

OKLAHOMA STATUTES
TITLE 61. PUBLIC BUILDINGS AND PUBLIC WORKS

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§61-1. Bond to be furnished on public works contracts.

A. Prior to an award of a contract exceeding 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 furnish a bond with good and sufficient sureties payable to the state in a sum not less than the total sum of the contract.

B. The bond 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.

R.L.1910, § 3881. Amended by Laws 1951, p. 168, § 1, emerg. eff. May 1, 1951; Laws 1955, p. 335, § 1, emerg. eff. June 6, 1955; Laws 1961, p. 459, § 1 emerg. eff. May 15, 1961; Laws 1965, c. 518, § 1, emerg. eff. July 22, 1965; Laws 1968, c. 77, § 1, emerg. eff. March 25, 1968; Laws 1980, c. 76, § 1, eff. July 1, 1980; Laws 1983, c. 125, § 1, eff. Nov. 1, 1983; Laws 1986, c. 110, § 1, emerg. eff. April 9, 1986; Laws 1989, c. 286, § 5, operative July 1, 1989; Laws 1992, c. 239, § 1, emerg. eff. May 19, 1992; Laws 2000, c. 363, § 1, emerg. eff. June 6, 2000; Laws 2006, c. 271, § 1, eff. July 1, 2006; Laws 2012, c. 241, § 1, eff. July 1, 2012; Laws 2012, c. 304, § 302; Laws 2022, c. 238, § 1, eff. Nov. 1, 2022.

§61-1.1. Repealed by Laws 2006, c. 271, § 37, eff. July 1, 2006.

§61-2. Filing of bond - Action on bond - Subcontractors.

A. Bonds shall be filed in the office of the agency, institution, department, commission, municipality or government instrumentality that is authorized by law and does enter into contracts for the construction of public improvements or buildings, or public or private improvements or buildings on a public-private partnership project, or repairs to the same; and the officer with whom the bond is filed shall furnish a copy thereof to any person claiming any rights thereunder. Any person to whom there is due any sum for labor, material or repair to machinery or equipment, furnished as stated in Section 1 of this title, the heirs or assigns of such person, may file a claim or bring an action on the bond for the recovery of the indebtedness, provided that no action shall be brought on the bond after one (1) year from the day on which the last of the labor was performed or material or parts furnished for which the claim is made unless a prior claim has been filed within one (1) year from the day on which the labor was performed or material or parts furnished, in which case, no action shall be

brought on the bond after two (2) years from the day on which the last of the labor was performed or material or parts furnished for which the claim is made.

B. 1. Any person having direct contractual relationship with a subcontractor, regardless of tier, performing work on the contract, but no contractual relationship express or implied with the contractor furnishing the payment bond, shall have a right of action upon the payment bond only upon giving written notice to the contractor and surety on the payment bond within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or parts for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material or parts were furnished or supplied or for whom the labor was done or performed. The notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, together with a copy thereof to the surety or sureties on the payment bond.

2. With regard to an at-risk construction management contract under which the at-risk construction manager or a trade contractor under either an agency or an at-risk construction management contract is required to furnish a payment bond, only persons having a direct contractual relationship with the party furnishing the payment bond shall have a right of action upon the payment bond in the same manner as set forth in subsection A of this section.

C. 1. The bond or irrevocable letter of credit issued to the Department of Transportation or the Oklahoma Turnpike Authority, pursuant to this section, shall also provide that the contractor shall pay all state and local taxes accruing as a result of the contract, any liquidated damages as provided by the contract and any overpayment of progressive estimates resulting in a balance due and owing the Department of Transportation or the Oklahoma Turnpike Authority.

2. A claim against the bond or irrevocable letter of credit for delinquent taxes shall be made by the public entity to which the tax was payable. The claim shall be made within six (6) months from the date on which the tax became delinquent. Notice of the delinquent tax shall be sent by certified mail to the surety, and a copy of the notice shall be sent to the contractor. Nothing in this paragraph shall be construed to release, at any time, the contractor from responsibility for full payment of all taxes.

3. A claim against the bond or irrevocable letter of credit for overpayment on progressive estimates shall be made by the public entity within one (1) year from the date of final acceptance of the project. Notice of the overpayment shall be sent by certified mail to the surety and a copy of the notice shall be sent to the

contractor. Nothing in this paragraph shall be construed as to release, at any time, the contractor from the responsibility of refunding any amount overpaid on progressive estimates which are due and owing the Department of Transportation.

R.L.1910, § 3882. Amended by Laws 1955, p. 335, § 2, emerg. eff. June 6, 1955; Laws 1961, p. 459, § 2, emerg. eff. May 15, 1961; Laws 1965, c. 518, § 2, emerg. eff. July 22, 1965; Laws 1968, c. 77, § 2, emerg. eff. March 25, 1968; Laws 1995, c. 200, § 1, emerg. eff. May 19, 1995; Laws 1997, c. 278, § 3, emerg. eff. May 27, 1997; Laws 2012, c. 241, § 2, eff. July 1, 2012; Laws 2019, c. 407, § 1, eff. Nov. 1, 2019; Laws 2021, c. 226, § 1, eff. Nov. 1, 2021.

§61-3. Working day for public employees.

A. Except as provided in subsection B of this section, eight (8) hours shall constitute a day's work for all public employees not otherwise exempt from or covered by special provisions under the federal Fair Labor Standards Act, 29 U.S.C.A., Section 201 et seq. and regulations thereto. In cases where it may be necessary to work more than eight (8) hours per calendar day which results in more than forty (40) hours worked per week, all public employees not otherwise exempt from or otherwise covered by special provisions under the federal Fair Labor Standards Act and regulations related thereto or other persons so employed shall be compensated in accordance with the federal Fair Labor Standards Act and regulations related thereto.

B. Public employees and public safety professionals may be allowed to work in excess of eight (8) hours per day when such hours are assigned as part of an alternative work schedule. In any case where such work schedule results in an employee working in excess of forty (40) hours per workweek who is not exempt from or covered by special provisions under the overtime provisions of the Fair Labor Standards Act, the employee shall be compensated in accordance with the Fair Labor Standards Act and regulations related thereto. For purposes of this section, "public safety professionals" means sheriffs, deputy sheriffs, correctional officers, and persons in the emergency medical service profession.

R.L. 1910, § 3757. Amended by Laws 1994, c. 242, § 44; Laws 2009, c. 55, § 1, eff. July 1, 2009.

§61-4. Public contracts made on basis of eight-hour day.

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 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. R.L. 1910, § 3758; Laws 1949, p. 413, § 1. Amended by Laws 2022, c. 238, § 2, eff. Nov. 1, 2022.

§61-5. Penalty for violating two preceding sections.

Any officer of the state, or of any county, city, township, or other municipality, or any person acting under or for such officer, or any contractor with the state, or any county, city, township, or other municipality thereof, or other persons violating any of the provisions of the two preceding sections, shall for each offense be fined in any sum not less than Fifty Dollars (\$50.00), nor more than Five Hundred Dollars (\$500.00), or punished by imprisonment of not less than three (3) months not more than six (6) months. Each day such violation continues shall constitute a separate offense.

R.L. 1910, § 3759.

§61-6. Public buildings - Home products - When to use.

In the construction of all public buildings erected for 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.

Laws 1910-11, c. 76, p. 174, § 1. Amended by Laws 2022, c. 238, § 3, eff. Nov. 1, 2022.

§61-7. Repealed by Laws 1983, c. 304, § 182, eff. July 1, 1983.

§61-8. Repealed by Laws 2022, c. 238, § 50, eff. Nov. 1, 2022.

§61-9. Repealed by Laws 2022, c. 238, § 50, eff. Nov. 1, 2022.

§61-10. Repealed by Laws 2022, c. 238, § 50, eff. Nov. 1, 2022.

§61-11. Public buildings - Facilities for people with disabilities - Additions to existing buildings.

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 people with disabilities. Such facilities shall conform with the codes and standards adopted by the State Fire Marshal and amended by the 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 Office of Management and Enterprise Services.

B. 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.

Added by Laws 1965, c. 213, § 1, eff. Jan. 2, 1966. Amended by Laws 1968, c. 57, § 1, emerg. eff. March 18, 1968; Laws 1973, c. 263, § 1, emerg. eff. May 24, 1973; Laws 1983, c. 304, § 44, eff. July 1, 1983; Laws 2002, c. 294, § 3, eff. Nov. 1, 2002; Laws 2006, c. 271, § 2, eff. July 1, 2006; Laws 2012, c. 304, § 303; Laws 2022, c. 238, § 4, eff. Nov. 1, 2022.

§61-12. Plans and specifications - Approval.

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 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 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.

Added by Laws 1965, c. 213, § 2, eff. Jan. 2, 1966. Amended by Laws 1973, c. 263, § 2, emerg. eff. May 24, 1973; Laws 1983, c. 304, § 45, eff. July 1, 1983; Laws 2002, c. 294, § 4, eff. Nov. 1, 2002; Laws 2012, c. 304, § 304; Laws 2022, c. 238, § 5, eff. Nov. 1, 2022.

§61-13. Definitions.

(a) For the purpose of this act the term "contractor" means an individual, general partnership, limited partnership, joint venture, association, corporation or a combination of any of the foregoing who does or undertakes for compensation the construction of any public works.

(b) The term "public works" for the purpose of this act means the construction, alteration, repair, improvement, moving, wrecking or demolition of any highway, road, railroad, earthwork, building or other structure, project, development or improvement, whether it be in whole or in part.

Added by Laws 1969, c. 100, § 1. Amended by Laws 2002, c. 294, § 5, eff. Nov. 1, 2002.

§61-14. Repealed by Laws 2022, c. 238, § 50, eff. Nov. 1, 2022.

§61-15. Repealed by Laws 2022, c. 238, § 50, eff. Nov. 1, 2022.

§61-16. Unconstitutional.

§61-17. Presumption as to consent to jurisdiction of Oklahoma courts.

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

Added by Laws 1970, c. 106, § 2, emerg. eff. April 1, 1970. Amended by Laws 2006, c. 271, § 4, eff. July 1, 2006.

§61-18. Liability of contractor after completion of contract work.

Whenever any public officer shall, under the laws of the State of Oklahoma, enter into a contract for the purpose of constructing any highway or turnpike, the contractor or supplier of materials shall not be liable for damages arising out of torts involving injury to persons or damage to property occurring after completion of such contract work and any applicable maintenance obligation and acceptance thereof by such public officer, if all contractual provisions and specifications imposed by state and federal agencies have been complied with by said contractor or supplier of materials.

Provided, however, that nothing herein contained shall apply to any cause of action on behalf of the contracting public agency. Added by Laws 1972, c. 51, § 1, emerg. eff. Mar. 15, 1972.

§61-19. Multi-year contracts for painting and other maintenance of water storage tanks.

A. A municipality or rural water district may enter into a multi-year contract for painting and other maintenance of water storage tanks and appurtenant facilities if the contract contains a contingency provision whereby the municipality or district is not obligated to make any payment, in any year, in an amount exceeding the income and revenue provided for such year.

B. Notwithstanding the provisions of Section 101, et seq., of Title 61 of the Oklahoma Statutes, a municipality or rural water district contemplating entering into a multi-year contract for painting and other maintenance of water storage tanks and appurtenant facilities may or may not, at its option, require that the work be bid pursuant to the provisions of the Public Competitive Bidding Act of 1974.

Added by Laws 2000, c. 139, § 1, emerg. eff. April 25, 2000.

§61-21. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-22. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-23. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-24. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-25. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-26. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-27. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-28. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-29. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

- §61-30. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-31. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-32. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-33. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-34. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-35. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-36. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-37. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-38. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-39. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-40. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-41. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-42. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-43. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.
- §61-44. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-45. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-46. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-47. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-48. Repealed by Laws 1974, c. 298, § 35, operative Aug. 1, 1974.

§61-51. Repealed by Laws 2022, c. 238, § 51, eff. Nov. 1, 2022.

§61-52. Repealed by Laws 1980, c. 68, § 1, emerg. eff. April 10, 1980.

§61-60. Mandatory consultant and construction contract forms - Exceptions.

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, the Oklahoma Municipal Power Authority, shall use construction manager, consultant and construction contract forms that the Director 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 Director may authorize, in writing, exceptions to the use of construction manager, consultant and construction contract forms for specific projects.

Added by Laws 1982, c. 70, § 1. Amended by Laws 1983, c. 304, § 46, eff. July 1, 1985; Laws 2000, c. 363, § 2, emerg. eff. June 6, 2000; Laws 2001, c. 399, § 1, emerg. eff. June 4, 2001; Laws 2002, c. 294, § 6, eff. Nov. 1, 2002; Laws 2006, c. 271, § 5, eff. July 1, 2006; Laws 2009, c. 454, § 3; Laws 2012, c. 304, § 305; Laws 2013, c. 302, § 1, eff. Nov. 1, 2013; Laws 2016, c. 71, § 1; Laws 2022, c. 238, § 6, eff. Nov. 1, 2022; Laws 2024, c. 452, § 123, emerg. eff. June 14, 2024.

§61-60v2. Mandatory consultant and construction contract forms - Exceptions.

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 shall use construction manager, consultant and construction contract forms that the Director 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 Director may authorize, in writing, exceptions to the use of construction manager, consultant and construction contract forms for specific projects.

Added by Laws 1982, c. 70, § 1. Amended by Laws 1983, c. 304, § 46, eff. July 1, 1985; Laws 2000, c. 363, § 2, emerg. eff. June 6, 2000; Laws 2001, c. 399, § 1, emerg. eff. June 4, 2001; Laws 2002, c. 294, § 6, eff. Nov. 1, 2002; Laws 2006, c. 271, § 5, eff. July 1, 2006; Laws 2009, c. 454, § 3; Laws 2012, c. 304, § 305; Laws 2013, c. 302, § 1, eff. Nov. 1, 2013; Laws 2016, c. 71, § 1; Laws 2022, c. 238, § 6, eff. Nov. 1, 2022.

§61-61. Definitions.

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

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;

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

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.

Added by Laws 1974, c. 156, § 1. Amended by Laws 1981, c. 346, § 1, eff. Jan. 1, 1982; Laws 1983, c. 304, § 47, eff. July 1, 1985; Laws 2000, c. 363, § 3, emerg. eff. June 6, 2000; Laws 2001, c. 399, § 2, emerg. eff. June 4, 2001; Laws 2002, c. 294, § 7, eff. Nov. 1, 2002; Laws 2006, c. 271, § 6, eff. July 1, 2006; Laws 2012, c. 304, § 306; Laws 2013, c. 302, § 2, eff. Nov. 1, 2013; Laws 2016, c. 71, § 2; Laws 2019, c. 299, § 1, eff. Jan. 1, 2020; Laws 2022, c. 238, § 7, eff. Nov. 1, 2022.

