

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. _____

COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 2666, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Leewright

Leewright-NP-FS-Req#2245
4/23/2019 11:04 AM

(Floor Amendments Only) Date and Time Filed: _____

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 2666

By: Wallace of the House

and

Leewright of the Senate

7
8 FLOOR SUBSTITUTE

9 [public buildings and public works - project
10 consultants - Public Facilities Act - Public
11 Construction Management Act for Political
12 Subdivisions - repealer - codification - effective
13 date]

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

15 SECTION 1. AMENDATORY 61 O.S. 2011, Section 61, as last
16 amended by Section 2, Chapter 71, O.S.L. 2016 (61 O.S. Supp. 2018,
17 Section 61), is amended to read as follows:

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

19 1. "Chief administrative officer" means an individual
20 responsible for directing the administration of a state agency. The
21 term does not mean one or all of the individuals that make policy
22 for a state agency;

23 2. "Construction manager" means an individual, firm,
24 corporation, association, partnership, copartnership, or any other

1 legal entity on the Office of Management and Enterprise Services
2 Construction and Properties (OMES-CAP) registration list and
3 possessing the qualifications to provide services of construction
4 management which include, but are not necessarily limited to, design
5 review, scheduling, cost control, value engineering,
6 constructability evaluation, preparation and coordination of bid
7 packages, and construction administration;

8 3. "Consultant" means an individual or legal entity possessing
9 the qualifications to provide licensed architectural, registered
10 engineering, or registered land surveying services or other
11 individuals or legal entities possessing specialized credentials and
12 qualifications as may be needed to evaluate, plan or design and/or
13 provide construction administration and/or construction inspection
14 services for any construction or a public work improvement project;

15 4. "Director" means the Director of the Office of Management
16 and Enterprise Services;

17 5. "Department" means the Department of Real Estate Services of
18 the Office of Management and Enterprise Services;

19 6. "Office" means the Office of Management and Enterprise
20 Services;

21 7. "Project" means studies, evaluations, plans or designs for
22 facility evaluations or public work improvements, except the
23 transportation facilities under the jurisdiction of the Department
24 of Transportation or the Oklahoma Turnpike Authority:

1 a. to construct, renovate, alter, repair, maintain, or
2 improve real property or fixtures of real property,
3 and

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

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

13 9. "Facilities Director" or "SFD" means the State Facilities
14 Director of the Department of Real Estate Services of the Office of
15 Management and Enterprise Services; and

16 10. "Political subdivision" means any local governmental body
17 formed pursuant to the laws of this state, including, but not
18 limited to, school districts, career technology centers, cities,
19 counties, public trusts, public authorities, commissions or other
20 local governmental bodies exercising their authority to contract
21 with construction managers and/or consultants. The term also means
22 any quasi-governmental and nongovernmental organizations contracting
23 with construction managers and/or consultants using public funds or
24 on behalf of a political subdivision.

1 SECTION 2. AMENDATORY 61 O.S. 2011, Section 62, as last
2 amended by Section 3, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,
3 Section 62), is amended to read as follows:

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

17 B. The requisitioning state agency shall define the scope of a
18 proposed project. The scope shall identify project components,
19 phases and timetables and shall include detailed project
20 descriptions. The state agency may request the Department to assist
21 with scope development. The state agency shall send the scope and a
22 requisition for construction management or consultant services,
23 signed by an authorized official, to the Department. The Department
24

1 shall review the scope and approve it before the state agency issues
2 a solicitation.

3 C. The state agency shall issue a solicitation to construction
4 managers or consultants that are registered with the Department and
5 capable of providing the services the state agency desires. The
6 solicitation shall, at a minimum, contain:

7 1. Description and scope of the project;

8 2. Estimated construction cost or available funds, anticipated
9 starting date, and completion date the state agency desires for the
10 project;

11 3. Certification of funds available for the construction
12 manager or consultant fee, including federal, state or other
13 participation;

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

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

21 D. After the closing date, the Department shall provide
22 information from the construction managers' or consultants' files to
23 the state agency. Should there be an inadequate expression of
24 interest in the project, the state agency and Department personnel

1 shall confer to add construction managers or consultants for
2 consideration.

