

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 185

By: Coates of the Senate

and

Liebmann of the House

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10 COMMITTEE SUBSTITUTE

11 [Public Building Construction and Planning Act -
12 authorizing use of best-value competitive proposals
13 - project management - codification - effective
14 date]

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

19 SECTION 1. AMENDATORY 61 O.S. 2001, Section 202, as last
20 amended by Section 27, Chapter 271, O.S.L. 2006 (61 O.S. Supp. 2010,
21 Section 202), is amended to read as follows:

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

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

4 2. "Best value" means an optional contract award system which
5 can evaluate and rank competitive performance proposals submitted by
6 offerors to identify the proposal with the greatest value to the
7 government;

8 3. "Construction" means the process of planning, acquiring,
9 designing, building, equipping, altering, repairing, improving,
10 maintaining, or demolishing any structure or appurtenance thereto
11 including facilities, utilities, or other improvements to any real
12 property but not including highways, bridges, airports, railroads,
13 tunnels, sewers not related to a structure or appurtenance thereto,
14 or dams;

15 ~~3.~~ 4. "Construction administration" means a series of actions
16 required of the State Construction Administrator, of other state
17 agency employees, or, under a construction administration contract
18 or contract provision, to ensure the full, timely, and proper
19 performance of all phases of a construction project by all
20 contractors, suppliers, and other persons having responsibility for
21 project work and any guarantees or warranties pertaining thereto;

22 ~~4.~~ 5. "Construction management" means a project delivery method
23 based on an agreement whereby the owner acquires from a construction
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1 entity a series of services that include, but are not necessarily
2 limited to, design review, scheduling, cost control, value
3 engineering, constructability evaluation, preparation and
4 coordination of bid packages, and construction administration;
5 "construction management" includes:

6 a. "agency construction management" whereby the
7 construction entity provides services to the owner
8 without taking on financial risks for the execution of
9 the actual construction, and

10 b. "at-risk construction management" whereby the
11 construction entity, after providing agency services
12 during the ~~pre-construction~~ preconstruction period,
13 takes on the financial obligation to carry out
14 construction under a specified cost agreement;

15 ~~5.~~ 6. "Consultant" means an individual or legal entity
16 possessing the qualifications to provide licensed architectural,
17 registered engineering, or registered land surveying services or
18 possessing specialized credentials and qualifications as may be
19 needed to plan or design for any construction or public work
20 improvement project;

21 ~~6.~~ 7. "Design-build" means a project delivery method whereby
22 this state acquires both design and construction services in the
23 same contract from a single legal entity, referred to as the design-

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1 builder, without the bid component of the traditional design-bid-
2 build process;

3 ~~7.~~ 8. "Department" means the Department of Central Services;

4 ~~8.~~ 9. "Director" means the Director of the Department of
5 Central Services;

6 ~~9.~~ 10. "Division" means the Construction and Properties
7 Division of the Department of Central Services;

8 ~~10.~~ 11. "Energy performance index or indices" (EPI) means a
9 number describing the energy requirements at the building boundary
10 of a structure, per square foot of floor space or per cubic foot of
11 occupied volume, as appropriate under defined internal and external
12 ambient conditions over an entire seasonal cycle. As experience
13 develops on the energy performance achieved with state construction,
14 the indices (EPI) will serve as a measure of structure performance
15 with respect to energy consumption;

16 ~~11.~~ 12. "Life-cycle costs" means the cost of owning, operating,
17 and maintaining the structure over the life of the structure. This
18 may be expressed as an annual cost for each year of the facility's
19 use;

20 ~~12.~~ 13. "Procurement" means buying, purchasing, renting,
21 leasing, or otherwise acquiring or disposing of supplies, services,
22 or construction;

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

12 ~~14.~~ 15. "Shared savings financing" means the financing of
13 energy conservation measures and maintenance services through a
14 private firm which may own any purchased equipment for the duration
15 of a contract. Such contract shall specify that the private firm
16 will be recompensed either out of a negotiated portion of the
17 savings resulting from the conservation measures and maintenance
18 services provided by the private firm or, in the case of a
19 cogeneration project, through the payment of a rate for energy lower
20 than would otherwise have been paid for the same energy from current
21 sources; and

22 ~~15.~~ 16. "State agency" means an agency, board, commission,
23 counsel, court, office, officer, bureau, institution, unit,

1 division, body, or house of the executive or judicial branches of
2 government of this state, whether elected or appointed, excluding
3 only political subdivisions.

