

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 HOUSE BILL 2939

By: Mulready

6 AS INTRODUCED

7 An Act relating to public buildings and public works;  
8 amending 61 O.S. 2011, Section 62, as last amended by  
9 Section 3, Chapter 302, O.S.L. 2013 (61 O.S. Supp.  
10 2017, Section 62), which relates to construction  
management and consultant services; providing certain  
selection procedure for counties; and providing an  
effective date.

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

14 SECTION 1. AMENDATORY 61 O.S. 2011, Section 62, as last  
15 amended by Section 3, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2017,  
16 Section 62), is amended to read as follows:

17 Section 62. A. The Department of Real Estate Services of the  
18 Office of Management and Enterprise Services shall maintain a file  
19 of all persons and entities interested in and capable of performing  
20 construction management and consultant services for state agencies.  
21 The file shall include registration forms and information submitted  
22 by construction managers and consultants pursuant to rules  
23 promulgated by the Office of Management and Enterprise Services.  
24 Pursuant to rules promulgated by the Office, the Department shall

1 determine whether a construction manager or consultant qualifies for  
2 registration and shall notify the construction manager or consultant  
3 within twenty (20) days of receipt of a request for registration.  
4 Construction managers and consultants shall re-register for each  
5 successive calendar year with the Department.

6 B. The requisitioning state agency shall define the scope of a  
7 proposed project. The scope shall identify project components,  
8 phases and timetables and shall include detailed project  
9 descriptions. The state agency may request the Department to assist  
10 with scope development. The state agency shall send the scope and a  
11 requisition for construction management or consultant services,  
12 signed by an authorized official, to the Department. The Department  
13 shall review the scope and approve it before the state agency issues  
14 a solicitation.

15 C. The state agency shall issue a solicitation to construction  
16 managers or consultants that are registered with the Department and  
17 capable of providing the services the state agency desires. The  
18 solicitation shall, at a minimum, contain:

- 19 1. Description and scope of the project;
- 20 2. Estimated construction cost or available funds, anticipated  
21 starting date, and completion date the state agency desires for the  
22 project;

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

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

6        5. Additional data the state agency requires from the  
7 construction manager or consultant. The closing date for submission  
8 of construction manager or consultant notice of interest for  
9 consideration shall be within thirty (30) days of the date of the  
10 notice the state agency issues.

11       D. After the closing date, the Department shall provide  
12 information from the construction managers' or consultants' files to  
13 the state agency. Should there be an inadequate expression of  
14 interest in the project, the state agency and Department personnel  
15 shall confer to add construction managers or consultants for  
16 consideration.

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

22       1. Professional qualifications for the type of work  
23 contemplated;

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

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

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

8        G. 1. Upon completion of contract negotiation with the highest  
9 qualified construction manager or consultant, which contract shall  
10 include a fair and reasonable fee, the Department shall approve and  
11 award the contract.

12        2. If the Department and the first-choice construction manager  
13 or consultant cannot reach an agreement, the negotiations shall  
14 terminate and negotiations with the second-choice construction  
15 manager or consultant shall commence. If the Department and the  
16 second-choice construction manager or consultant cannot reach an  
17 agreement, the negotiations shall terminate and negotiations with  
18 the third-choice construction manager or consultant shall commence.  
19 If the Department and the third-choice construction manager or  
20 consultant cannot reach an agreement, then all negotiations shall  
21 terminate. Should the Department be unable to negotiate a  
22 satisfactory contract with any of the three selected construction  
23 managers or consultants, the Department shall select additional  
24 construction managers or consultants in order of their competency

1 and qualifications and shall continue negotiations in accordance  
2 with the provisions of this section until an agreement is reached.

3 H. Any plans developed pursuant to the process for selection of  
4 a contractor for construction of a facility authorized pursuant to  
5 Section 183 of Title 73 of the Oklahoma Statutes shall become the  
6 property of the State of Oklahoma as a condition of the award of the  
7 final contract for construction of the facility.

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

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

14 2. Issue solicitations for construction manager and consultant  
15 services;

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

18 4. Provide contract management services after award of a  
19 construction management or consultant contract.

20 J. In the selection of a construction manager or consultant,  
21 all political subdivisions of this state, except counties, shall  
22 follow these procedures:

23 The subdivision shall select a construction manager or  
24 consultant based upon the professional qualifications and technical

1 experience of the construction manager or consultant. The  
2 subdivision shall negotiate a contract with the highest qualified  
3 construction manager or consultant, provided that a fee can be  
4 negotiated that is fair and reasonable to both parties. In the  
5 event a reasonable fee cannot be negotiated with the selected  
6 construction manager or consultant, the subdivision may negotiate  
7 with other construction managers or consultants in order of their  
8 qualifications.

9 K. In the selection of a construction manager or consultant,  
10 all counties of this state shall follow these procedures:

11 1. The county shall select a construction manager or consultant  
12 based upon the professional qualifications and technical experience  
13 of the construction manager or consultant;

14 2. If more than one construction manager or consultant meets  
15 the required professional qualifications and technical experience,  
16 the qualifying construction managers or consultants shall submit a  
17 bid based on percentage of the project total plus any separate costs  
18 that may be added. The county clerk shall receive the sealed bids  
19 received from vendors and shall forward the sealed bids to the board  
20 of county commissioners. The board of county commissioners, in an  
21 open meeting, shall open the sealed bids and compare them. The  
22 board shall select the lowest and best bid. The board shall keep a  
23 written record of the meeting as required by law, and any time the  
24 lowest bid was not considered to be the lowest and best bid, the

1 reason for such conclusion shall be recorded. The board may refuse  
2 all bids. The county purchasing agent shall notify the successful  
3 bidder and shall maintain a copy of the notification; and

4 3. If only one construction manager or consultant meets the  
5 required professional qualifications and technical experience, the  
6 county shall negotiate a contract, provided that a fee can be  
7 negotiated that is fair and reasonable to both parties.

8 SECTION 2. This act shall become effective November 1, 2018.

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