3 E. The state agency shall review the information the Department
4 provides and shall select no less than three and no more than five
5 construction managers or consultants per contract for interviews.
6 The review shall include consideration of factors from the
7 information the Department supplies including, but not limited to:

8 1. Professional qualifications for the type of work
9 contemplated;

10 2. Capacity for completing the project in the specified time
11 period; and

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

13 F. The Department shall advise the state agency of the methods
14 to be used to conduct an evaluation, interview, selection, contract
15 negotiation, and fee negotiation processes pursuant to rules
16 promulgated by the Office of Management and Enterprise Services.

17 G. 1. Upon completion of contract negotiation with the highest
18 qualified construction manager or consultant, which contract shall
19 include a fair and reasonable fee, the Department shall approve and
20 award the contract.

21 2. If the Department and the first-choice construction manager
22 or consultant cannot reach an agreement, the negotiations shall
23 terminate and negotiations with the second-choice construction
24 manager or consultant shall commence. If the Department and the

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

12 H. Any plans developed pursuant to the process for selection of
13 a contractor for construction of a facility authorized pursuant to
14 Section 183 of Title 73 of the Oklahoma Statutes shall become the
15 property of the State of Oklahoma as a condition of the award of the
16 final contract for construction of the facility.

17 I. For all state agencies subject to the Public Facilities Act,
18 Sections 202 through ~~220~~ 213 of this title, the Department shall
19 perform the necessary procurement actions on behalf of a
20 requisitioning agency as enumerated in subsections B through H of
21 this section:

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

24

1 2. Issue solicitations for construction manager and consultant
2 services;

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

5 4. Provide contract management services after award of a
6 construction management or consultant contract.

7 J. In the selection of a ~~construction manager or~~ consultant,
8 all political subdivisions of this state shall ~~follow these~~
9 ~~procedures:~~

10 ~~The subdivision shall select a construction manager or~~
11 consultant based upon the professional qualifications and technical
12 experience of the ~~construction manager or~~ consultant. The
13 subdivision shall negotiate a contract with the highest qualified
14 ~~construction manager or~~ consultant, provided that a fee can be
15 negotiated that is fair and reasonable to both parties. In the
16 event a reasonable fee cannot be negotiated with the selected
17 ~~construction manager or~~ consultant, the subdivision may negotiate
18 with other ~~construction managers or~~ consultants in order of their
19 qualifications.

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

22 1. Extend consideration to construction managers from the file
23 maintained by the Department of Real Estate Services of the Office
24 of Management and Enterprise Services. Political subdivisions are

1 not limited in the number of construction manager candidates from
2 whom they intend on seeking proposals;

3 2. Evaluate the candidates' professional qualifications,
4 licensing, registration, certifications, technical abilities and
5 past experience relevant to the contemplated project. Only firms
6 recognized as qualified construction managers by the Department of
7 Real Estate Services of the Office of Management and Enterprise
8 Services pursuant to this section may be considered for selection as
9 a construction manager. The subdivision shall use procedures as
10 described in this section and the Public Construction Management Act
11 for Political Subdivisions or may adopt procedures established by
12 the Office of Management and Enterprise Services for state agencies;
13 and

14 3. The political subdivision shall select a construction
15 manager based upon the professional qualifications and technical
16 experience of the construction manager. The political subdivision
17 shall negotiate a contract with the highest qualified construction
18 manager, provided that a fee can be negotiated that is fair and
19 reasonable to both parties. In the event a reasonable fee cannot be
20 negotiated with the selected construction manager, the political
21 subdivision may negotiate with other construction managers in order
22 of their qualifications.