§61-62. Construction managers and consultants - Registration and selection.

A. 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 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 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 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 Office. The 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 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 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 Office personnel shall confer to add construction managers or consultants for consideration.

E. The state agency shall review the information the 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 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 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 .

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 Office shall approve and award the contract.

2. If the 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 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 Office and the third-choice construction manager or consultant cannot reach an agreement, then all negotiations shall terminate. Should the Office be unable to negotiate a satisfactory contract with any of the three selected construction managers or consultants, the 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 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 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 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.

Added by Laws 1974, c. 156, § 2. Amended by Laws 1981, c. 346, § 2, eff. Jan. 1, 1982; Laws 1983, c. 304, § 48, eff. July 1, 1985; Laws 1989, c. 300, § 14, operative July 1, 1989; Laws 1997, c. 133, § 82, eff. July 1, 1997; Laws 2000, c. 363, § 4, emerg. eff. June 6, 2000; Laws 2001, c. 298, § 1, emerg. eff. May 31, 2001; Laws 2002, c. 294, § 8, eff. Nov. 1, 2002; Laws 2006, c. 271, § 7, eff. July 1, 2006; Laws 2012, c. 304, § 307; Laws 2013, c. 302, § 3, eff. Nov. 1, 2013; Laws 2019, c. 299, § 2, eff. Jan. 1, 2020; Laws 2022, c. 238, § 8, eff. Nov. 1, 2022.

§61-62.1. Contracts to be in accordance with Public Building Construction and Planning Act.

Except as provided by Sections 61 and 62 of this title and in addition to other statutory requirements, all construction manager, consultant, and construction contracts shall be in accordance with the provisions of the Public Building Construction and Planning Act. Added by Laws 1983, c. 304, § 168, eff. July 1, 1983. Amended by Laws 2000, c. 363, § 5, emerg. eff. June 6, 2000; Laws 2006, c. 271, § 8, eff. July 1, 2006.

§61-62.2. Contracts for minor services.

The Office of Management and Enterprise Services may enter into contracts with construction managers and consultants registered with the 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 be solely responsible for the fee of the construction manager or consultant that provides the services.

Added by Laws 2000, c. 363, § 6, emerg. eff. June 6, 2000. Amended by Laws 2002, c. 294, § 9, eff. Nov. 1, 2002; Laws 2006, c. 271, § 9, eff. July 1, 2006; Laws 2012, c. 304, § 308; Laws 2022, c. 238, § 9, eff. Nov. 1, 2022.

§61-63. Ownership and control of plans, etc.

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 state as directed by the terms of the contract.

Added by Laws 1974, c. 156, § 3. Amended by Laws 1983, c. 304, § 49, eff. July 1, 1983; Laws 2000, c. 363, § 7, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 10, eff. Nov. 1, 2002; Laws 2006, c. 271, § 10, eff. July 1, 2006; Laws 2012, c. 304, § 309; Laws 2013, c. 302, § 4, eff. Nov. 1, 2013; Laws 2022, c. 238, § 10, eff. Nov. 1, 2022.

§61-64. Misdemeanor offenses - Punishment.

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

Added by Laws 1974, c. 156, § 4. Amended by Laws 2002, c. 294, § 11, eff. Nov. 1, 2002; Laws 2006, c. 271, § 11, eff. July 1, 2006.

§61-65. Application of act - Emergencies.

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

Added by Laws 1978, c. 201, § 21, emerg. eff. April 14, 1978.

Amended by Laws 1983, c. 304, § 50, eff. July 1, 1983; Laws 1997, c. 133, § 83, eff. July 1, 1997; Laws 2002, c. 294, § 12, eff. Nov. 1, 2002; Laws 2006, c. 271, § 12, eff. July 1, 2006; Laws 2009, c. 454, § 4; Laws 2012, c. 304, § 310; Laws 2013, c. 302, § 5, eff. Nov. 1, 2013; Laws 2022, c. 238, § 11, eff. Nov. 1, 2022.

§61-81. Fair and Open Competition in Governmental Construction Act.

This act shall be known and may be cited as the "Fair and Open Competition in Governmental Construction Act". The purposes of this act are to provide for the efficient procurement of goods and services by governmental units; to promote the economical, nondiscriminatory, and efficient administration and completion of state and state-funded or state-assisted construction projects; to provide for fair and open competition for construction contracts, grants, tax abatements, and tax credits awarded by governmental units; to prohibit requirements for certain terms in construction contracts and construction contracts awarded by governmental units and supported through grants and tax subsidies and abatements by governmental units; to prohibit expenditure of public funds under certain conditions; to prohibit certain terms in procurement documents for certain expenditures by governmental units involving public facilities; and to provide powers and duties for certain public officers, employees, and contractors.
Added by Laws 2012, c. 145, § 1, eff. Nov. 1, 2012.

§61-82. Definitions.

As used in the Fair and Open Competition in Governmental Construction Act:

1. "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; and

2. "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.

Added by Laws 2012, c. 145, § 2, eff. Nov. 1, 2012.

§61-83. Prohibited terms in bid specifications for public improvement projects.

A public agency awarding any contract for the construction, repair, remodeling, or demolition of a public improvement or obligating funds pursuant to such a contract, shall ensure that neither the awarding public agency nor any construction manager acting on behalf of the public agency shall, in its bid specifications, project agreements, or other controlling documents, include:

1. A term that requires, prohibits, encourages, or discourages bidders, contractors, or subcontractors from entering into or adhering to agreements with a collective bargaining organization relating to the construction project or other related construction projects; and

2. A term that discriminates against bidders, contractors, or subcontractors based on the status as a party or nonparty to, or the willingness or refusal to enter into, an agreement with a collective bargaining organization relating to the construction project or other related construction projects.

Added by Laws 2012, c. 145, § 3, eff. Nov. 1, 2012.

§61-84. Prohibited contract terms prevent the award of applicable grants, tax abatements, or tax credits.

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 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.

Added by Laws 2012, c. 145, § 4, eff. Nov. 1, 2012. Amended by Laws 2022, c. 238, § 12, eff. Nov. 1, 2022.

§61-85. Prohibited terms in bid specifications for public improvement projects.

A public agency or a construction manager or other contracting entity acting on behalf of a public agency shall not place any of the terms described in Section 3 of the Fair and Open Competition in Governmental Construction Act in bid specifications, project agreements, or other controlling documents relating to the construction, repair, remodeling, or demolition of a public improvement. Any such included term is void and of no effect.

Added by Laws 2012, c. 145, § 5, eff. Nov. 1, 2012.

§61-86. Applicability of act.

A. The requirements of the Fair and Open Competition in Governmental Construction Act do not apply to public construction contracts executed before November 1, 2012.

B. The Fair and Open Competition in Governmental Construction Act does not:

1. Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C., Sections 151 to 169;

2. Interfere with labor relations of parties that are protected under the National Labor Relations Act, 29 U.S.C., Sections 151 to 169; or

3. Prohibit a public agency from awarding a public contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a collective bargaining organization, if being or becoming a party or adhering to an agreement with a collective bargaining organization is not a condition for award of the public contract, grant, tax abatement, or tax credit, and if the public agency does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that grant, tax abatement, or tax credit based upon the status as being or becoming, or the willingness or refusal to become, a party to an agreement with a collective bargaining organization.
Added by Laws 2012, c. 145, § 6, eff. Nov. 1, 2012.

§61-101. Short title.

This act shall be known and may be cited as the "Public Competitive Bidding Act of 1974".

Added by Laws 1974, c. 298, § 1, operative Aug. 1, 1974.

§61-102. Definitions.

As used in the Public Competitive Bidding Act of 1974:

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

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;

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;

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;

5. "Public agency" means the State of Oklahoma, and any county, city, town, school district or other political subdivision of the state, any public trust, any public entity specifically created by the statutes of the State of Oklahoma or as a result of statutory authorization therefor, and any department, agency, board, bureau, commission, committee or authority of any of the foregoing public entities;

6. "Public construction contract" or "contract" means any contract, exceeding 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;

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;

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

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.

Added by Laws 1974, c. 298, § 2, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 1, emerg. eff. June 5, 1975; Laws 1977, c. 74, § 1, eff. Oct. 1, 1977; Laws 1979, c. 28, § 1, emerg. eff. April 3, 1979; Laws 1990, c. 158, § 1, emerg. eff. May 1, 1990; Laws 1994, c. 7, § 5, emerg. eff. March 29, 1994; Laws 1998, c. 365, § 2, eff. July 1, 1998; Laws 1999, c. 149, § 2, eff. July 1, 1999; Laws 2000, c. 363, § 8, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 13, eff. Nov. 1, 2002; Laws 2004, c. 97, § 1, emerg. eff. April 14, 2004; Laws 2005, c. 1, § 89, emerg. eff. March 15, 2005; Laws 2006, c. 271, § 14, eff. July 1, 2006; Laws 2009, c. 257, § 2, eff. Nov. 1, 2009; Laws 2012, c. 304, § 311; Laws 2013, c. 186, § 1, eff. Nov. 1,

2013; Laws 2021, c. 340, § 1, eff. Nov. 1, 2021; Laws 2022, c. 238, § 13, eff. Nov. 1, 2022.

NOTE: Laws 2004, c. 52, § 1 repealed by Laws 2005, c. 1, § 90, emerg. eff. March 15, 2005.

§61-103. Governing law - Solicitation and award of contracts.

A. Unless otherwise provided by law, all 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) shall be let and awarded to the lowest responsible bidder, by open competitive bidding after solicitation for sealed bids, in accordance with the provisions of the Public Competitive Bidding Act of 1974. No work shall be commenced until a written contract is executed and all required bonds and insurance have been provided by the contractor to the awarding public agency.

B. Notwithstanding subsection A of this section, in awarding 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), counties, cities, other local units of government and any public trust with a county or a municipality as its sole beneficiary may provide for a local bid preference of not more than five percent (5%) of the bid price if the awarding public agency determines that there is an economic benefit to the local area or economy. Provided, however, the local bidder or contractor must agree to perform the contract for the same price and terms as the bid proposed by the nonlocal bidder or contractor. Any bid preference granted hereunder must be in accordance with an established policy adopted by the governing body of the awarding public agency to clearly demonstrate the economic benefit to the local area or economy. Provided, further, no local bid preference shall be granted unless the local bidding entity is the second lowest qualified bid on the contract. The bid specifications shall clearly state that the bid is subject to a local bidder preference law. For purposes of this section, "local bid" means the bidding person is authorized to transact business in this state and maintains a bona fide establishment for transacting such business within this state. This provision does not apply to any construction contract for which federal funds are available for expenditure when its provisions may be in conflict with federal law or regulation.

C. Except as provided in subsection E of this section, other construction contracts for the purpose of making any public improvements or constructing any public building or making repairs to the same for One Hundred Thousand Dollars (\$100,000.00) or less shall be let and awarded to the lowest responsible bidder by receipt of written bids or awarded on the basis of competitive quotes to the

lowest responsible qualified contractor. Work may be commenced in accordance with the purchasing policies of the public agency.

D. Except as provided in subsection E of this section, other construction contracts for less than Ten Thousand Dollars (\$10,000.00) may be negotiated with a qualified contractor. Work may be commenced in accordance with the purchasing policies of the public agency.

E. The provisions of this subsection shall apply to public construction for minor maintenance or minor repair work to public school district property. Other construction contracts for less than Twenty-five Thousand Dollars (\$25,000.00) may be negotiated with a qualified contractor. Construction contracts equal to or greater than Fifty Thousand Dollars (\$50,000.00) but less than One Hundred Thousand Dollars (\$100,000.00) shall be let and awarded to the lowest responsible bidder by receipt of written bids. No work shall be commenced on any construction contract until a written contract is executed and proof of insurance has been provided by the contractor to the awarding public agency.

F. The Construction and Properties Division of the Office of Management and Enterprise Services may award contracts using best value competitive proposals. As used in this subsection, "best value" means an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the state. The Office of Management and Enterprise Services, pursuant to the Administrative Procedures Act, shall promulgate rules necessary to implement the provisions of this subsection.

G. 1. A public agency shall not let or award 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) to any contractor affiliated with a purchasing cooperative unless the purchasing cooperative and the contractor have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including but not limited to open competitive bidding after solicitation for sealed bids. A public agency shall not let or award a public construction contract exceeding Ten Thousand Dollars (\$10,000.00) up to One Hundred Thousand Dollars (\$100,000.00) to any contractor affiliated with a purchasing cooperative unless the purchasing cooperative and the contractor have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including submission of a written bid upon notice of competitive bidding.

2. A purchasing cooperative and its affiliated contractors shall not be allowed to bid on any public construction contract exceeding One Hundred Thousand Dollars (\$100,000.00) or any construction management trade contract or subcontract exceeding

Fifty Thousand Dollars (\$50,000.00) unless the purchasing cooperative and its affiliated contractors have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including but not limited to open competitive bidding after solicitation for sealed bids. A purchasing cooperative and its affiliated contractors shall not be allowed to bid on any public construction contract exceeding Five Thousand Dollars (\$5,000.00) unless the purchasing cooperative and its affiliated contractors have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including submission of a written bid upon notice of open competitive bidding.

3. Local governmental units, or local governmental units cooperating under the terms of any interlocal cooperative agreement authorized by state law, may create a purchasing cooperative or contract with a purchasing cooperative to provide leverage in achieving best value or the best terms in contracts. To encourage intergovernmental collaboration, any purchasing cooperative or interlocal cooperative entity may utilize any single legal newspaper of this state to serve as sufficient compliance for bid notice requirements of competitive bidding or solicitation of bids. If the purchasing cooperative or interlocal cooperative entity is engaging in a project exclusive to a county or group of counties of this state, and not open to all governmental units or public trusts that wish to participate statewide, the bid notice shall be published in a legal newspaper located within the county or group of counties. Any local governmental unit or public trust that enters into membership or contracts with a purchasing cooperative or interlocal cooperative entity may enter into purchases or contracts under the terms negotiated by the purchasing cooperative or interlocal cooperative entity. If the purchasing cooperative or interlocal cooperative entity complies with the requirements of this section of law, all local governmental units shall be deemed in compliance with the requirements set forth for bid notices and publication.

