

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 HOUSE BILL 4080

By: Wallace

4
5 AS INTRODUCED

6 An Act relating to public buildings and public works;
7 amending 61 O.S. 2021, Sections 1, 4, 6, 11, and 12,
8 which relate to the bonding, contracting, and
9 construction of public buildings and works; modifying
10 construction bonds; regulating public contracts and
11 hours worked during a day; modifying preference
12 requirements for products produced in Oklahoma;
13 modifying requirements for accommodations for people
14 with disabilities; requiring submission of certain
15 plans to certain authorities; amending 61 O.S. 2021,
16 Sections 60, 61, 62, 62.2, 63, and 65, which relate
17 to construction management and consultant services;
18 regulating certain mandatory contract forms;
19 modifying definitions; eliminating references to the
20 Department of Real Estate Services and its Director;
21 regulating registration and selection of construction
22 managers and consultants; amending requirements for
23 contracts for on-call minor services; providing for
24 what shall be considered state property; establishing
procedures for when an emergency exists; amending 61
O.S. 2021, Section 84, which relates to the Fair and
Open Competition in Governmental Construction Act;
modifying prohibited contract terms; amending 61 O.S.
2021, Sections 102, 103.4, 103.7, 104, 105, 106, 107,
109, 110, 112, 113, 113.1, 119.1, 121, and 130, which
relate to the Public Competitive Bidding Act of 1974;
modifying definitions; modifying requirements for
school buildings and force accounts; modifying
contract requirements relating to fish and wildlife
conservation; modifying required bids and bid
notices; modifying bid documents on file; regulating
late bids; providing exemptions for open bid
requirements; providing public inspection
requirement; modifying the requirements for the
execution of a contract; regulating payment and
partial payment; providing for contract negotiations
when no bid is received; defining emergency

1 situations; amending 61 O.S. 2021, Sections 202, 204,
2 207.2, 208, 208.1, 208.2, 209, 210, 211, and 212,
3 which relate to the Public Facilities Act; modifying
4 definitions; providing for the reviewing and approval
5 of projects; modifying process for contract approval;
6 allowing for fees; modifying the State Construction
7 Revolving Fund; establishing the nature of the fund;
8 declaring funds appropriated; granting rule making
9 authority; allowing for performance-based efficiency
10 contracts; updating references; clarifying language;
11 repealing 61 O.S. 2021, Sections 8, 9, 10, 14, and
12 15, which relate to the bonding, contracting, and
13 construction of public buildings and works; repealing
14 61 O.S. 2021, Section 51, which relates to the
15 purchase of American goods and equipment; repealing
16 61 O.S. 2021, Sections 103.8 and 129, which relate to
17 the Public Competitive Bidding Act of 1974; repealing
18 61 O.S. 2021, Section 203, which relates to the
19 Department of Real Estate Services; and providing an
20 effective date.

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

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

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

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

2. ~~Cause an irrevocable letter of credit, containing terms the
Office of Management and Enterprise Services prescribes, to be~~

1 ~~issued for the benefit of the state by a financial institution~~
2 ~~insured by the Federal Deposit Insurance Corporation in a sum not~~
3 ~~less than the total sum of the contract.~~

4 B. The bond ~~or irrevocable letter of credit~~ shall ensure the
5 proper and prompt completion of the work in accordance with the
6 contract and shall ensure that the contractor shall pay all
7 indebtedness the contractor incurs for the contractor's
8 subcontractors and all suppliers of labor, material, rental of
9 machinery or equipment, and repair of and parts for equipment the
10 contract requires the contractor to furnish.

11 C. ~~For a contract not exceeding Fifty Thousand Dollars~~
12 ~~(\$50,000.00), in lieu of a bond or irrevocable letter of credit, the~~
13 ~~contractor shall submit an affidavit of the payment of all~~
14 ~~indebtedness incurred by the contractor, the contractor's~~
15 ~~subcontractors, and all suppliers of labor, material, rented~~
16 ~~machinery or equipment, and repair of and parts for equipment used~~
17 ~~or consumed in the performance of the contract. The execution of~~
18 ~~the affidavit with knowledge that any of the contents of the~~
19 ~~affidavit are false, upon conviction, shall constitute perjury,~~
20 ~~punishable as provided for by law.~~

21 SECTION 2. AMENDATORY 61 O.S. 2021, Section 4, is
22 amended to read as follows:

23 Section 4. All contracts hereafter made by or on behalf of the
24 state, or by or on behalf of any county, city, township, or other

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

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

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

23 Section 6. ~~From and after the passage and approval of this act,~~
24 ~~in~~ In the construction of all public buildings erected for the

1 state; ~~for any county for educational, eleemosynary, penal or other~~
2 ~~institution of the state,~~ or for any county thereof, where the
3 expense of construction is borne wholly or in part by the state, or
4 county, by appropriation, by the issuance of bonds, or by taxation,
5 preference shall be given to materials mined, quarried, manufactured
6 or procured within the State of Oklahoma, provided that the same can
7 be procured at no greater expense than like material or materials of
8 equal quality from without the state.

9 SECTION 4. AMENDATORY 61 O.S. 2021, Section 11, is
10 amended to read as follows:

11 Section 11. A. Unless otherwise provided for by law, all plans
12 and specifications for the erection of public buildings by this
13 state, or any agency or political subdivision thereof, or for any
14 building erected through the use of public funds shall provide
15 facilities for ~~the handicapped~~ people with disabilities. Such
16 facilities shall conform with the codes and standards adopted by the
17 State Fire Marshal and amended by the ~~Division's~~ Office's
18 promulgated rules. Elevators shall be constructed and installed in
19 said public buildings to the extent deemed feasible and financially
20 reasonable by the contracting authority of the state or such
21 political subdivision. Said codes and standards shall be on file in
22 the ~~Construction and Properties Division of the~~ Office of Management
23 and Enterprise Services.

24

1 B. ~~After May 24, 1973, any~~ Any building or facility which would
2 have been subject to the provisions of this section but for the fact
3 that it was constructed prior to May 24, 1973, shall be subject to
4 the requirements of this section if additions are made to such
5 building or facility in any twelve-month period which increase the
6 total floor area of such building or facility by twenty-five percent
7 (25%) or more or if alterations or structural repairs are made to
8 such building or facility in any twelve-month period which affect
9 twenty-five percent (25%) or more of the total floor area of such
10 building or facility.

11 SECTION 5. AMENDATORY 61 O.S. 2021, Section 12, is
12 amended to read as follows:

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

1 plans and specifications. In the case of public buildings to be
2 financed by county funds or funds controlled by some other political
3 subdivision of the state, the agency whose approval is required
4 shall be the governing body of such subdivision.

