

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO.1990

By: Brumbaugh and Murphey of
the House

6 and

7 Treat of the Senate

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to public buildings and public works;
11 amending 61 O.S. 2011, Sections 60, 61, 62, 63 and
12 65, as amended by Sections 305, 306, 307, 309 and
13 310, Chapter 304, O.S.L. 2012, Section 201, Sections
14 202, 202.1 and 203, as amended by Sections 318, 319
15 and 320, Chapter 304, O.S.L. 2012, Section 204, as
16 amended by Section 2, Chapter 184, O.S.L. 2012,
17 Section 208, as amended by Section 324, Chapter 304,
18 O.S.L. 2012, Sections 208.1 and 208.2, as amended by
19 Sections 3 and 4, Chapter 184, O.S.L. 2012, Section
20 208.3 and Sections 209, 210, 213 and 220, as amended
21 by Sections 327, 328, 331 and 332, Chapter 304,
22 O.S.L. 2012 (61 O.S. Supp. 2012, Sections 60, 61, 62,
23 63, 65, 202, 202.1, 203, 204, 208, 208.1, 208.2, 209,
24 210, 213 and 220), which relate to the Public
Building Construction and Planning Act; modifying
references; modifying definitions; creating the
Department of Real Estate Services; creating within
the Department the position of State Facilities
Director; modifying qualifications of Director;
requiring the Department of Real Estate Services to
perform procurement actions for certain agencies;
increasing amount of certain contract; providing
exceptions for certain notice and bids; modifying
definitions; eliminating annual reporting requirement
from the State Construction Administrator; providing
State Facilities Director with certain authority;
providing that certain terms have certain meanings;
modifying duties of the Department; authorizing

1 Department to issue solicitations and award statewide
2 contracts for managed construction service;
3 authorizing Department to provide management and
4 maintenance for certain agencies; allowing Director
5 to authorize exemptions; modifying the State
6 Construction Revolving Fund; modifying the adoption
7 of certain construction standards; eliminating
8 definitions; and providing an effective date.

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

10 SECTION 1. AMENDATORY 61 O.S. 2011, Section 60, as
11 amended by Section 305, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
12 2012, Section 60), is amended to read as follows:

13 Section 60. All state agencies, boards, commissions, offices,
14 institutions, and other governmental bodies of this state, and all
15 individuals representing such entities, except the Department of
16 Transportation, the Oklahoma Turnpike Authority, and CompSource
17 Oklahoma provided CompSource Oklahoma is operating pursuant to a
18 pilot program authorized by Sections 3316 and 3317 of Title 74 of
19 the Oklahoma Statutes, shall use construction manager, consultant
20 and construction contract forms that the State ~~Construction~~
21 ~~Administrator~~ Facilities Director of the ~~Construction and Properties~~
22 ~~Division~~ Department of Real Estate Services of the Office of
23 Management and Enterprise Services requires to award and execute
24 contracts for designs to construct, renovate, alter, repair,
maintain, or improve real property or fixtures of real property of
the state. The ~~Administrator~~ State Facilities Director may

1 authorize, in writing, exceptions to the use of construction
2 manager, consultant and construction contract forms for specific
3 projects.

4 SECTION 2. AMENDATORY 61 O.S. 2011, Section 61, as
5 amended by Section 306, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
6 2012, Section 61), is amended to read as follows:

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

8 1. ~~"Administrator" means the State Construction Administrator~~
9 ~~of the Construction and Properties Division of the Office of~~
10 ~~Management and Enterprise Services;~~

11 2. "Chief administrative officer" means an individual
12 responsible for directing the administration of a state agency. The
13 term does not mean one or all of the individuals that make policy
14 for a state agency;

15 3. 2. "Construction manager" means an individual, firm,
16 corporation, association, partnership, copartnership, or any other
17 legal entity possessing the qualifications to provide services of
18 construction management which include, but are not necessarily
19 limited to, design review, scheduling, cost control, value
20 engineering, constructability evaluation, preparation and
21 coordination of bid packages, and construction administration;

22 4. 3. "Consultant" means an individual or legal entity
23 possessing the qualifications to provide licensed architectural,
24 registered engineering, or registered land surveying services or

1 other individuals or legal entities possessing specialized
2 credentials and qualifications as may be needed to evaluate, plan or
3 design for any construction or a public work improvement project;

4 ~~5.~~ 4. "Director" means the Director of the Office of Management
5 and Enterprise Services;

6 ~~6.~~ 5. "~~Division~~ Department" means the ~~Construction and~~
7 ~~Properties Division~~ Department of Real Estate Services of the Office
8 of Management and Enterprise Services;

9 ~~7.~~ 6. "Office" means the Office of Management and Enterprise
10 Services;

11 ~~8.~~ 7. "Project" means studies, evaluations, plans or designs
12 for ~~a~~ facility evaluations or public work improvement improvements,
13 except the transportation facilities under the jurisdiction of the
14 Department of Transportation or the Oklahoma Turnpike Authority:

15 a. to construct, renovate, alter, repair, maintain, or
16 improve real property or fixtures of real property, and

17 b. that does not constitute "construction" as defined by
18 the Public Building Construction and Planning Act; ~~and~~

19 ~~9.~~ 8. "State agency" means an agency, office, officer, bureau,
20 board, counsel, court, commission, institution, unit, division, body
21 or house of the executive or judicial branches of state government,
22 whether elected or appointed, excluding only political subdivisions
23 of the state; and

24

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.

