

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1112

By: Stipe of the Senate

and

Tyler of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to aircraft and airports and public buildings and public works; amending 3 O.S. 1991, Section 84, as amended by Section 3, Chapter 181, O.S.L. 1995 (3 O.S. Supp. 1999, Section 84) which relates to the Oklahoma Aeronautics and Space Commission; changing the name of the Oklahoma Aeronautics and Space Commission to the Oklahoma Aeronautics Commission; amending 61 O.S. 1991, Sections 60 and 61, which relate to state consultants; providing certain exemption; modifying definitions; defining terms; requiring the Department of Transportation and the Oklahoma Transportation Authority to establish system to develop certain file; authorizing the Department and the Authority to pre-qualify consultants; requiring certain notice be sent by mail; requiring review of certain files; requiring the Department and the Authority to establish certain committee; requiring negotiation of certain fees; requiring certain report to be submitted to the Governor; requiring a written evaluation to be performed; authorizing the Department and the Authority to enter into service contracts; specifying that all drawings, plans, specifications, and models made by a consultant doing work for this state shall be the property of this state; requiring the Department of Transportation to designate and maintain certain roads as part of State Highway System; exempting the Oklahoma Transportation Authority from the provisions of the Oklahoma Central Purchasing Act; requiring the Department of Transportation and the Transportation Authority to provide certain notice; providing for codification; providing for noncodification; and declaring an emergency.

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

SECTION 1. AMENDATORY 3 O.S. 1991, Section 84, as amended by Section 3, Chapter 181, O.S.L. 1995 (3 O.S. Supp. 1999, Section 84), is amended to read as follows:

Section 84. The official name of the Oklahoma Aeronautics and Space Commission and is hereby changed to the Oklahoma Aeronautics and Space Commission. Wherever the term "Oklahoma Aeronautics and Space Commission" appears in statute, it shall mean "Oklahoma Aeronautics and Space Commission". The name change herein prescribed shall not affect in any manner any contract, other legal relationship, or legal status of the Commission.

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, and all individuals representing such governmental bodies, except the Department of Transportation and the Oklahoma Transportation Authority, 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~~ 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 services for any public work improvement project;

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

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

4. "Division" means the Construction and Properties Division within the Office of Public Affairs; and

5. "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 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 will assume possession or ownership of by contract, option to purchase agreement, or other agreement, except the transportation facilities under the jurisdiction of the Oklahoma Department of Transportation or the Oklahoma Transportation Authority.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 708.1 of Title 69, unless there is created a duplication in numbering, reads as follows:

As used in Sections 4, 5 and 6 of this act:

1. "Authority" means the Oklahoma Transportation Authority.

2. "Consultant" means any individual, firm, corporation, association, partnership, copartnership, or any other legal entity authorized to provide licensed architectural, registered

engineering, or registered land surveying services used in the development of plans for any public work improvement project;

3. "Department" means the Department of Transportation.

4. "Public work improvement" means any highway, bridge, street, sewer, pavement, waterline, sidewalk or any other improvement to a transportation facility which is constructed, altered, or repaired, under contract with the Department or the Authority.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 708.2 of Title 69, unless there is created a duplication in numbering, reads as follows:

1. The Department and the Authority shall each develop a list of all consultants interested in and capable of performing architectural, engineering, and land surveying services specific to the transportation industry. The Department and the Authority shall each be the sole judge of the qualifications of the prospective consultants and shall ascertain, to their exclusive satisfaction, the qualifications of each consultant.

2. When the Department or the Authority intends to secure consultant services to perform a specifically defined project, the Department or the Authority shall notify all firms on the list developed pursuant to paragraph 1 of this section for such work by mail, facsimile or other electronic means. The notifications shall provide the following information:

- a. a general description of the project or work to be performed,
- b. an estimated construction cost for the proposal projects,
- c. an estimated consultant contract performance time period,
- d. a description of the funding to be utilized for the contract or the project, including explicit notice of federal funding involvement,

- e. the last date for submitting a notice of interest; and
- f. other pertinent data.

