

SHORT TITLE: Public buildings and public works; increasing certain thresholds; deleting certain reporting requirements. Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1050

By: Dunlap

AS INTRODUCED

An Act relating to public buildings and public works; amending 61 O.S. 1991, Sections 1, as amended by Section 1, Chapter 239, O.S.L. 1992, 60, 61, 62, as amended by Section 82, Chapter 133, O.S.L. 1997, 102, as amended by Section 5, Chapter 7, O.S.L. 1994, 104, 106, 107, as last amended by Section 1, Chapter 156, O.S.L. 1995, 113, as amended by Section 3, Chapter 239, O.S.L. 1992, 119.1, as amended by Section 1, Chapter 9, O.S.L. 1992, 130, as amended by Section 84, Chapter 133, O.S.L. 1997, 131, 202, and 204 (61 O.S. Supp. 1997, Sections 1, 62, 102, 107, 113, 119.1 and 130), which relate to the Department of Central Services; increasing certain amounts utilized in determining applicability of certain provisions; modifying definition; adding definition; adding specified service to consultant notification file; permitting notice by electronic transmission; deleting certain publication requirement; shortening certain publication interval; updating certain references; changing responsibility for certain actions; updating usage; eliminating gender distinctions; deleting obsolete language; repealing 61 O.S. 1991, Section 130, as amended by Section 2, Chapter 72, O.S.L. 1997 (61 O.S. Supp. 1997, Section 130),

which is a duplicate section relating to emergencies; and declaring an emergency.

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

SECTION 1. AMENDATORY 61 O.S. 1991, Section 1, as amended by Section 1, Chapter 239, O.S.L. 1992 (61 O.S. Supp. 1997, Section 1), is amended to read as follows:

Section 1. A. Prior to the award of any contract exceeding the amount of ~~Thirteen Thousand Five Hundred Dollars (\$13,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) for the purpose of making any public improvements or constructing or repairing any public building, the person to whom said contract is awarded shall:

1. Furnish a bond with good and sufficient sureties payable to the state in a sum not less than the total sum of the contract; or
2. Cause an irrevocable letter of credit containing such terms as may be prescribed by the Department of Central Services to be issued for the benefit of the state by a financial institution insured by the Federal Deposit Insurance Corporation in a sum not less than the total sum of the contract.

B. The bond or irrevocable letter of credit shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness incurred by said contractor, his or her subcontractors, and all materialmen for such labor, material, rental of machinery or equipment, and repair of and parts for equipment as are used or consumed in the performance of said contract. Provided, notice in writing by certified mail must be given to the general contractor where rental of equipment is to be furnished to his or her subcontractor. The notice shall include the beginning date, the

location where the equipment is to be used, the description of the equipment and the terms of the rental and be mailed so as to be received by the general contractor within ten (10) days of the effective date of said rental.

C. For any contract not exceeding the amount of ~~Thirteen Thousand Five Hundred Dollars (\$13,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00), in lieu of a bond or irrevocable letter of credit, the contractor shall submit an affidavit of the payment of all indebtedness incurred by the contractor, subcontractors, and all materialmen for labor, material, rental of machinery or equipment, and repair of and parts for equipment as are used or consumed in the performance of the contract. The execution of the affidavit with knowledge that any of the contents of the affidavit are false, upon conviction, shall constitute perjury, punishable as provided for by law.

SECTION 2. AMENDATORY 61 O.S. 1991, Section 60, is amended to read as follows:

Section 60. All agencies, boards, commissions, offices, institutions, and other governmental bodies of ~~the State of Oklahoma~~ this state, and all individuals representing such governmental bodies, shall use consultant contract forms and construction contract forms developed by the State Construction Administrator for the purpose of use when awarding contracts for designing or constructing new buildings and for other capital improvements and for equipping, remodeling, modernizing, and repairing any and all existing buildings and capital improvements of the state. Any exceptions to the use of consultant contract forms and construction contract forms developed by the Administrator must be authorized in writing by the ~~Director of Public Affairs~~ Director of Central Services.

