

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 558

By: Shurden

AS INTRODUCED

An Act relating to public buildings and public works; amending 61 O.S. 2001, Sections 1, 15, 17, 61, as amended by Section 7, Chapter 294, O.S.L. 2002, 62, as amended by Section 8, Chapter 294, O.S.L. 2002, 62.1, 62.2, as amended by Section 9, Chapter 294, O.S.L. 2002, 63, as amended by Section 10, Chapter 294, O.S.L. 2002, and 65, as amended by Section 12, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2004, Sections 61, 62, 62.2, 63 and 65), which relate to bond, exceptions, presumption to consent to jurisdiction, definitions, construction manager and design consultants, contracts, contracts for minor services, ownership and control of plans, and application of act; modifying amount of certain contracts; deleting exception; deleting award of certain attorney fees and court costs; adding definition; adding consultants to persons performing public work improvement projects and selection procedures; clarifying language; modifying amount of minor services contracts; making certain reports state property; modifying amount of contract for certain persons in certain instances; amending 61 O.S. 2001, Sections 101, 102, as last amended by Section 1, Chapter 97, O.S.L. 2004, 103, 104, as amended by Section 14, Chapter 294, O.S.L. 2002, 107, as amended by Section 15, Chapter 294, O.S.L. 2002, 111, 113, as last amended by Section 1, Chapter 299, O.S.L. 2004, 113.1, 113.3, 121, as last amended by Section 2, Chapter 328, O.S.L. 2004, 123, 131 and 134 (61 O.S. Supp. 2004, Sections 102, 104, 107, 113 and 121), which relate to the Public Competitive Bidding Act of 1974, short title, definitions, competitive bidding, bid notices, requirements of bids, awarding of contract, execution of contract, partial payment, interest due, change orders or addendums, consultants certification, splitting contracts, and insurance or bond required; amending short title; modifying definitions, authorizing public construction contracts less than a certain amount to be let to certain bidder; authorizing public construction contracts for minor maintenance be negotiated; increasing amount of contracts requiring publications; increasing amount of contract requiring certain deposits or letter of credit; requiring certain contracts to be awarded in certain number of days; adding exceptions; clarifying language; providing for interest due the contractor; requiring certain person to certify certain invoices; deleting obsolete language; requiring certain bonds certified by certain companies; authorizing the Division the authority to develop and implement certain program to

provide performance bonds; adding exemption; amending 61 O.S. 2001, Sections 201, 202, as amended by Section 28, Chapter 294, O.S.L. 2002, 204, as last amended by Section 2, Chapter 277, O.S.L. 2003, 207.4, 208, Section 208.1, as last amended by Section 3, Chapter 277, O.S.L. 2003, and 209, as last amended by Section 50, Chapter 5, O.S.L. 2004 (61 O.S. Supp. 2004, Sections 202, 204, 208.1 and 209), which relate to the Public Construction and Planning Act, definitions, duties of the Construction and Properties Division, transactions to lease or acquire real property, awarding of contracts, fees, creating hold accounts, and adoption of rules; modifying short title; adding definition; modifying duties of the Division; adding certain facilities for certain approval; authorizing the Director of Central Services to declare certain property as surplus; authorizing the Director to sell or dispose of certain property; authorizing the Director to execute certain contracts for certain purposes; clarifying language; creating State Agency Construction holding accounts; requiring deposit of certain monies in certain accounts; stating parameters for certain expenditures; stating exemptions for certain fund; providing for codification; providing an effective date; and declaring an 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)~~ One Hundred Thousand Dollars (\$100,000.00) 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.

B. The bond or irrevocable letter of credit shall ensure the proper and prompt completion of the work in accordance with the

contract and shall ensure that the contractor shall pay all indebtedness the contractor incurs for the contractor's subcontractors and all suppliers of labor, material, rental of machinery or equipment, and repair of and parts for equipment the contract requires the contractor to furnish.

C. For a contract not exceeding ~~Twenty-five Thousand Dollars (\$25,000.00)~~ One Hundred Thousand Dollars (\$100,000.00), in lieu of a bond or irrevocable letter of credit, the contractor shall submit an affidavit of the payment of all indebtedness incurred by the contractor, the contractor's subcontractors, and all suppliers of labor, material, rented machinery or equipment, and repair of and parts for equipment used or consumed in the performance of the contract. The execution of the affidavit with knowledge that any of the contents of the affidavit are false, upon conviction, shall constitute perjury, punishable as provided for by law.