5 SECTION 6. AMENDATORY 61 O.S. 2021, Section 60, is
6 amended to read as follows:

7 Section 60. All state agencies, boards, commissions, offices,
8 institutions, and other governmental bodies of this state, and all
9 individuals representing such entities, except the Department of
10 Transportation, the Oklahoma Turnpike Authority, the Oklahoma State
11 Regents for Higher Education and its constituent institutions, and
12 the Commissioners of the Land Office ~~and CompSource Oklahoma~~
13 ~~provided CompSource Oklahoma is operating pursuant to a pilot~~
14 ~~program authorized by Sections 3316 and 3317 of Title 74 of the~~
15 ~~Oklahoma Statutes,~~ shall use construction manager, consultant and
16 construction contract forms that the ~~State Facilities~~ Director ~~of~~
17 ~~the Department of Real Estate Services~~ of the Office of Management
18 and Enterprise Services requires to award and execute contracts for
19 designs to construct, renovate, alter, repair, maintain, or improve
20 real property or fixtures of real property of the state. The ~~State~~
21 ~~Facilities~~ Director may authorize, in writing, exceptions to the use
22 of construction manager, consultant and construction contract forms
23 for specific projects.

24

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

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

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

8 2. "Construction manager" means an individual, firm,
9 corporation, association, partnership, copartnership, or any other
10 legal entity on the Office of Management and Enterprise Services
11 Construction and Properties (OMES-CAP) registration list and
12 possessing the qualifications to provide services of construction
13 management which include, but are not necessarily limited to, design
14 review, scheduling, cost control, value engineering,
15 constructability evaluation, preparation and coordination of bid
16 packages, and construction administration;

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

24

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

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

5 ~~6.~~ 5. "Office" means the Office of Management and Enterprise
6 Services;

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

11 a. to construct, renovate, alter, repair, maintain, or
12 improve real property or fixtures of real property,
13 and

14 b. that does not constitute "construction" as defined by
15 the Public Building Construction and Planning Act;

16 ~~8.~~ 7. "State agency" means an agency, office, officer, bureau,
17 board, counsel, court, commission, institution, unit, division, body
18 or house of the executive or judicial branches of state government,
19 whether elected or appointed, excluding only political subdivisions
20 of the state, the Oklahoma State Regents for Higher Education and
21 its constituent institutions and the Commissioners of the Land
22 Office; and

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

4 10. 8. "Political subdivision" means any local governmental
5 body formed pursuant to the laws of this state, including, but not
6 limited to, school districts, career technology centers, cities,
7 counties, public trusts, public authorities, commissions or other
8 local governmental bodies exercising their authority to contract
9 with construction managers and/or consultants. The term also means
10 any quasi-governmental and nongovernmental organizations contracting
11 with construction managers and/or consultants using public funds or
12 on behalf of a political subdivision.

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

15 Section 62. A. The ~~Department of Real Estate Services of the~~
16 Office of Management and Enterprise Services shall maintain a file
17 of all persons and entities interested in and capable of performing
18 construction management and consultant services for state agencies.
19 The file shall include registration forms and information submitted
20 by construction managers and consultants pursuant to rules
21 promulgated by the Office of Management and Enterprise Services.
22 Pursuant to rules promulgated by the Office, the ~~Department~~ Office
23 shall determine whether a construction manager or consultant
24 qualifies for registration and shall notify the construction manager

1 or consultant within twenty (20) days of receipt of a request for
2 registration. Construction managers and consultants shall re-
3 register for each successive calendar year with the ~~Department~~
4 Office.

5 B. The requisitioning state agency shall define the scope of a
6 proposed project. The scope shall identify project components,
7 phases and timetables and shall include detailed project
8 descriptions. The state agency may request the ~~Department~~ Office to
9 assist with scope development. The state agency shall send the
10 scope and a requisition for construction management or consultant
11 services, signed by an authorized official, to the ~~Department~~
12 Office. The ~~Department~~ Office shall review the scope and approve it
13 before the state agency issues a solicitation.

14 C. The state agency shall issue a solicitation to construction
15 managers or consultants that are registered with the ~~Department~~
16 Office and capable of providing the services the state agency
17 desires. The solicitation shall, at a minimum, contain:

- 18 1. Description and scope of the project;
- 19 2. Estimated construction cost or available funds, anticipated
20 starting date, and completion date the state agency desires for the
21 project;
- 22 3. Certification of funds available for the construction
23 manager or consultant fee, including federal, state or other
24 participation;

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

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

8 D. After the closing date, the ~~Department~~ Office shall provide
9 information from the construction managers' or consultants' files to
10 the state agency upon request. Should there be an inadequate
11 expression of interest in the project, the state agency and
12 ~~Department~~ Office personnel shall confer to add construction
13 managers or consultants for consideration.

14 E. The state agency shall review the information the ~~Department~~
15 Office provides and shall select no less than three and no more than
16 five construction managers or consultants per contract for
17 interviews. The review shall include consideration of factors from
18 the information the ~~Department~~ Office supplies including, but not
19 limited to:

20 1. Professional qualifications for the type of work
21 contemplated;

22 2. Capacity for completing the project in the specified time
23 period; and

24 3. Past performance on projects of a similar nature.

1 F. The ~~Department~~ Office shall advise the state agency of the
2 methods to be used to conduct an evaluation, interview, selection,
3 contract negotiation, and fee negotiation processes pursuant to
4 rules promulgated by the Office ~~of Management and Enterprise~~
5 ~~Services~~.

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

10 2. If the ~~Department~~ Office and the first-choice construction
11 manager or consultant cannot reach an agreement, the negotiations
12 shall terminate and negotiations with the second-choice construction
13 manager or consultant shall commence. If the ~~Department~~ Office and
14 the second-choice construction manager or consultant cannot reach an
15 agreement, the negotiations shall terminate and negotiations with
16 the third-choice construction manager or consultant shall commence.
17 If the ~~Department~~ Office and the third-choice construction manager
18 or consultant cannot reach an agreement, then all negotiations shall
19 terminate. Should the ~~Department~~ Office be unable to negotiate a
20 satisfactory contract with any of the three selected construction
21 managers or consultants, the ~~Department~~ Office shall select
22 additional construction managers or consultants in order of their
23 competency and qualifications and shall continue negotiations in
24

1 accordance with the provisions of this section until an agreement is
2 reached.

3 H. Any plans developed pursuant to the process for selection of
4 a contractor for construction of a facility authorized pursuant to
5 Section 183 of Title 73 of the Oklahoma Statutes shall become the
6 property of the State of Oklahoma as a condition of the award of the
7 final contract for construction of the facility.

8 I. For all state agencies subject to the Public Facilities Act,
9 Sections 202 through 213 of this title, the ~~Department~~ Office shall
10 perform the necessary procurement actions on behalf of a
11 requisitioning agency as enumerated in subsections B through H of
12 this section:

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

15 2. Issue solicitations for construction manager and consultant
16 services;

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

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

21 J. In the selection of a consultant, all political subdivisions
22 of this state shall select a consultant based upon the professional
23 qualifications and technical experience of the consultant. The
24 subdivision shall negotiate a contract with the highest qualified

1 consultant, provided that a fee can be negotiated that is fair and
2 reasonable to both parties. In the event a reasonable fee cannot be
3 negotiated with the selected consultant, the subdivision may
4 negotiate with other consultants in order of their qualifications.

