

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2666

By: Wallace of the House

and

Leewright of the Senate

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8 An Act relating to public buildings and public works;
9 amending 61 O.S. 2011, Sections 61, as last amended
10 by Section 2, Chapter 71, O.S.L. 2016 and 62, as last
11 amended by Section 3, Chapter 302, O.S.L. 2013 (61
12 O.S. Supp. 2018, Sections 61 and 62), which relate to
13 project consultants; modifying definition; defining
14 term; modifying construction manager and consultant
15 selection process; providing options between sets of
16 procedures; limiting considerations; *** certain
17 approval requirement; eliminating certain
18 prohibitions related to design-build and construction
19 management project delivery methods; providing that
20 trade contractors are not limited in certain
21 opportunities; requiring certain notices under
22 certain conditions; ***; requiring payment of bonds
23 under certain conditions in certain amounts;
24 prohibiting rejections of bids under certain
conditions; *** the use of construction management by
political subdivisions or school district boards of
education; providing for codification; and providing
an effective date.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
entire bill and insert

"An Act relating to public buildings and public
works; amending 61 O.S. 2011, Sections 61, as last
amended by Section 2, Chapter 71, O.S.L. 2016 and 62,
as last amended by Section 3, Chapter 302, O.S.L.
2013 (61 O.S. Supp. 2018, Sections 61 and 62), which

1 relate to project consultants; modifying definition;
2 defining term; modifying construction manager and
3 consultant selection process; requiring
4 considerations from certain file maintained by OMES;
5 recognizing certain qualified construction managers;
6 recognizing procedures of the Public Construction
7 Management Act or adopted procedures by OMES;
8 allowing negotiation of fee; providing certain
9 exception; amending 61 O.S. 2011, Section 113, as
10 last amended by Section 1, Chapter 93, O.S.L. 2017
11 (61 O.S. Supp. 2018, Section 113), which relates to
12 execution of contract; providing for construction
13 management at-risk delivery method; amending 61 O.S.
14 2011, Section 121, as last amended by Section 1,
15 Chapter 68, O.S.L. 2017 (61 O.S. Supp. 2018, Section
16 121), which relates to change orders; changing
17 certain limits for construction management at-risk
18 delivery method; amending 61 O.S. 2011, Sections 201,
19 as amended by Section 6, Chapter 302, O.S.L. 2013,
20 202, as last amended by Section 3, Chapter 71, O.S.L.
21 2016 and 202.1, as last amended by Section 8, Chapter
22 302, O.S.L. 2013 (61 O.S. Supp. 2018, Sections 201,
23 202 and 202.1), which relate to the Public Facilities
24 Act; clarifying sections contained in the Act;
modifying definition; eliminating certain
municipality, county, public trust and political
subdivision exemption from certain approval
requirement; eliminating certain prohibitions related
to design-build and construction management project
delivery methods; providing that trade contractors
are not limited in certain opportunities; requiring
certain notices under certain conditions; providing
notice standards; clarifying certain notices not
required; providing bids be opened publicly;
requiring certain presence at bid openings; modifying
exclusion from certain term; creating the Public
Construction Management Act for Political
Subdivisions; authorizing certain citation; declaring
applicability; defining terms; identifying process
for selection of construction managers by political
subdivisions; requiring certain inclusions in certain
written contracts; providing procedures for awarding
certain work; requiring certain compliance with the
Public Competitive Bidding Act and the Fair Pay for
Construction Act; requiring payment of bonds under
certain conditions in certain amounts; prohibiting
rejections of bids under certain conditions;

1 repealing 61 O.S. 2011, Section 220, as last amended
2 by Section 18, Chapter 302, O.S.L. 2013 (61 O.S.
3 Supp. 2018, Section 220), which relates to the use of
4 construction management by political subdivisions or
5 school district boards of education; providing for
6 codification; and providing an effective date.

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

7 SECTION 1. AMENDATORY 61 O.S. 2011, Section 61, as last
8 amended by Section 2, Chapter 71, O.S.L. 2016 (61 O.S. Supp. 2018,
9 Section 61), is amended to read as follows:

10 Section 61. As used in Sections 61 through 65 of this title:

11 1. "Chief administrative officer" means an individual
12 responsible for directing the administration of a state agency. The
13 term does not mean one or all of the individuals that make policy
14 for a state agency;

15 2. "Construction manager" means an individual, firm,
16 corporation, association, partnership, copartnership, or any other
17 legal entity on the Office of Management and Enterprise Services
18 Construction and Properties (OMES-CAP) registration list and
19 possessing the qualifications to provide services of construction
20 management which include, but are not necessarily limited to, design
21 review, scheduling, cost control, value engineering,
22 constructability evaluation, preparation and coordination of bid
23 packages, and construction administration;

1 3. "Consultant" means an individual or legal entity possessing
2 the qualifications to provide licensed architectural, registered
3 engineering, or registered land surveying services or other
4 individuals or legal entities possessing specialized credentials and
5 qualifications as may be needed to evaluate, plan or design and/or
6 provide construction administration and/or construction inspection
7 services for any construction or a public work improvement project;

8 4. "Director" means the Director of the Office of Management
9 and Enterprise Services;

10 5. "Department" means the Department of Real Estate Services of
11 the Office of Management and Enterprise Services;

12 6. "Office" means the Office of Management and Enterprise
13 Services;

14 7. "Project" means studies, evaluations, plans or designs for
15 facility evaluations or public work improvements, except the
16 transportation facilities under the jurisdiction of the Department
17 of Transportation or the Oklahoma Turnpike Authority:

18 a. to construct, renovate, alter, repair, maintain, or
19 improve real property or fixtures of real property,
20 and

21 b. that does not constitute "construction" as defined by
22 the Public Building Construction and Planning Act;

23 8. "State agency" means an agency, office, officer, bureau,
24 board, counsel, court, commission, institution, unit, division, body

1 or house of the executive or judicial branches of state government,
2 whether elected or appointed, excluding only political subdivisions
3 of the state, the Oklahoma State Regents for Higher Education and
4 its constituent institutions and the Commissioners of the Land
5 Office; ~~and~~

6 9. "Facilities Director" or "SFD" means the State Facilities
7 Director of the Department of Real Estate Services of the Office of
8 Management and Enterprise Services; and

9 10. "Political subdivision" means any local governmental body
10 formed pursuant to the laws of this state, including, but not
11 limited to, school districts, career technology centers, cities,
12 counties, public trusts, public authorities, commissions or other
13 local governmental bodies exercising their authority to contract
14 with construction managers and/or consultants. The term also means
15 any quasi-governmental and nongovernmental organizations contracting
16 with construction managers and/or consultants using public funds or
17 on behalf of a political subdivision.

18 SECTION 2. AMENDATORY 61 O.S. 2011, Section 62, as last
19 amended by Section 3, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,
20 Section 62), is amended to read as follows:

21 Section 62. A. The Department of Real Estate Services of the
22 Office of Management and Enterprise Services shall maintain a file
23 of all persons and entities interested in and capable of performing
24 construction management and consultant services for state agencies.

1 The file shall include registration forms and information submitted
2 by construction managers and consultants pursuant to rules
3 promulgated by the Office of Management and Enterprise Services.
4 Pursuant to rules promulgated by the Office, the Department shall
5 determine whether a construction manager or consultant qualifies for
6 registration and shall notify the construction manager or consultant
7 within twenty (20) days of receipt of a request for registration.
8 Construction managers and consultants shall re-register for each
9 successive calendar year with the Department.

