An Act

ENROLLED SENATE
BILL NO. 558

By: Shurden and Coates of the Senate

and

Liotta of the House

An Act relating to public buildings and public works; amending 61 O.S. 2001, Sections 1, 11, as amended by Section 3, Chapter 294, O.S.L. 2002, 15, 17, 60, as amended by Section 6, Chapter 294, O.S.L. 2002, 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, 64, as amended by Section 11, Chapter 294, O.S.L. 2002, 65, as amended by Section 12, Chapter 294, O.S.L. 2002; amending 74 O.S. 2001, Section 78, as amended by Section 1, Chapter 511, O.S.L. 2004 (74 O.S. Supp. 2005, Section 78), which relates to the Fleet Management Division; requiring report; providing exception; requiring certain rules to be promulgated; 102, as last amended by Section 89, Chapter 1, O.S.L. 2005, 103, 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, 116, as amended by Section 19, Chapter 294, O.S.L 2002, 119.1, 121, as last amended by Section 2, Chapter 328, O.S.L. 2004, 123, 127, 131, as amended by Section 1 of Enrolled House Bill No. 2424 of the 2nd Session of the 50th Oklahoma Legislature, 202, as amended by Section 28, Chapter 294, O.S.L. 2002, 202.1, as last amended by Section 1 of Enrolled House Bill No. 1564 of the 2nd Session of the 50th Oklahoma Legislature, 204, as last amended by Section 2, Chapter 277, O.S.L. 2003, 208, 209, as last amended by Section 50, Chapter 5, O.S.L. 2004, and Section 1, Chapter 414, O.S.L. 2002 (61 O.S. Supp. 2005, Sections 11, 60, 61, 62, 62.2, 63, 64, 65, 102, 107, 113, 116, 121, 202, 204, 209 and 220), which relate to bonds, public buildings, exceptions, jurisdiction, mandatory contract forms, definitions, registration and selection of construction managers and design consultants, requirement for compliance with certain act, contracts for minor services, ownership and control of plans, offenses, application of act, definitions, requirement for competitive bidding, requirements of bids, time for awarding of contract, execution of contract, partial payment, interest rate, disclosure of terms of bids, requirements for negotiation of contracts under

certain circumstances, change orders or addenda, supervisor's certification, contracts by a public trust, splitting contracts, definitions, construction management project delivery methods, duties of the Construction and Properties Division, awarding of contracts, rulemaking and construction management as a project delivery method; modifying amount of certain contracts; requiring conformation with certain codes; deleting exception; deleting award of certain attorney fees and court costs; adding certain exception for certain agency; modifying definitions; clarifying language; authorizing construction managers to perform certain activities; modifying amount of minor services contracts; making certain reports state property; modifying amount of certain contracts; amending short title; modifying definitions; providing guidelines for letting of certain public construction contracts; 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; modifying interest rate; authorizing the State Construction Administrator to negotiate contracts for certain state agencies; modifying persons required to sign contracts and change orders; clarifying term; modifying type of certification; clarifying application of the Competitive Bidding Act; deleting obsolete language; adding definitions; modifying persons required to give written approval of certain methods; requiring design-build and construction management project delivery method to meet certain criteria; mandating the State Construction Administrator to file certain annual report; modifying duties of the Division; exempting certain agency from application of certain requirements; authorizing the State Construction Administrator to negotiate certain contracts for certain purposes under certain circumstances and providing guidelines therefor; modifying duties of the Director of the Department of Central Services; adding definitions; authorizing the Department of Central Services to enter into certain contracts; requiring certain bond; requiring certain guarantees during term of contract; adding political subdivisions to those entities that may use certain project delivery method; adding exception; amending 74 O.S. 2001, Sections 90.1, as amended by Section 1, Chapter 218, O.S.L. 2003 (74 O.S. Supp. 2005, Section 90.1), 94 and 129.4, as last amended by Section 2 of Enrolled Senate Bill No. 620 of the 2nd Session of the 50th Oklahoma Legislature, which relate to postal services, agency authority to designate quarters and allot space, and disposal procedures for certain state-owned real property; modifying amount of annual expenditure for postage; authorizing the Department of Central Services to lease certain space to certain vendors for certain purposes; authorizing Department