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

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

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

SECTION 3. AMENDATORY 61 O.S. 2001, Section 17, is amended to read as follows:

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

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

SECTION 4. AMENDATORY 61 O.S. 2001, Section 61, as amended by Section 7, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2004, Section 61), is amended to read as follows:

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

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

2. "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;

3. "Construction manager" means an individual, firm, corporation, association, partnership, copartnership, or any other legal entity possessing the qualifications to provide services of construction management which include, but are not necessarily limited to, design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration;

4. "Consultant" means an individual or legal entity possessing the credentials and qualifications to provide services required for a public work improvement project;

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

~~5.~~ 6. "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;

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

~~7.~~ 8. "Division" means the Construction and Properties Division of the Department of Central Services;

~~8.~~ 9. "Project" means plans or designs for a public work improvement, except the transportation facilities under the

jurisdiction of the Department of Transportation or the Oklahoma Transportation Authority:

- a. to construct, renovate, alter, repair, maintain, or improve real property or fixtures of real property, and
- b. that does not constitute "construction" as defined by the Public Building Construction and Planning Act; and

~~9.~~ 10. "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 5. AMENDATORY 61 O.S. 2001, Section 62, as amended by Section 8, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2004, Section 62), is amended to read as follows:

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

B. The requisitioning state agency shall define the scope of a proposed project. The scope shall identify project components, phases, and timetables and shall include detailed project

descriptions. The state agency may request the Division to assist with scope development. The state agency shall send the scope and a requisition for construction management, consultant, 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~~ for review and approval.

C. The state agency shall issue a solicitation to construction managers, consultants, 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, consultant, or design consultant to give notice of interest to the ~~state agency~~ Division; and

5. Additional data the state agency requires from the construction manager, consultant, or design consultant. The closing date for submission of construction manager, consultant, 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 State Construction Administrator of the Construction and Properties Division of the Department of Central Services shall provide information from the construction managers' or design consultants' files to the state agency.~~ Should there be an inadequate expression of interest in the project, ~~the~~

~~state agency and~~ Division personnel shall confer to add construction managers, consultants or design consultants for consideration.

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

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

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

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

2. If the Division and the first-choice ~~consultant~~ construction manager, consultant, or design consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the second-choice consultant shall commence. If the Division and the second-choice ~~consultant~~ construction manager, consultant, or design consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the third-choice ~~consultant~~ construction manager, consultant, or design consultant shall commence. If the Division and the third-choice ~~consultant~~ construction manager, consultant, or design consultant cannot reach an agreement, then all negotiations shall terminate. Should the Division be unable to negotiate a satisfactory contract with any of

the three selected ~~consultants~~ construction managers, consultants,  
or design consultants, the Division shall select additional  
~~consultants~~ construction managers, consultants, or design  
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  
property of the State of Oklahoma as a condition of the award of the  
final contract for construction of the facility.

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 or construction  
manager based upon the professional qualifications and technical  
experience of the design consultant or construction manager. The  
subdivision shall negotiate a contract with the highest qualified  
design consultant or construction manager 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 or construction manager, the subdivision may negotiate  
with other design consultants or construction managers in order of  
their qualifications.

SECTION 6. AMENDATORY 61 O.S. 2001, Section 62.1, is  
amended to read as follows:

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



SECTION 7. AMENDATORY 61 O.S. 2001, Section 62.2, as amended by Section 9, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2004, Section 62.2), is amended to read as follows:

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

SECTION 8. AMENDATORY 61 O.S. 2001, Section 63, as amended by Section 10, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2004, Section 63), is amended to read as follows:

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

SECTION 9. AMENDATORY 61 O.S. 2001, Section 65, as amended by Section 12, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2004, Section 65), is amended to read as follows:

Section 65. A. In addition to the conditions prescribed pursuant to subsection C of this section, the provisions of Section 62 of this title shall not apply whenever the Construction and

Properties Division of the Department of Central Services with concurrence of the chief administrative officer of the public agency affected declares that an emergency exists. The design consultant or consultant shall be selected by the State Construction Administrator of the Construction and Properties Division of the Department of Central Services. The resulting design consultants or consultant contract shall not exceed ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ Twenty-five Thousand Dollars (\$25,000.00). The reasons for the emergency shall be recorded in the official records of the Division.

