

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

2ND CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
SENATE BILL 1172

By: Robinson of the Senate

and

Paulk of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public buildings, public works, and liens; 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, 62.1, 63, 102, as last amended by Section 2, Chapter 149, O.S.L. 1999, 107, as last amended by Section 3, Chapter 365, O.S.L. 1998, 113, as last amended by Section 1 of Enrolled Senate Bill No. 1176 of the 2nd Session of the 47th Oklahoma Legislature, 121, as last amended by Section 1, Chapter 118, O.S.L. 1998, 130, as last amended by Section 32 of Enrolled House Bill No. 2711 of the 2nd Session of the 47th Oklahoma Legislature, 131, as amended by Section 5, Chapter 365, O.S.L. 1998, 202, 203, 204, as amended by Section 17, Chapter 364, O.S.L. 1998, 205, 207.2, as amended by Section 4, Chapter 283, O.S.L. 1994, 208.1, 209, and 210 (61 O.S. Supp. 1999, Sections 1, 62, 102, 107, 121, 131, 204, and 207.2), which relate to public works bid and contract sureties, consultants and consultant contracts, the Public Competitive Bidding Act of 1974, and the Public Building Construction and Planning Act; changing and standardizing value of public works contracts at which specified sureties are required; deleting notice requirement relating to rental equipment; modifying requirements for use of forms; modifying, adding, and deleting definitions; clarifying requirements for listing construction managers and design consultants; clarifying and changing requisition, solicitation, and review responsibilities; authorizing negotiations; providing fees be fair and reasonable; authorizing Department of Central Services to enter into contracts with construction managers and design consultants and requiring state agencies reimburse Department; changing value of contracts at which specified sureties are required under Public Competitive Bidding Act of 1974; authorizing correction of errors, rescission of awards and readvertising for bids; providing for approvals and declarations on behalf of agencies not having governing boards; changing value of works at which provisions of Public Competitive Bidding Act of 1974 apply in emergencies; changing value of contracts to which splitting into partial contracts is forbidden; authorizing Director

of Department of Central Services to employ or contract with experts; excluding specified properties from inventory maintenance requirement; requiring agencies submit information relating to land acquisition and disposal; authorizing Construction and Properties Division to assist state agencies desiring to hire design consultants or construction managers and designating Division to award contracts; giving Department of Central Services final approval authority for contracts and contract documents; prohibiting solicitations to or contracts with unlicensed contractors; deleting requirements for monthly reports on construction projects and for reports of fraud or waste to Governor and legislative leaders; authorizing audit or review of state agencies' construction project records by designated personnel of Department of Central Services; expanding list of matters concerning which Department of Central Services is required to promulgate rules; deleting requirement for participation of Attorney General in development of model contract; amending 42 O.S. 1991, Section 143.1, which relates to notice and filing of lien statements; requiring written notices to property owner and original contractor and stating consequences; repealing 61 O.S. 1991, Sections 207, as amended by Section 18, Chapter 364, O.S.L. 1998, 207.1, and 207.3 (61 O.S. Supp. 1999, Section 207), which relate to Public Building Construction and Planning Act; modernizing and clarifying references; deleting obsolete language; providing for codification; 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. 1999, Section 1), is amended to read as follows:

Section 1. A. Prior to ~~the~~ an award of ~~any~~ a 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 construction or repairing any~~ repair of a public building, or structure, or improvement to real property, the person ~~to whom said contract is awarded~~ that receives the award 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 prescribes, 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~~ the contractor, ~~his~~ incurs for the contractor's subcontractors, ~~and all materialmen for such~~ suppliers of 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~~ requires the contractor to furnish. ~~Provided,~~ ~~notice in writing by certified mail must be given to the general contractor where rental of equipment is to be furnished to his 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 a~~ a 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, the contractor's subcontractors, and all ~~materialmen for~~ suppliers of labor, material, ~~rental of~~ rented 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 state agencies, boards, commissions, offices, institutions, and other governmental bodies of ~~the State of Oklahoma~~ this state, and all individuals representing such ~~governmental bodies~~ entities, shall use consultant ~~contract forms~~ and construction contract forms ~~developed by the State Construction Administrator for the purpose of use when awarding~~ that the Director of the Department of Central Services requires to award 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~~ designs to construct, renovate, alter, repair, maintain, or improve real property or fixtures of real property of the state. ~~Any~~ The Director of the Department of Central Services may authorize, in writing, 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.~~

