

An Act

ENROLLED HOUSE
BILL NO. 4080

By: Wallace of the House

and

Leewright of the Senate

An Act relating to public buildings and public works; amending 61 O.S. 2021, Sections 1, 4, 6, 11, and 12, which relate to the bonding, contracting, and construction of public buildings and works; modifying construction bonds; regulating public contracts and hours worked during a day; modifying preference requirements for products produced in Oklahoma; modifying requirements for accommodations for people with disabilities; requiring submission of certain plans to certain authorities; amending 61 O.S. 2021, Sections 60, 61, 62, 62.2, 63, and 65, which relate to construction management and consultant services; regulating certain mandatory contract forms; modifying definitions; eliminating references to the Department of Real Estate Services and its Director; regulating registration and selection of construction managers and consultants; amending requirements for contracts for on-call minor services; providing for what shall be considered state property; establishing procedures for when an emergency exists; amending 61 O.S. 2021, Section 84, which relates to the Fair and Open Competition in Governmental Construction Act; modifying prohibited contract terms; amending 61 O.S. 2021, Sections 102, 103.4, 103.7, 104, 105, 106, 107, 109, 110, 112, 113, 113.1, 119.1, 121, and 130, which relate to the Public Competitive Bidding Act of 1974; modifying definitions; modifying requirements for school buildings and force accounts; modifying contract requirements relating to fish and wildlife conservation; modifying required bids and bid notices; modifying bid documents on file; regulating late bids; prescribing procedures related to examination of bids; prescribing procedures related

to electronic bids; providing public inspection requirement; modifying the requirements for the execution of a contract; regulating payment and partial payment; providing for contract negotiations when no bid is received; defining emergency situations; amending 61 O.S. 2021, Sections 202, 204, 207.2, 208, 208.1, 208.2, 209, 210, 211, and 212, which relate to the Public Facilities Act; modifying definitions; providing for the reviewing and approval of projects; modifying process for contract approval; allowing for fees; modifying the State Construction Revolving Fund; establishing the nature of the fund; declaring funds appropriated; granting rulemaking authority; allowing for performance-based efficiency contracts; updating references; clarifying language; amending 61 O.S. 2021, Sections 308, 309, 311, 312, 316, 317, 323, 324, 326, 327, 327.1, and 330.1, which relate to the management, maintenance, and disposal of state property; clarifying language; increasing options for providing certain notices; modifying certain award standards; modifying deposit destination of certain revenues; broadening scope of certain exclusive control and jurisdiction; providing for expanded severability treatment of provisions; changing fund references; eliminating certain exceptions; eliminating certain described properties from certain defined description; modifying expenditure purpose for certain funds; requiring certain estimations and certain process related to certain real property disposals; authorizing electronic auctions; allowing the disposal of property at estimated value under certain conditions; authorizing invitations for written proposals under certain conditions; modifying proposal evaluation criteria; modifying exemption for certain recording fee; repealing 61 O.S. 2021, Sections 8, 9, 10, 14, and 15, which relate to the bonding, contracting, and construction of public buildings and works; repealing 61 O.S. 2021, Section 51, which relates to the purchase of American goods and equipment; repealing 61 O.S. 2021, Sections 103.8 and 129, which relate to the Public Competitive Bidding Act of 1974; repealing 61 O.S. 2021, Section 203, which relates to the Department of Real Estate Services; repealing 61 O.S. 2021, Sections 315, 321, 329, 330, and 331, which

relate to the management, maintenance, and disposal of state property; and providing an effective date.

SUBJECT: Public buildings and public works

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

SECTION 1. AMENDATORY 61 O.S. 2021, Section 1, is amended to read as follows:

Section 1. A. Prior to an award of a contract exceeding ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred Thousand Dollars (\$100,000.00) for construction or repair of a public or private building, structure, or improvement on public real property, the person that receives the award shall:

~~1. Furnish~~ 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 Office of Management and Enterprise 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 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. 2021, Section 4, is amended to read as follows:

Section 4. All contracts hereafter made by or on behalf of the state, or by or on behalf of any county, city, township, or other municipality, with any corporation, person or persons, for the performance of any public work, by or on behalf of the state or any county, city, township, or other municipality, shall be deemed and considered as made upon the basis of eight (8) hours constituting a day's work; and it shall be unlawful for such corporation, person or persons, to require, aid, abet, assist, connive at, or permit any laborer, workman, mechanic, prison guards, janitors in public institutions, or other person to work more than eight hours per calendar day in doing such work, except in cases and upon the conditions provided in ~~the preceding section~~ Section 3 of this title.

Provided that the provisions of this act in regard to hours worked per calendar day shall not apply to the construction, reconstruction, maintenance, or the production of local materials for: Highways, roads, streets, and all the structures and drainage in connection therewith; sewer systems, waterworks systems, dams and levees, canals, drainage ditches, airport grading, drainage, surfacing, seeding and planting. Provided that the provisions of this act will not prevent employees from drawing time and half for those hours worked over forty (40) during any calendar week.

SECTION 3. AMENDATORY 61 O.S. 2021, Section 6, is amended to read as follows:

Section 6. ~~From and after the passage and approval of this act, in~~ In the construction of all public buildings erected for the state; ~~for any county for educational, eleemosynary, penal or other institution of the state, or for any county thereof, where the~~ expense of construction is borne wholly or in part by the state, or county, by appropriation, by the issuance of bonds, or by taxation, preference shall be given to materials mined, quarried, manufactured or procured within the State of Oklahoma, provided that the same can be procured at no greater expense than like material or materials of equal quality from without the state.

SECTION 4. AMENDATORY 61 O.S. 2021, 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~~ people with disabilities. Such facilities shall conform with the codes and standards adopted by the State Fire Marshal and amended by the ~~Division's~~ Office'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 codes and standards shall be on file in the ~~Construction and Properties Division of the~~ Office of Management and Enterprise Services.

B. ~~After May 24, 1973, any~~ 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 5. AMENDATORY 61 O.S. 2021, Section 12, is amended to read as follows:

Section 12. All plans and specifications for the erection of public buildings subject to Section 11 of this title shall be submitted prior to bidding and awarding of contract to the ~~governing body of the political entity controlling the funds involved~~ State Fire Marshal or other authority having jurisdiction. Such plans and specifications shall be checked for compliance with Section 11 of this title, and no construction contract for any public building shall be awarded unless and until said plans and specifications are approved as being in compliance with Section 11 of this title by the appropriate governmental agency. If public buildings are to be financed by state funds, ~~the Construction and Properties Division of the~~ Office of Management and Enterprise Services shall approve said plans and specifications. In the case of public buildings to be financed by county funds or funds controlled by some other political

subdivision of the state, the agency whose approval is required shall be the governing body of such subdivision.

SECTION 6. AMENDATORY 61 O.S. 2021, 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, the Oklahoma Turnpike Authority, the Oklahoma State Regents for Higher Education and its constituent institutions, and the Commissioners of the Land Office ~~and CompSource Oklahoma provided CompSource Oklahoma is operating pursuant to a pilot program authorized by Sections 3316 and 3317 of Title 74 of the Oklahoma Statutes,~~ shall use construction manager, consultant and construction contract forms that the ~~State Facilities~~ Director ~~of the Department of Real Estate Services~~ of the Office of Management and Enterprise 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 ~~State Facilities~~ Director may authorize, in writing, exceptions to the use of construction manager, consultant and construction contract forms for specific projects.