to determine certain fee and directing deposit; prohibiting certain disposal of certain real property absent lawful authority therefore; modifying responsibilities of the Department related to disposal of certain real property; requiring the Department to review and approve certain acquisitions of property and to maintain certain inventory; requiring state agencies to provide certain records to the Department; authorizing the Director to promulgate rules; requiring the Director to contract with certain person to perform certain duties of the Department; repealing 61 O.S. 2001, Sections 1.1 and 207.4, which relate to irrevocable letters of credit, and approval of state agency real property transactions; 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)~~ Fifty Thousand Dollars ($50,000.00) for construction or repair of a public building or structure, or improvement to real property, the person that receives the award shall:

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

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

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)~~ Fifty Thousand Dollars ($50,000.00), 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 11, as amended by Section 3, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005, Section 11), is amended to read as follows:

Section 11. A. Unless otherwise provided for by law, all plans and specifications for the erection of public buildings by this state, or any agency or political subdivision thereof, or for any building erected through the use of public funds shall provide facilities for the handicapped. Such facilities shall conform with the codes and standards ~~prescribed in the current issue of the BOCA Basic Building Code approved by the Building Officials and Code Administrators International, Inc~~ adopted by the State Fire Marshal and amended by the Division's promulgated rules. Elevators shall be constructed and installed in said public buildings to the extent deemed feasible and financially reasonable by the contracting authority of the state or such political subdivision. Said ~~Code~~ codes and standards shall be on file in the Construction and Properties Division of the Department of Central Services.

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

SECTION 3. 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 4. 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 5. AMENDATORY 61 O.S. 2001, Section 60, as amended by Section 6, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005, Section 60), is amended to read as follows:

Section 60. All state agencies, boards, commissions, offices, institutions, and other governmental bodies of this state, and all individuals representing such entities, except the Department of Transportation and the Oklahoma ~~Transportation~~ Turnpike Authority, shall use construction manager, consultant and construction contract forms that the State Construction Administrator of the Construction and Properties Division of the Department of Central Services requires to award and execute contracts for designs to construct, renovate, alter, repair, maintain, or improve real property or fixtures of real property of the state. The Administrator may authorize, in writing, exceptions to the use of construction manager, consultant and construction contract forms for specific projects.

SECTION 6. AMENDATORY 61 O.S. 2001, Section 61, as amended by Section 7, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005, 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. "Department" means the Department of Central Services;

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

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

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

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

SECTION 7. AMENDATORY 61 O.S. 2001, Section 62, as amended by Section 8, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005, 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 and ~~design~~ consultant services for state agencies. The file shall include registration forms and information submitted by construction managers and ~~design~~ consultants pursuant to rules promulgated by the Department of Central Services. Pursuant to rules promulgated by the Department, the Division shall determine whether a construction manager or ~~design~~ consultant qualifies for registration and shall notify the construction manager or ~~design~~ consultant within twenty (20) days of receipt of a request for registration. Construction managers 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 or ~~design~~ consultant services, signed by the chief administrative officer, to the Division. The Division shall review the scope and approve it before the state agency issues a solicitation.

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

1. Description and scope of the project;

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

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

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

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

D. After the closing date, the 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 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 construction managers or 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 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 construction manager or consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the second-choice construction manager or consultant shall commence. If the Division and the second-choice construction manager or consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the third-choice construction manager or consultant shall commence. If the Division and the third-choice construction manager or 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 construction managers or consultants, the Division shall select additional

construction managers or 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~~ construction manager or consultant, all political subdivisions of this state shall follow these procedures:

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

SECTION 8. 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, ~~design~~ consultant, and construction contracts shall be in accordance with the provisions of the Public Building Construction and Planning Act.