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 202.2 of Title 61, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The Construction and Properties Division of the Department
8 of Central Services may award contracts using Best Value Competitive
9 Proposals.

10 B. The Department of Central Services shall, pursuant to the
11 Administrative Procedures Act, promulgate rules to effect procedures
12 as necessary for the fulfillment of its responsibilities under this
13 section.

14 SECTION 3. 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 2010, Section 202.1), is amended to read as follows:

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

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

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

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

- 22 1. The project benefits the public;
- 23 2. There is a need for cost control; and

1 3. The need exists for specialized or complex construction
2 methods due to the unique nature of the project.

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

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

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

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

20 ~~H.~~ F. As used in the Public Building Construction and Planning
21 Act, public trusts shall not include state beneficiary public
22 trusts.

1 SECTION 4. AMENDATORY 61 O.S. 2001, Section 208.1, as
2 last amended by Section 3, Chapter 277, O.S.L. 2003 (61 O.S. Supp.
3 2010, Section 208.1), is amended to read as follows:

4 Section 208.1 The Construction and Properties Division of the
5 Department of Central Services may collect a reasonable fee for the
6 purpose of providing or contracting for architectural, engineering,
7 and land surveying services to state agencies and from persons
8 requesting plans and notification of solicitations issued by the
9 Division. The Division may collect a reasonable fee for contract
10 management ~~for a construction project~~ services. All fees collected
11 in accordance with the provisions of this section shall be deposited
12 in the "State Construction Revolving Fund" created in Section 208.2
13 of this title.

14 SECTION 5. AMENDATORY Section 1, Chapter 418, O.S.L.
15 2008 (61 O.S. Supp. 2010, Section 213), is amended to read as
16 follows:

17 Section 213. A. The purpose of this section is to promote
18 effective energy and environmental standards for the construction,
19 renovation, and maintenance of public buildings in this state which
20 will improve the capacity of the state to design, build, and operate
21 high-performance buildings thus creating new jobs, contributing to
22 economic growth, and increasing energy independence. To accomplish
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1 the objectives of this section, the state shall adopt construction
2 standards for public buildings that:

3 1. Optimize the energy performance of public buildings in the
4 state;

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

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

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

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

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

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

19 8. Ensure that the systems of each building project are
20 designed, installed, and tested to perform according to the design
21 intent and operational needs of the building through third-party
22 postconstruction review and verification; and

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1 9. Authorize the Department of Central Services to pursue
2 ENERGY STAR designation from the United States Environmental
3 Protection Agency to further demonstrate the energy independence of
4 a public building project.

5 B. For purposes of this section:

6 1. "High-performance certification program" means a public
7 building design, construction, and renovation standard which meets
8 either the standards of the United States Green Building Council's
9 Leadership in Energy and Environmental Design Rating System (LEED)
10 or the standards of the Green Building Initiative's Green Globes
11 Rating System or the ANSI/ASHRAE/USGBC/IES "Standard for the Design
12 of High-Performance Green Buildings (American National Standards
13 Institute, American Society of Heating, Refrigerating and Air-
14 Conditioning, U.S. Green Building Council and Illuminating
15 Engineering Society) joint standard, and which:

16 a. is quantifiable, measurable, and verifiable as
17 certified by an independent third party, except that
18 compliance with Standard 189.1 may be certified by the
19 architect and/or engineer of record for the public
20 building project,

