

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2874

By: Gray

COMMITTEE SUBSTITUTE

An Act relating to public buildings and public works; amending 61 O.S. 2001, Sections 9, 10, 11, 12 and 13, which relate to the Department of Central Services; amending 61 O.S. 2001, Sections 60, 61, 62, 62.2, 63, 64 and 65, which relate to state consultants; amending 61 O.S. 2001, Sections 102, 104, 107, 110, 113, 115, 116, 118, 119, 121, 128 and 130, which relate to the Public Competitive Bidding Act; amending 61 O.S. 2001, Sections 152, 154 and 157, which relate to the Oklahoma Lighting Energy Conservation Act; amending 61 O.S. 2001, Sections 202, 204, 207.2, 208.1, 208.2, 209 and 211, which relate to the Public Building Construction and Planning Act; updating references to certain offices within the Department of Central Services; modifying certain duties of the Construction and Properties Division of the Department of Central Services; deleting certain notice requirement; expanding certain prequalification requirement; adding and modifying definitions; repealing 61 O.S. 2001, Section 103.3, which relates to requirement of competitive bidding for construction of certain facilities; and providing an effective date.

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

SECTION 1. AMENDATORY 61 O.S. 2001, Section 9, is amended to read as follows:

Section 9. The Governor, the Director of ~~Public Affairs~~ Central Services, the Board of Regents for Higher Education, and any agent or agency of the State of Oklahoma who shall be authorized to expend funds for the construction or repair of state institutions provided for pursuant to Section 31 of Article X of the State Constitution, shall include in all contracts for repair or construction a provision requiring employment of Oklahoma labor and the use of Oklahoma materials in doing such construction and repair if such

Oklahoma labor and materials are available, and the quality of such labor or materials meet the standards of labor and material available from outside the state and can be procured at a cost no higher than the same quality of labor or material available from outside this state.

SECTION 2. AMENDATORY 61 O.S. 2001, Section 10, is amended to read as follows:

Section 10. The Governor, the Director of ~~Public Affairs~~ Central Services, the Oklahoma State Regents for Higher Education, and any agent or agency of the State of Oklahoma who shall be authorized to expend funds for the construction or repair of state institutions provided for pursuant to Section 33 of Article X of the State Constitution, shall include in all contracts for repair or construction a provision requiring employment of Oklahoma labor and the use of Oklahoma materials in doing such construction and repair wherever such Oklahoma labor and materials are available and the quality of such labor or materials meet the standards of labor and material available from outside the state and can be procured at a cost no higher than the same quality of labor or material available from outside this state.

SECTION 3. AMENDATORY 61 O.S. 2001, Section 11, is amended to read as follows:

Section 11. A. Unless otherwise provided for by law, all plans and specifications for the erection of public buildings by this state, or any agency or political subdivision thereof, or for any building erected through the use of public funds shall provide facilities for the handicapped. Such facilities shall conform with the standards prescribed in the current issue of the BOCA Basic Building Code approved by the Building Officials and Code Administrators International, Inc. Elevators shall be constructed and installed in said public buildings to the extent deemed feasible and financially reasonable by the contracting authority of the state

or such political subdivision. Said Code shall be on file in the ~~Office of Public Affairs~~ Construction and Properties Division of the Department of Central Services.

B. After May 24, 1973, any building or facility which would have been subject to the provisions of this section but for the fact that it was constructed prior to May 24, 1973, shall be subject to the requirements of this section if additions are made to such building or facility in any twelve-month period which increase the total floor area of such building or facility by twenty-five percent (25%) or more or if alterations or structural repairs are made to such building or facility in any twelve-month period which affect twenty-five percent (25%) or more of the total floor area of such building or facility.

