

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2666 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Kevin Wallace _____

Reading Clerk

1 STATE OF OKLAHOMA

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

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2666

By: Wallace

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to public buildings and public works;
9 amending 61 O.S. 2011, Section 61, as last amended by
10 Section 2, Chapter 71, O.S.L. 2016 and Section 62, as
11 last amended by Section 3, Chapter 302, O.S.L. 2013
12 (61 O.S. Supp. 2018, Sections 61 and 62), which
13 relate to project consultants; modifying definition;
14 defining term; modifying construction manager and
15 consultant selection process; providing options
16 between sets of procedures; limiting considerations;
17 amending 61 O.S. 2011, Sections 201, as amended by
18 Section 6, Chapter 302, O.S.L. 2013, 202, as last
19 amended by Section 3, Chapter 71, O.S.L. 2016 and
20 202.1, as last amended by Section 8, Chapter 302,
21 O.S.L. 2013 (61 O.S. Supp. 2018, Sections 201, 202
22 and 202.1), which relate to the Public Facilities
23 Act; clarifying sections contained in the Act;
24 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 bid 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

1 written contracts; providing procedures for awarding
2 certain work; requiring certain compliance with the
3 Public Competitive Bidding Act and the Fair Pay for
4 Construction Act; requiring payment of bonds under
5 certain conditions in certain amounts; prohibiting
6 rejections of bids under certain conditions;
7 repealing 61 O.S. 2011, Section 220, as last amended
8 by Section 18, Chapter 302, O.S.L. 2013 (61 O.S.
9 Supp. 2018, Section 220), which relates to the use of
10 construction management by political subdivisions or
11 school district boards of education; providing for
12 codification; and providing an effective date.

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

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

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

18 1. "Chief administrative officer" means an individual
19 responsible for directing the administration of a state agency. The
20 term does not mean one or all of the individuals that make policy
21 for a state agency;

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

1 constructability evaluation, preparation and coordination of bid
2 packages, and construction administration;

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

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

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

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

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

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

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

24

1 8. "State agency" means an agency, office, officer, bureau,
2 board, counsel, court, commission, institution, unit, division, body
3 or house of the executive or judicial branches of state government,
4 whether elected or appointed, excluding only political subdivisions
5 of the state, the Oklahoma State Regents for Higher Education and
6 its constituent institutions and the Commissioners of the Land
7 Office; ~~and~~

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

11 10. "Political subdivision" means any local governmental body
12 formed pursuant to the laws of this state, including school
13 districts, career technology centers, cities, counties, public
14 trusts, public authorities, commissions or other local governmental
15 bodies exercising their authority to contract for construction
16 delivery services. The term also means any quasi-governmental and
17 nongovernmental organizations delivering construction services using
18 public funds or on behalf of a political subdivision.

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

22 Section 62. A. The Department of Real Estate Services of the
23 Office of Management and Enterprise Services shall maintain a file
24 of all persons and entities interested in and capable of performing

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

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

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

24 1. Description and scope of the project;

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

19 2. Evaluate the candidates' professional qualifications,
20 licensing, registration, certifications, technical abilities and
21 past experience relevant to the contemplated project. Only firms
22 recognized as qualified construction managers by the Department of
23 Real Estate Services of the Office of Management and Enterprise
24 Services pursuant to this section may be considered for selection as

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

6 3. Consider only professional attributes of the applicant
7 during the evaluation process and shall not discuss fees. Once the
8 first-choice candidate is determined, the subdivision shall enter
9 into contract negotiations with the candidate. If the subdivision
10 cannot reach an agreement with the first-choice construction manager
11 or consultant, the negotiations shall terminate and negotiations
12 with the second-choice construction manager or consultant shall
13 commence. If the subdivision and the second-choice construction
14 manager or consultant cannot reach an agreement, the negotiations
15 shall terminate and negotiations with the third-choice construction
16 manager or consultant shall commence. If the subdivision and the
17 third-choice construction manager or consultant cannot reach an
18 agreement, then all negotiations shall terminate and the subdivision
19 shall restart the process as described in this section and in the
20 Public Construction Management Act for Political Subdivisions, if
21 applicable.

22 SECTION 3. 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 4. AMENDATORY 61 O.S. 2011, Section 202, as last
4 amended by Section 3, Chapter 71, O.S.L. 2016 (61 O.S. Supp. 2018,
5 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 5. 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 6. 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 7. 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 school districts, vocational education districts, cities,
9 counties, public trusts, public authorities, commissions or other
10 local governmental bodies exercising their authority to contract for
11 public construction delivery services. The term also applies to
12 quasi-governmental and nongovernmental organizations delivering
13 construction services using public funds or on behalf of a political
14 subdivision.

15 SECTION 8. 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 J 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;

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, but before written agreements are
3 executed, the construction manager will prepare a guaranteed maximum
4 price (GMP) for the project or relevant portion of the work, as an
5 amendment to the contract. After the subdivision approves the
6 construction manager's GMP amendment, the construction manager shall
7 enter into written subcontractor and supplies agreements for the
8 work previously awarded by the subdivision. Upon receiving a notice
9 to proceed with the work from the subdivision or its designee, the
10 subdivision shall have the option, if included in the GMP, to
11 require the construction manager to provide performance, payment and
12 maintenance bonds or only a payment bond in an amount equal to one
13 hundred percent (100%) of the value of the work, excluding the
14 construction manager's fee, general conditions, reimbursements and
15 insurances. "Payment bond", "performance bond" and "maintenance
16 bond", as used herein, mean and refer to those bonds as defined in
17 the Public Competitive Bidding Act of 1974;

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

24

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 9. 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 10. This act shall become effective November 1, 2019.

57-1-7833 JM 02/19/19