SECTION 7. AMENDATORY 61 O.S. 2021, Section 61, is amended to read as follows:

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

1. "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;

2. "Construction manager" means an individual, firm, corporation, association, partnership, copartnership, or any other legal entity on the Office of Management and Enterprise Services Construction and Properties (OMES-CAP) registration list and 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;

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

4. "Director" means the Director of the Office of Management and Enterprise Services or a designee;

~~5. "Department" means the Department of Real Estate Services of the Office of Management and Enterprise Services;~~

~~6. "Office" means the Office of Management and Enterprise Services;~~

~~7.~~ 6. "Project" means studies, evaluations, plans or designs for facility evaluations or public work improvements, except the transportation facilities under the jurisdiction of the Department of Transportation or the Oklahoma Turnpike 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;

~~8.~~ 7. "State agency" means an agency, office, officer, bureau, board, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of state government, whether elected or appointed, excluding only political subdivisions of the state, the Oklahoma State Regents for Higher Education and its constituent institutions and the Commissioners of the Land Office; and

~~9. "Facilities Director" or "SFD" means the State Facilities Director of the Department of Real Estate Services of the Office of Management and Enterprise Services; and~~

~~10.~~ 8. "Political subdivision" means any local governmental body formed pursuant to the laws of this state, including, but not limited to, school districts, career technology centers, cities, counties, public trusts, public authorities, commissions or other

local governmental bodies exercising their authority to contract with construction managers and/or consultants. The term also means any quasi-governmental and nongovernmental organizations contracting with construction managers and/or consultants using public funds or on behalf of a political subdivision.

SECTION 8. AMENDATORY 61 O.S. 2021, Section 62, is amended to read as follows:

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

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 ~~Department~~ Office to assist with scope development. The state agency shall send the scope and a requisition for construction management or consultant services, signed by an authorized official, to the ~~Department~~ Office. The ~~Department~~ Office 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 consultants that are registered with the ~~Department~~ Office and 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 consultant fee, including federal, state or other participation;

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

5. Additional data the state agency requires from the construction manager or consultant. The closing date for submission of construction manager or 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 ~~Department~~ Office shall provide information from the construction managers' or consultants' files to the state agency upon request. Should there be an inadequate expression of interest in the project, the state agency and ~~Department~~ Office personnel shall confer to add construction managers or consultants for consideration.

E. The state agency shall review the information the ~~Department~~ Office 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 ~~Department~~ Office 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 ~~Department~~ Office 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 Office of ~~Management and Enterprise Services~~.

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

2. If the ~~Department~~ Office 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 ~~Department~~ Office 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 ~~Department~~ Office and the third-choice construction manager or consultant cannot reach an agreement, then all negotiations shall terminate. Should the ~~Department~~ Office be unable to negotiate a satisfactory contract with any of the three selected construction managers or consultants, the ~~Department~~ Office 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. For all state agencies subject to the Public Facilities Act, Sections 202 through 213 of this title, the ~~Department~~ Office shall perform the necessary procurement actions on behalf of a requisitioning agency as enumerated in subsections B through H of this section:

1. Determine or approve the agency's scope of a project and required services as provided in the Public Facilities Act;

2. Issue solicitations for construction manager and consultant services;

3. Conduct evaluations, interviews, selection, contract negotiation, and fee negotiation processes; and

4. Provide contract management services after award of a construction management or consultant contract.

J. In the selection of a consultant, all political subdivisions of this state shall select a consultant based upon the professional qualifications and technical experience of the consultant. The

subdivision shall negotiate a contract with the highest qualified 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 consultant, the subdivision may negotiate with other consultants in order of their qualifications.

K. In the selection of a construction manager, all political subdivisions of this state shall:

1. Extend consideration to construction managers from the file maintained by the ~~Department of Real Estate Services~~ of the Office of Management and Enterprise Services. Political subdivisions are not limited in the number of construction manager candidates from whom they intend on seeking proposals;

2. Evaluate the candidates' professional qualifications, licensing, registration, certifications, technical abilities and past experience relevant to the contemplated project. Only firms recognized as qualified construction managers by ~~the Department of Real Estate Services~~ of the Office of Management and Enterprise Services pursuant to this section may be considered for selection as a construction manager. The subdivision shall use procedures as described in this section and the Public Construction Management Act for Political Subdivisions or may adopt procedures established by the Office of Management and Enterprise Services for state agencies; and

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

SECTION 9. AMENDATORY 61 O.S. 2021, Section 62.2, is amended to read as follows:

Section 62.2 ~~The Construction and Properties Division of the~~ Office of Management and Enterprise Services may enter into contracts with construction managers and consultants registered with the ~~Division~~ Office for the purpose of providing on-call minor services to state agencies. The contracts shall provide for

services on an as-needed basis and shall not exceed One Hundred Thousand Dollars (\$100,000.00) per construction manager or consultant during one (1) year. The requisitioning state agency shall ~~reimburse the Division~~ be solely responsible for the fee of the construction manager or consultant that provides the services.

SECTION 10. AMENDATORY 61 O.S. 2021, Section 63, is amended to read as follows:

Section 63. All drawings, plans, specifications, reports, and models made by a construction manager or consultant for a state agency shall be the property of this state, and shall be delivered to the ~~Department of Real Estate Services of the Office of Management and Enterprise Services.~~ The state agency shall file such plans with the Department for inclusion in a library system to be maintained by the Department. Any state agency shall have access for review to any plans or specifications filed with the Department state as directed by the terms of the contract.

SECTION 11. AMENDATORY 61 O.S. 2021, Section 65, is amended to read as follows:

Section 65. A. In addition to the conditions prescribed pursuant to ~~subsections~~ subsection C and D of this section, the provisions of Section 62 of this title shall not apply whenever ~~the Department of Real Estate Services of the Office of Management and Enterprise 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 Facilities Director of the Department of Real Estate Services~~ of the Office of Management and Enterprise Services. The resulting construction manager or consultant contract shall not exceed Fifty Thousand Dollars (\$50,000.00). The reasons for the emergency shall be recorded in the official records of the Department Office.

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 State Board of Corrections informs the ~~Department~~ Office 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 ~~Department~~ Office 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 State 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.

~~D. The provisions of Section 62 of this title shall not apply to CompSource Oklahoma if CompSource Oklahoma is operating pursuant to a pilot program authorized by Sections 3316 and 3317 of Title 74 of the Oklahoma Statutes.~~

SECTION 12. AMENDATORY 61 O.S. 2021, Section 84, is amended to read as follows:

Section 84. A public agency shall not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term described in Section ~~3 of the Fair and Open Competition in Governmental Construction Act~~ 83 of this title in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or tax credit.

SECTION 13. AMENDATORY 61 O.S. 2021, 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 Office of Management and Enterprise Services;~~

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

~~3.~~ 2. "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.~~ 3. "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.~~ 4. "Construction management trade contract or subcontract" means any public construction contract exceeding Fifty Thousand Dollars (\$50,000.00) in amount that is awarded as a trade contract in an agency construction management contract or awarded as a subcontract in an at-risk construction management contract;

~~6.~~ 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;

~~7.~~ 6. "Public construction contract" or "contract" means any contract, exceeding One Hundred Thousand Dollars (\$100,000.00) in amount, or any construction management trade contracts or subcontracts exceeding 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;

~~8.~~ 7. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to new or further purposes. The term does not include the direct purchase of materials, equipment or supplies by a public agency, or any personal property, including property as defined in paragraphs 1 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma Statutes;

~~9.~~ 8. "Purchasing cooperative" means an association of public entities working together to provide leverage in achieving best value and/or the best terms in contracts awarded through a competitive bidding process; and

~~10.~~ 9. "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 14. AMENDATORY 61 O.S. 2021, Section 103.4, is amended to read as follows:

Section 103.4 Nothing in the Public Competitive Bidding Act of 1974 shall be construed to prohibit a school district from erecting a building or making improvements on a force account basis. ~~Contracts between a state agency and a school district for the purpose of emergency asbestos abatement shall be exempt from the provisions of the Public Competitive Bidding Act of 1974.~~

SECTION 15. AMENDATORY 61 O.S. 2021, Section 103.7, is amended to read as follows:

Section 103.7 For purposes of the provisions of the Public Competitive Bidding Act of 1974, contracts entered into solely for projects and activities by the Oklahoma Department of Wildlife Conservation relating to fish and wildlife conservation shall be let and awarded using the competitive bidding process as set forth in the Public Competitive Bidding Act of 1974. However, for contracts ~~of Fifty Thousand Dollars (\$50,000.00) or less~~ not exceeding One

Hundred Thousand Dollars (\$100,000.00), the Department may administer the competitive bidding process and let and award the contract itself rather than the ~~Construction and Properties Division of the~~ Office of Management and Enterprise Services.