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

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

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

23 3. The political subdivision shall select a construction
24 manager based upon the professional qualifications and technical

1 experience of the construction manager. The political subdivision
2 shall negotiate a contract with the highest qualified construction
3 manager, provided that a fee can be negotiated that is fair and
4 reasonable to both parties. In the event a reasonable fee cannot be
5 negotiated with the selected construction manager, the political
6 subdivision may negotiate with other construction managers in order
7 of their qualifications.

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

10 Section 62.2 ~~The Construction and Properties Division of the~~
11 Office of Management and Enterprise Services may enter into
12 contracts with construction managers and consultants registered with
13 the ~~Division~~ Office for the purpose of providing on-call minor
14 services to state agencies. The contracts shall provide for
15 services on an as-needed basis and shall not exceed One Hundred
16 Thousand Dollars (\$100,000.00) per construction manager or
17 consultant during one (1) year. The requisitioning state agency
18 shall ~~reimburse the Division~~ be solely responsible for the fee of
19 the construction manager or consultant that provides the services.

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

22 Section 63. All drawings, plans, specifications, reports, and
23 models made by a construction manager or consultant for a state
24 agency shall be the property of this state, and shall be delivered

1 to the state as directed by the terms of the contract ~~Department of~~
2 ~~Real Estate Services of the Office of Management and Enterprise~~
3 ~~Services. The state agency shall file such plans with the~~
4 ~~Department for inclusion in a library system to be maintained by the~~
5 ~~Department. Any state agency shall have access for review to any~~
6 ~~plans or specifications filed with the Department.~~

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

9 Section 65. A. In addition to the conditions prescribed
10 pursuant to ~~subsections~~ subsection C and D of this section, the
11 provisions of Section 62 of this title shall not apply whenever ~~the~~
12 ~~Department of Real Estate Services of the Office of Management and~~
13 ~~Enterprise Services with concurrence of the chief administrative~~
14 ~~officer of the public agency affected declares that an emergency~~
15 ~~exists. The construction manager or consultant shall be selected by~~
16 ~~the State Facilities Director of the Department of Real Estate~~
17 ~~Services of the Office of Management and Enterprise Services. The~~
18 ~~resulting construction manager or consultant contract shall not~~
19 ~~exceed Fifty Thousand Dollars (\$50,000.00). The reasons for the~~
20 ~~emergency shall be recorded in the official records of the~~
21 ~~Department~~ Office.

22 B. Emergency as used in this section shall be limited to
23 conditions resulting from any of the following:
24

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

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

8 C. The provisions of Section 62 of this title shall not apply
9 to the process for construction of a correctional facility whenever
10 the State Board of Corrections informs the ~~Department~~ Office that an
11 emergency condition threatens the security of the state correctional
12 system, including inmate population growth, and the condition
13 requires expeditious treatment for the review, approval and bid
14 process as it relates to construction or expansion of correctional
15 facilities. The ~~Department~~ Office and the Department of Corrections
16 are authorized to implement an expedited competitive bid process for
17 the contracting of construction managers or consultants and
18 construction of new or expanded correctional facilities that
19 adequately respond to the emergency. The State Board of Corrections
20 shall provide written notification to the Governor, the Speaker of
21 the House of Representatives and to the President Pro Tempore of the
22 Senate of the emergency conditions.

23 ~~D. The provisions of Section 62 of this title shall not apply~~
24 ~~to CompSource Oklahoma if CompSource Oklahoma is operating pursuant~~

1 ~~to a pilot program authorized by Sections 3316 and 3317 of Title 74~~
2 ~~of the Oklahoma Statutes.~~

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

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

12 SECTION 13. AMENDATORY 61 O.S. 2021, Section 102, is
13 amended to read as follows:

14 Section 102. As used in the Public Competitive Bidding Act of
15 1974:

16 ~~1. "Administrator" means the State Construction Administrator~~
17 ~~of the Construction and Properties Division of the Office of~~
18 ~~Management and Enterprise Services;~~

19 ~~2.~~ 1. "Awarding public agency" means the public agency which
20 solicits and receives sealed bids on a particular public
21 construction contract;

22 ~~3.~~ 2. "Bidding documents" means the bid notice, instruction to
23 bidders, plans and specifications, bidding form, bidding
24 instructions, general conditions, special conditions and all other

1 written instruments prepared by or on behalf of an awarding public
2 agency for use by prospective bidders on a public construction
3 contract;

4 ~~4.~~ 3. "Chief administrative officer" means an individual
5 responsible for directing the administration of a public agency.
6 The term does not mean one or all of the individuals that make
7 policy for a public agency;

8 ~~5.~~ 4. "Construction management trade contract or subcontract"
9 means any public construction contract exceeding Fifty Thousand
10 Dollars (\$50,000.00) in amount that is awarded as a trade contract
11 in an agency construction management contract or awarded as a
12 subcontract in an at-risk construction management contract;

13 ~~6.~~ 5. "Public agency" means the State of Oklahoma, and any
14 county, city, town, school district or other political subdivision
15 of the state, any public trust, any public entity specifically
16 created by the statutes of the State of Oklahoma or as a result of
17 statutory authorization therefor, and any department, agency, board,
18 bureau, commission, committee or authority of any of the foregoing
19 public entities;

20 ~~7.~~ 6. "Public construction contract" or "contract" means any
21 contract, exceeding One Hundred Thousand Dollars (\$100,000.00) in
22 amount, or any construction management trade contracts or
23 subcontracts exceeding Fifty Thousand Dollars (\$50,000.00) in
24 amount, awarded by any public agency for the purpose of making any

1 public improvements or constructing any public building or making
2 repairs to or performing maintenance on the same except where the
3 improvements, construction of any building or repairs to the same
4 are improvements or buildings leased to a person or other legal
5 entity exclusively for private and not for public use and no public
6 tax revenues shall be expended on or for the contract unless the
7 public tax revenues used for the project are authorized by a
8 majority of the voters of the applicable public agency voting at an
9 election held for that purpose and the public tax revenues do not
10 exceed twenty-five percent (25%) of the total project cost. The
11 amount of public tax dollars committed to the project will not
12 exceed a fixed amount established by resolution of the governing
13 body prior to or concurrent with approval of the project;

14 ~~8.~~ 7. "Public improvement" means any beneficial or valuable
15 change or addition, betterment, enhancement or amelioration of or
16 upon any real property, or interest therein, belonging to a public
17 agency, intended to enhance its value, beauty or utility or to adapt
18 it to new or further purposes. The term does not include the direct
19 purchase of materials, equipment or supplies by a public agency, or
20 any personal property, including property as defined in paragraphs 1
21 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma
22 Statutes;

23 ~~9.~~ 8. "Purchasing cooperative" means an association of public
24 entities working together to provide leverage in achieving best

1 value and/or the best terms in contracts awarded through a
2 competitive bidding process; and

3 ~~10.~~ 9. "Retainage" means the difference between the amount
4 earned by the contractor on a public construction contract, with the
5 work being accepted by the public agency, and the amount paid on
6 said contract by the public agency.