SECTION 9. AMENDATORY 61 O.S. 2001, Section 62.2, as amended by Section 9, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005, 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 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 or ~~design~~ consultant during one (1) year. The requisitioning state agency shall reimburse the Division for the fee of the construction manager or ~~design~~ consultant that provides the services.

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

Section 63. All drawings, plans, specifications, reports, and models made by a ~~design~~ construction manager 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~~ construction manager 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 11. AMENDATORY 61 O.S. 2001, Section 64, as amended by Section 11, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005, Section 64), is amended to read as follows:

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

SECTION 12. AMENDATORY 61 O.S. 2001, Section 65, as amended by Section 12, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005, 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 construction manager or consultant shall be selected by the State Construction Administrator of the Construction and Properties Division of the Department of Central Services. The resulting construction manager or consultant contract shall not exceed ~~Seven Thousand Five Hundred Dollars ($7,500.00)~~ Fifteen Thousand Dollars ($15,000.00). 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~~.~~; and

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 construction managers or 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 13. AMENDATORY 74 O.S. 2001, Section 78, as amended by Section 1, Chapter 511, O.S.L. 2004 (74 O.S. Supp. 2005, Section 78), is amended to read as follows:

Section 78. A. There is hereby created and established within the Department of Central Services, the Fleet Management Division. The Division shall provide oversight of and advice to state agencies that own, operate and utilize motor vehicles, except for the Department of Public Safety, the Oklahoma Department of Transportation and the Oklahoma State System of Higher Education.

B. The Director of Central Services shall:

1. Appoint and fix duties and compensation for a Fleet Manager who shall serve as the administrative head of the division;

2. Hire personnel as necessary to provide fleet management services to state agencies;

3. Acquire facilities to maintain vehicles;

4. Promulgate rules for efficient and economical operations to provide fleet management services to state agencies; and

5. Report to the Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate those agencies that fail to comply with the provisions of law and the rules of the Fleet Management Division regarding submission of reports, vehicle use, and vehicle maintenance.

C. The rules shall include provisions to:

1. Establish uniform written vehicle acquisition, leasing, maintenance, repairs, and disposal standards for use by all state agencies to justify actual need for vehicles;

2. Establish standards for routine vehicle inspection and maintenance;

3. Provide standards and forms for recordkeeping of fleet operation, maintenance, and repair costs for mandatory use by all state agencies to report the data to the Fleet Management Division on a monthly basis;

4. Provide standards and utilize methods for disposal of vehicles pursuant to the Oklahoma Surplus Property Act and any other applicable state laws; ~~and~~

5. Establish mandatory maintenance contracts throughout the state for all agencies to access for vehicle repairs and service at discounted rates and parts;

6. Require all agencies with in-house repair and service facilities to assign a value to the preventive maintenance services, track those services with a dollar value, and report costs to the Fleet Manager for the prior month no later than the twentieth day following the close of each month;

7. Promulgate rules requiring all state-owned motor vehicles to be marked in a uniform, highly visible manner, except for certain vehicles driven by law enforcement agencies or other agencies requiring confidentiality;

8. Require agencies to produce and maintain written justification for any vehicle that travels fewer than twelve thousand (12,000) miles annually and report to the Fleet Manager such information by October 1 of each year; and

9. Address any other matter or practice which relates to the responsibilities of the Director of Central Services.

D. The Fleet Manager shall:

1. Develop specifications for contracts for vehicle maintenance for state vehicles not serviced or maintained by state agencies;

2. Conduct on-site inspections to verify state agency or supplier compliance with Division standards for inspections, maintenance and recordkeeping;

3. Assess state agency needs for vehicles and types of vehicles;

4. Assign, transfer or lease vehicles to a state agency to meet the needs of the state agency;

5. Unless otherwise provided by law, determine whether a state agency may use or operate a vehicle without state identifying

markings, bearing a license plate used by a privately owned vehicle to perform the duties of the state agency without hindrance;

6. Report to the Director of Central Services occurrences of agencies failing to comply with the provisions of law and the rules of the Fleet Management Division regarding submission of reports, vehicle use, and vehicle maintenance; ~~and~~

7. Offer guidelines to agencies to assist in determining the most cost-effective and reasonable modes of travel for single trips from the following options: state vehicle, private rental, or mileage reimbursement; and

8. Provide, upon the request of the Governor, the President Pro Tempore of the Senate or the Speaker of the House of Representatives, reports from data the Fleet Manager collects.