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

19 C. The state agency shall issue a solicitation to construction
20 managers or consultants that are registered with the Department and
21 capable of providing the services the state agency desires. The
22 solicitation shall, at a minimum, contain:

23 1. Description and scope of the project;
24

1 2. Estimated construction cost or available funds, anticipated
2 starting date, and completion date the state agency desires for the
3 project;

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

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

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

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

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

1 1. Professional qualifications for the type of work
2 contemplated;

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

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

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

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

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

1 managers or consultants, the Department shall select additional
2 construction managers or consultants in order of their competency
3 and qualifications and shall continue negotiations in accordance
4 with the provisions of this section until an agreement is reached.

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

10 I. For all state agencies subject to the Public Facilities Act,
11 Sections 202 through ~~220~~ 213 of this title, the Department shall
12 perform the necessary procurement actions on behalf of a
13 requisitioning agency as enumerated in subsections B through H of
14 this section:

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

17 2. Issue solicitations for construction manager and consultant
18 services;

19 3. Conduct evaluations, interviews, selection, contract
20 negotiation, and fee negotiation processes; and

21 4. Provide contract management services after award of a
22 construction management or consultant contract.

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1 J. In the selection of a ~~construction manager or~~ consultant,
2 all political subdivisions of this state shall ~~follow these~~
3 ~~procedures:~~

4 ~~The subdivision shall select a construction manager or~~
5 consultant based upon the professional qualifications and technical
6 experience of the ~~construction manager or~~ consultant. The
7 subdivision shall negotiate a contract with the highest qualified
8 ~~construction manager or~~ consultant, provided that a fee can be
9 negotiated that is fair and reasonable to both parties. In the
10 event a reasonable fee cannot be negotiated with the selected
11 ~~construction manager or~~ consultant, the subdivision may negotiate
12 with other ~~construction managers or~~ consultants in order of their
13 qualifications.

14 K. In the selection of a construction manager, all political
15 subdivisions of this state shall:

16 1. Extend consideration to construction managers from the file
17 maintained by the Department of Real Estate Services of the Office
18 of Management and Enterprise Services. Political subdivisions are
19 not limited in the number of construction manager candidates from
20 whom they intend on seeking proposals;

21 2. Evaluate the candidates' professional qualifications,
22 licensing, registration, certifications, technical abilities and
23 past experience relevant to the contemplated project. Only firms
24 recognized as qualified construction managers by the Department of

1 Real Estate Services of the Office of Management and Enterprise
2 Services pursuant to this section may be considered for selection as
3 a construction manager. The subdivision shall use procedures as
4 described in this section and the Public Construction Management Act
5 for Political Subdivisions or may adopt procedures established by
6 the Office of Management and Enterprise Services for state agencies;
7 and

8 3. The political subdivision shall select a construction
9 manager based upon the professional qualifications and technical
10 experience of the construction manager. The political subdivision
11 shall negotiate a contract with the highest qualified construction
12 manager, provided that a fee can be negotiated that is fair and
13 reasonable to both parties. In the event a reasonable fee cannot be
14 negotiated with the selected construction manager, the political
15 subdivision may negotiate with other construction managers in order
16 of their qualifications.

17 SECTION 3. AMENDATORY 61 O.S. 2011, Section 113, as last
18 amended by Section 1, Chapter 93, O.S.L. 2017 (61 O.S. Supp. 2018,
19 Section 113), is amended to read as follows:

20 Section 113. A. Except as otherwise provided by law, within
21 the period of time, not to exceed sixty (60) days, specified in the
22 bid notice by the awarding public agency, a contract embodying the
23 terms set forth in the bidding documents shall be executed by the
24 awarding public agency or, where construction management at-risk is

1 the project delivery method, by the construction manager and the
2 successful bidder. No bidder shall obtain any property right in a
3 contract awarded under the provisions of the Public Competitive
4 Bidding Act of 1974 until the contract has been fully executed by
5 both the bidder and the awarding public agency.

6 B. Except as otherwise provided by law, within the period of
7 time specified in subsection A of this section, the following shall
8 be provided by the contractor to the awarding public agency for
9 contracts exceeding Fifty Thousand Dollars (\$50,000.00):

10 1. A bond or irrevocable letter of credit complying with the
11 provisions of Section 1 of this title;

12 2. A bond in a sum equal to the contract price, with adequate
13 surety, or an irrevocable letter of credit containing terms
14 prescribed by the Construction and Properties Division of the Office
15 of Management and Enterprise Services issued by a financial
16 institution insured by the Federal Deposit Insurance Corporation or
17 the Federal Savings and Loan Insurance Corporation for the benefit
18 of the state, on behalf of the awarding public agency, in a sum
19 equal to the contract price, to ensure the proper and prompt
20 completion of the work in accordance with the provisions of the
21 contract and bidding documents;

22 3. A bond in a sum equal to the contract price or an
23 irrevocable letter of credit containing terms as prescribed by the
24 Division issued by a financial institution insured by the Federal

1 Deposit Insurance Corporation or the Federal Savings and Loan
2 Insurance Corporation for the benefit of the state, on behalf of the
3 awarding public agency, in a sum equal to the contract price, to
4 protect the awarding public agency against defective workmanship and
5 materials for a period of one (1) year after acceptance of the
6 project, except when the awarding public agency is the Department of
7 Transportation or the Oklahoma Turnpike Authority, in such case the
8 period shall be for one (1) year after project completion; and

9 4. Public liability and workers' compensation insurance during
10 construction in reasonable amounts. A public agency may require the
11 contractor to name the public agency and its architects or
12 engineers, or both, as an additional assured under the public
13 liability insurance, which requirement, if made, shall be
14 specifically set forth in the bidding documents.

15 C. A single irrevocable letter of credit may be used to satisfy
16 paragraphs 1, 2 and 3 of subsection B of this section, provided such
17 single irrevocable letter of credit meets all applicable
18 requirements of subsection B of this section.

19 If the contractor needs additional time in which to obtain the
20 bond required pursuant to subsection B of this section, the
21 contractor may request and the awarding agency may allow the
22 contractor an additional sixty (60) days in which to obtain the
23 bond.

24

1 D. 1. After the award of a contract, but prior to its
2 execution, an awarding public agency, upon discovery of an
3 administrative error in the award process that would void an
4 otherwise valid award, may suspend the time of execution of the
5 contract. The agency may rescind the award and readvertise for
6 bids, or may direct correction of the error and award the contract
7 to the lowest responsible bidder, whichever shall be in the best
8 interests of the state.

9 2. If the awarding public agency has a governing body, the
10 agency shall, at the next regularly scheduled public business
11 meeting of the governing body of the agency, upon the record,
12 present to the governing body that an error has been made in the
13 award process and shall state the nature of the error. The
14 governing body, upon presentation of the facts of the error, may
15 rescind the award and readvertise for bids, or may direct correction
16 of the error and award the contract to the lowest responsible
17 bidder, whichever shall be in the best interests of the state.

18 E. No public agency shall require for any public construction
19 project, nor shall any general contractor submit a project bid based
20 on acquiring or participating in, any wrap-up, wrap-around, or
21 controlled insurance program. For the purposes of this subsection,
22 "wrap-up, wrap-around, or controlled insurance program" means any
23 insurance program that has the effect of disabling or rendering
24 inapplicable any workers' compensation, commercial general

1 liability, builders' risk, completed operations, or excess liability
2 insurance coverage carried by a subcontractor that is engaged or to
3 be engaged on a public construction project unless this is a cost
4 savings to the public or the need exists for a specialized or
5 complex insurance program and shall not apply to contracts less than
6 Seventy-five Million Dollars (\$75,000,000.00).

