

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SUBCOMMITTEE RECOMMENDATION  
4 FOR

5 HOUSE BILL NO. 3123

6 By: Jones

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to public buildings and public works;  
9 amending 61 O.S. 2001, Section 202.1, as last amended  
10 by Section 28, Chapter 271, O.S.L. 2006 and Section  
11 1, Chapter 414, O.S.L. 2002, as amended by Section  
12 33, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2007,  
13 Sections 202.1 and 220), which relate to design-build  
14 and at-risk construction management project delivery  
15 methods; limiting certain prohibitions for the  
16 design-build and at-risk construction management  
17 project delivery methods to certain projects;  
18 exempting projects by school districts and technology  
19 center school districts from certain prohibitions;  
20 limiting construction manager criteria to certain  
21 projects; defining certain term; recognizing certain  
22 qualifications for construction managers selected by  
23 school districts; limiting certain provisions to  
24 certain projects; allowing a construction manager at-  
risk to provide all bonds and proof of insurance; and  
declaring an emergency.

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

SECTION 1. AMENDATORY 61 O.S. 2001, Section 202.1, as  
last amended by Section 28, Chapter 271, O.S.L. 2006 (61 O.S. Supp.  
2007, Section 202.1), is amended to read as follows:

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

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

21 C. The For projects constructed by a state agency, for projects  
22 authorized by an act of the Legislature specifying design-build or  
23 at-risk construction management, or for projects constructed by a  
24 municipality, county, public trust or other political subdivision,

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

- 9 1. The project benefits the public;
- 10 2. There is a need for cost control; and
- 11 3. The need exists for specialized or complex construction  
12 methods due to the unique nature of the project.

13 D. The For projects constructed by a state agency, for projects  
14 authorized by an act of the Legislature specifying design-build or  
15 at-risk construction management, or for projects constructed by a  
16 municipality, county, public trust or other political subdivision,  
17 the use of design-build and construction management project delivery  
18 methods shall not interfere or inhibit the opportunity for  
19 subcontractors to openly and freely compete for subcontracts  
20 pursuant to the Public Competitive Bidding Act of 1974.

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

3 F. The provisions of subsections C and D of this section shall  
4 not apply to projects constructed by school districts and technology  
5 center school districts.

6 G. The State Construction Administrator shall file an annual  
7 report to the legislature summarizing cost information for each  
8 construction management project completed the preceding year.

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

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

17 SECTION 2. AMENDATORY Section 1, Chapter 414, O.S.L.  
18 2002, as amended by Section 33, Chapter 271, O.S.L. 2006 (61 O.S.  
19 Supp. 2007, Section 220), is amended to read as follows:

20 Section 220. A. Any political subdivision or board of  
21 education of a school district may use construction management as a  
22 project delivery method for the building, altering, repairing,  
23 improving, maintaining or demolishing any structure or appurtenance  
24 thereto, or any other improvement to real property owned by that

1 political subdivision or school district. For purposes of this  
2 section "construction management" shall be defined as set forth in  
3 Section 202 of this title and shall include both agency construction  
4 management and at-risk construction management. For purposes of  
5 this section "school district" shall include technology center  
6 school districts.

7 B. A political subdivision or school district shall select a  
8 construction manager based on the professional qualifications and  
9 technical experience of the construction manager. Selection  
10 criteria shall include the experience of the candidate, past  
11 performance, and certification of the company or individuals within  
12 the company of their knowledge of recognized standards of  
13 construction, construction management and project management. Only  
14 firms recognized as qualified construction managers by the  
15 Construction and Properties Division of the Department of Central  
16 Services pursuant to Section 62 of this title, may be considered for  
17 selection as a construction manager by a political subdivision ~~or~~  
18 ~~school district.~~ Recognition of a company as a qualified  
19 construction manager by the Construction and Properties Division of  
20 the Department of Central Services pursuant to Section 62 of this  
21 title may be considered in evaluating the qualifications of a  
22 prospective construction manager by a school district.

23 C. The For construction projects by political subdivisions,  
24 excluding school districts, the construction management project

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

6 D. When For construction projects by political subdivisions,  
7 excluding school districts, when bids for a public construction  
8 project have been received from general contractors pursuant to the  
9 Public Competitive Bidding Act of 1974 and the lowest responsible  
10 bid is within the awarding agency's available funding, the awarding  
11 agency shall not reject all bids and award the project to a  
12 construction manager.

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

20 F. All construction contracts or subcontracts exceeding Fifty  
21 Thousand Dollars (\$50,000.00) in amount for work to be performed for  
22 any political subdivision or school district pursuant to a  
23 construction management project delivery method shall be awarded in  
24 accordance with the provisions of the Public Competitive Bidding Act

1 of 1974. If a construction manager at-risk wishes to self-perform  
2 portions of the construction work to be performed, the construction  
3 manager at-risk may self-perform portions of the work provided the  
4 construction manager at-risk competitively bids the work under the  
5 same terms and conditions as the other bidders and the construction  
6 manager at-risk is the lowest responsible bidder for the  
7 construction subcontract. No work shall commence until the school  
8 district executes a written contract and the contractor and  
9 subcontractors submit bonds and proofs of insurance as required by  
10 the appropriate contract. A construction manager at-risk may  
11 provide bonds and proofs of insurance in the full amount of the  
12 guaranteed maximum amount in lieu of bonds and proofs of insurance  
13 submitted by individual contractors and subcontractors.

14 SECTION 3. It being immediately necessary for the preservation  
15 of the public peace, health and safety, an emergency is hereby  
16 declared to exist, by reason whereof this act shall take effect and  
17 be in full force from and after its passage and approval.

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