

CS for SB 558

THE STATE SENATE  
Monday, February 27, 2006

Committee Substitute for  
Senate Bill No. 558

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 558 - By: SHURDEN and  
COATES of the Senate and LIOTTA of the House.

[ public buildings and public works - contracts - clarifying  
language - State Agency Construction Holding Accounts -  
effective date -  
emergency ]

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

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

Section 1. A. Prior to an award of a contract exceeding  
~~Twenty five Thousand Dollars (\$25,000.00)~~ Fifty Thousand Dollars  
(\$50,000.00) for construction or repair of a public building or  
structure, or improvement to real property, the person that receives  
the award shall:

1. Furnish a bond with good and sufficient sureties payable to  
the state in a sum not less than the total sum of the contract; or

2. Cause an irrevocable letter of credit, containing terms the  
Department of Central Services prescribes, to be issued for the  
benefit of the state by a financial institution insured by the  
Federal Deposit Insurance Corporation in a sum not less than the  
total sum of the contract.

1           B. The bond or irrevocable letter of credit shall ensure the  
2 proper and prompt completion of the work in accordance with the  
3 contract and shall ensure that the contractor shall pay all  
4 indebtedness the contractor incurs for the contractor's  
5 subcontractors and all suppliers of labor, material, rental of  
6 machinery or equipment, and repair of and parts for equipment the  
7 contract requires the contractor to furnish.

8           C. For a contract not exceeding ~~Twenty-five Thousand Dollars~~  
9 ~~(\$25,000.00)~~ Fifty Thousand Dollars (\$50,000.00), in lieu of a bond  
10 or irrevocable letter of credit, the contractor shall submit an  
11 affidavit of the payment of all indebtedness incurred by the  
12 contractor, the contractor's subcontractors, and all suppliers of  
13 labor, material, rented machinery or equipment, and repair of and  
14 parts for equipment used or consumed in the performance of the  
15 contract. The execution of the affidavit with knowledge that any of  
16 the contents of the affidavit are false, upon conviction, shall  
17 constitute perjury, punishable as provided for by law.

18           SECTION 2.           AMENDATORY           61 O.S. 2001, Section 11, as  
19 amended by Section 3, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005,  
20 Section 11), is amended to read as follows:

21           Section 11. A. Unless otherwise provided for by law, all plans  
22 and specifications for the erection of public buildings by this  
23 state, or any agency or political subdivision thereof, or for any

1 building erected through the use of public funds shall provide  
2 facilities for the handicapped. Such facilities shall conform with  
3 the codes and standards prescribed ~~in the current issue of the BOCA~~  
4 ~~Basic Building Code approved by the Building Officials and Code~~  
5 ~~Administrators International, Inc~~ by the Construction and Properties  
6 Division of the Department of Central Services. Elevators shall be  
7 constructed and installed in said public buildings to the extent  
8 deemed feasible and financially reasonable by the contracting  
9 authority of the state or such political subdivision. Said ~~Code~~  
10 codes and standards shall be on file in the Construction and  
11 Properties Division of the Department of Central Services.

12 B. After May 24, 1973, any building or facility which would  
13 have been subject to the provisions of this section but for the fact  
14 that it was constructed prior to May 24, 1973, shall be subject to  
15 the requirements of this section if additions are made to such  
16 building or facility in any twelve-month period which increase the  
17 total floor area of such building or facility by twenty-five percent  
18 (25%) or more or if alterations or structural repairs are made to  
19 such building or facility in any twelve-month period which affect  
20 twenty-five percent (25%) or more of the total floor area of such  
21 building or facility.

22 SECTION 3. AMENDATORY 61 O.S. 2001, Section 15, is  
23 amended to read as follows:

1 Section 15. ~~(a)~~ This act shall not apply to any contractor who  
2 is qualified for bidding purposes with the Oklahoma State Highway  
3 Department and submits a successful bid wherein part of or the  
4 entire funds are furnished by the United States Government.

5 ~~(b) This act shall not apply to any public works where the bid~~  
6 ~~is less than Five Hundred Dollars (\$500.00).~~

7 SECTION 4. AMENDATORY 61 O.S. 2001, Section 17, is  
8 amended to read as follows:

9 Section 17. Any contractor doing business in this state shall  
10 be presumed to have consented to the jurisdiction of any court of  
11 this state where the work is being done and service may be obtained  
12 upon any agent or employee of said contractor.

13 ~~The court may assess all costs and a reasonable attorney fee to~~  
14 ~~the plaintiff, if he is successful in his suit.~~

15 SECTION 5. AMENDATORY 61 O.S. 2001, Section 60, as  
16 amended by Section 6, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005,  
17 Section 60), is amended to read as follows:

18 Section 60. All state agencies, boards, commissions, offices,  
19 institutions, and other governmental bodies of this state, and all  
20 individuals representing such entities, except the Department of  
21 Transportation and the Oklahoma ~~Transportation~~ Turnpike Authority,  
22 shall use construction manager, consultant and construction contract  
23 forms that the State Construction Administrator of the Construction

1 and Properties Division of the Department of Central Services  
2 requires to award and execute contracts for designs to construct,  
3 renovate, alter, repair, maintain, or improve real property or  
4 fixtures of real property of the state. The Administrator may  
5 authorize, in writing, exceptions to the use of construction  
6 manager, consultant and construction contract forms for specific  
7 projects.

8 SECTION 6. AMENDATORY 61 O.S. 2001, Section 61, as  
9 amended by Section 7, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005,  
10 Section 61), is amended to read as follows:

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

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

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

19 3. "Construction manager" means an individual, firm,  
20 corporation, association, partnership, copartnership, or any other  
21 legal entity possessing the qualifications to provide services of  
22 construction management which include, but are not necessarily  
23 limited to, design review, scheduling, cost control, value

1 engineering, constructability evaluation, preparation and  
2 coordination of bid packages, and construction administration;

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

4 5. "~~Design consultant~~ Consultant" means an individual or legal  
5 entity possessing the qualifications to provide licensed  
6 architectural, registered engineering, or registered land surveying  
7 services ~~for~~ or other individuals or legal entities possessing  
8 specialized credentials and qualifications as may be needed to plan  
9 or design for any construction or a public work improvement project;

10 6. "Director" means the Director of the Department of Central  
11 Services;

12 7. "Division" means the Construction and Properties Division of  
13 the Department of Central Services;

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

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

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

22 9. "State agency" means an agency, office, officer, bureau,  
23 board, counsel, court, commission, institution, unit, division, ~~or~~

1 body or house of the executive or judicial branches of state  
2 government, whether elected or appointed, excluding only political  
3 subdivisions of the state.

4 SECTION 7. AMENDATORY 61 O.S. 2001, Section 62, as  
5 amended by Section 8, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005,  
6 Section 62), is amended to read as follows:

7 Section 62. A. The Construction and Properties Division of the  
8 Department of Central Services shall maintain a file of all persons  
9 and entities interested in and capable of performing construction  
10 management and ~~design~~ consultant services for state agencies. The  
11 file shall include registration forms and information submitted by  
12 construction managers and ~~design~~ consultants pursuant to rules  
13 promulgated by the Department of Central Services. Pursuant to  
14 rules promulgated by the Department, the Division shall determine  
15 whether a construction manager or ~~design~~ consultant qualifies for  
16 registration and shall notify the construction manager or ~~design~~  
17 consultant within twenty (20) days of receipt of a request for  
18 registration. Construction managers and ~~design~~ consultants shall  
19 re-register for each successive calendar year with the Division.