7 F. This act shall not apply to the public construction projects
8 of constitutional agencies which had authorized a wrap-up, wrap-
9 around, or controlled insurance program on or before April 11, 2000.

10 SECTION 4. AMENDATORY 61 O.S. 2011, Section 121, as
11 last amended by Section 1, Chapter 68, O.S.L. 2017 (61 O.S. Supp.
12 2018, Section 121), is amended to read as follows:

13 Section 121. A. Change orders or addenda to public
14 construction contracts of One Million Dollars (\$1,000,000.00) or
15 less shall not exceed a fifteen percent (15%) cumulative increase in
16 the original contract amount.

17 B. Change orders or addenda to public construction contracts of
18 over One Million Dollars (\$1,000,000.00) shall not exceed the
19 greater of One Hundred Fifty Thousand Dollars (\$150,000.00) or a ten
20 percent (10%) cumulative increase in the original contract amount.

21 C. Change orders or cumulative change orders which exceed the
22 limits of subsection A or B of this section shall require a
23 readvertising for bids on the incomplete portions of the contract.

24

1 D. If the awarding public agency does not have a governing
2 body, the chief administrative officer of the awarding public agency
3 shall approve change orders. The State Construction Administrator
4 of the Construction and Properties Division of the Office of
5 Management and Enterprise Services, or the Administrator's designee,
6 shall sign and execute all contracts and change orders, as they
7 relate to state agencies.

8 E. If the awarding public agency has a governing body, all
9 change orders shall be formally approved by the governing body of
10 the awarding public agency and the reasons for approval recorded in
11 the permanent records of the governing body. The governing body of
12 a municipality or technology center may delegate approval of change
13 orders up to Forty Thousand Dollars (\$40,000.00) or ten percent
14 (10%) of any contract, whichever is less, to the chief
15 administrative officer of the municipality or technology center or
16 their designee, with any approved change orders reported to the
17 governing body at the next regularly scheduled meeting.

18 F. The Oklahoma Veterans Commission, as the governing body of
19 the Oklahoma Department of Veterans Affairs, is authorized to
20 delegate to the Director of the agency the authority to approve
21 change orders on a construction contract provided that the
22 individual change order does not exceed Forty Thousand Dollars
23 (\$40,000.00) in expenditure, and complies with the limits
24 established by this section. Change orders approved by the Director

1 pursuant to a delegation of authority shall be presented to the
2 Commission during the next regular meeting and the reasons for the
3 orders recorded in permanent records.

4 G. The governing body of the Oklahoma Tourism and Recreation
5 Department is authorized, upon approval of a majority of all of the
6 members of the Oklahoma Tourism and Recreation Commission, to
7 delegate to the Director of the agency the authority to approve
8 change orders on a construction contract provided that the
9 individual change order does not exceed Twenty-five Thousand Dollars
10 (\$25,000.00) in expenditure and complies with the limits established
11 by this section. The Administrator of the Division shall sign and
12 execute all contracts and change orders.

13 H. The Transportation Commission may, by rule, authorize the
14 Director of the Department of Transportation to approve change
15 orders in an amount of not to exceed Five Hundred Thousand Dollars
16 (\$500,000.00). Change orders approved by the Director shall be
17 presented to the Transportation Commission during the next regular
18 meeting and the reasons therefor recorded in the permanent records.
19 The Oklahoma Turnpike Authority may authorize the Director of the
20 Authority to approve change orders in an amount not to exceed Two
21 Hundred Fifty Thousand Dollars (\$250,000.00). Change orders
22 approved by the Director of the Authority shall be presented to the
23 Authority during the next regular meeting and the reasons for the
24 orders recorded in permanent records.

1 I. All change orders for the Department of Transportation or
2 the Authority shall contain a unit price and total for each of the
3 following items:

4 1. All materials with cost per item;

5 2. Itemization of all labor with number of hours per operation
6 and cost per hour;

7 3. Itemization of all equipment with the type of equipment,
8 number of each type, cost per hour for each type, and number of
9 hours of actual operation for each type;

10 4. Itemization of insurance cost, bond cost, social security,
11 taxes, workers' compensation, employee fringe benefits and overhead
12 cost; and

13 5. Profit for the contractor.

14 J. 1. If a construction contract contains unit pricing, and
15 the change order pertains to the unit price, the change order will
16 not be subject to subsection A or B of this section.

17 2. When the unit price change does not exceed Twenty Thousand
18 Dollars (\$20,000.00), the unit price change order computation may be
19 based on an acceptable unit price basis in lieu of cost itemization
20 as required in paragraphs 1, 2, 3, 4 and 5 of subsection I of this
21 section.

22 3. When the unit price change exceeds Twenty Thousand Dollars
23 (\$20,000.00), any unit price for a new item established at or below
24 the average eighteen-month-price history for the new item may be

1 used in lieu of cost itemization as required in paragraphs 1, 2, 3,
2 4 and 5 of subsection I of this section.

3 K. Alternates or add items bid with the original bid and
4 contained in the awarded contract as options of the awarding public
5 agency shall not be construed as change orders under the provisions
6 of the Public Competitive Bidding Act of 1974.

7 L. Where construction management at-risk is the project
8 delivery method, the limits established by subsections A and B of
9 this section shall be based upon the total cost of the project
10 rather than the cost of the individual trade contracts.

11 SECTION 5. AMENDATORY 61 O.S. 2011, Section 201, as
12 amended by Section 6, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,
13 Section 201), is amended to read as follows:

14 Section 201. Sections 202 through ~~220~~ 213 of this title shall
15 be known and may be cited as the "Public Facilities Act".

16 SECTION 6. AMENDATORY 61 O.S. 2011, Section 202, as last
17 amended by Section 3, Chapter 71, O.S.L. 2016 (61 O.S. Supp. 2018,
18 Section 202), is amended to read as follows:

19 Section 202. As used in the Public Facilities Act:

20 1. "Annual capital plan" means the collective state facility
21 capital improvements, facility operations and maintenance, rent and
22 lease payments, facility debt services, water, sewer and energy
23 utilities and real property transactions approved by the Legislature
24

1 in a capital budget relative to state construction, maintenance, and
2 real estate services;

3 2. "Capital planning and asset management" means the processes
4 delegated to the Department of Real Estate Services for real
5 property data acquisition, data analysis and determination of
6 capital construction projects and procurement related to real
7 property;

8 3. "Construction" means the process of planning, acquiring,
9 designing, building, equipping, altering, repairing, improving,
10 maintaining, leasing, disposing or demolishing any structure or
11 appurtenance thereto including facilities, utilities, or other
12 improvements to any real property but not including highways,
13 bridges, airports, railroads, tunnels, sewers not related to a
14 structure or appurtenance thereto, or dams;

15 4. "Construction administration" means a series of actions
16 required of the State Facilities Director, of other state agency
17 employees, or, under a construction administration contract or
18 contract provision, to ensure the full, timely, and proper
19 performance of all phases of a construction project by all
20 contractors, suppliers, and other persons having responsibility for
21 project work and any guarantees or warranties pertaining thereto;

22 5. "Department" means the Department of Real Estate Services of
23 the Office of Management and Enterprise Services;

24

1 6. "Construction management" means a project delivery method
2 based on an agreement whereby the owner acquires from a construction
3 entity a series of services that include, but are not necessarily
4 limited to, design review, scheduling, cost control, value
5 engineering, constructability evaluation, preparation and
6 coordination of bid packages, and construction administration;

