promulgation of purchasing procedures; requiring certain procedures be filed with certain agencies; and declaring an emergency.

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

SECTION 1. 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, Section 201 et seq. of this title, 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, 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 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. The provisions of subsections A through G of this section shall not apply to the Oklahoma Tourism and Recreation Department. The Department shall select consultants to provide architectural, engineering or land surveying services as follows:

The Department shall select consultants based upon the professional qualifications and technical experience of the consultant. The Department shall negotiate and award contracts to the consultant having the highest qualifications provided that a fee can be negotiated that is fair and reasonable to the Department and the consultant. In the event a reasonable fee cannot be negotiated with the selected consultant, the Department shall negotiate with other consultants in the order of their qualifications.

I. In the selection of a consultant to provide architectural, engineering, or land surveying services, all political subdivisions of this state 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 2. AMENDATORY 61 O.S. 1991, Section 102, as amended by Section 5, Chapter 7, O.S.L. 1994 (61 O.S. Supp. 1996, Section 102), is amended to read as follows:

Section 102. When used in ~~this act~~ the Public Competitive Bidding Act of 1974, Section 101 et seq. of this title, unless the context clearly indicates otherwise, the following words and terms shall be construed as having the meanings ascribed to them in this section:

1. "Awarding public agency" means the public agency which solicits and receives sealed bids on a particular public construction contract. With regard to a public construction project which is, or shall be, financed, leased, owned, managed, or operated by the Oklahoma Tourism and Recreation Department as a tourism or recreation facility, the "awarding public agency" shall be the Oklahoma Tourism and Recreation Department;

2. "Bidding documents" means the bid notice, plans and specifications, bidding form, bidding instructions, special provisions 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;

3. "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;

4. "Public construction contract" or "contract" means any contract, exceeding Seven Thousand Five Hundred Dollars ($7,500.00) in amount, awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs to 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 said 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;

5. "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; and

6. "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.

SECTION 3. AMENDATORY 61 O.S. 1991, Section 121, as last amended by Section 3, Chapter 200, O.S.L. 1995 (61 O.S. Supp. 1996, Section 121), is amended to read as follows:

Section 121. Change orders or addendums 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. Change orders or addendums 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. Any change orders or cumulative change orders which exceed these limits shall require a readvertising for bids on that part of the contract. Change orders in any amount shall be formally approved by the governing body of the public agency involved and the reasons therefor recorded in the permanent records. Provided, however, the Oklahoma Tourism and Recreation Commission is authorized to delegate the approval of change orders which do not exceed Twenty-five Thousand Dollars ($25,000.00) in expenditures to the chief administrative officer of the Department. 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 One Hundred Fifty Thousand Dollars ($150,000.00). 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. All change orders shall contain a unit price and total for each of the following items:

1. All materials with cost per item; ~~and~~

2. Itemization of all labor with number of hours per operation and cost per hour; ~~and~~

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; ~~and~~

4. Itemization of insurance cost, bond cost, social security, taxes, workers' compensation, employee fringe benefits and overhead cost; and

5. Profit for the contractor.

If the construction contract was bid on a unit basis, and the change order is based exactly on the unit price or basis, such a change order will not be subject to this section. When the individual change orders are less than Ten Thousand Dollars ($10,000.00), the change order may be based on an acceptable unit price(s) basis in lieu of cost itemization as required in paragraphs 1, 2, 3, 4 and 5 of this section. 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, Section 101 et seq. of this title.

SECTION 4. AMENDATORY 61 O.S. 1991, Section 204, is amended to read as follows:

Section 204. A. The Division shall:

1. Develop a comprehensive master plan for construction of buildings used by state agencies, capital improvements, and utilization of land owned by the State of Oklahoma to be completed by December 31, 1987, and the annual revision of the master plan; ~~and~~

2. Develop a comprehensive inventory of presently state-owned real property and its use to be completed by June 30, 1987, which inventory shall be revised and updated by June 30, 1989, and annually thereafter:

a. no later than September 30, 1986, and annually thereafter commencing September 30, 1988, every

department, board, commission, institution and agency of this state, owning or controlling land subject to the provisions of ~~this act~~ Section 202 et seq. of this title, shall furnish and deliver to the ~~Office of Public Affairs~~ Department of Central Services an itemized list of all records, deeds, abstracts and other title instruments, showing the description of and relating to any and all lands, and interests in lands owned, supervised or controlled by such department, board, commission, institution and agency, and

b. the provisions of this subsection shall also apply to all lands of public trusts having the State of Oklahoma, or any department, board, authority, commission, institution or agency thereof, as the primary beneficiary, but shall not apply to lands of municipalities, counties, school districts, or agencies thereof, or Department of Transportation ~~rights-of-ways~~ rights-of-way; ~~and~~