Added by Laws 1974, c. 298, § 3, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 2, emerg. eff. June 5, 1975; Laws 2001, c. 298, § 2, emerg. eff. May 31, 2001; Laws 2006, c. 271, § 15, eff. July 1, 2006; Laws 2010, c. 98, § 2, eff. Nov. 1, 2010; Laws 2011, c. 362, § 1, eff. Nov. 1, 2011; Laws 2012, c. 304, § 312; Laws 2013, c. 186, § 2, eff. Nov. 1, 2013; Laws 2019, c. 405, § 2, eff. Nov. 1, 2019; Laws 2021, c. 340, § 2, eff. Nov. 1, 2021; Laws 2022, c. 228, § 23, emerg. eff. May 5, 2022.

NOTE: Laws 2021, c. 244, § 1 repealed by Laws 2022, c. 228, § 24, emerg. eff. May 5, 2022.

§61-103.1. Repealed by Laws 1984, c. 101, § 1, eff. July 1, 1984.

§61-103.2. Political subdivision may appoint purchasing agent.

The governing body of any political subdivision of this state may duly appoint as its agent any individual or individual of a legal entity, with whom the political subdivision has duly entered into a public contract pursuant to law, to make purchases necessary for carrying out the public contract.

Added by Laws 1981, c. 243, § 2, emerg. eff. June 23, 1981.

§61-103.3. Repealed by Laws 2002, c. 294, § 35, eff. Nov. 1, 2002.

§61-103.4. School districts - Erection of building or making improvements on force account basis.

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.

Added by Laws 1999, c. 86, § 2, eff. July 1, 1999. Amended by Laws 2022, c. 238, § 14, eff. Nov. 1, 2022.

§61-103.5. Right-of-way clearance by Transportation Commission and Authority - Competitive bidding not required.

For purposes of the provisions of the Public Competitive Bidding Act of 1974, contracts not exceeding One Hundred Thousand Dollars (\$100,000.00) entered into solely for right-of-way clearance by the Transportation Commission and the Oklahoma Transportation Authority for the exclusive purpose of demolition and removal of buildings, foundations, slab floors, stem walls, steps, brush, shrubs, brickbats or stone and all rubbish, scrap iron, fencing, and debris, and the installation of new right-of-way fencing, shall not be considered to be public construction contracts and shall not be required to be open for competitive bidding.

Added by Laws 1999, c. 341, § 1, eff. Nov. 1, 1999. Amended by Laws 2021, c. 340, § 3, eff. Nov. 1, 2021

NOTE: Editorially renumbered from § 103.4 of this title to avoid a duplication in numbering.

§61-103.6. Expired.

NOTE: This section, from Laws 2009, c. 273, § 1, expired July 1, 2011. Laws 2009, c. 273, § 5 provides: "Sections 1 and 2 of this act shall cease to have the force and effect of law on July 1, 2011."

§61-103.7. Contracts related to fish and wildlife conservation.

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 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 Office of Management and Enterprise Services.

Added by Laws 2014, c. 288, § 1, eff. Nov. 1, 2014. Amended by Laws 2021, c. 340, § 4, eff. Nov. 1, 2021; Laws 2022, c. 238, § 15, eff. Nov. 1, 2022.

§61-103.8. State agencies to identify headquarters location of contracting companies - Provide reasons for choosing companies not headquartered in Oklahoma.

A. When a state agency accepts a services contract, whether bid or no-bid, it shall list the city, state, and country in which the services will be provided. Any contract the state awards that is not strictly awarded by the lowest price and is awarded to a company not preparing and producing the services in Oklahoma shall require the awarding agency's director to provide reasons why the services were not prepared and produced in Oklahoma.

B. When a state agency accepts any other type of contract, whether bid or no-bid, it shall list the city, state and country in which the company that is seeking or awarded work is headquartered. If the company is an Oklahoma entity of which over fifty percent (50%) is owned by an out-of-state entity or individual, then, for the purposes of this section, the location of the company's headquarters shall be considered to be in the city, state and country of the majority owner. Any contract the state awards that is not strictly awarded by the lowest price and is awarded to a company not headquartered in Oklahoma shall require the awarding agency's director to provide reasons why the out-of-state company was chosen over an Oklahoma company.

Added by Laws 2019, c. 472, § 3, eff. July 1, 2019. Amended by Laws 2022, c. 36, § 1, eff. Nov. 1, 2022.

NOTE: This section was purportedly repealed by Laws 2022, c. 238, § 52, eff. Nov. 1, 2022.

§61-104. Bid notices.

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 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.

Added by Laws 1974, c. 298, § 4, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 3, emerg. eff. June 5, 1975; Laws 2002, c. 294, § 14, eff. Nov. 1, 2002; Laws 2012, c. 40, § 1, emerg. eff. April 13, 2012; Laws 2017, c. 40, § 1, eff. Nov. 1, 2017; Laws 2021, c. 340, § 5, eff. Nov. 1, 2021; Laws 2022, c. 238, § 16, eff. Nov. 1, 2022.

§61-105. Contents of bid notices.

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 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.

Added by Laws 1974, c. 298, § 5, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 4, emerg. eff. June 5, 1975; Laws 2022, c. 238, § 17, eff. Nov. 1, 2022.

§61-106. Bidding documents to be on file.

Complete bidding documents regarding a proposed public construction contract shall be available to the public at least twenty (20) days prior to the date set for opening bids. The awarding public agency, or its agent, may require a reasonable deposit for each 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.

Added by Laws 1974, c. 298, § 6, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 5, emerg. eff. June 5, 1975; Laws 2022, c. 238, § 18, eff. Nov. 1, 2022.

§61-107. Check, bond or irrevocable letter of credit to accompany bid.

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 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 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.

Added by Laws 1974, c. 298, § 7, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 6, emerg. eff. June 5, 1975; Laws 1986, c. 110, § 2, emerg. eff. April 9, 1986; Laws 1992, c. 239, § 2, emerg. eff. May 19, 1992; Laws 1993, c. 293, § 1, emerg. eff. June 3, 1993; Laws 1995, c. 156, § 1, eff. July 1, 1995; Laws 1998, c. 365, § 3, eff. July 1, 1998; Laws 2000, c. 363, § 9, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 15, eff. Nov. 1, 2002; Laws 2006, c. 271, § 16, eff. July 1, 2006; Laws 2012, c. 304, § 313; Laws 2021, c. 340, § 6, eff. Nov. 1, 2021; Laws 2022, c. 238, § 19, eff. Nov. 1, 2022.

§61-108. Written statement under oath to accompany bid.

Each bidder shall accompany the bid with a written statement under oath disclosing the following information:

1. The nature of any partnership, joint venture or other business relationships then in effect or which existed within one (1) year prior to the date of such statement with the architect, engineer or other party to the project;

2. Any such business relationship then in effect or which existed within one (1) year prior to the date of such statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project; and

3. The names of all persons having any such business relationships and the positions they hold with their respective companies or firms. If none of the business relationships hereinabove mentioned exist, then a statement to that effect.

Added by Laws 1974, c. 298, § 8, operative Aug. 1, 1974. Amended by Laws 2008, c. 212, § 1, emerg. eff. May 19, 2008.

§61-109. Late bids.

Any bid received after the time set for opening of bids shall not be opened or considered by the awarding public agency.

Added by Laws 1974, c. 298, § 9, operative Aug. 1, 1974. Amended by Laws 2022, c. 238, § 20, eff. Nov. 1, 2022.

§61-110. Opening of bids.

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.

Added by Laws 1974, c. 298, § 10, operative Aug. 1, 1974. Amended by Laws 2002, c. 294, § 16, eff. Nov. 1, 2002; Laws 2018, c. 219, § 1, emerg. eff. May 7, 2018; Laws 2022, c. 238, § 21, eff. Nov. 1, 2022.

§61-111. Time for awarding of contract.

The awarding of a contract to the lowest responsible bidder or bidders shall be made within thirty (30) days after the opening of bids unless the governing body of the awarding public agency, by formal recorded action and for good cause shown, provides for a reasonable extension of that period, which extension period shall not in any event exceed fifteen (15) days where only state or local funds are involved, or not to exceed ninety (90) days on any award of contract for the construction of a public improvement where funds are utilized which are furnished by an agency of the United States Government. Upon mutual written agreement between the lowest responsible bidder or bidders and the awarding public agency, the Division or awarding public agency may extend the contract award period no more than one hundred twenty (120) days from the bid opening date.

Added by Laws 1974, c. 298, § 11, operative Aug. 1, 1974. Amended by Laws 2006, c. 271, § 17, eff. July 1, 2006; Laws 2015, c. 198, § 1, eff. Nov. 1, 2015.

§61-112. Bids, contracts, bonds open for public inspection.

All bids, both successful and unsuccessful, and all contracts and required bonds shall be placed on file and maintained 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.

Added by Laws 1974, c. 298, § 12, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 7, emerg. eff. June 5, 1975; Laws 2022, c. 238, § 22, eff. Nov. 1, 2022.

§61-113. Execution of contract.

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 complying with the provisions of Section 1 of this title;

2. A bond in a sum equal to the contract price, with adequate surety, 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 for the benefit of the state, on behalf of the awarding public agency, 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. 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. Added by Laws 1974, c. 298, § 13, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 8, emerg. eff. June 5, 1975; Laws 1986, c. 110, § 3, emerg. eff. April 9, 1986; Laws 1987, c. 26, § 1, eff. Nov. 1, 1987; Laws 1987, c. 191, § 12, operative July 1, 1987; Laws 1992, c. 239, § 3, emerg. eff. May 19, 1992; Laws 1998, c. 365, § 4, eff. July 1, 1998; Laws 2000, c. 46, § 1, emerg. eff. April 11, 2000; Laws 2000, c. 363, § 10, emerg. eff. June 6, 2000; Laws 2001, c. 298, § 3, emerg. eff. May 31, 2001; Laws 2002, c. 294, § 17, eff. Nov. 1, 2002; Laws 2004, c. 299, § 1, eff. Nov. 1, 2004; Laws 2006, c. 271, § 18, eff. July 1, 2006; Laws 2011, c. 362, § 2, eff. Nov. 1, 2011; Laws 2012, c. 304, § 314; Laws 2017, c. 93, § 1, emerg. eff. April 25, 2017; Laws 2019, c. 299, § 3, eff. Jan. 1, 2020; Laws 2021, c. 340, § 7, eff. Nov. 1, 2021; Laws 2022, c. 238, § 23, eff. Nov. 1, 2022.

§61-113.1. See the following versions:

OS 61-113.1v1 (HB 4080, Laws 2022, c. 238, § 24).

OS 61-113.1v2 (SB 1520, Laws 2022, c. 315, § 1).

§61-113.1v1. Partial payment - Retainage.

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.

Added by Laws 1977, c. 74, § 2, eff. Oct. 1, 1977. Amended by Laws 1983, c. 67, § 1, emerg. eff. April 29, 1983; Laws 1995, c. 200, § 2, emerg. eff. May 19, 1995; Laws 1997, c. 278, § 4, emerg. eff. May 27, 1997; Laws 2006, c. 271, § 19, eff. July 1, 2006; Laws 2011, c. 99, § 1, eff. Nov. 1, 2011; Laws 2022, c. 238, § 24, eff. Nov. 1, 2022.

§61-113.1v2. Partial payment - Retainage.

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. At any time the contractor has completed in excess of fifty percent (50%) of the total contract amount, the retainage shall be reduced to two and one-half percent (2.5%) of the amount earned to date once the public agency has determined that satisfactory progress is being made.

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.

Added by Laws 1977, c. 74, § 2, eff. Oct. 1, 1977. Amended by Laws 1983, c. 67, § 1, emerg. eff. April 29, 1983; Laws 1995, c. 200, § 2, emerg. eff. May 19, 1995; Laws 1997, c. 278, § 4, emerg. eff. May 27, 1997; Laws 2006, c. 271, § 19, eff. July 1, 2006; Laws 2011, c. 99, § 1, eff. Nov. 1, 2011; Laws 2022, c. 315, § 1, eff. Nov. 1, 2022.

§61-113.2. Withdrawal of retainage - Deposit of securities.

The contractor may, from time to time, withdraw any part, or the whole, of the amount which has been retained from partial payments to the contractor pursuant to the terms of contract, upon depositing with or delivery to the awarding public agency, or other appropriate public official designated in the contract document: (1) United States Treasury bonds, United States Treasury notes, United States Treasury bills, or (2) general obligation bonds of the State of Oklahoma, or (3) certificates of deposit from a state or national bank having its principal office in the State of Oklahoma. No retained amount shall be withdrawn which would represent an amount

in excess of the market value of the securities at the time of deposit or of the par value of such securities, whichever is lower.

At the time of deposit of any securities the same shall be endorsed, if necessary, and shall be accompanied by a conditional assignment to the awarding public agency, or to the other public body designated as "owner" in the contract documents, which will empower the awarding public agency, or other appropriate public official designated to have custody of same, to negotiate same at any time to the extent necessary to cause the contract to be fulfilled. The securities which remain on deposit at the time of completion of any contract and observance by the parties to the contract of any other statutory obligations relative thereto shall be returned to the contractor.

Added by Laws 1977, c. 74, § 3, eff. Oct. 1, 1977.

§61-113.3. Interest - Rate.

When interest is due the contractor, all awarding public agencies, other than school districts, shall pay to the contractor interest at the rate of one and one-half percent (1 1/2%) per month of the final payment due the contractor. When interest is due to the contractor, school districts shall pay to the contractor interest at the rate of three fourths percent (3/4%) per month of the final payment due the contractor. For lump sum contracts the interest shall commence thirty (30) days after the work under the contract has been completed and accepted and all required material certifications and other documentation required by the contract have been furnished the awarding public agency by the contractor, and shall run until the date when the final payment or estimate is tendered to the contractor.

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

Added by Laws 1977, c. 74, § 4, eff. Oct. 1, 1977. Amended by Laws 2006, c. 271, § 20, eff. July 1, 2006.

§61-114. Conflict of interest.

The chief administrative officer and members of the governing body of the awarding public agency authorizing or awarding or supervising the execution of a public construction contract, and their relatives within the third degree of consanguinity or affinity, are forbidden to be interested directly or indirectly through stock ownership, partnership interest or otherwise in any such contract. Contracts entered into in violation of this section shall be void. Persons willfully violating this section shall be guilty of a felony and shall be subject to removal from office.

Added by Laws 1974, c. 298, § 14, operative Aug. 1, 1974. Amended by Laws 1997, c. 133, § 515, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 515 from July 1, 1998, to July 1, 1999.

§61-115. Collusion among bidders or material suppliers.

Any agreement or collusion among bidders, prospective bidders or material suppliers in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding, or otherwise, shall render the bids of such bidders void. Persons willfully violating this section shall be guilty of a felony. Each bidder shall accompany the bid with a sworn statement that the bidder has not been a party to any such agreement. The form of the statement shall be substantially as provided in Section 85.22 of Title 74 of the Oklahoma Statutes, but modified in wording to refer to the appropriate public agency requesting bids.

