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February 28, 2019

AS AMENDED

SENATE BILL NO. 698

By: Dugger of the Senate

and

West (Kevin) of the House

[public buildings and public works - Public
Facilities Act - at-risk construction management -
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. 2018, 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 specifying design-build or at-risk construction management for a project. In all instances where the design-build project or at-risk construction management delivery method is authorized, construction 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~~ the Public Facilities Act. Such
16 methods shall not be used unless there is a need for compressed
17 construction time as required to respond to a natural disaster or
18 other emergency situation affecting public health and safety, or all
19 of the following criteria for designation are met:

- 20 1. The project benefits the public; and
- 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.~~

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

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

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

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

18 SECTION 2. AMENDATORY 61 O.S. 2011, Section 220, as last
19 amended by Section 18, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,
20 Section 220), is amended to read as follows:

21 Section 220. A. Any political subdivision or board of
22 education of a school district may use construction management as a
23 project delivery method for the building, altering, repairing,
24 improving, maintaining or demolishing any structure or appurtenance

1 thereto, or any other improvement to real property owned by that
2 political subdivision or school district. For purposes of this
3 section "construction management" shall be defined as set forth in
4 Section 202 of this title and shall include both agency construction
5 management and at-risk construction management.

6 B. ~~A political subdivision or school district shall select a~~
7 ~~construction manager based on the professional qualifications and~~
8 ~~technical experience of the construction manager. Selection~~
9 ~~criteria shall include the experience of the candidate, past~~
10 ~~performance, and certification of the company or individuals within~~
11 ~~the company of their knowledge of recognized standards of~~
12 ~~construction, construction management and project management~~
13 Following the Request for Qualifications in accordance with the
14 Public Competitive Bidding Act of 1974, those firms determined to be
15 qualified as a political subdivision or school district shall
16 establish a final selection process for the construction manager,
17 which shall require the qualified prospective construction managers
18 to develop a more detailed qualified-based proposal response. The
19 information to be contained in the detailed response in determining
20 the final selection of the construction manager shall include, but
21 not be limited to, the following criteria:

22 1. Technical experience;

23 2. References;

24 3. Proposed project schedule;

1 4. Proposed personnel;

2 5. Proposed form of contract;

3 6. Proposed fees;

4 7. Proposed mark up; and

5 8. Proposed methodology for savings or contingency returned to
6 the political subdivision or school district upon completion of the
7 project.

8 Only firms recognized as qualified construction managers by the
9 Department of Real Estate Services of the Office of Management and
10 Enterprise Services pursuant to Section 62 of this title, may be
11 considered for selection as a construction manager by a political
12 subdivision or school district.

13 C. The construction management project delivery method may only
14 be used for public construction contracts when the construction
15 project meets the criteria established by Section 202.1 of this
16 title, except that a political subdivision or school district shall
17 not be required to obtain permission from the Director of the Office
18 of Management and Enterprise Services.

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

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

SECTION 3. This act shall become effective November 1, 2019.

COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT
February 28, 2019 - DO PASS AS AMENDED