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

2. "Construction manager" means an individual, firm, corporation, association, partnership, copartnership, or any other

legal entity possessing the qualifications to provide services of construction management which include, but are not necessarily limited to, design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration;

~~3.~~ 3. "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~~ the Department of Central Services;

4. "Design consultant" means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services for a public work improvement project;

~~3.~~ 5. "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~~ Director of the Department of Central Services;

~~4.~~ 6. "Division" means ~~the Construction and Properties Division within the Office of Public Affairs~~ of the Department of Central Services; and

~~5.~~ 7. ~~"Public work improvement"~~ "Project" 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~~ plans or designs for a public work improvement:

a. to construct, renovate, alter, repair, maintain, or improve real property or fixtures of real property, and

b. that does not constitute "construction" as defined by the Public Building Construction and Planning Act;

8. "State agency" means an office, officer, bureau, board, counsel, court, commission, institution, unit, division, or body of the executive or judicial branches of state government, whether elected or appointed, excluding only political subdivisions of the state.

SECTION 4. AMENDATORY 61 O.S. 1991, Section 62, as amended by Section 82, Chapter 133, O.S.L. 1997 (61 O.S. Supp. 1999, Section 62), is amended to read as follows:

Section 62. A. ~~A comprehensive~~ The Department of Central Services shall maintain a file for of all consultants persons and entities interested in and capable of performing architectural, engineering, and land surveying construction management and design consultant services for the state shall be maintained by the Department of Central Services agencies. These files The file 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 registration forms and information submitted by construction managers and design consultants pursuant to rules promulgated by the Department.

~~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 Pursuant to rules promulgated by the Department, the Construction and Properties Division shall determine whether a construction manager or design consultant qualifies for registration and shall notify the construction manager or design consultant within twenty (20) days of the receipt of a request for registration. Registration of construction managers and design consultants shall be effective for one (1) year following notice of qualification from the Division.~~

~~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 requisitioning state agency shall define the scope of a proposed project, determine the various. The scope shall identify project components, phases, and timetables, and prepare shall include detailed project descriptions in cooperation with the Division to guide prospective consultants. The state agency may request the Division to assist with scope development. The state agency shall send the scope and a requisition for construction management or design consultant services, signed by the chief administrative officer, to the Division. Before the Division awards a contract for the construction, reconstruction or improvement of any state building, the plans must be approved by the department. The Division shall review the scope and approve it before the state agency issues a solicitation.~~

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~~ The state agency shall issue a solicitation to construction managers or design consultants capable

of providing the services the state agency desires. The solicitation shall, at a minimum, contain the following information:

1. Description and scope of the project ~~or projects;~~

2. Estimated construction cost ~~and time schedule,~~ anticipated starting date, and completion date the state agency desires for the project;

3. ~~Funds~~ Certification of funds available for the construction manager or design consultant fee, including federal, state or other participation. ~~For purposes of this paragraph, in order to provide notification to architects and engineers, only those funds required in order to make payment to architects and engineers shall be considered with respect to the date as of which architects and engineers may be notified of the state's intent to secure consultant services from those professionals;~~

4. ~~Last~~ Closing date for submitting construction manager or design consultant to give notice of interest in performing services to ~~director~~ the state agency; and

5. ~~Other pertinent~~ Additional data Consultants desiring the state agency requires from the construction manager or design consultant. The closing date for submission of construction manager or design consultant notice of interest for consideration must meet the requirements of this act and to be considered must submit a letter to the department shall be within twenty (20) thirty (30) days of the postmark date of the letter of notification mailed by notice the department state agency issues.

~~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 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 closing date,~~ the Director of the Department of Central Services Construction and Properties Division shall ~~forward the applicants' provide information from the construction managers' or design consultants' 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~~ state agency. Should there be an inadequate expression of interest in, or should the state agency desire to consider additional construction managers or design consultants for the project, the ~~contracting department~~ state agency and the ~~Director Division personnel~~ shall confer to add ~~additional~~ construction managers or design consultants for consideration ~~which are known to be appropriate for the project.~~

E. The ~~department~~ state agency shall review the ~~consultant files forwarded information provided by the Board,~~ the Division provides and shall select no less than three and no more than five consultants per contract 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~~ The review shall include consideration 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 information the Division supplies:

1. ~~Specialized experience in~~ Professional qualifications for
the type of work contemplated;
2. Capacity ~~of the consultant to accomplish~~ for completing the
~~work project~~ in the required specified time period; 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~~ on projects of a similar
nature.