20 B. The requisitioning state agency shall define the scope of a  
21 proposed project. The scope shall identify project components,  
22 phases, and timetables and shall include detailed project  
23 descriptions. The state agency may request the Division to assist

1 with scope development. The state agency shall send the scope and a  
2 requisition for construction management or ~~design~~ consultant  
3 services, signed by the chief administrative officer, to the  
4 Division. The Division shall review the scope and approve it before  
5 the state agency issues a solicitation.

6 C. The state agency shall issue a solicitation to construction  
7 managers or ~~design~~ consultants capable of providing the services the  
8 state agency desires. The solicitation shall, at a minimum,  
9 contain:

10 1. Description and scope of the project;

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

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

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

19 5. Additional data the state agency requires from the  
20 construction manager or ~~design~~ consultant. The closing date for  
21 submission of construction manager or ~~design~~ consultant notice of  
22 interest for consideration shall be within thirty (30) days of the  
23 date of the notice the state agency issues.

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

8 E. The state agency shall review the information the Division  
9 provides and shall select no less than three and no more than five  
10 construction managers or consultants per contract for interviews.

11 The review shall include consideration of factors from the  
12 information the Division supplies including, but not limited to:

- 13 1. Professional qualifications for the type of work  
14 contemplated;
- 15 2. Capacity for completing the project in the specified time  
16 period; and
- 17 3. Past performance on projects of a similar nature.

18 F. The Division shall advise the state agency of the methods to  
19 be used to conduct an evaluation, interview, selection, contract  
20 negotiation, and fee negotiation processes pursuant to rules  
21 promulgated by the Department of Central Services Division.

22 G. 1. Upon completion of contract negotiation with the highest  
23 qualified construction manager or ~~design~~ consultant, which contract

1 shall include a fair and reasonable fee, the Division shall approve  
2 and award the contract.

3 2. If the Division and the first-choice construction manager or  
4 consultant cannot reach an agreement, the negotiations shall  
5 terminate and negotiations with the second-choice construction  
6 manager or consultant shall commence. If the Division and the  
7 second-choice construction manager or consultant cannot reach an  
8 agreement, the negotiations shall terminate and negotiations with  
9 the third-choice construction manager or consultant shall commence.  
10 If the Division and the third-choice construction manager or  
11 consultant cannot reach an agreement, then all negotiations shall  
12 terminate. Should the Division be unable to negotiate a  
13 satisfactory contract with any of the three selected construction  
14 managers or consultants, the Division shall select additional  
15 construction managers or consultants in order of their competency  
16 and qualifications and shall continue negotiations in accordance  
17 with the provisions of this section until an agreement is reached.

18 H. Any plans developed pursuant to the process for selection of  
19 a contractor for construction of a facility authorized pursuant to  
20 Section 183 of Title 73 of the Oklahoma Statutes shall become the  
21 property of the State of Oklahoma as a condition of the award of the  
22 final contract for construction of the facility.

1 I. In the selection of a ~~design~~ construction manager or  
2 consultant, all political subdivisions of this state shall follow  
3 these procedures:

4 The subdivision shall select a ~~design~~ construction manager or  
5 consultant based upon the professional qualifications and technical  
6 experience of the ~~design~~ construction manager or consultant. The  
7 subdivision shall negotiate a contract with the highest qualified  
8 ~~design~~ construction manager or consultant, provided that a fee can  
9 be negotiated that is fair and reasonable to both parties. In the  
10 event a reasonable fee cannot be negotiated with the selected ~~design~~  
11 construction manager or consultant, the subdivision may negotiate  
12 with other ~~design~~ construction managers or consultants in order of  
13 their qualifications.

14 SECTION 8. AMENDATORY 61 O.S. 2001, Section 62.1, is  
15 amended to read as follows:

16 Section 62.1 Except as provided by Sections 61 and 62 of this  
17 title and in addition to other statutory requirements, all  
18 construction manager, ~~design~~ consultant, and construction contracts  
19 shall be in accordance with the provisions of the Public Building  
20 Construction and Planning Act.

21 SECTION 9. AMENDATORY 61 O.S. 2001, Section 62.2, as  
22 amended by Section 9, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005,  
23 Section 62.2), is amended to read as follows:

1 Section 62.2 The Construction and Properties Division of the  
2 Department of Central Services may enter into contracts with  
3 construction managers and ~~design~~ consultants registered with the  
4 Division for the purpose of providing minor services to state  
5 agencies. The contracts shall provide for services on an as-needed  
6 basis and shall not exceed ~~Fifty Thousand Dollars (\$50,000.00)~~ One  
7 Hundred Thousand Dollars (\$100,00.00) per construction manager or  
8 ~~design~~ consultant during one (1) year. The requisitioning state  
9 agency shall reimburse the Division for the fee of the construction  
10 manager or ~~design~~ consultant that provides the services.

11 SECTION 10. AMENDATORY 61 O.S. 2001, Section 63, as  
12 amended by Section 10, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005,  
13 Section 63), is amended to read as follows:

14 Section 63. All drawings, plans, specifications, reports, and  
15 models made by a ~~design~~ construction manager or consultant for a  
16 state agency shall be the property of this state, and shall be  
17 delivered to the Construction and Properties Division of the  
18 Department of Central Services. The ~~design~~ construction manager or  
19 consultant receiving payment for plans paid for in whole or in part  
20 with state funds shall file such plans with the Division for  
21 inclusion in a library system to be maintained by the Division. Any  
22 state agency shall have access for review to any plans or  
23 specifications filed with the Division.

1 SECTION 11. AMENDATORY 61 O.S. 2001, Section 64, as  
2 amended by Section 11, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005,  
3 Section 64), is amended to read as follows:

4 Section 64. Any construction manager or consultant or person  
5 doing architectural, surveying or engineering work for the State of  
6 Oklahoma, their agents, servants or employees, who shall receive  
7 gratuity from any contractor or builder of any public building or  
8 works, or solicit, receive or make any political contribution from  
9 or to a contractor or builder of any public building or works, or  
10 who attempts to interfere with the competitive bidding process of  
11 the State of Oklahoma in any manner, is guilty of a misdemeanor, and  
12 upon conviction thereof shall be fined not less than One Hundred  
13 Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), and  
14 by imprisonment in the county jail for not less than six (6) months  
15 nor more than one (1) year. Any contractor or builder of any public  
16 building or works, their agents, servants or employees, who shall  
17 offer any gratuity or political contribution to any construction  
18 manager or consultant doing architectural, surveying or engineering  
19 work for the State of Oklahoma, or who attempts to interfere with  
20 the competitive bidding process of the State of Oklahoma in any  
21 manner, is guilty of a misdemeanor, and upon conviction thereof  
22 shall be fined not less than One Hundred Dollars (\$100.00) nor more  
23 than Five Hundred Dollars (\$500.00), and by imprisonment in the

1 county jail for not less than six (6) months nor more than one (1)  
2 year.