4 SECTION 3. AMENDATORY 61 O.S. 2011, Section 62, as
5 amended by Section 307, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
6 2012, Section 62), is amended to read as follows:

7 Section 62. A. ~~The Construction and Properties Division~~
8 Department of Real Estate Services of the Office of Management and
9 Enterprise Services shall maintain a file of all persons and
10 entities interested in and capable of performing construction
11 management and consultant services for state agencies. The file
12 shall include registration forms and information submitted by
13 construction managers and consultants pursuant to rules promulgated
14 by the Office of Management and Enterprise Services. Pursuant to
15 rules promulgated by the Office, the ~~Division~~ Department shall
16 determine whether a construction manager or consultant qualifies for
17 registration and shall notify the construction manager or consultant
18 within twenty (20) days of receipt of a request for registration.
19 Construction managers and consultants shall re-register for each
20 successive calendar year with the ~~Division~~ Department.

21 B. The requisitioning state agency shall define the scope of a
22 proposed project. The scope shall identify project components,
23 phases, and timetables and shall include detailed project
24 descriptions. The state agency may request the ~~Division~~ Department

1 to assist with scope development. The state agency shall send the
2 scope and a requisition for construction management or consultant
3 services, signed by ~~the chief administrative officer~~ an authorized
4 official, to the ~~Division~~ Department. The ~~Division~~ Department shall
5 review the scope and approve it before the state agency issues a
6 solicitation.

7 C. The state agency shall issue a solicitation to construction
8 managers or consultants that are registered with the Department and
9 capable of providing the services the state agency desires. The
10 solicitation shall, at a minimum, contain:

11 1. Description and scope of the project;

12 2. Estimated construction cost or available funds, anticipated
13 starting date, and completion date the state agency desires for the
14 project;

15 3. Certification of funds available for the construction
16 manager or consultant fee, including federal, state or other
17 participation;

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

20 5. Additional data the state agency requires from the
21 construction manager or consultant. The closing date for submission
22 of construction manager or consultant notice of interest for
23 consideration shall be within thirty (30) days of the date of the
24 notice the state agency issues.

1 D. After the closing date, the ~~State Construction Administrator~~
2 ~~of the Construction and Properties Division of the Office of~~
3 ~~Management and Enterprise Services~~ Department shall provide
4 information from the construction managers' or consultants' files to
5 the state agency. Should there be an inadequate expression of
6 interest in the project, the state agency and ~~Division~~ Department
7 personnel shall confer to add construction managers or consultants
8 for consideration.

9 E. The state agency shall review the information the ~~Division~~
10 Department provides and shall select no less than three and no more
11 than five construction managers or consultants per contract for
12 interviews. The review shall include consideration of factors from
13 the information the ~~Division~~ Department supplies including, but not
14 limited to:

- 15 1. Professional qualifications for the type of work
16 contemplated;
- 17 2. Capacity for completing the project in the specified time
18 period; and
- 19 3. Past performance on projects of a similar nature.

20 F. The ~~Division~~ Department shall advise the state agency of the
21 methods to be used to conduct an evaluation, interview, selection,
22 contract negotiation, and fee negotiation processes pursuant to
23 rules promulgated by the Office of Management and Enterprise
24 Services.

1 G. 1. Upon completion of contract negotiation with the highest
2 qualified construction manager or consultant, which contract shall
3 include a fair and reasonable fee, the ~~Division~~ Department shall
4 approve and award the contract.

5 2. If the ~~Division~~ Department and the first-choice construction
6 manager or consultant cannot reach an agreement, the negotiations
7 shall terminate and negotiations with the second-choice construction
8 manager or consultant shall commence. If the ~~Division~~ Department
9 and the second-choice construction manager or consultant cannot
10 reach an agreement, the negotiations shall terminate and
11 negotiations with the third-choice construction manager or
12 consultant shall commence. If the ~~Division~~ Department and the
13 third-choice construction manager or consultant cannot reach an
14 agreement, then all negotiations shall terminate. Should the
15 ~~Division~~ Department be unable to negotiate a satisfactory contract
16 with any of the three selected construction managers or consultants,
17 the ~~Division~~ Department shall select additional construction
18 managers or consultants in order of their competency and
19 qualifications and shall continue negotiations in accordance with
20 the provisions of this section until an agreement is reached.

21 H. Any plans developed pursuant to the process for selection of
22 a contractor for construction of a facility authorized pursuant to
23 Section 183 of Title 73 of the Oklahoma Statutes shall become the
24

1 property of the State of Oklahoma as a condition of the award of the
2 final contract for construction of the facility.

3 I. For all state agencies subject to the Public Facilities Act,
4 Sections 202 through 220 of this title, the Department shall perform
5 the necessary procurement actions on behalf of a requisitioning
6 agency as enumerated in subsections B through H of this section:

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

9 2. Issue solicitations for construction manager and consultant
10 services;

11 3. Conduct evaluations, interviews, selection, contract
12 negotiation, and fee negotiation processes; and

13 4. Provide contract management services after award of a
14 construction management or consultant contract.

15 J. In the selection of a construction manager or consultant,
16 all political subdivisions of this state shall follow these
17 procedures:

18 The subdivision shall select a construction manager or
19 consultant based upon the professional qualifications and technical
20 experience of the construction manager or consultant. The
21 subdivision shall negotiate a contract with the highest qualified
22 construction manager or consultant, provided that a fee can be
23 negotiated that is fair and reasonable to both parties. In the
24 event a reasonable fee cannot be negotiated with the selected

1 construction manager or consultant, the subdivision may negotiate
2 with other construction managers or consultants in order of their
3 qualifications.