Added by Laws 1974, c. 298, § 15, operative Aug. 1, 1974. Amended by Laws 1980, c. 339, § 1, emerg. eff. June 25, 1980; Laws 1997, c. 133, § 516, eff. July 1, 1999; Laws 2002, c. 294, § 18, eff. Nov. 1, 2002; Laws 2008, c. 212, § 2, emerg. eff. May 19, 2008.

NOTE: Laws 1998, 1st Ex. Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 516 from July 1, 1998, to July 1, 1999.

§61-116. Disclosure of terms of bids - Public agency engineering estimates.

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

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

Added by Laws 1974, c. 298, § 16, operative Aug. 1, 1974. Amended by Laws 1976, c. 79, § 1, emerg. eff. May 3, 1976; Laws 1992, c. 239, § 4, emerg. eff. May 19, 1992; Laws 1997, c. 133, § 517, eff. July 1, 1999; Laws 1999, c. 341, § 2, eff. Nov. 1, 1999; Laws 2000, c. 66, § 1, emerg. eff. April 14, 2000; Laws 2002, c. 294, § 19, eff. Nov. 1, 2002; Laws 2006, c. 271, § 21, eff. July 1, 2006. NOTE: Laws 1998, 1st Ex. Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 517 from July 1, 1998, to July 1, 1999.

§61-117. Award to other than lowest bidder.

If an award is made to other than the lowest bidder, the awarding public agency shall accompany its action with a publicized statement setting forth the reason for its action. Such statement shall be placed on file, open to public inspection and be a matter of public record.

Added by Laws 1974, c. 298, § 17, operative Aug. 1, 1974.

§61-118. Prequalification of bidders.

A. In order to determine the responsibility of bidders, the awarding public agency may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify as responsible bidders prior to submitting bids on a public construction contract. Prequalification to bid or perform work pursuant to this section does not constitute a license. Except as provided in subsection B of this section, prequalification shall not serve as a substitute for a license otherwise required by law. Notice of any such prequalification requirement shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the same manner as proposals to award public construction contracts as set forth in Section 104 of this title. Financial information including, but not limited to, audited financial statements required by the awarding public agency as part of prequalification shall remain confidential.

B. The Oklahoma Transportation Commission and the Oklahoma Transportation Authority may establish a system for prequalifying prospective bidders on construction and maintenance contracts to be awarded by the Commission or Authority. The Commission and the Authority shall be the sole judge of the qualifications of prospective bidders and shall ascertain, to their exclusive satisfaction, the qualifications of each prequalified bidder. Any contractor or subcontractor prequalified as of the effective date of this act performing signing, highway lighting, or traffic signal installation or maintenance for the Oklahoma Department of Transportation or the Oklahoma Transportation Authority shall be allowed to continue to bid and perform such work without obtaining any additional license from this state or any political subdivision of this state. However, no contractor or subcontractor may

transfer, convey or assign this exemption to any other person or entity.

Added by Laws 1974, c. 298, § 18, operative Aug. 1, 1974. Amended by Laws 1992, c. 239, § 5, emerg. eff. May 19, 1992; Laws 1994, c. 203, § 2, eff. July 1, 1994; Laws 2000, c. 66, § 2, emerg. eff. April 14, 2000; Laws 2002, c. 294, § 20, eff. Nov. 1, 2002; Laws 2008, c. 212, § 3, emerg. eff. May 19, 2008.

§61-119. Rejection of bids.

By majority action of the governing board of the awarding public agency or the chief administrating officer of an awarding public agency without a governing board, the awarding public agency shall have the right to reject any or all bids and solicit bidders again as herein provided if, in the opinion of the governing body of the public agency, the best interests of the people of the State of Oklahoma would be best served by so doing.

Added by Laws 1974, c. 298, § 19, operative Aug. 1, 1974. Amended by Laws 2002, c. 294, § 21, eff. Nov. 1, 2002.

§61-119.1. Certain contract to be negotiated when no bid is received.

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 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.

Added by Laws 1980, c. 339, § 3, emerg. eff. June 25, 1980. Amended by Laws 1992, c. 9, § 1, eff. July 1, 1992; Laws 2006, c. 271, § 22, eff. July 1, 2006; Laws 2021, c. 340, § 8, eff. Nov. 1, 2021; Laws 2022, c. 238, § 25, eff. Nov. 1, 2022.

§61-120. Assignment of contracts.

No public construction contract shall be assignable by the successful bidder without written consent of the governing body of the awarding public agency, evidenced by resolution. In no event shall such a contract be assigned to a bidder who was declared by the awarding public agency not to be a responsible bidder in the consideration of bids received for the particular contract.

Added by Laws 1974, c. 298, § 20, operative Aug. 1, 1974.

§61-121. Change orders or addenda.

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 Director of the Office of Management and Enterprise Services, or the 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 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.

Added by Laws 1974, c. 298, § 21, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 9, emerg. eff. June 5, 1975; Laws 1989, c. 164, § 1, emerg. eff. May 8, 1989; Laws 1993, c. 293, § 2, emerg. eff. June 3, 1993; Laws 1995, c. 200, § 3, emerg. eff. May 19, 1995; Laws 1997, c. 72, § 1, eff. Nov. 1, 1997; Laws 1998, c. 118, § 1, eff. July 1, 1998; Laws 2000, c. 363, § 11, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 22, eff. Nov. 1, 2002; Laws 2004, c. 328, § 2, eff. July 1, 2004; Laws 2006, c. 271, § 23, eff. July 1, 2006; Laws 2009, c. 257, § 3, eff. Nov. 1, 2009; Laws 2011, c. 112, § 1, eff. Nov. 1, 2011; Laws 2012, c. 304, § 315; Laws 2013, c. 170, § 1, eff. Nov. 1, 2013; Laws 2017, c. 68, § 1, eff. Nov. 1, 2017; Laws 2019, c. 299, § 4, eff. Jan. 1, 2020; Laws 2022, c. 238, § 26, eff. Nov. 1, 2022.

§61-122. Taxpayer suits to enjoin execution of unlawful contracts.

Any taxpayer of the State of Oklahoma, or any bona fide unsuccessful bidder on a particular public construction contract, within ten (10) days after any such contract has been executed, is empowered to bring suit in the district court of the county where the work, or the major part of it, is to be done to enjoin the performance of such contract if entered into in violation of the provisions of this act.

Added by Laws 1974, c. 298, § 22, operative Aug. 1, 1974.

§61-123. Supervisor's certification to accompany invoices - Exception.

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

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

B. If project progressive payments are based on the public agency's estimated quantities of materials provided and work performed, certifications are not required. Payment of progressive estimates shall not constitute a defense or in any manner affect any cause or causes of action which the awarding public agency might have against the contractor for failure to properly perform in accordance with the project contract, plans, specifications, or special provisions. Final estimates shall contain a sworn certification signed by the contractor that the work performed and the material provided conform to the requirements of the contract, plans, specifications, and special provisions.

Added by Laws 1974, c. 298, § 23, operative Aug. 1, 1974. Amended by Laws 2006, c. 271, § 24, eff. July 1, 2006; Laws 2007, c. 263, § 1, eff. Nov. 1, 2007.

§61-124. Inspections.

The awarding public agency shall make provision for the inspection of projects prior to acceptance by the said agency and shall approve claims for payment only after proper inspection has been made as provided in the plans and specifications for said project.

Added by Laws 1974, c. 298, § 24, operative Aug. 1, 1974.

§61-125. Accounting procedure.

The Director of the Office of Management and Enterprise Services shall prescribe the accounting procedure to be followed to pay costs and payments to contractors on public construction contracts with state agencies. The Director of the Office of Management and Enterprise Services is directed to include any procedures necessary to provide accountability for state funds and funds furnished by an agency of the United States Government.

Added by Laws 1974, c. 298, § 25, operative Aug. 1, 1974. Amended by Laws 2012, c. 304, § 316.

§61-126. Construction on force account basis.

Nothing in this act shall be construed to prevent a public agency from doing public construction work on a force account basis.

Added by Laws 1974, c. 298, § 26, operative Aug. 1, 1974.

§61-127. Contracts made by a public entity - Applicability.

This act shall apply to contracts made by a public entity operating pursuant to the Local Industrial Development Act or the Local Development Act except where the public improvements, buildings, or repairs are being made or constructed as a part of an agreement to provide development financing assistance, and where the

cost of such public improvements does not exceed twenty-five percent (25%) of the total amount of the estimated public and private investment being made within the related increment district. Added by Laws 1974, c. 298, § 27, operative Aug. 1, 1974. Amended by Laws 2006, c. 271, § 25, eff. July 1, 2006; Laws 2011, c. 361, § 3.

§61-128. Builder's risk insurance.

The awarding public agency is authorized to require the contractor to carry builder's risk insurance against damage from fire and the elements during the process of construction to the extent of protecting said public agency's equity in said project until accepted by said agency.

Added by Laws 1974, c. 298, § 28, operative Aug. 1, 1974. Amended by Laws 2002, c. 294, § 23, eff. Nov. 1, 2002.

§61-129. Contracts exempt.

A. The Public Competitive Bidding Act of 1974 shall not apply to contracts awarded or contracts for which bids have been solicited on or before August 1, 1974.

B. The Public Competitive Bidding Act of 1974 shall not apply to contracts awarded or contracts for which bids are solicited by 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.

C. The Public Competitive Bidding Act of 1974 shall not apply to contracts awarded or contracts for which bids are solicited by the Oklahoma Municipal Power Authority.

Added by Laws 1974, c. 298, § 29, operative Aug. 1, 1974. Amended by Laws 2009, c. 454, § 5; Laws 2022, c. 223, § 2, eff. Nov. 1, 2022.

NOTE: This section was purportedly repealed by Laws 2022, c. 238, § 52, eff. Nov. 1, 2022.

§61-130. Emergencies.

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 Office of Management and Enterprise Services 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.

Added by Laws 1974, c. 298, § 30, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 10, emerg. eff. June 5, 1975; Laws 1981, c. 51, § 1, emerg. eff. April 13, 1981; Laws 1982, c. 151, § 1, emerg. eff. April 12, 1982; Laws 1997, c. 133, § 84, eff. July 1, 1997; Laws 1998, c. 364, § 16, emerg. eff. June 8, 1998; Laws 2000, c. 6, § 32, emerg. eff. March 20, 2000; Laws 2000, c. 363, § 12, emerg. eff. June 6, 2000; Laws 2001, c. 298, § 4, emerg. eff. May 31, 2001; Laws 2002, c. 294, § 24, eff. Nov. 1, 2002; Laws 2007, c. 265, § 1, eff. Nov. 1, 2007; Laws 2011, c. 362, § 3, eff. Nov. 1, 2011; Laws 2012, c. 304, § 317; Laws 2014, c. 184, § 1, eff. Nov. 1, 2014; Laws 2014, c. 271, § 1, eff. Nov. 1, 2014; Laws 2016, c. 293, § 1, emerg. eff. May 11, 2016; Laws 2021, c. 340, § 9, eff. Nov. 1, 2021; Laws 2022, c. 238, § 27, eff. Nov. 1, 2022.

NOTE: Laws 1997, c. 72, § 2 repealed by Laws 2000, c. 6, § 34, emerg. eff. March 20, 2000.

§61-131. Splitting of contracts - Punishment and fine.

No contract shall be split into partial contracts for the purpose of avoiding the requirements of this act. All such partial contracts shall be void. Any person who knowingly violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

Added by Laws 1974, c. 298, § 31, operative Aug. 1, 1974. Amended by Laws 1979, c. 28, § 2, emerg. eff. April 3, 1979; Laws 1998, c. 365, § 5, eff. July 1, 1998; Laws 2000, c. 363, § 13, emerg. eff. June 6, 2000; Laws 2006, c. 78, § 1, eff. Nov. 1, 2006; Laws 2006, c. 271, § 26, eff. July 1, 2006.

§61-132. Repealed by Laws 1983, c. 304, § 182, eff. July 1, 1983.

§61-133. Law governing.

If a statute, charter or general ordinance provides more stringent standards or procedures than those provided by this act, then the statute, charter or general ordinance shall prevail.

Added by Laws 1974, c. 298, § 33, operative Aug. 1, 1974.

§61-134. Insurance or bond to be secured from carrier licensed in Oklahoma.

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

Added by Laws 1974, c. 298, § 34, operative Aug. 1, 1974. Amended by Laws 1975, c. 266, § 11, emerg. eff. June 5, 1975.

§61-135. Public agencies or officers not to exert influence in procuring particular bond or insurance.

A. No public agency, nor any officer, agent or employee thereof, nor any person acting or purporting to act on behalf of such public agency or an officer, agent or employee thereof, shall, with respect to any public construction contract require or attempt to require a contractor or any subcontractor to make application to or to procure or obtain from a particular insurance or surety company, agent or broker, any of the bonds or insurance required by this act.

B. Any provisions in a public construction contract or in the bidding documents in conflict herewith are hereby declared to be contrary to the public policy of this state and thereby void.

C. Any person who violates this section shall, upon conviction, be deemed guilty of a misdemeanor.

Added by Laws 1975, c. 266, § 12, emerg. eff. June 5, 1975.

§61-136. Conflicts with federal rules and regulations - Laws governing.

In the event any provision of this act conflicts with or is inconsistent in any manner with the rules and regulations of any agency of the United States Government, which is providing all or any portion of the funds used to finance any public construction contract, the rules and regulations of said agency of the United States Government shall supersede and take precedence over such portion or portions of this act in conflict or inconsistent therewith, it being the intent of the Legislature to secure all of the benefits available to the people of the State of Oklahoma from federally assisted programs.

Added by Laws 1975, c. 266, § 13, emerg. eff. June 5, 1975.

§61-137. Termination of certain unperformed contracts.

Any contract which has been bid under the provisions of the Public Competitive Bidding Act, Section 101 et seq. of Title 61 of the Oklahoma Statutes, and on which no work has been performed and no formal claim or litigation has been pending within the last twenty-four (24) months shall be terminated by the public agency which awarded the contract. After termination, the public agency shall determine the amount of any final payment due to the contractor and shall make such payment to the contractor at the contractor's last-known address, or if the public agency is unable

to locate the contractor, the amount due shall be held in a separate account by the State Treasurer in the name of the contractor. Termination of the contract and payment to the contractor or deposit of the funds due to the contractor as determined by the public agency shall release the public agency from any further liability to the contractor or surety company. Any such funds held by the State Treasurer for the contractor which are not claimed by the contractor within thirty-six (36) months from the date of deposit with the State Treasurer shall be deposited in the General Revenue Fund and the state shall have no further liability on the project to the contractor or surety company.