3 SECTION 12. AMENDATORY 61 O.S. 2001, Section 65, as  
4 amended by Section 12, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005,  
5 Section 65), is amended to read as follows:

6 Section 65. A. In addition to the conditions prescribed  
7 pursuant to subsection C of this section, the provisions of Section  
8 62 of this title shall not apply whenever the Construction and  
9 Properties Division of the Department of Central Services with  
10 concurrence of the chief administrative officer of the public agency  
11 affected declares that an emergency exists. The construction  
12 manager or consultant shall be selected by the State Construction  
13 Administrator of the Construction and Properties Division of the  
14 Department of Central Services. The resulting construction manager  
15 or consultant contract shall not exceed ~~Seven Thousand Five Hundred~~  
16 ~~Dollars (\$7,500.00)~~ Fifteen Thousand Dollars (\$15,000.00). The  
17 reasons for the emergency shall be recorded in the official records  
18 of the Division.

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

21 1. A sudden unexpected happening or unforeseen occurrence if it  
22 is impossible for the provisions of Section 62 of this title to be

1 observed because of the time factor and if the public health or  
2 safety is endangered; and

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

6 C. The provisions of Section 62 of this title shall not apply  
7 to the process for construction of a correctional facility whenever  
8 the Board of Corrections informs the Division that an emergency  
9 condition threatens the security of the state correctional system,  
10 including inmate population growth, and the condition requires  
11 expeditious treatment for the review, approval and bid process as it  
12 relates to construction or expansion of correctional facilities.  
13 The Division and the Department of Corrections are authorized to  
14 implement an expedited competitive bid process for the contracting  
15 of construction managers or consultants and construction of new or  
16 expanded correctional facilities that adequately respond to the  
17 emergency. The Board of Corrections shall provide written  
18 notification to the Governor, the Speaker of the House of  
19 Representatives and to the President Pro Tempore of the Senate of  
20 the emergency conditions.

21 SECTION 13. AMENDATORY 61 O.S. 2001, Section 102, as  
22 last amended by Section 89, Chapter 1, O.S.L. 2005 (61 O.S. Supp.  
23 2005, Section 102), is amended to read as follows:

1 Section 102. As used in the Public Competitive Bidding Act of  
2 1974:

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

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

9 3. "Bidding documents" means the bid notice, instruction to  
10 bidders, plans and specifications, bidding form, bidding  
11 instructions, general conditions, special conditions and all other  
12 written instruments prepared by or on behalf of an awarding public  
13 agency for use by prospective bidders on a public construction  
14 contract;

15 4. "Chief administrative officer" means an individual  
16 responsible for directing the administration of a public agency.  
17 The term does not mean one or all of the individuals that make  
18 policy for a public agency;

19 5. "Public agency" means the State of Oklahoma, and any county,  
20 city, town, school district or other political subdivision of the  
21 state, any public trust, any public entity specifically created by  
22 the statutes of the State of Oklahoma or as a result of statutory  
23 authorization therefor, and any department, agency, board, bureau,

1 commission, committee or authority of any of the foregoing public  
2 entities;

3 6. "Public construction contract" or "contract" means any  
4 contract, exceeding ~~Twenty-five Thousand Dollars (\$25,000.00)~~ Fifty  
5 Thousand Dollars (\$50,000.00) in amount, awarded by any public  
6 agency for the purpose of making any public improvements or  
7 constructing any public building or making repairs to or performing  
8 maintenance on the same except where the improvements, construction  
9 of any building or repairs to the same are improvements or buildings  
10 leased to a person or other legal entity exclusively for private and  
11 not for public use and no public tax revenues shall be expended on  
12 or for the contract unless the public tax revenues used for the  
13 project are authorized by a majority of the voters of the applicable  
14 public agency voting at an election held for that purpose and the  
15 public tax revenues do not exceed twenty-five percent (25%) of the  
16 total project cost. The amount of public tax dollars committed to  
17 the project will not exceed a fixed amount established by resolution  
18 of the governing body prior to or concurrent with approval of the  
19 project;

20 7. "Public improvement" means any beneficial or valuable change  
21 or addition, betterment, enhancement or amelioration of or upon any  
22 real property, or interest therein, belonging to a public agency,  
23 intended to enhance its value, beauty or utility or to adapt it to

1 new or further purposes. The term does not include the direct  
2 purchase of materials, provided that the materials are not purchased  
3 in increments for an amount of less than ~~Twenty-five Thousand~~  
4 ~~Dollars (\$25,000.00)~~ Fifty Thousand Dollars (\$50,000.00) and used  
5 for the purposes of completing a single project, equipment or  
6 supplies by a public agency, or any personal property as defined in  
7 paragraphs 1 and 4 of subsection B of Section 430.1 of Title 62 of  
8 the Oklahoma Statutes; and

9 8. "Retainage" means the difference between the amount earned  
10 by the contractor on a public construction contract, with the work  
11 being accepted by the public agency, and the amount paid on said  
12 contract by the public agency.

13 SECTION 14. AMENDATORY 61 O.S. 2001, Section 103, is  
14 amended to read as follows:

15 Section 103. A. Unless otherwise provided by law, all public  
16 construction contracts exceeding Fifty Thousand Dollars (\$50,000.00)  
17 shall be let and awarded to the lowest responsible bidder, by ~~free~~  
18 ~~and~~ open competitive bidding after solicitation for sealed bids, in  
19 accordance with the provisions of the Public Competitive Bidding Act  
20 of 1974. No work shall be commenced until a written contract is  
21 executed and all required bonds and insurance have been provided by  
22 the contractor to the awarding public agency.

1        B. Public construction contracts less than Fifty Thousand  
2 Dollars (\$50,000.00) shall be let and awarded to the lowest  
3 responsible bidder by receipt of written bids. No work shall be  
4 commenced until a written contract is executed and proof of  
5 insurance has been provided by the contractor to the awarding public  
6 agency.

7        C. Public construction contracts for less than Two Thousand  
8 Five Hundred Dollars (\$2,500.00) for minor maintenance or minor  
9 repair work may be negotiated with a qualified contractor. No work  
10 shall be commenced until a written contract is executed and proof of  
11 insurance has been provided by the contractor to the awarding public  
12 agency.

13        SECTION 15.        AMENDATORY        61 O.S. 2001, Section 107, as  
14 amended by Section 15, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005,  
15 Section 107), is amended to read as follows:

16        Section 107. A. A bidder on a public construction contract  
17 exceeding ~~Twenty-five Thousand Dollars (\$25,000.00)~~ Fifty Thousand  
18 Dollars (\$50,000.00) shall accompany the bid with:

19        1. A certified check, cashier's check or bid bond equal to five  
20 percent (5%) of the bid, which shall be deposited with the awarding  
21 public agency as a guaranty; or

22        2. An irrevocable letter of credit containing terms the  
23 Construction and Properties Division of the Department of Central

1 Services prescribes, issued by a financial institution insured by  
2 the Federal Deposit Insurance Corporation or the Federal Savings and  
3 Loan Insurance Corporation for the benefit of the state, on behalf  
4 of the awarding public agency, in an amount equal to five percent  
5 (5%) of the bid. The awarding public agency shall deposit the  
6 irrevocable letter of credit with the Division.

7 B. The cost of republication of the notice to bidders, actual  
8 expenses incurred by reason of the bidder's default and the  
9 difference between the low bid of the defaulting bidder and the  
10 amount of the bid of the bidder to whom the contract is subsequently  
11 awarded, but not to exceed the amount of the certified check,  
12 cashier's check, bid bond or irrevocable letter of credit may, at  
13 the discretion of the awarding public agency, be forfeited to the  
14 awarding public agency in the event the apparently successful bidder  
15 fails to execute the contract or fails to provide the required bonds  
16 or irrevocable letters of credit and insurance to the awarding  
17 public agency.