7 "construction management" includes:

8 a. "agency construction management" whereby the
9 construction entity provides services to the owner
10 without taking on financial risks for the execution of
11 the actual construction or time of performance, and
12 the owner contracts directly with those awarded trade
13 contracts for the work, and

14 b. "at-risk construction management" whereby the
15 construction entity, after providing agency services
16 during the pre-construction period₇:

17 (1) takes on the financial obligation to timely carry
18 out construction under a specified cost
19 agreement, and

20 (2) enters into written subcontracts for the work in
21 accordance with the construction management
22 procedures for state agencies;

23 7. "Consultant" means an individual or legal entity possessing
24 the qualifications to provide licensed architectural, registered

1 engineering, registered land surveying, certified appraisal, land
2 title, or abstract services or possessing specialized credentials
3 and qualifications as may be needed to evaluate, plan or design for
4 any construction or public work improvement project, or to lease,
5 acquire or dispose of state-owned real property;

6 8. "Division" means the Construction and Properties Division of
7 the Office of Management and Enterprise Services;

8 9. "Energy performance index or indices" (EPI) means a number
9 describing the energy requirements at the building boundary of a
10 structure, per square foot of floor space or per cubic foot of
11 occupied volume, as appropriate under defined internal and external
12 ambient conditions over an entire seasonal cycle. As experience
13 develops on the energy performance achieved with state construction,
14 the indices (EPI) will serve as a measure of structure performance
15 with respect to energy consumption;

16 10. "Facilities Director" or "SFD" means the State Facilities
17 Director of the Department of Real Estate Services of the Office of
18 Management and Enterprise Services;

19 11. "Life cycle costs" means the cost of owning, operating, and
20 maintaining the structure over the life of the structure. This may
21 be expressed as an annual cost for each year of the facility's use;

22 12. "Office" means the Office of Management and Enterprise
23 Services;

24

1 13. "Procurement" means buying, purchasing, renting, leasing,
2 allocating, trading or otherwise acquiring or disposing of supplies,
3 services, or construction necessary to evaluate, plan, construct,
4 manage, operate and preserve real property capital assets;

5 14. "Public improvement" means any beneficial or valuable
6 change or addition, betterment, enhancement or amelioration of or
7 upon any real property, or interest therein, belonging to a state
8 agency and the State of Oklahoma, intended to enhance its value,
9 beauty or utility or to adapt it to new or further purposes. The
10 term does not include the direct purchase of materials used for
11 general repairs and maintenance to state facilities;

12 15. "Shared savings financing" means the financing of energy
13 conservation measures and maintenance services through a private
14 firm which may own any purchased equipment for the duration of a
15 contract. Such contract shall specify that the private firm will be
16 recompensed either out of a negotiated portion of the savings
17 resulting from the conservation measures and maintenance services
18 provided by the private firm or, in the case of a cogeneration
19 project, through the payment of a rate for energy lower than would
20 otherwise have been paid for the same energy from current sources;
21 and

22 16. "State agency" means an agency, board, commission, counsel,
23 court, office, officer, bureau, institution, unit, division, body,
24 or house of the executive or judicial branches of government of this

1 state, whether elected or appointed, excluding only political
2 subdivisions, the Oklahoma State Regents for Higher Education and
3 its constituent institutions and the Commissioners of the Land
4 Office.

5 SECTION 7. AMENDATORY 61 O.S. 2011, Section 202.1, as
6 last amended by Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp.
7 2018, Section 202.1), is amended to read as follows:

8 Section 202.1. A. The design-build and construction management
9 project delivery methods shall not be used without the written
10 approval of the Director of the Office of Management and Enterprise
11 Services, or the Director's designee, when those projects are
12 constructed for a state agency or by an act of the Legislature
13 specifying design-build or at-risk construction management for a
14 project. In all instances where the design-build project or at-risk
15 construction management delivery method is authorized, construction
16 administration shall be performed by the State Facilities Director,
17 the SFD's designee or designees, or otherwise by contract or
18 contract provision approved by the Director of the Office of
19 Management and Enterprise Services for construction administration
20 by another party.

21 B. ~~Municipalities, counties, public trusts, or any other~~
22 ~~political subdivision in this state shall not be required to get~~
23 ~~approval of any other state agency in order to use agency~~
24 ~~construction management or at-risk construction management as a~~

1 ~~construction delivery method. However, municipalities, counties,~~
2 ~~public trusts, and any other political subdivision shall be subject~~
3 ~~to Section 220 of this title.~~

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

- 12 ~~1. The project benefits the public;~~
- 13 ~~2. There is a need for cost control; and~~
- 14 ~~3. The need exists for specialized or complex construction~~
15 ~~methods due to the unique nature of the project.~~

16 ~~D. The use of design-build and construction management project~~
17 ~~delivery methods shall not interfere or inhibit the opportunity for~~
18 ~~subcontractors and trade contractors to openly and freely compete~~
19 ~~for subcontracts or trade contracts pursuant to the Public~~
20 ~~Competitive Bidding Act of 1974 with respect to public notices. The~~
21 ~~State Facilities Director, or designee, or the construction manager~~
22 ~~shall make the subcontracting and supply opportunities publicly~~
23 ~~known, as follows:~~

1 1. Whenever the estimated cost of the contract exceeds Fifty
2 Thousand Dollars (\$50,000.00), public notice shall be given by
3 publication in a newspaper of general circulation and published in
4 the county where the work, or the major part of the work, is to be
5 done. Such notice by publication shall be published in two
6 consecutive weekly issues of the newspaper, with the first
7 publication thereof to be at least twenty-one (21) days prior to the
8 date set for opening bids; and

9 2. Notice thereof shall be sent to one in-state trade or
10 construction publication for the publication's use and information
11 whenever the estimated cost of the contract exceeds Fifty Thousand
12 Dollars (\$50,000.00); provided, however, this section shall not be
13 construed to require the publication of such notice in such trade or
14 construction publication or to require the provision of such notice
15 to more than one in-state trade or construction publication or to
16 any out-of-state trade or construction publication.

17 C. Bids shall be publicly opened at the time and place
18 designated in the public notice. A representative of the State
19 Facilities Director shall be present at the bid opening.

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

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

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

8 SECTION 8. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 215 of Title 61, unless there is
10 created a duplication in numbering, reads as follows:

11 Sections 8 through 10 of this act shall be known and may be
12 cited as the "Public Construction Management Act for Political
13 Subdivisions".

14 SECTION 9. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 216 of Title 61, unless there is
16 created a duplication in numbering, reads as follows:

17 A. The Public Construction Management Act for Political
18 Subdivisions shall apply to political subdivisions of this state.

19 B. As used in the Public Construction Management Act for
20 Political Subdivisions:

21 1. "Agency construction management" means the construction
22 entity provides services to the owner without taking on financial
23 risks for the execution of the actual construction and/or time of
24

1 performance, and the owner contracts directly with those awarded
2 trade contracts for the work;

3 2. "At-risk construction management" means the construction
4 entity, after providing agency services during the preconstruction
5 period:

6 a. takes on the financial obligation to timely carry out
7 construction under a specified cost agreement, and

8 b. enters into written subcontracts for the work in
9 accordance with the Construction Management Procedures
10 for Political Subdivisions;

11 3. "Construction management" means a public construction
12 project delivery method based on an agreement whereby the owner
13 acquires from a construction entity a series of services that
14 include, but are not necessarily limited to, design review,
15 scheduling, cost control, value engineering, constructability
16 evaluation, preparation and coordination of bid packages and
17 construction administration. Construction management includes:

18 a. agency construction management, and

19 b. at-risk construction management; and

20 4. "Political subdivision" or "subdivision" means any local
21 governmental body formed pursuant to the laws of this state,
22 including, but not limited to, school districts, vocational
23 education districts, cities, counties, public trusts, public
24 authorities, commissions or other local governmental bodies

1 exercising their authority to contract for public construction
2 delivery services. The term also applies to quasi-governmental and
3 nongovernmental organizations delivering construction services using
4 public funds or on behalf of a political subdivision.

