

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1316

By: Sparks

AS INTRODUCED

An Act relating to infrastructure development; creating the Oklahoma Public and Private Facilities and Infrastructure Act; stating legislative findings and purpose; defining terms; clarifying applicability of Act; clarifying scope of eminent domain use; providing procedure and requirements for proposals for qualifying projects; requiring adoption of certain guidelines; providing approval process for qualifying projects; authorizing governmental entities to enter into certain contracts; requiring notice to affected jurisdictions; providing for the dedication and conveyance of public property; specifying the powers and duties of contracting person; providing for and specifying contents of comprehensive agreements; providing for interim agreements; specifying funding sources for qualifying projects; requiring certain performance bonds; specifying remedies for material defaults; providing for use of eminent domain; providing procedures concerning affected facility owners; clarifying police powers; providing for posting of certain notice and public comment; providing for public access to certain procurement records; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5151 of Title 74, unless there is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Oklahoma Public
2 and Private Facilities and Infrastructure Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 5152 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The Legislature finds that:

7 1. There is a public need for timely acquisition, design,
8 construction, improvement, renovation, expansion, equipping,
9 maintenance, operation, implementation and installation of
10 technology, services, and other public infrastructure and government
11 facilities in this state that serve a public need and purpose;

12 2. The public need may not be wholly satisfied by existing
13 methods of procurement in which qualifying projects are acquired,
14 designed, constructed, improved, renovated, expanded, equipped,
15 maintained, operated, implemented or installed;

16 3. There are inadequate resources to develop new technology,
17 services, and other public infrastructure and government facilities
18 for the benefit of the citizens of this state, and there is
19 demonstrated evidence that partnerships between public entities and
20 private entities or other persons can meet these needs by improving
21 the schedule for delivery, lowering the cost and providing other
22 benefits to the public; and

23 4. Authorizing private entities or other persons to develop or
24 operate one or more qualifying projects may serve the public safety,

1 benefit and welfare by making the projects available to the public
2 in a more timely or less costly fashion.

3 B. An action authorized under Section 8 of this act serves the
4 public purpose of the Oklahoma Public and Private Facilities and
5 Infrastructure Act if the action facilitates the timely development
6 or operation of a qualifying project.

7 C. The purposes of the Oklahoma Public and Private Facilities
8 and Infrastructure Act include:

9 1. Encouraging investment in this state by private entities and
10 other persons;

11 2. Facilitating financing, private capital, and other funding
12 sources that support the development or operation of qualifying
13 projects in order to expand and accelerate financing for qualifying
14 projects that improve and add to the convenience of the public; and

15 3. Providing governmental entities with the greatest possible
16 flexibility in contracting with private entities or other persons to
17 provide public services through qualifying projects subject to the
18 Oklahoma Public and Private Facilities and Infrastructure Act.

19 D. The Oklahoma Public and Private Facilities and
20 Infrastructure Act shall be liberally construed in conformity with
21 the purposes of this section.

22 E. The procedures in the Oklahoma Public and Private Facilities
23 and Infrastructure Act are not exclusive. The Oklahoma Public and
24 Private Facilities and Infrastructure Act does not prohibit a

1 responsible governmental entity from entering into an agreement for
2 or procuring public and private facilities and infrastructure under
3 other statutory authority.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 5153 of Title 74, unless there
6 is created a duplication in numbering, reads as follows:

7 As used in the Oklahoma Public and Private Facilities and
8 Infrastructure Act:

9 1. "Affected jurisdiction" means any county or municipality in
10 which all or a portion of a qualifying project is located;

11 2. "Availability Payment" is a periodic payment made to a
12 private sector concessionaire or developer by the responsible public
13 sector entity, in exchange for making available the use of the
14 public facility at a predetermined level of service;

15 3. "Comprehensive agreement" means the comprehensive agreement
16 authorized by Section 12 of this act between the contracting entity
17 and the responsible governmental entity;

18 4. "Contracting entity" means a person, or business entity, who
19 enters into a comprehensive or interim agreement with a responsible
20 governmental entity;

21 5. "Develop" means to plan, design, develop, finance, lease,
22 acquire, install, construct or expand a qualifying project;

23 6. "Governmental entity" means a political subdivision, board,
24 commission, department, or other agency of this state that elects to