23

24

1 SECTION 3. AMENDATORY 61 O.S. 2011, Section 113, as last
2 amended by Section 1, Chapter 93, O.S.L. 2017 (61 O.S. Supp. 2018,
3 Section 113), is amended to read as follows:

4 Section 113. A. Except as otherwise provided by law, within
5 the period of time, not to exceed sixty (60) days, specified in the
6 bid notice by the awarding public agency, a contract embodying the
7 terms set forth in the bidding documents shall be executed by the
8 awarding public agency or, where construction management at-risk is
9 the project delivery method, by the construction manager and the
10 successful bidder. No bidder shall obtain any property right in a
11 contract awarded under the provisions of the Public Competitive
12 Bidding Act of 1974 until the contract has been fully executed by
13 both the bidder and the awarding public agency.

14 B. Except as otherwise provided by law, within the period of
15 time specified in subsection A of this section, the following shall
16 be provided by the contractor to the awarding public agency for
17 contracts exceeding Fifty Thousand Dollars (\$50,000.00):

18 1. A bond or irrevocable letter of credit complying with the
19 provisions of Section 1 of this title;

20 2. A bond in a sum equal to the contract price, with adequate
21 surety, or an irrevocable letter of credit containing terms
22 prescribed by the Construction and Properties Division of the Office
23 of Management and Enterprise Services issued by a financial
24 institution insured by the Federal Deposit Insurance Corporation or

1 the Federal Savings and Loan Insurance Corporation for the benefit
2 of the state, on behalf of the awarding public agency, in a sum
3 equal to the contract price, to ensure the proper and prompt
4 completion of the work in accordance with the provisions of the
5 contract and bidding documents;

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

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

23 C. A single irrevocable letter of credit may be used to satisfy
24 paragraphs 1, 2 and 3 of subsection B of this section, provided such

1 single irrevocable letter of credit meets all applicable
2 requirements of subsection B of this section.

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

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

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

1 E. No public agency shall require for any public construction
2 project, nor shall any general contractor submit a project bid based
3 on acquiring or participating in, any wrap-up, wrap-around, or
4 controlled insurance program. For the purposes of this subsection,
5 "wrap-up, wrap-around, or controlled insurance program" means any
6 insurance program that has the effect of disabling or rendering
7 inapplicable any workers' compensation, commercial general
8 liability, builders' risk, completed operations, or excess liability
9 insurance coverage carried by a subcontractor that is engaged or to
10 be engaged on a public construction project unless this is a cost
11 savings to the public or the need exists for a specialized or
12 complex insurance program and shall not apply to contracts less than
13 Seventy-five Million Dollars (\$75,000,000.00).

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

17 SECTION 4. AMENDATORY 61 O.S. 2011, Section 121, as
18 last amended by Section 1, Chapter 68, O.S.L. 2017 (61 O.S. Supp.
19 2018, Section 121), is amended to read as follows:

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

24

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

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

8 D. If the awarding public agency does not have a governing
9 body, the chief administrative officer of the awarding public agency
10 shall approve change orders. The State Construction Administrator
11 of the Construction and Properties Division of the Office of
12 Management and Enterprise Services, or the Administrator's designee,
13 shall sign and execute all contracts and change orders, as they
14 relate to state agencies.

15 E. If the awarding public agency has a governing body, all
16 change orders shall be formally approved by the governing body of
17 the awarding public agency and the reasons for approval recorded in
18 the permanent records of the governing body. The governing body of
19 a municipality or technology center may delegate approval of change
20 orders up to Forty Thousand Dollars (\$40,000.00) or ten percent
21 (10%) of any contract, whichever is less, to the chief
22 administrative officer of the municipality or technology center or
23 their designee, with any approved change orders reported to the
24 governing body at the next regularly scheduled meeting.