SECTION 16. AMENDATORY 61 O.S. 2021, Section 104, is amended to read as follows:

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

1. Notice thereof shall be given ~~by~~ electronically and by publication in a newspaper of general circulation and published in the county where the work, or the major part of it, is to be done, such notice by publication to be published in two consecutive weekly issues of the newspaper, with the first publication thereof to be at least twenty-one (21) days prior to the date set for opening bids; and

2. Notice thereof shall be sent to one in-state trade or construction publication for their use and information whenever the estimated cost of the public construction contract exceeds One Hundred Thousand Dollars (\$100,000.00) or the cost of the construction management trade contract or subcontract exceeds Fifty Thousand Dollars (\$50,000.00); provided, however, this section shall not be construed to require the publication of the notice in such trade or construction publication or the requirement to provide the notice to more than one in-state trade or construction publication or to any out-of-state trade or construction publications.

SECTION 17. AMENDATORY 61 O.S. 2021, Section 105, is amended to read as follows:

Section 105. All bid notices shall set forth the following information:

1. The character of the proposed public construction contract in sufficient details that all bidders shall know exactly what their obligation will be, either in the bid notice itself or by reference to bidding documents ~~on file in the main office of the awarding public agency~~ available to the public; and

2. The name of the officer, agent or employee of the awarding public agency and the office location and address of such person, from whom a complete set of bidding documents regarding such proposed contract may be obtained, together with the amount of the cost deposit required therefor, if any; and

3. The date, time and place of opening of the sealed bids either in person or electronically; and

4. The name and office location and address of the office of the awarding public agency to whom the sealed bids should be submitted or information sufficient to enable a bid to be submitted electronically; and

5. Any additional information regarding such proposed contract deemed by the awarding public agency to be of beneficial interest to prospective bidders or the public.

SECTION 18. AMENDATORY 61 O.S. 2021, Section 106, is amended to read as follows:

Section 106. ~~At least one complete set of Complete~~ bidding documents regarding a proposed public construction contract shall be ~~on file in the main office of the awarding public agency available to the public~~ at least twenty (20) days prior to the date set for opening bids. ~~The officer, agent or employee of the awarding public agency designated in the bid notice shall have a sufficient number of complete sets of said bidding documents and shall provide a complete set of same to any prospective bidder, upon request; provided, however, that the~~ awarding public agency, or its agent, may require a reasonable deposit for each ~~such~~ set of bidding documents; provided, that such deposit shall not exceed the actual cost of duplicating or printing. The public agency, or its agent, may retain all or part of said deposit if so stated in the notice for bids.

SECTION 19. AMENDATORY 61 O.S. 2021, Section 107, is amended to read as follows:

Section 107. A. A bidder on a public construction contract exceeding One Hundred Thousand Dollars (\$100,000.00) or a construction management trade contract or subcontract exceeding 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 Office of Management and Enterprise 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~~ Office.

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 20. AMENDATORY 61 O.S. 2021, Section 109, is amended to read as follows:

~~Section 109. Any bid received by the awarding public agency or an officer or employee thereof, more than ninety-six (96) hours excluding Saturdays, Sundays and holidays before the time set for the opening of bids, or any bid so received after the time set for opening of bids, shall not be opened or considered by the awarding public agency and shall be returned unopened to the bidder submitting same.~~

SECTION 21. AMENDATORY 61 O.S. 2021, Section 110, is amended to read as follows:

~~Section 110. A. Except as provided by subsection B of this section, all bids shall be sealed and opened only at the time and place mentioned in the bidding documents, and read aloud in the presence of an administrative officer of the awarding public agency. Such bid opening shall be open to the public and to all bidders.~~

~~B. The Oklahoma Department of Transportation and the Oklahoma Turnpike Authority shall be exempt from the requirements provided in subsection A of this section, if the agency electronically publishes the bids on the website of the agency Bids whether submitted in paper or electronic format shall be opened only at the time and place listed in the bidding documents. Paper bids shall be opened in the presence of an administrative officer of the awarding public agency and be read aloud at the time of opening. Such bid opening shall be open to the public and to all bidders. Electronic bids shall not be viewable prior to the time listed for bid opening in the bidding documents. Electronic bids may be opened in a public bid opening in the same way as for paper bids. A public bid opening is not required for electronic bids if the awarding public agency electronically publishes the bids on its website at time of bid opening.~~

SECTION 22. AMENDATORY 61 O.S. 2021, Section 112, is amended to read as follows:

Section 112. All bids, both successful and unsuccessful, and all contracts and required bonds shall be placed on file and maintained ~~in the main office of~~ by the awarding public agency for a period of five (5) years from the date of opening of bids or for a period of three (3) years from the date of completion of the contract, whichever is longer, and shall be open to public inspection and shall be matters of public record.

SECTION 23. AMENDATORY 61 O.S. 2021, 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 or, where construction management at-risk is the project delivery method, by the construction manager 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 public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) or construction management trade contracts or subcontracts exceeding 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 Office of Management and Enterprise 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, except when the awarding public agency is the Department of

Transportation or the Oklahoma Turnpike Authority, in such case the period shall be for one (1) year after project completion; 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 unless this is a cost savings to the public or the need exists for a specialized or complex insurance program and shall not apply to contracts less than Seventy-five Million Dollars (\$75,000,000.00).

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 24. AMENDATORY 61 O.S. 2021, 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 five percent (5%) of all partial payments made shall be withheld as retainage until the project is fifty percent (50%) complete as determined by the awarding agency. When the awarding public agency determines that the project is at least fifty percent (50%) complete, the retainage amount shall be two and one-half percent (2.5%) with respect to the balance of the work.

B. The 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 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 25. AMENDATORY 61 O.S. 2021, 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 One Hundred Thousand Dollars (\$100,000.00) or on any proposed construction management trade contract or subcontract which does not exceed Fifty Thousand Dollars (\$50,000.00):

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~~ Office of Management and Enterprise Services to negotiate a contract on its behalf.

B. The amount of a public construction contract which may be awarded by the governing body pursuant to this section shall not exceed One Hundred Thousand Dollars (\$100,000.00), nor shall the amount of a construction management trade contract or subcontract awarded by the governing body pursuant to this section 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 26. AMENDATORY 61 O.S. 2021, 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~~ Director of the Office of Management and Enterprise Services, or the ~~Administrator's~~ Director'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. The governing body of a municipality or technology center may delegate approval of change orders up to Forty Thousand Dollars (\$40,000.00) or ten percent (10%) of any contract, whichever is less, to the chief administrative officer of the municipality or technology center or their designee, with any approved change orders reported to the governing body at the next regularly scheduled meeting.

F. The Oklahoma Veterans Commission, as the governing body of the Oklahoma Department of Veterans Affairs, is authorized 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 Forty Thousand Dollars (\$40,000.00) in expenditure, and complies with the limits established by this section. Change orders approved by the Director pursuant to a delegation of authority shall be presented to the Commission during the next regular meeting and the reasons for the orders recorded in permanent records.