SECTION 4. AMENDATORY 61 O.S. 2001, Section 12, is amended to read as follows:

Section 12. All plans and specifications for the erection of public buildings subject to Section 11 of this title shall be submitted prior to bidding and awarding of contract to the governing body of the political entity controlling the funds involved. Such plans and specifications shall be checked for compliance with Section 11 of this title, and no construction contract for any public building shall be awarded unless and until said plans and specifications are approved as being in compliance with Section 11 of this title by the appropriate governmental agency. If public buildings are to be financed by state funds, the ~~Office of Public Affairs~~ Construction and Properties Division of the Department of Central Services shall approve said plans and specifications. In the case of public buildings to be financed by county funds or funds controlled by some other political subdivision of the state, the agency whose approval is required shall be the governing body of such subdivision.

SECTION 5. AMENDATORY 61 O.S. 2001, Section 13, is amended to read as follows:

Section 13. (a) For the purpose of this act the term "contractor" means an individual, general partnership, limited partnership, joint venture, association, corporation or a combination of any of the foregoing who does or undertakes for compensation the ~~bidding~~ construction of any public works.

(b) The term "public works" for the purpose of this act means a ~~contractor who proposed to undertake~~ the construction, alteration, repair, improvement, moving, wrecking or demolition of any highway, road, railroad, earthwork, building or other structure, project, development or improvement, whether it be in whole or in part.

SECTION 6. AMENDATORY 61 O.S. 2001, Section 60, is amended to read as follows:

Section 60. All state agencies, boards, commissions, offices, institutions, and other governmental bodies of this state, and all individuals representing such entities, except the Department of Transportation and the Oklahoma Transportation Authority, shall use consultant and construction contract forms that the ~~Director~~ State Construction Administrator of the Construction and Properties Division of the Department of Central Services requires to award and execute contracts for designs to construct, renovate, alter, repair, maintain, or improve real property or fixtures of real property of the state. The ~~Director of the Department of Central Services Administrator~~ may authorize, in writing, exceptions to the use of consultant and construction contract forms for specific projects.

SECTION 7. AMENDATORY 61 O.S. 2001, Section 61, is amended to read as follows:

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

1. "Administrator" means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services;

~~2.~~ 2. "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.~~ 3. "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.~~ 4. "Department" means the Department of Central Services;

~~4.~~ 5. "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;

~~5.~~ 6. "Director" means the Director of the Department of Central Services;

~~6.~~ 7. "Division" means the Construction and Properties Division of the Department of Central Services;

~~7.~~ 8. "Project" means plans or designs for a public work improvement, except the transportation facilities under the jurisdiction of the Department of Transportation or the Oklahoma Transportation Authority:

- 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; and

~~8.~~ 9. "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 8. AMENDATORY 61 O.S. 2001, Section 62, is amended to read as follows:

Section 62. A. The Construction and Properties Division of the Department of Central Services shall maintain a file of all persons and entities interested in and capable of performing construction management and design consultant services for state agencies. The file shall include registration forms and information submitted by construction managers and design consultants pursuant to rules promulgated by the Department of Central Services. 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 receipt of a request for registration. Construction managers and design consultants shall re-register for each successive calendar year with the Division.

B. The requisitioning state agency shall define the scope of a proposed project. The scope shall identify project components, phases, and timetables and shall include detailed project descriptions. 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. The Division shall review the scope and approve it before the state agency issues a solicitation.

C. 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:

1. Description and scope of the project;

2. Estimated construction cost or available funds, anticipated starting date, and completion date the state agency desires for the project;

3. Certification of funds available for the construction manager or design consultant fee, including federal, state or other participation;

4. Closing date for construction manager or design consultant to give notice of interest to the state agency; and

5. Additional data 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 shall be within thirty (30) days of the date of the notice the state agency issues.

D. After the closing date, the ~~Director~~ State Construction Administrator of the Construction and Properties Division of the Department of Central Services shall provide information from the construction managers' or design consultants' files to the state agency. Should there be an inadequate expression of interest in the project, the state agency and Division personnel shall confer to add construction managers or design consultants for consideration.