1 F. The Oklahoma Veterans Commission, as the governing body of
2 the Oklahoma Department of Veterans Affairs, is authorized to
3 delegate to the Director of the agency the authority to approve
4 change orders on a construction contract provided that the
5 individual change order does not exceed Forty Thousand Dollars
6 (\$40,000.00) in expenditure, and complies with the limits
7 established by this section. Change orders approved by the Director
8 pursuant to a delegation of authority shall be presented to the
9 Commission during the next regular meeting and the reasons for the
10 orders recorded in permanent records.

11 G. The governing body of the Oklahoma Tourism and Recreation
12 Department is authorized, upon approval of a majority of all of the
13 members of the Oklahoma Tourism and Recreation Commission, to
14 delegate to the Director of the agency the authority to approve
15 change orders on a construction contract provided that the
16 individual change order does not exceed Twenty-five Thousand Dollars
17 (\$25,000.00) in expenditure and complies with the limits established
18 by this section. The Administrator of the Division shall sign and
19 execute all contracts and change orders.

20 H. The Transportation Commission may, by rule, authorize the
21 Director of the Department of Transportation to approve change
22 orders in an amount of not to exceed Five Hundred Thousand Dollars
23 (\$500,000.00). Change orders approved by the Director shall be
24 presented to the Transportation Commission during the next regular

1 meeting and the reasons therefor recorded in the permanent records.
2 The Oklahoma Turnpike Authority may authorize the Director of the
3 Authority to approve change orders in an amount not to exceed Two
4 Hundred Fifty Thousand Dollars (\$250,000.00). Change orders
5 approved by the Director of the Authority shall be presented to the
6 Authority during the next regular meeting and the reasons for the
7 orders recorded in permanent records.

8 I. All change orders for the Department of Transportation or
9 the Authority shall contain a unit price and total for each of the
10 following items:

11 1. All materials with cost per item;

12 2. Itemization of all labor with number of hours per operation
13 and cost per hour;

14 3. Itemization of all equipment with the type of equipment,
15 number of each type, cost per hour for each type, and number of
16 hours of actual operation for each type;

17 4. Itemization of insurance cost, bond cost, social security,
18 taxes, workers' compensation, employee fringe benefits and overhead
19 cost; and

20 5. Profit for the contractor.

21 J. 1. If a construction contract contains unit pricing, and
22 the change order pertains to the unit price, the change order will
23 not be subject to subsection A or B of this section.

24

1 2. When the unit price change does not exceed Twenty Thousand
2 Dollars (\$20,000.00), the unit price change order computation may be
3 based on an acceptable unit price basis in lieu of cost itemization
4 as required in paragraphs 1, 2, 3, 4 and 5 of subsection I of this
5 section.

6 3. When the unit price change exceeds Twenty Thousand Dollars
7 (\$20,000.00), any unit price for a new item established at or below
8 the average eighteen-month-price history for the new item may be
9 used in lieu of cost itemization as required in paragraphs 1, 2, 3,
10 4 and 5 of subsection I of this section.

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

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

19 SECTION 5. AMENDATORY 61 O.S. 2011, Section 201, as
20 amended by Section 6, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,
21 Section 201), is amended to read as follows:

22 Section 201. Sections 202 through ~~220~~ 213 of this title shall
23 be known and may be cited as the "Public Facilities Act".
24

1 SECTION 6. AMENDATORY 61 O.S. 2011, Section 202, as last
2 amended by Section 3, Chapter 71, O.S.L. 2016 (61 O.S. Supp. 2018,
3 Section 202), is amended to read as follows:

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

5 1. "Annual capital plan" means the collective state facility
6 capital improvements, facility operations and maintenance, rent and
7 lease payments, facility debt services, water, sewer and energy
8 utilities and real property transactions approved by the Legislature
9 in a capital budget relative to state construction, maintenance, and
10 real estate services;

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

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

23 4. "Construction administration" means a series of actions
24 required of the State Facilities Director, of other state agency

1 employees, or, under a construction administration contract or
2 contract provision, to ensure the full, timely, and proper
3 performance of all phases of a construction project by all
4 contractors, suppliers, and other persons having responsibility for
5 project work and any guarantees or warranties pertaining thereto;