1 operate under the Oklahoma Public and Private Facilities and
2 Infrastructure Act through the adoption of a resolution by the
3 governing body of the governmental entity;

4 7. "Interim agreement" means an agreement authorized by Section
5 14 of this act between a contracting entity and a responsible
6 governmental entity that proposes the development or operation of
7 the qualifying project;

8 8. "Lease payment" means any form of payment, including a land
9 lease, by a governmental entity to the contracting entity for the
10 use of a qualifying project;

11 9. "Material default" means any default by a contracting entity
12 in the performance of duties imposed under subsection F of Section
13 12 of this act that jeopardizes adequate service to the public from
14 a qualifying project;

15 10. "Operate" means to finance, maintain, improve, equip,
16 modify, repair or operate a qualifying project;

17 11. "Qualifying project" means:

- 18 a. any transportation capacity, highway, bridge or
19 tunnel, mass transit facility, vehicle parking
20 facility, port facility, water way, power generation
21 facility or transmission line, fuel supply facility or
22 pipeline, water supply facility or pipeline, public
23 work, wastewater or waste treatment facility,
24 hospital, school, medical or nursing care facility,

1 recreational facility, public building, or other
2 similar facility currently available or to be made
3 available to a governmental entity for public use,
4 including any structure, parking area, appurtenance
5 and other property required to operate the structure
6 or facility and any technology infrastructure
7 installed in the structure or facility that is
8 essential to the purpose of the project, or

9 b. any improvements necessary or desirable to unimproved
10 real estate owned by a governmental entity,

11 c. notwithstanding any provision of this section to the
12 contrary, all roadway or highway projects shall be
13 subject to review and approval by the Governor, and
14 the authority shall not approve any roadway or highway
15 project disapproved by the Governor;

16 12. "Responsible governmental entity" means a governmental
17 entity that has the power to develop or operate an applicable
18 qualifying project;

19 13. "Revenue" means all revenue, income, earnings, user fees,
20 lease payments, or other service payments that support the
21 development or operation of a qualifying project, including money
22 received as a grant or otherwise from the federal government, a
23 governmental entity or any agency or instrumentality of the federal
24 government or governmental entity in aid of the project;

1 14. "Service contract" means a contract between a governmental
2 entity and a contracting entity under Section 8 of this act;

3 15. "Service payment" means a payment to a contracting entity
4 of a qualifying project under a service contract; and

5 16. "User fee" means a rate, fee, or other charge imposed by a
6 contracting entity for the use of all or part of a qualifying
7 project under a comprehensive agreement.

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 5155 of Title 74, unless there
10 is created a duplication in numbering, reads as follows:

11 The Oklahoma Public and Private Facilities and Infrastructure
12 Act does not alter the eminent domain laws of this state or grant
13 the power of eminent domain to any person who is not expressly
14 granted that power under other state law.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 5156 of Title 74, unless there
17 is created a duplication in numbering, reads as follows:

18 A. A contracting entity may not develop or operate a qualifying
19 project unless the contracting entity obtains the approval of and
20 contracts with the responsible governmental entity under the
21 Oklahoma Public and Private Facilities and Infrastructure Act. The
22 contracting entity may initiate the approval process by submitting a
23 proposal requesting approval under subsection A of Section 7 of this
24

1 act, or the responsible governmental entity may request proposals or
2 invite bids under subsection B of Section 7 of this act.

3 B. A person, or business entity, submitting a proposal
4 requesting approval of a qualifying project shall specifically and
5 conceptually identify any facility, building, infrastructure or
6 improvement included in the proposal as a part of the qualifying
7 project.

8 C. On receipt of a proposal submitted by a person or business
9 entity initiating the approval process under subsection A of Section
10 7 of this act, the responsible governmental entity shall determine
11 whether to accept the proposal for consideration in accordance with
12 Section 6 of this act and the guidelines adopted under those
13 sections. A responsible governmental entity that determines not to
14 accept the proposal for consideration shall return the proposal, all
15 fees and the accompanying documentation to the person, or business
16 entity, submitting the proposal.

17 D. The responsible governmental entity may at any time reject a
18 proposal initiated by a person or business entity under subsection A
19 of Section 8 of this act.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 5157 of Title 74, unless there
22 is created a duplication in numbering, reads as follows:

23 A. Before requesting or considering a proposal for a qualifying
24 project, a responsible governmental entity must adopt and make

1 publicly available guidelines that enable the governmental entity to
2 comply with the Oklahoma Public and Private Facilities and
3 Infrastructure Act. The guidelines must be reasonable, encourage
4 competition, and guide the selection of projects under the purview
5 of the responsible governmental entity.