F. ~~A full report of~~ The state agency shall conduct the
evaluation ~~procedures and recommendations of the department shall be~~
~~prepared by~~ , interview, selection, contract negotiation, and fee
negotiation processes pursuant to rules promulgated 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~~ 1. Upon completion of
contract negotiation with the selected highest qualified
construction manager or design consultant, which contract shall
include a fair and reasonable fee. ~~The negotiated scope and fee~~ ,
the state agency shall be reported send the contract to the ~~Board~~
Division for the approval ~~of the~~ and award of the ~~consultant service~~
contract.

2. 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 as a condition of the award of the final contract for construction of the facility. The State of Oklahoma 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 design consultant ~~to provide architectural, engineering, or land surveying services,~~ all political subdivisions of this state ~~may~~ shall follow these procedures:

The subdivision shall select a design consultant based upon the professional qualifications and technical experience of the design consultant. The subdivision shall negotiate a contract with the highest qualified design 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 design consultant, the subdivision may negotiate with other design consultants in order of their qualifications.

SECTION 5. AMENDATORY 61 O.S. 1991, Section 62.1, is amended to read as follows:

Section 62.1 Except as provided by Sections 61 and 62 of ~~Title 61~~ this title and in addition to other statutory requirements, ~~after January 1, 1984,~~ all construction manager, design consultant, and

construction contracts shall be in accordance with the provisions of the Public Building Construction and Planning Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 62.2 of Title 61, unless there is created a duplication in numbering, reads as follows:

The Department of Central Services may enter into contracts with construction managers and design consultants registered with the Construction and Properties Division of the Department for the purpose of providing minor services to state agencies. The contracts shall provide for services on an as-needed basis and shall not exceed Fifty Thousand Dollars (\$50,000.00) per construction manager or design consultant during one year. The requisitioning state agency shall reimburse the Department of Central Services for the fee of the construction manager or design consultant that provides the services.

SECTION 7. AMENDATORY 61 O.S. 1991, Section 63, is amended to read as follows:

Section 63. All drawings, plans, specifications, and models made by a design consultant ~~doing work for this~~ a state agency shall be the property of this state, and shall be delivered to the ~~Director of Public Affairs~~ Construction and Properties Division of the Department of Central Services. The design consultant receiving payment for plans paid for in whole or in part with state funds shall file such plans with the ~~Office of Public Affairs~~ Division for inclusion in a library system to be maintained by the ~~Office of Public Affairs~~ 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 ~~Office of Public Affairs~~ Department.

SECTION 8. AMENDATORY 61 O.S. 1991, Section 102, as last amended by Section 2, Chapter 149, O.S.L. 1999 (61 O.S. Supp. 1999, Section 102), is amended to read as follows:

Section 102. ~~When~~ As used in the Public Competitive Bidding Act of 1974, ~~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. "Chief administrative officer" means an individual responsible for directing the administration of a public agency. The term does not mean one or all of the individuals that make policy for a public agency;

4. "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.~~ 5. "Public construction contract" or "contract" means any contract, exceeding ~~Twelve Thousand Five Hundred Dollars~~ ~~(\$12,500.00)~~ 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 or performing maintenance on the same except where the improvements, construction of any building or repairs to the same are improvements or buildings leased to a person or other legal entity exclusively for private and not for public use and no public

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

~~5.~~ 6. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, equipment or supplies by a public agency or any personal property as defined in subsection B of Section 430.1 of Title 62 of the Oklahoma Statutes; and

~~6.~~ 7. "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 9. AMENDATORY 61 O.S. 1991, Section 107, as last amended by Section 3, Chapter 365, O.S.L. 1998 (61 O.S. Supp. 1999, Section 107), is amended to read as follows:

Section 107. A. ~~Each~~ A bidder on a public construction contract exceeding ~~Fifteen Thousand Dollars (\$15,000.00)~~ 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 prescribes, issued by a financial institution insured by the Federal Deposit

Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in an amount equal to five percent (5%) of the bid. The awarding public agency shall deposit ~~such~~ the 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~~ The public agency shall, upon receipt of notice from the awarding public agency, return a certified or cashier's check, bid bond, or irrevocable letter of credit ~~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~~ bid solicitation.