3. The Department or the Authority shall review the qualifications of the consultants who respond to the notice and shall select three consultants for consideration for each contract. In selecting the consultants, the Department or the Authority shall consider:

- a. specialized experience in the type of work to be performed,
- b. capacity of the consultant to provide the service in the State of Oklahoma in the time required,
- c. the proximity and availability of the consultant and its employees to the project location,
- d. past performance as determined from performance evaluations of public and private work,
- e. the number of employees who are residents of Oklahoma, and
- f. other significant factors pertinent to the solicited project or function;

4. The Department and the Authority shall each establish a committee which will evaluate the consultants selected for consideration and rank the consultants in order of preference.

5. The Department or the Authority shall negotiate the contracts and reasonable fees with the first ranked consultant. If an agreement cannot be realized with the first ranked consultant, the negotiations shall be terminated and negotiations with the next ranked consultant shall commence. If an agreement cannot be realized with the next ranked consultant, the negotiations shall be terminated and negotiations with remaining consultant shall commence. In the event the Department or the Authority cannot realize an agreement with any of the selected consultants, the

proposed work shall be reevaluated and, after reevaluation and revisions, a new notice to consultants may be issued.

6. A full report of the evaluation, selection, and negotiations shall be prepared by the Department or the Authority and submitted to the Office of the Governor, unless otherwise directed by the Governor.

7. As provided for in the Transportation Commission rules or by Authority resolutions, the Department or the Authority shall perform a written evaluation of the services provided by the consultant. This evaluation shall become a part of the Department's and the Authority's consultant file. Failure of the consultant to perform the prescribed work in a timely and accurate manner shall be grounds for exclusion from the list of qualified consultants until such a time as the consultant can reasonably document and demonstrate performance improvement to the satisfaction of the Department or the Authority.

8. In addition to the foregoing provisions of this section, the Department or the Authority may enter into demand services contracts for consultant services to provide a specific project work type or activity for unspecified projects or facilities on an as needed basis. Contract consultants for demand services shall not exceed a total of Two Hundred and Fifty Thousand Dollars (\$250,000.00) per consultant per State fiscal year. When soliciting and securing such services, the Department and the Authority shall utilize the procedure set forth in this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 708.3 of Title 69, unless there is created a duplication in numbering, reads as follows:

All drawings, plans, specifications, and models made by a consultant doing work for this state shall be the property of this state. The consultant receiving payment for plans paid for in whole or in part with state funds shall provide a copy of the plans to the

Department of Central Services for inclusion in a library system to be maintained by the Department of Central Services. Any state department, board, commission, institution, or agency shall have access to the use of any plans or specifications filed with the Department of Central Services.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 502.1 of Title 69, unless there is created a duplication in numbering, reads as follows:

The Transportation Commission shall designate and maintain as part of the State Highway System any road accepted by the Federal Highway Administration as a National Highway System connector route to an intermodal port. Said road shall not exceed one and one-half miles in length.

SECTION 8. AMENDATORY 74 O.S. 1991, Section 85.12, as last amended by Section 23 of Enrolled House Bill No. 2711 of the 2nd Session of the 47th 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 as they may be directly in conflict herewith; and all claims, warrants, and bonds shall be examined, inspected, and approved as now provided by law.

B. Except as otherwise provided by this section, the acquisitions specified in this subsection shall be made in compliance with Section 85.39 of this title but are not subject to other provisions of the Oklahoma Central Purchasing Act:

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

2. The printing or duplication of publications or forms of whatsoever kind or character by state agencies if the work is performed upon their own equipment by their own employees. 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;

3. 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, 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; but not contractual services for advertising or public relations or employment services;

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

5. Acquisitions by the University Hospitals Authority. The Authority shall develop standards for the acquisition of products and services and may elect to utilize the Purchasing Division. The standards shall foster economy and short response time and shall include appropriate safeguards and record-keeping requirements to ensure appropriate competition and economical and efficient purchasing;