SECTION 3. AMENDATORY 61 O.S. 1991, Section 61, is amended to read as follows:

Section 61. As used in Sections 61 through 65 of this title:

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, or construction management services for any public work improvement project;

2. "Construction management services" means the services provided by a qualified construction organization which performs the construction management of the public work improvement project as the construction professional, from the beginning of design through construction completion, or any portion thereof;

3. "Department" means any agency or department of ~~the State of Oklahoma~~ this state responsible for a public improvement work project except the State Department of Education and the common schools under its jurisdiction;

~~3.~~ 4. "Director" means the director, commissioner or administrative head of any department of ~~the State of Oklahoma~~ this state which seeks public work improvement through contracting with a consultant;

~~4.~~ 5. "Division" means the Construction and Properties Division within the ~~Office of Public Affairs~~ Department of Central Services; and

~~5.~~ 6. "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 ~~the State of Oklahoma~~ this state which does not constitute "construction" as defined by the Public Building Construction and Planning Act, and any building, highway, street, sewer, pavement, waterline, sidewalk, or any other improvement or structure which ~~the State of Oklahoma~~ this state will assume

possession or ownership of by contract, option to purchase agreement, or other agreement.

SECTION 4. AMENDATORY 61 O.S. 1991, Section 62, as amended by Section 82, Chapter 133, O.S.L. 1997 (61 O.S. Supp. 1997, 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, and construction management services for the state shall be maintained by the 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. ~~For;~~ provided that for purposes of this paragraph, in order to provide notification to ~~architects and engineers consultants~~, only those funds required in order to make payment to ~~architects and engineers~~ consultants shall be considered with respect to the date as of which ~~architects and engineers~~ consultants may be notified of the state's intent to secure consultant services from those professionals;
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~~ Section 60 et seq. of this title and to be considered must submit a letter to the department within twenty (20) 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;~~ provided, however, the requirements of this subsection shall not apply to consultant contracts entered into by the 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)~~ Fifty Thousand Dollars (\$50,000.00) per consultant or consulting firm per year.

D. After expiration of the period for expression of interest, the ~~Director of the Department of Central Services~~ Administrator of the Division shall forward the applicants' files or extracts of the files to the department responsible for the project. The ~~Director~~ Administrator shall forward the files of those seeking to contract services for the project for all consultants to be considered. ~~He~~ The Administrator may include such other data, information or comments that ~~he~~ the Administrator thinks will be beneficial to the department. Should there be an inadequate expression of interest in the project, the contracting department and the ~~Director~~ Administrator 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~~ Division, 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 Construction and Properties Division of the Department of Central Services 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~~ Division 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. Any plans developed pursuant to the process for selection of a contractor for construction of a facility authorized pursuant to Section ~~79~~ 183 of ~~this act~~ Title 73 of the Oklahoma Statutes shall become the nonexclusive property of ~~the State of Oklahoma~~ this state as a condition of the award of the final contract for construction of the facility. ~~The State of Oklahoma~~ This state shall not be obligated to obtain any further permission for use of the plans or to make payment to any person or other legal entity for the further use of the plans as may be needed for additional projects for site adaptation for buildings, structures, or both, for use by the Department of Corrections.

I. In the selection of a consultant to provide architectural, engineering, ~~or~~ land surveying, or construction management 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 5. AMENDATORY 61 O.S. 1991, Section 102, as amended by Section 5, Chapter 7, O.S.L. 1994 (61 O.S. Supp. 1997, Section 102), is amended to read as follows:

Section 102. When used in ~~this act~~ 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;

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~~ this state 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)~~ Twenty-five Thousand Dollars (\$25,000.00) in amount, awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs to 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 "public improvement" 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 6. AMENDATORY 61 O.S. 1991, Section 104, is amended to read as follows:

Section 104. 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 ~~mailed~~ provided, by first-class mail or electronic transmission, to all known prospective bidders, who have made known, in writing to the public agency their interest in bidding within the twelve (12) months immediately preceding the date of opening bids, at least ~~twenty (20)~~ fourteen (14) days prior to the time set for opening bids; and

2. 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 said newspaper, with the first publication thereof to be at least ~~twenty (20)~~ fourteen (14) days prior to the date set for opening bids; and

3. Notice thereof shall be sent to trade or construction publications for their use and information whenever the estimated cost of the contract exceeds Fifty Thousand Dollars (\$50,000.00); provided, however, that this section shall not be construed as requiring the publication of said notice in such trade or construction publication.

SECTION 7. AMENDATORY 61 O.S. 1991, Section 106, is amended to read as follows:

Section 106. 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)~~ fourteen (14) 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.