G. 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~~ Director of the Office shall sign and execute all contracts and change orders.

H. 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 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 Authority during the next regular meeting and the reasons for the orders recorded in permanent records.

I. All change orders for the Department of Transportation or the 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.

J. 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 Twenty Thousand Dollars (\$20,000.00), 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 I of this section.

3. When the unit price change exceeds Twenty Thousand Dollars (\$20,000.00), any unit price for a new item established at or below the average eighteen-month-price history for the new item may be used in lieu of cost itemization as required in paragraphs 1, 2, 3, 4 and 5 of subsection I of this section.

K. 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.

L. Where construction management at-risk is the project delivery method, the limits established by subsections A and B of this section shall be based upon the total cost of the project rather than the cost of the individual trade contracts.

SECTION 27. AMENDATORY 61 O.S. 2021, Section 130, is amended to read as follows:

Section 130. A. The provisions of the Public Competitive Bidding Act of 1974 with reference to notice and bids shall not apply to an emergency if:

1. The governing body of a public agency declares by a two-thirds (2/3) majority vote of all of the members of the governing body that an emergency exists;

2. The Transportation Commission and the Oklahoma Tourism and Recreation Commission, by majority vote of all the members of each Commission, declare that an emergency exists; or

3. The chief administrative officer of a public agency without a governing body declares that an emergency exists.

B. The governing body of a public agency may, upon approval of two-thirds (2/3) majority of all of the members of the governing body, delegate to the chief administrative officer of a public agency the authority to declare an emergency whereby the provisions of the Public Competitive Bidding Act of 1974 with reference to notice and bids shall not apply to contracts less than One Hundred Fifty Thousand Dollars (\$150,000.00) in amount; provided, such authority of the Department of Transportation and the Oklahoma Turnpike Authority shall not extend to any contract exceeding Seven Hundred Fifty Thousand Dollars (\$750,000.00) in amount and such authority of the Department of Corrections shall not extend to any contract exceeding Two Hundred Fifty Thousand Dollars (\$250,000.00) in amount for situations in which the emergency impacts the conditions of confinement, health and safety of correctional officers and inmates in the custody of the Department of Corrections.

C. Upon approval of a two-thirds (2/3) majority vote, the Oklahoma Conservation Commission may delegate to the Executive Director the authority to declare an emergency and set a monetary limit for the declaration. The provisions of this subsection may only be used for the purpose of responding to an emergency involving the reclamation of abandoned coal mines or the repair of damaged upstream floodwater retarding structures.

D. An emergency declared by the Board of Corrections pursuant to subsection C of Section 65 of this title shall exempt the Department of Corrections from the limits which would otherwise be imposed pursuant to subsection B of this section for the contracting and construction of new or expanded correctional facilities.

E. The chief administrative officer of a public agency with a governing body shall notify the governing body within ten (10) days of the declaration of an emergency if the governing body did not approve the emergency. The notification shall contain a statement of the reasons for the action, and shall be recorded in the official minutes of the governing body.

F. Emergency as used in this section shall be limited to conditions resulting from a sudden unexpected happening or unforeseen occurrence or condition whereby the public health or safety is endangered or further damage to state property is likely if the situation is not addressed promptly.

G. The chief administrative officer of a public agency shall report an emergency within ten (10) days of the emergency declaration and include the official minutes of the governing body of the public agency, if applicable, to the ~~State Construction Administrator of the Construction and Properties Division of the~~ Office of Management and Enterprise Services ~~who~~ which shall compile an annual report detailing all emergencies declared pursuant to this section during the previous calendar year. The report shall be submitted to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives upon request.

H. The Risk Management Administrator of the Office of Management and Enterprise Services may declare an emergency on behalf of a public agency when an insurable loss has occurred which would lead to further economic loss or additional property damage if not addressed promptly. Such declaration shall not relieve the public agency of fiscal responsibility for its deductible, uninsured losses, and other related expenses.

SECTION 28. AMENDATORY 61 O.S. 2021, Section 202, is amended to read as follows:

Section 202. As used in the Public Facilities Act:

1. "Annual capital plan" means the collective state facility capital improvements, facility operations and maintenance, rent and

lease payments, facility debt services, water, sewer and energy utilities and real property transactions approved by the Legislature in a capital budget relative to state construction, maintenance, and real estate services;

2. "Capital planning and asset management" means the processes ~~delegated to the Department of Real Estate Services~~ for real property data acquisition, data analysis and determination of capital construction projects and procurement related to real property;

3. "Construction" means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving, maintaining, leasing, disposing 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;

4. "Construction administration" means a series of actions required of the ~~State Facilities Director, of~~ Office of Management and Enterprise Services or 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;

5. ~~"Department" means the Department of Real Estate Services of the Office of Management and Enterprise Services;~~

~~6.~~ "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 or time of performance, and the owner contracts directly with those awarded trade contracts for the work, and

b. "at-risk construction management" whereby the construction entity, after providing agency services during the pre-construction period:

- (1) takes on the financial obligation to timely carry out construction under a specified cost agreement, and
- (2) enters into written subcontracts for the work in accordance with the construction management procedures for state agencies;

~~7.~~ 6. "Consultant" means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, registered land surveying, certified appraisal, land title, or abstract services or possessing specialized credentials and qualifications as may be needed to evaluate, plan or design for any construction or public work improvement project, or to lease, acquire or dispose of state-owned real property;

~~8.~~ "~~Division~~" means ~~the Construction and Properties Division of the Office of Management and Enterprise Services;~~

~~9.~~ 7. "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;

~~10.~~ "~~Facilities Director~~" or "~~SFD~~" means ~~the State Facilities Director of the Department of Real Estate Services of the Office of Management and Enterprise Services;~~

~~11.~~ 8. "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.~~ 9. "Office" means the Office of Management and Enterprise Services;

~~13.~~ 10. "Procurement" means buying, purchasing, renting, leasing, allocating, trading or otherwise acquiring or disposing of supplies, services, or construction necessary to evaluate, plan, construct, manage, operate and preserve real property capital assets;

~~14.~~ 11. "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 state agency and the State of Oklahoma, 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 used for general repairs and maintenance to state facilities;

~~15.~~ 12. "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

~~16.~~ 13. "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, the Oklahoma State Regents for Higher Education and its constituent institutions and the Commissioners of the Land Office.

SECTION 29. AMENDATORY 61 O.S. 2021, Section 204, is amended to read as follows:

Section 204. A. The Department of Real Estate Services Office of Management and Enterprise Services shall:

~~1. Maintain a comprehensive master plan for utilization and construction of state buildings, capital improvements, and utilization of land owned by this state. Requirements of the master planning process shall include:~~

- ~~a. reporting by each state agency concerning facility needs,~~
- ~~b. data acquisition of condition and performance benchmarking of state agency facilities,~~
- ~~c. analyses and audits of state agency facilities, properties and leaseholds to determine critical and long range needs,~~
- ~~d. development of state agency long range strategic facility plans,~~
- ~~e. short range project programming to identify budget requests for facility capital improvements and asset management decisions, and~~
- ~~f. an annual capital plan for all state agencies submitted to the Legislature for line item appropriation requests;~~

~~2.~~ 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;

~~3.~~ 2. Inspect prior to acceptance and final payment all completed projects for which the ~~Department~~ Office issued bid solicitations to ensure compliance with the plans and specifications of the project;

~~4.~~ 3. Select and hire consultants and construction managers for projects as determined or approved by the ~~Department~~ Office. The ~~Department~~ Office shall select, award and execute contracts to consultants and construction managers that provide services to state agencies subject to this act;

~~5.~~ 4. Develop and issue solicitations for award of state agency contracts for construction services. The ~~Department~~ Office shall have final approval authority for contracts and contract documents. Neither the ~~Department~~ Office nor any public entity 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;