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

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

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

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

Speaker of the House of Representatives and to the President Pro Tempore of the Senate of the emergency conditions.

SECTION 10. AMENDATORY 61 O.S. 2001, Section 101, is amended to read as follows:

Section 101. ~~This act~~ Sections 101 through 157 of this title shall be known and may be cited as the "Public Competitive Bidding Act of 1974".

SECTION 11. AMENDATORY 61 O.S. 2001, Section 102, as last amended by Section 1, Chapter 97, O.S.L. 2004 (61 O.S. Supp. 2004, Section 102), is amended to read as follows:

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

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

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

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

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

5. "Public agency" means the State of Oklahoma, and any county, city, town, school district or other political subdivision of the state, any public trust, any public entity specifically created by the statutes of the State of Oklahoma or as a result of statutory

authorization therefor, and any department, agency, board, bureau, commission, committee or authority of any of the foregoing public entities;

6. "Public construction contract" or "contract" means any contract, exceeding ~~Twenty-five Thousand Dollars (\$25,000.00)~~ One Hundred Thousand Dollars (\$100,000.00) in amount, awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs to or performing maintenance on the same except where the improvements, construction of any building or repairs to the same are improvements or buildings leased to a person or other legal entity exclusively for private and not for public use and no public tax revenues shall be expended on or for the contract unless the public tax revenues used for the project are authorized by a majority of the voters of the applicable public agency voting at an election held for that purpose and the public tax revenues do not exceed twenty-five percent (25%) of the total project cost. The amount of public tax dollars committed to the project will not exceed a fixed amount established by resolution of the governing body prior to or concurrent with approval of the project;

7. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, equipment or supplies by a public agency or any personal property as defined in paragraphs 1 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma Statutes; and

8. "Retainage" means the difference between the ~~amount earned~~ estimated value of satisfactory completed work by the contractor on a public construction contract, ~~with the work being accepted by the~~

~~public agency,~~ and the amount paid on said contract by the awarding public agency.

SECTION 12. AMENDATORY 61 O.S. 2001, Section 103, is amended to read as follows:

Section 103. A. Unless otherwise provided by law, all public construction contracts exceeding One Hundred Thousand Dollars (\$100,00.00) shall be let and awarded to the lowest responsible bidder, by ~~free and~~ open competitive bidding after solicitation for sealed bids, in accordance with the provisions of the Public Competitive Bidding Act of 1974. No work shall be commenced until a written contract is executed and all required bonds and insurance have been provided by the contractor to the awarding public agency.

B. Public construction contracts less than One Hundred Thousand Dollars (\$100,00.00) shall be let and awarded to the lowest bidder by receipt of a written responsive bid from a minimum of three (3) bidders. All bids shall be time and date stamped upon receipt at the office of the awarding public agency. No work shall be commenced until a written contract is executed and insurance has been provided by the contractor to the awarding public agency.

C. Public construction contracts for less than Five Thousand Dollars (\$5,000.00) for minor maintenance or minor repair work may be negotiated with a qualified contractor. No work shall be commenced until a written contract is executed and insurance has been provided by the contractor to the awarding public agency.

SECTION 13. AMENDATORY 61 O.S. 2001, Section 104, as amended by Section 14, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2004, Section 104), is amended to read as follows:

Section 104. All proposals to award public construction contracts shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the following manner:

1. Notice thereof shall be given by publication in a newspaper of general circulation and published in the county where the work, or the major part of it, is to be done, such notice by publication to be published in two consecutive weekly issues of said newspaper, with the first publication thereof to be at least twenty (20) days prior to the date set for opening bids; and

2. Notice thereof shall be sent to trade or construction publications for their use and information whenever the estimated cost of the contract exceeds ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred Thousand Dollars (\$100,000.00); provided, however, that this section shall not be construed as requiring the publication of said notice in such trade or construction publication.