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

SECTION 10. AMENDATORY 61 O.S. 1991, Section 113, as last amended by Section 1 of Enrolled Senate Bill No. 1176 of the

2nd Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 113. A. Except as otherwise provided by law, within the period of time, not to exceed sixty (60) days, specified in the bid notice by the awarding public agency, a contract embodying the terms set forth in the bidding documents shall be executed by the awarding public agency and the successful bidder. No bidder shall obtain any property right in a contract awarded under the provisions of the Public Competitive Bidding Act of 1974 until the contract has been fully executed by both the bidder and the awarding public agency.

B. Except as otherwise provided by law, within the period of time specified in subsection A of this section, the following shall be provided by the contractor to the awarding public agency for contracts exceeding ~~Fifteen Thousand Dollars (\$15,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00):

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

2. A bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing terms prescribed by the 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 bond in a sum equal to the contract price or an irrevocable letter of credit containing terms as 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 the public agency and its architects or engineers, or both, as an additional assured under the public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.

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

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

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

award the contract to the lowest responsible bidder, whichever shall be in the best interests of the state.

E. No public agency shall require for any public construction project, nor shall any general contractor submit a project bid based on acquiring or participating in, any wrap-up, wrap-around, or controlled insurance program. For the purposes of this subsection, "wrap-up, wrap-around, or controlled insurance program" means any insurance program that has the effect of disabling or rendering inapplicable any workers' compensation, commercial general liability, builders' risk, completed operations, or excess liability insurance coverage carried by a subcontractor that is engaged or to be engaged on a public construction project.

SECTION 11. AMENDATORY 61 O.S. 1991, Section 121, as last amended by Section 1, Chapter 118, O.S.L. 1998 (61 O.S. Supp. 1999, Section 121), is amended to read as follows:

Section 121. A. Change orders or ~~addendums~~ addenda to public construction contracts of One Million Dollars (\$1,000,000.00) or less shall not exceed a fifteen percent (15%) cumulative increase in the original contract amount.

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

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

D. If the awarding public agency does not have a governing body, the chief administrative officer of the awarding public agency shall approve change orders.

E. If the awarding public agency has a governing body, all change orders in any amount shall be formally approved by the governing body of the awarding public agency involved and the reasons ~~therefor~~ for approval recorded in the permanent records of the governing body.

F. The governing body of the Oklahoma Tourism and Recreation Department is authorized, upon approval of a majority of all of the members of the Oklahoma Tourism and Recreation Commission, to delegate to the Director of the agency the authority to approve change orders on a construction contract provided that the individual change order does not exceed Twenty-five Thousand Dollars (\$25,000.00) in expenditure and complies with the limits established by this section.

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

H. 1. If ~~the~~ a construction contract ~~was bid on a~~ contains unit ~~basis~~ pricing, and the change order ~~is based exactly on~~ pertains to the unit price ~~or basis, such a,~~ the change order will not be subject to subsections A or B of this section.

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

I. 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 12. AMENDATORY 61 O.S. 1991, Section 130, as last amended by Section 32 of Enrolled House Bill No. 2711 of the 2nd Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 130. A. The provisions of the Public Competitive Bidding Act with reference to notice and bids shall not apply ~~whenever the~~ to an emergency that exceeds Thirty-five Thousand Dollars (\$35,000.00) if:

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

2. The 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; or

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

B. 1. The governing ~~bodies~~ body of ~~all a~~ a public ~~agencies are~~ agency may, upon approval of two-thirds (2/3)

majority 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~~ whereby 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 a contract not exceeding Twenty-five Thousand Dollars (\$25,000.00)~~ Thirty-five Thousand Dollars (\$35,000.00) in amount; provided, such authority of the ~~Oklahoma~~ Department of Transportation shall not extend to any contract exceeding Five Hundred Thousand Dollars (\$500,000.00) in amount.

2. The chief administrative officer of a public agency without a governing body may declare an emergency whereby the provisions of the Public Competitive Bidding Act that refer to notice and bids shall not apply to a contract not exceeding Thirty-five Thousand Dollars (\$35,000.00) in amount.