7 SECTION 14. AMENDATORY 61 O.S. 2021, Section 103.4, is
8 amended to read as follows:

9 Section 103.4 Nothing in the Public Competitive Bidding Act of
10 1974 shall be construed to prohibit a school district from erecting
11 a building or making improvements on a force account basis.

12 ~~Contracts between a state agency and a school district for the~~
13 ~~purpose of emergency asbestos abatement shall be exempt from the~~
14 ~~provisions of the Public Competitive Bidding Act of 1974.~~

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

17 Section 103.7 For purposes of the provisions of the Public
18 Competitive Bidding Act of 1974, contracts entered into solely for
19 projects and activities by the Oklahoma Department of Wildlife
20 Conservation relating to fish and wildlife conservation shall be let
21 and awarded using the competitive bidding process as set forth in
22 the Public Competitive Bidding Act of 1974. However, for contracts
23 ~~of Fifty Thousand Dollars (\$50,000.00) or less~~ not exceeding One
24 Hundred Thousand Dollars (\$100,000.00), the Department may

1 administer the competitive bidding process and let and award the
2 contract itself rather than the ~~Construction and Properties Division~~
3 ~~of the~~ Office of Management and Enterprise Services.

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

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

10 1. Notice thereof shall be given ~~by~~ electronically or by
11 publication in a newspaper of general circulation and published in
12 the county where the work, or the major part of it, is to be done,
13 such notice by publication to be published in two consecutive weekly
14 issues of the newspaper, with the first publication thereof to be at
15 least ~~twenty-one (21)~~ ten (10) days prior to the date set for
16 opening bids; and

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

1 notice to more than one in-state trade or construction publication
2 or to any out-of-state trade or construction publications.

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

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

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

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

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

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

23
24

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

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

6 Section 106. ~~At least one complete set of Complete bidding~~
7 documents regarding a proposed public construction contract shall be
8 ~~on file in the main office of the awarding public agency available~~
9 ~~to the public~~ at least ~~twenty (20)~~ ten (10) days prior to the date
10 set for opening bids. ~~The officer, agent or employee of the~~
11 ~~awarding public agency designated in the bid notice shall have a~~
12 ~~sufficient number of complete sets of said bidding documents and~~
13 ~~shall provide a complete set of same to any prospective bidder, upon~~
14 ~~request; provided, however, that the awarding public agency, or its~~
15 ~~agent,~~ may require a reasonable deposit for each ~~such~~ set of bidding
16 documents; provided, that such deposit shall not exceed the actual
17 cost of duplicating or printing. The public agency, or its agent,
18 may retain all or part of said deposit if so stated in the notice
19 for bids.

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

22 Section 107. A. A bidder on a public construction contract
23 exceeding One Hundred Thousand Dollars (\$100,000.00) or a
24

1 construction management trade contract or subcontract exceeding
2 Fifty Thousand Dollars (\$50,000.00) shall accompany the bid with:

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

6 2. An irrevocable letter of credit containing terms ~~the~~
7 ~~Construction and Properties Division of~~ the Office of Management and
8 Enterprise Services prescribes, issued by a financial institution
9 insured by the Federal Deposit Insurance Corporation or the Federal
10 Savings and Loan Insurance Corporation for the benefit of the state,
11 on behalf of the awarding public agency, in an amount equal to five
12 percent (5%) of the bid. The awarding public agency shall deposit
13 the irrevocable letter of credit with the ~~Division~~ Office.

14 B. The cost of republication of the notice to bidders, actual
15 expenses incurred by reason of the bidder's default and the
16 difference between the low bid of the defaulting bidder and the
17 amount of the bid of the bidder to whom the contract is subsequently
18 awarded, but not to exceed the amount of the certified check,
19 cashier's check, bid bond or irrevocable letter of credit may, at
20 the discretion of the awarding public agency, be forfeited to the
21 awarding public agency in the event the apparently successful bidder
22 fails to execute the contract or fails to provide the required bonds
23 or irrevocable letters of credit and insurance to the awarding
24 public agency.

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

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

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

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

24

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

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

8 B. ~~The Oklahoma Department of Transportation and the Oklahoma~~
9 ~~Turnpike Authority~~ A public agency shall be exempt from the
10 requirements provided in subsection A of this section, if the agency
11 electronically publishes the bids on the website of the agency.

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

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

21 SECTION 23. AMENDATORY 61 O.S. 2021, Section 113, is
22 amended to read as follows:

23 Section 113. A. Except as otherwise provided by law, within
24 the period of time, not to exceed sixty (60) days, specified in the

1 bid notice by the awarding public agency, a contract embodying the
2 terms set forth in the bidding documents shall be executed by the
3 awarding public agency or, where construction management at-risk is
4 the project delivery method, by the construction manager and the
5 successful bidder. No bidder shall obtain any property right in a
6 contract awarded under the provisions of the Public Competitive
7 Bidding Act of 1974 until the contract has been fully executed by
8 both the bidder and the awarding public agency.

9 B. Except as otherwise provided by law, within the period of
10 time specified in subsection A of this section, the following shall
11 be provided by the contractor to the awarding public agency for
12 public construction contracts exceeding One Hundred Thousand Dollars
13 (\$100,000.00) or construction management trade contracts or
14 subcontracts exceeding Fifty Thousand Dollars (\$50,000.00):

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

17 2. A bond in a sum equal to the contract price, with adequate
18 surety, ~~or an irrevocable letter of credit containing terms~~
19 ~~prescribed by the Construction and Properties Division of the Office~~
20 ~~of Management and Enterprise Services issued by a financial~~
21 ~~institution insured by the Federal Deposit Insurance Corporation or~~
22 ~~the Federal Savings and Loan Insurance Corporation~~ for the benefit
23 of the state, on behalf of the awarding public agency, in a sum
24 equal to the contract price, to ensure the proper and prompt

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

3 3. A bond in a sum equal to the contract price ~~or an~~
4 ~~irrevocable letter of credit containing terms as prescribed by the~~
5 ~~Division issued by a financial institution insured by the Federal~~
6 ~~Deposit Insurance Corporation or the Federal Savings and Loan~~
7 ~~Insurance Corporation~~ for the benefit of the state, on behalf of the
8 awarding public agency, ~~in a sum equal to the contract price,~~ to
9 protect the awarding public agency against defective workmanship and
10 materials for a period of one (1) year after acceptance of the
11 project, except when the awarding public agency is the Department of
12 Transportation or the Oklahoma Turnpike Authority, in such case the
13 period shall be for one (1) year after project completion; and

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

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

24

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

6 D. 1. After the award of a contract, but prior to its
7 execution, an awarding public agency, upon discovery of an
8 administrative error in the award process that would void an
9 otherwise valid award, may suspend the time of execution of the
10 contract. The agency may rescind the award and readvertise for
11 bids, or may direct correction of the error and award the contract
12 to the lowest responsible bidder, whichever shall be in the best
13 interests of the state.

