

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2666

By: Wallace of the House

and

Leewright of the Senate

7  
8  
9  
10                                   COMMITTEE SUBSTITUTE

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

1 term; creating the Public Construction Management Act  
2 for Political Subdivisions; authorizing certain  
3 citation; declaring applicability; defining terms;  
4 identifying process for selection of construction  
5 managers by political subdivisions; requiring certain  
6 inclusions in certain written contracts; providing  
7 procedures for awarding certain work; requiring  
8 certain compliance with the Public Competitive  
9 Bidding Act and the Fair Pay for Construction Act;  
10 requiring payment of bonds under certain conditions  
11 in certain amounts; prohibiting rejections of bids  
12 under certain conditions; repealing 61 O.S. 2011,  
13 Section 220, as last amended by Section 18, Chapter  
14 302, O.S.L. 2013 (61 O.S. Supp. 2018, Section 220),  
15 which relates to the use of construction management  
16 by political subdivisions or school district boards  
17 of education; providing for codification; and  
18 providing an effective date.

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

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

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

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

2. "Construction manager" means an individual, firm,  
corporation, association, partnership, copartnership, or any other  
legal entity on the Office of Management and Enterprise Services  
Construction and Properties (OMES-CAP) registration list and

1 possessing the qualifications to provide services of construction  
2 management which include, but are not necessarily limited to, design  
3 review, scheduling, cost control, value engineering,  
4 constructability evaluation, preparation and coordination of bid  
5 packages, and construction administration;

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

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

15 5. "Department" means the Department of Real Estate Services of  
16 the Office of Management and Enterprise Services;

17 6. "Office" means the Office of Management and Enterprise  
18 Services;

19 7. "Project" means studies, evaluations, plans or designs for  
20 facility evaluations or public work improvements, except the  
21 transportation facilities under the jurisdiction of the Department  
22 of Transportation or the Oklahoma Turnpike Authority:  
23  
24

1 a. to construct, renovate, alter, repair, maintain, or  
2 improve real property or fixtures of real property,  
3 and

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

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

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

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

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

4 Section 62. A. The Department of Real Estate Services of the  
5 Office of Management and Enterprise Services shall maintain a file  
6 of all persons and entities interested in and capable of performing  
7 construction management and consultant services for state agencies.  
8 The file shall include registration forms and information submitted  
9 by construction managers and consultants pursuant to rules  
10 promulgated by the Office of Management and Enterprise Services.  
11 Pursuant to rules promulgated by the Office, the Department shall  
12 determine whether a construction manager or consultant qualifies for  
13 registration and shall notify the construction manager or consultant  
14 within twenty (20) days of receipt of a request for registration.  
15 Construction managers and consultants shall re-register for each  
16 successive calendar year with the Department.

17 B. The requisitioning state agency shall define the scope of a  
18 proposed project. The scope shall identify project components,  
19 phases and timetables and shall include detailed project  
20 descriptions. The state agency may request the Department to assist  
21 with scope development. The state agency shall send the scope and a  
22 requisition for construction management or consultant services,  
23 signed by an authorized official, to the Department. The Department  
24

1 shall review the scope and approve it before the state agency issues  
2 a solicitation.

3 C. The state agency shall issue a solicitation to construction  
4 managers or consultants that are registered with the Department and  
5 capable of providing the services the state agency desires. The  
6 solicitation shall, at a minimum, contain:

7 1. Description and scope of the project;

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

11 3. Certification of funds available for the construction  
12 manager or consultant fee, including federal, state or other  
13 participation;

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

16 5. Additional data the state agency requires from the  
17 construction manager or consultant. The closing date for submission  
18 of construction manager or consultant notice of interest for  
19 consideration shall be within thirty (30) days of the date of the  
20 notice the state agency issues.

21 D. After the closing date, the Department shall provide  
22 information from the construction managers' or consultants' files to  
23 the state agency. Should there be an inadequate expression of  
24 interest in the project, the state agency and Department personnel

1 shall confer to add construction managers or consultants for  
2 consideration.