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

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

15 a. "agency construction management" whereby the
16 construction entity provides services to the owner
17 without taking on financial risks for the execution of
18 the actual construction or time of performance, and
19 the owner contracts directly with those awarded trade
20 contracts for the work, and

21 b. "at-risk construction management" whereby the
22 construction entity, after providing agency services
23 during the pre-construction period₇;

24

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

4 (2) enters into written subcontracts for the work in
5 accordance with the construction management
6 procedures for state agencies;

7 7. "Consultant" means an individual or legal entity possessing
8 the qualifications to provide licensed architectural, registered
9 engineering, registered land surveying, certified appraisal, land
10 title, or abstract services or possessing specialized credentials
11 and qualifications as may be needed to evaluate, plan or design for
12 any construction or public work improvement project, or to lease,
13 acquire or dispose of state-owned real property;

14 8. "Division" means the Construction and Properties Division of
15 the Office of Management and Enterprise Services;

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

1 10. "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 11. "Life cycle costs" means the cost of owning, operating, and
5 maintaining the structure over the life of the structure. This may
6 be expressed as an annual cost for each year of the facility's use;

7 12. "Office" means the Office of Management and Enterprise
8 Services;

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

13 14. "Public improvement" means any beneficial or valuable
14 change or addition, betterment, enhancement or amelioration of or
15 upon any real property, or interest therein, belonging to a state
16 agency and the State of Oklahoma, intended to enhance its value,
17 beauty or utility or to adapt it to new or further purposes. The
18 term does not include the direct purchase of materials used for
19 general repairs and maintenance to state facilities;

20 15. "Shared savings financing" means the financing of energy
21 conservation measures and maintenance services through a private
22 firm which may own any purchased equipment for the duration of a
23 contract. Such contract shall specify that the private firm will be
24 recompensed either out of a negotiated portion of the savings

1 resulting from the conservation measures and maintenance services
2 provided by the private firm or, in the case of a cogeneration
3 project, through the payment of a rate for energy lower than would
4 otherwise have been paid for the same energy from current sources;
5 and

6 16. "State agency" means an agency, board, commission, counsel,
7 court, office, officer, bureau, institution, unit, division, body,
8 or house of the executive or judicial branches of government of this
9 state, whether elected or appointed, excluding only political
10 subdivisions, the Oklahoma State Regents for Higher Education and
11 its constituent institutions and the Commissioners of the Land
12 Office.

13 SECTION 7. AMENDATORY 61 O.S. 2011, Section 202.1, as
14 last amended by Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp.
15 2018, Section 202.1), is amended to read as follows:

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

1 the SFD's designee or designees, or otherwise by contract or
2 contract provision approved by the Director of the Office of
3 Management and Enterprise Services for construction administration
4 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 agency~~
8 ~~construction management or at-risk construction management as a~~
9 ~~construction delivery method. However, municipalities, counties,~~
10 ~~public trusts, and any other political subdivision shall be subject~~
11 ~~to Section 220 of this title.~~

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

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

24

1 ~~D.~~ The use of design-build and construction management project
2 delivery methods shall not interfere or inhibit the opportunity for
3 subcontractors and trade contractors to openly and freely compete
4 for subcontracts or trade contracts pursuant to the Public
5 Competitive Bidding Act of 1974 ~~with respect to public notices.~~ The
6 State Facilities Director, or designee, or the construction manager
7 shall make the subcontracting and supply opportunities publicly
8 known, as follows:

9 1. Whenever the estimated cost of the contract exceeds Fifty
10 Thousand Dollars (\$50,000.00), public notice shall be given by
11 publication in a newspaper of general circulation and published in
12 the county where the work, or the major part of the work, is to be
13 done. Such notice by publication shall be published in two
14 consecutive weekly issues of the newspaper, with the first
15 publication thereof to be at least twenty-one (21) days prior to the
16 date set for opening bids; and

17 2. Notice thereof shall be sent to one in-state trade or
18 construction publication for the publication's use and information
19 whenever the estimated cost of the contract exceeds Fifty Thousand
20 Dollars (\$50,000.00); provided, however, this section shall not be
21 construed to require the publication of such notice in such trade or
22 construction publication or to require the provision of such notice
23 to more than one in-state trade or construction publication or to
24 any out-of-state trade or construction publication.