21 b. reduces the operating costs of public buildings by
22 reducing the consumption of energy, water, and other
23 resources,

- 1 c. results in the recovery of the increased initial
2 capital costs attributable to compliance with the
3 program over a time period by reducing long-term
4 energy, maintenance, and operating costs,
5 d. improves the indoor environmental quality of public
6 buildings for a healthier work environment,
7 e. encourages the use of products harvested, created, or
8 mined within Oklahoma, regardless of product
9 certification status, and
10 f. protects the environment of Oklahoma;

11 2. a. "Public building" means a facility that:

12 (1) is constructed or renovated in whole or in part
13 with state funds or with funds guaranteed or
14 insured by a state agency and the state funds
15 constitute at least fifty percent (50%) of the
16 project cost,

17 (2) contains ten thousand (10,000) or more gross
18 square feet,

19 (3) includes a heating, ventilation, or air
20 conditioning system, and

21 (4) has not entered the design phase prior to July 1,
22 2008.

23 b. A public building shall not include:
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1 (1) a building constructed or renovated with funds
2 from a public school in the state as defined in
3 Section 1-106 of Title 70 of the Oklahoma
4 Statutes, and

5 (2) a building constructed or renovated where the
6 primary purpose of the building project is for
7 the storage of archived documents;

8 3. "State agency" means any agency, board, commission, counsel,
9 court, office, officer, bureau, institution, unit division, body, or
10 house of the executive or judicial branches of state government,
11 whether elected or appointed. State agency shall include
12 institutions within The Oklahoma State System of Higher Education.
13 State agency shall not mean a public school district or technology
14 center school district; and

15 4. "Substantial renovation" means any renovation of a public
16 building the cost of which exceeds fifty percent (50%) of the
17 replacement value of the facility.

18 C. The Department of Central Services shall adopt and update
19 from time to time a high-performance certification program.

20 D. A state agency designing, constructing, or controlling the
21 substantial renovation of a public building shall carry out the
22 design, construction, or substantial renovation so as to achieve the
23 highest performance certification attainable as certified by an

1 independent third party pursuant to the high-performance
2 certification program adopted by the Department pursuant to
3 subsection C of this section. For purposes of this subsection, a
4 certification is attainable if the increased initial costs of
5 achieving the certification, including the time value of money, can
6 be recouped from decreased operational costs within five (5) years.

7 E. If the state agency estimates that the increased initial
8 costs of achieving certification will exceed five percent (5%) of
9 the total cost of the design, construction, or substantial
10 renovation project, the Department of Central Services shall
11 specifically examine the estimate before authorizing the design,
12 construction or substantial renovation.

13 F. If a public building undergoing substantial renovation
14 cannot achieve a high-performance certification due to either the
15 historical nature of the building or because the increased costs of
16 renovating the public building cannot be recouped from decreased
17 operational costs within five (5) years, an accredited professional
18 shall assert in writing that, as much as possible, the substantial
19 renovation was executed in a manner that is consistent with the
20 standards in the high-performance certification program adopted by
21 the Department of Central Services.

22 G. Any facility that is designed or newly constructed with
23 state funds with less than five thousand (5,000) gross square feet
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1 that except for the size would be a public building subject to the
2 high-performance certification program, any minor renovation of a
3 public building, and any controlled maintenance of a public building
4 shall, as much as possible, be executed in a manner that is
5 consistent with the standards in the high-performance certification
6 program adopted by the Department of Central Services.

7 H. A public building may be exempted from complying with this
8 section upon a determination by the Department of Central Services
9 that extenuating circumstances exist such as to preclude compliance
10 with the high-performance certification program.

11 I. The Department of Central Services shall identify and seek
12 to have any public building which has been designed, constructed, or
13 renovated in accordance with the standards of the high-performance
14 certification program designated as an ENERGY STAR building by the
15 United States Environmental Protection Agency.