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

8 1. Professional qualifications for the type of work  
9 contemplated;

10 2. Capacity for completing the project in the specified time  
11 period; and

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

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

17 G. 1. Upon completion of contract negotiation with the highest  
18 qualified construction manager or consultant, which contract shall  
19 include a fair and reasonable fee, the Department shall approve and  
20 award the contract.

21 2. If the Department and the first-choice construction manager  
22 or consultant cannot reach an agreement, the negotiations shall  
23 terminate and negotiations with the second-choice construction  
24 manager or consultant shall commence. If the Department and the

1 second-choice construction manager or consultant cannot reach an  
2 agreement, the negotiations shall terminate and negotiations with  
3 the third-choice construction manager or consultant shall commence.  
4 If the Department and the third-choice construction manager or  
5 consultant cannot reach an agreement, then all negotiations shall  
6 terminate. Should the Department be unable to negotiate a  
7 satisfactory contract with any of the three selected construction  
8 managers or consultants, the Department shall select additional  
9 construction managers or consultants in order of their competency  
10 and qualifications and shall continue negotiations in accordance  
11 with the provisions of this section until an agreement is reached.

12 H. Any plans developed pursuant to the process for selection of  
13 a contractor for construction of a facility authorized pursuant to  
14 Section 183 of Title 73 of the Oklahoma Statutes shall become the  
15 property of the State of Oklahoma as a condition of the award of the  
16 final contract for construction of the facility.

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

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

24

1           2. Issue solicitations for construction manager and consultant  
2 services;

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

5           4. Provide contract management services after award of a  
6 construction management or consultant contract.

7           J. In the selection of a ~~construction manager or~~ consultant,  
8 all political subdivisions of this state shall ~~follow these~~  
9 ~~procedures:~~

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

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

22           1. Extend consideration to construction managers from the file  
23 maintained by the Department of Real Estate Services of the Office  
24 of Management and Enterprise Services. Political subdivisions are

1 not limited in the number of construction manager candidates from  
2 whom they intend on seeking proposals;

3 2. Evaluate the candidates' professional qualifications,  
4 licensing, registration, certifications, technical abilities and  
5 past experience relevant to the contemplated project. Only firms  
6 recognized as qualified construction managers by the Department of  
7 Real Estate Services of the Office of Management and Enterprise  
8 Services pursuant to this section may be considered for selection as  
9 a construction manager. The subdivision shall use procedures as  
10 described in this section and the Public Construction Management Act  
11 for Political Subdivisions or may adopt procedures established by  
12 the Office of Management and Enterprise Services for state agencies;  
13 and

14 3. Consider only professional attributes of the construction  
15 managers during the evaluation process and shall not discuss fees.  
16 Once the first-choice construction manager candidate is determined,  
17 the subdivision shall enter into contract negotiations with the  
18 candidate. If the subdivision cannot reach an agreement with the  
19 first-choice construction manager, the negotiations shall terminate  
20 and negotiations with the next-choice construction manager shall  
21 commence. The negotiations shall continue in this manner with each  
22 successive candidate until an agreement is reached. If the  
23 subdivision and any of the construction manager candidates cannot  
24 reach an agreement, then all negotiations shall terminate and the

1 subdivision shall restart the process as described in this section  
2 and in the Public Construction Management Act for Political  
3 Subdivision, if applicable.

4 SECTION 3. AMENDATORY 61 O.S. 2011, Section 201, as  
5 amended by Section 6, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,  
6 Section 201), is amended to read as follows:

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

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

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

13 1. "Annual capital plan" means the collective state facility  
14 capital improvements, facility operations and maintenance, rent and  
15 lease payments, facility debt services, water, sewer and energy  
16 utilities and real property transactions approved by the Legislature  
17 in a capital budget relative to state construction, maintenance, and  
18 real estate services;

19 2. "Capital planning and asset management" means the processes  
20 delegated to the Department of Real Estate Services for real  
21 property data acquisition, data analysis and determination of  
22 capital construction projects and procurement related to real  
23 property;