4 SECTION 4. AMENDATORY 61 O.S. 2011, Section 63, as
5 amended by Section 309, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
6 2012, Section 63), is amended to read as follows:

7 Section 63. All drawings, plans, specifications, reports, and
8 models made by a construction manager or consultant for a state
9 agency shall be the property of this state, and shall be delivered
10 to the ~~Construction and Properties Division~~ Department of Real
11 Estate Services of the Office of Management and Enterprise Services.
12 The construction manager or consultant receiving payment for plans
13 paid for in whole or in part with state funds shall file such plans
14 with the ~~Division~~ Department for inclusion in a library system to be
15 maintained by the ~~Division~~ Department. Any state agency shall have
16 access for review to any plans or specifications filed with the
17 ~~Division~~ Department.

18 SECTION 5. AMENDATORY 61 O.S. 2011, Section 65, as
19 amended by Section 310, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
20 2012, Section 65), is amended to read as follows:

21 Section 65. A. In addition to the conditions prescribed
22 pursuant to subsections C and D of this section, the provisions of
23 Section 62 of this title shall not apply whenever the ~~Construction~~
24 ~~and Properties Division~~ Department of Real Estate Services of the

1 Office of Management and Enterprise Services with concurrence of the
2 chief administrative officer of the public agency affected declares
3 that an emergency exists. The construction manager or consultant
4 shall be selected by the State ~~Construction Administrator~~ Facilities
5 Director of the ~~Construction and Properties Division~~ Department of
6 Real Estate Services of the Office of Management and Enterprise
7 Services. The resulting construction manager or consultant contract
8 shall not exceed ~~Fifteen Thousand Dollars (\$15,000.00)~~ Fifty
9 Thousand Dollars (\$50,000.00). The reasons for the emergency shall
10 be recorded in the official records of the ~~Division~~ Department.

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

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

17 2. A condition or situation which, if allowed to continue,
18 would lead to economic loss to the state or to further damage of
19 state property.

20 C. The provisions of Section 62 of this title shall not apply
21 to the process for construction of a correctional facility whenever
22 the State Board of Corrections informs the ~~Division~~ Department that
23 an emergency condition threatens the security of the state
24 correctional system, including inmate population growth, and the

1 condition requires expeditious treatment for the review, approval
2 and bid process as it relates to construction or expansion of
3 correctional facilities. The ~~Division~~ Department and the Department
4 of Corrections are authorized to implement an expedited competitive
5 bid process for the contracting of construction managers or
6 consultants and construction of new or expanded correctional
7 facilities that adequately respond to the emergency. The State
8 Board of Corrections shall provide written notification to the
9 Governor, the Speaker of the House of Representatives and to the
10 President Pro Tempore of the Senate of the emergency conditions.

11 D. The provisions of Section 62 of this title shall not apply
12 to CompSource Oklahoma if CompSource Oklahoma is operating pursuant
13 to a pilot program authorized by Sections 3316 and 3317 of Title 74
14 of the Oklahoma Statutes.

15 SECTION 6. AMENDATORY 61 O.S. 2011, Section 201, is
16 amended to read as follows:

17 Section 201. Sections 202 through ~~209~~ 220 of this title shall
18 be known and may be cited as the "Public ~~Building Construction and~~
19 Planning Facilities Act".

20 SECTION 7. AMENDATORY 61 O.S. 2011, Section 202, as
21 amended by Section 318, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
22 2012, Section 202), is amended to read as follows:

23 Section 202. As used in the Public ~~Building Construction and~~
24 Planning Facilities Act:

1 1. ~~"Administrator" means the State Construction Administrator~~
2 ~~of the Construction and Properties Division of the Office of~~
3 ~~Management and Enterprise Services~~ "Annual capital plan" means the
4 collective state facility capital improvements, facility operations
5 and maintenance, rent and lease payments, facility debt services,
6 water, sewer and energy utilities and real property transactions
7 approved by the Legislature in a capital budget relative to state
8 construction, maintenance, and real estate services;

9 2. "Capital planning and asset management" means the processes
10 delegated to the Department of Real Estate Services for real
11 property data acquisition, data analysis and determination of
12 capital construction projects and procurement related to real
13 property;

14 3. "Construction" means the process of planning, acquiring,
15 designing, building, equipping, altering, repairing, improving,
16 maintaining, or demolishing any structure or appurtenance thereto
17 including facilities, utilities, or other improvements to any real
18 property but not including highways, bridges, airports, railroads,
19 tunnels, sewers not related to a structure or appurtenance thereto,
20 or dams;

21 ~~3.~~ 4. "Construction administration" means a series of actions
22 required of the ~~State Construction Administrator~~ State Facilities
23 Director, of other state agency employees, or, under a construction
24 administration contract or contract provision, to ensure the full,

1 timely, and proper performance of all phases of a construction
2 project by all contractors, suppliers, and other persons having
3 responsibility for project work and any guarantees or warranties
4 pertaining thereto;

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

11 "construction management" includes:

- 12 a. "agency construction management" whereby the
13 construction entity provides services to the owner
14 without taking on financial risks for the execution of
15 the actual construction, and
- 16 b. "at-risk construction management" whereby the
17 construction entity, after providing agency services
18 during the pre-construction period, takes on the
19 financial obligation to carry out construction under a
20 specified cost agreement;

21 ~~5.~~ 6. "Consultant" means an individual or legal entity
22 possessing the qualifications to provide licensed architectural,
23 registered engineering, or registered land surveying services or
24 possessing specialized credentials and qualifications as may be

1 needed to plan or design for any construction or public work
2 improvement project;

3 ~~6.~~ 7. "Department" means the Department of Real Estate Services
4 of the Office of Management and Enterprise Services;

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

10 ~~7.~~ 9. "Director" means the Director of the Office of Management
11 and Enterprise Services;

