

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 181

By: Robinson of the Senate

and

Ferguson of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public buildings and public works; amending 61 O.S. 1991, Section 62, as last amended by Section 4, Chapter 363, O.S.L. 2000, 103, 113, as last amended by Section 10, Chapter 363, O.S.L. 2000, and 130, as last amended by Section 12, Chapter 363, O.S.L. 2000 (61 O.S. Supp. 2000, Sections 62, 113 and 130), which relate to construction managers, design consultants, and emergencies; requiring yearly re-registration; modifying content of solicitation; clarifying communication, approval, and negotiation responsibilities of the Department of Central Services; providing exception; clarifying language; exempting certain public construction projects from prohibition on certain insurance requirement; deleting restriction on exception for emergencies; deleting authorization for specified officers to declare an emergency; requiring the Construction and Properties Division of the Department of Central Services approve certain transactions; prohibiting certain state agency actions until approval has been granted; requiring state agencies to provide certain information; providing time period for the Division to provide notice of transaction approval or disapproval; providing exception; 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 62, as last amended by Section 4, Chapter 363, O.S.L. 2000 (61 O.S. Supp. 2000, Section 62), is amended to read as follows:

Section 62. A. 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.

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. ~~Registration of construction~~ Construction managers and design consultants shall ~~be effective re-register~~ for ~~one (1)~~ each successive calendar year ~~following notice of qualification from~~ 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 of the Construction and Properties Division 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:

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 ~~shall~~ of the methods to be used to conduct ~~the~~ an evaluation, interview, selection, contract negotiation, and fee negotiation processes pursuant to rules promulgated by the Department of Central Services.

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 ~~state agency shall send the contract to the~~ Division ~~for approval~~ shall approve and award of the contract.

2. If the department and the first-choice consultant cannot reach an agreement, ~~their~~ the negotiations shall ~~be terminated~~ terminate and negotiations with the second-choice consultant shall

commence. If the department and the second-choice consultant cannot reach an agreement, ~~their~~ the negotiations shall ~~be terminated~~ terminate 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~~ terminate. 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 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 2. AMENDATORY 61 O.S. 1991, Section 103, is amended to read as follows:

Section 103. ~~All~~ Unless otherwise provided by law, all public construction contracts shall be let and awarded to the lowest responsible bidder, by free and open competitive bidding after solicitation for sealed bids, in accordance with the provisions of ~~this act~~ the Public Competitive Bidding Act of 1974. No work shall be commenced until a written contract is executed and all required bonds and insurance have been provided by the contractor to the awarding public agency.

SECTION 3. AMENDATORY 61 O.S. 1991, Section 113, as last amended by Section 10, Chapter 363, O.S.L. 2000 (61 O.S. Supp. 2000, 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 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 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 4. AMENDATORY 61 O.S. 1991, Section 130, as last amended by Section 12, Chapter 363, O.S.L. 2000 (61 O.S. Supp. 2000, 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 ~~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;

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. ~~1.~~ 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 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.

~~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. 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 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 207.4 of Title 61, unless there is created a duplication in numbering, reads as follows:

A. Unless otherwise provided by law, the Construction and Properties Division of the Department of Central Services shall review and approve state agency transactions to lease or acquire real property, or lease, dispose of or transfer state-owned real property. A state agency shall not lease or acquire real property, or lease, dispose of or transfer state-owned real property until the Division provides notice of transaction approval to the state agency. Prior to approval, a state agency shall provide documents to the Division and provide reference to statutory or other legal authority of the state agency to lease or acquire real property, or lease, dispose of or transfer state-owned real property. If the state agency intends to lease or acquire real property, the state agency shall state the intended use of the real property. Within

thirty (30) days of receipt, the Division shall provide notice of transaction approval or disapproval to the state agency.

B. The provisions of this section shall not apply to the lease of office space, real property subject to supervision of the Commissioners of the Land Office, or district boards of education.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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