

1 STATE OF OKLAHOMA

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

3 SENATE BILL NO. 698

By: Dugger

6 AS INTRODUCED

7 An Act relating to public buildings and public works;
8 amending 61 O.S. 2011, Sections 202.1, as last
9 amended by Section 8, Chapter 302, O.S.L. 2013 and
10 220, as last amended by Section 18, Chapter 302,
11 O.S.L. 2013 (61 O.S. Supp. 2018, Sections 202.1 and
12 220), which relate to the Public Facilities Act;
13 eliminating certain criteria for use for design-build
14 and at-risk construction management project delivery
15 methods; requiring competitive bidding for all
16 contracts for at-risk construction management;
17 updating statutory references; and providing an
18 effective date.

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

16 SECTION 1. AMENDATORY 61 O.S. 2011, Section 202.1, as
17 last amended by Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp.
18 2018, 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 administration shall be performed by the State Facilities Director,
4 the SFD's designee or designees, or otherwise by contract or
5 contract provision approved by the Director of the Office of
6 Management and Enterprise Services for construction administration
7 by another party.

8 B. Municipalities, counties, public trusts, or any other
9 political subdivision in this state shall not be required to get
10 approval of any other state agency in order to use agency
11 construction management or at-risk construction management as a
12 construction delivery method. However, municipalities, counties,
13 public trusts, and any other political subdivision shall be subject
14 to Section 220 of this title.

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

- 23 1. The project benefits the public; and
- 24 2. There is a need for cost control; ~~and~~

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

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

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

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

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

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

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

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

24 1. Technical experience;

1 2. References;

2 3. Proposed project schedule;

3 4. Proposed personnel;

4 5. Proposed form of contract;

5 6. Proposed fees;

6 7. Proposed mark up; and

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

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

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

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

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

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

1 subcontractors submit bonds and proofs of insurance as required by
2 the appropriate contract.

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