E. The state agency shall review the information the Division provides and shall select no less than three and no more than five consultants per contract for interviews. The review shall include consideration of factors from the information the Division supplies including, but not limited to:

1. Professional qualifications for the type of work contemplated;

2. Capacity for completing the project in the specified time period; and

3. Past performance on projects of a similar nature.

F. The Division shall advise the state agency of the methods to be used to conduct an evaluation, interview, and selection, ~~contract~~

~~negotiation, and fee negotiation processes~~ pursuant to rules promulgated by the ~~Department of Central Services~~ Division.

G. ~~1. Upon completion of contract negotiation with the highest qualified construction manager or design consultant, which contract shall include a fair and reasonable fee, the Division shall approve and award the contract.~~

~~2.~~ If the ~~department~~ Division and the first-choice consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the second-choice consultant shall commence. If the ~~department~~ Division and the second-choice consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the third-choice consultant shall commence. If the ~~department~~ Division and the third-choice consultant cannot reach an agreement, then all negotiations shall terminate. Should the ~~department~~ Division be unable to negotiate a satisfactory contract with any of the three selected consultants, the ~~department~~ Division 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 183 of 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, all political subdivisions of this state 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 9. AMENDATORY 61 O.S. 2001, Section 62.2, is amended to read as follows:

Section 62.2 The Construction and Properties Division of 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~~ Division for the fee of the construction manager or design consultant that provides the services.

SECTION 10. AMENDATORY 61 O.S. 2001, Section 63, is amended to read as follows:

Section 63. All drawings, plans, specifications, and models made by a design consultant for a state agency shall be the property of this state, and shall be delivered to the 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 Division for inclusion in a library system to be maintained by the ~~Department of Central Services~~ Division. Any state agency shall have access for

review to any plans or specifications filed with the ~~Department~~
Division.

SECTION 11. AMENDATORY 61 O.S. 2001, Section 64, is amended to read as follows:

Section 64. Any consultant or person doing architectural, surveying or engineering work for the State of Oklahoma, their agents, servants or employees, who shall receive gratuity from any contractor or builder of any public building or works, or solicit, receive or make any political contribution from or to a contractor or builder of any public building or works, or who attempts to interfere with the competitive bidding process of the State of Oklahoma in any manner, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), and by imprisonment in the county jail for not less than six (6) months nor more than one (1) year. Any contractor or builder of any public building or works, their agents, servants or employees, who shall offer any gratuity or political contribution to any consultant doing architectural, surveying or engineering work for the State of Oklahoma, or who attempts to interfere with the competitive bidding process of the State of Oklahoma in any manner, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), and by imprisonment in the county jail for not less than six (6) months nor more than one (1) year.

SECTION 12. AMENDATORY 61 O.S. 2001, Section 65, is amended to read as follows:

Section 65. A. In addition to the conditions prescribed pursuant to subsection C of this section, the provisions of ~~Sections 61 through 64~~ Section 62 of this title shall not apply whenever the Construction and Properties Division of the Department of Central Services with concurrence of the chief administrative officer of the

public agency affected declares that an emergency exists. The consultant shall be selected by the ~~Director~~ State Construction Administrator of the Construction and Properties Division of the Department of Central Services. The resulting consultant contract shall not exceed Seven Thousand Five Hundred Dollars (\$7,500.00). The reasons for the emergency shall be recorded in the official records of the ~~Department of Central Services~~ Division.

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

1. A sudden unexpected happening or unforeseen occurrence if it is impossible for the provisions of ~~Sections 61 through 64~~ Section 62 of this title to be observed because of the time factor and if the public health or safety is endangered.