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

D. ~~Whenever the~~ The chief administrative officer ~~shall declare such an emergency, the chief administrative officer~~ of a public agency with a governing body shall notify the governing body, ~~the President Pro Tempore of the State Senate and Speaker of the House of Representatives of such action~~ within ten (10) days of the declaration of an emergency if the governing body did not approve the emergency. ~~Such~~ The notification shall contain a statement of the reasons for the action, and shall be recorded in the official minutes of 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~~ whereby the public health or safety is endangered.

F. ~~The reasons for declaring~~ chief administrative officer of a public agency shall report an emergency and ~~not complying with the provisions of the Public Competitive Bidding Act shall be entered into~~ within ten (10) days of the emergency declaration and include the official minutes of the governing body of the public agency. ~~Copies of said minutes shall be submitted,~~ if applicable, to the State Construction Administrator of the Department of Central Services who shall compile an annual report detailing all emergencies declared pursuant to this section during the previous calendar year. The report shall be submitted to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

SECTION 13. AMENDATORY 61 O.S. 1991, Section 131, as amended by Section 5, Chapter 365, O.S.L. 1998 (61 O.S. Supp. 1999, Section 131), is amended to read as follows:

Section 131. No contract involving sums in excess of ~~Twelve Thousand Five Hundred Dollars (\$12,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00) shall be split into partial contracts involving sums ~~of below Twelve Thousand Five Hundred Dollars (\$12,500.00)~~ not exceeding Twenty-five Thousand Dollars (\$25,000.00) for the purpose of avoiding the requirements of this act. All such partial contracts ~~involving less than Twelve Thousand Five Hundred Dollars (\$12,500.00)~~ shall be void.

SECTION 14. 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~~ of the Department of Central Services;

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

3. "Department" means the Department of Central Services;

4. "Consultant" "Design 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 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. "Director" means the Director of the Department of Central Services";

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

~~6.~~ 7. "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.~~ 8. "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.~~ 9. "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; and

11. "State agency" ~~or "department"~~ means ~~any~~ an agency, board, commission, counsel, court, office, officer, bureau, institution, ~~or other governmental body of the state which receives its operating monies through the Office of State Finance~~ unit, division, body, or house of the executive or judicial branches of state government, whether elected or appointed, excluding only political subdivisions.

~~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 15. AMENDATORY 61 O.S. 1991, Section 203, is amended to read as follows:

Section 203. There is hereby created within the ~~Office of Public Affairs~~ Department of Central Services the Construction and

Properties Division. There is hereby created within the Division the position of State Construction Administrator who shall be the chief administrative officer of the Division. The Administrator shall be a registered professional engineer or a licensed architect who shall be appointed by and serve at the pleasure of the Director of Public Affairs. The Administrator may appoint employees Director shall employ or contract with experts and consultants as are necessary to perform the duties of the Division.

SECTION 16. AMENDATORY 61 O.S. 1991, Section 204, as amended by Section 17, Chapter 364, O.S.L. 1998 (61 O.S. Supp. 1999, 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~~ Maintain a comprehensive master plan for utilization and construction of buildings used by for 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~~ Maintain 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~~ excluding property of the public schools and property subject to the jurisdiction of the Commissioners of the Land Office:

- a. ~~no later than September 30, 1986, and annually thereafter commencing September 30, 1988, every department, board, commission, institution and each state agency of this state, owning or controlling land subject to the provisions of this act, shall furnish and deliver, within thirty (30) days of the closing date for lands newly acquired, provide to the Department of Central Services an itemized a list of~~

~~all~~ records, deeds, abstracts and other title instruments, showing the description of and relating to any and all such lands, ~~and or~~ interests ~~in lands~~ owned, supervised or controlled by such department, board, commission, institution and agency, and therein,

- b. the provisions of paragraph a 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,~~ a state agency 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
- c. a state agency that sells or otherwise disposes of land shall notify the Department within thirty (30) days of the disposition closing date;

~~3. 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~~

~~4. 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~~

~~5. 4. Review~~ Inspect prior to acceptance and final payment all completed projects for which the Division issued bid solicitations to ensure compliance with the plans and specifications of the project; ~~and~~

5. Provide assistance to state agencies when a state agency desires to hire a design consultant or construction manager for a project. Except as provided by subsection B of this section, the

Division shall award contracts to design consultants and construction managers that provide services to state agencies for construction projects;