18 C. The public agency shall, upon receipt of notice from the  
19 awarding public agency, return a certified or cashier's check, bid  
20 bond, or irrevocable letter of credit to the successful bidder on  
21 execution and delivery of the contract and required bonds or  
22 irrevocable letters of credit and insurance. Checks of unsuccessful

1 bidders shall be returned to them in accordance with the terms of  
2 the bid solicitation.

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

10 SECTION 16. AMENDATORY 61 O.S. 2001, Section 111, is  
11 amended to read as follows:

12 Section 111. The awarding of a contract to the lowest  
13 responsible bidder or bidders shall be made within thirty (30) days  
14 after the opening of bids unless the governing body of the awarding  
15 public agency, by formal recorded action and for good cause shown,  
16 provides for a reasonable extension of that period, which extension  
17 period shall not in any event exceed fifteen (15) days where only  
18 state or local funds are involved, or not to exceed ninety (90) days  
19 on any award of contract for the construction of a public  
20 improvement where funds are utilized which are furnished by an  
21 agency of the United States Government. Upon mutual written  
22 agreement between the lowest responsible bidder or bidders and the  
23 awarding public agency, the Division may extend the contract award

1 period no more than one hundred twenty (120) days of the bid opening  
2 date.

3 SECTION 17. AMENDATORY 61 O.S. 2001, Section 113, as  
4 last amended by Section 1, Chapter 299, O.S.L. 2004 (61 O.S. Supp.  
5 2005, Section 113), is amended to read as follows:

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

15 B. Except as otherwise provided by law, within the period of  
16 time specified in subsection A of this section, the following shall  
17 be provided by the contractor to the awarding public agency for  
18 contracts exceeding ~~Twenty-five Thousand Dollars (\$25,000.00)~~ Fifty  
19 Thousand Dollars (\$50,000.00):

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

22 2. A bond in a sum equal to the contract price, with adequate  
23 surety, or an irrevocable letter of credit containing terms

1 prescribed by the Construction and Properties Division of the  
2 Department of Central Services issued by a financial institution  
3 insured by the Federal Deposit Insurance Corporation or the Federal  
4 Savings and Loan Insurance Corporation for the benefit of the state,  
5 on behalf of the awarding public agency, in a sum equal to the  
6 contract price, to ensure the proper and prompt completion of the  
7 work in accordance with the provisions of the contract and bidding  
8 documents;

9       3. A bond in a sum equal to the contract price or an  
10 irrevocable letter of credit containing terms as prescribed by the  
11 Division issued by a financial institution insured by the Federal  
12 Deposit Insurance Corporation or the Federal Savings and Loan  
13 Insurance Corporation for the benefit of the state, on behalf of the  
14 awarding public agency, in a sum equal to the contract price, to  
15 protect the awarding public agency against defective workmanship and  
16 materials for a period of one (1) year after acceptance of the  
17 project; and

18       4. Public liability and workers' compensation insurance during  
19 construction in reasonable amounts. A public agency may require the  
20 contractor to name the public agency and its architects or  
21 engineers, or both, as an additional assured under the public  
22 liability insurance, which requirement, if made, shall be  
23 specifically set forth in the bidding documents.

1 C. A single irrevocable letter of credit may be used to satisfy  
2 paragraphs 1, 2 and 3 of subsection B of this section, provided such  
3 single irrevocable letter of credit meets all applicable  
4 requirements of subsection B of this section.

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

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

18 2. If the awarding public agency has a governing body, the  
19 agency shall, at the next regularly scheduled public business  
20 meeting of the governing body of the agency, upon the record,  
21 present to the governing body that an error has been made in the  
22 award process and shall state the nature of the error. The  
23 governing body, upon presentation of the facts of the error, may

1 rescind the award and readvertise for bids, or may direct correction  
2 of the error and award the contract to the lowest responsible  
3 bidder, whichever shall be in the best interests of the state.

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

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

17 SECTION 18. AMENDATORY 61 O.S. 2001, Section 113.1, is  
18 amended to read as follows:

19 Section 113.1 A. A public construction contract shall provide  
20 for partial payment based upon work completed. The contract shall  
21 provide that up to ten percent (10%) of all partial payments made  
22 shall be withheld as retainage. At any time the contractor has  
23 completed in excess of fifty percent (50%) of the total contract

1 amount, the retainage shall be reduced to five percent (5%) of the  
2 amount earned to date if the owner or owner's duly authorized  
3 representative has determined that satisfactory progress is being  
4 made, and upon approval by the surety.

5 B. The ~~Oklahoma~~ Department of Transportation or the Oklahoma  
6 Turnpike Authority shall not withhold retainage on public  
7 construction contracts awarded by the Department or the Authority.

8 C. The ~~Oklahoma~~ Department of Transportation shall not withhold  
9 retainage or require any bond on projects awarded to railroads on  
10 the railroad's privately owned or operated rail property.

11 SECTION 19. AMENDATORY 61 O.S. 2001, Section 113.3, is  
12 amended to read as follows:

13 Section 113.3 ~~The~~ When interest is due the contractor, the  
14 awarding public agency shall pay to the contractor interest at the  
15 rate of one and one-half percent (1 1/2%) ~~three-fourths percent~~  
16 ~~(3/4%) per month of the final payment due the contractor.~~ For lump  
17 sum contracts the interest shall commence thirty (30) days after the  
18 work under the contract has been completed and accepted and all  
19 required material certifications and other documentation required by  
20 the contract have been furnished the awarding public agency by the  
21 contractor, and shall run until the date when the final payment or  
22 estimate is tendered to the contractor.

1 For contracts bid by unit prices the interest shall commence  
2 sixty (60) days after the above conditions are satisfied. When  
3 contract quantities or the final payment amount is in dispute, the  
4 interest-bearing period shall be suspended until the conclusion of  
5 arbitration and settlement of the dispute.

6 SECTION 20. AMENDATORY 61 O.S. 2001, Section 116, as  
7 amended by Section 19, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005,  
8 Section 116), is amended to read as follows:

9 Section 116. A. Any disclosure by an employee of a public  
10 agency of the terms of a bid submitted in response to a bid notice  
11 issued by a public agency in advance of the time set for opening of  
12 all bids so submitted shall be unlawful. It shall also be unlawful  
13 for any person to solicit, possess or receive information which is  
14 to be contained in a bid notice of a public agency, for use in  
15 preparing a bid, in advance of the date on which said bid notice is  
16 to be made equally and uniformly known to all prospective bidders  
17 and the public, and it shall further be unlawful for any employee of  
18 a public agency to withhold or impede the distribution of said  
19 information after notice of the bid has been given, unless the  
20 solicitation of bids has been withdrawn or the particular  
21 information in question has been deleted or replaced through  
22 alteration of the bid notice and said withdrawal or alteration has  
23 been made equally and uniformly known. Any violation of this

1 subsection shall be a felony and shall render the proceedings void  
2 and require solicitation and award anew.

3 B. The estimate of the actual cost of the project made by the  
4 public agency, ~~or the~~ construction manager or consultant for the  
5 agency shall not be considered confidential and shall be available  
6 to the public in accordance with the Oklahoma Open Records Act.