SECTION 14. AMENDATORY 61 O.S. 2001, Section 107, as amended by Section 15, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2004, Section 107), is amended to read as follows:

Section 107. A. A bidder on a public construction contract exceeding ~~Twenty five Thousand Dollars (\$25,000.00)~~ One Hundred Thousand Dollars (\$100,00.00) shall accompany the bid with:

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

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

B. The cost of republication of the notice to bidders, actual expenses incurred by reason of the bidder's default and the difference between the low bid of the defaulting bidder and the

amount of the bid of the bidder to whom the contract is subsequently awarded, but not to exceed the amount of the certified check, cashier's check, bid bond or irrevocable letter of credit may, at the discretion of the awarding public agency, be forfeited to the awarding public agency in the event the apparently successful bidder fails to execute the contract or fails to provide the required bonds or irrevocable letters of credit and insurance to the awarding public agency.

C. The public agency shall, upon receipt of notice from the awarding public agency, return a certified or cashier's check, bid bond, or irrevocable letter of credit to the successful bidder on execution and delivery of the contract and required bonds or irrevocable letters of credit and insurance. Checks of unsuccessful bidders shall be returned to them in accordance with the terms of the bid solicitation.

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

SECTION 15. AMENDATORY 61 O.S. 2001, Section 111, is amended to read as follows:

Section 111. The awarding of a contract to the lowest responsible bidder or bidders shall be made within thirty (30) days after the opening of bids unless the governing body of the awarding public agency, by formal recorded action and for good cause shown, provides for a reasonable extension of that period, which extension period shall not in any event exceed fifteen (15) days where only state or local funds are involved, or not to exceed ninety (90) days on any award of contract for the construction of a public

improvement where funds are utilized which are furnished by an agency of the United States Government. Upon mutual written agreement between the lowest responsible bidder or bidders and the awarding public agency, the contract shall be awarded within ninety (90) days of the bid opening date.

SECTION 16. AMENDATORY 61 O.S. 2001, Section 113, as last amended by Section 1, Chapter 299, O.S.L. 2004 (61 O.S. Supp. 2004, Section 113), is amended to read as follows:

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

B. Except as otherwise provided by law, within the period of time specified in subsection A of this section, the following shall be provided by the contractor to the awarding public agency for contracts exceeding ~~Twenty-five Thousand Dollars (\$25,000.00)~~ One Hundred Thousand Dollars (\$100,000.00):

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

2. A bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing terms prescribed by the Construction and Properties Division of the Department of Central Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to ensure the proper and prompt completion of the



work in accordance with the provisions of the contract and bidding documents;

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

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

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

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

D. 1. After the award of a contract, but prior to its execution, an awarding public agency, upon discovery of an administrative error in the award process that would void an otherwise valid award, may suspend the time of execution of the contract. The agency may rescind the award and readvertise for bids, or may direct correction of the error and award the contract

to the lowest responsible bidder, whichever shall be in the best interests of the state.

2. If the awarding public agency has a governing body, the agency shall, at the next regularly scheduled public business meeting of the governing body of the agency, upon the record, present to the governing body that an error has been made in the award process and shall state the nature of the error. The governing body, upon presentation of the facts of the error, may rescind the award and readvertise for bids, or may direct correction of the error and award the contract to the lowest responsible bidder, whichever shall be in the best interests of the state.

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

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

G. Except as otherwise provided by law, within the period of time specified in subsection A of this section, the following shall be provided by the contractor to the awarding public agency for contracts less than One Hundred Thousand Dollars (\$100,00.00):

1. Public liability insurance and workers' compensation insurance during construction in reasonable amounts. A public agency may require the contractor to name the public agency and its architects or engineers, or both, as an additional insured under the

public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.

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

Section 113.1 A. A public construction contract shall provide for partial payment based upon work completed. The contract shall provide that up to ten percent (10%) of all partial payments made shall be withheld as retainage. At any time the contractor has completed in excess of fifty percent (50%) of the total contract amount, the retainage shall be reduced to five percent (5%) of the amount earned to date if the owner or owner's duly authorized representative has determined that satisfactory work and satisfactory progress is being made, and upon approval by the surety.