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

23 E. No public agency shall require for any public construction
24 project, nor shall any general contractor submit a project bid based

1 on acquiring or participating in, any wrap-up, wrap-around, or
2 controlled insurance program. For the purposes of this subsection,
3 "wrap-up, wrap-around, or controlled insurance program" means any
4 insurance program that has the effect of disabling or rendering
5 inapplicable any workers' compensation, commercial general
6 liability, builders' risk, completed operations, or excess liability
7 insurance coverage carried by a subcontractor that is engaged or to
8 be engaged on a public construction project unless this is a cost
9 savings to the public or the need exists for a specialized or
10 complex insurance program and shall not apply to contracts less than
11 Seventy-five Million Dollars (\$75,000,000.00).

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

15 SECTION 24. AMENDATORY 61 O.S. 2021, Section 113.1, is
16 amended to read as follows:

17 Section 113.1 A. A public construction contract shall provide
18 for partial payment based upon work completed. The contract shall
19 provide that up to five percent (5%) of all partial payments made
20 shall be withheld as retainage until the project is fifty percent
21 (50%) complete as determined by the awarding agency. When the
22 awarding public agency determines that the project is at least 50%
23 complete, the retainage amount shall be two and one-half percent
24 (2.5%) with respect to the balance of the work.

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

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

7 SECTION 25. AMENDATORY 61 O.S. 2021, Section 119.1, is
8 amended to read as follows:

9 Section 119.1 A. If no timely bid is received after bid
10 notices have been published on any proposed public construction
11 contract which does not exceed One Hundred Thousand Dollars
12 (\$100,000.00) or on any proposed construction management trade
13 contract or subcontract which does not exceed Fifty Thousand Dollars
14 (\$50,000.00):

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

18 2. The state agency, as defined in Section 202 of this title,
19 shall request the ~~State Construction Administrator of the~~
20 ~~Construction and Properties Division~~ Office of Management and
21 Enterprise Services to negotiate a contract on its behalf.

22 B. The amount of a public construction contract which may be
23 awarded by the governing body pursuant to this section shall not
24 exceed One Hundred Thousand Dollars (\$100,000.00), nor shall the

1 amount of a construction management trade contract or subcontract
2 awarded by the governing body pursuant to this section exceed Fifty
3 Thousand Dollars (\$50,000.00), and the work to be performed shall be
4 as specified in the initial bidding documents. The contract shall
5 be executed within six (6) months after the date initially set for
6 opening of bids. The contract and contract procedure shall conform
7 to all other applicable provisions of the Public Competitive Bidding
8 Act of 1974.

9 SECTION 26. AMENDATORY 61 O.S. 2021, Section 121, is
10 amended to read as follows:

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

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

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

22 D. If the awarding public agency does not have a governing
23 body, the chief administrative officer of the awarding public agency
24 shall approve change orders. The ~~State Construction Administrator~~

1 ~~of the Construction and Properties Division~~ Director of the Office
2 of Management and Enterprise Services, or the ~~Administrator's~~
3 Director's designee, shall sign and execute all contracts and change
4 orders, as they relate to state agencies.

5 E. If the awarding public agency has a governing body, all
6 change orders shall be formally approved by the governing body of
7 the awarding public agency and the reasons for approval recorded in
8 the permanent records of the governing body. The governing body of
9 a municipality or technology center may delegate approval of change
10 orders up to Forty Thousand Dollars (\$40,000.00) or ten percent
11 (10%) of any contract, whichever is less, to the chief
12 administrative officer of the municipality or technology center or
13 their designee, with any approved change orders reported to the
14 governing body at the next regularly scheduled meeting.

15 F. The Oklahoma Veterans Commission, as the governing body of
16 the Oklahoma Department of Veterans Affairs, is authorized to
17 delegate to the Director of the agency the authority to approve
18 change orders on a construction contract provided that the
19 individual change order does not exceed Forty Thousand Dollars
20 (\$40,000.00) in expenditure, and complies with the limits
21 established by this section. Change orders approved by the Director
22 pursuant to a delegation of authority shall be presented to the
23 Commission during the next regular meeting and the reasons for the
24 orders recorded in permanent records.

1 G. The governing body of the Oklahoma Tourism and Recreation
2 Department is authorized, upon approval of a majority of all of the
3 members of the Oklahoma Tourism and Recreation Commission, to
4 delegate to the Director of the agency the authority to approve
5 change orders on a construction contract provided that the
6 individual change order does not exceed Twenty-five Thousand Dollars
7 (\$25,000.00) in expenditure and complies with the limits established
8 by this section. The ~~Administrator of the Division~~ Director of the
9 Office shall sign and execute all contracts and change orders.

10 H. The Transportation Commission may, by rule, authorize the
11 Director of the Department of Transportation to approve change
12 orders in an amount of not to exceed Five Hundred Thousand Dollars
13 (\$500,000.00). Change orders approved by the Director shall be
14 presented to the Transportation Commission during the next regular
15 meeting and the reasons therefor recorded in the permanent records.
16 The Oklahoma Turnpike Authority may authorize the Director of the
17 Authority to approve change orders in an amount not to exceed Two
18 Hundred Fifty Thousand Dollars (\$250,000.00). Change orders
19 approved by the Director of the Authority shall be presented to the
20 Authority during the next regular meeting and the reasons for the
21 orders recorded in permanent records.

22 I. All change orders for the Department of Transportation or
23 the Authority shall contain a unit price and total for each of the
24 following items:

- 1 1. All materials with cost per item;
- 2 2. Itemization of all labor with number of hours per operation
3 and cost per hour;
- 4 3. Itemization of all equipment with the type of equipment,
5 number of each type, cost per hour for each type, and number of
6 hours of actual operation for each type;
- 7 4. Itemization of insurance cost, bond cost, Social Security,
8 taxes, workers' compensation, employee fringe benefits and overhead
9 cost; and
- 10 5. Profit for the contractor.
- 11 J. 1. If a construction contract contains unit pricing, and
12 the change order pertains to the unit price, the change order will
13 not be subject to subsection A or B of this section.
- 14 2. When the unit price change does not exceed Twenty Thousand
15 Dollars (\$20,000.00), the unit price change order computation may be
16 based on an acceptable unit price basis in lieu of cost itemization
17 as required in paragraphs 1, 2, 3, 4 and 5 of subsection I of this
18 section.
- 19 3. When the unit price change exceeds Twenty Thousand Dollars
20 (\$20,000.00), any unit price for a new item established at or below
21 the average eighteen-month-price history for the new item may be
22 used in lieu of cost itemization as required in paragraphs 1, 2, 3,
23 4 and 5 of subsection I of this section.