Added by Laws 1992, c. 239, § 6, emerg. eff. May 19, 1992.

§61-138. Noncollusion affidavit attached to bid submitted to school district, county or municipality.

Any competitive bid submitted pursuant to the Public Competitive Bidding Act of 1974 to a school district, county or municipality for furnishing of goods or services shall be accompanied by the sworn noncollusion statement contained in Section 85.22 of this title, modified in wording to refer to the school district, county or municipality instead of the state.

Added by Laws 1974, c. 43, § 3, emerg. eff. April 13, 1974. Amended by Laws 1980, c. 339, § 2, emerg. eff. June 25, 1980. Renumbered from Title 74, § 85.24 by Laws 1999, c. 289, § 18, eff. July 1, 1999.

§61-139. Authority to enter into cooperative purchasing agreements.

A. In addition to any authority to enter an agreement pursuant to the Interlocal Cooperation Act, any school district, including a technology school district, may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the acquisition of any commodities or services with one or more public agencies in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public agencies and open-ended state public procurement contracts.

B. Any local public procurement unit may either participate in, sponsor, conduct or administer a cooperative or piggybacking purchasing agreement for the acquisition of any commodities or services, including construction services, with one (1) or more public procurement units or external procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units. Purchases made in accordance with this subsection by a local public procurement unit shall be required

to satisfy any procurement regulation, including The Central Purchasing Act, the Public Competitive Bidding Act, the Finance Act, related administrative rules and federal regulations that may apply due to the federal source of the funding for the anticipated purchase.

C. For purposes of this section, the following definitions apply:

1. "Local public procurement unit" shall mean, inter alia, any county, city, town, state agency, and any other subdivision of the state or public unit or agency thereof;

2. "External procurement unit" shall mean any buying organization in the United States not located in this state which, if located in this state, would qualify as a public procurement unit; and

3. "Cooperative or piggybacking purchasing agreement" shall mean an agreement between a local public procurement unit and another local public procurement unit or an external procurement unit to authorize the use of a contract procured by one of the parties to the agreement to benefit the other party to the agreement. This term shall also mean an agreement that provides access to a product or service that is lower in price than a comparable product or service that is available through the usage of a statewide, multistate or multigovernmental contract issued by the state Purchasing Division.

D. Nothing in this section shall supersede the obligation of a state agency to adhere to rules regarding statewide contracts issued by the state Purchasing Division. Neither shall any provision of this section be construed to waive the obligation of a state agency to utilize a mandatory purchasing contract as designated by the State Purchasing Director.

Added by Laws 2017, c. 252, § 1, eff. Nov. 1, 2017.

§61-151. Repealed by Laws 2011, c. 34, § 1, eff. Nov. 1, 2011.

§61-152. Repealed by Laws 2011, c. 34, § 1, eff. Nov. 1, 2011.

§61-153. Repealed by Laws 2011, c. 34, § 1, eff. Nov. 1, 2011.

§61-154. Repealed by Laws 2011, c. 34, § 1, eff. Nov. 1, 2011.

§61-155. Repealed by Laws 2011, c. 34, § 1, eff. Nov. 1, 2011.

§61-156. Repealed by Laws 2011, c. 34, § 1, eff. Nov. 1, 2011.

§61-157. Repealed by Laws 2011, c. 34, § 1, eff. Nov. 1, 2011.

§61-201. Short title - Public Facilities Act.

Sections 202 through 213 of this title shall be known and may be cited as the "Public Facilities Act".

Added by Laws 1983, c. 304, § 169, eff. Jan. 1, 1984. Amended by Laws 1986, c. 301, § 20, operative July 1, 1986; Laws 2013, c. 302, § 6, eff. Nov. 1, 2013; Laws 2019, c. 299, § 5, eff. Jan. 1, 2020.

§61-202. Definitions.

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 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 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. "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;

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;

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;

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;

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

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;

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;

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

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, the Oklahoma Municipal Power Authority, and the Commissioners of the Land Office.

Added by Laws 1983, c. 304, § 170, eff. Jan. 1, 1984. Amended by Laws 1986, c. 83, § 1; Laws 1986, c. 301, § 21, operative July 1, 1986; Laws 2000, c. 365, § 1, emerg. eff. June 6, 2000; Laws 2001, c. 5, § 33, emerg. eff. March 21, 2001; Laws 2002, c. 294, § 28, eff. Nov. 1, 2002; Laws 2006, c. 271, § 27, eff. July 1, 2006; Laws 2012, c. 184, § 1; Laws 2013, c. 15, § 48, emerg. eff. April 8, 2013; Laws 2013, c. 302, § 7, eff. Nov. 1, 2013; Laws 2016, c. 71, § 3; Laws 2019, c. 299, § 6, eff. Jan. 1, 2020; Laws 2022, c. 238, § 28, eff. Nov. 1, 2022; Laws 2024, c. 452, § 125, emerg. eff. June 14, 2024.

NOTE: Laws 2000, c. 363, § 14 repealed by Laws 2001, c. 5, § 34, emerg. eff. March 21, 2001. Laws 2012, c. 304, § 318 repealed by Laws 2013, c. 15, § 49, emerg. eff. April 8, 2013.

§61-202.1. Design-build and at-risk construction management project delivery methods - Authorization required - Exemptions.

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

B. The use of design-build and construction management project delivery methods shall not interfere or inhibit the opportunity for subcontractors and trade contractors to openly and freely compete for subcontracts or trade contracts pursuant to the Public Competitive Bidding Act of 1974. The State Facilities Director, or designee, or the construction manager shall make the subcontracting and supply opportunities publicly known, as follows:

1. Whenever the estimated cost of the contract exceeds Fifty Thousand Dollars (\$50,000.00), public notice shall be given by

publication in a newspaper of general circulation and published in the county where the work, or the major part of the work, is to be done. Such notice by publication shall 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 the publication's use and information whenever the estimated cost of the contract exceeds Fifty Thousand Dollars (\$50,000.00); provided, however, this section shall not be construed to require the publication of such notice in such trade or construction publication or to require the provision of such notice to more than one in-state trade or construction publication or to any out-of-state trade or construction publication.

C. Bids shall be publicly opened at the time and place designated in the public notice. A representative of the State Facilities Director shall be present at the bid opening.

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

E. The Office of Management and Enterprise Services shall, pursuant to the Administrative Procedures Act, promulgate rules to effect procedures, processes and design-build/construction management fee guidelines necessary to the fulfillment of its responsibilities under this section.

Added by Laws 2000, c. 365, § 2, emerg. eff. June 6, 2000. Amended by Laws 2003, c. 277, § 1, eff. July 1, 2003; Laws 2005, c. 79, § 1, eff. Nov. 1, 2005; Laws 2006, c. 271, § 28, eff. July 1, 2006; Laws 2012, c. 304, § 319; Laws 2013, c. 302, § 8, eff. Nov. 1, 2013; Laws 2019, c. 299, § 7, eff. Jan. 1, 2020.

§61-202v2. Definitions.

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 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 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. "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;

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;

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;

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;

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

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;

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;

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

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.

Added by Laws 1983, c. 304, § 170, eff. Jan. 1, 1984. Amended by Laws 1986, c. 83, § 1; Laws 1986, c. 301, § 21, operative July 1, 1986; Laws 2000, c. 365, § 1, emerg. eff. June 6, 2000; Laws 2001, c. 5, § 33, emerg. eff. March 21, 2001; Laws 2002, c. 294, § 28, eff. Nov. 1, 2002; Laws 2006, c. 271, § 27, eff. July 1, 2006; Laws 2012, c. 184, § 1; Laws 2013, c. 15, § 48, emerg. eff. April 8, 2013; Laws 2013, c. 302, § 7, eff. Nov. 1, 2013; Laws 2016, c. 71, § 3; Laws 2019, c. 299, § 6, eff. Jan. 1, 2020; Laws 2022, c. 238, § 28, eff. Nov. 1, 2022.

NOTE: Laws 2000, c. 363, § 14 repealed by Laws 2001, c. 5, § 34, emerg. eff. March 21, 2001. Laws 2012, c. 304, § 318 repealed by Laws 2013, c. 15, § 49, emerg. eff. April 8, 2013.

§61-203. Repealed by Laws 2022, c. 238, § 53, eff. Nov. 1, 2022.

§61-204. Office of Management and Enterprise Services - Duties.

A. The Office of Management and Enterprise Services shall:

1. 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;

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

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

4. Develop and issue solicitations for award of state agency contracts for construction services. The Office shall have final approval authority for contracts and contract documents. Neither the 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;

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;

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;

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 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;

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

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

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

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

B. When a state agency 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 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.

Added by Laws 1983, c. 304, § 172, eff. Jan. 1, 1984. Amended by Laws 1984, c. 279, § 13, operative July 1, 1984; Laws 1985, c. 294, § 10, emerg. eff. July 24, 1985; Laws 1986, c. 301, § 22, operative July 1, 1986; Laws 1988, c. 319, § 11, eff. Sept. 30, 1988; Laws 1998, c. 364, § 17, emerg. eff. June 8, 1998; Laws 2000, c. 363, § 16, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 29, eff. Nov. 1, 2002; Laws 2003, c. 277, § 2, eff. July 1, 2003; Laws 2006, c. 271, § 29, eff. July 1, 2006; Laws 2012, c. 184, § 2; Laws 2013, c. 15, § 50, emerg. eff. April 8, 2013; Laws 2013, c. 302, § 10, eff. Nov. 1, 2013; Laws 2022, c. 238, § 29, eff. Nov. 1, 2022.

NOTE: Laws 2012, c. 304, § 321 repealed by Laws 2013, c. 15, § 51, emerg. eff. April 8, 2013.

§61-204.1. Expired.

NOTE: This section, from Laws 2009, c. 273, § 2, expired July 1, 2011. Laws 2009, c. 273, § 5 provides: "Sections 1 and 2 of this act shall cease to have the force and effect of law on July 1, 2011."

§61-205. Access to records.

Employees of the Office of Management and Enterprise Services designated by the Director of the Office shall have access to state agency records that relate to state construction projects. The Director may authorize review or audit of the records.

Added by Laws 1983, c. 304, § 173, eff. Jan. 1, 1984. Amended by Laws 2000, c. 363, § 17, emerg. eff. June 6, 2000; Laws 2012, c. 304, § 322.

§61-206. Repealed by Laws 1998, c. 364, § 38, emerg. eff. June 8, 1998.

§61-206.1. Repealed by Laws 1998, c. 364, § 38, emerg. eff. June 8, 1998.

§61-207. Repealed by Laws 2000, c. 363, § 24, emerg. eff. June 6, 2000.

§61-207.1. Repealed by Laws 2000, c. 363, § 24, emerg. eff. June 6, 2000.

§61-207.2. Architects, engineers or land surveyors - Employment.

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. The University Hospitals Authority and University Hospitals Trust.

Added by Laws 1986, c. 301, § 24, operative July 1, 1986. Amended by Laws 1987, c. 203, § 96, operative July 1, 1987; Laws 1994, c. 283, § 4, eff. Sept. 1, 1994; Laws 2000, c. 363, § 18, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 30, eff. Nov. 1, 2002; Laws 2005, c. 86, § 1, eff. Nov. 1, 2005; Laws 2008, c. 319, § 6, eff. Nov. 1, 2008; Laws 2009, c. 454, § 6; Laws 2012, c. 304, § 323; Laws 2019, c. 495, § 9, eff. Nov. 1, 2019; Laws 2022, c. 238, § 30, eff. Nov. 1, 2022.

NOTE: Editorially renumbered from § 207.1 of this title to avoid duplication in numbering.

§61-207.3. Repealed by Laws 2000, c. 363, § 24, emerg. eff. June 6, 2000.

§61-207.4. Repealed by Laws 2006, c. 271, § 37, eff. July 1, 2006.

§61-208. Approval, negotiation and award of contracts - Costs exceeding estimated and available funding - Negotiations - Contracts for managed construction services delivery - Facility management and maintenance.

A. 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 Office.

C. The 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 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 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 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, lowest responsible bidder, and the Director, the Office may award the public construction contract to the lowest responsible bidder.

4. The 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 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 Director.

F. The 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 Director; or
2. 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 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 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 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 Office; and

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

Added by Laws 1983, c. 304, § 176, eff. Jan. 1, 1984. Amended by Laws 2000, c. 363, § 19, emerg. eff. June 6, 2000; Laws 2006, c. 271, § 30, eff. July 1, 2006; Laws 2012, c. 304, § 324; Laws 2013, c. 302, § 11, eff. Nov. 1, 2013; Laws 2016, c. 71, § 4; Laws 2022, c. 238, § 31, eff. Nov. 1, 2022.

§61-208.1. Contracting for construction services - Fee.

The 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 Office. The Office may collect a reasonable fee for management services. Annual fees to the 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 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. Added by Laws 1986, c. 301, § 26, operative July 1, 1986. Amended by Laws 2000, c. 363, § 20, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 31, eff. Nov. 1, 2002; Laws 2003, c. 277, § 3, eff. July 1, 2003; Laws 2012, c. 184, § 3; Laws 2013, c. 15, § 52, emerg. eff. April 8, 2013; Laws 2013, c. 302, § 12, eff. Nov. 1, 2013; Laws 2022, c. 238, § 32, eff. Nov. 1, 2022.

NOTE: Laws 2012, c. 304, § 325 repealed by Laws 2013, c. 15, § 53, emerg. eff. April 8, 2013.

§61-208.2. State Construction Revolving Fund.

There is hereby created in the State Treasury a revolving fund for 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 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 Office. The fund shall be used to pay expenses resulting from contracts

awarded by the Office and to defray Office operating costs and expenses the Office incurs to support 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.

Added by Laws 1986, c. 301, § 27, operative July 1, 1986. Amended by Laws 2002, c. 294, § 32, eff. Nov. 1, 2002; Laws 2003, c. 372, § 1, eff. July 1, 2003; Laws 2012, c. 184, § 4; Laws 2013, c. 15, § 54, emerg. eff. April 8, 2013; Laws 2013, c. 302, § 13, eff. Nov. 1, 2013; Laws 2022, c. 238, § 33, eff. Nov. 1, 2022.

NOTE: Laws 2012, c. 304, § 326 repealed by Laws 2013, c. 15, § 55, emerg. eff. April 8, 2013.

§61-208.3. Exempted entities - Compliance with act.

Nothing in the Public Facilities Act shall be construed to prevent any state entity exempted from any of the provisions of the Public Facilities Act from complying with any provisions of the Public Facilities Act.

Added by Laws 1986, c. 301, § 28, operative July 1, 1986. Amended by Laws 2013, c. 302, § 14, eff. Nov. 1, 2013.