7 SECTION 21. AMENDATORY 61 O.S. 2001, Section 119.1, is  
8 amended to read as follows:

9 Section 119.1 A. If no timely bid is received after bid  
10 notices have been published on any proposed public construction  
11 contract which does not exceed Fifty Thousand Dollars (\$50,000.00);

12 1. ~~the~~ The governing body of a county, city, town or school  
13 district may direct its employees or agents to negotiate the  
14 contract with a prospective contractor; or

15 2. The state agency as defined in Section 202 of this title,  
16 shall request the State Construction Administrator of the  
17 Construction and Properties Division to negotiate a contract on  
18 their behalf.

19 B. The amount of a contract which may be awarded by the  
20 governing body pursuant to this section shall not exceed Fifty  
21 Thousand Dollars (\$50,000.00) and the work to be performed shall be  
22 as specified in the initial bidding documents. The contract shall  
23 be executed within six (6) months after the date initially set for

1 opening of bids. The contract and contract procedure shall conform  
2 to all other applicable provisions of the Public Competitive Bidding  
3 Act of 1974.

4 SECTION 22. AMENDATORY 61 O.S. 2001, Section 121, as  
5 last amended by Section 2, Chapter 328, O.S.L. 2004 (61 O.S. Supp.  
6 2005, Section 121), is amended to read as follows:

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

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

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

18 D. If the awarding public agency does not have a governing  
19 body, the chief administrative officer of the awarding public agency  
20 shall approve change orders. The State Construction Administrator  
21 of the Construction and Properties Division of the Department of  
22 Central Services, or the administrator's designee, shall sign and

1 execute all contracts and change orders, as they relate to state  
2 agencies.

3 E. If the awarding public agency has a governing body, all  
4 change orders shall be formally approved by the governing body of  
5 the awarding public agency and the reasons for approval recorded in  
6 the permanent records of the governing body.

7 F. The governing body of the Oklahoma Tourism and Recreation  
8 Department is authorized, upon approval of a majority of all of the  
9 members of the Oklahoma Tourism and Recreation Commission, to  
10 delegate to the Director of the agency the authority to approve  
11 change orders on a construction contract provided that the  
12 individual change order does not exceed Twenty-five Thousand Dollars  
13 (\$25,000.00) in expenditure and complies with the limits established  
14 by this section. The Administrator of the Division shall sign and  
15 execute all contracts and change orders.

16 G. The Transportation Commission may, by rule, authorize the  
17 Director of the Department of Transportation to approve change  
18 orders in an amount of not to exceed Five Hundred Thousand Dollars  
19 (\$500,000.00). Change orders approved by the Director shall be  
20 presented to the Transportation Commission during the next regular  
21 meeting and the reasons therefor recorded in the permanent records.  
22 The Oklahoma ~~Transportation~~ Turnpike Authority may authorize the  
23 Director of the Authority to approve change orders in an amount not

1 to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00). Change  
2 orders approved by the Director of the Authority shall be presented  
3 to the ~~Oklahoma Transportation~~ Authority during the next regular  
4 meeting and the reasons for the orders recorded in permanent  
5 records.

6 H. All change orders for the Department of Transportation or  
7 the Oklahoma ~~Transportation~~ Turnpike Authority shall contain a unit  
8 price and total for each of the following items:

- 9 1. All materials with cost per item;
- 10 2. Itemization of all labor with number of hours per operation  
11 and cost per hour;
- 12 3. Itemization of all equipment with the type of equipment,  
13 number of each type, cost per hour for each type, and number of  
14 hours of actual operation for each type;
- 15 4. Itemization of insurance cost, bond cost, social security,  
16 taxes, workers' compensation, employee fringe benefits and overhead  
17 cost; and
- 18 5. Profit for the contractor.

19 ~~H.~~ I. 1. If a construction contract contains unit pricing, and  
20 the change order pertains to the unit price, the change order will  
21 not be subject to subsection A or B of this section.

22 2. When the unit price change does not exceed Ten Thousand  
23 Dollars (\$10,000.00), the unit price change order computation may be

1 based on an acceptable unit price basis in lieu of cost itemization  
2 as required in paragraphs 1, 2, 3, 4 and 5 of subsection ~~G~~ H of this  
3 section.

4 ~~F.~~ J. Alternates or add items bid with the original bid and  
5 contained in the awarded contract as options of the awarding public  
6 agency shall not be construed as change orders under the provisions  
7 of the Public Competitive Bidding Act of 1974.

8 SECTION 23. AMENDATORY 61 O.S. 2001, Section 123, is  
9 amended to read as follows:

10 Section 123. All statements or invoices submitted to the  
11 awarding public agency for work performed shall contain a ~~sworn~~  
12 certification by the supervising architect or engineer, or other  
13 supervisory official if no supervisory architect or engineer is  
14 employed for the project, that work for which payment is claimed has  
15 been performed and that such work conforms to the plans and  
16 specifications for the project. No such statement or invoice shall  
17 be paid by the awarding public agency without such certification.  
18 The execution of a ~~sworn~~ certificate, as herein provided, shall not  
19 constitute a defense or in any other manner affect any cause or  
20 causes of action which the awarding public agency might otherwise  
21 have against the contractor for nonperformance of a public  
22 construction contract.

1 SECTION 24. AMENDATORY 61 O.S. 2001, Section 131, is  
2 amended to read as follows:

3 Section 131. No contract ~~involving sums in excess of Twenty~~  
4 ~~five Thousand Dollars (\$25,000.00)~~ shall be split into partial  
5 contracts ~~involving sums not exceeding Twenty-five Thousand Dollars~~  
6 ~~(\$25,000.00)~~ for the purpose of avoiding the requirements of this  
7 act. All such partial contracts shall be void.

8 SECTION 25. AMENDATORY 61 O.S. 2001, Section 202, as  
9 amended by Section 28, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005,  
10 Section 202), is amended to read as follows:

11 Section 202. As used in the Public Building Construction and  
12 Planning Act:

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

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

1           3. "Construction administration" means a series of actions  
2 required of the State Construction Administrator, of other state  
3 agency employees, or, under a construction administration contract  
4 or contract provision, to ensure the full, timely, and proper  
5 performance of all phases of a construction project by all  
6 contractors, suppliers, and other persons having responsibility for  
7 project work and any guarantees or warranties pertaining thereto;

8           4. "Construction management" means a project delivery method  
9 based on an agreement whereby the owner acquires from a construction  
10 entity a series of services that include, but are not necessarily  
11 limited to, design review, scheduling, cost control, value  
12 engineering, constructability evaluation, preparation and  
13 coordination of bid packages, and construction administration;  
14 "construction management" includes:

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

1       5. "Consultant" means an individual or legal entity possessing  
2 the qualifications to provide licensed architectural, registered  
3 engineering, or registered land surveying services or possessing  
4 specialized credentials and qualifications as may be needed to plan  
5 or design for any construction or public work improvement project;

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

11       ~~6.~~ 7. "Department" means the Department of Central Services;

12       ~~7. "Design consultant" means any individual, firm, corporation,~~  
13 ~~association, partnership, copartnership, or any other legal entity~~  
14 ~~possessing the required qualifications to provide licensed~~  
15 ~~architectural, registered engineering, or registered land surveying~~  
16 ~~services for any construction project;~~