3. Develop a plan for the proposed future use of presently state-owned real property compatible with the comprehensive master plan for capital construction to be completed by December 31, 1987, which plan shall be revised and updated by December 31, 1989, and annually thereafter; ~~and~~

4. Submit to the Governor, the Director of State Finance, and the Legislative Service Bureau annually a review of all agency requests for construction or land acquisition; ~~and~~

5. Review and approve all construction plans and specifications to ensure compliance with good construction practices and space standards, costs of project, proposed construction timetables, and agency need for the project, except as otherwise provided in subsection B of this section; ~~and~~

6. Review prior to acceptance and final payment all completed projects to ensure compliance with the plans and specifications of the project; ~~and~~

7. Develop and award all contracts for state construction subject to final approval required by the ~~Office of Public Affairs~~ Department of Central Services; ~~and~~

8. Overview inspections performed by consultants during construction, primary inspections when consultants are not used, and final inspections after completion; ~~and~~

9. Recommend standards, including but not limited to building codes, space utilization, material testing, indexes of efficiency, economy, and effectiveness, for adoption by the ~~Office of Public Affairs~~ Department of Central Services pursuant to the provisions of the Administrative Procedures Act, Sections 301 through 326 of Title 75 of the Oklahoma Statutes; ~~and~~

10. Monitor construction projects to ensure maximum efficiency in the expenditure of state funds for construction. The Division shall make written monthly reports to the Division of the Budget and the Legislative Service Bureau specifying current construction projects for which the Legislature has appropriated state funds, the state funds expended, the state funds encumbered, and an estimated timetable for completion with reasons for delays or alterations in the original construction timetable; and

11. Report fraud or waste in any construction project by written notification with attached documentation for the report to the Governor, the Attorney General, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Director of the Legislative Service Bureau, and the chief administrative officer of the state agency involved. The Attorney General shall take appropriate action to protect the interest of the state.

B. The review and approval of all construction plans and specifications required pursuant to paragraph 5 of subsection A of this section shall not apply to:

1. The common schools subject to the jurisdiction of the State Department of Education;

2. The Department of Transportation with respect to highways, bridges and dams;

3. The Oklahoma State System of Higher Education;

4. The Military Department of the State of Oklahoma;

5. The Department of Tourism and Recreation.

C. The review and approval of all construction plans and specifications required pursuant to paragraphs 6, 7 and 8 of subsection A of this section shall not apply to the Oklahoma Tourism and Recreation Department.

SECTION 5. AMENDATORY 61 O.S. 1991, Section 208, is amended to read as follows:

Section 208. A. The awarding of all consultant and professional services contracts related to construction projects shall be performed pursuant to the provisions of Section 62 of Title 61 of the Oklahoma Statutes. ~~Provided however, the selection of all consultants for construction projects shall be performed by the Division.~~

B. ~~The negotiation of consultant contracts and consultant fees shall be performed by the Division.~~

~~C.~~ The awarding of all construction contracts shall be performed pursuant to the provisions of the Public Competitive Bidding Act of 1974.

SECTION 6. AMENDATORY 74 O.S. 1991, Section 85.12, as last amended by Section 19 of Enrolled House Bill No. 1436 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 85.12 A. The provisions of this section shall not be construed to affect any law relating to fiscal or accounting procedure except such as may be directly in conflict herewith; and all claims, warrants and bonds shall be examined, inspected and approved as now provided by law.

B. The following acquisitions shall not be included within the purview of the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title:

1. Food and other products produced by state institutions and agencies;

2. Contracts for construction of new buildings and for the repair, maintenance or modernization of old buildings by state educational institutions included within The Oklahoma State System of Higher Education;

3. The printing or duplication of publications or forms of whatsoever kind or character by state agencies, which service is performed upon their own equipment, by their own employees. In order to be exempt from the Oklahoma Central Purchasing Act pursuant to this paragraph, the state agency may only use equipment owned or leased by the agency and may only utilize that equipment for printing services required by the agency in performing duties imposed upon the agency or functions authorized to be performed by the agency. Any use of the equipment by the agency pursuant to an agreement or contract with any other entity resulting in delivery of intermediate or finished products to the entity purchasing or using the products shall be subject to the provisions of the Oklahoma Central Purchasing Act;

4. Acquisitions by institutions of The Oklahoma State System of Higher Education, the Oklahoma State Regents for Higher Education, or the University Centers subject to the State Regents insofar as such acquisitions relate to textbooks, laboratory supplies, instructional materials and specialized laboratory equipment or

acquisitions for the telecommunications network known as OneNet, whether said network is governed or operated by the State Regents or any other state entity assigned responsibility for OneNet;

5. Department of Transportation and Transportation Commission contractual services or right-of-way purchases. Contracts awarded pursuant to bids let by the Transportation Commission for the maintenance or construction of streets, roads, highways, bridges, or underpasses, or any other transportation facilities under the control of the Department of Transportation, the acquisitions of equipment or materials accruing to the Department of Transportation required in Federal-Aid contracts, and contracts for public service type announcements initiated by the Department of Transportation. Contractual services as used herein shall not include advertising or public relations services;

