

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1661

By: West (Kevin)

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6 AS INTRODUCED

7 An Act relating to public building and public works;
8 amending Section 10, Chapter 299, O.S.L. 2020 (61
9 O.S. Supp. 2020, Section 217), which relates to the
10 Public Construction Management Act for Political
Subdivisions; modifying procedures for awarding work;
removing certain option; and providing an effective
date.

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

14 SECTION 1. AMENDATORY Section 10, Chapter 299, O.S.L.
15 2020 (61 O.S. Supp. 2020, Section 217), is amended to read as
16 follows:

17 Section 217. A. Construction managers shall be selected by the
18 political subdivision following the requirements set forth in
19 subsection K of Section 62 of Title 61 of the Oklahoma Statutes.

20 B. A written contract between the political subdivision and the
21 construction manager shall set forth the obligations of the parties,
22 which, at a minimum, shall include the construction manager's scope
23 of services, fees and expenses, as follows:
24

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

3 2. The cost or basis of cost expenses incurred by the
4 construction manager to be reimbursed by the subdivision for normal
5 general conditions and general requirements necessary for the work
6 but not applicable to a particular subcontractor, trade contractor
7 or supplier; and

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

9 C. The procedures for awarding work under agency construction
10 management are as follows:

11 1. The construction manager, with the advice of the design
12 consultant and subdivision, will develop individual bid packages for
13 public bidding;

14 2. Public bidding on individual bid packages will comply with
15 the requirements of the Public Competitive Bidding Act of 1974 and
16 may include scope of work of the bidder;

17 3. The construction manager shall evaluate all bids and
18 recommend the lowest responsible bidder to the subdivision, who
19 shall accept or reject the bids. The construction manager may
20 assist the subdivision with the preparation of contracts and the
21 receipt of insurance and bonds as required for public construction
22 contracts by state law;

23 4. After trade contracts are awarded, the construction manager
24 will perform contract administrative services as set forth in the

1 agreement and may assist the subdivision with the review and
2 processing of progress and final payments to the subcontractors.

3 However, under no circumstances shall construction managers receive
4 funds from subdivisions for payments of trade contractors;

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

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

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

12 1. The construction manager, with the advice of the design
13 consultant and subdivision, will develop individual bid packages for
14 public bidding;

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

19 3. Bid packages with a value less than or equal to Fifty
20 Thousand Dollars (\$50,000.00) may be awarded by the political
21 subdivision based on written comparative quotes. Bid packages with
22 a value less than or equal to Twenty-five Thousand Dollars
23 (\$25,000.00) may be awarded by the political subdivision to any
24 qualified vendor;

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

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

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

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

11 8. If a construction manager at-risk wishes to self-perform
12 portions of the work to be performed, it may do so, provided the
13 construction manager at-risk competitively bids the work under the
14 same terms and conditions as the other bidders and the construction
15 manager at-risk is the lowest responsible bidder for the work scope
16 on which the bid was submitted.

17 E. When bids for a public construction project have been
18 received from general contractors pursuant to the Public Competitive
19 Bidding Act of 1974 and the lowest responsible bid is within the
20 subdivision's available funding, the subdivision shall not reject
21 all bids and subsequently award the project to a construction
22 manager.

1 SECTION 2. This act shall become effective November 1, 2021.

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3 58-1-6155 LRB 01/06/21
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