6 B. The guidelines for a responsible governmental entity must:

7 1. Require the responsible governmental entity to:

- 8 a. make a representative of the entity available to meet
9 with persons who are considering submitting a
10 proposal, and
- 11 b. provide notice of the availability of the
12 representative;

13 2. Provide reasonable criteria for choosing among competing
14 proposals;

15 3. Contain suggested timelines for selecting proposals and
16 negotiating an interim or comprehensive agreement;

17 4. Allow the responsible governmental entity to accelerate the
18 selection, review and documentation timelines for proposals
19 involving a qualifying project considered a priority by the entity;

20 5. Include financial review and analysis procedures that, at a
21 minimum, consist of:

- 22 a. a cost-benefit analysis,
 - 23 b. an assessment of opportunity cost,
- 24

1 c. consideration of the degree to which functionality and
2 services similar to the functionality and services to
3 be provided by the proposed project are already
4 available in the private market, and

5 d. consideration of the results of all studies and
6 analyses related to the proposed qualifying project;

7 6. Allow the responsible governmental entity to consider the
8 nonfinancial benefits of a proposed qualifying project;

9 7. Include criteria for:

10 a. the qualifying project, including the scope, costs,
11 and duration of the project and the involvement or
12 impact of the project on multiple public entities, and

13 b. the creation of and the responsibilities of an
14 oversight committee, with members representing the
15 responsible governmental entity, that acts as an
16 advisory committee to review the terms of any proposed
17 interim or comprehensive agreement;

18 8. Require the responsible governmental entity to analyze the
19 adequacy of the information to be released by the entity when
20 seeking competing proposals and require that the entity provide more
21 detailed information, if the entity determines necessary, to
22 encourage competition, subject to subsection G of Section 7 of this
23 act;
24

1 9. Establish criteria for determining that, should the
2 authority deem it in the public's best interest to cancel a
3 procurement, post-short-term listing, the authority shall pay for
4 documented third-party costs, to include, but not be limited to:
5 design services, legal advisors, financial advisors, together with
6 reasonable internal expenditures, when termination results from
7 government action;

8 10. Establish criteria, key decision points and approvals
9 required to ensure that the responsible governmental entity
10 considers the extent of competition before selecting proposals and
11 negotiating an interim or comprehensive agreement; and

12 11. Require the posting and publishing of public notice of a
13 proposal requesting approval of a qualifying project, including:

- 14 a. specific information and documentation regarding the
15 nature, timing and scope of the qualifying project, as
16 required under subsection A of Section 7 of this act,
- 17 b. a reasonable period of not less than forty-five (45)
18 days, as determined by the responsible governmental
19 entity, to encourage competition and partnerships with
20 private entities and other persons in accordance with
21 the goals of the Oklahoma Public and Private
22 Facilities and Infrastructure Act, during which the
23 responsible governmental entity must accept submission
24 of competing proposals for the qualifying project, and

1 c. a requirement for advertising the notice on the
2 Internet website of the governmental entity and on the
3 official Internet website of the state.

4 SECTION 7. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 5158 of Title 74, unless there
6 is created a duplication in numbering, reads as follows:

7 A. A business entity or other person may submit a proposal
8 requesting approval of a qualifying project by the responsible
9 governmental entity. The proposal must be accompanied by the
10 following, unless waived by the responsible governmental entity:

11 1. A topographic map, with a 1:2,000 or other appropriate
12 scale, indicating the location of the qualifying project;

13 2. A description of the qualifying project, including:

14 a. the conceptual design of any facility or a conceptual
15 plan for the provision of services or technology
16 infrastructure, and

17 b. a schedule for the initiation of and completion of the
18 qualifying project that includes the proposed major
19 responsibilities and timeline for activities to be
20 performed by the governmental entity and the
21 contracting entity;

22 3. A statement of the method the contracting entity proposes
23 for securing necessary property interests required for the
24 qualifying project;

1 4. Information relating to any current plans for the
2 development of facilities or technology infrastructure to be used by
3 a governmental entity that are similar to the qualifying project
4 being proposed by the contracting entity for each affected
5 jurisdiction;