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

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

SECTION 18. AMENDATORY 61 O.S. 2001, Section 113.3, is amended to read as follows:

Section 113.3 ~~The~~ When interest is due the contractor, the awarding public agency shall pay to the contractor interest at the rate of ~~three-fourths percent (3/4%) per month of the final payment due the contractor~~ in accordance with Section 41.4b of Title 62 of the Oklahoma Statutes. For lump sum contracts the interest shall commence thirty (30) days after the work under the contract has been completed and accepted and all required material certifications and other documentation required by the contract have been furnished the awarding public agency by the contractor, and shall run until the

date when the final payment or estimate is tendered to the contractor.

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

SECTION 19. AMENDATORY 61 O.S. 2001, Section 121, as last amended by Section 2, Chapter 328, O.S.L. 2004 (61 O.S. Supp. 2004, Section 121), is amended to read as follows:

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

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

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

D. If the awarding public agency does not have a governing body, the chief administrative officer of the awarding public agency shall approve change orders. The State Construction Administrator of the Construction and Properties Division of the Department of Central Services shall sign and execute all contracts and change orders, as they relate to state agencies.

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

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

G. The Transportation Commission may, by rule, authorize the Director of the Department of Transportation to approve change orders in an amount of not to exceed Five Hundred Thousand Dollars (\$500,000.00). Change orders approved by the Director shall be presented to the Transportation Commission during the next regular meeting and the reasons therefor recorded in the permanent records. The Oklahoma Transportation Authority may authorize the Director of the Authority to approve change orders in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00). Change orders approved by the Director of the Authority shall be presented to the Oklahoma Transportation Authority during the next regular meeting and the reasons for the orders recorded in permanent records.

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

1. All materials with cost per item;
2. Itemization of all labor with number of hours per operation and cost per hour;
3. Itemization of all equipment with the type of equipment, number of each type, cost per hour for each type, and number of hours of actual operation for each type;

4. Itemization of insurance cost, bond cost, social security, taxes, workers' compensation, employee fringe benefits and overhead cost; and

5. Profit for the contractor.

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

2. When the unit price change does not exceed Ten Thousand Dollars (\$10,000.00), the unit price change order computation may be based on an acceptable unit price basis in lieu of cost itemization as required in paragraphs 1, 2, 3, 4 and 5 of subsection ~~G~~ H of this section.

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

SECTION 20. AMENDATORY 61 O.S. 2001, Section 123, is amended to read as follows:

Section 123. All statements or invoices submitted to the awarding public agency for work performed shall contain a ~~sworn~~ certification ~~by the supervising architect or engineer, or other supervisory official if no supervisory architect or engineer is employed for the project,~~ that work for which payment is claimed has been performed and that such work conforms to the plans and specifications for the project. The certification shall be executed by the design consultant or, if no design consultant is employed for the project, the representative designated by the awarding public agency to oversee the project. No such statement or invoice shall be paid by the awarding public agency without such certification. The execution of a ~~sworn certificate~~ certified statement, as herein provided, shall not constitute a defense or in any other manner affect any cause or causes of action which the awarding public

agency might otherwise have against the contractor for nonperformance of a public construction contract.

SECTION 21. AMENDATORY 61 O.S. 2001, Section 131, is amended to read as follows:

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

SECTION 22. AMENDATORY 61 O.S. 2001, Section 134, is amended to read as follows:

Section 134. 1. Any insurance ~~or bond~~ required by this act shall be secured from an insurance ~~or indemnity~~ carrier licensed to do business in the State of Oklahoma.

2. Any bond required by this act shall be secured from a prequalified, good, and sufficient bonding company licensed to do business in the State of Oklahoma.

3. The Construction and Properties Division of the Department of Central Services shall have the authority to develop and implement a statewide program to provide performance bonds, payment bonds, and defect bonds for public construction or improvement projects for public agencies, which shall be exempt from the provisions of Section 135 and subsection E of Section 113 of this act. The Director shall promulgate rules to implement the provisions of this section.

SECTION 23. AMENDATORY 61 O.S. 2001, Section 201, is amended to read as follows:

Section 201. ~~Sections 202 through 209~~ Section 202 et seq. of this title shall be known and may be cited as the "Public Building Construction and Planning Act".