6. Develop and issue solicitations for award all of state agency contracts for state construction subject to final approval required by the Department of Central Services. The Department of Central Services shall have final approval authority for contracts and contract documents. Neither the Department nor any state agency shall, for performance of work that requires that a contractor be licensed by this state, issue a solicitation to, or make a contract with, a contractor not licensed by this state; and

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

8. Recommend standards, including but not limited to building codes, space utilization, material testing, indexes of efficiency, economy, and effectiveness, ~~for adoption by the Department of Central Services pursuant to the provisions of the Administrative Procedures Act~~ rules the Director promulgates; and

9. 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~~

10. 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 4 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; and

5. The ~~Department of~~ Oklahoma Tourism and Recreation Department.

SECTION 17. AMENDATORY 61 O.S. 1991, Section 205, is amended to read as follows:

Section 205. ~~The Administrator and his employees~~ Employees of the Department of Central Services designated by the Director of the Department shall have access to ~~all state agency records that are maintained by or available to any public body which~~ relate to ~~expenditure of state funds relating to~~ state construction projects. The Director may authorize review or audit of the records.

SECTION 18. AMENDATORY 61 O.S. 1991, Section 207.2, as amended by Section 4, Chapter 283, O.S.L. 1994 (61 O.S. Supp. 1999, Section 207.2), is amended to read as follows:

Section 207.2 A. ~~Effective December 31, 1987, except~~ Except as provided by subsection B of this section, no state agency shall have contracts, or make contracts with private individuals, or have employed, or employ any persons engaged in the practice of architecture, engineering or land surveying for the purpose of planning or performing any construction upon any real property

belonging to the agency or to the state, or upon any real property of which this state will assume possession or ownership by contract, option to purchase agreement, lease, or otherwise. The term "practice of architecture" shall be defined as those activities of an architect as provided for in Section ~~45.3~~ 46.3 of Title 59 of the Oklahoma Statutes. The terms "practice of engineering" or the "practice of land surveying" shall be defined as such terms are defined by Section 475.2 of Title 59 of the Oklahoma Statutes.

B. The provisions of subsection A of this section shall not apply to:

1. The Department of Human Services;

2. The ~~Department of~~ Oklahoma Tourism and Recreation Department;

3. The Department of Health insofar as the monitoring of permitted health care facility construction for licensing purposes;

4. The Oklahoma Historical Society insofar as the monitoring of historical site preservation and authenticity;

5. The ~~Office of Public Affairs~~ Department of Central Services;

6. The State Department of Education and the ~~common~~ public schools subject to its jurisdiction;

7. The Department of Transportation;

8. The Oklahoma State System of Higher Education; and

9. The Military Department of the State of Oklahoma; ~~and~~

~~10. The University Hospitals.~~

SECTION 19. 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~~ Construction and Properties Division of the Department of Central Services shall approve state agency selection of, and award contracts to, construction managers and design consultants pursuant to the provisions of Section 62 of ~~Title 61 of~~

~~the Oklahoma Statutes this title. Provided however, the selection of all consultants for construction projects shall be performed by the Division.~~

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

C. ~~The awarding of all~~ Division shall award and administer construction contracts ~~shall be performed~~ for state agencies pursuant to the provisions of the Public Competitive Bidding Act of 1974.

SECTION 20. AMENDATORY 61 O.S. 1991, Section 208.1, is amended to read as follows:

Section 208.1 ~~The Office of Public Affairs~~ Department of Central Services may ~~levy and~~ collect a reasonable fee ~~from any state agency~~ for the purpose of providing architectural, engineering, and land surveying services to ~~these~~ state agencies and from persons requesting ~~such services~~ plans and notification of solicitations issued by the Construction and Properties Division of the Department. All fees collected in accordance with the provisions of this section shall be deposited in the "State Construction Revolving Fund" created in Section ~~27~~ 208.2 of this ~~act~~ title.