6 5. A list of all permits and approvals required for the
7 development and completion of the qualifying project from local,
8 state or federal agencies and a projected schedule for obtaining the
9 permits and approvals;

10 6. A list of any facilities that will be affected by the
11 qualifying project and a statement by the contracting entity of the
12 plans to accommodate the affected facilities;

13 7. A statement by the contracting entity on the general plans
14 for financing the qualifying project, including the sources of the
15 funds of the contracting entity and identification of any dedicated
16 revenue source or proposed debt or equity investment for the
17 contracting entity;

18 8. The name and address of each individual who may be contacted
19 for further information concerning the request;

20 9. User fees, lease payments, and other service payments over
21 the term of any applicable interim or comprehensive agreement and
22 the methodology and circumstances for changes to the user fees,
23 lease payments and other service payments over time; and
24

1 10. Any additional material and information the responsible
2 governmental entity reasonably requests.

3 B. A responsible governmental entity may request proposals or
4 invite bids from persons or business entities for the development or
5 operation of a qualifying project. A responsible governmental
6 entity shall consider the total project cost as one factor in
7 evaluating the proposals received, but is not required to select the
8 proposal that offers the lowest total project cost. The responsible
9 governmental entity may consider the following factors:

- 10 1. The proposed cost of the qualifying project;
- 11 2. The general reputation, industry experience, and financial
12 capacity of the contracting entity submitting a proposal;
- 13 3. The proposed design of the qualifying project;
- 14 4. The eligibility of the project for accelerated selection,
15 review and documentation timelines under the guidelines of the
16 responsible governmental entity;
- 17 5. Comments from local citizens and affected jurisdictions;
- 18 6. Benefits to the public;
- 19 7. The plans of the contracting entity to employ local
20 contractors and residents;
- 21 8. For a qualifying project that involves a continuing role
22 beyond design and construction, the proposed rate of return of the
23 contracting entity and opportunities for revenue sharing; and
24

1 9. Other criteria that the responsible governmental entity
2 considers appropriate.

3 C. The responsible governmental entity may approve as a
4 qualifying project the development or operation of a facility needed
5 by the governmental entity, or the design, or equipping of a
6 qualifying project, if the responsible governmental entity
7 determines that the project serves the public purpose of the
8 Oklahoma Public and Private Facilities and Infrastructure Act. The
9 responsible governmental entity may determine that the development
10 or operation of the project as a qualifying project serves the
11 public purpose if:

12 1. There is a public need for or benefit derived from the
13 project of the type the person or business entity proposes as a
14 qualifying project;

15 2. The estimated cost of the project is reasonable in relation
16 to similar facilities; and

17 3. The plans of the contracting entity will result in the
18 timely development or operation of the qualifying project.

19 D. The responsible governmental entity may charge a reasonable
20 fee to cover the costs of processing, reviewing and evaluating the
21 proposal, including reasonable legal fees and fees for financial,
22 technical and other necessary advisors or consultants.

1 E. The approval of a responsible governmental entity is subject
2 to the contracting entity entering into an interim or comprehensive
3 agreement with the responsible governmental entity.

4 F. On approval of the qualifying project, the responsible
5 governmental entity shall establish a date by which activities
6 related to the qualifying project must begin. The responsible
7 governmental entity may extend the date.

8 G. The responsible governmental entity shall take action
9 appropriate under the Oklahoma Open Records Act to protect
10 confidential and proprietary information provided by the contracting
11 entity under an agreement.

12 H. The Oklahoma Public and Private Facilities and
13 Infrastructure Act and an interim or comprehensive agreement entered
14 into under the Oklahoma Public and Private Facilities and
15 Infrastructure Act do not enlarge, diminish or affect any authority
16 a responsible governmental entity has to take action that would
17 impact the debt capacity of this state.

18 SECTION 8. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 5159 of Title 74, unless there
20 is created a duplication in numbering, reads as follows:

21 A responsible governmental entity may contract with a
22 contracting entity for the delivery of services to be provided as
23 part of a qualifying project in exchange for service payments and
24

1 other consideration as the governmental entity considers
2 appropriate.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 5160 of Title 74, unless there
5 is created a duplication in numbering, reads as follows:

6 A. A person or business entity submitting a proposal to a
7 responsible governmental entity under Section 7 of this act shall
8 notify each affected jurisdiction by providing a copy of its
9 proposal to the affected jurisdiction.

