STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 465 By: Stipe of the Senate

and

Tyler of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public buildings and public works; amending 61 O.S. 1991, Sections 60 and 61, as amended by Sections 2 and 3, Chapter 363, O.S.L. 2000 (61 O.S. Supp. 2000, Sections 60 and 61), which relate to state consultants; providing certain exception; modifying definitions; defining terms; requiring the Department of Transportation and the Oklahoma Transportation Authority to compile certain list; providing for certain solicitation and provisions thereto; requiring certain review; requiring certain procedure; requiring negotiation of certain fees; requiring a written evaluation to be performed; authorizing the Department and the Authority to enter into service contracts; specifying that all drawings, plans, specifications, and models made by a consultant doing work for this state shall be the nonexclusive property of this state; requiring the Department of Transportation to designate and maintain certain roads as part of State Highway System; requiring the Department of Transportation and the Oklahoma Transportation Authority to provide certain notice; providing for codification; providing for noncodification; and declaring an emergency.

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

SECTION 1. AMENDATORY 61 O.S. 1991, Section 60, as amended by Section 2, Chapter 363, O.S.L. 2000 (61 O.S. Supp. 2000, 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, <u>except the Department of Transportation and the Oklahoma Transportation Authority,</u> shall use consultant and construction contract forms that the Director of the

Department of Central Services requires to award 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 may authorize, in writing, exceptions to the use of consultant and construction contract forms

SECTION 2. AMENDATORY 61 O.S. 1991, Section 61, as amended by Section 3, Chapter 363, O.S.L. 2000 (61 O.S. Supp. 2000, Section 61), is amended to read as follows:

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

1. "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. "Department" means 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;

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

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

7. "Project" means plans or designs for a public work improvement<u>, except the transportation facilities under the</u>

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

As used in Sections 4 and 5 of this act:

1. "Authority" means the Oklahoma Transportation Authority;

2. "Construction manager" means any 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. "Department" means the Department of Transportation;

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

5. "Public work improvement" means any highway, bridge, street, sewer, pavement, waterline, sidewalk or any other improvement to a

transportation facility which is constructed, altered, or repaired, under contract with the Department or the Authority.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 708.2 of Title 69, unless there is created a duplication in numbering, reads as follows:

A. The Department of Transportation and the Oklahoma Transportation Authority shall each compile a list of all persons and entities interested in and capable of performing construction management and design consultant services specific to the transportation industry. The consultant list shall include, but shall not be limited to, qualified construction managers and design consultants capable of performing such services as solicited from the Department of Central Services file on an annual basis. The Department and the Authority shall each determine the qualifications of the prospective construction managers and design consultants. The construction managers and design consultants shall be selected at the discretion of the Department or the Authority.

B. The Department or the Authority shall issue a solicitation to construction managers or design consultants capable of providing the services desired. The solicitation shall, at a minimum, contain:

1. A description and scope of the projects;

2. An estimated construction cost, anticipated starting date, and completion date the Department or the Authority desires for the project;

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

4. The closing date for construction manager or design consultant to give notice of interest; and

5. Additional data the Department or the Authority 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 the notice is issued by the Department or the Authority.

C. The Department or the Authority shall review the qualifications of the entities on the consultant list and shall select no less than three and no more than five consultants per contract for further consideration. The review shall include consideration of the following information:

1. Professional qualifications for the type of work contemplated;

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

3. Past performance on projects of a similar nature; and

4. Percentage of work to be performed by residents of Oklahoma.

D. The Department and the Authority shall each establish a committee which will evaluate the construction managers or design consultants selected for consideration and rank the construction managers or design consultants in order of preference.

E. The Department or the Authority shall enter into negotiations with the first-choice consultant. If the Department or Authority 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 or the Authority 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 or the Authority and the third-choice consultant cannot reach an agreement, then all negotiations shall be terminated. Should the Department or the Authority be unable to negotiate a satisfactory contract with any of the three selected consultants, the Department

or the Authority shall reevaluate the proposed work and send out a new notice.

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

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 708.3 of Title 69, unless there is created a duplication in numbering, reads as follows:

Any plans developed pursuant to the process for selection of a contractor for construction of a facility 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.

SECTION 6. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

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

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

The Transportation Commission shall designate and maintain as part of the State Highway System any road accepted by the Federal Highway Administration as a National Highway System connector route to an intermodal port. Such road shall not exceed one and one-half (1 1/2) miles in length.

SECTION 8. 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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