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

C. The provisions of ~~Sections 61 through 64~~ Section 62 of this title shall not apply to the process for construction of a correctional facility whenever the Board of Corrections informs the ~~Department of Central Services~~ Division that an emergency condition threatens the security of the state correctional system, including inmate population growth, and the condition requires expeditious treatment for the review, approval and bid process as it relates to construction or expansion of correctional facilities. The ~~Department of Central Services~~ Division and the Department of Corrections are authorized to implement an expedited competitive bid process for the contracting of consultants and construction of new or expanded correctional facilities that adequately respond to the emergency. The Board of Corrections shall provide written notification to the Governor, the Speaker of the House of Representatives and to the President Pro Tempore of the Senate of the emergency conditions.

SECTION 13. AMENDATORY 61 O.S. 2001, Section 102, is amended to read as follows:

Section 102. As used in the Public Competitive Bidding Act of 1974:

1. "Administrator" means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services;

2. "Awarding public agency" means the public agency which solicits and receives sealed bids on a particular public construction contract;

~~2.~~ 3. "Bidding documents" means the bid notice, instruction to bidders, plans and specifications, bidding form, bidding instructions, general conditions, special ~~provisions~~ conditions 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.~~ 4. "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.~~ 5. "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;

~~5.~~ 6. "Public construction contract" or "contract" means any contract, exceeding 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;

~~6.~~ 7. "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

~~7.~~ 8. "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 14. AMENDATORY 61 O.S. 2001, 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, by first-class mail, 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) 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) days prior to the date set for opening bids; and

~~3.~~ 2. 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 15. AMENDATORY 61 O.S. 2001, Section 107, is amended to read as follows:

Section 107. A. A bidder on a public construction contract exceeding Twenty-five Thousand Dollars (\$25,000.00) shall accompany 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 terms the Construction and Properties Division of 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 the irrevocable letter of credit with the ~~Department of Central Services~~ Division.

B. The cost of republication of the notice to bidders, 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. 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 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 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 16. AMENDATORY 61 O.S. 2001, Section 110, is amended to read as follows:

Section 110. All bids shall be sealed and opened only at the time and place mentioned in the ~~bid section~~ bidding documents, and read aloud in the presence of an administrative officer of the awarding public agency. Such bid opening shall be open to the public and to all bidders.

SECTION 17. AMENDATORY 61 O.S. 2001, Section 113, 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 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;

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 Construction and Properties Division of 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;

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~~ Division 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. 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, upon the record, present to the governing body that an error 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.

F. This act shall not apply to the public construction projects of constitutional agencies which had authorized a wrap-up, wrap-around, or controlled insurance program on or before April 11, 2000.

SECTION 18. AMENDATORY 61 O.S. 2001, Section 115, is amended to read as follows:

Section 115. Any agreement or collusion among bidders ~~or~~, prospective bidders or material suppliers in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding, or otherwise, shall render the bids of such bidders void. Persons willfully violating this section shall be guilty of a felony. Each bidder shall accompany his bid with a sworn statement that he has not been a party to any such agreement. The form of the statement shall be substantially as provided in Section 85.22 of Title 74 of the Oklahoma Statutes, but modified in wording to refer to the appropriate public agency requesting bids.

SECTION 19. AMENDATORY 61 O.S. 2001, Section 116, is amended to read as follows:

Section 116. A. Any disclosure by an employee of a public agency of the terms of a bid submitted in response to a bid notice issued by a public agency in advance of the time set for opening of all bids so submitted shall be unlawful. It shall also be unlawful for any person to solicit, possess or receive information which is

to be contained in a bid notice of a public agency, for use in preparing a bid, in advance of the date on which said bid notice is to be made equally and uniformly known to all prospective bidders and the public, and it shall further be unlawful for any employee of a public agency to withhold or impede the distribution of said information after notice of the bid has been given, unless the solicitation of bids has been withdrawn or the particular information in question has been deleted or replaced through alteration of the bid notice and said withdrawal or alteration has been made equally and uniformly known. Any violation of this subsection shall be a felony and shall render the proceedings void and require solicitation and award anew.