10 B. Not later than the fourteenth business day after the date an
11 affected jurisdiction receives the notice required by subsection A
12 of this section, the affected jurisdiction that is not the
13 responsible governmental entity for the respective qualifying
14 project shall submit in writing to the responsible governmental
15 entity any comments the affected jurisdiction has on the proposed
16 qualifying project and indicate whether the facility or project is
17 compatible with the local comprehensive plan, local infrastructure
18 development plans, the capital improvements budget or other
19 government spending plan. The responsible governmental entity shall
20 consider the submitted comments before entering into a comprehensive
21 agreement with a contracting entity.

22 SECTION 10. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 5161 of Title 74, unless there
24 is created a duplication in numbering, reads as follows:

1 A. After obtaining any appraisal of the property interest that
2 is required under other law in connection with the conveyance, a
3 governmental entity may dedicate any property interest, including
4 land, improvements and tangible personal property, for public use in
5 a qualifying project if the governmental entity finds that the
6 dedication will serve the public purpose of the Oklahoma Public and
7 Private Facilities and Infrastructure Act by minimizing the cost of
8 a qualifying project to the governmental entity or reducing the
9 delivery time of a qualifying project.

10 B. In connection with a dedication under subsection A of this
11 section, a governmental entity may convey any property interest,
12 including a license, franchise, easement or another right or
13 interest the governmental entity considers appropriate, subject to
14 the conditions imposed by general law governing such conveyance and
15 subject to the rights of an existing utility under a license,
16 franchise, easement or other right under law, to the contracting
17 entity for the consideration determined by the governmental entity.
18 The consideration may include the agreement of the contracting
19 entity to develop or operate the qualifying project.

20 SECTION 11. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 5162 of Title 74, unless there
22 is created a duplication in numbering, reads as follows:

23 A. The contracting entity has:

24 1. The power granted by:

- a. general law to a person that has the same form of organization as the contracting entity, and
- b. a statute governing the business or activity of the contracting entity; and

2. The power to:

- a. develop or operate the qualifying project, and
- b. collect lease payments, impose user fees subject to subsection B of this section or enter into service contracts in connection with the use of the project.

B. The contracting entity may not impose a user fee or increase the amount of a user fee until the fee or increase is approved by the responsible governmental entity.

C. The contracting entity may own, lease or acquire any other right to use or operate the qualifying project.

D. The contracting entity may finance a qualifying project in the amounts and on the terms determined by the contracting entity. The contracting entity may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on any or all of its property, including all of its property interests in the qualifying project.

E. In operating the qualifying project, the contracting entity may:

1 1. Establish classifications according to reasonable categories
2 for assessment of user fees; and

3 2. With the consent of the responsible governmental entity,
4 adopt and enforce reasonable rules for the qualifying project to the
5 same extent as the responsible governmental entity.

6 F. The contracting entity shall:

7 1. Develop or operate the qualifying project in a manner that
8 is acceptable to the responsible governmental entity and in
9 accordance with any applicable interim or comprehensive agreement;

10 2. Subject to subsection G of this section, keep the qualifying
11 project open for use by the public at all times, or as appropriate
12 based on the use of the project, after its initial opening on
13 payment of the applicable user fees, lease payments or service
14 payments;

15 3. Maintain, or provide by contract for the maintenance or
16 upgrade of, the qualifying project, if required by any applicable
17 interim or comprehensive agreement;

18 4. Cooperate with the responsible governmental entity to
19 establish any interconnection with the qualifying project requested
20 by the responsible governmental entity; and

21 5. Comply with any applicable interim or comprehensive
22 agreement and any lease or service contract.

23 G. The qualifying project may be temporarily closed because of
24 emergencies or, with the consent of the responsible governmental

1 entity, to protect public safety or for reasonable construction or
2 maintenance activities.

3 H. The Oklahoma Public and Private Facilities and
4 Infrastructure Act does not prohibit a contracting entity of a
5 qualifying project from providing additional services for the
6 qualifying project to the public or persons other than the
7 responsible governmental entity if the provision of additional
8 service does not impair the ability of the contracting entity to
9 meet the commitments of the contracting entity to the responsible
10 governmental entity under any applicable interim or comprehensive
11 agreement.