SECTION 21. AMENDATORY 61 O.S. 1991, Section 209, is amended to read as follows:

Section 209. ~~In addition to other duties imposed by law, not later than January 1, 1987, the Office of Public Affairs~~ The Director of the Department of Central Services shall ~~adopt~~ promulgate rules and regulations:

1. ~~For the full-time employment by state agencies of personnel to perform minor construction projects as determined by the Office of Public Affairs;~~

2. Specifying building codes ~~to be imposed on~~ for construction projects ~~of state agencies;~~

3. Permitting state agencies who have the expertise, upon written application to the Construction and Properties Division, to perform any part of the responsibilities ~~exercised by~~ of the Division pursuant to the provisions of the Public Building Construction and Planning Act for a specific project;

4. Specifying procedures and guidelines for the implementation of shared savings financing by state agencies ~~and departments; and~~

5. Specifying energy conservation performance guidelines, for conducting a life cycle cost analysis of alternative architectural and engineering designs and alternative major items of energy-consuming equipment to be retrofitted in existing state-owned or leased structures and for developing energy performance indices to evaluate the efficiency of energy utilization for completing designs in the construction of state-financed and leased structures;

6. The time, manner, authentication, and form of making requisitions to the Division;

7. The form and manner of submission for bids or proposals and the manner of accepting and opening bids or proposals;

8. The manner for a state agency to acquire services for construction projects not exceeding the amount for which competitive bids are required pursuant to Section 102 of this title;

9. Conditions under which any of the rules herein authorized may be waived; and

10. The form of any document the Director requires.

SECTION 22. AMENDATORY 61 O.S. 1991, Section 210, is amended to read as follows:

Section 210. A. ~~State agency and department shared~~ Shared savings contracts shall be developed in accordance with a model contract to be developed by the Construction and Properties Division

of the Department of Central Services ~~in cooperation with the Attorney General~~. The model contract shall include:

1. ~~the~~ The methodology for calculating baseline energy costs;
2. a A procedure for revising these costs should the state institute additional energy conservation features or structure use change;
3. a A requirement for a performance bond guaranteeing that the structure will be restored to the original condition in the event of default;
4. a A provision for early buy out;
5. a A clause specifying who will be responsible for maintaining the equipment; and
6. a A provision allowing the disposal of equipment at the end of the contract.

No state agency or department shall substantially alter the provisions described in the model without the permission of the Division.

B. Contracts subject to this section shall be awarded pursuant to the provisions of subsection A of Section 208 of Title 61 of the Oklahoma Statutes this title.

SECTION 23. AMENDATORY 42 O.S. 1991, Section 143.1, is amended to read as follows:

Section 143.1 A. 1. Within one (1) business day after the date of the filing of the lien statement, provided for in Sections 142 and 143 of this title, a notice of such lien shall be mailed by certified mail return receipt requested to the owner of the property on which the lien attaches. The claimant shall furnish to the county clerk the last-known mailing address of the person or persons against whom the claim is made and the owner of the property. The notice shall be mailed by the county clerk. The fee for preparing and mailing the notice of mechanics' and materialmen's lien and costs for each additional page or exhibit shall be as provided for

in Section 32 of Title 28 of the Oklahoma Statutes and shall be paid by the person filing such lien. Said fee shall be deposited into the County Clerk's Lien Fee Account, created pursuant to the provisions of Section 265 of Title 19 of the Oklahoma Statutes.

2. The notice shall contain the date of filing; the name and address of the following: The person claiming the lien; the person against whom the claim is made and the owner of the property; a legal description of the property; and the amount claimed. Provided that, if with due diligence the person against whom the claim is made or the owner of the property cannot be found, the claimant after filing an affidavit setting forth such facts may, within sixty (60) days of the filing of the lien statement, serve a copy of such notice upon the occupant of the property or the occupant of the improvements, as the case may be, in a like manner as is provided for service upon the owner thereof, or, if the same be unoccupied, he may post such copy in a conspicuous place upon the property or any improvements thereon.

B. 1. A lien claimant who is owed payment by the original contractor must send written notice of the unpaid amount to the owner of the property and the original contractor not later than the tenth day of the third month following each month in which the unpaid labor, materials, or equipment was furnished.

2. A lien claimant who is owed payment by a subcontractor must send written notice of the unpaid amount to the owner and the original contractor not later than the tenth day of the second month following each month in which the unpaid labor, materials, or equipment was furnished.

3. Failure of the lien claimant to send written notice pursuant to this subsection shall render that portion of the lien claim for which no notice was sent invalid and unenforceable.

SECTION 24. REPEALER 61 O.S. 1991, Sections 207, as amended by Section 18, Chapter 364, O.S.L. 1998, 207.1, and 207.3 (61 O.S. Supp. 1999, Section 207), are hereby repealed.

SECTION 25. 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.

47-2-3553

WHT

6/11/2015 8:22:34 PM