6. Utility services where rates therefor are regulated by a state or federal regulatory commission, or by city ordinance or by an Indian Tribal Council for use by the Department of Corrections only;

7. Acquisition of products and services by the University Hospitals and the University Hospitals Authority. The Authority shall develop standards for the acquisition of products and services and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and shall include appropriate safeguards and written records to assure appropriate competition and economical and efficient purchasing and shall be approved by the Director of Central Purchasing;

8. Contracts for custom harvesting by the Department of Corrections for the Department or its institutions;

9. Contracts with private prison contractors which are subject to the contracting procedures of Section 561 of Title 57 of the Oklahoma Statutes;

10. Acquisitions of aircraft by agencies authorized by the Legislature to purchase aircraft;

11. Purchases by the Oklahoma Municipal Power Authority;

12. Grand River Dam Authority;

13. Purchases by rural water, sewer, gas or solid waste management districts created pursuant to Section 1324.1 et seq. of Title 82 of the Oklahoma Statutes;

14. Purchases by the Oklahoma Ordnance Works Authority or Midwestern Oklahoma Development Authority;

15. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser or for acquisition of insurance when it is determined by its Board of Directors that an emergency exists and for the services of legal counsel when approved by the Attorney General;

16. Expenditure of monies appropriated to the State Board of Education for the purpose of Local, State-supported Programs and State-supported Programs except monies appropriated for the Administrative and Support Functions of the State Department of Education;

17. Contracts entered into by the State Department of Vocational and Technical Education for the development, revision or updating of vocational curriculum materials and contracts entered into by the State Department of Vocational and Technical Education for training and supportive services that meet the needs of new or expanding industries, or both, contributing to economic growth and development of Oklahoma while maintaining Oklahoma's competitive advantage and flexibility in meeting their needs;

18. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

19. Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5066.4 of this title;

20. Purchases made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

21. Purchases of products available to an agency through a General Services Administration contract or other federal contract if the item is on current state contract and the terms of such contract are more favorable to the agency than the terms of a state contract for the same products as determined by the State Purchasing Director;

22. Contracts for managed health care services entered into by the state entity designated by law or the Department of Human Services, as specified in paragraph 1 of subsection A of Section 1010.3 of Title 56 of the Oklahoma Statutes;

23. Purchases of products by the Forestry Service of the State Department of Agriculture as authorized by the federal General Services Administration through a General Services Administration contract or other federal contract if the item is not on current state contract or the terms of such federal contract are more favorable to the agency than the terms of a state contract for the same products;

24. Purchases amounting to less than that requiring competitive bid pursuant to Section 85.7 of this title. The Director of Central Services shall promulgate rules related to such purchases in excess of Seven Hundred Fifty Dollars ($750.00) and not exceeding Two Thousand Five Hundred Dollars ($2,500.00) to ensure competitiveness and fairness in such purchases;

25. Purchases or acquisitions of clothing for clients of the Department of Human Services and purchases and acquisitions of food for group homes operated by the Department of Human Services;

26. Purchases made or contracts entered into by the Oklahoma Energy Resources Board; ~~and~~

27. Purchases or acquisitions of clothing for juveniles in the custody of the Office of Juvenile Affairs and purchases and

acquisitions of food for group homes operated by the Office of Juvenile Affairs; and

28. Contracts awarded pursuant to bids let by the Oklahoma Tourism and Recreation Department for the construction of public improvements and for the repair, maintenance or modernization of structures and improvements at properties owned or operated by the Department. All contracts in excess of Twenty-five Thousand Dollars ($25,000.00) shall be approved by the Oklahoma Tourism and Recreation Commission. The Department shall promulgate and adopt purchasing procedures which shall be filed with the Department of Central Services and the Office of State Finance.

C. Notwithstanding the exclusions provided herein, any agency or common schools of Oklahoma, any municipality of the state, any rural fire protection district and county officers may, unless the contract with the state specifies otherwise, avail themselves of the provisions of the Oklahoma Central Purchasing contracts and the services of the Purchasing Director. Provided further, however, that any subdivision of government and any rural fire protection district of the state may designate the office of Oklahoma Central Purchasing as its agent for the purchase or procurement of any item or service contracted or available to the state.

D. Further, notwithstanding the exclusions provided herein, the purchasing policies and procedures of the Oklahoma Ordnance Works Authority, the University Hospitals Authority and the Midwestern Oklahoma Development Authority shall be subject to approval by the Director of the Department of Central Services, and said Director shall make periodic audits of the purchasing policies and procedures of the Oklahoma Ordnance Works Authority, the University Hospitals Authority and the Midwestern Oklahoma Development Authority to ensure that said purchasing policies and procedures, as approved, are being followed.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-7117 MCD