12 SECTION 12. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 5163 of Title 74, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Before developing or operating the qualifying project, the
16 contracting entity must enter into a comprehensive agreement with a
17 responsible governmental entity. The comprehensive agreement shall
18 provide for:

19 1. Delivery of letters of credit or other security in
20 connection with the development or operation of the qualifying
21 project, in the forms and amounts satisfactory to the responsible
22 governmental entity and delivery of performance and payment bonds
23 required for all construction activities;
24

1 2. Review of plans and specifications for the qualifying
2 project by the responsible governmental entity and approval by the
3 responsible governmental entity if the plans and specifications
4 conform to standards acceptable to the responsible governmental
5 entity, except that the contracting entity may not be required to
6 complete the design of a qualifying project before the execution of
7 a comprehensive agreement;

8 3. Inspection of the qualifying project by the responsible
9 governmental entity to ensure that the activities of the contracting
10 entity are acceptable to the responsible governmental entity in
11 accordance with the comprehensive agreement;

12 4. Maintenance of a public liability insurance policy, copies
13 of which must be filed with the responsible governmental entity
14 accompanied by proofs of coverage, or self-insurance, each in the
15 form and amount satisfactory to the responsible governmental entity
16 and reasonably sufficient to ensure coverage of tort liability to
17 the public and project employees and to enable the continued
18 operation of the qualifying project;

19 5. Monitoring of the practices of the contracting entity by the
20 responsible governmental entity to ensure that the qualifying
21 project is properly maintained;

22 6. Reimbursement to be paid to the responsible governmental
23 entity for services provided by the responsible governmental entity;
24

1 7. Filing of appropriate financial statements on an annual
2 basis; and

3 8. Policies and procedures governing the rights and
4 responsibilities of the responsible governmental entity and the
5 contracting entity if the comprehensive agreement is terminated or
6 there is a material default by the contracting entity, including
7 conditions governing:

8 a. assumption of the duties and responsibilities of the
9 contracting entity by the responsible governmental
10 entity, and

11 b. the transfer or purchase of property or other
12 interests of the contracting entity to the responsible
13 governmental entity.

14 B. The comprehensive agreement shall provide for any user fee,
15 lease payment or service payment established by agreement of the
16 parties. In negotiating a user fee under this section, the parties
17 shall establish a payment or fee that is the same for persons using
18 a facility of the qualifying project under like conditions and that
19 will not materially discourage use of the qualifying project. The
20 execution of the comprehensive agreement or an amendment to the
21 agreement is conclusive evidence that the user fee, lease payment or
22 service payment complies with the Oklahoma Public and Private
23 Facilities and Infrastructure Act. A user fee or lease payment
24

1 established in the comprehensive agreement as a source of revenue
2 may be in addition to, or in lieu of, a service payment.

3 C. A comprehensive agreement may include a provision that
4 authorizes the responsible governmental entity to make grants or
5 loans to the contracting entity from money received from the
6 federal, state or local government or any agency or instrumentality
7 of the government.

8 D. The comprehensive agreement must incorporate the duties of
9 the contracting entity under the Oklahoma Public and Private
10 Facilities and Infrastructure Act and may contain terms the
11 responsible governmental entity determines serve the public purpose
12 of the Oklahoma Public and Private Facilities and Infrastructure
13 Act. The comprehensive agreement may contain:

14 1. Provisions that require the responsible governmental entity
15 to provide notice of default and cure rights for the benefit of the
16 contracting entity and the persons specified in the agreement as
17 providing financing for the qualifying project;

18 2. Other lawful terms to which the contracting entity and the
19 responsible governmental entity mutually agree, including provisions
20 regarding unavoidable delays or providing for a loan of public money
21 to the contracting entity to develop or operate one or more
22 qualifying projects; and

23 3. Provisions in which the authority and duties of the
24 contracting entity under the Oklahoma Public and Private Facilities

1 and Infrastructure Act cease and the qualifying project is dedicated
2 for public use to the responsible governmental entity or, if the
3 qualifying project was initially dedicated by an affected
4 jurisdiction, to the affected jurisdiction.

5 E. Any change in the terms of the comprehensive agreement that
6 the parties agree to must be added to the comprehensive agreement by
7 written amendment.

8 F. The comprehensive agreement may provide for the development
9 or operation of phases or segments of the qualifying project.