24

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

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

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

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

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

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

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

22 B. The governing body of a public agency may, upon approval of
23 two-thirds (2/3) majority of all of the members of the governing
24 body, delegate to the chief administrative officer of a public

1 agency the authority to declare an emergency whereby the provisions
2 of the Public Competitive Bidding Act of 1974 with reference to
3 notice and bids shall not apply to contracts less than One Hundred
4 Fifty Thousand Dollars (\$150,000.00) in amount; provided, such
5 authority of the Department of Transportation and the Oklahoma
6 Turnpike Authority shall not extend to any contract exceeding Seven
7 Hundred Fifty Thousand Dollars (\$750,000.00) in amount and such
8 authority of the Department of Corrections shall not extend to any
9 contract exceeding Two Hundred Fifty Thousand Dollars (\$250,000.00)
10 in amount for situations in which the emergency impacts the
11 conditions of confinement, health and safety of correctional
12 officers and inmates in the custody of the Department of
13 Corrections.

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

21 D. An emergency declared by the Board of Corrections pursuant
22 to subsection C of Section 65 of this title shall exempt the
23 Department of Corrections from the limits which would otherwise be
24

1 imposed pursuant to subsection B of this section for the contracting
2 and construction of new or expanded correctional facilities.

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

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

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

24

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

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

10 Section 202. As used in the Public Facilities Act:

11 1. "Annual capital plan" means the collective state facility
12 capital improvements, facility operations and maintenance, rent and
13 lease payments, facility debt services, water, sewer and energy
14 utilities and real property transactions approved by the Legislature
15 in a capital budget relative to state construction, maintenance, and
16 real estate services;

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

22 3. "Construction" means the process of planning, acquiring,
23 designing, building, equipping, altering, repairing, improving,
24 maintaining, leasing, disposing or demolishing any structure or

1 appurtenance thereto including facilities, utilities, or other
2 improvements to any real property but not including highways,
3 bridges, airports, railroads, tunnels, sewers not related to a
4 structure or appurtenance thereto, or dams;

5 4. "Construction administration" means a series of actions
6 required of the ~~State Facilities Director, of~~ Office of Management
7 and Enterprise Services' or other state agency employees, or, under
8 a construction administration contract or contract provision, to
9 ensure the full, timely, and proper performance of all phases of a
10 construction project by all contractors, suppliers, and other
11 persons having responsibility for project work and any guarantees or
12 warranties pertaining thereto;

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

15 ~~6.~~ 5. "Construction management" means a project delivery method
16 based on an agreement whereby the owner acquires from a construction
17 entity a series of services that include, but are not necessarily
18 limited to, design review, scheduling, cost control, value
19 engineering, constructability evaluation, preparation and
20 coordination of bid packages, and construction administration;
21 "construction management" includes:

22 a. "agency construction management" whereby the
23 construction entity provides services to the owner
24 without taking on financial risks for the execution of

1 the actual construction or time of performance, and
2 the owner contracts directly with those awarded trade
3 contracts for the work, and

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

7 (1) takes on the financial obligation to timely carry
8 out construction under a specified cost
9 agreement, and

10 (2) enters into written subcontracts for the work in
11 accordance with the construction management
12 procedures for state agencies;

13 ~~7.~~ 6. "Consultant" means an individual or legal entity
14 possessing the qualifications to provide licensed architectural,
15 registered engineering, registered land surveying, certified
16 appraisal, land title, or abstract services or possessing
17 specialized credentials and qualifications as may be needed to
18 evaluate, plan or design for any construction or public work
19 improvement project, or to lease, acquire or dispose of state-owned
20 real property;

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

23 ~~9.~~ 7. "Energy performance index or indices" (EPI) means a
24 number describing the energy requirements at the building boundary

1 of a structure, per square foot of floor space or per cubic foot of
2 occupied volume, as appropriate under defined internal and external
3 ambient conditions over an entire seasonal cycle. As experience
4 develops on the energy performance achieved with state construction,
5 the indices (EPI) will serve as a measure of structure performance
6 with respect to energy consumption;

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

10 ~~11.~~ 8. "Life cycle costs" means the cost of owning, operating,
11 and maintaining the structure over the life of the structure. This
12 may be expressed as an annual cost for each year of the facility's
13 use;

14 ~~12.~~ 9. "Office" means the Office of Management and Enterprise
15 Services;

16 ~~13.~~ 10. "Procurement" means buying, purchasing, renting,
17 leasing, allocating, trading or otherwise acquiring or disposing of
18 supplies, services, or construction necessary to evaluate, plan,
19 construct, manage, operate and preserve real property capital
20 assets;

21 ~~14.~~ 11. "Public improvement" means any beneficial or valuable
22 change or addition, betterment, enhancement or amelioration of or
23 upon any real property, or interest therein, belonging to a state
24 agency and the State of Oklahoma, intended to enhance its value,

1 beauty or utility or to adapt it to new or further purposes. The
2 term does not include the direct purchase of materials used for
3 general repairs and maintenance to state facilities;

4 ~~15.~~ 12. "Shared savings financing" means the financing of
5 energy conservation measures and maintenance services through a
6 private firm which may own any purchased equipment for the duration
7 of a contract. Such contract shall specify that the private firm
8 will be recompensed either out of a negotiated portion of the
9 savings resulting from the conservation measures and maintenance
10 services provided by the private firm or, in the case of a
11 cogeneration project, through the payment of a rate for energy lower
12 than would otherwise have been paid for the same energy from current
13 sources; and

14 ~~16.~~ 13. "State agency" means an agency, board, commission,
15 counsel, court, office, officer, bureau, institution, unit,
16 division, body, or house of the executive or judicial branches of
17 government of this state, whether elected or appointed, excluding
18 only political subdivisions, the Oklahoma State Regents for Higher
19 Education and its constituent institutions and the Commissioners of
20 the Land Office.