5 SECTION 10. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 217 of Title 61, unless there is
7 created a duplication in numbering, reads as follows:

8 A. Construction managers shall be selected by the political
9 subdivision following the requirements set forth in subsection K of
10 Section 62 of Title 61 of the Oklahoma Statutes.

11 B. A written contract between the political subdivision and the
12 construction manager shall set forth the obligations of the parties,
13 which, at a minimum, shall include the construction manager's scope
14 of services, fees and expenses, as follows:

15 1. A construction management fee, which may be based on a
16 percentage of the construction cost or as defined in the contract;

17 2. The cost or basis of cost expenses incurred by the
18 construction manager to be reimbursed by the subdivision for normal
19 general conditions and general requirements necessary for the work
20 but not applicable to a particular subcontractor, trade contractor
21 or supplier; and

22 3. Other project-related expenses as set forth in the contract.

23 C. The procedures for awarding work under agency construction
24 management are as follows:

1 1. The construction manager, with the advice of the design
2 consultant and subdivision, will develop individual bid packages for
3 public bidding;

4 2. Public bidding on individual bid packages will comply with
5 the requirements of the Public Competitive Bidding Act of 1974;

6 3. The construction manager shall evaluate all bids and
7 recommend the lowest responsible bidder to the subdivision, who
8 shall accept or reject the bids. The construction manager may
9 assist the subdivision with the preparation of contracts and the
10 receipt of insurance and bonds as required for public construction
11 contracts by state law;

12 4. After trade contracts are awarded, the construction manager
13 will perform contract administrative services as set forth in the
14 agreement and may assist the subdivision with the review and
15 processing of progress and final payments to the subcontractors.
16 However, under no circumstances shall construction managers receive
17 funds from subdivisions for payments of trade contractors;

18 5. The owner shall pay all trade contractors as required by the
19 Fair Pay for Construction Act; and

20 6. Contracts awarded under an agency construction management
21 delivery system shall not be modified such to permit the assignment
22 of subcontracts and/or trade packages to the construction manager.

23 D. The procedures for awarding work under at-risk construction
24 management are as follows:

1 1. The construction manager, with the advice of the design
2 consultant and subdivision, will develop individual bid packages for
3 public bidding;

4 2. Whenever the estimated cost of the contract exceeds Fifty
5 Thousand Dollars (\$50,000.00) bid packages shall be let and awarded
6 pursuant to the Public Competitive Bidding Act of 1974 and this
7 section;

8 3. Bid packages with a value less than or equal to Fifty
9 Thousand Dollars (\$50,000.00) may be awarded by the political
10 subdivision based on written comparative quotes. Bid packages with
11 a value less than or equal to Twenty-five Thousand Dollars
12 (\$25,000.00) may be awarded by the political subdivision to any
13 qualified vendor;

14 4. Once the bids are accepted by the construction manager and
15 awards made by the subdivision and the subdivision indicates its
16 bonding preference, as noted below, but before written agreements
17 are executed, the construction manager will prepare a guaranteed
18 maximum price (GMP) for the project or relevant portion of the work,
19 as an amendment to the contract. After the subdivision approves the
20 construction manager's GMP amendment, the construction manager shall
21 enter into written subcontractor and supplier agreements for the
22 work previously awarded by the subdivision. Upon receiving a notice
23 to proceed with the work from the subdivision or its designee, the
24 subdivision shall have the option, but not mandate, to require the

1 construction manager to provide performance, payment and maintenance
2 bonds, or any combination, in an amount equal to one hundred percent
3 (100%) of the value of the work, excluding the construction
4 manager's fee, general conditions, reimbursements and insurances.
5 "Payment bond", "performance bond" and "maintenance bond", as used
6 herein, mean and refer to those bonds as defined in the Public
7 Competitive Bidding Act of 1974;

8 5. The construction manager may require bonds from
9 subcontractors or suppliers in an amount equal to one hundred
10 percent (100%) of the value of their bid packages for subcontractors
11 or suppliers not subject to bonding requirements of the Public
12 Competitive Bidding Act of 1974. In such cases, the bonding
13 requirements shall be set forth in the bidding documents;

14 6. The construction manager's work performed under this section
15 may be on a lump-sum basis and subject to the change order
16 limitations for a public construction contract as set forth in the
17 Public Competitive Bidding Act of 1974 or may be performed under a
18 cost-plus basis as determined by the subdivision;

19 7. The subdivision may withhold retainage from the construction
20 manager's progress pay applications as set forth in the Public
21 Competitive Bidding Act of 1974. The owner shall pay the
22 construction manager as required by the Fair Pay for Construction
23 Act; and
24

1 8. If a construction manager at-risk wishes to self-perform
2 portions of the work to be performed, it may do so, provided the
3 construction manager at-risk competitively bids the work under the
4 same terms and conditions as the other bidders and the construction
5 manager at-risk is the lowest responsible bidder for the work scope
6 on which the bid was submitted.

7 E. When bids for a public construction project have been
8 received from general contractors pursuant to the Public Competitive
9 Bidding Act of 1974 and the lowest responsible bid is within the
10 subdivision's available funding, the subdivision shall not reject
11 all bids and subsequently award the project to a construction
12 manager.

13 SECTION 11. REPEALER 61 O.S. 2011, Section 220, as last
14 amended by Section 18, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,
15 Section 220), is hereby repealed.

16 SECTION 12. This act shall become effective January 1, 2020."
17
18
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1 Passed the Senate the 24th day of April, 2019.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2019.

7
8 _____
9 Presiding Officer of the House
10 of Representatives

1 ENGROSSED HOUSE
2 BILL NO. 2666

By: Wallace of the House

and

Leewright of the Senate

3
4
5
6 An Act relating to public buildings and public works;
7 amending 61 O.S. 2011, Sections 61, as last amended
8 by Section 2, Chapter 71, O.S.L. 2016 and 62, as last
9 amended by Section 3, Chapter 302, O.S.L. 2013 (61
10 O.S. Supp. 2018, Sections 61 and 62), which relate to
11 project consultants; modifying definition; defining
12 term; modifying construction manager and consultant
13 selection process; providing options between sets of
14 procedures; limiting considerations; amending 61 O.S.
15 2011, Sections 201, as amended by Section 6, Chapter
16 302, O.S.L. 2013, 202, as last amended by Section 3,
17 Chapter 71, O.S.L. 2016 and 202.1, as last amended by
18 Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp.
19 2018, Sections 201, 202 and 202.1), which relate to
20 the Public Facilities Act; clarifying sections
21 contained in the Act; modifying definition;
22 eliminating certain municipality, county, public
23 trust and political subdivision exemption from
24 certain approval requirement; eliminating certain
prohibitions related to design-build and construction
management project delivery methods; providing that
trade contractors are not limited in certain
opportunities; requiring certain notices under
certain conditions; providing notice standards;
clarifying certain notices not required; providing
bids be opened publicly; requiring certain presence
at bid openings; modifying exclusion from certain
term; creating the Public Construction Management Act
for Political Subdivisions; authorizing certain
citation; declaring applicability; defining terms;
identifying process for selection of construction
managers by political subdivisions; requiring certain
inclusions in certain written contracts; providing
procedures for awarding certain work; requiring
certain compliance with the Public Competitive
Bidding Act and the Fair Pay for Construction Act;
requiring payment of bonds under certain conditions

1 in certain amounts; prohibiting rejections of bids
2 under certain conditions; repealing 61 O.S. 2011,
3 Section 220, as last amended by Section 18, Chapter
4 302, O.S.L. 2013 (61 O.S. Supp. 2018, Section 220),
5 which relates to the use of construction management
6 by political subdivisions or school district boards
7 of education; providing for codification; and
8 providing an effective date.