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

~~7.~~ 6. Establish standards and policies as required to standardize facility assessment and benchmarking, facility operations and maintenance, asset preservation, design and energy standards, space utilization, material testing, indexes of efficiency, economy, and effectiveness;

~~8.~~ 7. Monitor indices of facility condition, effectiveness of operations and maintenance programs, deferred maintenance prioritization, effectiveness of planning processes, budgeting for capital needs, application of facility standards as established by the ~~Department~~ Office, and performance outcomes of construction projects to ensure maximum efficiency in the expenditure of state funds for asset management and preservation of the state's capital real property;

~~9.~~ 8. Coordinate, monitor and report on statewide energy conservation programs delegated to the Office;

~~10.~~ 9. Provide property leasing and brokerage services delegated to the Office;

~~11.~~ 10. Report fraud or waste in any construction project by written notification with documentation for the report to the Attorney General. The Attorney General shall take appropriate action to protect the interest of the state; and

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

B. When a state agency employs a licensed architect or licensed engineer as a full-time employee, said licensed employee may conduct required facility planning, prepare project plans and specifications and monitor construction work as prescribed by the ~~Department~~ Office. State agencies authorized to employ licensed architects and engineers for the purposes of this section include:

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

2. The Oklahoma State Regents for Higher Education and its constituent institutions;

3. The Military Department of the State of Oklahoma;

4. The Oklahoma Tourism and Recreation Department; and

5. The Department of Human Services.

~~C. Not later than December 31, 2012, with the advice of the State Facilities Director, the Director of the Office of Management and Enterprise Services shall provide a report containing recommendations to the Legislature for the streamlining, integration, and consolidation of state construction, maintenance, and real property management processes to maximize capital assets and achieve cost savings to the state. The report shall identify the necessary planning processes for transitioning from a decentralized capital budgeting process to a centralized annual capital plan appropriation process, to be implemented no later than January 1, 2014.~~

SECTION 30. AMENDATORY 61 O.S. 2021, Section 207.2, is amended to read as follows:

Section 207.2 A. Except as provided by subsection B of this section, no state agency shall employ, either temporary or full-time, any person engaged in the practice of architecture, engineering or land surveying for the purpose of planning or performing any construction upon any real property belonging to the agency or to the state, or upon any real property of which this state will assume possession or ownership by contract, option to purchase agreement, lease, or otherwise. The term "practice of architecture" shall be defined as those activities of an architect as provided for in Section 46.3 of Title 59 of the Oklahoma Statutes. The terms "practice of engineering" or the "practice of land surveying" shall be defined as such terms are defined by Section 475.2 of Title 59 of the Oklahoma Statutes.

B. The provisions of subsection A of this section shall not apply to:

1. The Department of Human Services;
2. The Oklahoma Tourism and Recreation Department;
3. The State Department of Health insofar as the monitoring of permitted health care facility construction for licensing purposes;
4. The Oklahoma Historical Society insofar as the monitoring of historical site preservation and authenticity;
5. The Office of Management and Enterprise Services;
6. The State Department of Education and the public schools subject to its jurisdiction;
7. The Department of Transportation;
8. The Oklahoma State System of Higher Education;
9. The Military Department of the State of Oklahoma;
10. The Oklahoma Municipal Power Authority;
11. The Department of Public Safety gun range; and
12. ~~CompSource Oklahoma if CompSource Oklahoma is operating pursuant to a pilot program authorized by Sections 3316 and 3317 of Title 74 of the Oklahoma Statutes; and~~
13. The University Hospitals Authority and University Hospitals Trust.

SECTION 31. AMENDATORY 61 O.S. 2021, Section 208, is amended to read as follows:

Section 208. A. ~~The Department of Real Estate Services of the~~ Office of Management and Enterprise Services shall select 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 consultant contracts and fees shall be performed by the ~~Department~~ Office.

C. The ~~Department~~ Office 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 the programmed estimate and available funding, the ~~Department~~ Office 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 ~~Department~~ Office, 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 Office of Management and Enterprise Services to enter into negotiations pursuant to paragraph 1 of this subsection. If approved by the Director, the ~~Department~~ Office 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~~ lowest responsible bidder, and the ~~SFD~~ Director, the ~~Department~~ Office may award the public construction contract to the ~~low~~ lowest responsible bidder.

4. The ~~Department~~ Office 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.

E. The ~~Department of Real Estate Services~~ Office is authorized to issue solicitations and award statewide contracts for managed construction service delivery in order to provide efficient and cost-effective procurement solutions for public agencies. Statewide contracts may be either mandatory or nonmandatory as determined by the ~~SFD~~ Director.

F. The ~~Department of Real Estate Services~~ Office is authorized to provide facility management and operations and maintenance services for any state agency on a cost-recovery basis for any facility operated by a state agency when:

1. The state agency initiates a request with the ~~SFD~~ Director;
or

2. ~~Beginning on or after July 1, 2016, the SFD~~ The Director determines a state agency is performing in the bottom ten percent (10%) of all state agencies with respect to performance measures for facility management established by the ~~Department~~ Office.

G. In addition to the exception from this act hereby provided to the Oklahoma State Regents for Higher Education and its constituent institutions and the Commissioners of the Land Office, the ~~State Facilities~~ Director may authorize an exemption to the provisions of this act to any other state agency provided that the recipient of the exemption:

1. Adopts standards, processes and procedures for planning, budgeting, design, facility management, asset management and asset preservation that are substantially compliant with those as prescribed by the ~~Department~~ Office;

2. Adheres to procurement requirements of Sections 62 through 65 of this title and the provisions of this act;

3. Reports benchmark, budget and ongoing performance data required by the ~~Department~~ Office; and

4. Participates in annual performance reviews and organized forums for promoting best practices statewide as determined by the ~~SFD~~ Director.

SECTION 32. AMENDATORY 61 O.S. 2021, Section 208.1, is amended to read as follows:

Section 208.1 The ~~Department of Real Estate Services~~ Office may collect a reasonable fee for the purpose of providing or contracting for architectural, engineering, land surveying, planning, real estate and related services to state agencies and political subdivisions of the state, and from persons requesting plans and notification of solicitations issued by the ~~Department~~ Office. The ~~Department~~ Office may collect a reasonable fee for management services. Annual fees to the ~~Department~~ Office shall be on a cost-recovery basis and may be calculated as a percentage of annual construction and real estate services in an amount necessary to support ~~Department operation as designated in the annual capital plan~~ the Office's operations. All fees collected in accordance with the provisions of this section shall be deposited in the "State Construction Revolving Fund" created in Section 208.2 of this title.

SECTION 33. AMENDATORY 61 O.S. 2021, Section 208.2, is amended to read as follows:

Section 208.2 There is hereby created in the State Treasury a revolving fund for the ~~Department of Real Estate Services of the~~ Office of Management and Enterprise Services, to be designated the "State Construction Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all funds appropriated by the Legislature for projects included in the annual capital plan; funds from nonappropriated sources designated for projects within a capital plan; allocations from an approved annual capital plan designed for assessment and planning services; allocations from an approved annual capital plan for emergency response in accordance with Section 130 of this title; and fees collected by the ~~Department~~ Office in accordance with the provisions of this section or as otherwise provided by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the ~~Department~~ Office. The fund shall be used to pay expenses resulting from contracts awarded by the ~~Department~~ Office and to defray ~~Department~~ Office operating costs and expenses the Office incurs to support ~~Department~~ construction-related operations. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

SECTION 34. AMENDATORY 61 O.S. 2021, Section 209, is amended to read as follows:

Section 209. The Director of the Office of Management and Enterprise Services shall promulgate rules:

1. For state agencies to perform minor construction projects;
2. Specifying building codes pursuant to the Oklahoma Uniform Building Code Commission Act for construction projects;
3. Permitting state agencies who have the expertise, upon written application to the ~~Department of Real Estate Services of the~~ Office of Management and Enterprise Services, to perform any part of the responsibilities of the ~~Department~~ Office pursuant to the provisions of the Public Facilities 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 ~~Department~~ Office;
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;
9. Conditions under which any of the rules herein authorized may be waived;
10. The form of any document the Director requires;
11. Specifying provisions 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.