§61-209. Rulemaking.

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 Office of Management and Enterprise Services, to perform any part of the responsibilities of the 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 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.

Added by Laws 1983, c. 304, § 177, eff. Jan. 1, 1984. Amended by Laws 1984, c. 279, § 14, operative July 1, 1984; Laws 1985, c. 294, § 11, emerg. eff. July 24, 1985; Laws 1986, c. 83, § 2; Laws 2000, c. 363, § 21, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 33, eff. Nov. 1, 2002; Laws 2003, c. 277, § 4, eff. July 1, 2003; Laws 2004, c. 5, § 50, emerg. eff. March 1, 2004; Laws 2006, c. 271, § 31, eff. July 1, 2006; Laws 2009, c. 439, § 17, emerg. eff. June 2, 2009; Laws 2012, c. 304, § 327; Laws 2013, c. 302, § 15, eff. Nov. 1, 2013; Laws 2022, c. 238, § 34, eff. Nov. 1, 2022.

NOTE: Laws 2003, c. 60, § 6 repealed by Laws 2004, c. 5, § 51, emerg. eff. March 1, 2004.

§61-210. Model shared savings contract.

A. Shared savings contracts shall be developed in accordance with a model contract developed by 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 Office.

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

Added by Laws 1986, c. 83, § 3. Amended by Laws 2000, c. 363, § 22, emerg. eff. June 6, 2000; Laws 2012, c. 304, § 328; Laws 2013, c.

302, § 16, eff. Nov. 1, 2013; Laws 2022, c. 238, § 35, eff. Nov. 1, 2022.

§61-211. Selection of equipment on life cycle cost analysis basis.

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. Added by Laws 1986, c. 83, § 4. Amended by Laws 2002, c. 294, § 34, eff. Nov. 1, 2002; Laws 2012, c. 304, § 329; Laws 2022, c. 238, § 36, eff. Nov. 1, 2022.

§61-212. Performance-based efficiency contracts - Alternative to bidding process for certain contracts.

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 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 Office a sufficient bond for its faithful performance of the contract. In addition, the Office may require performance bonds covering the annual amount of guaranteed savings over the contract term. 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 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.

Added by Laws 2006, c. 271, § 32, eff. July 1, 2006. Amended by Laws 2012, c. 304, § 330; Laws 2021, c. 128, § 1, eff. Nov. 1, 2021; Laws 2022, c. 238, § 37, eff. Nov. 1, 2022.

§61-213. Public building energy and environmental performance program.

The purpose of this section is to promote effective energy and environmental standards for the construction, renovation, and maintenance of state buildings which will improve the capacity of the state to design, build, and operate high-performance buildings thus creating new jobs, contributing to economic growth, and increasing energy independence. To accomplish the objectives of this section, the state shall adopt planning and construction standards for state buildings that:

1. Conserve energy consumption and optimize the energy performance of new building construction;

2. Increase the demand for environmentally preferable building materials, finishes, and furnishings;

3. Reduce the dependence of the state on imported sources of energy through buildings that conserve energy and utilize local and renewable energy sources;

4. Protect and restore the natural resources of the state by avoiding development of inappropriate building sites;

5. Reduce the burden on municipal water supply and treatment by reducing potable water consumption;

6. Reduce waste generation and manage waste through recycling and diversion from landfill disposal;

7. Establish life-cycle cost analysis as the appropriate and most efficient analysis to determine the optimal performance level of a building project;

8. Ensure that the systems of each building project are designed, installed, and tested to perform according to the design intent and operational needs of the building; and

9. Authorize the Office of Management and Enterprise Services to pursue ENERGY STAR designation from the United States Environmental Protection Agency to further demonstrate the energy efficiency of a public building project.

Added by Laws 2008, c. 418, § 1, eff. July 1, 2009. Amended by Laws 2012, c. 304, § 331; Laws 2013, c. 302, § 17, eff. Nov. 1, 2013.

§61-215. Short title - Public Construction Management Act for Political Subdivisions.

Sections 8 through 10 of this act shall be known and may be cited as the "Public Construction Management Act for Political Subdivisions".

Added by Laws 2019, c. 299, § 8, eff. Jan. 1, 2020.

§61-216. Definitions.

A. The Public Construction Management Act for Political Subdivisions shall apply to political subdivisions of this state.

B. As used in the Public Construction Management Act for Political Subdivisions:

1. "Agency construction management" means the construction entity provides services to the owner without taking on financial risks for the execution of the actual construction and/or time of performance, and the owner contracts directly with those awarded trade contracts for the work;

2. "At-risk construction management" means the construction entity, after providing agency services during the preconstruction period:

- a. takes on the financial obligation to timely carry out construction under a specified cost agreement, and

- b. enters into written subcontracts for the work in accordance with the Construction Management Procedures for Political Subdivisions;

3. "Construction management" means a public construction 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, and
- b. at-risk construction management; and

4. "Political subdivision" or "subdivision" means any local governmental body formed pursuant to the laws of this state, including, but not limited to, school districts, vocational education districts, cities, counties, public trusts, public authorities, commissions or other local governmental bodies exercising their authority to contract for public construction delivery services. The term also applies to quasi-governmental and nongovernmental organizations delivering construction services using public funds or on behalf of a political subdivision.
Added by Laws 2019, c. 299, § 9, eff. Jan. 1, 2020.

§61-217. Construction managers - Written contract required - Procedure for awarding work.

A. Construction managers shall be selected by the political subdivision following the requirements set forth in subsection K of Section 62 of Title 61 of the Oklahoma Statutes.

B. A written contract between the political subdivision and the construction manager shall set forth the obligations of the parties, which, at a minimum, shall include the construction manager's scope of services, fees and expenses, as follows:

1. A construction management fee, which may be based on a percentage of the construction cost or as defined in the contract;

2. The cost or basis of cost expenses incurred by the construction manager to be reimbursed by the subdivision for normal general conditions and general requirements necessary for the work but not applicable to a particular subcontractor, trade contractor or supplier; and

3. Other project-related expenses as set forth in the contract.

C. The procedures for awarding work under agency construction management are as follows:

1. The construction manager, with the advice of the design consultant and subdivision, will develop individual bid packages for public bidding;

2. Public bidding on individual bid packages will comply with the requirements of the Public Competitive Bidding Act of 1974;

3. The construction manager shall evaluate all bids and recommend the lowest responsible bidder to the subdivision, who shall accept or reject the bids. The construction manager may assist the subdivision with the preparation of contracts and the receipt of insurance and bonds as required for public construction contracts by state law;

4. After trade contracts are awarded, the construction manager will perform contract administrative services as set forth in the agreement and may assist the subdivision with the review and processing of progress and final payments to the subcontractors. However, under no circumstances shall construction managers receive funds from subdivisions for payments of trade contractors;

5. The owner shall pay all trade contractors as required by the Fair Pay for Construction Act; and

6. Contracts awarded under an agency construction management delivery system shall not be modified such to permit the assignment of subcontracts and/or trade packages to the construction manager.

D. The procedures for awarding work under at-risk construction management are as follows:

1. The construction manager, with the advice of the design consultant and subdivision, will develop individual bid packages for public bidding;

2. Whenever the estimated cost of the contract exceeds Fifty Thousand Dollars (\$50,000.00), bid packages shall be let and awarded pursuant to the Public Competitive Bidding Act of 1974 and this section;

3. Bid packages with a value less than or equal to Fifty Thousand Dollars (\$50,000.00) may be awarded by the political subdivision based on written comparative quotes. Bid packages with a value less than or equal to Twenty-five Thousand Dollars (\$25,000.00) may be awarded by the political subdivision to any qualified vendor;

4. Once the bids are accepted by the construction manager and awards made by the subdivision and the subdivision indicates its bonding preference, as noted below, but before written agreements are executed, the construction manager will prepare a guaranteed maximum price (GMP) for the project or relevant portion of the work, as an amendment to the contract. After the subdivision approves the construction manager's GMP amendment, the construction manager shall enter into written subcontractor and supplier agreements for the work previously awarded by the subdivision. Upon receiving a notice to proceed with the work from the subdivision or its designee, the subdivision shall have the option, but not mandate, to require the construction manager to provide performance, payment and maintenance bonds, or any combination, in an amount equal to one hundred percent (100%) of the value of the work, excluding the construction manager's fee, general conditions, reimbursements and insurances.

"Payment bond", "performance bond" and "maintenance bond", as used herein, mean and refer to those bonds as defined in the Public Competitive Bidding Act of 1974;

5. The construction manager may require bonds from subcontractors or suppliers in an amount equal to one hundred percent (100%) of the value of their bid packages for subcontractors or suppliers not subject to bonding requirements of the Public Competitive Bidding Act of 1974. In such cases, the bonding requirements shall be set forth in the bidding documents;

6. The construction manager's work performed under this section may be on a lump-sum basis and subject to the change order limitations for a public construction contract as set forth in the Public Competitive Bidding Act of 1974 or may be performed under a cost-plus basis as determined by the subdivision;

7. The subdivision may withhold retainage from the construction manager's progress pay applications as set forth in the Public Competitive Bidding Act of 1974. The owner shall pay the construction manager as required by the Fair Pay for Construction Act; and

8. If a construction manager at-risk wishes to self-perform portions of the work to be performed, it may do so, provided the construction manager at-risk competitively bids the work under the same terms and conditions as the other bidders and the construction manager at-risk is the lowest responsible bidder for the work scope on which the bid was submitted.

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

Added by Laws 2019, c. 299, § 10, eff. Jan. 1, 2020.

§61-220. Repealed by Laws 2019, c. 299, § 11, eff. Jan. 1, 2020.

§61-220.1. Design-build as project delivery method for public water supply, wastewater treatment facilities and wastewater collection systems.

A. For purposes of this section, "design-build" means a project delivery method in which one entity works under a single contract with the project owner to provide design and construction services.

B. A conservancy district formed pursuant to Section 541 of Title 82 of the Oklahoma Statutes, a municipality, a county, a public trust, and any other political subdivision in this state that operates a public water supply system or wastewater treatment or collection system is authorized to utilize design-build as a project

delivery method for public water supply and wastewater treatment facilities and wastewater collection systems.

C. No later than November 1, 2022, the Department of Environmental Quality shall incorporate into its administrative rules a flexible permitting process to allow the utilization by the entities identified in subsection B of this section of the design-build project delivery method for public water supply and wastewater treatment facilities and wastewater collection systems.

D. In the interim between the effective date of this act and promulgation of rules, the Department may authorize no more than five pilot projects in which the entities identified in subsection B of this section may utilize the design-build project delivery method for public water supply and wastewater treatment facilities and wastewater collection systems, and the Department may use the results to promulgate rules.

Added by Laws 2021, c. 120, § 1, eff. July 1, 2021.

§61-221. Short title.

This act shall be known and may be cited as the "Fair Pay for Construction Act".

Added by Laws 2004, c. 256, § 1, eff. Nov. 1, 2004. Renumbered from Title 15, § 621 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§61-222. Definitions.

As used in the Fair Pay for Construction Act:

1. "Construction contract" means a written contract or subcontract awarded by an owner or contracting entity for the purpose of making any public improvements or constructing any public building or making repairs to or performing maintenance on the same;

2. "Material supplier" means any entity that supplies materials, services, or equipment to be used in conjunction with the performance of work on a construction contract;

3. "Prime contractor" means any entity that has a direct contract with an owner to perform work under a construction contract;

4. "Owner" means any state government entity, municipality, township, public trust or an instrumentality of a state government entity, municipality, township or public trust in this state, or any entity designated by the owner to act on the owner's behalf, that requests work to be performed by a contractor under a construction contract;

5. "Proper invoice" means a request for payment or partial payment based on work performed on a construction contract;

6. "Retainage" means the difference between a gross proper invoice amount on a construction contract and the amount paid on said contract;

7. "Subcontractor" means any entity that has a direct contract with a prime contractor to perform a portion of the work under a construction contract; and

8. "Sub-subcontractor" means any entity that has a direct contract with another subcontractor to perform a portion of the work under a construction contract.

Added by Laws 2004, c. 256, § 2, eff. Nov. 1, 2004. Amended by Laws 2004, c. 425, § 2, eff. July 1, 2004; Laws 2005, c. 92, § 1, eff. Nov. 1, 2005. Renumbered from Title 15, § 622 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§61-223. Construction contracts - Progress payments - Reduction.

A. On all construction contracts exceeding Twenty-five Thousand Dollars (\$25,000.00) in value an owner shall make progress payments to the prime contractor for work performed and materials properly stored, within thirty (30) calendar days after a proper invoice is submitted to the owner or a representative designated by the owner.

B. An owner or entity designated by the owner, may not reduce a proper invoice of a prime contractor without detailing and forwarding to the prime contractor, within fourteen (14) calendar days of receipt of the proper invoice, the reasons for reduction. The reduction may not be more than an amount that is reasonable to correct the work, as set forth in writing.

C. If a contracting entity has had their proper invoice reduced by another entity all other affected entities having a construction contract with the contracting entity shall be notified within seven (7) calendar days. Except as affected by a prior reduction, a prime contractor or subcontractor may not reduce the proper invoice of another subcontractor, sub-subcontractor, or material supplier without detailing and forwarding to the subcontractor, sub-subcontractor, or material supplier, within seven (7) calendar days of receipt of the proper invoice, the reasons for reduction. A prime contractor, subcontractor, or sub-subcontractor may also reduce a payment of a contracted party from a previous proper invoice. Any such reductions may not be more than an amount that is reasonable to correct the reasons for reduction, as set forth in writing. Any prime contractor, subcontractor or sub-subcontractor may be exempt from notification if the reduction is less than one percent (1%) of its net proper invoice or is due to mathematical errors.

Added by Laws 2004, c. 256, § 3, eff. Nov. 1, 2004. Amended by Laws 2004, c. 425, § 3, eff. July 1, 2004; Laws 2005, c. 92, § 2, eff. Nov. 1, 2005. Renumbered from Title 15, § 623 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§61-224. Payment of subcontractor or sub-contractor or supplier - Time limit.

A. If a subcontractor or material supplier has performed in accordance with the provisions of a construction contract, the prime contractor shall make payment to the subcontractor or material supplier no later than ten (10) calendar days after the prime contractor receives its corresponding payment for the work performed.

B. If a sub-subcontractor or material supplier has performed in accordance with the provisions of a construction contract, the sub-subcontractor or material supplier shall be entitled to receive payment no later than seven (7) calendar days after subcontractor receives its corresponding payment for the work performed.

Added by Laws 2004, c. 256, § 4, eff. Nov. 1, 2004. Renumbered from Title 15, § 624 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§61-225. Suspension or termination of construction contract - Payment.

