

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 181

By: Robinson

AS INTRODUCED

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, and 130, as last amended by Section 12, Chapter 363, O.S.L. 2000 (61 O.S. Supp. 2000, Sections 62 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; deleting restriction on exception for emergencies; deleting authorization for specified officers to declare an emergency; 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 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 3. 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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