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

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

8. Acquisitions by the Oklahoma Municipal Power Authority;

9. Acquisitions by the Grand River Dam Authority;

10. Acquisitions by rural water, sewer, gas, or solid waste management districts created pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act;

11. Acquisitions by the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, or the Midwestern Oklahoma Development Authority;

12. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser or for acquisition of insurance when the Authority's Board of Directors determines that an emergency exists, and contracts for the services of legal counsel when approved by the Attorney General;

13. Expenditure of monies appropriated to the State Board of Education for Local and State Supported Financial Support of Public Schools, except monies allocated therefrom for the Administrative and Support Functions of the State Department of Education;

14. Expenditure of monies appropriated to the State Department of Rehabilitation Services for educational programs or educational materials for the Oklahoma School for the Blind and the Oklahoma School for the Deaf;

15. Contracts entered into by the Oklahoma Department of Vocational and Technical Education for the development, revision, or updating of vocational curriculum materials, and contracts entered into by the Oklahoma Department of Vocational and Technical Education for training and supportive services that address the needs of new or expanding industries;

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

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

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

19. Acquisitions available to an agency through a General Services Administration (GSA) contract or other federal contract if the acquisition is on current statewide contract and the terms of the GSA or other federal contract, as determined by the State Purchasing Director, are more favorable to the agency than the terms of a statewide contract for the same products;

20. 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;

21. Acquisitions 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 acquisitions are not on current statewide contract or the terms of the federal contract are more favorable to the agency than the terms of a statewide contract for the same products;

22. Acquisitions of clothing for clients of the Department of Human Services and acquisitions of food for group homes operated by the Department of Human Services;

23. Acquisitions by the Oklahoma Energy Resources Board;

24. Acquisitions of clothing for juveniles in the custody of the Office of Juvenile Affairs and acquisitions of food for group homes operated by the Office of Juvenile Affairs;

25. State contracts for flexible benefits plans pursuant to the Oklahoma State Employees Benefits Act, Section 1361 et seq. of this title;

26. Acquisitions by the Department of Securities to investigate, initiate, or pursue administrative, civil, or criminal proceedings involving potential violations of the acts under the Department's jurisdiction;

27. Acquisitions by the Native America Cultural and Educational Authority and acquisitions by the Oklahoma Department of Commerce to assist the Native American Cultural and Educational Authority pursuant to Section 5017 of this title;

28. Acquisitions for resale in and through canteens operated pursuant to Section 537 of Title 57 of the Oklahoma Statutes;

29. Acquisitions by the Oklahoma Boll Weevil Eradication Organization for employment and personnel services, and for acquiring sprayers, blowers, traps, and attractants related to the eradication of boll weevils in this state or as part of a national or regional boll weevil eradication program; ~~and~~

30. Contracts entered into by the Oklahoma Indigent Defense System for expert services pursuant to the provisions of subsection D of Section 1355.4 of Title 22 of the Oklahoma Statutes; and

31. Acquisitions by the Oklahoma Transportation.

C. Any state agency, common school, municipality, rural fire protection district, or county officer may, unless acting pursuant to a contract with the state that specifies otherwise, make use of statewide contracts and the services of the Purchasing Division and the State Purchasing Director. Any political subdivision or rural fire protection district may designate the State Purchasing Director as its agent for any acquisition from a statewide contract or otherwise available to the state.

D. The State Purchasing Director shall make periodic audits of the purchasing procedures of the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, the University Hospitals Authority, and the Midwestern Oklahoma Development Authority to ensure that the procedures are being followed.

SECTION 9. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Within sixty (60) days of the effective date of this Act, the Department and the Authority shall notify each consultant on the Department of Central Services consultant list of the provisions of this Act. The notice shall further inform the consultant of the method and requirements for being listed and the consultant lists maintained by the Department and Authority.

SECTION 10. 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.

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