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

10 SECTION 13. AMENDATORY 61 O.S. 2011, Section 61, as last
11 amended by Section 2, Chapter 71, O.S.L. 2016 (61 O.S. Supp. 2018,
12 Section 61), is amended to read as follows:

13 Section 61. As used in Sections 61 through 65 of this title:

14 1. "Chief administrative officer" means an individual
15 responsible for directing the administration of a state agency. The
16 term does not mean one or all of the individuals that make policy
17 for a state agency;

18 2. "Construction manager" means an individual, firm,
19 corporation, association, partnership, copartnership, or any other
20 legal entity on the Office of Management and Enterprise Services
21 Construction and Properties (OMES-CAP) registration list and
22 possessing the qualifications to provide services of construction
23 management which include, but are not necessarily limited to, design
24 review, scheduling, cost control, value engineering,
constructability evaluation, preparation and coordination of bid
packages, and construction administration;

1 3. "Consultant" means an individual or legal entity possessing
2 the qualifications to provide licensed architectural, registered
3 engineering, or registered land surveying services or other
4 individuals or legal entities possessing specialized credentials and
5 qualifications as may be needed to evaluate, plan or design and/or
6 provide construction administration and/or construction inspection
7 services for any construction or a public work improvement project;

8 4. "Director" means the Director of the Office of Management
9 and Enterprise Services;

10 5. "Department" means the Department of Real Estate Services of
11 the Office of Management and Enterprise Services;

12 6. "Office" means the Office of Management and Enterprise
13 Services;

14 7. "Project" means studies, evaluations, plans or designs for
15 facility evaluations or public work improvements, except the
16 transportation facilities under the jurisdiction of the Department
17 of Transportation or the Oklahoma Turnpike Authority:

18 a. to construct, renovate, alter, repair, maintain, or
19 improve real property or fixtures of real property,
20 and

21 b. that does not constitute "construction" as defined by
22 the Public Building Construction and Planning Act;

23 8. "State agency" means an agency, office, officer, bureau,
24 board, counsel, court, commission, institution, unit, division, body

1 or house of the executive or judicial branches of state government,
2 whether elected or appointed, excluding only political subdivisions
3 of the state, the Oklahoma State Regents for Higher Education and
4 its constituent institutions and the Commissioners of the Land
5 Office; ~~and~~

6 9. "Facilities Director" or "SFD" means the State Facilities
7 Director of the Department of Real Estate Services of the Office of
8 Management and Enterprise Services; and

9 10. "Political subdivision" means any local governmental body
10 formed pursuant to the laws of this state, including, but not
11 limited to, school districts, career technology centers, cities,
12 counties, public trusts, public authorities, commissions or other
13 local governmental bodies exercising their authority to contract
14 with construction managers and/or consultants. The term also means
15 any quasi-governmental and nongovernmental organizations contracting
16 with construction managers and/or consultants using public funds or
17 on behalf of a political subdivision.

18 SECTION 14. AMENDATORY 61 O.S. 2011, Section 62, as last
19 amended by Section 3, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,
20 Section 62), is amended to read as follows:

21 Section 62. A. The Department of Real Estate Services of the
22 Office of Management and Enterprise Services shall maintain a file
23 of all persons and entities interested in and capable of performing
24 construction management and consultant services for state agencies.

1 The file shall include registration forms and information submitted
2 by construction managers and consultants pursuant to rules
3 promulgated by the Office of Management and Enterprise Services.
4 Pursuant to rules promulgated by the Office, the Department shall
5 determine whether a construction manager or consultant qualifies for
6 registration and shall notify the construction manager or consultant
7 within twenty (20) days of receipt of a request for registration.
8 Construction managers and consultants shall re-register for each
9 successive calendar year with the Department.

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

19 C. The state agency shall issue a solicitation to construction
20 managers or consultants that are registered with the Department and
21 capable of providing the services the state agency desires. The
22 solicitation shall, at a minimum, contain:

23 1. Description and scope of the project;
24

1 2. Estimated construction cost or available funds, anticipated
2 starting date, and completion date the state agency desires for the
3 project;

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

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

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

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

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

1 1. Professional qualifications for the type of work
2 contemplated;

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

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

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

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

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

1 managers or consultants, the Department shall select additional
2 construction managers or consultants in order of their competency
3 and qualifications and shall continue negotiations in accordance
4 with the provisions of this section until an agreement is reached.

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

10 I. For all state agencies subject to the Public Facilities Act,
11 Sections 202 through ~~220~~ 213 of this title, the Department shall
12 perform the necessary procurement actions on behalf of a
13 requisitioning agency as enumerated in subsections B through H of
14 this section:

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

17 2. Issue solicitations for construction manager and consultant
18 services;

19 3. Conduct evaluations, interviews, selection, contract
20 negotiation, and fee negotiation processes; and

21 4. Provide contract management services after award of a
22 construction management or consultant contract.

23

24

1 J. In the selection of a ~~construction manager or~~ consultant,
2 all political subdivisions of this state shall ~~follow these~~
3 ~~procedures:~~

4 ~~The subdivision shall select a construction manager or~~
5 consultant based upon the professional qualifications and technical
6 experience of the ~~construction manager or~~ consultant. The
7 subdivision shall negotiate a contract with the highest qualified
8 ~~construction manager or~~ consultant, provided that a fee can be
9 negotiated that is fair and reasonable to both parties. In the
10 event a reasonable fee cannot be negotiated with the selected
11 ~~construction manager or~~ consultant, the subdivision may negotiate
12 with other ~~construction managers or~~ consultants in order of their
13 qualifications.

14 K. In the selection of a construction manager, all political
15 subdivisions of this state shall:

16 1. Extend consideration to construction managers from the file
17 maintained by the Department of Real Estate Services of the Office
18 of Management and Enterprise Services. Political subdivisions are
19 not limited in the number of construction manager candidates from
20 whom they intend on seeking proposals;

21 2. Evaluate the candidates' professional qualifications,
22 licensing, registration, certifications, technical abilities and
23 past experience relevant to the contemplated project. Only firms
24 recognized as qualified construction managers by the Department of

1 Real Estate Services of the Office of Management and Enterprise
2 Services pursuant to this section may be considered for selection as
3 a construction manager. The subdivision shall use procedures as
4 described in this section and the Public Construction Management Act
5 for Political Subdivisions or may adopt procedures established by
6 the Office of Management and Enterprise Services for state agencies;
7 and

8 3. Consider only professional attributes of the construction
9 managers during the evaluation process and shall not discuss fees.
10 Once the first-choice construction manager candidate is determined,
11 the subdivision shall enter into contract negotiations with the
12 candidate. If the subdivision cannot reach an agreement with the
13 first-choice construction manager, the negotiations shall terminate
14 and negotiations with the next-choice construction manager shall
15 commence. The negotiations shall continue in this manner with each
16 successive candidate until an agreement is reached. If the
17 subdivision and any of the construction manager candidates cannot
18 reach an agreement, then all negotiations shall terminate and the
19 subdivision shall restart the process as described in this section
20 and in the Public Construction Management Act for Political
21 Subdivision, if applicable.