10 SECTION 13. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 5164 of Title 74, unless there
12 is created a duplication in numbering, reads as follows:

13 Before or in connection with the negotiation of the
14 comprehensive agreement, the responsible governmental entity may
15 enter into an interim agreement with the contracting entity
16 proposing the development or operation of the qualifying project.
17 The interim agreement may:

18 1. Authorize the contracting entity to begin project phases or
19 activities for which the contracting entity may be compensated
20 relating to the proposed qualifying project, including project
21 planning and development, design, engineering, environmental
22 analysis and mitigation, surveying and financial and revenue
23 analysis, including ascertaining the availability of financing for
24 the proposed facility or facilities of the qualifying project;

1 2. Establish the process and timing of the negotiation of the
2 comprehensive agreement; and

3 3. Contain any other provision related to any aspect of the
4 development or operation of a qualifying project that the parties
5 consider appropriate.

6 SECTION 14. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 5165 of Title 74, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The contracting entity and the responsible governmental
10 entity may use any funding resources that are available to the
11 parties, including, but not limited to:

12 1. Accessing any designated trust funds; and

13 2. Borrowing or accepting grants from any state infrastructure
14 loan program or bank.

15 B. The responsible governmental entity may take any action to
16 obtain federal, state or local assistance for a qualifying project
17 that serves the public purpose of the Oklahoma Public and Private
18 Facilities and Infrastructure Act and may enter into any contracts
19 required to receive the assistance.

20 C. If the responsible governmental entity is a state agency,
21 any money received from the state or federal government or any
22 agency or instrumentality of the state or federal government is
23 subject to appropriation by the Legislature.
24

1 D. The responsible governmental entity may determine that it
2 serves the public purpose of the Oklahoma Public and Private
3 Facilities and Infrastructure Act for all or part of the costs of a
4 qualifying project to be directly or indirectly paid from the
5 proceeds of a grant or loan made by the local, state or federal
6 government or any agency or instrumentality of the government.

7 SECTION 15. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 5166 of Title 74, unless there
9 is created a duplication in numbering, reads as follows:

10 A. The construction, remodel or repair of a qualifying project
11 may be performed only after performance and payment bonds for the
12 construction, remodel or repair have been executed regardless of
13 whether the qualifying project is on public or private property or
14 is publicly or privately owned.

15 B. For purposes of this section, a qualifying project is
16 considered a public work and the responsible governmental entity
17 shall assume the obligations and duties of a governmental entity.

18 C. The obligee under a performance bond under this section may
19 be a public entity, a contracting entity, a business entity, or an
20 entity consisting of both a public entity and a contracting entity.

21 SECTION 16. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 5167 of Title 74, unless there
23 is created a duplication in numbering, reads as follows:
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1 A. If the contracting entity commits a material default, the
2 responsible governmental entity may assume the responsibilities and
3 duties of the contracting entity of the qualifying project. If the
4 responsible governmental entity assumes the responsibilities and
5 duties of the contracting entity, the responsible governmental
6 entity has all the rights, title and interest in the qualifying
7 project, subject to any liens on revenue previously granted by the
8 contracting entity to any person or business entity providing
9 financing for the project.

10 B. The responsible governmental entity may terminate, with
11 cause, any applicable interim or comprehensive agreement and
12 exercise any other rights and remedies available to the governmental
13 entity at law or in equity.

14 C. Stipends are to be used on large projects where there is
15 substantial opportunity for innovation and the costs for developing
16 a proposal is significant. Also called 'payment for work product',
17 stipends encourage competition and do not put smaller companies at a
18 competitive disadvantage and they compensate unsuccessful offerors
19 for a portion of their costs.

20 1. The authority may elect to pay unsuccessful proposers for
21 the work product that they submit with their proposal in response to
22 an RFP solicitation. The use by the authority of any design element
23 contained in an unsuccessful proposal is at the sole risk and
24

1 discretion of the authority and does not confer liability on the
2 recipient of the stipulated amount under this section.

3 2. After payment of the stipulated amount, the authority and
4 the unsuccessful proposer will jointly own the rights to, and may
5 make use of any work product contained in the proposal including the
6 technologies, techniques, methods, processes, ideas and information
7 contained in the proposal, project design and project financial
8 plan. The use by the unsuccessful proposer of any part of the work
9 product contained in the proposal is at the sole risk of the
10 unsuccessful proposer and does not confer liability on the
11 authority.