SECTION 14. AMENDATORY 61 O.S. 2001, Section 102, as last amended by Section 89, Chapter 1, O.S.L. 2005 (61 O.S. Supp. 2005, 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)~~ Fifty Thousand Dollars ($50,000.00) 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, provided that the materials are not purchased in increments for an amount of less than ~~Twenty-five Thousand Dollars ($25,000.00)~~ Fifty Thousand Dollars ($50,000.00) and used for the purposes of completing a single project, 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 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 public agency.

SECTION 15. 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 Fifty Thousand Dollars ($50,000.00) 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. Except as provided in subsection D of this section, public construction contracts less than Fifty Thousand Dollars ($50,000.00) shall be let and awarded to the lowest responsible bidder by receipt of written bids. No work shall be commenced until a written contract is executed and proof of insurance has been provided by the contractor to the awarding public agency.

C. Except as provided in subsection D of this section, public construction contracts for less than Two Thousand Five Hundred Dollars ($2,500.00) 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 proof of insurance has been provided by the contractor to the awarding public agency.

D. The provisions of this subsection shall apply to public construction for minor maintenance or minor repair work to public school district property. Such public construction contracts for less than Twenty-five Thousand Dollars ($25,000.00) may be negotiated with a qualified contractor. Such public construction contracts equal to or greater than Twenty-five Thousand Dollars ($25,000.00) but less than Fifty Thousand Dollars ($50,000.00) shall be let and awarded to the lowest responsible bidder by receipt of written bids. No work shall be commenced on any such public construction contract until a written contract is executed and proof of insurance has been provided by the contractor to the awarding public agency.

SECTION 16. AMENDATORY 61 O.S. 2001, Section 107, as amended by Section 15, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005, 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)~~ Fifty Thousand Dollars ($50,000.00) 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 17. 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 Division may extend the contract award period no more than one hundred twenty (120) days from the bid opening date.

SECTION 18. AMENDATORY 61 O.S. 2001, Section 113, as last amended by Section 1, Chapter 299, O.S.L. 2004 (61 O.S. Supp. 2005, 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)~~ Fifty Thousand Dollars ($50,000.00):

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.

SECTION 19. 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 progress is being made, and upon approval by the surety.

B. The ~~Oklahoma~~ Department of Transportation or the Oklahoma Turnpike 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 20. AMENDATORY 61 O.S. 2001, Section 113.3, is amended to read as follows:

Section 113.3 ~~The~~ When interest is due the contractor, all awarding public ~~agency~~ agencies, other than school districts, shall pay to the contractor interest at the rate of ~~three fourths percent (3/4%)~~ one and one-half percent (1 1/2%) per month of the final payment due the contractor. When interest is due to the contractor, school districts shall pay to the contractor interest at the rate of three fourths percent (3/4%) per month of the final payment due the contractor. 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 21. AMENDATORY 61 O.S. 2001, Section 116, as amended by Section 19, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005, Section 116), is amended to read as follows:

Section 116. A. Any disclosure by an employee of a public agency of the terms of a bid submitted in response to a bid notice issued by a public agency in advance of the time set for opening of all bids so submitted shall be unlawful. It shall also be unlawful for any person to solicit, possess or receive information which is to be contained in a bid notice of a public agency, for use in preparing a bid, in advance of the date on which said bid notice is to be made equally and uniformly known to all prospective bidders and the public, and it shall further be unlawful for any employee of a public agency to withhold or impede the distribution of said information after notice of the bid has been given, unless the solicitation of bids has been withdrawn or the particular information in question has been deleted or replaced through alteration of the bid notice and said withdrawal or alteration has been made equally and uniformly known. Any violation of this subsection shall be a felony and shall render the proceedings void and require solicitation and award anew.