24

1           3. "Construction" means the process of planning, acquiring,  
2 designing, building, equipping, altering, repairing, improving,  
3 maintaining, leasing, disposing or demolishing any structure or  
4 appurtenance thereto including facilities, utilities, or other  
5 improvements to any real property but not including highways,  
6 bridges, airports, railroads, tunnels, sewers not related to a  
7 structure or appurtenance thereto, or dams;

8           4. "Construction administration" means a series of actions  
9 required of the State Facilities Director, of other state agency  
10 employees, or, under a construction administration contract or  
11 contract provision, to ensure the full, timely, and proper  
12 performance of all phases of a construction project by all  
13 contractors, suppliers, and other persons having responsibility for  
14 project work and any guarantees or warranties pertaining thereto;

15           5. "Department" means the Department of Real Estate Services of  
16 the Office of Management and Enterprise Services;

17           6. "Construction management" means a project delivery method  
18 based on an agreement whereby the owner acquires from a construction  
19 entity a series of services that include, but are not necessarily  
20 limited to, design review, scheduling, cost control, value  
21 engineering, constructability evaluation, preparation and  
22 coordination of bid packages, and construction administration;  
23 "construction management" includes:

24

1 a. "agency construction management" whereby the  
2 construction entity provides services to the owner  
3 without taking on financial risks for the execution of  
4 the actual construction or time of performance, and  
5 the owner contracts directly with those awarded trade  
6 contracts for the work, and

7 b. "at-risk construction management" whereby the  
8 construction entity, after providing agency services  
9 during the pre-construction period<sup>7</sup>:

10 (1) takes on the financial obligation to timely carry  
11 out construction under a specified cost  
12 agreement, and

13 (2) enters into written subcontracts for the work in  
14 accordance with the construction management  
15 procedures for state agencies;

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

23 8. "Division" means the Construction and Properties Division of  
24 the Office of Management and Enterprise Services;

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

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

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

15       12. "Office" means the Office of Management and Enterprise  
16 Services;

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

21       14. "Public improvement" means any beneficial or valuable  
22 change or addition, betterment, enhancement or amelioration of or  
23 upon any real property, or interest therein, belonging to a state  
24 agency and the State of Oklahoma, intended to enhance its value,

1 beauty or utility or to adapt it to new or further purposes. The  
2 term does not include the direct purchase of materials used for  
3 general repairs and maintenance to state facilities;

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

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

21 SECTION 5. AMENDATORY 61 O.S. 2011, Section 202.1, as  
22 last amended by Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp.  
23 2018, Section 202.1), is amended to read as follows:

24

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

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

21 C. ~~The design-build and construction management project~~  
22 ~~delivery methods shall not be used for any project unless the~~  
23 ~~project meets the criteria established by the administrative rules~~  
24 ~~promulgated as required by this act. Such methods shall not be used~~

1 ~~unless there is a need for compressed construction time as required~~  
2 ~~to respond to a natural disaster or other emergency situation~~  
3 ~~affecting public health and safety, or all of the following criteria~~  
4 ~~for designation are met:~~

- 5 ~~1. The project benefits the public;~~
- 6 ~~2. There is a need for cost control; and~~
- 7 ~~3. The need exists for specialized or complex construction~~  
8 ~~methods due to the unique nature of the project.~~

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

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

1        2. Notice thereof shall be sent to one in-state trade or  
2 construction publication for the publication's use and information  
3 whenever the estimated cost of the contract exceeds Fifty Thousand  
4 Dollars (\$50,000.00); provided, however, this section shall not be  
5 construed to require the publication of such notice in such trade or  
6 construction publication or to require the provision of such notice  
7 to more than one in-state trade or construction publication or to  
8 any out-of-state trade or construction publication.