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

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

22 10. "Facilities Director" or "SFD" means the State Facilities
23 Director of the Department of Real Estate Services of the Office of
24 Management and Enterprise Services;

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

4 ~~11.~~ 12. "Office" means the Office of Management and Enterprise
5 Services;

6 ~~12.~~ 13. "Procurement" means buying, purchasing, renting,
7 leasing, allocating, trading or otherwise acquiring or disposing of
8 supplies, services, or construction necessary to evaluate, plan,
9 construct, manage, operate and preserve real property capital
10 assets;

11 ~~13.~~ 14. "Public improvement" means any beneficial or valuable
12 change or addition, betterment, enhancement or amelioration of or
13 upon any real property, or interest therein, belonging to a ~~public~~
14 state agency and the State of Oklahoma, intended to enhance its
15 value, beauty or utility or to adapt it to new or further purposes.
16 The term does not include the direct purchase of materials, ~~provided~~
17 ~~that the materials are not purchased in increments for an amount of~~
18 ~~less than Twenty-five Thousand Dollars (\$25,000.00) and used for the~~
19 ~~purposes of completing a single project, equipment or supplies by a~~
20 ~~public agency, or any personal property as defined in paragraphs 1~~
21 ~~and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma~~
22 Statutes used for general repairs and maintenance to state
23 facilities;

1 ~~14.~~ 15. "Shared savings financing" means the financing of
2 energy conservation measures and maintenance services through a
3 private firm which may own any purchased equipment for the duration
4 of a contract. Such contract shall specify that the private firm
5 will be recompensed either out of a negotiated portion of the
6 savings resulting from the conservation measures and maintenance
7 services provided by the private firm or, in the case of a
8 cogeneration project, through the payment of a rate for energy lower
9 than would otherwise have been paid for the same energy from current
10 sources; and

11 ~~15.~~ 16. "State agency" means an agency, board, commission,
12 counsel, court, office, officer, bureau, institution, unit,
13 division, body, or house of the executive or judicial branches of
14 government of this state, whether elected or appointed, excluding
15 only political subdivisions.

16 SECTION 8. AMENDATORY 61 O.S. 2011, Section 202.1, as
17 amended by Section 319, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
18 2012, Section 202.1), is amended to read as follows:

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

1 project. In all instances where the design-build project or at-risk
2 construction management delivery method is authorized, ~~construction~~
3 contract administration shall be performed by the State ~~Construction~~
4 ~~Administrator~~ Facilities Director, the ~~Administrator's~~ SFD's
5 designee or designees, or otherwise by contract or contract
6 provision approved by the Director of the Office of Management and
7 Enterprise Services for construction administration by another
8 party.

9 B. Municipalities, counties, public trusts, or any other
10 political subdivision in this state shall not be required to get
11 approval of any other state agency in order to use design-build
12 agency construction management or at-risk construction management as
13 a construction ~~management~~ delivery method. However, municipalities,
14 counties, public trusts, and any other political subdivision shall
15 be subject to ~~all other provisions of the Public Building~~
16 ~~Construction and Planning Act~~ Section 220 of this title.

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

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

5 D. The use of design-build and construction management project
6 delivery methods shall not interfere or inhibit the opportunity for
7 subcontractors to openly and freely compete for subcontracts
8 pursuant to the Public Competitive Bidding Act of 1974 with respect
9 to public notices.

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

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

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

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1 H. G. As used in the Public ~~Building Construction and Planning~~
2 Facilities Act, public trusts shall not include state beneficiary
3 public trusts.

4 SECTION 9. AMENDATORY 61 O.S. 2011, Section 203, as
5 amended by Section 320, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
6 2012, Section 203), is amended to read as follows:

7 Section 203. A. There is hereby created within the Office of
8 Management and Enterprise Services the ~~Construction and Properties~~
9 Division Department of Real Estate Services.

10 B. There is hereby created within the ~~Division Department~~ the
11 position of State ~~Construction Administrator~~ Facilities Director who
12 shall be the chief administrative officer of the ~~Division Department~~
13 and chief official over procurement as authorized in this act. The
14 ~~Administrator~~ State Facilities Director shall be a registered
15 professional engineer ~~or~~, a licensed architect or an individual
16 credentialed and experienced in the field of real property
17 administration who shall be appointed by and serve at the pleasure
18 of the Director.

19 C. The State Facilities Director or designee shall have
20 authority over planning, procurement, contracts, facility
21 management, property standards, state leasing and real estate
22 brokerage services as delegated to the Department.
23
24

1 D. The Director shall employ or contract with experts and
2 consultants as are necessary to perform the duties of the ~~Division~~
3 Department.

4 E. Anywhere the terms "State Construction Administrator" and
5 "Construction and Properties Division" appear in the Oklahoma
6 Statutes, they shall have the same meaning as "State Facilities
7 Director" and "Department of Real Estate Services" respectively.

8 SECTION 10. AMENDATORY 61 O.S. 2011, Section 204, as
9 amended by Section 2, Chapter 184, O.S.L. 2012 (61 O.S. Supp. 2012,
10 Section 204), is amended to read as follows:

11 Section 204. A. ~~The Construction and Properties Division~~
12 Department of Real Estate Services shall:

13 1. Maintain a comprehensive master plan for utilization and
14 construction of state buildings ~~for state agencies~~, capital
15 improvements, and utilization of land owned by this state.