16 J. The Department of Central Services shall develop and
17 implement a process to monitor and evaluate the energy and
18 environmental benefits associated with designing, constructing, or
19 renovating a public building in accordance with the standards of the
20 high-performance certification program. The Department shall issue
21 an annual report regarding program guidelines, monitoring and
22 evaluation procedures, and the energy and environmental benefits

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1 related to the implementation of the high-performance certification
2 program.

3 SECTION 6. AMENDATORY Section 1, Chapter 414, O.S.L.
4 2002, as amended by Section 33, Chapter 271, O.S.L. 2006 (61 O.S.
5 Supp. 2010, Section 220), is amended to read as follows:

6 Section 220. A. Any political subdivision or board of
7 education of a school district may use construction management as a
8 project delivery method for the building, altering, repairing,
9 improving, maintaining or demolishing any structure or appurtenance
10 thereto, or any other improvement to real property owned by that
11 political subdivision or school district. For purposes of this
12 section "construction management" shall be defined as set forth in
13 Section 202 of this title and shall include both agency construction
14 management and at-risk construction management.

15 B. A political subdivision or school district shall select a
16 construction manager based on the professional qualifications and
17 technical experience of the construction manager. Selection
18 criteria shall include the experience of the candidate, past
19 performance, and certification of the company or individuals within
20 the company of their knowledge of recognized standards of
21 construction, construction management and project management. Only
22 firms recognized as qualified construction managers by the
23 Construction and Properties Division of the Department of Central

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 Services pursuant to Section 62 of this title, may be considered for
2 selection as a construction manager by a political subdivision or
3 school district. The political subdivision or school district shall
4 select the construction manager using a selection process
5 substantially similar to that described by Section 62 of this title,
6 including notification of eligible firms, screening of submittals
7 and interviews to identify the best-qualified firm. Fees may not be
8 discussed or requested until the first-ranked firm is invited for
9 fee negotiations. Any person that is not a qualified construction
10 manager that knowingly offers construction management services, or
11 public official that knowingly retains a firm or individual not
12 qualified as a construction manager, upon conviction, shall be
13 guilty of a misdemeanor punishable by imprisonment in the county
14 jail for not more than one (1) year, or by a fine of not more than
15 One Thousand Dollars (\$1,000.00), or by both such fine and
16 imprisonment.

17 C. The construction management project delivery method may only
18 be used for public construction contracts when the construction
19 project meets the criteria established by Section 202.1 of this
20 title, ~~except that a political subdivision or school district shall~~
21 ~~not be required to obtain permission from the Director of Central~~
22 ~~Services.~~

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1 D. When bids for a public construction project have been
2 received from general contractors pursuant to the Public Competitive
3 Bidding Act of 1974 and the lowest responsible bid is within the
4 awarding agency's available funding, the awarding agency shall not
5 reject all bids and award the project to a construction manager.

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

13 F. All construction contracts or subcontracts for work to be
14 performed for any political subdivision or school district pursuant
15 to a construction management project delivery method shall be
16 awarded in accordance with the provisions of the Public Competitive
17 Bidding Act of 1974. If a construction manager at-risk wishes to
18 self-perform portions of the construction work to be performed, the
19 construction manager at-risk may self-perform portions of the work
20 provided the construction manager at-risk competitively bids the
21 work under the same terms and conditions as the other bidders and
22 the construction manager at-risk is the lowest responsible bidder
23 for the construction subcontract. No work shall commence until the

1 school district executes a written contract and the contractor and
2 subcontractors submit bonds and proofs of insurance as required by
3 the appropriate contract.

4 G. Except for subsection B of Section 202.1 of this title,
5 public school systems and political subdivisions of this state are
6 exempt from the provisions of Section 202.1 of this title.

7 SECTION 7. This act shall become effective January 1, 2012.

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9 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
10 04-07-2011 - DO PASS, As Amended.

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