

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 4075

By: Wallace

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6 AS INTRODUCED

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

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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

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

11 SECTION 2. AMENDATORY 61 O.S. 2021, Section 202, is  
12 amended to read as follows:

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

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

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

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:

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:

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

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SECTION 3. This act shall become effective November 1, 2022.

58-2-8536 JM 01/13/22