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

SECTION 22. AMENDATORY 61 O.S. 2001, Section 119.1, is amended to read as follows:

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

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

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

B. The amount of a contract which may be awarded by the governing body pursuant to this section shall not exceed Fifty Thousand Dollars ($50,000.00) and the work to be performed shall be as specified in the initial bidding documents. The contract shall be executed within six (6) months after the date initially set for opening of bids. The contract and contract procedure shall conform to all other applicable provisions of the Public Competitive Bidding Act of 1974.

SECTION 23. AMENDATORY 61 O.S. 2001, Section 121, as last amended by Section 2, Chapter 328, O.S.L. 2004 (61 O.S. Supp. 2005, 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, or the administrator's designee, 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~~ Turnpike 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.

~~I.~~ 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 24. 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. No such statement or invoice shall be paid by the awarding public agency without such certification. The execution of a ~~sworn~~ certificate, 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 25. AMENDATORY 61 O.S. 2001, Section 127, is amended to read as follows:

Section 127. This act shall apply to contracts made by a public trust ~~created~~ operating pursuant to the Local Industrial Development Act or the Local Development Act except where the public improvements, buildings, or repairs are being made or constructed as a part of an agreement to provide development financing assistance, and where the cost of such public improvements does not exceed twenty-five percent (25%) of the total amount of the estimated public and private investment being made within the related increment district.

SECTION 26. AMENDATORY 61 O.S. 2001, Section 131, as amended by Section 1 of Enrolled House Bill No. 2424 of the 2nd

Session of the 50th Oklahoma Legislature, 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. Any person who knowingly violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

SECTION 27. AMENDATORY 61 O.S. 2001, Section 202, as amended by Section 28, Chapter 294, O.S.L. 2002 (61 O.S. Supp. 2005, 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 qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or 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. "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. "Director" means the Director of the Department of Central Services;

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

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

13. "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, provided that the materials are not purchased in increments for an amount of less than Twenty-five Thousand Dollars ($25,000.00) and used for the purposes of completing a single project, 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;

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 28. AMENDATORY 61 O.S. 2001, Section 202.1, as last amended by Section 1 of Enrolled House Bill No. 1564 of the 2nd Session of the 50th Oklahoma Legislature, is amended to read as follows:

Section 202.1 A. The design-build and ~~at-risk~~ construction management project delivery methods shall not be used without the written approval of the Director of Central Services, or the Director's designee, when those projects are constructed for a state agency or by an act of the Legislature specifying design-build or at-risk construction management for a project. In all instances where the design-build project or at-risk construction management delivery method is authorized, construction administration shall be performed by the State Construction Administrator, the Administrator's designee or designees, or otherwise by contract or contract provision approved by the Director of Central Services for construction administration by another party.

B. Municipalities, counties, public trusts, or any other political subdivision in this state shall not be required to get approval of any other state agency in order to use design-build construction management or at-risk construction management as a construction management delivery method. However, municipalities, counties, public trusts, and any other political subdivision shall be subject to all other provisions of the Public Building Construction and Planning Act.

C. The design-build and construction management project delivery methods shall not be used for any project unless the project meets the criteria established by the administrative rules promulgated as required by this act. Such methods shall not be used unless there is a need for compressed construction time as required to respond to a natural disaster or other emergency situation affecting public health and safety, or all of the following criteria for designation are met:

1. The project benefits the public;

2. There is a need for cost control; and

3. The need exists for specialized or complex construction methods due to the unique nature of the project.

D. The use of design-build and construction management project delivery methods shall not interfere or inhibit the opportunity for subcontractors to openly and freely compete for subcontracts pursuant to the Public Competitive Bidding Act of 1974.