SECTION 24. AMENDATORY 61 O.S. 2001, Section 202, as amended by Section 28, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2004, Section 202), is amended to read as follows:

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

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

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

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

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

- a. "agency construction management" whereby the construction entity provides services to the owner



without taking on financial risks for the execution of the actual construction, and

- b. "at-risk construction management" whereby the construction entity, after providing agency services during the pre-construction period, takes on the financial obligation to carry out construction under a specified cost agreement;

5. "Consultant" means an individual or legal entity possessing the credentials and qualifications to provide services required for a public work improvement project;

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

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

~~7.~~ 8. "Design consultant" means any individual, ~~firm,~~ ~~corporation,~~ ~~association,~~ ~~partnership,~~ ~~copartnership,~~ or any other ~~legal~~ entity possessing the required qualifications to provide licensed architectural, registered engineering, or registered land surveying services for any construction project;

~~8.~~ 9. "Director" means the Director of the Department of Central Services;

~~9.~~ 10. "Division" means the Construction and Properties Division of the Department of Central Services;

~~10.~~ 11. "Energy performance index or indices" (EPI) means a number describing the energy requirements at the building boundary of a structure, per square foot of floor space or per cubic foot of occupied volume, as appropriate under defined internal and external ambient conditions over an entire seasonal cycle. As experience develops on the energy performance achieved with state construction,

the indices (EPI) will serve as a measure of structure performance with respect to energy consumption;

~~11.~~ 12. "Life cycle costs" means the cost of owning, operating, and maintaining the structure over the life of the structure. This may be expressed as an annual cost for each year of the facility's use;

~~12.~~ 13. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring or disposing of supplies, services, or construction;

~~13.~~ 14. "Shared savings financing" means the financing of energy conservation measures and maintenance services through a private firm which may own any purchased equipment for the duration of a contract. Such contract shall specify that the private firm will be recompensed either out of a negotiated portion of the savings resulting from the conservation measures and maintenance services provided by the private firm or, in the case of a cogeneration project, through the payment of a rate for energy lower than would otherwise have been paid for the same energy from current sources; and

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

SECTION 25. AMENDATORY 61 O.S. 2001, Section 204, as last amended by Section 2, Chapter 277, O.S.L. 2003 (61 O.S. Supp. 2004, Section 204), is amended to read as follows:

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

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

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

- a. each state agency shall, within thirty (30) days of the closing date for lands newly acquired, provide to the Division a list of records, deeds, abstracts and other title instruments showing the description of and relating to any and all such lands or interests therein,
- b. the provisions of paragraph a of this subsection shall apply to all lands of public trusts having a state agency as the primary beneficiary, but shall not apply to lands of municipalities, counties, school districts, or agencies thereof, or Department of Transportation rights of way, and
- c. a state agency that sells or otherwise disposes of land shall notify the Division within thirty (30) days of the disposition closing date;

3. Review and approve all construction plans and specifications to ensure compliance with good construction practices and space standards, costs of project, proposed construction timetables, and agency need for the project, except as otherwise provided in subsection B of this section;

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

5. Provide assistance to state agencies when a state agency ~~desires to hire~~ requires the services of a design consultant, consultant, or construction manager for a project. Except as provided by subsection B of this section, the Division shall ~~award~~ select and execute contracts ~~to~~ with consultants, design consultants

and construction managers that provide services to state agencies for construction projects;

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

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

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

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

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

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

B. When a state agency has a licensed architect or licensed engineer, as a full-time employee, to review construction plans and specifications, the review and approval of all construction plans

and specifications required pursuant to paragraph 3 of subsection A of this section shall not apply to:

1. The common schools subject to the jurisdiction of the State Department of Education;

2. The Department of Transportation with respect to highways, bridges and dams;

3. The Oklahoma State System of Higher Education;

4. The Military Department of the State of Oklahoma; and

5. The Oklahoma Tourism and Recreation Department.

SECTION 26. AMENDATORY 61 O.S. 2001, Section 207.4, is amended to read as follows:

Section 207.4 A. Unless otherwise provided by law, the Construction and Properties Division of the Department of Central Services shall review and approve all state agency transactions for construction of facilities and for leasing or acquiring of real property, or to sell, lease, transfer or otherwise ~~or acquire real property, or lease, dispose or declare surplus any of or transfer~~ state-owned real property. A state agency shall not construct facilities, lease or acquire real property, or sell, lease, transfer, or otherwise dispose of or ~~transfer~~ declare surplus state-owned real property until the Division provides notice of transaction approval to the state agency. Prior to approval, a state agency shall provide documents to the Division and provide reference to statutory or other legal authority of the state agency to construct facilities, to lease or acquire real property, or to sell or lease, dispose of or transfer or to declare surplus state-owned real property. If the state agency intends to construct facilities, lease or acquire real property, the state agency shall state the intended use of the real property. Within thirty (30) days of receipt, the Division shall provide notice of transaction approval or disapproval to the state agency.

