

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2939

By: Mulready

COMMITTEE SUBSTITUTE

An Act relating to public buildings and public works;
amending 61 O.S. 2011, Sections 202.1, as last
amended by Section 8, Chapter 302, O.S.L. 2013 and
220, as last amended by Section 18, Chapter 302,
O.S.L. 2013 (61 O.S. Supp. 2017, Sections 202.1 and
220), which relate to the Public Facilities Act;
eliminating certain criteria for use for design-build
and at-risk construction management project delivery
methods; requiring competitive bidding for all
contracts for at-risk construction management; and
providing an effective date.

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 202.1, as
last amended by Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp.
2017, Section 202.1), is amended to read as follows:

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

1 specifying design-build or at-risk construction management for a
2 project. In all instances where the design-build project or at-risk
3 construction management delivery method is authorized, construction
4 administration shall be performed by the State Facilities Director,
5 the SFD's designee or designees, or otherwise by contract or
6 contract provision approved by the Director of the Office of
7 Management and Enterprise Services for construction administration
8 by another 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 agency
12 construction management or at-risk construction management as a
13 construction delivery method. However, municipalities, counties,
14 public trusts, and any other political subdivision shall be subject
15 to Section 220 of this title.

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

24 1. The project benefits the public; and

1 2. There is a need for cost control, ~~and~~

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

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

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

14 F. The Office of Management and Enterprise Services shall,
15 pursuant to the Administrative Procedures Act, promulgate rules to
16 effect procedures, processes and design-build/construction
17 management fee guidelines necessary to the fulfillment of its
18 responsibilities under this section.

19 G. As used in the Public Facilities Act, public trusts shall
20 not include state beneficiary public trusts.

21 SECTION 2. AMENDATORY 61 O.S. 2011, Section 220, as last
22 amended by Section 18, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2017,
23 Section 220), is amended to read as follows:

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

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

22 C. The construction management project delivery method may only
23 be used for public construction contracts when the construction
24 project meets the criteria established by Section 202.1 of this

1 title, except that a political subdivision or school district shall
2 not be required to obtain permission from the Director of the Office
3 of Management and Enterprise Services.

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

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

19 F. All construction contracts or subcontracts for work to be
20 performed for any political subdivision or school district pursuant
21 to a construction management project delivery method shall be
22 awarded in accordance with the provisions of the Public Competitive
23 Bidding Act of 1974. ~~If a construction manager at-risk wishes to~~
24 ~~self-perform portions of the construction work to be performed, the~~

1 ~~construction manager at risk may self perform portions of the work~~
2 ~~provided the construction manager at risk competitively bids the~~
3 ~~work under the same terms and conditions as the other bidders and~~
4 ~~the construction manager at risk is the lowest responsible bidder~~
5 ~~for the construction subcontract.~~ No work shall commence until the
6 school district executes a written contract and the contractor and
7 subcontractors submit bonds and proofs of insurance as required by
8 the appropriate contract.

9 SECTION 3. This act shall become effective November 1, 2018.

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