16 Requirements of the master planning process shall include:

- 17 a. reporting by each state agency concerning facility
18 needs,
- 19 b. data acquisition of condition and performance
20 benchmarking of state agency facilities,
- 21 c. analyses and audits of state agency facilities,
22 properties and leaseholds to determine critical and
23 long-range needs,

- 1 d. development of state agency long-range strategic
2 facility plans,
3 e. short-range project programming to identify budget
4 requests for facility capital improvements and asset
5 management decisions, and
6 f. an annual capital plan for all state agencies
7 submitted to the Legislature for line-item
8 appropriation requests;

9 2. Review and approve all construction plans and specifications
10 to ensure compliance with good construction practices and space
11 standards, costs of project, proposed construction timetables, and
12 agency need for the project, ~~except as otherwise provided in~~
13 ~~subsection B of this section;~~

14 3. Inspect prior to acceptance and final payment all completed
15 projects for which the ~~Division~~ Department issued bid solicitations
16 to ensure compliance with the plans and specifications of the
17 project;

18 4. ~~Provide assistance to state agencies when a state agency~~
19 ~~desires to~~ Select and hire a consultant or consultants and
20 construction ~~manager~~ managers for a project projects as determined
21 or approved by the Department. ~~Except as provided by subsection B~~
22 ~~of this section, the Division~~ The Department shall select, award and
23 execute contracts to consultants and construction managers that
24

1 provide services to state agencies ~~for construction projects~~ subject
2 to this act;

3 5. Develop and issue solicitations for award of state agency
4 contracts for construction services. The ~~Division~~ Department shall
5 have final approval authority for contracts and contract documents.
6 Neither the ~~Division~~ Department nor any ~~state agency~~ public entity
7 shall, for performance of work that requires that a contractor be
8 licensed by this state, issue a solicitation to, or make a contract
9 with, a contractor not licensed by this state;

10 6. Review inspections performed by consultants and construction
11 managers during construction, perform primary inspections when
12 consultants or construction managers are not used, and final
13 inspections after completion;

14 7. ~~Recommend~~ Establish standards, ~~including, but not limited~~
15 ~~to, building codes,~~ and policies as required to standardize facility
16 assessment and benchmarking, facility operations and maintenance,
17 asset preservation, design and energy standards, space utilization,
18 material testing, indexes of efficiency, economy, and effectiveness,
19 ~~pursuant to rules the Director promulgates;~~

20 8. Monitor indices of facility condition, effectiveness of
21 operations and maintenance programs, deferred maintenance
22 prioritization, effectiveness of planning processes, budgeting for
23 capital needs, application of facility standards as established by
24 the Department, and performance outcomes of construction projects to

1 ensure maximum efficiency in the expenditure of state funds for
2 ~~construction~~ asset management and preservation of the state's
3 capital real property;

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

6 10. Provide property leasing and brokerage services delegated
7 to the Office;

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

12 ~~10.~~ 12. Prequalify as good and sufficient insurance carriers,
13 bonding companies and surety companies to meet provisions of
14 Sections 1 and 134 of this title. The Director shall promulgate
15 rules to establish criteria to determine whether a carrier or
16 company is good and sufficient. The prequalification requirement
17 and process shall not violate the provisions of Section 135 of this
18 title.

19 B. When a state agency ~~has~~ employs a licensed architect or
20 licensed engineer, as a full-time employee, ~~to review construction~~
21 ~~plans and specifications, the review and approval of all~~
22 ~~construction plans and specifications required pursuant to paragraph~~
23 ~~2 of subsection A of this section shall not apply to:~~

24

1 ~~1. The common schools subject to the jurisdiction of the State~~
2 ~~Department of Education;~~ said licensed employee may conduct required
3 facility planning, prepared project plans and specification and
4 monitor construction work as prescribed by the Department. State
5 agencies authorized to employ licensed architects and engineers for
6 the purposes of this section include:

7 ~~2.~~ 1. The Department of Transportation with respect to
8 highways, bridges and dams;

9 ~~3.~~ 2. The Oklahoma State System of Higher Education;

10 ~~4.~~ 3. The Military Department of the State of Oklahoma;

11 ~~5.~~ 4. The Oklahoma Tourism and Recreation Department; and

12 ~~6.~~ 5. The Department of Human Services.

13 C. Not later than December 31, 2012, with the advice of the
14 State ~~Construction Administrator~~ Facilities Director, the Director
15 of the Office of ~~State Finance~~ Management and Enterprise Services
16 shall provide a report containing recommendations to the Legislature
17 for the streamlining, integration, and consolidation of state
18 construction, maintenance, and real property management processes to
19 maximize capital assets and achieve cost savings to the state. The
20 report shall identify the necessary planning processes for
21 transitioning from a decentralized capital budgeting process to a
22 centralized annual capital plan appropriation process, to be
23 implemented no later than January 1, 2014.

1 SECTION 11. AMENDATORY 61 O.S. 2011, Section 208, as
2 amended by Section 324, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
3 2012, Section 208), is amended to read as follows:

4 Section 208. A. ~~The Construction and Properties Division~~
5 Department of Real Estate Services of the Office of Management and
6 Enterprise Services shall ~~approve state agency selection of,~~ select
7 and award contracts to~~r~~ construction managers and design consultants
8 pursuant to the provisions of Section 62 of this title.

9 B. The negotiation of construction manager and ~~design~~
10 consultant contracts and fees shall be performed by the ~~Division~~
11 Department.

12 C. The ~~Division~~ Department shall award and administer
13 construction contracts for state agencies pursuant to the provisions
14 of the Public Competitive Bidding Act of 1974.