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

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

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

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

24

1 SECTION 6. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 215 of Title 61, unless there is  
3 created a duplication in numbering, reads as follows:

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

7 SECTION 7. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 216 of Title 61, unless there is  
9 created a duplication in numbering, reads as follows:

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

12 B. As used in the Public Construction Management Act for  
13 Political Subdivisions:

14 1. "Agency construction management" means the construction  
15 entity provides services to the owner without taking on financial  
16 risks for the execution of the actual construction and/or time of  
17 performance, and the owner contracts directly with those awarded  
18 trade contracts for the work;

19 2. "At-risk construction management" means the construction  
20 entity, after providing agency services during the preconstruction  
21 period:

22 a. takes on the financial obligation to timely carry out  
23 construction under a specified cost agreement, and  
24

1           b. enters into written subcontracts for the work in  
2           accordance with the Construction Management Procedures  
3           for Political Subdivisions;

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

- 11           a. agency construction management, and
- 12           b. at-risk construction management; and

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

22           SECTION 8.       NEW LAW       A new section of law to be codified  
23 in the Oklahoma Statutes as Section 217 of Title 61, unless there is  
24 created a duplication in numbering, reads as follows:

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

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

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

10 2. The cost or basis of cost expenses incurred by the  
11 construction manager to be reimbursed by the subdivision for normal  
12 general conditions and general requirements necessary for the work  
13 but not applicable to a particular subcontractor, trade contractor  
14 or supplier; and

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

16 C. The procedures for awarding work under agency construction  
17 management are as follows:

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

21 2. Public bidding on individual bid packages will comply with  
22 the requirements of the Public Competitive Bidding Act;

23 3. The construction manager shall evaluate all bids and  
24 recommend the lowest responsible bidder to the subdivision, who

1 shall accept or reject the bids. The construction manager may  
2 assist the subdivision with the preparation of contracts and the  
3 receipt of insurance and bonds as required for public construction  
4 contracts by state law;

5 4. After trade contracts are awarded, the construction manager  
6 will perform contract administrative services as set forth in the  
7 agreement and may assist the subdivision with the review and  
8 processing of progress and final payments to the subcontractors.  
9 However, under no circumstances shall construction managers receive  
10 funds from subdivisions for payments of trade contractors;

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

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

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

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

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

1           3. Bid packages with a value less than or equal to Fifty  
2 Thousand Dollars (\$50,000.00) may be awarded by the political  
3 subdivision based on written comparative quotes. Bid packages with  
4 a value less than or equal to Twenty-five Thousand Dollars  
5 (\$25,000.00) may be awarded by the political subdivision to any  
6 qualified vendor;

7           4. Once the bids are accepted by the construction manager and  
8 awards made by the subdivision and the subdivision indicates its  
9 bonding preference, as noted below, but before written agreements  
10 are executed, the construction manager will prepare a guaranteed  
11 maximum price (GMP) for the project or relevant portion of the work,  
12 as an amendment to the contract. After the subdivision approves the  
13 construction manager's GMP amendment, the construction manager shall  
14 enter into written subcontractor and supplies agreements for the  
15 work previously awarded by the subdivision. Upon receiving a notice  
16 to proceed with the work from the subdivision or its designee, the  
17 subdivision shall have the option, but not mandate, to require the  
18 construction manager to provide performance, payment and maintenance  
19 bonds, or any combination, in an amount equal to one hundred percent  
20 (100%) of the value of the work, excluding the construction  
21 manager's fee, general conditions, reimbursements and insurances.  
22 "Payment bond", "performance bond" and "maintenance bond", as used  
23 herein, mean and refer to those bonds as defined in the Public  
24 Competitive Bidding Act of 1974;

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

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

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

17           8. If a construction manager at-risk wishes to self-perform  
18 portions of the work to be performed, it may do so, provided the  
19 construction manager at-risk competitively bids the work under the  
20 same terms and conditions as the other bidders and the construction  
21 manager at-risk is the lowest responsible bidder for the work scope  
22 on which the bid was submitted.

23           E. When bids for a public construction project have been  
24 received from general contractors pursuant to the Public Competitive

1 Bidding Act of 1974 and the lowest responsible bid is within the  
2 subdivision's available funding, the subdivision shall not reject  
3 all bids and subsequently award the project to a construction  
4 manager.

5 SECTION 9. REPEALER 61 O.S. 2011, Section 220, as last  
6 amended by Section 18, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,  
7 Section 220), is hereby repealed.

8 SECTION 10. This act shall become effective January 1, 2020.

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10 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated  
11 03/04/2019 - DO PASS, As Amended.

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