

An Act

ENROLLED HOUSE
BILL NO. 4075

By: Wallace of the House

and

Hall of the Senate

An Act relating to the Oklahoma Municipal Power Authority; amending 61 O.S. 2021, Section 60, which relates to mandatory consultant and construction contract forms; exempting the Oklahoma Municipal Power Authority from certain requirements; amending 61 O.S. 2021, Section 129, which relates to exemptions to the Public Competitive Bidding Act of 1974; providing an exemption; updating references; amending 61 O.S. 2021, Section 202, which relates to defined terms of the Public Facilities Act; modifying certain definition to include the Oklahoma Municipal Power Authority; and providing an effective date.

SUBJECT: Oklahoma Municipal Power Authority

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

SECTION 1. AMENDATORY 61 O.S. 2021, Section 60, is amended to read as follows:

Section 60. All state agencies, boards, commissions, offices, institutions, and other governmental bodies of this state, and all individuals representing such entities, except the Department of Transportation, the Oklahoma Turnpike Authority, the Oklahoma State Regents for Higher Education and its constituent institutions, the Commissioners of the Land Office, the Oklahoma Municipal Power Authority, and CompSource Oklahoma provided CompSource Oklahoma is operating pursuant to a pilot program authorized by Sections 3316 and 3317 of Title 74 of the Oklahoma Statutes, shall use construction manager, consultant and construction contract forms that the State Facilities Director of the Department of Real Estate

Services of the Office of Management and Enterprise Services requires to award and execute contracts for designs to construct, renovate, alter, repair, maintain, or improve real property or fixtures of real property of the state. The State Facilities Director may authorize, in writing, exceptions to the use of construction manager, consultant and construction contract forms for specific projects.

SECTION 2. AMENDATORY 61 O.S. 2021, Section 129, is amended to read as follows:

Section 129. A. The Public Competitive Bidding Act of 1974 shall not apply to contracts awarded or contracts for which bids have been solicited on or before August 1, 1974.

B. The Public Competitive Bidding Act of 1974 shall not apply to contracts awarded or contracts for which bids are solicited by CompSource Oklahoma if CompSource Oklahoma is operating pursuant to a pilot program authorized by Sections ~~1~~ 3316 and ~~2~~ 3317 of ~~this act~~ Title 74 of the Oklahoma Statutes.

C. The Public Competitive Bidding Act of 1974 shall not apply to contracts awarded or contracts for which bids are solicited by the Oklahoma Municipal Power Authority.

SECTION 3. AMENDATORY 61 O.S. 2021, Section 202, is amended to read as follows:

Section 202. As used in the Public Facilities Act:

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

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

3. "Construction" means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving,

maintaining, leasing, disposing or demolishing any structure or appurtenance thereto including facilities, utilities, or other improvements to any real property but not including highways, bridges, airports, railroads, tunnels, sewers not related to a structure or appurtenance thereto, or dams;

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

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

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

- a. "agency construction management" whereby the construction entity provides services to the owner without taking on financial risks for the execution of the actual construction or time of performance, and the owner contracts directly with those awarded trade contracts for the work, and
- b. "at-risk construction management" whereby the construction entity, after providing agency services during the pre-construction period:
 - (1) takes on the financial obligation to timely carry out construction under a specified cost agreement, and
 - (2) enters into written subcontracts for the work in accordance with the construction management procedures for state agencies;

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

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

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

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

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

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

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

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

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

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

SECTION 4. This act shall become effective November 1, 2022.

Passed the House of Representatives the 14th day of March, 2022.

Presiding Officer of the House
of Representatives

Passed the Senate the 27th day of April, 2022.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____