E. The provisions of ~~subsection~~ subsections A and B of this section shall not apply to projects by contract pursuant to an interagency agreement under Section 581 of Title 74 of the Oklahoma Statutes or to projects a state agency performs solely with the staff of the agency.

~~D.~~ F. The State Construction Administrator shall file an annual report to the legislature summarizing cost information for each construction management project completed the preceding year.

G. The Department of Central Services shall, pursuant to the Administrative Procedures Act, promulgate rules to effect procedures, ~~and~~ processes and design-build/construction management fee guidelines necessary to the fulfillment of its responsibilities under ~~subsection A of~~ this section.

~~E.~~ H. As used in the Public Building Construction and Planning Act, public trusts shall not include state beneficiary public trusts.

SECTION 29. AMENDATORY 61 O.S. 2001, Section 204, as last amended by Section 2, Chapter 277, O.S.L. 2003 (61 O.S. Supp. 2005, 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.~~ 3. 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.~~ 4. Provide assistance to state agencies when a state agency desires to hire a ~~design~~ consultant or construction manager for a project. Except as provided by subsection B of this section, the Division shall award and execute contracts to ~~design~~ consultants and construction managers that provide services to state agencies for construction projects;

~~6.~~ 5. 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.~~ 6. Review inspections performed by ~~design~~ consultants and construction managers during construction, primary inspections when consultants or construction managers are not used, and final inspections after completion;

~~8.~~ 7. 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.~~ 8. Monitor construction projects to ensure maximum efficiency in the expenditure of state funds for construction;

~~10.~~ 9. 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.~~ 10. 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~~ 2 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; and

6. The Department of Human Services.

SECTION 30. 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 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.

D. 1. When all bids for a public construction contract exceed an agency's estimate and available funding, the State Construction Administrator may enter into negotiations with the lowest responsible bidder for the purpose of modifying the project scope and reducing the construction cost, provided that:

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

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

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

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

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

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

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

SECTION 31. AMENDATORY 61 O.S. 2001, Section 209, as last amended by Section 50, Chapter 5, O.S.L. 2004 (61 O.S. Supp. 2005, 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 a state agency shall follow to adhere to acquisition, contract, contract management and other provisions of this title; and

12. Specifying the process a state agency shall follow to establish the scope of work, schedule and cost estimate for all publicly bid construction projects involving construction or renovation of buildings. This requirement shall not apply to project planning work performed by a state agency which employs an architect pursuant to other provisions of this act.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 212 of Title 61, unless there is created a duplication in numbering, reads as follows:

A. For purposes of this section:

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

a. utility services,

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

c. replacement or modifications of lighting fixtures,

d. indoor air quality improvements to increase air quality that conform to the applicable state or local building code requirements when done in conjunction with other cost-saving measures,

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

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

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

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

A qualified provider to whom the contract is awarded shall be required to provide to the Division a sufficient bond for its faithful performance of the contract. In addition, the Division may require performance bonds covering the annual amount of guaranteed savings over the contract term. The Department of Central Services may enter into an installment contract, lease purchase agreement or other contractual obligation for the purpose of financing performance-based efficiency projects for a term not to exceed twenty (20) years or the useful life of the project.

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

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

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

SECTION 33. AMENDATORY Section 1, Chapter 414, O.S.L. 2002 (61 O.S. Supp. 2005, Section 220), is amended to read as follows:

Section 220. A. Any political subdivision or board of education of a school district may use construction management as a project delivery method for the building, altering, repairing, improving, maintaining or demolishing any structure or appurtenance thereto, or any other improvement to real property owned by that political subdivision or school district. For purposes of this section "construction management" shall be defined as set forth in Section 202 of ~~Title 61 of the Oklahoma Statutes~~ this title and shall include both agency construction management and at-risk construction management.