SECTION 35. AMENDATORY 61 O.S. 2021, Section 210, is amended to read as follows:

Section 210. A. Shared savings contracts shall be developed in accordance with a model contract developed by ~~the Department of Real Estate Services~~ of the Office of Management and Enterprise Services. The model contract shall include:

1. The methodology for calculating baseline energy costs;
2. A procedure for revising these costs should the state institute additional energy conservation features or structure use change;
3. A requirement for a performance bond guaranteeing that the structure will be restored to the original condition in the event of default;
4. A provision for early buyout;
5. A clause specifying who will be responsible for maintaining the equipment; and
6. A provision allowing the disposal of equipment at the end of the contract.

No state agency or department shall substantially alter the provisions described in the model without the permission of the ~~Department~~ Office.

B. Contracts subject to this section shall be awarded pursuant to the provisions of subsection A of Section 208 of this title.

SECTION 36. AMENDATORY 61 O.S. 2021, Section 211, is amended to read as follows:

Section 211. ~~On and after July 1, 1987, when~~ When any state agency or department must replace or supplement major items of energy-consuming equipment in existing state-owned or leased structures or any self-contained unit of any structure with other

major items of energy-consuming equipment, the selection of such items shall be made on the basis of a life cycle cost analysis of alternatives in accordance with rules and regulations promulgated by the Director of the Office of Management and Enterprise Services.

SECTION 37. AMENDATORY 61 O.S. 2021, Section 212, is amended to read as follows:

Section 212. 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 Office of Management and Enterprise 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~~ Office a sufficient bond for its faithful performance of the contract. In addition, the ~~Division~~ Office may require performance bonds covering the annual amount of guaranteed savings over the contract term. ~~The Office of Management and Enterprise Services~~ State agencies 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 the greater of 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. In calculating cost savings, the public entity may consider capital cost avoidance and include additional revenue that is directly attributed to the performance-based efficiency contract. 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~~ Office 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 38. AMENDATORY 61 O.S. 2021, Section 308, is amended to read as follows:

Section 308. The Office of Management and Enterprise Services is hereby authorized to lease for drilling and development of oil or gas, or both, any of the lands belonging to the state, on which are

located ~~penal or eleemosynary~~ public institutions, or are connected with or a part of the lands of such institution. Such leasing to be made by public competition after not less than fifteen (15) days' notice by publication electronically on an authorized state website and in two newspapers authorized by law to publish legal notices, one of which newspapers shall be published at the State Capital, and the other in the county where the land is situated, and in such manner as said Office of Management and Enterprise Services may by rule prescribe. All such leasing must be on electronic or sealed bids and awarded to the highest responsible bidder, and for a term of not to exceed five (5) years from date and as long thereafter as oil and gas, or either of them, is produced in paying quantities from the land by the lessee, provided the Office may reject any and all bids. The oil and gas interest in such land hereby authorized to be leased, is to the extent and in the manner that a private owner of lands in fee, may in his own right, execute such lease or grant.

SECTION 39. AMENDATORY 61 O.S. 2021, Section 309, is amended to read as follows:

Section 309. A. The Office of Management and Enterprise Services is hereby authorized and empowered to offer for sale and sell and execute and deliver oil and gas or mineral leases upon the lands described in Section 1 of Title 73 of the Oklahoma Statutes under the control of said Office of Management and Enterprise Services. The Office of Management and Enterprise Services is hereby authorized and empowered to enter into contracts with persons or corporations for the drilling of oil and gas wells on any such property owned by the state. No such lease or drilling contract shall be entered into by said Office of Management and Enterprise Services which provides for the payment of a royalty to the State of Oklahoma of less than one-eighth (1/8) of all of the oil, gas, or casinghead gas produced, saved, and sold from said lands, plus cash bonus, of the royalty in said leases. Such Office shall give notice of its intention to offer for sale said lease or drilling contract by advertising said fact for a period of at least twenty-one (21) days electronically on an authorized state website and in a legal newspaper published and of general circulation in the county where said lands are located. The Office shall award such lease, leases, or drilling contracts to the highest ~~and best~~ responsible bidder. All bidding shall be by sealed written or electronic bids filed with said Office of Management and Enterprise Services.

B. ~~The monies received as royalties, bonuses, or rentals by the Office of Management and Enterprise Services for the use and benefit of this state not paid by said Office of Management and Enterprise Services to the Treasurer shall be credited into the General Revenue Fund.~~ All royalties, bonuses, and rentals accruing to the state from any contracts or leases executed pursuant to the provisions of subsection A of this section and all other monies received from the sale of any such leases, bonuses, and royalties or other contracts made by said Office of Management and Enterprise Services shall be credited to the Public Building Fund Maintenance of State Buildings Revolving Fund of the State of Oklahoma.

SECTION 40. AMENDATORY 61 O.S. 2021, Section 311, is amended to read as follows:

Section 311. The lands described in ~~Section One of this act Sections 308 through 317 of this title~~ shall be under the exclusive control and jurisdiction of the State of Oklahoma and the zoning and drilling regulations of any municipality of this state shall not apply thereto.

SECTION 41. AMENDATORY 61 O.S. 2021, Section 312, is amended to read as follows:

Section 312. If any section, paragraph, sentence or phrase of this ~~act~~ title shall be declared unconstitutional or void for any reason by any court of final jurisdiction, such decision shall not in any way invalidate or affect any other section, paragraph, sentence or phrase of this act but the same shall continue in full force and effect.

SECTION 42. AMENDATORY 61 O.S. 2021, Section 316, is amended to read as follows:

Section 316. All proceeds derived from any royalty under such leases or any bonus received from the sale of such leases, shall be paid into the ~~General Revenue Fund~~ Maintenance of State Buildings Revolving Fund of the state but this section shall not be a part of any contract with any lessee hereunder.

SECTION 43. AMENDATORY 61 O.S. 2021, Section 317, is amended to read as follows:

Section 317. The Office of Management and Enterprise Services is hereby authorized and empowered to sell and execute oil and gas

leases, and other mining leases, on any of the lands of this state under the control of said Office of Management and Enterprise Services. Sale of Oklahoma State Capitol lands or parkways or the Executive Mansion lands shall be made upon a basis of a retained royalty of not less than one-eighth (1/8) of all the oil, gas, and other minerals produced therefrom, and such additional cash bonus as may be procured. Such leases shall contain a provision that in the event of the discovery of natural gas, gas shall be furnished free of charge to any state institution located or hereafter located upon the lands covered by said lease, or leases. Said leases shall be sold only after advertisement for a period of three (3) weeks electronically on an authorized state website and in a legal newspaper published and of general circulation in the county in which said lands are located. The sale shall be made to the highest ~~and best~~ responsible bidder, and all bids for any tract shall be presented to the Office of Management and Enterprise Services electronically or in sealed envelopes, and shall all be opened and considered at the same time. Said Office of Management and Enterprise Services shall have the right to reject any and all of said bids and again readvertise said lease, or leases, for sale.

The Office of Management and Enterprise Services is further authorized to make and promulgate such additional rules and regulations as he may deem necessary and for the best interest of the state in facilitating the sale of said leases. The Director may contract with other state agencies to implement the provisions of this section and any expenses charged under such contract may be paid from the proceeds of the lease.