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

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

21       10. "Energy performance index or indices" (EPI) means a number  
22 describing the energy requirements at the building boundary of a  
23 structure, per square foot of floor space or per cubic foot of

1 occupied volume, as appropriate under defined internal and external  
2 ambient conditions over an entire seasonal cycle. As experience  
3 develops on the energy performance achieved with state construction,  
4 the indices (EPI) will serve as a measure of structure performance  
5 with respect to energy consumption;

6 11. "Life cycle costs" means the cost of owning, operating, and  
7 maintaining the structure over the life of the structure. This may  
8 be expressed as an annual cost for each year of the facility's use;

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

12 13. "Public improvement" means any beneficial or valuable  
13 change or addition, betterment, enhancement or amelioration of or  
14 upon any real property, or interest therein, belonging to a public  
15 agency, intended to enhance its value, beauty or utility or to adapt  
16 it to new or further purposes. The term does not include the direct  
17 purchase of materials, provided that the materials are not purchased  
18 in increments for an amount of less than Twenty-five Thousand  
19 Dollars (\$25,000.00) and used for the purposes of completing a  
20 single project, equipment or supplies by a public agency, or any  
21 personal property as defined in paragraphs 1 and 4 of subsection B  
22 of Section 430.1 of Title 62 of the Oklahoma Statutes;

1        14. "Shared savings financing" means the financing of energy  
2 conservation measures and maintenance services through a private  
3 firm which may own any purchased equipment for the duration of a  
4 contract. Such contract shall specify that the private firm will be  
5 recompensed either out of a negotiated portion of the savings  
6 resulting from the conservation measures and maintenance services  
7 provided by the private firm or, in the case of a cogeneration  
8 project, through the payment of a rate for energy lower than would  
9 otherwise have been paid for the same energy from current sources;  
10 and

11        ~~14.~~ 15. "State agency" means an agency, board, commission,  
12 counsel, court, office, officer, bureau, institution, unit,  
13 division, body, or house of the executive or judicial branches of  
14 government of this state, whether elected or appointed, excluding  
15 only political subdivisions.

16        SECTION 26.        AMENDATORY        61 O.S. 2001, Section 204, as  
17 last amended by Section 2, Chapter 277, O.S.L. 2003 (61 O.S. Supp.  
18 2005, Section 204), is amended to read as follows:

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

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

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

5           a. ~~each state agency shall, within thirty (30) days of~~  
6 ~~the closing date for lands newly acquired, provide to~~  
7 ~~the Division a list of records, deeds, abstracts and~~  
8 ~~other title instruments showing the description of and~~  
9 ~~relating to any and all such lands or interests~~  
10 ~~therein,~~

11           b. ~~the provisions of paragraph a of this subsection shall~~  
12 ~~apply to all lands of public trusts having a state~~  
13 ~~agency as the primary beneficiary, but shall not apply~~  
14 ~~to lands of municipalities, counties, school~~  
15 ~~districts, or agencies thereof, or Department of~~  
16 ~~Transportation rights of way, and~~

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

20           ~~3.~~ Review and approve all construction plans and specifications  
21 to ensure compliance with good construction practices and space  
22 standards, costs of project, proposed construction timetables, and

1 agency need for the project, except as otherwise provided in  
2 subsection B of this section;

3 ~~4.~~ 3. Inspect prior to acceptance and final payment all  
4 completed projects for which the Division issued bid solicitations  
5 to ensure compliance with the plans and specifications of the  
6 project;

7 ~~5.~~ 4. Provide assistance to state agencies when a state agency  
8 desires to hire a ~~design~~ consultant or construction manager for a  
9 project. Except as provided by subsection B of this section, the  
10 Division shall award and execute contracts to ~~design~~ consultants and  
11 construction managers that provide services to state agencies for  
12 construction projects;

13 ~~6.~~ 5. Develop and issue solicitations for award of state agency  
14 contracts for construction. The Division shall have final approval  
15 authority for contracts and contract documents. Neither the  
16 Division nor any state agency shall, for performance of work that  
17 requires that a contractor be licensed by this state, issue a  
18 solicitation to, or make a contract with, a contractor not licensed  
19 by this state;

20 ~~7.~~ 6. Review inspections performed by ~~design~~ consultants and  
21 construction managers during construction, primary inspections when  
22 consultants or construction managers are not used, and final  
23 inspections after completion;

1       ~~8. Recommend~~ 7. Establish standards, including, but not  
2 limited to, building codes, space utilization, material testing,  
3 indexes of efficiency, economy, and effectiveness, pursuant to rules  
4 the Director promulgates;

5       ~~9. 8.~~ Monitor construction projects to ensure maximum  
6 efficiency in the expenditure of state funds for construction;

7       ~~10. 9.~~ Report fraud or waste in any construction project by  
8 written notification with documentation for the report to the  
9 Attorney General. The Attorney General shall take appropriate  
10 action to protect the interest of the state; and

11       ~~11. 10.~~ Prequalify as good and sufficient insurance carriers,  
12 bonding companies and surety companies to meet provisions of  
13 Sections 1 and 134 of this title. The Director shall promulgate  
14 rules to establish criteria to determine whether a carrier or  
15 company is good and sufficient. The prequalification requirement  
16 and process shall not violate the provisions of Section 135 of this  
17 title.

18       B. When a state agency has a licensed architect or licensed  
19 engineer, as a full-time employee, to review construction plans and  
20 specifications, the review and approval of all construction plans  
21 and specifications required pursuant to paragraph 3 of subsection A  
22 of this section shall not apply to:

- 1        1. The common schools subject to the jurisdiction of the State
- 2 Department of Education;
- 3        2. The Department of Transportation with respect to highways,
- 4 bridges and dams;
- 5        3. The Oklahoma State System of Higher Education;
- 6        4. The Military Department of the State of Oklahoma; ~~and~~
- 7        5. The Oklahoma Tourism and Recreation Department; and
- 8        6. The Department of Human Services.

9        SECTION 27.        AMENDATORY        61 O.S. 2001, Section 208, is  
10 amended to read as follows:

11        Section 208. A. The Construction and Properties Division of  
12 the Department of Central Services shall approve state agency  
13 selection of, and award contracts to, construction managers and  
14 design consultants pursuant to the provisions of Section 62 of this  
15 title.

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

18        C. The Division shall award and administer construction  
19 contracts for state agencies pursuant to the provisions of the  
20 Public Competitive Bidding Act of 1974.

21        D. 1. When all bids for a public construction contract exceed  
22 an agency's estimate and available funding, the State Construction  
23 Administrator may enter into negotiations with the lowest

1 responsible bidder for the purpose of modifying the project scope  
2 and reducing the construction cost, provided that:

3 a. the unexpected higher construction costs resulted from  
4 unforeseen economic conditions or otherwise sudden  
5 price volatility in the construction industry,

6 b. the project was appropriately planned, and cost  
7 estimates were developed using standards of care  
8 acceptable to the Division, and

9 c. further delay caused by redesigning and rebidding the  
10 project would jeopardize the using agency's mission or  
11 result in the loss of a planned funding source.

12 2. To request consideration for negotiations pursuant to this  
13 subsection, the using agency, within ten (10) days of the bid  
14 opening date, shall make a written request to the Director of the  
15 Department of Central Services to enter into negotiations pursuant  
16 to paragraph 1 of this subsection. If approved by the Director, the  
17 State Construction Administrator shall consult with the using  
18 agency, consultant and low bidder on methods to reduce the project  
19 scope or other cost-saving measures.