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

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

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

5 a. ~~reporting by each state agency concerning facility~~
6 ~~needs,~~

7 b. ~~data acquisition of condition and performance~~
8 ~~benchmarking of state agency facilities,~~

9 c. ~~analyses and audits of state agency facilities,~~
10 ~~properties and leaseholds to determine critical and~~
11 ~~long range needs,~~

12 d. ~~development of state agency long range strategic~~
13 ~~facility plans,~~

14 e. ~~short range project programming to identify budget~~
15 ~~requests for facility capital improvements and asset~~
16 ~~management decisions, and~~

17 f. ~~an annual capital plan for all state agencies~~
18 ~~submitted to the Legislature for line item~~
19 ~~appropriation requests;~~

20 ~~2.~~ 1. Review and approve all construction plans and
21 specifications to ensure compliance with good construction practices
22 and space standards, costs of project, proposed construction
23 timetables, and agency need for the project;

1 ~~3.~~ 2. Inspect prior to acceptance and final payment all
2 completed projects for which the ~~Department~~ Office issued bid
3 solicitations to ensure compliance with the plans and specifications
4 of the project;

5 ~~4.~~ 3. Select and hire consultants and construction managers for
6 projects as determined or approved by the ~~Department~~ Office. The
7 ~~Department~~ Office shall select, award and execute contracts to
8 consultants and construction managers that provide services to state
9 agencies subject to this act;

10 ~~5.~~ 4. Develop and issue solicitations for award of state agency
11 contracts for construction services. The ~~Department~~ Office shall
12 have final approval authority for contracts and contract documents.
13 Neither the ~~Department~~ Office nor any public entity shall, for
14 performance of work that requires that a contractor be licensed by
15 this state, issue a solicitation to, or make a contract with, a
16 contractor not licensed by this state;

17 ~~6.~~ 5. Review inspections performed by consultants and
18 construction managers during construction, perform primary
19 inspections when consultants or construction managers are not used,
20 and final inspections after completion;

21 ~~7.~~ 6. Establish standards and policies as required to
22 standardize facility assessment and benchmarking, facility
23 operations and maintenance, asset preservation, design and energy
24

1 standards, space utilization, material testing, indexes of
2 efficiency, economy, and effectiveness;

3 ~~8.~~ 7. Monitor indices of facility condition, effectiveness of
4 operations and maintenance programs, deferred maintenance
5 prioritization, effectiveness of planning processes, budgeting for
6 capital needs, application of facility standards as established by
7 the ~~Department~~ Office, and performance outcomes of construction
8 projects to ensure maximum efficiency in the expenditure of state
9 funds for asset management and preservation of the state's capital
10 real property;

11 ~~9.~~ 8. Coordinate, monitor and report on statewide energy
12 conservation programs delegated to the Office;

13 ~~10.~~ 9. Provide property leasing and brokerage services
14 delegated to the Office;

15 ~~11.~~ 10. Report fraud or waste in any construction project by
16 written notification with documentation for the report to the
17 Attorney General. The Attorney General shall take appropriate
18 action to protect the interest of the state; and

19 ~~12.~~ 11. Prequalify as good and sufficient insurance carriers,
20 bonding companies and surety companies to meet provisions of
21 Sections 1 and 134 of this title. The Director shall promulgate
22 rules to establish criteria to determine whether a carrier or
23 company is good and sufficient. The prequalification requirement
24

1 and process shall not violate the provisions of Section 135 of this
2 title.

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

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

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

13 3. The Military Department of the State of Oklahoma;

14 4. The Oklahoma Tourism and Recreation Department; and

15 5. The Department of Human Services.

16 ~~C. Not later than December 31, 2012, with the advice of the~~
17 ~~State Facilities Director, the Director of the Office of Management~~
18 ~~and Enterprise Services shall provide a report containing~~
19 ~~recommendations to the Legislature for the streamlining,~~
20 ~~integration, and consolidation of state construction, maintenance,~~
21 ~~and real property management processes to maximize capital assets~~
22 ~~and achieve cost savings to the state. The report shall identify~~
23 ~~the necessary planning processes for transitioning from a~~
24 ~~decentralized capital budgeting process to a centralized annual~~

1 ~~capital plan appropriation process, to be implemented no later than~~
2 ~~January 1, 2014.~~

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

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

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

- 20 1. The Department of Human Services;
- 21 2. The Oklahoma Tourism and Recreation Department;
- 22 3. The State Department of Health insofar as the monitoring of
23 permitted health care facility construction for licensing purposes;
- 24

- 1 4. The Oklahoma Historical Society insofar as the monitoring of
2 historical site preservation and authenticity;
- 3 5. The Office of Management and Enterprise Services;
- 4 6. The State Department of Education and the public schools
5 subject to its jurisdiction;
- 6 7. The Department of Transportation;
- 7 8. The Oklahoma State System of Higher Education;
- 8 9. The Military Department of the State of Oklahoma;
- 9 10. The Oklahoma Municipal Power Authority;
- 10 11. The Department of Public Safety gun range; and
- 11 ~~12. CompSource Oklahoma if CompSource Oklahoma is operating~~
12 ~~pursuant to a pilot program authorized by Sections 3316 and 3317 of~~
13 ~~Title 74 of the Oklahoma Statutes; and~~
- 14 ~~13.~~ 12. The University Hospitals Authority and University
15 Hospitals Trust.

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

18 Section 208. A. ~~The Department of Real Estate Services of the~~
19 Office of Management and Enterprise Services shall select and award
20 contracts to construction managers and design consultants pursuant
21 to the provisions of Section 62 of this title.

22 B. The negotiation of construction manager and consultant
23 contracts and fees shall be performed by the ~~Department~~ Office.

24

1 C. The ~~Department~~ Office shall award and administer
2 construction contracts for state agencies pursuant to the provisions
3 of the Public Competitive Bidding Act of 1974.

4 D. 1. When all bids for a public construction contract exceed
5 the programmed estimate and available funding, the ~~Department~~ Office
6 may enter into negotiations with the lowest responsible bidder for
7 the purpose of modifying the project scope and reducing the
8 construction cost, provided that:

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

12 b. the project was appropriately planned, and cost
13 estimates were developed using standards of care
14 acceptable to the ~~Department~~ Office, and

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

18 2. To request consideration for negotiations pursuant to this
19 subsection, the using agency, within ten (10) days of the bid
20 opening date, shall make a written request to the Director of the
21 Office of Management and Enterprise Services to enter into
22 negotiations pursuant to paragraph 1 of this subsection. If
23 approved by the Director, the ~~Department~~ Office shall consult with
24

1 the using agency, consultant and low bidder on methods to reduce the
2 project scope or other cost-saving measures.

3 3. If a suitable revised scope and contract amount is agreed
4 upon by the using agency, ~~low~~ lowest responsible bidder, and the ~~SFD~~
5 Director, the ~~Department~~ Office may award the public construction
6 contract to the ~~low~~ lowest responsible bidder.

7 4. The ~~Department~~ Office shall negotiate a fair and reasonable
8 fee with the project's consultant, if applicable, to make any
9 necessary revisions to the contract documents. The cost of this
10 additional consulting work shall be paid from the agency's available
11 funds.

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

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

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

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

3 2. ~~Beginning on or after July 1, 2016, the SFD~~ The Director
4 determines a state agency is performing in the bottom ten percent
5 (10%) of all state agencies with respect to performance measures for
6 facility management established by the ~~Department~~ Office.