B. A political subdivision or school district shall select a construction manager based on the professional qualifications and technical experience of the construction manager. Selection criteria shall include the experience of the candidate, past performance, and certification of the company or individuals within the company of their knowledge of recognized standards of construction, construction management and project management. ~~Recognition of the company~~ Only firms recognized as ~~a~~ qualified construction ~~manager~~ managers by the Construction and Properties Division of the Department of Central Services pursuant to Section 62 of ~~Title 61 of the Oklahoma Statutes~~ this title, may be considered ~~in evaluating the qualifications of a prospective~~ for selection as a construction manager by a political subdivision or school district.

C. The construction management project delivery method may only be used for public construction contracts when the construction project meets the criteria established by Section 202.1 of this title, except that a political subdivision or school district shall not be required to obtain permission from the Director of Central Services.

D. When bids for a public construction project have been received from general contractors pursuant to the Public Competitive Bidding Act of 1974 and the lowest responsible bid is within the awarding agency's available funding, the awarding agency shall not reject all bids and award the project to a construction manager.

E. Construction management contracts, for both agency construction management and at-risk construction management, entered into by a political subdivision or school district pursuant to this section shall not be considered a public construction contract pursuant to Section 102 of Title 61 of the Oklahoma Statutes and shall not be subject to competitive bidding requirements as set forth in the Public Competitive Bidding Act of 1974.

~~D.~~ F. All construction contracts or subcontracts for work to be performed for any political subdivision or school district pursuant to a construction management project delivery method shall be awarded in accordance with the provisions of the Public Competitive Bidding Act of 1974. If a construction manager at-risk wishes to self-perform portions of the construction work to be performed, the construction manager at-risk may self-perform portions of the work provided the construction manager at-risk competitively bids the work under the same terms and conditions as the other bidders and the construction manager at-risk is the lowest responsible bidder for the construction subcontract. No work shall commence until the school district executes a written contract and the contractor and subcontractors submit bonds and proofs of insurance as required by the appropriate contract.

SECTION 34. AMENDATORY 74 O.S. 2001, Section 90.1, as amended by Section 1, Chapter 218, O.S.L. 2003 (74 O.S. Supp. 2005, Section 90.1), is amended to read as follows:

Section 90.1 A. Except as otherwise provided for in this section, any agency, as defined in the Administrative Procedures Act, which has an expenditure for postage of ~~One Thousand Dollars ($1,000.00)~~ Two Thousand Dollars ($2,000.00) or more for any one (1) fiscal year shall install a postage meter machine and have all purchases of postage recorded on that postage meter machine. Except, a field office or branch office of a state agency distantly located from the parent agency, and which office has an annual expenditure for postage of less than ~~One Thousand Dollars ($1,000.00)~~ Two Thousand Dollars ($2,000.00), may purchase postage stamps in the manner prescribed by Section 90.2 of this title and such purchases shall not be subject to the provisions of subsection B of this section.

B. Any agency, as defined in the Administrative Procedures Act, not engaged in scientific research or community development, which finds it necessary, in order to more efficiently and effectively carry out certain programs or functions, is hereby authorized, upon making application to the Director of the Office of State Finance showing sufficient need and upon approval by said Director, to purchase not more than ~~One Thousand Dollars ($1,000.00)~~ Two Thousand Dollars ($2,000.00) worth of postage stamps during any one (1) fiscal year in the manner prescribed by Section 90.2 of this title, with a method of accountability for the use thereof to be maintained and subject to audit. Any agency of the state engaged in scientific research or community development, which finds it necessary, in order to effectively carry out such research or development, is hereby authorized, upon making application to the Director of the Office of State Finance showing sufficient need and upon approval by the Director, to purchase postage stamps in the amount demonstrated necessary to pursue such research or development in the manner prescribed by Section 90.2 of this title, with a method of accountability for the use thereof to be maintained and subject to audit. Provided, however, the finance officer of such state agency shall keep and maintain a record of all postage stamp allocations within the agency. For purposes of this section, "scientific research" shall mean research conducted under formally sponsored grants or contracts; "community development" shall mean development conducted by a formally and permanently organized office for that purpose.

