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.
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, the SFD's designee or designees, or otherwise by contract or contract provision approved by the Director of the Office of Management and Enterprise Services for construction administration by another party.

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

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

1. The project benefits the public; and
2. There is a need for cost control, and

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

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

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

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

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

SECTION 2. AMENDATORY 61 O.S. 2011, Section 220, as last amended by Section 18, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2017, Section 220), is amended to read as follows:
Section 220. A. Any political subdivision or board of education of a school district may use construction management as a project delivery method for the building, altering, repairing, improving, maintaining or demolishing any structure or appurtenance thereto, or any other improvement to real property owned by that political subdivision or school district. For purposes of this section "construction management" shall be defined as set forth in Section 202 of this title and shall include both agency construction management and at-risk construction management.

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

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

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

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

F. All construction contracts or subcontracts for work to be performed for any political subdivision or school district pursuant to a construction management project delivery method shall be awarded in accordance with the provisions of the Public Competitive Bidding Act of 1974. If a construction manager at-risk wishes to self-perform portions of the construction work to be performed, the
construction manager at-risk may self-perform portions of the work provided the construction manager at-risk competitively bids the work under the same terms and conditions as the other bidders and the construction manager at-risk is the lowest responsible bidder for the construction subcontract. No work shall commence until the school district executes a written contract and the contractor and subcontractors submit bonds and proofs of insurance as required by the appropriate contract.

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

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