1 C. Bids shall be publicly opened at the time and place
2 designated in the public notice. A representative of the State
3 Facilities Director shall be present at the bid opening.

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

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

14 ~~G. As used in the Public Facilities Act, public trusts shall~~
15 ~~not include state beneficiary public trusts.~~

16 SECTION 8. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 215 of Title 61, unless there is
18 created a duplication in numbering, reads as follows:

19 Sections 8 through 10 of this act shall be known and may be
20 cited as the "Public Construction Management Act for Political
21 Subdivisions".

22 SECTION 9. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 216 of Title 61, unless there is
24 created a duplication in numbering, reads as follows:

1 A. The Public Construction Management Act for Political
2 Subdivisions shall apply to political subdivisions of this state.

3 B. As used in the Public Construction Management Act for
4 Political Subdivisions:

5 1. "Agency construction management" means the construction
6 entity provides services to the owner without taking on financial
7 risks for the execution of the actual construction and/or time of
8 performance, and the owner contracts directly with those awarded
9 trade contracts for the work;

10 2. "At-risk construction management" means the construction
11 entity, after providing agency services during the preconstruction
12 period:

- 13 a. takes on the financial obligation to timely carry out
14 construction under a specified cost agreement, and
- 15 b. enters into written subcontracts for the work in
16 accordance with the Construction Management Procedures
17 for Political Subdivisions;

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

1 a. agency construction management, and

2 b. at-risk construction management; and

3 4. "Political subdivision" or "subdivision" means any local
4 governmental body formed pursuant to the laws of this state,
5 including, but not limited to, school districts, vocational
6 education districts, cities, counties, public trusts, public
7 authorities, commissions or other local governmental bodies
8 exercising their authority to contract for public construction
9 delivery services. The term also applies to quasi-governmental and
10 nongovernmental organizations delivering construction services using
11 public funds or on behalf of a political subdivision.

12 SECTION 10. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 217 of Title 61, unless there is
14 created a duplication in numbering, reads as follows:

15 A. Construction managers shall be selected by the political
16 subdivision following the requirements set forth in subsection K of
17 Section 62 of Title 61 of the Oklahoma Statutes.

18 B. A written contract between the political subdivision and the
19 construction manager shall set forth the obligations of the parties,
20 which, at a minimum, shall include the construction manager's scope
21 of services, fees and expenses, as follows:

22 1. A construction management fee, which may be based on a
23 percentage of the construction cost or as defined in the contract;

1 2. The cost or basis of cost expenses incurred by the
2 construction manager to be reimbursed by the subdivision for normal
3 general conditions and general requirements necessary for the work
4 but not applicable to a particular subcontractor, trade contractor
5 or supplier; and

6 3. Other project-related expenses as set forth in the contract.

7 C. The procedures for awarding work under agency construction
8 management are as follows:

9 1. The construction manager, with the advice of the design
10 consultant and subdivision, will develop individual bid packages for
11 public bidding;

12 2. Public bidding on individual bid packages will comply with
13 the requirements of the Public Competitive Bidding Act of 1974;

14 3. The construction manager shall evaluate all bids and
15 recommend the lowest responsible bidder to the subdivision, who
16 shall accept or reject the bids. The construction manager may
17 assist the subdivision with the preparation of contracts and the
18 receipt of insurance and bonds as required for public construction
19 contracts by state law;

20 4. After trade contracts are awarded, the construction manager
21 will perform contract administrative services as set forth in the
22 agreement and may assist the subdivision with the review and
23 processing of progress and final payments to the subcontractors.