All monies derived from the sale of any and all of said leases, and from any royalties subsequently accruing, after deduction of the amount required to pay necessary and actual expenses of developing the lease, shall be paid into the State Treasury and credited to the ~~General Revenue Fund of the state~~ Maintenance of State Buildings Revolving Fund.

SECTION 44. AMENDATORY 61 O.S. 2021, Section 323, is amended to read as follows:

Section 323. A. The Director of the Office of Management and Enterprise Services is hereby authorized to lease for a temporary period of time the surface of any of the lands belonging to the state described in Section 322 of this title, which are not needed or required for the proper maintenance of the institutions or departments in possession thereof.

B. ~~Except as otherwise provided by Section 6201 of Title 74 of the Oklahoma Statutes, leases~~ Leases shall be for a period of time not exceeding five (5) years and upon such other terms and conditions as the Director may determine to be in the best interests of the state.

C. ~~Except as otherwise provided by Section 6201 of Title 74 of the Oklahoma Statutes, leases~~ Leases shall provide for a termination of the lease upon reasonable notice in writing whenever the needs of the state or the institution in possession thereof requires the land.

D. The Director may also execute lease contracts for the lands to any institution or agency or department, commission, or municipal subdivision that requires the need of the land in conjunction with cooperation or participation in any city or state project authorized by law, if contracts or agreements will not interfere with or restrict in any manner, the proper use of the lands by the state institution in possession thereof.

E. The Commissioners of the Land Office, the Oklahoma Ordnance Works Authority, the Midwestern Oklahoma Development Authority, the Oklahoma Department of Transportation, the Oklahoma Turnpike Authority and the Northeast Oklahoma Public Facilities Authority and their lands shall be exempt from the application of this section.

F. Lands leased to private prison contractors pursuant to Section 561 of Title 57 of the Oklahoma Statutes shall be exempt from the application of this section.

SECTION 45. AMENDATORY 61 O.S. 2021, Section 324, is amended to read as follows:

Section 324. The Director of the Office of Management and Enterprise Services is authorized and directed to take charge of, manage, and lease "Capitol Building Lands", described as follows:

~~Lots 31 and 32, Ethel Park Addition to Oklahoma City, Oklahoma, known as Tract No. 23, being a part of Section 23 - Twp. 12N - R - 3 West.~~

~~Lots 1, 2, 3, 4, 5, and lots 45, 46, 47, and 48 in Block 6, Ethel Park Addition to Oklahoma City, Oklahoma, known as Tract No. 24, being a part of Section 23 - Twp. 12 N - R - 3 West.~~

~~Lots 1, 2, 3, 4, 5, 6, and 43, 44, 45, 46, 47, and 48, Block 1, Ethel Park Addition to Oklahoma City, Oklahoma, known as Tract No. 25, being a part of Section 23 Twp. 12 N - R - 3 West.~~

~~Lots 30 and 31, Woody Crest Addition to Oklahoma City, Oklahoma, known as Tract No. 39, being a part of Section 22 - Twp. 12N - R - 3 West.~~

~~Lots 11 and 12, Stevens Hamill Addition to Oklahoma City, Oklahoma, known as Tract No. 19, being a part of Section 26 Twp. 12N - R - 3 West.~~

~~Lots 11 and 12, Block 3, Northeast Highland Addition to Oklahoma City, Oklahoma, known as Tract No. 40, being a part of Section 23 - Twp. 12N - R - 3 West.~~

~~Lots 35, 36, 37, and 38 Northeast Highland Addition to Oklahoma City, Oklahoma, known as Tract No. 44, being a part of Section 22 - Twp. 12N - R - 3 West.~~

~~Lots 7, 8, 9, and 10, Block 1, Donley Heights, a subdivision of Blocks 19 and 20, Barrows Second Addition to Oklahoma City, Oklahoma. Lots 31 and 32, Block 4, of the subdivision of Lots 9 and 10, and 23 and 24 of Barrows First and Second Additions to Oklahoma City, Oklahoma. Lots 11 and 12, Block 3, Northeast Highland Addition, being a part of Blocks 25 and 26, Barrows Second Addition to Oklahoma City, Oklahoma. All of the above lots in Barrows Addition being known as Tract No. 41.~~

~~A tract of land 48' x 128' facing NE 38th Street and located between Lindsay Avenue and First Street west known as Tract No. 29. Lots 9 and 10, Block 2, Stevens Hamill Addition to Oklahoma City, Oklahoma, known as Tract No. 18, being a part of Section 26 - Twp. 12 N - R - 3 West.~~

~~Lots 13 through 24, inclusive, Block 2, Frances Heights Addition to Oklahoma City, Oklahoma, known as Tract No. 43, being a part of Section 22 - Twp. 12 N - R - 3 West.~~

~~Lots 5, 6, 11, 12, 19 and 20, Block 2, Hares Lake View Addition, situated approximately two and one-half (2 1/2) miles Northeast of Oklahoma City, Oklahoma, known as Tract No. 30, being a part of Section 11 - Twp. 12 N - R - 3 West.~~

Also the following acreage tracts of land:

~~Two (2) acres, situated three and one-half (3 1/2) miles East on 23rd Street hence two (2) miles North, thence one-half (1/2) mile East, thence one-fourth (1/4) mile North from the State Capitol Building, known as Tract No. 3, being a part of SE 1/4 of SW 1/4 of Section 8 - Twp. 12 N - R - 2 West.~~

Five (5) acres, situated one and one-half (1 1/2) miles East and one and one-half (1 1/2) miles North of the State Capitol Building, facing on Eastern Avenue and laying directly South of Springlake Park, and known as Tract No. 28. Also described as S 1/2 of SE 1/4 of NE 1/4 of SE 1/4 of Section 14, Township 12 North, Range 3 West.

Also other lots and tracts not listed or described above constituting the small balance of "State Capitol Building Land" not heretofore disposed of pursuant to the provision of Chapter 298, Session Laws 1919.

SECTION 46. AMENDATORY 61 O.S. 2021, Section 326, is amended to read as follows:

Section 326. After payment of all costs incurred in the inventory and appraisal and advertisement and costs of sale, the remaining proceeds therefrom, and any monies derived from leasing the property described in Section 324 of this title, shall be deposited in a special ~~"Capitol Building Maintenance and Repair Fund"~~ the Maintenance of State Buildings Revolving Fund. ~~The fund shall be used for the maintenance and repair of all State Capitol Buildings, grounds, shrubbery, boulevards, and streets surrounding the same. The funds shall be paid upon claims made therefor by the Office of Management and Enterprise Services and approved by the Director of the Office of Management and Enterprise Services. The leasing for oil and gas purposes of any such lands and the proceeds therefrom shall be conducted and handled by the Office of Management and Enterprise Services pursuant to Section 317 of this title.~~

SECTION 47. AMENDATORY 61 O.S. 2021, Section 327, is amended to read as follows:

Section 327. A. Unless procedures for state agency real property transactions are otherwise specifically provided for by law, no state agency shall sell, lease, exchange, or otherwise dispose of such real property subject to its jurisdiction, or lease, purchase or otherwise acquire real property subject to its

jurisdiction, except as authorized by subsection L of this section and as otherwise provided for in this section. As used in this section, "state agency" means any department, board, commission, institution, agency or entity of state government.

B. 1. Every state agency shall request the Office of Management and Enterprise Services to dispose of real property upon:

- a. legislative authorization,
- b. authorization by the Long-Range Capital Planning Commission, or
- c. a determination, in writing, by the Office of Management and Enterprise Services or the state agency that a parcel of real property subject to its jurisdiction is no longer needed.