22 SECTION 15. AMENDATORY 61 O.S. 2011, Section 201, as
23 amended by Section 6, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,
24 Section 201), is amended to read as follows:

1 Section 201. Sections 202 through ~~220~~ 213 of this title shall
2 be known and may be cited as the "Public Facilities Act".

3 SECTION 16. AMENDATORY 61 O.S. 2011, Section 202, as
4 last amended by Section 3, Chapter 71, O.S.L. 2016 (61 O.S. Supp.
5 2018, Section 202), is amended to read as follows:

6 Section 202. As used in the Public Facilities Act:

7 1. "Annual capital plan" means the collective state facility
8 capital improvements, facility operations and maintenance, rent and
9 lease payments, facility debt services, water, sewer and energy
10 utilities and real property transactions approved by the Legislature
11 in a capital budget relative to state construction, maintenance, and
12 real estate services;

13 2. "Capital planning and asset management" means the processes
14 delegated to the Department of Real Estate Services for real
15 property data acquisition, data analysis and determination of
16 capital construction projects and procurement related to real
17 property;

18 3. "Construction" means the process of planning, acquiring,
19 designing, building, equipping, altering, repairing, improving,
20 maintaining, leasing, disposing or demolishing any structure or
21 appurtenance thereto including facilities, utilities, or other
22 improvements to any real property but not including highways,
23 bridges, airports, railroads, tunnels, sewers not related to a
24 structure or appurtenance thereto, or dams;

1 4. "Construction administration" means a series of actions
2 required of the State Facilities Director, of other state agency
3 employees, or, under a construction administration contract or
4 contract provision, to ensure the full, timely, and proper
5 performance of all phases of a construction project by all
6 contractors, suppliers, and other persons having responsibility for
7 project work and any guarantees or warranties pertaining thereto;

8 5. "Department" means the Department of Real Estate Services of
9 the Office of Management and Enterprise Services;

10 6. "Construction management" means a project delivery method
11 based on an agreement whereby the owner acquires from a construction
12 entity a series of services that include, but are not necessarily
13 limited to, design review, scheduling, cost control, value
14 engineering, constructability evaluation, preparation and
15 coordination of bid packages, and construction administration;

16 "construction management" includes:

- 17 a. "agency construction management" whereby the
18 construction entity provides services to the owner
19 without taking on financial risks for the execution of
20 the actual construction or time of performance, and
21 the owner contracts directly with those awarded trade
22 contracts for the work, and

1 b. "at-risk construction management" whereby the
2 construction entity, after providing agency services
3 during the pre-construction period⁷:

4 (1) takes on the financial obligation to timely carry
5 out construction under a specified cost
6 agreement, and

7 (2) enters into written subcontracts for the work in
8 accordance with the construction management
9 procedures for state agencies;

10 7. "Consultant" means an individual or legal entity possessing
11 the qualifications to provide licensed architectural, registered
12 engineering, registered land surveying, certified appraisal, land
13 title, or abstract services or possessing specialized credentials
14 and qualifications as may be needed to evaluate, plan or design for
15 any construction or public work improvement project, or to lease,
16 acquire or dispose of state-owned real property;

17 8. "Division" means the Construction and Properties Division of
18 the Office of Management and Enterprise Services;

19 9. "Energy performance index or indices" (EPI) means a number
20 describing the energy requirements at the building boundary of a
21 structure, per square foot of floor space or per cubic foot of
22 occupied volume, as appropriate under defined internal and external
23 ambient conditions over an entire seasonal cycle. As experience
24 develops on the energy performance achieved with state construction,

1 the indices (EPI) will serve as a measure of structure performance
2 with respect to energy consumption;

3 10. "Facilities Director" or "SFD" means the State Facilities
4 Director of the Department of Real Estate Services of the Office of
5 Management and Enterprise Services;

6 11. "Life cycle costs" means the cost of owning, operating, and
7 maintaining the structure over the life of the structure. This may
8 be expressed as an annual cost for each year of the facility's use;

9 12. "Office" means the Office of Management and Enterprise
10 Services;

11 13. "Procurement" means buying, purchasing, renting, leasing,
12 allocating, trading or otherwise acquiring or disposing of supplies,
13 services, or construction necessary to evaluate, plan, construct,
14 manage, operate and preserve real property capital assets;

15 14. "Public improvement" means any beneficial or valuable
16 change or addition, betterment, enhancement or amelioration of or
17 upon any real property, or interest therein, belonging to a state
18 agency and the State of Oklahoma, intended to enhance its value,
19 beauty or utility or to adapt it to new or further purposes. The
20 term does not include the direct purchase of materials used for
21 general repairs and maintenance to state facilities;

22 15. "Shared savings financing" means the financing of energy
23 conservation measures and maintenance services through a private
24 firm which may own any purchased equipment for the duration of a

1 contract. Such contract shall specify that the private firm will be
2 recompensed either out of a negotiated portion of the savings
3 resulting from the conservation measures and maintenance services
4 provided by the private firm or, in the case of a cogeneration
5 project, through the payment of a rate for energy lower than would
6 otherwise have been paid for the same energy from current sources;
7 and

8 16. "State agency" means an agency, board, commission, counsel,
9 court, office, officer, bureau, institution, unit, division, body,
10 or house of the executive or judicial branches of government of this
11 state, whether elected or appointed, excluding only political
12 subdivisions, the Oklahoma State Regents for Higher Education and
13 its constituent institutions and the Commissioners of the Land
14 Office.

15 SECTION 17. AMENDATORY 61 O.S. 2011, Section 202.1, as
16 last amended by Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp.
17 2018, Section 202.1), is amended to read as follows:

18 Section 202.1 A. The design-build and construction management
19 project delivery methods shall not be used without the written
20 approval of the Director of the Office of Management and Enterprise
21 Services, or the Director's designee, when those projects are
22 constructed for a state agency or by an act of the Legislature
23 specifying design-build or at-risk construction management for a
24 project. In all instances where the design-build project or at-risk

1 construction management delivery method is authorized, construction
2 administration shall be performed by the State Facilities Director,
3 the SFD's designee or designees, or otherwise by contract or
4 contract provision approved by the Director of the Office of
5 Management and Enterprise Services for construction administration
6 by another party.

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

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

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

24

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 and trade contractors to openly and freely compete
6 for subcontracts or trade contracts pursuant to the Public
7 Competitive Bidding Act of 1974 ~~with respect to public notices.~~ The
8 State Facilities Director, or designee, or the construction manager
9 shall make the subcontracting and supply opportunities publicly
10 known, as follows:

11 1. Whenever the estimated cost of the contract exceeds Fifty
12 Thousand Dollars (\$50,000.00), public notice shall be given by
13 publication in a newspaper of general circulation and published in
14 the county where the work, or the major part of the work, is to be
15 done. Such notice by publication shall be published in two
16 consecutive weekly issues of the newspaper, with the first
17 publication thereof to be at least twenty-one (21) days prior to the
18 date set for opening bids; and

19 2. Notice thereof shall be sent to one in-state trade or
20 construction publication for the publication's use and information
21 whenever the estimated cost of the contract exceeds Fifty Thousand
22 Dollars (\$50,000.00); provided, however, this section shall not be
23 construed to require the publication of such notice in such trade or
24 construction publication or to require the provision of such notice

1 to more than one in-state trade or construction publication or to
2 any out-of-state trade or construction publication.