C. Every state agency shall utilize business reply mail accounts, bulk mailing accounts, postage due accounts, zip + 4 codes, mailer applied bar codes or such other services offered by the United States Postal Service for the purpose of reducing postal costs and promoting efficiency. The Department of Central Services shall oversee the implementation of the provisions of this subsection.

SECTION 35. AMENDATORY 74 O.S. 2001, Section 94, is amended to read as follows:

Section 94. A. Except as otherwise provided by law, the Department of Central Services shall have full and complete authority to designate quarters for every department of state government, and to determine what space shall be allotted.

B. The Department may lease adequate space in state buildings and facilities to private vendors for the location of automatic teller machines as determined necessary or appropriate by the Director of the Department. The Department is hereby authorized to fix the monthly amount to be paid by such vendors, which shall be deposited in the General Revenue Fund.

SECTION 36. AMENDATORY 74 O.S. 2001, Section 129.4, as last amended by Section 2 of Enrolled Senate Bill No. 620 of the 2nd Session of the 50th Oklahoma Legislature, is amended to read as follows:

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

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

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

a. when appropriate, determine whether a study conducted pursuant to Section 456.7 of this title is in the best interest of the state,

b. obtain three new and complete appraisals ~~of such property~~ on properties with an estimated value that equals or exceeds One Million Dollars ($1,000,000.00); or, two new and complete appraisals on properties with an estimated value greater than One Hundred Thousand Dollars ($100,000.00) and less than One Million Dollars ($1,000,000.00); or, one new and complete appraisal on properties with an estimated value less than One Hundred Thousand Dollars ($100,000.00). The appraisals shall be made by ~~three disinterested~~ persons~~, knowledgeable in real estate costs~~ certified by the Real Estate Appraiser Board of the Oklahoma Insurance Department, who shall ascertain:

(1) the present fair value of the property, and

(2) the present value of the improvements on such property, and

(3) the actual condition of the improvements on the property, ~~and~~

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

~~c.~~ d. offer said property through public auction or sealed bids within three (3) weeks after the last publication of the notice in said newspapers. The property shall be sold to the highest bidder. The Department of Central Services shall not accept a bid of less than ninety percent (90%) of the appraised fair value of the property and the improvements on such property. The Department of Central Services is authorized to reject all bids.

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

C. Unless otherwise provided by law, the Department of Central Services shall review and approve state agency transactions to lease or acquire real property, or lease, dispose of or transfer state-owned real property. A state agency shall not lease or acquire real property, or lease, dispose of or transfer state-owned real property until the Department provides notice of transaction approval to the state agency. Prior to approval, a state agency shall provide documents to the Department and provide reference to statutory or other legal authority of the state agency to lease or acquire real property, or lease, dispose of or transfer state-owned real property. If the state agency intends to lease or acquire real property, the state agency shall state the intended use of the real property. Within thirty (30) days of receipt, the Department shall provide notice of transaction approval or disapproval to the state agency.

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.

E. The Department of Central Services shall 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.

1. Each state agency shall, within thirty (30) days of the closing date for lands newly acquired, provide to the Department 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.

2. The provisions of paragraph 1 of this subsection shall apply to all lands of public trusts having a state agency as the primary benefactor, but shall not apply to lands of municipalities, counties, school districts, or agencies thereof, or Department of Transportation rights-of-way.

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

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

~~D.~~ G. The Department of Central Services may provide services to sell or purchase real property for other state agencies.

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

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

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

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

SECTION 37. REPEALER 61 O.S. 2001, Sections 1.1 and 207.4, are hereby repealed.

SECTION 38. This act shall become effective July 1, 2006.

SECTION 39. 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.

Passed the Senate the 26th day of May, 2006.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of May, 2006.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 26

day of May, **20** 06,

at 8:45 **o'clock** P **M.**

By: Blair Gaddis

Approved by the Governor of the State of Oklahoma the 7 **day of** June, **20** 06, **at** 10:54 **o'clock** A **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 7th **day of** June, **20** 06,

at 11:58 **o'clock** A **M.**

By: M. Susan Savage