

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 4075

By: Wallace of the House

and

**Hall** of the Senate

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10                                   COMMITTEE SUBSTITUTE

11                   An Act relating to the Oklahoma Municipal Power  
12 Authority; amending 61 O.S. 2021, Section 60, which  
13 relates to mandatory consultant and construction  
14 contract forms; exempting the Oklahoma Municipal  
15 Power Authority from certain requirements; amending  
16 61 O.S. 2021, Section 129, which relates to  
17 exemptions to the Public Competitive Bidding Act of  
18 1974; providing an exemption; updating reference;  
19 amending 61 O.S. 2021, Section 202, which relates to  
20 defined terms of the Public Facilities Act; modifying  
21 certain definition to include the Oklahoma Municipal  
22 Power Authority; and providing an effective date.

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

24                   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

1 Transportation, the Oklahoma Turnpike Authority, the Oklahoma State  
2 Regents for Higher Education and its constituent institutions, the  
3 Commissioners of the Land Office, the Oklahoma Municipal Power  
4 Authority, and CompSource Oklahoma provided CompSource Oklahoma is  
5 operating pursuant to a pilot program authorized by Sections 3316  
6 and 3317 of Title 74 of the Oklahoma Statutes, shall use  
7 construction manager, consultant and construction contract forms  
8 that the State Facilities Director of the Department of Real Estate  
9 Services of the Office of Management and Enterprise Services  
10 requires to award and execute contracts for designs to construct,  
11 renovate, alter, repair, maintain, or improve real property or  
12 fixtures of real property of the state. The State Facilities  
13 Director may authorize, in writing, exceptions to the use of  
14 construction manager, consultant and construction contract forms for  
15 specific projects.

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

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

21 B. The Public Competitive Bidding Act of 1974 shall not apply  
22 to contracts awarded or contracts for which bids are solicited by  
23 CompSource Oklahoma if CompSource Oklahoma is operating pursuant to  
24

1 a pilot program authorized by Sections ~~1~~ 3316 and ~~2~~ 3317 of ~~this act~~  
2 Title 74 of the Oklahoma Statutes.

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

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

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

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

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

20 3. "Construction" means the process of planning, acquiring,  
21 designing, building, equipping, altering, repairing, improving,  
22 maintaining, leasing, disposing or demolishing any structure or  
23 appurtenance thereto including facilities, utilities, or other  
24 improvements to any real property but not including highways,

1 bridges, airports, railroads, tunnels, sewers not related to a  
2 structure or appurtenance thereto, or dams;

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

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

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

18 "construction management" includes:

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

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, the Oklahoma Municipal Power  
14 Authority, and the Commissioners of the Land Office.

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

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17 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated  
18 03/02/2022 - DO PASS, As Amended and Coauthored.

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