24

1 However, under no circumstances shall construction managers receive
2 funds from subdivisions for payments of trade contractors;

3 5. The owner shall pay all trade contractors as required by the
4 Fair Pay for Construction Act; and

5 6. Contracts awarded under an agency construction management
6 delivery system shall not be modified such to permit the assignment
7 of subcontracts and/or trade packages to the construction manager.

8 D. The procedures for awarding work under at-risk construction
9 management are as follows:

10 1. The construction manager, with the advice of the design
11 consultant and subdivision, will develop individual bid packages for
12 public bidding;

13 2. Whenever the estimated cost of the contract exceeds Fifty
14 Thousand Dollars (\$50,000.00) bid packages shall be let and awarded
15 pursuant to the Public Competitive Bidding Act of 1974 and this
16 section;

17 3. Bid packages with a value less than or equal to Fifty
18 Thousand Dollars (\$50,000.00) may be awarded by the political
19 subdivision based on written comparative quotes. Bid packages with
20 a value less than or equal to Twenty-five Thousand Dollars
21 (\$25,000.00) may be awarded by the political subdivision to any
22 qualified vendor;

23 4. Once the bids are accepted by the construction manager and
24 awards made by the subdivision and the subdivision indicates its

1 bonding preference, as noted below, but before written agreements
2 are executed, the construction manager will prepare a guaranteed
3 maximum price (GMP) for the project or relevant portion of the work,
4 as an amendment to the contract. After the subdivision approves the
5 construction manager's GMP amendment, the construction manager shall
6 enter into written subcontractor and supplier agreements for the
7 work previously awarded by the subdivision. Upon receiving a notice
8 to proceed with the work from the subdivision or its designee, the
9 subdivision shall have the option, but not mandate, to require the
10 construction manager to provide performance, payment and maintenance
11 bonds, or any combination, in an amount equal to one hundred percent
12 (100%) of the value of the work, excluding the construction
13 manager's fee, general conditions, reimbursements and insurances.
14 "Payment bond", "performance bond" and "maintenance bond", as used
15 herein, mean and refer to those bonds as defined in the Public
16 Competitive Bidding Act of 1974;

17 5. The construction manager may require bonds from
18 subcontractors or suppliers in an amount equal to one hundred
19 percent (100%) of the value of their bid packages for subcontractors
20 or suppliers not subject to bonding requirements of the Public
21 Competitive Bidding Act of 1974. In such cases, the bonding
22 requirements shall be set forth in the bidding documents;

23 6. The construction manager's work performed under this section
24 may be on a lump-sum basis and subject to the change order

1 limitations for a public construction contract as set forth in the
2 Public Competitive Bidding Act of 1974 or may be performed under a
3 cost-plus basis as determined by the subdivision;

4 7. The subdivision may withhold retainage from the construction
5 manager's progress pay applications as set forth in the Public
6 Competitive Bidding Act of 1974. The owner shall pay the
7 construction manager as required by the Fair Pay for Construction
8 Act; and

9 8. If a construction manager at-risk wishes to self-perform
10 portions of the work to be performed, it may do so, provided the
11 construction manager at-risk competitively bids the work under the
12 same terms and conditions as the other bidders and the construction
13 manager at-risk is the lowest responsible bidder for the work scope
14 on which the bid was submitted.

15 E. When bids for a public construction project have been
16 received from general contractors pursuant to the Public Competitive
17 Bidding Act of 1974 and the lowest responsible bid is within the
18 subdivision's available funding, the subdivision shall not reject
19 all bids and subsequently award the project to a construction
20 manager.

21 SECTION 11. REPEALER 61 O.S. 2011, Section 220, as last
22 amended by Section 18, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,
23 Section 220), is hereby repealed.

24

1 SECTION 12. This act shall become effective January 1, 2020.

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