20 3. If a suitable revised scope and contract amount is agreed  
21 upon by the using agency, low bidder and State Construction  
22 Administrator, the Division may award the public construction  
23 contract to the low bidder.

1        4. The State Construction Administrator shall negotiate a fair  
2 and reasonable fee with the project's consultant, if applicable, to  
3 make any necessary revisions to the contract documents. The cost of  
4 this additional consulting work shall be paid from the agency's  
5 available funds.

6        5. Approval and final award of the contract for the  
7 construction negotiated pursuant to this subsection shall occur no  
8 later than one hundred and twenty (120) days from the opening bid.

9        SECTION 28.        AMENDATORY        61 O.S. 2001, Section 209, as  
10 last amended by Section 50, Chapter 5, O.S.L. 2004 (61 O.S. Supp.  
11 2005, Section 209), is amended to read as follows:

12        Section 209. The Director of Central Services shall promulgate  
13 rules:

14        1. For state agencies to perform minor construction projects;

15        2. Specifying building codes for construction projects;

16        3. Permitting state agencies who have the expertise, upon  
17 written application to the Construction and Properties Division of  
18 the Department of Central Services, to perform any part of the  
19 responsibilities of the Division pursuant to the provisions of the  
20 Public Building Construction and Planning Act for a specific  
21 project;

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

- 1           5. Specifying energy conservation performance guidelines, for  
2 conducting a life cycle cost analysis of alternative architectural  
3 and engineering designs and alternative major items of energy-  
4 consuming equipment to be retrofitted in existing state-owned or  
5 leased structures and for developing energy performance indices to  
6 evaluate the efficiency of energy utilization for completing designs  
7 in the construction of state-financed and leased structures;
- 8           6. The time, manner, authentication, and form of making  
9 requisitions to the Division;
- 10          7. The form and manner of submission for bids or proposals and  
11 the manner of accepting and opening bids or proposals that may  
12 include online bids pursuant to the Oklahoma Online Bidding Act;
- 13          8. The manner for a state agency to acquire services for  
14 construction projects not exceeding the amount for which competitive  
15 bids are required pursuant to Section 102 of this title;
- 16          9. Conditions under which any of the rules herein authorized  
17 may be waived;
- 18          10. The form of any document the Director requires; ~~and~~
- 19          11. Specifying provisions the Division of a state agency shall  
20 follow to adhere to acquisition, contract, contract management and  
21 other provisions of this title; and

1        12. Specifying the process a state agency shall follow to  
2 establish the scope of work, schedule and cost estimate for all  
3 construction projects.

4        SECTION 29.        NEW LAW        A new section of law to be codified  
5 in the Oklahoma Statutes as Section 212 of Title 61, unless there is  
6 created a duplication in numbering, reads as follows:

7        A. For purposes of this section:

8        1. "Performance-based efficiency contract" means a contract for  
9 the design, development, financing, installation, construction, and  
10 service of any improvement, repair, alteration or betterment of any  
11 public building or facility; or any equipment, fixture or furnishing  
12 to be added to or used in any such building or facility; or any  
13 maintenance or operational strategy that is designed and implemented  
14 that will reduce utility consumption or lower operating costs, and  
15 may include, but is not limited to, one or more of the following:

16            a. utility services,

17            b. heating, ventilating or air conditioning system  
18            modifications or replacements and automated control  
19            systems,

20            c. replacement or modifications of lighting fixtures,

21            d. indoor air quality improvements to increase air  
22            quality that conform to the applicable state or local

1 building code requirements when done in conjunction  
2 with other cost-saving measures,

3 e. any additional building infrastructure improvement,  
4 cost saving, life safety or any other improvement that  
5 provides long-term operating cost reductions and is in  
6 compliance with state and local codes, or

7 f. any facility operation and support programs that  
8 reduce operating cost; and

9 2. "Qualified provider" means a person or business experienced  
10 or trained in the design, analysis, construction and/or installation  
11 of energy conservation and facility management measures. A  
12 qualified provider must employ a professional engineer registered in  
13 the State of Oklahoma.

14 B. In addition to any other legally permissible alternatives of  
15 entering into contracts, The Department of Central Services  
16 (Construction and Properties Division) may enter into performance-  
17 based efficiency contracts on behalf of all state agencies with a  
18 qualified provider pursuant to the provisions of this section.

19 A qualified provider to whom the contract is awarded shall be  
20 required to provide to the Division a sufficient bond for its  
21 faithful performance of the contract. In addition, the Division may  
22 require performance bonds covering the annual amount of guaranteed  
23 savings over the contract term. The Department of Central Services

1 may enter into an installment contract, lease purchase agreement or  
2 other contractual obligation for the purpose of financing  
3 performance-based efficiency projects for a term not to exceed  
4 twenty (20) years or the useful life of the project.

5 The qualified provider must guarantee the contract's cost  
6 savings each year during the term of the agreement. The savings  
7 must be sufficient to offset the annual costs of the contract. The  
8 contract shall provide for reimbursement to the state agency  
9 undertaking the project annually for any shortfall of guaranteed  
10 savings. Savings must be measured, verified and documented each  
11 year of the term and may be utilized to meet the annual debt  
12 service.

13 The contracts authorized by this section shall include  
14 procedures for modifying the contract should the Division determine  
15 it necessary.

16 This section shall constitute the sole authority necessary to  
17 enter into performance-based efficiency contracts, without regard to  
18 compliance with other laws which may specify additional procedural  
19 requirements for execution of contracts.

20 SECTION 30. AMENDATORY 74 O.S. 2001, Section 94, is  
21 amended to read as follows:

22 Section 94. A. Except as otherwise provided by law, the  
23 Department of Central Services shall have full and complete

1 authority to designate quarters for every department of state  
2 government, and to determine what space shall be allotted.

3 B. The Department may lease adequate space in state buildings  
4 and facilities to private vendors for the location of automatic  
5 teller machines as determined necessary or appropriate by the  
6 Director of the Department. The Department is hereby authorized to  
7 fix the monthly amount to be paid by such vendors, which shall be  
8 deposited in the Building and Facility Revolving Fund created in  
9 Section 63.1 of this title for the operation and maintenance of the  
10 buildings and facilities.

11 SECTION 31. AMENDATORY 74 O.S. 2001, Section 129.4, as  
12 last amended by Section 2, Chapter 234, O.S.L. 2005 (74 O.S. Supp.  
13 2005, Section 129.4), is amended to read as follows:

14 Section 129.4 A. Unless procedures for ~~the disposal of real~~  
15 ~~property owned by this state~~ state agency transactions to lease or  
16 acquire real property, or lease, dispose of or transfer state-owned  
17 real property are otherwise provided for by law, no department,  
18 board, commission, institution, or agency of this state shall sell,  
19 lease, exchange, or otherwise dispose of such real property subject  
20 to its jurisdiction except as provided for in ~~subsection B~~ of this  
21 section.

22 B. 1. Every department, board, commission, institution, or  
23 agency, upon legislative authorization to dispose of a parcel of

1 real property or upon a determination, in writing, by said  
2 department, board, commission, institution, or agency that a parcel  
3 of real property subject to its jurisdiction is no longer needed by  
4 said department, board, commission, institution, or agency, shall  
5 request the Department of Central Services to dispose of said real  
6 property.

