

1 **SENATE FLOOR VERSION**

2 April 7, 2022

3 ENGROSSED HOUSE
4 BILL NO. 4075

By: Wallace of the House

and

Hall of the Senate

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7
8 An Act relating to the Oklahoma Municipal Power
9 Authority; amending 61 O.S. 2021, Section 60, which
10 relates to mandatory consultant and construction
11 contract forms; exempting the Oklahoma Municipal
12 Power Authority from certain requirements; amending
13 61 O.S. 2021, Section 129, which relates to
14 exemptions to the Public Competitive Bidding Act of
15 1974; providing an exemption; updating reference;
16 amending 61 O.S. 2021, Section 202, which relates to
17 defined terms of the Public Facilities Act; modifying
18 certain definition to include the Oklahoma Municipal
19 Power Authority; and providing an effective date.

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

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

23 Section 60. All state agencies, boards, commissions, offices,
24 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

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

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

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

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

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

4 SECTION 3. AMENDATORY 61 O.S. 2021, Section 202, is
5 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 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.

16 COMMITTEE REPORT BY: COMMITTEE ON ENERGY
17 April 7, 2022 - DO PASS
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