

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 31

By: Coates

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5
6 AS INTRODUCED

7 An Act relating to public buildings and public works;
8 amending 61 O.S. 2001, Sections 202, as last amended
9 by Section 27, Chapter 271, and 202.1, as last
10 amended by Section 28, Chapter 271, O.S.L. 2006 (61
11 O.S. Supp. 2008, Sections 202 and 202.1), which
12 relate to the Public Building Construction and
13 Planning Act; deleting definition; deleting certain
14 construction project delivery method; clarifying
15 applicability of certain law prior to certain date;
16 and declaring an emergency.

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

18 SECTION 1. AMENDATORY 61 O.S. 2001, Section 202, as last
19 amended by Section 27, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2008,
20 Section 202), is amended to read as follows:

21 Section 202. As used in the Public Building Construction and
22 Planning Act:

23 1. "Administrator" means the State Construction Administrator
24 of the Construction and Properties Division of the Department of
Central Services;

2. "Construction" means the process of planning, acquiring,
designing, building, equipping, altering, repairing, improving,

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

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

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

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

1 b. "at-risk construction management" whereby the
2 construction entity, after providing agency services
3 during the pre-construction period, takes on the
4 financial obligation to carry out construction under a
5 specified cost agreement;

6 5. "Consultant" means an individual or legal entity possessing
7 the qualifications to provide licensed architectural, registered
8 engineering, or registered land surveying services or possessing
9 specialized credentials and qualifications as may be needed to plan
10 or design for any construction or public work improvement project;

11 ~~6. "Design-build" means a project delivery method whereby this~~
12 ~~state acquires both design and construction services in the same~~
13 ~~contract from a single legal entity, referred to as the design-~~
14 ~~builder, without the bid component of the traditional design bid-~~
15 ~~build process;~~

16 7. "Department" means the Department of Central Services;

17 ~~8.~~ 7. "Director" means the Director of the Department of
18 Central Services;

19 ~~9.~~ 8. "Division" means the Construction and Properties Division
20 of the Department of Central Services;

21 ~~10.~~ 9. "Energy performance index or indices" (EPI) means a
22 number describing the energy requirements at the building boundary
23 of a structure, per square foot of floor space or per cubic foot of
24 occupied volume, as appropriate under defined internal and external

1 ambient conditions over an entire seasonal cycle. As experience
2 develops on the energy performance achieved with state construction,
3 the indices (EPI) will serve as a measure of structure performance
4 with respect to energy consumption;

5 ~~11.~~ 10. "Life cycle costs" means the cost of owning, operating,
6 and maintaining the structure over the life of the structure. This
7 may be expressed as an annual cost for each year of the facility's
8 use;

9 ~~12.~~ 11. "Procurement" means buying, purchasing, renting,
10 leasing, or otherwise acquiring or disposing of supplies, services,
11 or construction;

12 ~~13.~~ 12. "Public improvement" means any beneficial or valuable
13 change or addition, betterment, enhancement or amelioration of or
14 upon any real property, or interest therein, belonging to a public
15 agency, intended to enhance its value, beauty or utility or to adapt
16 it to new or further purposes. The term does not include the direct
17 purchase of materials, provided that the materials are not purchased
18 in increments for an amount of less than Twenty-five Thousand
19 Dollars (\$25,000.00) and used for the purposes of completing a
20 single project, equipment or supplies by a public agency, or any
21 personal property as defined in paragraphs 1 and 4 of subsection B
22 of Section 430.1 of Title 62 of the Oklahoma Statutes;

23 ~~14.~~ 13. "Shared savings financing" means the financing of
24 energy conservation measures and maintenance services through a

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

9 ~~15.~~ 14. "State agency" means an agency, board, commission,
10 counsel, court, office, officer, bureau, institution, unit,
11 division, body, or house of the executive or judicial branches of
12 government of this state, whether elected or appointed, excluding
13 only political subdivisions.

14 SECTION 2. AMENDATORY 61 O.S. 2001, Section 202.1, as
15 last amended by Section 28, Chapter 271, O.S.L. 2006 (61 O.S. Supp.
16 2008, Section 202.1), is amended to read as follows:

17 Section 202.1 A. The ~~design-build and~~ construction management
18 project delivery ~~methods~~ method shall not be used without the
19 written approval of the Director of Central Services, or the
20 Director's designee, when those projects are constructed for a state
21 agency or by an act of the Legislature specifying ~~design-build or~~
22 at-risk construction management for a project. In all instances
23 where the ~~design-build project or~~ at-risk construction management
24 delivery method is authorized, construction administration shall be

1 performed by the State Construction Administrator, the
2 Administrator's designee or designees, or otherwise by contract or
3 contract provision approved by the Director of Central Services for
4 construction administration by another party.

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

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

- 21 1. The project benefits the public;
- 22 2. There is a need for cost control; and
- 23 3. The need exists for specialized or complex construction
24 methods due to the unique nature of the project.

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

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

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

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

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

21 I. Any project authorized to utilize the design build delivery
22 method prior to the effective date of this act shall abide by the
23 requirements of this section and any applicable rules in effect
24 prior to the effective date of this act.

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

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