3 C. Bids shall be publicly opened at the time and place
4 designated in the public notice. A representative of the State
5 Facilities Director shall be present at the bid opening.

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

11 ~~F.~~ E. 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 18. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 215 of Title 61, unless there is
20 created a duplication in numbering, reads as follows:

21 Sections 6 through 8 of this act shall be known and may be cited
22 as the "Public Construction Management Act for Political
23 Subdivisions".

24

1 SECTION 19. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 216 of Title 61, unless there is
3 created a duplication in numbering, reads as follows:

4 A. The Public Construction Management Act for Political
5 Subdivisions shall apply to political subdivisions of this state.

6 B. As used in the Public Construction Management Act for
7 Political Subdivisions:

8 1. "Agency construction management" means the construction
9 entity provides services to the owner without taking on financial
10 risks for the execution of the actual construction and/or time of
11 performance, and the owner contracts directly with those awarded
12 trade contracts for the work;

13 2. "At-risk construction management" means the construction
14 entity, after providing agency services during the preconstruction
15 period:

16 a. takes on the financial obligation to timely carry out
17 construction under a specified cost agreement, and
18 b. enters into written subcontracts for the work in
19 accordance with the Construction Management Procedures
20 for Political Subdivisions;

21 3. "Construction management" means a public construction
22 project delivery method based on an agreement whereby the owner
23 acquires from a construction entity a series of services that
24 include, but are not necessarily limited to, design review,

1 scheduling, cost control, value engineering, constructability
2 evaluation, preparation and coordination of bid packages and
3 construction administration. Construction management includes:

- 4 a. agency construction management, and
- 5 b. at-risk construction management; and

6 4. "Political subdivision" or "subdivision" means any local
7 governmental body formed pursuant to the laws of this state,
8 including, but not limited to, school districts, vocational
9 education districts, cities, counties, public trusts, public
10 authorities, commissions or other local governmental bodies
11 exercising their authority to contract for public construction
12 delivery services. The term also applies to quasi-governmental and
13 nongovernmental organizations delivering construction services using
14 public funds or on behalf of a political subdivision.

15 SECTION 20. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 217 of Title 61, unless there is
17 created a duplication in numbering, reads as follows:

18 A. Construction managers shall be selected by the political
19 subdivision following the requirements set forth in subsection K of
20 Section 62 of Title 61 of the Oklahoma Statutes.

21 B. A written contract between the political subdivision and the
22 construction manager shall set forth the obligations of the parties,
23 which, at a minimum, shall include the construction manager's scope
24 of services, fees and expenses, as follows:

1 1. A construction management fee, which may be based on a
2 percentage of the construction cost or as defined in the contract;

3 2. The cost or basis of cost expenses incurred by the
4 construction manager to be reimbursed by the subdivision for normal
5 general conditions and general requirements necessary for the work
6 but not applicable to a particular subcontractor, trade contractor
7 or supplier; and

8 3. Other project-related expenses as set forth in the contract.

9 C. The procedures for awarding work under agency construction
10 management are as follows:

11 1. The construction manager, with the advice of the design
12 consultant and subdivision, will develop individual bid packages for
13 public bidding;

14 2. Public bidding on individual bid packages will comply with
15 the requirements of the Public Competitive Bidding Act of 1974;

16 3. The construction manager shall evaluate all bids and
17 recommend the lowest responsible bidder to the subdivision, who
18 shall accept or reject the bids. The construction manager may
19 assist the subdivision with the preparation of contracts and the
20 receipt of insurance and bonds as required for public construction
21 contracts by state law;

22 4. After trade contracts are awarded, the construction manager
23 will perform contract administrative services as set forth in the
24 agreement and may assist the subdivision with the review and

1 processing of progress and final payments to the subcontractors.

2 However, under no circumstances shall construction managers receive
3 funds from subdivisions for payments of trade contractors;

4 5. The owner shall pay all trade contractors as required by the
5 Fair Pay for Construction Act; and

6 6. Contracts awarded under an agency construction management
7 delivery system shall not be modified such to permit the assignment
8 of subcontracts and/or trade packages to the construction manager.

9 D. The procedures for awarding work under at-risk construction
10 management are as follows:

11 1. The construction manager, with the advice of the design
12 consultant and subdivision, will develop individual bid packages for
13 public bidding;

14 2. Whenever the estimated cost of the contract exceeds Fifty
15 Thousand Dollars (\$50,000.00) bid packages shall be let and awarded
16 pursuant to the Public Competitive Bidding Act of 1974 and this
17 section;

18 3. Bid packages with a value less than or equal to Fifty
19 Thousand Dollars (\$50,000.00) may be awarded by the political
20 subdivision based on written comparative quotes. Bid packages with
21 a value less than or equal to Twenty-five Thousand Dollars
22 (\$25,000.00) may be awarded by the political subdivision to any
23 qualified vendor;

24

1 4. Once the bids are accepted by the construction manager and
2 awards made by the subdivision and the subdivision indicates its
3 bonding preference, as noted below, but before written agreements
4 are executed, the construction manager will prepare a guaranteed
5 maximum price (GMP) for the project or relevant portion of the work,
6 as an amendment to the contract. After the subdivision approves the
7 construction manager's GMP amendment, the construction manager shall
8 enter into written subcontractor and supplies agreements for the
9 work previously awarded by the subdivision. Upon receiving a notice
10 to proceed with the work from the subdivision or its designee, the
11 subdivision shall have the option, but not mandate, to require the
12 construction manager to provide performance, payment and maintenance
13 bonds, or any combination, in an amount equal to one hundred percent
14 (100%) of the value of the work, excluding the construction
15 manager's fee, general conditions, reimbursements and insurances.
16 "Payment bond", "performance bond" and "maintenance bond", as used
17 herein, mean and refer to those bonds as defined in the Public
18 Competitive Bidding Act of 1974;

19 5. The construction manager may require bonds from
20 subcontractors or suppliers in an amount equal to one hundred
21 percent (100%) of the value of their bid packages for subcontractors
22 or suppliers not subject to bonding requirements of the Public
23 Competitive Bidding Act of 1974. In such cases, the bonding
24 requirements shall be set forth in the bidding documents;

1 6. The construction manager's work performed under this section
2 may be on a lump-sum basis and subject to the change order
3 limitations for a public construction contract as set forth in the
4 Public Competitive Bidding Act of 1974 or may be performed under a
5 cost-plus basis as determined by the subdivision;

6 7. The subdivision may withhold retainage from the construction
7 manager's progress pay applications as set forth in the Public
8 Competitive Bidding Act of 1974. The owner shall pay the
9 construction manager as required by the Fair Pay for Construction
10 Act; and

11 8. If a construction manager at-risk wishes to self-perform
12 portions of the work to be performed, it may do so, provided the
13 construction manager at-risk competitively bids the work under the
14 same terms and conditions as the other bidders and the construction
15 manager at-risk is the lowest responsible bidder for the work scope
16 on which the bid was submitted.

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

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SECTION 21. REPEALER 61 O.S. 2011, Section 220, as last amended by Section 18, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018, Section 220), is hereby repealed.

SECTION 22. This act shall become effective January 1, 2020.
Passed the House of Representatives the 11th day of March, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the ____ day of _____, 2019.

Presiding Officer of the Senate