7 2. Upon notification by the department, board, commission,  
8 institution, or agency to sell a parcel of real property, the  
9 Department of Central Services shall:

- 10 a. when appropriate, determine whether a study conducted  
11 pursuant to Section 456.7 of this title is in the best  
12 interest of the state,
- 13 b. obtain three new and complete appraisals of such  
14 property on properties with an estimated value that  
15 equals or exceeds One Million Dollars (\$1,000,000.00);  
16 or, two new and complete appraisals on properties with  
17 an estimated value greater than One Hundred Thousand  
18 Dollars (\$100,000.00) and less than One Million  
19 Dollars (\$1,000,000.00); or, one new and complete  
20 appraisal on properties with an estimated value less  
21 than One Hundred Thousand Dollars (\$100,000.00). The  
22 appraisals shall be made by ~~three disinterested~~  
23 ~~persons, knowledgeable in real estate costs~~ persons

1                   certified by the Real Estate Appraiser Board of the  
2                   Oklahoma Insurance Department, who shall ascertain:

- 3                   (1) the present fair value of the property, and  
4                   (2) the present value of the improvements on such  
5                   property, and  
6                   (3) the actual condition of the improvements on the  
7                   property, ~~and~~

8                   ~~b.~~ c. cause notice of such sale to be published for at  
9                   least one (1) day in a newspaper of general statewide  
10                  circulation authorized to publish legal notices, and  
11                  for at least three (3) consecutive weeks in a  
12                  newspaper of general circulation published in the  
13                  county or counties in which the property is located.  
14                  The notice shall contain the legal description of each  
15                  parcel of real property to be offered for sale, the  
16                  appraised value thereof, the time and location of the  
17                  sale or opening of the bids, and terms of the sale  
18                  including the fact that no parcel of property shall be  
19                  sold for less than ninety percent (90%) of the  
20                  appraised value of the real property, and

21                  ~~e.~~ d. offer said property through public auction or sealed  
22                  bids within three (3) weeks after the last publication  
23                  of the notice in said newspapers. The property shall

1 be sold to the highest bidder. The Department of  
2 Central Services shall not accept a bid of less than  
3 ninety percent (90%) of the appraised fair value of  
4 the property and the improvements on such property.  
5 The Department of Central Services is authorized to  
6 reject all bids.

7 3. The cost of the appraisements required by the provisions of  
8 this section, together with other necessary expenses incurred  
9 pursuant to this section, shall be paid by the department, board,  
10 commission, institution, or agency for which the real property is to  
11 be sold from funds available to said department, board, commission,  
12 institution, or agency for such expenditure. All monies received  
13 from the sale or disposal of said property, except those monies  
14 necessary to pay the expenses incurred pursuant to this section,  
15 shall be deposited in the General Revenue Fund.

16 C. Unless otherwise provided by law, the Department of Central  
17 Services shall review and approve state agency transactions to lease  
18 or acquire real property, or lease, dispose of or transfer state-  
19 owned real property. A state agency shall not lease or acquire real  
20 property, or lease, dispose of or transfer state-owned real property  
21 until the Department provides notice of transaction approval to the  
22 state agency. Prior to approval, a state agency shall provide  
23 documents to the Department and provide reference to statutory or

1 other legal authority of the state agency to lease or acquire real  
2 property, or lease, dispose of or transfer state-owned real  
3 property. If the state agency intends to lease or acquire real  
4 property, the state agency shall state the intended use of the real  
5 property. Within thirty (30) days of receipt, the Department shall  
6 provide notice of transaction approval or disapproval to the state  
7 agency.

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

11 E. The Department of Central Services shall maintain a  
12 comprehensive inventory of state-owned real property and its use  
13 excluding property of the public schools and property subject to the  
14 jurisdiction of the Commissioners of the Land Office.

15 1. Each state agency shall, within thirty (30) days of the  
16 closing date for lands newly acquired, provide to the Department a  
17 list of records, deeds, abstracts and other title instruments  
18 showing the description of and relating to any and all such lands or  
19 interests therein.

20 2. The provisions of paragraph 1 of this subsection shall apply  
21 to all lands of public trusts having a state agency as the primary  
22 benefactor, but shall not apply to lands of municipalities,

1 counties, school districts, or agencies thereof, or Department of  
2 Transportation rights-of-way.

3 3. A state agency that sells or otherwise disposes of land  
4 shall notify the Department within thirty (30) days of the  
5 disposition closing date.

6 F. This section shall not be construed to authorize any  
7 department, board, commission, institution, or agency, not otherwise  
8 authorized by law, to sell, lease, or otherwise dispose of any real  
9 property owned by the state.

10 G. 1. The Department of Central Services may provide services  
11 for a reasonable fee to sell or purchase real property for other  
12 state agencies. All fees collected in accordance with the  
13 provisions of this section shall be deposited in the Real Property  
14 Revolving Fund created in paragraph 2 of this subsection.

15 2. There is hereby created in the State Treasury a revolving  
16 fund for the Department of Central Services to be designated the  
17 "Real Property Revolving Fund". The fund shall be a continuing  
18 fund, not subject to fiscal year limitations, and shall consist of  
19 all fees collected by the Department in accordance with the  
20 provisions of this subsection or as otherwise provided by law. All  
21 monies accruing to the credit of said fund are hereby appropriated  
22 and may be budgeted and expended by the Department of Central  
23 Services and shall be used to defray operating costs and expenses

1 incurred by the Department to support real property services  
2 operations. Expenditures from said fund shall be made upon warrants  
3 issued by the State Treasurer against claims filed as prescribed by  
4 law with the Director of State Finance for approval and payment.

5 H. The Director of the Department of Central Services shall,  
6 pursuant to the Administrative Procedures Act, promulgate rules to  
7 effect procedures necessary to the fulfillment of its  
8 responsibilities under this section.

9 ~~D.~~ I. The Oklahoma Ordnance Works Authority and its lands, and  
10 the Northeast Oklahoma Public Facilities Authority shall be exempt  
11 from the application of this section. The Grand River Dam Authority  
12 and its lands shall be exempt from the application of this section  
13 for any real property disposed of prior to November 1, 2006.

14 ~~E.~~ J. Unless otherwise provided for by law, the procedures  
15 established pursuant to this section for the sale or exchange of  
16 real estate or personal property as authorized pursuant to Sections  
17 ~~1852.2~~ 2222 and ~~1852.3~~ 2223 of this title shall be followed unless  
18 the sale is to an entity of state government.

19 K. The Director of the Department of Central Services shall  
20 contract with experts, professionals or consultants as necessary to  
21 perform the duties of the Department. Selections shall be made  
22 using the qualifications-based procedures established in Section 62  
23 of Title 61 of the Oklahoma Statutes, and the rules promulgated by

1 the Director for the selection of construction managers and design  
2 consultants.

3 SECTION 32. REPEALER 61 O.S. 2001, Sections 1.1 and  
4 207.4, are hereby repealed.

5 SECTION 33. This act shall become effective July 1, 2006.

6 SECTION 34. It being immediately necessary for the preservation  
7 of the public peace, health and safety, an emergency is hereby  
8 declared to exist, by reason whereof this act shall take effect and  
9 be in full force from and after its passage and approval.

10 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-22-06 - DO  
11 PASS, As Amended and Coauthored.