B. The ~~public agency's engineering~~ estimate of the actual cost of the project made by the public agency or the consultant for the agency shall not be considered confidential and shall be available to the public in accordance with the Oklahoma Open Records Act.

SECTION 20. AMENDATORY 61 O.S. 2001, Section 118, is amended to read as follows:

Section 118. A. In order to determine the responsibility of bidders, the awarding public agency may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify as responsible bidders prior to submitting bids on a public construction contract. Notice of any such prequalification requirement shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the same manner as proposals to award public construction contracts as set forth in Section 104 of this title. Financial information including, but not limited to, audited financial statements required by the awarding public agency as part of prequalification shall remain confidential.

B. The Oklahoma Transportation Commission and the Oklahoma ~~Turnpike~~ Transportation Authority may establish a system for

prequalifying prospective bidders on construction and maintenance contracts to be awarded by the Commission or Authority. The Commission and the Authority shall be the sole judge of the qualifications of prospective bidders and shall ascertain, to their exclusive satisfaction, the qualifications of each prequalified bidder. Any contractor or subcontractor prequalified as of the effective date of this act performing signing, highway lighting, or traffic signal installation or maintenance for the Oklahoma Department of Transportation or the Oklahoma ~~Turnpike~~ Transportation Authority shall be allowed to continue to bid and perform such work without obtaining any additional license from this state or any political subdivision of this state. However, no contractor or subcontractor may transfer, convey or assign this exemption to any other person or entity.

SECTION 21. AMENDATORY 61 O.S. 2001, Section 119, is amended to read as follows:

Section 119. By majority action of the governing board of the awarding public agency or the chief administrating officer of an awarding public agency without a governing board, the awarding public agency shall have the right to reject any or all bids and solicit bidders again as herein provided if, in the opinion of the governing body of the public agency, the best interests of the people of the State of Oklahoma would be best served by so doing.

SECTION 22. AMENDATORY 61 O.S. 2001, Section 121, is amended to read as follows:

Section 121. A. Change orders or 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 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.

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

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. The State Construction Administrator of the Construction and Properties Division of the Department of Central Services shall sign and execute all contracts and change orders.

E. If the awarding public agency has a governing body, all change orders shall be formally approved by the governing body of the awarding public agency and the reasons 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. The Administrator of the Division shall sign and execute all contracts and change orders.

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;
2. Itemization of all labor with number of hours per operation and cost per hour;
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;
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 a construction contract contains unit pricing, and the change order pertains to the unit price, the change order will not be subject to ~~subsections~~ subsection A or B of this section.

2. When the unit price change does not exceed Ten Thousand Dollars (\$10,000.00), the unit price change order computation may be based on an acceptable unit 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 23. AMENDATORY 61 O.S. 2001, Section 128, is amended to read as follows:

Section 128. The awarding public agency is authorized to require the contractor to carry builder's risk insurance against damage from fire and the elements during the process of construction to the extent of protecting said public agency's equity in said project until accepted by said agency.

SECTION 24. AMENDATORY 61 O.S. 2001, 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 to an emergency 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;

2. The Transportation Commission and the Oklahoma Tourism and Recreation Commission, 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. The governing body of a public agency may, upon approval of two-thirds (2/3) majority of all of the members of the governing body, delegate to the chief administrative officer of a public agency the authority to declare an emergency whereby the provisions of the Public Competitive Bidding Act of 1974 with reference to notice and bids shall not apply to ~~a contract not exceeding~~ contracts less than Thirty-five Thousand Dollars (\$35,000.00) in amount; provided, such authority of the Department of Transportation shall not extend to any contract exceeding Five Hundred Thousand Dollars (\$500,000.00) 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. The chief administrative officer of a public agency with a governing body shall notify the governing body within ten (10) days of the declaration of an emergency if the governing body did not approve the emergency. 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 whereby the public health or safety is endangered.