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

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

17 2. Adheres to procurement requirements of Sections 62 through
18 65 of this title and the provisions of this act;

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

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

24

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

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

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

19 Section 208.2 There is hereby created in the State Treasury a
20 revolving fund for the ~~Department of Real Estate Services of the~~
21 Office of Management and Enterprise Services, to be designated the
22 "State Construction Revolving Fund". The fund shall be a continuing
23 fund, not subject to fiscal year limitations, and shall consist of
24 all funds appropriated by the Legislature for projects included in

1 the annual capital plan; funds from nonappropriated sources
2 designated for projects within a capital plan; allocations from an
3 approved annual capital plan designed for assessment and planning
4 services; allocations from an approved annual capital plan for
5 emergency response in accordance with Section 130 of this title; and
6 fees collected by the ~~Department~~ Office in accordance with the
7 provisions of this section or as otherwise provided by law. All
8 monies accruing to the credit of the fund are hereby appropriated
9 and may be budgeted and expended by the ~~Department~~ Office. The fund
10 shall be used to pay expenses resulting from contracts awarded by
11 the ~~Department~~ Office and to defray ~~Department~~ Office operating
12 costs and expenses the Office incurs to support ~~Department~~
13 construction-related operations. Expenditures from the fund shall
14 be made upon warrants issued by the State Treasurer against claims
15 filed as prescribed by law with the Director of the Office of
16 Management and Enterprise Services for approval and payment.

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

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

- 21 1. For state agencies to perform minor construction projects;
- 22 2. Specifying building codes pursuant to the Oklahoma Uniform
23 Building Code Commission Act for construction projects;

24

- 1 3. Permitting state agencies who have the expertise, upon
2 written application to the ~~Department of Real Estate Services of the~~
3 Office of Management and Enterprise Services, to perform any part of
4 the responsibilities of the ~~Department~~ Office pursuant to the
5 provisions of the Public Facilities Act for a specific project;
- 6 4. Specifying procedures and guidelines for the implementation
7 of shared savings financing by state agencies;
- 8 5. Specifying energy conservation performance guidelines, for
9 conducting a life cycle cost analysis of alternative architectural
10 and engineering designs and alternative major items of energy-
11 consuming equipment to be retrofitted in existing state-owned or
12 leased structures and for developing energy performance indices to
13 evaluate the efficiency of energy utilization for completing designs
14 in the construction of state-financed and leased structures;
- 15 6. The time, manner, authentication, and form of making
16 requisitions to the ~~Department~~ Office;
- 17 7. The form and manner of submission for bids or proposals and
18 the manner of accepting and opening bids or proposals that may
19 include online bids pursuant to the Oklahoma Online Bidding Act;
- 20 8. The manner for a state agency to acquire services for
21 construction projects;
- 22 9. Conditions under which any of the rules herein authorized
23 may be waived;
- 24 10. The form of any document the Director requires;

1 11. Specifying provisions a state agency shall follow to adhere
2 to acquisition, contract, contract management and other provisions
3 of this title; and

4 12. Specifying the process a state agency shall follow to
5 establish the scope of work, schedule and cost estimate for all
6 publicly bid construction projects involving construction or
7 renovation of buildings.

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

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

14 1. The methodology for calculating baseline energy costs;

15 2. A procedure for revising these costs should the state
16 institute additional energy conservation features or structure use
17 change;

18 3. A requirement for a performance bond guaranteeing that the
19 structure will be restored to the original condition in the event of
20 default;

21 4. A provision for early buyout;

22 5. A clause specifying who will be responsible for maintaining
23 the equipment; and

24

1 6. A provision allowing the disposal of equipment at the end of
2 the contract.

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

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

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

10 Section 211. ~~On and after July 1, 1987, when~~ When any state
11 agency or department must replace or supplement major items of
12 energy-consuming equipment in existing state-owned or leased
13 structures or any self-contained unit of any structure with other
14 major items of energy-consuming equipment, the selection of such
15 items shall be made on the basis of a life cycle cost analysis of
16 alternatives in accordance with rules and regulations promulgated by
17 the Director of the Office of Management and Enterprise Services.

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

20 Section 212. A. For purposes of this section:

21 1. "Performance-based efficiency contract" means a contract for
22 the design, development, financing, installation, construction and
23 service of any improvement, repair, alteration or betterment of any
24 public building or facility; or any equipment, fixture or furnishing

1 to be added to or used in any such building or facility; or any
2 maintenance or operational strategy that is designed and implemented
3 that will reduce utility consumption or lower operating costs, and
4 may include, but is not limited to, one or more of the following:

- 5 a. utility services,
- 6 b. heating, ventilating or air conditioning system
7 modifications or replacements and automated control
8 systems,
- 9 c. replacement or modifications of lighting fixtures,
- 10 d. indoor air quality improvements to increase air
11 quality that conform to the applicable state or local
12 building code requirements when done in conjunction
13 with other cost-saving measures,
- 14 e. any additional building infrastructure improvement,
15 cost saving, life safety or any other improvement that
16 provides long-term operating cost reductions and is in
17 compliance with state and local codes, or
- 18 f. any facility operation and support programs that
19 reduce operating cost; and

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

1 B. In addition to any other legally permissible alternatives of
2 entering into contracts, the Office of Management and Enterprise
3 Services ~~Construction and Properties Division~~ may enter into
4 performance-based efficiency contracts on behalf of all state
5 agencies with a qualified provider pursuant to the provisions of
6 this section.

7 A qualified provider to whom the contract is awarded shall be
8 required to provide to the ~~Division~~ Office a sufficient bond for its
9 faithful performance of the contract. In addition, the ~~Division~~
10 Office may require performance bonds covering the annual amount of
11 guaranteed savings over the contract term. ~~The Office of Management~~
12 ~~and Enterprise Services~~ State agencies may enter into an installment
13 contract, lease purchase agreement or other contractual obligation
14 for the purpose of financing performance-based efficiency projects
15 for a term not to exceed the greater of twenty (20) years or the
16 useful life of the project.

17 The qualified provider must guarantee the contract's cost
18 savings each year during the term of the agreement. In calculating
19 cost savings, the public entity may consider capital cost avoidance
20 and include additional revenue that is directly attributed to the
21 performance-based efficiency contract. The savings must be
22 sufficient to offset the annual costs of the contract. The contract
23 shall provide for reimbursement to the state agency undertaking the
24 project annually for any shortfall of guaranteed savings. Savings

1 must be measured, verified and documented each year of the term and
2 may be utilized to meet the annual debt service.

3 The contracts authorized by this section shall include
4 procedures for modifying the contract should the ~~Division~~ Office
5 determine it necessary.

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

10 SECTION 38. REPEALER 61 O.S. 2021, Sections 8, 9, 10,
11 14, 15, 51, 103.8, 129, and 203 are hereby repealed.

12 SECTION 39. This act shall become effective November 1, 2022.

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14 58-2-8695 MKS 01/14/22

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