A. Any prime contractor that performs work under a construction contract may suspend performance of the work or may terminate a construction contract if the prime contractor is not properly paid within forty-nine (49) calendar days of the date that the corresponding proper invoice is submitted. Written notice must be received by the owner at least seven (7) calendar days before any such intended suspension or termination.

B. A prime contractor or any entity that suspends performance due to the suspension of a prime contractor, is not required to furnish further performance until such entity is paid for the full amount, less retainage, of work performed, material supplied, or services rendered, together with any costs incurred for demobilization, mobilization and other costs attributable to delay of the work resulting from the shutdown and start-up of a project.

C. Any entity that suspends performance of the work or terminates a construction contract for nonpayment under this act shall not be held in breach of the construction contract.

D. If the owner delays in making payments to the prime contractor, any agreed-upon schedule or completion date and their resulting penalties, damages, bonuses, or rewards shall be extended by the same amount of calendar days that payments were late.

E. If a payment to a prime contractor is received later than as specified in this act, that prime contractor shall be entitled to receive interest pursuant to Section 41.4b of Title 62 of the Oklahoma Statutes. If the prime contractor has already paid a subcontractor, then no interest is due and owing to the subcontractor. If interest is paid to a prime contractor as provided herein, then any subsequent timely payment made to a subcontractor shall bear interest at the same rate paid to the prime contractor. If a prime contractor fails to timely pay a

subcontractor, such payment to a subcontractor shall bear interest at the rate of one and one-half percent (1 1/2%) per month.

Added by Laws 2004, c. 256, § 5, eff. Nov. 1, 2004. Amended by Laws 2004, c. 425, § 4, eff. July 1, 2004; Laws 2005, c. 92, § 3, eff. Nov. 1, 2005. Renumbered from Title 15, § 625 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§61-226. Retainage of portion of payment due - Release.

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. At any time the contractor has completed in excess of fifty percent (50%) of the total contract amount, the retainage shall be reduced to two and one-half percent (2.5%) of the amount earned to date once the owner or owner's duly authorized representative has determined that satisfactory progress is being made.

B. A subcontract shall include a provision for the retainage of a portion of payment due. Such retainage shall not exceed five percent (5%) of the amount of the payment due. When the work of the subcontractor has been determined by the holder to be at least fifty percent (50%) complete, the retainage shall be reduced to two and one-half percent (2.5%) of the original contract amount.

C. No later than twenty-one (21) calendar days after a certificate of substantial completion is issued for the project or separate usable phase of the project and upon adequate performance of the prime contractor and with approval of any applicable surety, retainage shall be released by the owner to the prime contractor less an amount no greater than one hundred fifty percent (150%) of the estimated costs to correct any incomplete or defective work as identified, itemized, and attached to the certificate of substantial completion. All remaining funds shall be released as each deficiency is satisfactorily completed. The prime contractor shall release within ten (10) calendar days of receipt the share of those funds that have been withheld from other entities. All other entities shall release within seven (7) calendar days of receipt the share of those funds that have been withheld from other entities. Added by Laws 2004, c. 256, § 6, eff. Nov. 1, 2004. Amended by Laws 2005, c. 92, § 4, eff. Nov. 1, 2005. Renumbered from § 626 of Title 15 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005. Amended by Laws 2010, c. 207, § 1, emerg. eff. May 5, 2010; Laws 2019, c. 456, § 1, eff. Nov. 1, 2019; Laws 2022, c. 315, § 2, eff. Nov. 1, 2022.

§61-227. Application of act - Void and unenforceable provisions, covenant, clauses or understandings.

- A. 1. This act shall not apply to:
- a. highway construction,

- b. railroad construction, or
- c. turnpike construction.

2. Except as the following may be a portion of a construction contract as defined in Section 2 of this act, this act shall not apply to:

- a. roads,
- b. bridges,
- c. utilities,
- d. traffic control,
- e. drainage construction,
- f. sanitary sewer construction, or
- g. waterline construction.

3. This act shall not apply to any contract relating to a single-, two-, three-, or four-family dwelling.

B. The following are against the public policy of this state and are void and unenforceable:

1. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state; and

2. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that disallows or alters the rights of any prime contractor, subcontractor, sub-subcontractor, or material supplier to receive and enforce any and all rights under this act.

Added by Laws 2004, c. 256, § 7, eff. Nov. 1, 2004. Amended by Laws 2005, c. 92, § 5, eff. Nov. 1, 2005. Renumbered from Title 15, § 627 by Laws 2005, c. 92, § 6, eff. Nov. 1, 2005.

§61-306. Property purchased from specific appropriations - Transfer to another department or institution.

In order that state property now located in one department or institution, which has been purchased out of an appropriation, specifically set up for such department or institution, which is not needed by such department or institution and is needed in other divisions of government, the Office of Management and Enterprise Services is hereby authorized to cause the transfer of such property to any department or institution in need of such excess property.

Added by Laws 1935, p. 23, § 1, emerg. eff. Feb. 28, 1935. Amended by Laws 1983, c. 304, § 119, eff. July 1, 1983; Laws 2012, c. 304, § 796. Renumbered from § 96 of Title 74 by Laws 2013, c. 209, § 18, eff. July 1, 2013.

§61-307. Property conveyed for public college or university - Implementation of transfer to designated board of regents - Limitations in deed.

A. Any property, real or personal, conveyed to the State of Oklahoma for the purpose of establishing or for the use and benefit of any public college or university in the State of Oklahoma, shall upon a request submitted to the Office of Management and Enterprise Services by the college or university which is the beneficiary of such conveyance, be conveyed to the board of regents of such college or university following a determination by the Office of Management and Enterprise Services, in its sole discretion, that such property has been and continues to be used for the benefit of such college or university.

B. The Office of Management and Enterprise Services is designated to act on behalf of the State of Oklahoma to implement a transfer from the State of Oklahoma to the designated board of regents of any property described in subsection A of this section.

C. A recital by the Office of Management and Enterprise Services in any deed (i) that said deed is executed pursuant to this section or (ii) that the original purpose of the conveyance to the State of Oklahoma was for establishing or for the use and benefit of the college or university grantee and that the property continues to be used for the benefit of the college or university grantee shall create a conclusive presumption as to the facts contained in said recital.

Added by Laws 2004, c. 398, § 1. Amended by Laws 2012, c. 304, § 797. Renumbered from § 96.1 of Title 74 by Laws 2013, c. 209, § 19, eff. July 1, 2013.

§61-308. Oil or gas lease of lands of public institutions.

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 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.

Added by Laws 1917, c. 223, p. 407, § 1, emerg. eff. March 23, 1917. Amended by Laws 1969, c. 312, § 1; Laws 1983, c. 304, § 120, eff. July 1, 1983; Laws 1992, c. 250, § 7, eff. July 1, 1992; Laws 2012, c. 304, § 798; Laws 2013, c. 209, § 4, eff. July 1, 2013. Renumbered from § 97 of Title 74 by Laws 2013, c. 209, § 20, eff. July 1, 2013. Amended by Laws 2022, c. 238, § 38, eff. Nov. 1, 2022.

§61-309. Oil, gas and mineral leases upon state lands - Drilling contracts - Notice - Disposition of royalties, bonuses or rentals.

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 responsible bidder. All bidding shall be by sealed written or electronic bids filed with said Office of Management and Enterprise Services.

B. 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 Maintenance of State Buildings Revolving Fund of the State of Oklahoma.

Added by Laws 1935, p. 22, § 1, emerg. eff. May 13, 1935. Amended by Laws 1936, Ex. Sess., p. 22, § 1, emerg. eff. Jan. 6, 1937; Laws 1937, p. 86, § 1, emerg. eff. May 14, 1937; Laws 1983, c. 304, § 121, eff. July 1, 1983; Laws 2012, c. 304, § 799. Renumbered from § 98 of Title 74 by Laws 2013, c. 209, § 21, eff. July 1, 2013. Amended by Laws 2022, c. 238, § 39, eff. Nov. 1, 2022.

§61-310. Oil and gas leases upon described state-owned lands.

The Office of Management and Enterprise Services is hereby authorized and empowered to advertise, sell, and execute an oil and gas lease or leases upon the following described state-owned lands constituting a portion of the State Capitol grounds:

Beginning at a point One Hundred Fifty-two and Seventy-seven One-hundredths (152.77) feet east of the Southwest Corner of the Northeast One-quarter (NE 1/4) of Section Twenty-seven (27), Township Twelve (12) North, Range Three (3) West. Thence North Four (4) Degrees Thirty-one (31) Minutes East, Twelve Hundred Eight and Fifty-five One-hundredths (1,208.55) feet. Thence West Four Hundred Ninety-six (496.0) feet. Thence South Four (4) Degrees Thirty-one (31) Minutes East, Twelve Hundred Eight and Fifty-five One-hundredths (1,208.55) feet. Thence East Three Hundred Five and Fifty-four One-hundredths (305.54) feet to the place of beginning, containing Eleven and Eight One-hundredths (11.08) acres, more or less, situated in Oklahoma County, Oklahoma.

In advertising, selling, and executing such lease or leases, such Office shall follow the provisions and requirements of Section 309 of this title. The Office may provide for the consolidation of such lease or leases with a lease or leases upon other lands under such terms as such Office may determine.

Added by Laws 1937, p. 26, § 1, emerg. eff. Jan. 22, 1937. Amended by Laws 1983, c. 304, § 122, eff. July 1, 1983; Laws 2012, c. 304, § 800. Renumbered from § 99 of Title 74 by Laws 2013, c. 209, § 22, eff. July 1, 2013. Amended by Laws 2014, c. 286, § 2, eff. Nov. 1, 2014.

§61-311. Jurisdiction over lands covered by lease.

The lands described in 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.

Added by Laws 1937, p. 26, § 3, emerg. eff. Jan. 22, 1937. Renumbered from § 101 of Title 74 by Laws 2013, c. 209, § 23, eff. July 1, 2013. Amended by Laws 2022, c. 238, § 40, eff. Nov. 1, 2022.

§61-312. Partial invalidity.

If any section, paragraph, sentence or phrase of this 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.

Added by Laws 1937, p. 26, § 4, emerg. eff. Jan. 22, 1937. Renumbered from § 102 of Title 74 by Laws 2013, c. 209, § 24, eff.

July 1, 2013. Amended by Laws 2022, c. 238, § 41, eff. Nov. 1, 2022.

§61-313. Development for oil and gas purposes of certain state-owned lands in Oklahoma City authorized - Agreements.

The Office of Management and Enterprise Services is authorized to provide for the development for oil and gas purposes of the following described property:

All of the-state owned lands not now leased for oil and gas mining purposes within a radius of five hundred (500) yards of a point on the half-section line running north and south between the northeast fourth and northwest fourth of Section twenty-seven (27), Township Twelve (12) North, Range three (3) West of the Indian Meridian, and the center of Twenty-second (22) Street in Oklahoma City, Oklahoma, extended east from the right-of-way of the Atchison, Topeka and Santa Fe Railway Company.

The development of such property shall be by means of a well, or wells, located on adjacent state-owned lands. The Office of Management and Enterprise Services is authorized to enter into an agreement, or agreements, with the owner of the oil and gas lease, or leases, on adjacent state-owned lands, consolidating said tract with said adjacent state-owned lands or some part thereof for oil and gas development, upon such terms and conditions, and for such consideration as the Office of Management and Enterprise Services may prescribe. There shall be reserved to the state a royalty of not less than one fourth (1/4) of the oil and gas, or the proceeds thereof, that may be produced from the property first described. All development of the property first described for oil and gas purposes shall be by means of a well, or wells, located on the surface of said adjacent land but which may be directionally drilled and bottomed on and underneath the property first described. Added by Laws 1941, p. 441, § 1. Amended by Laws 1983, c. 304, § 123, eff. July 1, 1983; Laws 2012, c. 304, § 801. Renumbered from § 103 of Title 74 by Laws 2013, c. 209, § 25, eff. July 1, 2013.

§61-314. Use of other state-owned lands by lessees.

The Office of Management and Enterprise Services may authorize the use by the oil and gas lessees of the state-owned land that lies west of the north portion of Lincoln Terrace Addition to Oklahoma City, Oklahoma, and known as the State Historical Site, or such part thereof as may be necessary, as a base for the drilling, operating, and producing of a well to be directionally drilled and bottomed under some part of Lincoln Terrace Addition to Oklahoma City, Oklahoma, together with the right to drill such well through so much of said state-owned land as such lessees shall deem necessary to cause the bottom of the well to be located in or under said Lincoln Terrace Addition, on such terms and conditions and for such

consideration as the Office of Management and Enterprise Services may prescribe. Any such well drilled shall not be deemed to be a well drilled upon said Historical Site within the meaning and provisions of the oil and gas lease covering same.

Added by Laws 1941, p. 441, § 2. Amended by Laws 1983, c. 304, § 124, eff. July 1, 1983; Laws 2012, c. 304, § 802. Renumbered from § 104 of Title 74 by Laws 2013, c. 209, § 26, eff. July 1, 2013.

§61-315. Repealed by Laws 2022, c. 238, § 54, eff. Nov. 1, 2022.

§61-316. Payment of proceeds into Maintenance of State Buildings Revolving Fund.

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

Added by Laws 1941, p. 442, § 4. Renumbered from § 106 of Title 74 by Laws 2013, c. 209, § 28, eff. July 1, 2013. Amended by Laws 2022, c. 238, § 42, eff. Nov. 1, 2022.

§61-317. Oil and gas or mineral leases of state lands other than Capitol lands and parkways.

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 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 Maintenance of State Buildings Revolving Fund.

Added by Laws 1941, p. 440, § 1. Amended by Laws 1943, p. 236, § 1; Laws 1983, c. 304, § 125, eff. July 1, 1983; Laws 1995, c. 342, § 8, emerg. eff. June 9, 1995; Laws 2012, c. 304, § 803. Renumbered from § 107 of Title 74 by Laws 2013, c. 209, § 29, eff. July 1, 2013. Amended by Laws 2022, c. 238, § 43, eff. Nov. 1, 2022.

§61-318. Lease of property formerly occupied by Russell Girls Home.

The Office of Management and Enterprise Services is hereby authorized to lease the surface of a tract of land consisting of about ten (10) acres located in Oklahoma County, Oklahoma, formerly occupied and used by the state for the Russell Girls Home. Said lease shall be only for temporary periods of time, and shall contain a provision authorizing termination of such lease whenever the needs of state require said land. Said lease to be for a period not to exceed five (5) years with provisions for renewal thereof at the authorization of the said Office of Management and Enterprise Services, and to be upon such terms and consideration as the Office of Management and Enterprise Services deems adequate and proper.