F. The chief administrative officer of a public agency shall report an emergency within ten (10) days of the emergency declaration and include the official minutes of the governing body of the public agency, 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 25. AMENDATORY 61 O.S. 2001, Section 152, is amended to read as follows:

Section 152. As used in the Oklahoma Lighting Energy Conservation Act:

1. "Auxiliary task lighting" means illumination applied to an individual location, with local control of switching. Examples include desk lights, examining lights, and machine lights;

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

3. "Exempt buildings" means the Oklahoma Lighting Energy Conservation Act shall not apply to:

- a. any building or portion thereof whose peak design rate of energy usage for all purposes is less than one watt or 3.4 BTU per hour, per square foot of floor area, and

b. any historic buildings which have been specifically designated as historically significant by a governmental entity, or listed in "The National Register of Historic Places" or which have been determined to be eligible for listing;

4. "Governmental entity" means any unit of local government within the state including but not limited to any county, city, or town;

5. "Lighting budget" means the total connected load of all lamps and ballast equipment installed in interior locations divided by the occupied floor space and shall be expressed in watts per square foot. The lighting budget shall not include sign lighting, parking lot lighting, or other independently mounted lighting fixtures devoted to security purposes;

6. "Lighting power limit" means the upper limit of the power to be available to provide the interior lighting needs of a building;

7. "Model Code" means the Code for Energy Conservation in New Building Construction, prepared by the National Conference of State and Building Codes and Standards, Inc.; and

8. "Occupied floor space" means the area of square feet contained within the interior dimensions of the outside walls of a building. Open air atriums, courtyards, and walkways shall not be considered to be occupied floor space.

SECTION 26. AMENDATORY 61 O.S. 2001, Section 154, is amended to read as follows:

Section 154. The Oklahoma Lighting Energy Conservation Act shall prescribe that each public building in this state will conform to a lighting code designed to accomplish energy conservation. Individual governmental entities may adopt rules, regulations, and specifications which they deem reasonable and which are consistent with Sections 155 and 156 of this title. However, nothing in this

section shall prevent a governmental entity from applying even higher standards.

The ~~Office of Public Affairs~~ Construction and Properties Division of the Department of Central Services shall review annually all lighting codes and shall make available to all governmental entities technical interpretation and evaluation and encourage adoption of the latest energy conservation methods.

SECTION 27. AMENDATORY 61 O.S. 2001, Section 157, is amended to read as follows:

Section 157. Prior to January 1, 1980, a report on the lighting power budget for every building subject to the provisions of the Oklahoma Lighting Energy Conservation Act shall be prepared and maintained by the individual responsible for building management and made available on request to the local governmental entity responsible for enforcement. This report shall indicate compliance or provide an implementation plan for compliance in accordance with the provisions of the Oklahoma Lighting Energy Conservation Act. The report shall be made on lighting power audit forms available from the ~~Office of Public Affairs~~ Construction and Properties Division of the Department of Central Services.

SECTION 28. AMENDATORY 61 O.S. 2001, 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 of the Construction and Properties Division 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. "Construction administration" means a series of actions required of the State Construction Administrator, of other state agency employees, or, under a construction administration contract or contract provision, to ensure the full, timely, and proper performance of all phases of a construction project by all contractors, suppliers, and other persons having responsibility for project work and any guarantees or warranties pertaining thereto;

4. "Construction management" means a project delivery method based on an agreement whereby the owner acquires from a construction entity a series of services that 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;

"construction management" includes:

- a. "agency construction management" whereby the construction entity provides services to the owner without taking on financial risks for the execution of the actual construction, and
- b. "at-risk construction management" whereby the construction entity, after providing agency services during the pre-construction period, takes on the financial obligation to carry out construction under a specified cost agreement;

5. "Design-build" means a project delivery method whereby this state acquires both design and construction services in the same contract from a single legal entity, referred to as the design-builder, without the bid component of the traditional design-bid-build process;

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

7. "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;

8. "Director" means the Director of the Department of Central Services;