15 D. 1. When all bids for a public construction contract exceed
16 ~~an agency's~~ the programmed estimate and available funding, the ~~State~~
17 ~~Construction Administrator~~ Department may enter into negotiations
18 with the lowest responsible bidder for the purpose of modifying the
19 project scope and reducing the construction cost, provided that:

20 a. the unexpected higher construction costs resulted from
21 unforeseen economic conditions or otherwise sudden
22 price volatility in the construction industry,
23
24

1 b. the project was appropriately planned, and cost
2 estimates were developed using standards of care
3 acceptable to the ~~Division~~ Department, and

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

7 2. To request consideration for negotiations pursuant to this
8 subsection, the using agency, within ten (10) days of the bid
9 opening date, shall make a written request to the Director of the
10 Office of Management and Enterprise Services to enter into
11 negotiations pursuant to paragraph 1 of this subsection. If
12 approved by the Director, the ~~State Construction Administrator~~
13 Department shall consult with the using agency, consultant and low
14 bidder on methods to reduce the project scope or other cost-saving
15 measures.

16 3. If a suitable revised scope and contract amount is agreed
17 upon by the using agency, low bidder and ~~State Construction~~
18 ~~Administrator~~ the SFD, the ~~Division~~ Department may award the public
19 construction contract to the low bidder.

20 4. The ~~State Construction Administrator~~ Department shall
21 negotiate a fair and reasonable fee with the project's consultant,
22 if applicable, to make any necessary revisions to the contract
23 documents. The cost of this additional consulting work shall be
24 paid from the agency's available funds.

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

4 E. The Department of Real Estate Services is authorized to
5 issue solicitations and award statewide contracts for managed
6 construction service delivery in order to provide efficient and
7 cost-effective procurement solutions for public agencies. Statewide
8 contracts may be either mandatory or nonmandatory as determined by
9 the SFD.

10 F. The Department of Real Estate Services is authorized to
11 provide facility management and operations and maintenance services
12 for any state agency on a cost-recovery basis for any facility
13 operated by a state agency when:

- 14 1. The state agency initiates a request with the SFD; or
15 2. Beginning on or after July 1, 2016, the SFD determines a
16 state agency is performing in the bottom ten percent (10%) of all
17 state agencies with respect to performance measures for facility
18 management established by the Department.

19 G. The State Facilities Director may authorize an exemption to
20 the provisions of this act to a state agency, including but not
21 limited to The Oklahoma State System of Higher Education, provided
22 that the recipient of an exemption:

- 23 1. Adopts standards, processes and procedures for planning,
24 budgeting, design, facility management, asset management and asset

1 preservation that are substantially compliant with those as
2 prescribed by the Department;

3 2. Adheres to procurement requirements of Sections 62 through
4 65 of this title and the provisions of this act;

5 3. Reports benchmark, budget and ongoing performance data
6 required by the Department; and

7 4. Participates in annual performance reviews and organized
8 forums for promoting best practices statewide as determined by the
9 SFD.

10 SECTION 12. AMENDATORY 61 O.S. 2011, Section 208.1, as
11 amended by Section 3, Chapter 184, O.S.L. 2012 (61 O.S. Supp. 2012,
12 Section 208.1), is amended to read as follows:

13 Section 208.1. ~~The Construction and Properties Division~~
14 Department of Real Estate Services may collect a reasonable fee for
15 the purpose of providing or contracting for architectural,
16 engineering, land surveying, planning, real estate and related
17 services to state agencies and political subdivisions of the state,
18 and from persons requesting plans and notification of solicitations
19 issued by the ~~Division~~ Department. The ~~Division~~ Department may
20 collect a reasonable fee for management services. Annual fees to
21 the ~~Division~~ Department shall be on a cost-recovery basis and may be
22 calculated as a percentage of annual construction and real estate
23 services in an amount necessary to support ~~Division~~ Department
24 operation as designated in the annual capital plan. All fees

1 collected in accordance with the provisions of this section shall be
2 deposited in the "State Construction Revolving Fund" created in
3 Section 208.2 of this title.

4 SECTION 13. AMENDATORY 61 O.S. 2011, Section 208.2, as
5 amended by Section 4, Chapter 184, O.S.L. 2012 (61 O.S. Supp. 2012,
6 Section 208.2), is amended to read as follows:

7 Section 208.2. There is hereby created in the State Treasury a
8 revolving fund for the ~~Construction and Properties Division~~
9 Department of Real Estate Services of the ~~Department of Central~~
10 Office of Management and Enterprise Services, to be designated the
11 "State Construction Revolving Fund". The fund shall be a continuing
12 fund, not subject to fiscal year limitations, and shall consist of
13 all funds appropriated by the Legislature for projects included in
14 the annual capital plan; funds from nonappropriated sources
15 designated for projects within a capital plan; allocations from an
16 approved annual capital plan designed for assessment and planning
17 services; allocations from an approved annual capital plan for
18 emergency response in accordance with Section 130 of this title; and
19 fees collected by the ~~Division~~ Department in accordance with the
20 provisions of this section or as otherwise provided by law. All
21 monies accruing to the credit of the fund are hereby appropriated
22 and may be budgeted and expended by the ~~Division~~ Department. The
23 fund shall be used to pay expenses resulting from contracts awarded
24 by the ~~Division~~ Department and to defray ~~Division~~ Department

1 operating costs and expenses the ~~Department~~ Office incurs to support
2 ~~Division~~ Department operations. Expenditures from the fund shall be
3 made upon warrants issued by the State Treasurer against claims
4 filed as prescribed by law with the Director of ~~State Finance~~ the
5 Office of Management and Enterprise Services for approval and
6 payment.

7 SECTION 14. AMENDATORY 61 O.S. 2011, Section 208.3, is
8 amended to read as follows:

9 Section 208.3. Nothing in the Public ~~Building Construction and~~
10 ~~Planning~~ Facilities Act shall be construed to prevent any state
11 entity exempted from any of the provisions of the Public ~~Building~~
12 ~~Construction and Planning~~ Facilities Act from complying with any
13 provisions of the Public ~~Building Construction and Planning~~
14 Facilities Act.