2. Upon the request of the state agency to dispose of real property, the Office of Management and Enterprise Services shall estimate the value of the property, and:

- a. for properties with an estimated value of greater than Twenty-five Thousand Dollars (\$25,000.00), obtain at least one complete appraisal made by a person certified by the Real Estate Appraiser Board of the Oklahoma Insurance Department, who shall ascertain:
 - (1) the present fair value of the property,
 - (2) the present value of the improvements on such property, and
 - (3) the actual condition of the improvements on the property,
- b. after completion of the provisions of subsection L of this section, 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 weekly for 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; provided, in lieu of such procedure, the information may be published electronically on the Office of Management and Enterprise Services' website if the notice of sale and instructions on accessing the public information are published in a newspaper of general circulation in the county or counties in which the property is located weekly for three (3) consecutive weeks,

- c. offer the property through electronic auction, public auction or sealed bids within three (3) weeks after the last publication of the notice. The property shall be sold to the highest bidder. The Office of Management and Enterprise Services shall not accept a bid of less than ninety percent (90%) of the average appraised fair value of the property and the improvements on such property, ~~and~~
- d. if the property is being disposed of in compliance with Section 908 of Title 62 of the Oklahoma Statutes, the Office may auction the property at public or electronic auction provided proper public notice is given in compliance with this section and the property has been approved for liquidation by the Long-Range Capital Planning Commission. The Office of Management and Enterprise Services is authorized to reject all bids,
- e. if the property has an estimated value of less than Twenty-five Thousand Dollars (\$25,000.00), the Office of Management and Enterprise Services may establish the value through market comparison and may dispose of the property based on estimated value without obtaining a certified appraisal; provided, however, the sale shall comply with all other requirements of statute, and
- f. if the property is landlocked, the Office of Management and Enterprise Services may offer the property through indirect sale to the adjacent

property owner for not less than ninety percent (90%) of fair market value, as determined in compliance with this section. All sales costs, including any required surveys and appraisals, shall be at the expense of the buyer.

3. The cost of the appraisal required by the provisions of this section, together with other necessary expenses incurred pursuant to this section, shall be paid by the state agency for which the real property is to be sold from funds available to the state agency for such expenditure. All monies received from the sale or disposal of the property, except those monies necessary to pay the expenses incurred pursuant to this section, shall be deposited in the Maintenance of State Buildings Revolving Fund unless otherwise provided by law.

4. The Office of Management and Enterprise Services may dismiss from consideration any appraisal found to be incomplete or flawed.

C. Unless otherwise provided by law, the Office of Management and Enterprise Services shall review and approve state agency real property transactions. A state agency shall not lease or acquire real property, or lease, dispose of or transfer state-owned real property until the Office provides notice of transaction approval to the state agency. Prior to approval, a state agency shall provide documents to the Office 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, and shall provide the Office with required telework documentation. Within thirty (30) days of receipt, the Office 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 or real property subject to supervision of the Commissioners of the Land Office or district boards of education.

E. 1. The Office of Management and Enterprise 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.

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

3. The provisions of paragraph 2 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.

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

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

G. The Office of Management and Enterprise Services and the Secretary of the Commissioners of the Land Office, or designee, as provided in subsection L of this section may provide services to sell, transfer, trade or purchase real property for other state agencies.

H. The Director of the Office of Management and Enterprise 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, the Oklahoma Historical Society, the Oklahoma Department of Transportation, the Oklahoma Turnpike Authority and the Department of Wildlife managed lands 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.

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 2222 and 2223 of Title 74 of the Oklahoma Statutes shall be followed unless the sale is to an entity of state government.

K. The Director of the Office of Management and Enterprise Services shall contract with experts, professionals or consultants as necessary to perform the duties of the Office. Selections shall be made using the qualifications-based procedures established in Section 62 of this title and the rules promulgated by the Director for the selection of construction managers and design consultants.

L. 1. No state agency shall sell, lease, exchange, or otherwise dispose of such real property subject to its jurisdiction, or lease, purchase or otherwise acquire real property subject to its jurisdiction, until such agency or the Office of Management and Enterprise Services acting on the agency's behalf has presented to the Secretary of the Commissioners of the Land Office, or designee, all information collected pursuant to subparagraph a of paragraph 2 of subsection B of this section, and provided the Secretary of the Commissioners of the Land Office or designee a twenty-calendar-day period to provide a proposal for the acquisition or disposal of applicable real property.

2. The Secretary of the Commissioners of the Land Office or designee may decline to provide such a proposal; provided such notice of decline is communicated to the Office of Management and Enterprise Services in written or electronic form. Upon the reception of such notice of decline by the Office of Management and Enterprise Services, the twenty-calendar-day period otherwise required by this subsection shall be deemed to have expired.

SECTION 48. AMENDATORY 61 O.S. 2021, Section 327.1, is amended to read as follows:

Section 327.1 A. When historic significance, location, advancement of the long term capital asset plan or other factors make disposition of state-owned properties under Section 327 of ~~Title 61 of the Oklahoma Statutes~~ this title not in the best interest of the state, the Office of Management and Enterprise Services may invite the presentation of written proposals for the purchase ~~or~~, lease, and sale, exchange, construction, maintenance, repair, improvement, development, or redevelopment, of state-owned property provided the property meets one or more of the following criteria:

1. The property is listed on the National Register of Historic Places;

2. The property is designated by the Oklahoma Historical Society as a property of historical interest or significance;

3. The property is located within the Oklahoma State Capitol Complex; or

4. The property is located within a campus owned by the State of Oklahoma~~+~~.

B. Proposals shall be evaluated by a committee selected by the Director of the Office of Management and Enterprise Services which shall include at least one member of the Long-Range Capital Planning Commission or a designee. The evaluation of the proposals shall be based on the principal criteria of:

1. The proposal's economic benefits, cultural benefits, job creation potential, advancement of long term capital asset plan or other benefits to the State of Oklahoma and the general public;

2. The qualifications and experience of the construction or maintenance provider, developer, or redeveloper;

3. The financial ability of the construction or maintenance provider, developer, or redeveloper to complete the redevelopment in a timely fashion; and

4. When applicable, the fidelity of the proposed renovation or redevelopment with the historic significance of the property.

C. The Office of Management and Enterprise Services may enter into negotiations with one or more respondents and may enter into contracts with the respondent or respondents selected by the committee.

The Office of Management and Enterprise Services may reject any and all ~~bids~~ proposals.

SECTION 49. AMENDATORY 61 O.S. 2021, Section 330.1, is amended to read as follows:

Section 330.1 All instruments vesting any right, title or interest in lands or minerals and mineral rights, ~~in~~ providing for the passage of title or release of interest to or from the Office of Management and Enterprise Services or any other state agency, whether as grantor or grantee, and all instruments to adjust any

defect or irregularity or to remove any cloud on the title to lands or minerals or mineral rights owned by the state, and all notices and orders issued by the Office of Management and Enterprise Services and proofs of publication thereof, shall be filed and recorded by the proper officers of all counties of the State of Oklahoma at the request of the Office of Management and Enterprise Services without any filing or recording fee being charged.

SECTION 50. REPEALER 61 O.S. 2021, Sections 8, 9, 10, 14, and 15, are hereby repealed.

SECTION 51. REPEALER 61 O.S. 2021, Section 51, is hereby repealed.

SECTION 52. REPEALER 61 O.S. 2021, Sections 103.8 and 129, are hereby repealed.

SECTION 53. REPEALER 61 O.S. 2021, Section 203, is hereby repealed.

SECTION 54. REPEALER 61 O.S. 2021, Sections 315, 321, 329, 330, and 331, are hereby repealed.

SECTION 55. This act shall become effective November 1, 2022.

Passed the House of Representatives the 4th day of May, 2022.

Presiding Officer of the House
of Representatives

Passed the Senate the 27th day of April, 2022.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____