SECTION 8. AMENDATORY 61 O.S. 1991, Section 107, as last amended by Section 1, Chapter 156, O.S.L. 1995 (61 O.S. Supp. 1997, Section 107), is amended to read as follows:

Section 107. A. Each bidder on a public construction contract exceeding ~~Thirteen Thousand Five Hundred Dollars (\$13,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) shall accompany ~~his~~ 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 such terms as may be prescribed by the Department of Central 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 an amount equal to five percent (5%) of the bid. The awarding public agency shall deposit such irrevocable letter of credit with the Department of Central Services.

B. The cost of republication of the notice to bidders, all 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. Said certified or cashier's check, bid bond or irrevocable letter of credit shall be returned 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 proposal.

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.

SECTION 9. AMENDATORY 61 O.S. 1991, Section 113, as amended by Section 3, Chapter 239, O.S.L. 1992 (61 O.S. Supp. 1997, Section 113), is amended to read as follows:

Section 113. A. Except as otherwise provided by law, within such period of time, not to exceed sixty (60) days, as shall be 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, ~~Section 101 et seq. of this title, 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 said period of time, the following shall be provided by the contractor to the awarding public agency for contracts exceeding ~~Thirteen Thousand~~

~~Five Hundred Dollars (\$13,500.00)~~ Twenty-five Thousand Dollars
(\$25,000.00):

1. A bond or irrevocable letter of credit complying with the provisions of Section 1 of ~~Title 61 of the Oklahoma Statutes~~ this title; ~~and~~

2. A good and sufficient bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing such terms as may be prescribed by the Department of Central 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; ~~and~~

3. A good and sufficient bond in a sum equal to the contract price or an irrevocable letter of credit containing such terms as may be prescribed by the Department of Central 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 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 said public agency and its architects and/or engineers as an additional assured under said public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.

C. If the contractor needs additional time in which to obtain the bond required pursuant to subsection B of this section, he or

she may request and the awarding agency may allow said contractor an additional sixty (60) days in which to obtain said bond.

D. Subsequent to 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 until the next regularly scheduled public business meeting of the governing body of the agency. At the next public business meeting, the agency, upon the record, shall present to the governing body that such an error had 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 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. An awarding public agency which has entered into a public construction contract prior to the effective date of this act shall be permitted to amend such contract by change order or other lawful means to conform with the requirements of paragraph 3 of subsection B of this section.~~

SECTION 10. AMENDATORY 61 O.S. 1991, Section 119.1, as amended by Section 1, Chapter 9, O.S.L. 1992 (61 O.S. Supp. 1997, Section 119.1), is amended to read as follows:

Section 119.1 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), the governing body of a state agency, county, city, town, or school district may direct its employees or agents to negotiate the contract with a prospective contractor. 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.

SECTION 11. AMENDATORY 61 O.S. 1991, Section 130, as amended by Section 84, Chapter 133, O.S.L. 1997 (61 O.S. Supp. 1997, Section 130), is amended to read as follows:

Section 130. A. The provisions of the Public Competitive Bidding Act of 1974 with reference to notice and bids shall not apply whenever the governing body of a public agency declares by a two-thirds (2/3) vote of all of the members of the governing body that an emergency exists; provided, the Oklahoma Transportation Commission and the Oklahoma Tourism and Recreation Commission may, by majority vote of all the members of each Commission, declare that an emergency exists.

B. The governing bodies of all public agencies are further authorized, upon approval of two-thirds (2/3) of all of the members of the governing body, to delegate to the chief administrative officer of a public agency the authority to declare an emergency situation, in which event the provisions of the Public Competitive Bidding Act of 1974 with reference to notice and bids shall not apply, but such authority shall not extend to any contract exceeding ~~Twenty-five Thousand Dollars (\$25,000.00)~~ Fifty Thousand Dollars (\$50,000.00) in amount; provided, such authority of the Oklahoma Department of Transportation shall not extend to any contract exceeding ~~One Hundred Fifty Thousand Dollars (\$150,000.00)~~ Five Hundred Thousand Dollars (\$500,000.00) in amount.

C. An emergency declared by the State 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.

D. Whenever ~~said~~ the chief administrative officer shall declare such an emergency ~~he~~ the chief administrative officer shall notify the governing body, the President Pro Tempore of the ~~State~~ Senate and the Speaker of the House of Representatives of such action within ten (10) days. Such notification shall contain a statement of the reasons for his action, and shall be recorded in the official minutes of ~~said~~ the governing body.

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

F. The reasons for declaring an emergency and not complying with the provisions of the Public Competitive Bidding Act of 1974 shall be entered into the official minutes of the governing body of the public agency. Copies of said minutes shall be submitted to the President Pro Tempore of the ~~State~~ Senate and the Speaker of the House of Representatives.