15 SECTION 15. AMENDATORY 61 O.S. 2011, Section 209, as
16 amended by Section 327, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
17 2012, Section 209), is amended to read as follows:

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

- 20 1. For state agencies to perform minor construction projects;
- 21 2. Specifying building codes pursuant to the Oklahoma Uniform
22 Building Code Commission Act for construction projects;
- 23 3. Permitting state agencies who have the expertise, upon
24 written application to the ~~Construction and Properties Division~~

1 Department of Real Estate Services of the Office of Management and
2 Enterprise Services, to perform any part of the responsibilities of
3 the ~~Division~~ Department pursuant to the provisions of the Public
4 ~~Building Construction and Planning~~ Facilities Act for a specific
5 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 ~~Division~~ Department;

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 ~~not exceeding the amount for which competitive~~
22 ~~bids are required pursuant to Section 102 of this title;~~

23 9. Conditions under which any of the rules herein authorized
24 may be waived;

1 10. The form of any document the Director requires;

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

5 12. Specifying the process a state agency shall follow to
6 establish the scope of work, schedule and cost estimate for all
7 publicly bid construction projects involving construction or
8 renovation of buildings. ~~This requirement shall not apply to
9 project planning work performed by a state agency which employs an
10 architect pursuant to other provisions of this act.~~

11 SECTION 16. AMENDATORY 61 O.S. 2011, Section 210, as
12 amended by Section 328, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
13 2012, Section 210), is amended to read as follows:

14 Section 210. A. Shared savings contracts shall be developed in
15 accordance with a model contract ~~to be~~ developed by the ~~Construction
16 and Properties Division~~ Department of Real Estate Services of the
17 Office of Management and Enterprise Services. The model contract
18 shall include:

- 19 1. The methodology for calculating baseline energy costs;
- 20 2. A procedure for revising these costs should the state
21 institute additional energy conservation features or structure use
22 change;

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

4 4. A provision for early ~~buy-out~~ buyout;

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

7 6. A provision allowing the disposal of equipment at the end of
8 the contract.

9 No state agency or department shall substantially alter the
10 provisions described in the model without the permission of the
11 ~~Division~~ Department.

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

14 SECTION 17. AMENDATORY 61 O.S. 2011, Section 213, as
15 amended by Section 331, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
16 2012, Section 213), is amended to read as 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~~ state buildings ~~in this state~~
20 which will improve the capacity of the state to design, build, and
21 operate high-performance buildings thus creating new jobs,
22 contributing to economic growth, and increasing energy independence.
23 To accomplish the objectives of this section, the state shall adopt
24 planning and construction standards for ~~public~~ state buildings that:

- 1 1. ~~Optimize~~ Conserve energy consumption and optimize the energy
2 performance of ~~public buildings in the state~~ new building
3 construction;
- 4 2. Increase the demand for environmentally preferable building
5 materials, finishes, and furnishings;
- 6 3. Reduce the dependence of the state on imported sources of
7 energy through buildings that conserve energy and utilize local and
8 renewable energy sources;
- 9 4. Protect and restore the natural resources of the state by
10 avoiding development of inappropriate building sites;
- 11 5. Reduce the burden on municipal water supply and treatment by
12 reducing potable water consumption;
- 13 6. Reduce waste generation and manage waste through recycling
14 and diversion from landfill disposal;
- 15 7. Establish life-cycle cost analysis as the appropriate and
16 most efficient analysis to determine the optimal performance level
17 of a building project;
- 18 8. Ensure that the systems of each building project are
19 designed, installed, and tested to perform according to the design
20 intent and operational needs of the building ~~through third-party~~
21 ~~postconstruction review and verification~~; and
- 22 9. Authorize the Office of Management and Enterprise Services
23 to pursue ENERGY STAR designation from the United States
24

1 Environmental Protection Agency to further demonstrate the energy
2 independence efficiency of a public building project.

3 ~~B. For purposes of this section:~~

4 ~~1. "High-performance certification program" means a public~~
5 ~~building design, construction, and renovation standard which meets~~
6 ~~either the standards of the United States Green Building Council's~~
7 ~~Leadership in Energy and Environmental Design Rating System (LEED)~~
8 ~~or the standards of the Green Building Initiative's Green Globes~~
9 ~~Rating System, and which:~~

10 ~~a. is quantifiable, measurable, and verifiable as~~
11 ~~certified by an independent third party,~~

12 ~~b. reduces the operating costs of public buildings by~~
13 ~~reducing the consumption of energy, water, and other~~
14 ~~resources,~~

15 ~~c. results in the recovery of the increased initial~~
16 ~~capital costs attributable to compliance with the~~
17 ~~program over a time period by reducing long-term~~
18 ~~energy, maintenance, and operating costs,~~

19 ~~d. improves the indoor environmental quality of public~~
20 ~~buildings for a healthier work environment,~~

21 ~~e. encourages the use of products harvested, created, or~~
22 ~~mined within Oklahoma, regardless of product~~
23 ~~certification status, and~~