Added by Laws 1945, p. 379, § 1, emerg. eff. May 5, 1945. Amended by Laws 1983, c. 304, § 126, eff. July 1, 1983; Laws 2012, c. 304, § 804. Renumbered from § 108.1 of Title 74 by Laws 2013, c. 209, § 30, eff. July 1, 2013.

§61-319. Purpose or use for which leased.

Such leases shall not be granted for a purpose or use that would interfere with or restrict in any manner the use to which other lands of the state are being used.

Added by Laws 1945, p. 379, § 3, emerg. eff. May 5, 1945. Renumbered from § 108.3 of Title 74 by Laws 2013, c. 209, § 31, eff. July 1, 2013.

§61-320. Repealed by Laws 2013, c. 209, § 47, eff. July 1, 2013.

NOTE: Renumbered from § 109.1 of Title 74 in same act, by Laws 2013, c. 209, § 32, eff. July 1, 2013.

§61-321. Repealed by Laws 2022, c. 238, § 54, eff. Nov. 1, 2022.

§61-322. Easement and right-of-way grants - Exemptions.

A. The Director of the Office of Management and Enterprise Services is hereby authorized to grant easements, rights-of-way, and enter into contracts authorizing the construction and maintenance of telephone, electric transmission and distribution lines, railroad lines, telegraph lines, and pipelines across any state lands under the management of said Director, and all lands set apart for the use and benefit of any state agency, department, or institution including all lands set apart for use of colleges, universities, hospitals, and eleemosynary institutions. Said easements and rights-of-way grants shall be for a period not to exceed twenty (20) years and shall provide for such considerations, terms, and conditions including privileges and conditions of renewal, as the Director of the Office of Management and Enterprise Services may determine advisable for the best interests of the state institutions in possession thereof.

B. 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, the Northeast Oklahoma Public Facilities Authority and the Department of Wildlife Conservation and their lands shall be exempt from the application of this section.

Added by Laws 1947, p. 587, § 1. Amended by Laws 1951, p. 249, § 1; Laws 1983, c. 304, § 137, eff. July 1, 1983; Laws 1985, H.J.R. No. 1039, p. 1682, § 4, eff. Nov. 1, 1985; Laws 1986, c. 245, § 8, emerg. eff. June 12, 1986; Laws 1997, c. 292, § 6, eff. July 1, 1997; Laws 1998, c. 203, § 7, emerg. eff. May 11, 1998; Laws 2012, c. 304, § 814. Renumbered from § 126.1 of Title 74 by Laws 2013, c. 209, § 34, eff. July 1, 2013. Amended by Laws 2014, c. 286, § 3, eff. Nov. 1, 2014; Laws 2016, c. 336, § 1.

§61-323. Leases - Exemptions.

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. 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. 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.

Added by Laws 1947, p. 588, § 2. Amended by Laws 1983, c. 304, § 138, eff. July 1, 1983; Laws 1985, H.J.R. No. 1039, p. 1682, § 5, eff. Nov. 1, 1985; Laws 1986, c. 245, § 9, emerg. eff. June 12, 1986; Laws 1987, c. 80, § 12, operative July 1, 1987; Laws 1992, c. 250, § 8, eff. July 1, 1992; Laws 1997, c. 292, § 7, eff. July 1, 1997; Laws 1998, c. 203, § 8, emerg. eff. May 11, 1998; Laws 2013, c. 209, § 5, eff. July 1, 2013. Renumbered from § 126.2 of Title 74 by Laws 2013, c. 209, § 35, eff. July 1, 2013. Amended by Laws 2014, c. 286, § 4, eff. Nov. 1, 2014; Laws 2022, c. 238, § 44, eff. Nov. 1, 2022.

§61-324. Director to take charge, manage and lease Capitol Building Lands.

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 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.

Also the following acreage tracts of land:

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.

Added by Laws 1947, p. 588, § 1, emerg. eff. May 16, 1947. Amended by Laws 1983, c. 304, § 139, eff. July 1, 1983; Laws 2012, c. 304, § 815. Renumbered from § 128.1 of Title 74 by Laws 2013, c. 209, § 36, eff. July 1, 2013. Amended by Laws 2022, c. 238, § 45, eff. Nov. 1, 2022.

§61-325. Inventory and appraisal - Sale.

The Office of Management and Enterprise Services shall make or cause to be made a full and complete inventory and appraisal of the property described in Section 324 of this title. Except for lands owned by the Department of Transportation, the Office may offer for sale to the highest bidder at public sale all of the lots, blocks, or acreage tracts of "Capitol Building Lands" that are not used by the state and which, in the judgment of the Office, will not be required for future use by the state. The property shall be offered for sale in separate lots or tracts, for cash, to the highest bidder. The sale shall be at public auction or under sealed bids whichever the Office may determine to be most advantageous. The sale shall be advertised in a newspaper of general circulation in Oklahoma County, Oklahoma, for not less than thirty (30) days prior to the date of sale. The notice shall contain an accurate description of all the property to be sold and terms and conditions of the sale.

The lands so offered for sale shall be subject to a reservation by this state in one-half (1/2) of all the mineral rights therein. If royalties are not paid to the state from any of the above-described lots or tracts of land, the sale of such properties shall be made subject to a reservation by this state of all of the mineral rights therein under the lots or tracts. The Office of Management and Enterprise Services shall reserve the right to refuse any and all bids for the property. No sale of any portion of the land shall be confirmed at a price less than ninety percent (90%) of the appraised value. All sales shall be approved by the Governor.

Added by Laws 1947, p. 589, § 2, emerg. eff. May 16, 1947. Amended by Laws 1983, c. 304, § 140, eff. July 1, 1983; Laws 2012, c. 304, § 816; Laws 2013, c. 209, § 6, eff. July 1, 2013. Renumbered from § 128.2 of Title 74 by Laws 2013, c. 209, § 37, eff. July 1, 2013. Amended by Laws 2014, c. 286, § 5, eff. Nov. 1, 2014.

§61-326. Disposition of proceeds - Leases for oil and gas purposes.

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 the Maintenance of State Buildings Revolving Fund. 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.

Added by Laws 1947, p. 590, § 3, emerg. eff. May 16, 1947. Amended by Laws 1983, c. 304, § 141, eff. July 1, 1983; Laws 2010, c. 413, § 27, eff. July 1, 2010; Laws 2012, c. 304, § 817. Renumbered from § 128.3 of Title 74 by Laws 2013, c. 209, § 38, eff. July 1, 2013. Amended by Laws 2014, c. 286, § 6, eff. Nov. 1, 2014; Laws 2022, c. 238, § 46, eff. Nov. 1, 2022.

§61-327. Procedures for disposal or lease of certain state-owned real property.

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,
- 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. Added by Laws 1983, c. 304, § 181, eff. July 1, 1983. Amended by Laws 1985, H.J.R. No. 1039, p. 1682, § 6, eff. Nov. 1, 1985; Laws 1997, c. 292, § 8, eff. July 1, 1997; Laws 1998, c. 203, § 9, emerg. eff. May 11, 1998; Laws 2003, c. 372, § 17, eff. July 1, 2003; Laws 2005, c. 234, § 2, emerg. eff. May 26, 2005; Laws 2006, c. 271, § 36, eff. July 1, 2006; Laws 2012, c. 304, § 818; Laws 2013, c. 209, § 7, eff. July 1, 2013. Renumbered from § 129.4 of Title 74 by Laws 2013, c. 209, § 39, eff. July 1, 2013. Amended by Laws 2014, c. 286, § 7, eff. Nov. 1, 2014; Laws 2016, c. 309, § 2, emerg. eff. May 16, 2016; Laws 2019, c. 204, § 2, eff. Nov. 1, 2019; Laws 2021, c. 483, § 1, eff. Nov. 1, 2021; Laws 2022, c. 238, § 47, eff. Nov. 1, 2022.

§61-327.1. Written proposals for state-owned properties not subject to disposition.

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 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 , lease, 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 proposals.

Added by Laws 2014, c. 248, § 1. Amended by Laws 2015, c. 77, § 1, eff. July 1, 2015; Laws 2022, c. 238, § 48, eff. Nov. 1, 2022.

§61-327.2. Proposals for investment real property.

A. When the Commissioners of the Land Office determine it is in the best interest of the trust, the Commissioners may invite the presentation of written proposals for the lease, sale, exchange, construction, maintenance, repair, improvement, development or redevelopment of any investment real property, as defined in this section, contained within the Land Office trust.

B. The term "investment real property" shall include all real property acquired by the Commissioners for investment purposes and shall exclude all real property originally granted in the Enabling Act of 1906.

C. Proposals shall be evaluated by the Commissioners of the Land Office investment committee which shall make recommendations to the Commissioners. The Commissioners shall retain authority to make all decisions concerning investment real property. Evaluation of the proposals shall be based on the following criteria:

1. The economic benefit of the proposal to the Land Office trust, advancement of long-term capital asset plan, investment objectives, or other advantages to the Land Office trust for the benefit of the trust;

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

3. The financial ability of the construction or maintenance provider, developer or redeveloper to perform in a timely fashion.

D. The Secretary of the Land Office may enter into negotiations with one or more respondents and may enter into contracts with the respondent or respondents selected by majority vote of the Commissioners in an open meeting.

E. The Commissioners may reject any and all bids.

Added by Laws 2016, c. 71, § 5.

§61-327.3. Transfer of certain public buildings to the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges -

Authority to lease and purchase properties and facilities for relocation.

A. Provided the United States government provides funding to the United States Department of Veterans Affairs for the Oklahoma Veterans Inpatient Facility in Tulsa through the Communities Helping Invest through Property and Improvements Needed for Veterans Act of 2016 (CHIP IN for Vets Act), effective January 1, 2021, title, ownership and possession of the Robert S. Kerr and J. Howard Edmondson State Office Buildings and all real estate and structures, parking and other improvements attached thereto, located at 440 and 444 S. Houston Street in Tulsa County, are hereby transferred to the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges. Provided such transfer occurs, related construction shall commence no later than July 1, 2021.

B. The Office of Management and Enterprise Services shall take all actions necessary to reflect such transfer in the land records of Tulsa County and to transfer all leases for space within the buildings to the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges as lessor. Tenants under said leases shall continue to have quiet enjoyment of the premises until relocation to new quarters.

C. Beginning July 1, 2021, for state agencies housed within the Robert S. Kerr and J. Howard Edmondson buildings, up to one hundred thousand (100,000) square feet shall be made available to tenants, and such tenants shall pay the monthly rental rate, determined by the Office of Management and Enterprise Services, to the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges until such time as those agencies are relocated. The Office of Management and Enterprise Services and tenants of the Robert S. Kerr and J. Howard Edmondson State Office Buildings may, at their discretion, remove selected fixtures, furniture and equipment, including signage, that are not critical to the operation of the buildings.

D. Upon transfer, the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges shall become solely responsible for operation and maintenance of the Robert S. Kerr and J. Howard Edmondson buildings. Operation and maintenance shall include payment of all utilities, insurance, assessments, agreements and other expenses. At the discretion of the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, contracts for goods and services for operation and maintenance of the Robert S. Kerr and J. Howard Edmondson buildings may be assigned by the Office of Management and Enterprise Services to the Board.

E. The Office of Management and Enterprise Services is hereby authorized to lease and purchase properties and facilities owned or purchased by the Commissioners of the Land Office, within the Tulsa metro area for the relocation of the state agencies currently housed within the Robert S. Kerr and J. Howard Edmondson buildings. The

Office of Management and Enterprise Services shall make all reasonable efforts to identify suitable space for the affected agencies and to relocate the affected agencies as soon as possible. Under no circumstances shall the affected state agencies be forced out of the Robert S. Kerr and J. Howard Edmondson State Office Buildings prior to December 31, 2021, or such later date as agreed to by the affected state agencies, if such delays arise out of or are caused by, directly or indirectly, forces beyond the control of the Office of Management and Enterprise Services.

Added by Laws 2020, c. 131, § 1, emerg. eff. May 21, 2020.

§61-328. Facilities management software program - Authority to procure software and implement program.

The Office of Management and Enterprise Services may:

1. Research and identify available facilities management software applications and existing facilities management software systems in other state agencies;

2. Procure facilities management software in accordance with the requirements of The Oklahoma Central Purchasing Act; and

3. Implement a comprehensive statewide facilities management software program in order to effectively identify state-owned real property and to efficiently and fiscally manage the long-range deferred maintenance funding requirements of such real property.

State agencies that have existing facilities management software systems shall cooperate with the Office in the integration of existing and future maintenance data into the statewide system database. It shall not be a requirement that the software directly interface with any other computer system. After full operational status of the management program is achieved, the Office of Management and Enterprise Services shall make an annual facilities condition assessment report to the Speaker of the Oklahoma House of Representatives, the President Pro Tempore of the State Senate, and the Governor. Provisions of this section shall not apply to the physical assets, buildings, and equipment of the Oklahoma State Regents for Higher Education.

Added by Laws 2006, c. 198, § 1, eff. July 1, 2006. Amended by Laws 2012, c. 304, § 819. Renumbered from § 129.4f of Title 74 by Laws 2013, c. 209, § 40, eff. July 1, 2013.

§61-329. Repealed by Laws 2022, c. 238, § 54, eff. Nov. 1, 2022.

§61-330. Repealed by Laws 2022, c. 238, § 54, eff. Nov. 1, 2022.

§61-330.1. Recording fee for Office of Management and Enterprise Services.

All instruments vesting any right, title or interest in lands or minerals and mineral rights, 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.

Added by Laws 2013, c. 209, § 8, eff. July 1, 2013. Amended by Laws 2022, c. 238, § 49, eff. Nov. 1, 2022.

§61-331. Repealed by Laws 2022, c. 238, § 54, eff. Nov. 1, 2022.

§61-332. Repealed by Laws 2014, c. 286, § 10, eff. Nov. 1, 2014.

§61-333. Repealed by Laws 2015, c. 215, § 1.

§61-334. Public buildings - Lactation room required.

A. As used in this section:

1. "Appropriate authority" means the head of a state agency or other official authority responsible for the operation of a covered public building;

2. "Covered public building" means a building owned or leased by the state where state employees work; and

3. "Lactation room" means a hygienic place, other than a bathroom, that:

a. is shielded from view,

b. is free from intrusion, and

c. contains a chair, a working surface and, if the public building is otherwise supplied with electricity, an electrical outlet.

B. The appropriate authority of a covered public building shall ensure that the building contains a lactation room that is made available for use by state employees to breast feed or express breast milk.

Added by Laws 2020, c. 78, § 1, eff. Nov. 1, 2020.