SECTION 12. AMENDATORY 61 O.S. 1991, Section 131, is amended to read as follows:

Section 131. No contract involving sums in excess of ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) shall be split into partial contracts involving sums of ~~below Seven Thousand Five Hundred Dollars (\$7,500.00)~~ less than Twenty-five Thousand Dollars (\$25,000.00) for the purpose of avoiding the requirements of ~~this act~~ the Public Competitive Bidding Act of 1974. All such partial contracts involving less than ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) shall be void.

SECTION 13. AMENDATORY 61 O.S. 1991, Section 202, is amended to read as follows:

Section 202. As used in the Public Building Construction and Planning Act:

1. "Administrator" means the State Construction Administrator within the ~~Office of Public Affairs~~ Department of Central Services;

2. "Construction" means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving, or demolishing any structure or appurtenance thereto including facilities, utilities, or other improvements to any real property but not including highways, airports, tunnels, sewers not related to a structure or appurtenance thereto, or dams;

3. "Consultant" means any individual, firm, corporation, association, partnership, copartnership, or any other legal entity possessing the required qualifications to provide licensed architectural, registered engineering, ~~or~~ registered land surveying, or construction management services for any construction project;

4. "Contractor" means any person, corporation, partnership, business, or other organization, entity, or group of individuals who perform construction services;

5. "Division" means the Construction and Properties Division within the ~~Office of Public Affairs~~ Department of Central Services;

6. "Energy performance index or indices" (EPI) means a number describing the energy requirements at the building boundary of a structure, per square foot of floor space or per cubic foot of occupied volume, as appropriate under defined internal and external ambient conditions over an entire seasonal cycle. As experience develops on the energy performance achieved with state construction, the indices (EPI) will serve as a measure of structure performance with respect to energy consumption;

7. "Life cycle costs" means the cost of owning, operating, and maintaining the structure over the life of the structure. This may be expressed as an annual cost for each year of the facility's use;

8. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring or disposing of supplies, services, or construction;

9. "Services" means the furnishing of labor, effort, or time by a contractor;

10. "Shared savings financing" means the financing of energy conservation measures and maintenance services through a private firm which may own any purchased equipment for the duration of a contract. Such contract shall specify that the private firm will be recompensed either out of a negotiated portion of the savings resulting from the conservation measures and maintenance services provided by the private firm or, in the case of a cogeneration project, through the payment of a rate for energy lower than would otherwise have been paid for the same energy from current sources;

11. "State agency" or "department" means any agency, board, commission, office, institution, or other governmental body of the state which receives its operating monies through the Office of State Finance;

12. "State funds" means monies which are disbursed through the Division of the Budget; and

13. "Supplies" means for the purpose of expenses all property including but not limited to equipment, materials, printing, insurance, and the purchase or lease of real property.

SECTION 14. AMENDATORY 61 O.S. 1991, Section 204, is amended to read as follows:

Section 204. A. The Construction and Properties Division of the Department of Central Services shall:

1. Develop and annually revise 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~~ this state; and

2. Develop and annually revise and update 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~~ for the development of which, every department, board, commission, institution, and agency of this state, owning or controlling land subject to the provisions of ~~this act~~ the Public Building Construction and Planning Act, shall, by September 30 of each year, 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 or 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; 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~~ C of this section; ~~and~~

~~6. 4.~~ Review prior to acceptance and final payment all completed projects to ensure compliance with the plans and specifications of the project; ~~and~~

~~7. 5.~~ 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. 6.~~ Overview inspections performed by consultants during construction, primary inspections when consultants are not used, and final inspections after completion; ~~and~~

~~9. 7.~~ 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. 8.~~ 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.~~ 9. 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 provisions of paragraph 2 of subsection A of this section shall apply to all lands of public trusts having this state, or any department, board, authority, commission, institution, or agency of this state, as the primary beneficiary, but shall not apply to lands of municipalities, counties, school districts or agencies thereof, or to Department of Transportation rights-of-way.

C. The review and approval of all construction plans and specifications required pursuant to paragraph ~~5~~ 3 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 Oklahoma Department of Tourism and Recreation.

SECTION 15. REPEALER 61 O.S. 1991, Section 130, as amended by Section 2, Chapter 72, O.S.L. 1997 (61 O.S. Supp. 1997, Section 130), is hereby repealed.

SECTION 16. 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.

46-2-2048

WHT