24 ~~f. protects the environment of Oklahoma;~~

1 2. a. ~~"Public building" means a facility that:~~

2 ~~(1) is constructed or renovated in whole or in part~~

3 ~~with state funds or with funds guaranteed or~~

4 ~~insured by a state agency and the state funds~~

5 ~~constitute at least fifty percent (50%) of the~~

6 ~~project cost,~~

7 ~~(2) contains ten thousand (10,000) or more gross~~

8 ~~square feet,~~

9 ~~(3) includes a heating, ventilation, or air~~

10 ~~conditioning system, and~~

11 ~~(4) has not entered the design phase prior to July 1,~~

12 ~~2008.~~

13 b. ~~A public building shall not include:~~

14 ~~(1) a building constructed or renovated with funds~~

15 ~~from a public school in the state as defined in~~

16 ~~Section 1-106 of Title 70 of the Oklahoma~~

17 ~~Statutes, and~~

18 ~~(2) a building constructed or renovated where the~~

19 ~~primary purpose of the building project is for~~

20 ~~the storage of archived documents;~~

21 3. ~~"State agency" means any agency, board, commission, counsel,~~

22 ~~court, office, officer, bureau, institution, unit division, body, or~~

23 ~~house of the executive or judicial branches of state government,~~

24 ~~whether elected or appointed. State agency shall include~~

1 ~~institutions within The Oklahoma State System of Higher Education.~~
2 ~~State agency shall not mean a public school district or technology~~
3 ~~center school district; and~~

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

7 C. ~~The Office of Management and Enterprise Services shall adopt~~
8 ~~and update from time to time a high-performance certification~~
9 ~~program.~~

10 D. ~~A state agency designing, constructing, or controlling the~~
11 ~~substantial renovation of a public building shall carry out the~~
12 ~~design, construction, or substantial renovation so as to achieve the~~
13 ~~highest performance certification attainable as certified by an~~
14 ~~independent third party pursuant to the high-performance~~
15 ~~certification program adopted by the Office pursuant to subsection C~~
16 ~~of this section. For purposes of this subsection, a certification~~
17 ~~is attainable if the increased initial costs of achieving the~~
18 ~~certification, including the time value of money, can be recouped~~
19 ~~from decreased operational costs within five (5) years.~~

20 E. ~~If the state agency estimates that the increased initial~~
21 ~~costs of achieving certification will exceed five percent (5%) of~~
22 ~~the total cost of the design, construction, or substantial~~
23 ~~renovation project, the Office of Management and Enterprise Services~~
24

1 ~~shall specifically examine the estimate before authorizing the~~
2 ~~design, construction or substantial renovation.~~

3 ~~F. If a public building undergoing substantial renovation~~
4 ~~cannot achieve a high-performance certification due to either the~~
5 ~~historical nature of the building or because the increased costs of~~
6 ~~renovating the public building cannot be recouped from decreased~~
7 ~~operational costs within five (5) years, an accredited professional~~
8 ~~shall assert in writing that, as much as possible, the substantial~~
9 ~~renovation was executed in a manner that is consistent with the~~
10 ~~standards in the high-performance certification program adopted by~~
11 ~~the Office of Management and Enterprise Services.~~

12 ~~G. Any facility that is designed or newly constructed with~~
13 ~~state funds with less than five thousand (5,000) gross square feet~~
14 ~~that except for the size would be a public building subject to the~~
15 ~~high-performance certification program, any minor renovation of a~~
16 ~~public building, and any controlled maintenance of a public building~~
17 ~~shall, as much as possible, be executed in a manner that is~~
18 ~~consistent with the standards in the high-performance certification~~
19 ~~program adopted by the Office of Management and Enterprise Services.~~

20 ~~H. A public building may be exempted from complying with this~~
21 ~~section upon a determination by the Office of Management and~~
22 ~~Enterprise Services that extenuating circumstances exist such as to~~
23 ~~preclude compliance with the high-performance certification program.~~

24

1 ~~I. The Office of Management and Enterprise Services shall~~
2 ~~identify and seek to have any public building which has been~~
3 ~~designed, constructed, or renovated in accordance with the standards~~
4 ~~of the high-performance certification program designated as an~~
5 ~~ENERGY STAR building by the United States Environmental Protection~~
6 ~~Agency.~~

7 ~~J. The Office of Management and Enterprise Services shall~~
8 ~~develop and implement a process to monitor and evaluate the energy~~
9 ~~and environmental benefits associated with designing, constructing,~~
10 ~~or renovating a public building in accordance with the standards of~~
11 ~~the high-performance certification program. The Office shall issue~~
12 ~~an annual report regarding program guidelines, monitoring and~~
13 ~~evaluation procedures, and the energy and environmental benefits~~
14 ~~related to the implementation of the high-performance certification~~
15 ~~program.~~

16 SECTION 18. AMENDATORY 61 O.S. 2011, Section 220, as
17 amended by Section 332, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
18 2012, Section 220), is amended to read as follows:

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

1 section "construction management" shall be defined as set forth in
2 Section 202 of this title and shall include both agency construction
3 management and at-risk construction management.

4 B. A political subdivision or school district shall select a
5 construction manager based on the professional qualifications and
6 technical experience of the construction manager. Selection
7 criteria shall include the experience of the candidate, past
8 performance, and certification of the company or individuals within
9 the company of their knowledge of recognized standards of
10 construction, construction management and project management. Only
11 firms recognized as qualified construction managers by the
12 ~~Construction and Properties Division~~ Department of Real Estate
13 Services of the Office of Management and Enterprise Services
14 pursuant to Section 62 of this title, may be considered for
15 selection as a construction manager by a political subdivision or
16 school district.

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 the Office
22 of Management and Enterprise Services.

23 D. When bids for a public construction project have been
24 received from general contractors pursuant to the Public Competitive

1 Bidding Act of 1974 and the lowest responsible bid is within the
2 awarding agency's available funding, the awarding agency shall not
3 reject all bids and award the project to a construction manager.

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

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

1 SECTION 19. This act shall become effective November 1, 2013.

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