12 D. The responsible governmental entity may make any appropriate
13 claim under the letters of credit or other security or the
14 performance and payment bonds required by paragraph 1 of subsection
15 A of Section 12 of this act.

16 E. If the responsible governmental entity elects to assume the
17 responsibilities and duties for a qualifying project under
18 subsection A of this section, the responsible governmental entity
19 may:

- 20 1. Develop or operate the qualifying project;
- 21 2. Impose user fees;
- 22 3. Impose and collect lease payments for the use of the
23 project; and
- 24 4. Comply with any applicable contract to provide services.

1 F. The responsible governmental entity shall collect and pay to
2 secured parties any revenue subject to a lien to the extent
3 necessary to satisfy the obligations of the contracting party to
4 secured parties, including the maintenance of reserves. The liens
5 shall be correspondingly reduced and, when paid off, released.

6 G. Before any payment is made to or for the benefit of a
7 secured party, the responsible governmental entity may use revenue
8 to pay the current operation and maintenance costs of the qualifying
9 project, including compensation to the responsible governmental
10 entity for its services in operating and maintaining the qualifying
11 project. The right to receive any payment is considered just
12 compensation for the qualifying project.

13 H. The full faith and credit of the responsible governmental
14 entity may not be pledged to secure any financing of the contracting
15 entity that was assumed by the governmental entity when the
16 governmental entity assumed responsibility for the qualifying
17 project.

18 SECTION 17. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 5169 of Title 74, unless there
20 is created a duplication in numbering, reads as follows:

21 A. The contracting entity and each facility owner, including a
22 public utility, a public service company or a cable television
23 provider, whose facilities will be affected by a qualifying project
24

1 shall cooperate fully in planning and arranging the manner in which
2 the facilities will be affected.

3 B. The contracting entity and responsible governmental entity
4 shall ensure that a facility owner whose facility will be affected
5 by a qualifying project does not suffer a disruption of service as a
6 result of the construction or improvement of the qualifying project.

7 C. The contracting entity shall pay any amount owed for the
8 crossing, constructing or relocating of facilities.

9 SECTION 18. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 5171 of Title 74, unless there
11 is created a duplication in numbering, reads as follows:

12 A. Not later than the tenth day after the date a responsible
13 governmental entity accepts a proposal, the responsible governmental
14 entity shall provide notice of the proposal by posting the proposal
15 on the Internet website of the entity.

16 B. The responsible governmental entity shall make available for
17 public inspection at least one (1) copy of the proposal. This
18 section does not prohibit the responsible governmental entity from
19 posting the proposal in another manner considered appropriate by the
20 responsible governmental entity to provide maximum notice to the
21 public of the opportunity to inspect the proposal.

22 C. Trade secrets, financial records, or other records of the
23 contracting entity excluded from disclosure under the Oklahoma Open
24 Records Act may not be posted or made available for public

1 inspection except as otherwise agreed to by the responsible
2 governmental entity and the contracting entity.

3 D. The responsible governmental entity shall hold a public
4 hearing on the proposal during the proposal review process not later
5 than the thirtieth day before the date the entity enters into an
6 interim or comprehensive agreement.

7 E. On completion of the negotiation phase for the development
8 of an interim or comprehensive agreement and before an interim
9 agreement or comprehensive agreement is entered into, a responsible
10 governmental entity must make available the proposed agreement in a
11 manner provided by subsection A or B of this section.

12 F. A responsible governmental entity that has entered into an
13 interim agreement or comprehensive agreement shall make procurement
14 records available for public inspection on request. For purposes of
15 this subsection, procurement records do not include the trade
16 secrets of the contracting entity or financial records, including
17 balance sheets or financial statements of the contracting entity,
18 that are not generally available to the public through regulatory
19 disclosure or other means.

20 G. Cost estimates relating to a proposed procurement
21 transaction prepared by or for a responsible governmental entity are
22 not open to public inspection.

1 H. Any inspection of procurement transaction records under this
2 section is subject to reasonable restrictions to ensure the security
3 and integrity of the records.

4 I. This section applies to any accepted proposal regardless of
5 whether the process of bargaining results in an interim or
6 comprehensive agreement.

7 SECTION 19. This act shall become effective November 1, 2016.

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