B. The Director of the Department of Central Services shall have the authority to declare real property owned by the State of Oklahoma as surplus to the needs of the state and to sell, lease, transfer or otherwise dispose of this property without seeking approval of the legislature. Unless funds are otherwise directed by the legislature, all funds from the sale of surplus property shall be deposited in the general fund, less reasonable costs incurred by the Department of Central Services associated with the sale of the real property. The Director of the Department of Central Services shall submit to the legislature at the beginning of each session a list of all real property sold, leased, or transferred to or otherwise disposed of since its last report.

C. The Director of the Department of Central Services shall have the authority to execute contracts for the construction of facilities for leasing or acquiring of real property for the use of any state agency.

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

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

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

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

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

SECTION 28. AMENDATORY 61 O.S. 2001, Section 208.1, as last amended by Section 3, Chapter 277, O.S.L. 2003 (61 O.S. Supp. 2004, Section 208.1), is amended to read as follows:

Section 208.1 The Construction and Properties Division of the Department of Central Services may collect a reasonable fee for the purpose of providing or contracting for architectural, engineering, consultants, and land surveying services to state agencies and from persons requesting plans and notification of solicitations issued by the Division. The Division may collect a reasonable fee for contract management for a construction project. All fees collected in accordance with the provisions of this section shall be deposited in the "State Construction Revolving Fund" created in Section 208.2 of this title.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 208.4 of Title 61, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a series of agency holding accounts to be designated for funds dedicated for public construction and improvement projects. The accounts shall be continuing funds, not subject to fiscal year limitations and shall consist of all monies appropriated or received by the state for the design and construction of State of Oklahoma facilities or improvements.

B. All monies appropriated or received by the state for the construction of state facilities or improvements shall be deposited in the appropriate State Agency Construction Holding Accounts and shall be expanded for the design and construction of state facilities or improvements as designated by the Legislature.

C. All monies accruing to the credit of such accounts may be budgeted and expended by the Construction and Property Division for the design and construction of state facilities or improvements.

D. Any expenditures from such accounts shall be made upon warrants issued by the State Treasurer against claims filed, as prescribed by law, with the Director of State Finance for approval and payment.

E. Any funds remaining in such accounts upon the final completion and payment for the public construction and improvement project shall be deposited in the General Revenue Fund.

F. Federal funds or monies for the construction of structures such as highways, bridges, railroads, tunnels, and dams are exempt from the deposit requirements of this act.

SECTION 30. AMENDATORY 61 O.S. 2001, Section 209, as last amended by Section 50, Chapter 5, O.S.L. 2004 (61 O.S. Supp. 2004, Section 209), is amended to read as follows:

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

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

written application to the Construction and Properties Division of the Department of Central Services, to perform any part of the responsibilities of the Division pursuant to the provisions of the Public Building Construction and Planning Act for a specific project;

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

5. Specifying energy conservation performance guidelines, for conducting a life cycle cost analysis of alternative architectural and engineering designs and alternative major items of energy-consuming equipment to be retrofitted in existing state-owned or leased structures and for developing energy performance indices to evaluate the efficiency of energy utilization for completing designs in the construction of state-financed and leased structures;



6. The time, manner, authentication, and form of making requisitions to the Division;

7. The form and manner of submission for bids or proposals and the manner of accepting and opening bids or proposals that may include online bids pursuant to the Oklahoma Online Bidding Act;

8. The manner for a state agency to acquire services for construction projects not exceeding the amount for which competitive bids are required pursuant to Section 102 of this title;

9. Conditions under which any of the rules herein authorized may be waived;

10. The form of any document the Director requires; and

11. Specifying provisions the Division ~~of~~ or a state agency shall follow to adhere to acquisition, contract, contract management and other provisions of this title.

SECTION 31. This act shall become effective July 1, 2005.

SECTION 32. 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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