9. "Division" means the Construction and Properties Division of the Department of Central Services;

10. "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;

11. "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;

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

13. "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

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

SECTION 29. AMENDATORY 61 O.S. 2001, Section 204, is amended to read as follows:

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

1. Maintain a comprehensive master plan for utilization and construction of buildings for state agencies, capital improvements, and utilization of land owned by this state;

2. Maintain a comprehensive inventory of state-owned real property and its use excluding property of the public schools and property subject to the jurisdiction of the Commissioners of the Land Office:

- a. each state agency shall, within thirty (30) days of the closing date for lands newly acquired, provide to the ~~Department of Central Services~~ Division a list of records, deeds, abstracts and other title instruments showing the description of and relating to any and all such lands or interests therein,
- b. the provisions of paragraph a of this subsection shall apply to all lands of public trusts having 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 way, and

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

3. 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;

4. 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;

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 and execute contracts to design consultants and construction managers that provide services to state agencies for construction projects;

6. Develop and issue solicitations for award of state agency contracts for construction. The ~~Department of Central Services~~ Division shall have final approval authority for contracts and contract documents. Neither the ~~Department~~ Division 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;

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

8. Recommend standards, including but not limited to building codes, space utilization, material testing, indexes of efficiency, economy, and effectiveness, pursuant to rules the Director promulgates;

9. Monitor construction projects to ensure maximum efficiency in the expenditure of state funds for construction; and

10. Report fraud or waste in any construction project by written notification with documentation for the report to the Attorney General. The Attorney General shall take appropriate action to protect the interest of the state.

B. ~~The~~ When a state agency has a licensed architect or licensed engineer, as a full-time employee, to review construction plans and specifications, the review and approval of all construction plans and specifications required pursuant to paragraph 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 Oklahoma Tourism and Recreation Department.

SECTION 30. AMENDATORY 61 O.S. 2001, Section 207.2, is amended to read as follows:

Section 207.2 A. 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,~~ either temporary or full-time, 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 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 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 Department of Central Services;
6. The State Department of Education and the 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.

SECTION 31. AMENDATORY 61 O.S. 2001, Section 208.1, is amended to read as follows:

Section 208.1 The Construction and Properties Division of the Department of Central Services may collect a reasonable fee for the purpose of providing architectural, engineering, and land surveying services to state agencies and from persons requesting 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 208.2 of this title.

SECTION 32. AMENDATORY 61 O.S. 2001, Section 208.2, is amended to read as follows:

Section 208.2 There is hereby created in the State Treasury a revolving fund for the ~~Office of Public Affairs~~ Construction and Properties Division of the Department of Central Services, to be

designated the "State Construction Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all fees collected by the ~~Office of Public Affairs Division~~ in accordance with the provisions of this section or as otherwise provided by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the ~~Construction and Properties~~ Division provided for in Section 203 of Title 61 of the Oklahoma Statutes. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 33. AMENDATORY 61 O.S. 2001, Section 209, is amended to read as follows:

Section 209. The Director of the Department of Central Services shall promulgate rules:

1. For state agencies to perform minor construction projects;
2. Specifying building codes for construction projects;
3. Permitting state agencies who have the expertise, upon

written application to the Construction and Properties Division of the Department of Central Services, to perform any part of the responsibilities 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;

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 34. AMENDATORY 61 O.S. 2001, Section 211, is amended to read as follows:

Section 211. On and after July 1, 1987, when any state agency or department must replace or supplement major items of energy-consuming equipment in existing state-owned or leased structures or any self-contained unit of any structure with other major items of energy-consuming equipment, the selection of such items shall be made on the basis of a life cycle cost analysis of alternatives in accordance with rules and regulations promulgated by the ~~Office of Public Affairs~~ Director of the Department of Central Services.

SECTION 35. REPEALER 61 O.S. 2001, Section 103.3, is hereby repealed.

SECTION 36. This act shall become effective November 1, 2002.

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