

An Act

ENROLLED HOUSE
BILL NO. 2666

By: Wallace of the House

and

Leewright of the Senate

An Act relating to public buildings and public works; amending 61 O.S. 2011, Sections 61, as last amended by Section 2, Chapter 71, O.S.L. 2016 and 62, as last amended by Section 3, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018, Sections 61 and 62), which relate to project consultants; modifying definition; defining term; modifying construction manager and consultant selection process; requiring considerations from certain file maintained by Office of Management and Enterprise Services; recognizing certain qualified construction managers; recognizing procedures of the Public Construction Management Act or adopted procedures by OMES; allowing negotiation of fee; providing certain exception; amending 61 O.S. 2011, Section 113, as last amended by Section 1, Chapter 93, O.S.L. 2017 (61 O.S. Supp. 2018, Section 113), which relates to execution of contract; providing for construction management at-risk delivery method; amending 61 O.S. 2011, Section 121, as last amended by Section 1, Chapter 68, O.S.L. 2017 (61 O.S. Supp. 2018, Section 121), which relates to change orders; changing certain limits for construction management at-risk delivery method; amending 61 O.S. 2011, Sections 201, as amended by Section 6, Chapter 302, O.S.L. 2013, 202, as last amended by Section 3, Chapter 71, O.S.L. 2016 and 202.1, as last amended by Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018, Sections 201, 202 and 202.1), which relate to the Public Facilities Act; clarifying sections contained in the Act; modifying definition; eliminating certain municipality, county, public trust and political subdivision exemption from certain approval requirement; eliminating certain

prohibitions related to design-build and construction management project delivery methods; providing that trade contractors are not limited in certain opportunities; requiring certain notices under certain conditions; providing notice standards; clarifying certain notices not required; providing bids be opened publicly; requiring certain presence at bid openings; modifying exclusion from certain term; creating the Public Construction Management Act for Political Subdivisions; authorizing certain citation; declaring applicability; defining terms; identifying process for selection of construction managers by political subdivisions; requiring certain inclusions in certain written contracts; providing procedures for awarding certain work; requiring certain compliance with the Public Competitive Bidding Act and the Fair Pay for Construction Act; requiring payment of bonds under certain conditions in certain amounts; prohibiting rejections of bids under certain conditions; repealing 61 O.S. 2011, Section 220, as last amended by Section 18, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018, Section 220), which relates to the use of construction management by political subdivisions or school district boards of education; providing for codification; and providing an effective date.

SUBJECT: Public buildings and public works

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

SECTION 1. AMENDATORY 61 O.S. 2011, Section 61, as last amended by Section 2, Chapter 71, O.S.L. 2016 (61 O.S. Supp. 2018, Section 61), is amended to read as follows:

Section 61. As used in Sections 61 through 65 of this title:

1. "Chief administrative officer" means an individual responsible for directing the administration of a state agency. The term does not mean one or all of the individuals that make policy for a state agency;

2. "Construction manager" means an individual, firm, corporation, association, partnership, copartnership, or any other legal entity on the Office of Management and Enterprise Services Construction and Properties (OMES-CAP) registration list and possessing the qualifications to provide services of construction management which 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;

3. "Consultant" means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or other individuals or legal entities possessing specialized credentials and qualifications as may be needed to evaluate, plan or design and/or provide construction administration and/or construction inspection services for any construction or a public work improvement project;

4. "Director" means the Director of the Office of Management and Enterprise Services;

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

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

7. "Project" means studies, evaluations, plans or designs for facility evaluations or public work improvements, except the transportation facilities under the jurisdiction of the Department of Transportation or the Oklahoma Turnpike Authority:

a. to construct, renovate, alter, repair, maintain, or improve real property or fixtures of real property, and

b. that does not constitute "construction" as defined by the Public Building Construction and Planning Act;

8. "State agency" means an agency, office, officer, bureau, board, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of state government, whether elected or appointed, excluding only political subdivisions of the state, the Oklahoma State Regents for Higher Education and

its constituent institutions and the Commissioners of the Land Office; ~~and~~

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

10. "Political subdivision" means any local governmental body formed pursuant to the laws of this state, including, but not limited to, school districts, career technology centers, cities, counties, public trusts, public authorities, commissions or other local governmental bodies exercising their authority to contract with construction managers and/or consultants. The term also means any quasi-governmental and nongovernmental organizations contracting with construction managers and/or consultants using public funds or on behalf of a political subdivision.

SECTION 2. AMENDATORY 61 O.S. 2011, Section 62, as last amended by Section 3, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018, Section 62), is amended to read as follows:

Section 62. A. The Department of Real Estate Services of the Office of Management and Enterprise Services shall maintain a file of all persons and entities interested in and capable of performing construction management and consultant services for state agencies. The file shall include registration forms and information submitted by construction managers and consultants pursuant to rules promulgated by the Office of Management and Enterprise Services. Pursuant to rules promulgated by the Office, the Department shall determine whether a construction manager or consultant qualifies for registration and shall notify the construction manager or consultant within twenty (20) days of receipt of a request for registration. Construction managers and consultants shall re-register for each successive calendar year with the Department.

B. The requisitioning state agency shall define the scope of a proposed project. The scope shall identify project components, phases and timetables and shall include detailed project descriptions. The state agency may request the Department to assist with scope development. The state agency shall send the scope and a requisition for construction management or consultant services, signed by an authorized official, to the Department. The Department shall review the scope and approve it before the state agency issues a solicitation.

C. The state agency shall issue a solicitation to construction managers or consultants that are registered with the Department and capable of providing the services the state agency desires. The solicitation shall, at a minimum, contain:

1. Description and scope of the project;
2. Estimated construction cost or available funds, anticipated starting date, and completion date the state agency desires for the project;
3. Certification of funds available for the construction manager or consultant fee, including federal, state or other participation;
4. Closing date for construction manager or consultant to give notice of interest to the state agency; and
5. Additional data the state agency requires from the construction manager or consultant. The closing date for submission of construction manager or consultant notice of interest for consideration shall be within thirty (30) days of the date of the notice the state agency issues.

D. After the closing date, the Department shall provide information from the construction managers' or consultants' files to the state agency. Should there be an inadequate expression of interest in the project, the state agency and Department personnel shall confer to add construction managers or consultants for consideration.

E. The state agency shall review the information the Department provides and shall select no less than three and no more than five construction managers or consultants per contract for interviews. The review shall include consideration of factors from the information the Department supplies including, but not limited to:

1. Professional qualifications for the type of work contemplated;
2. Capacity for completing the project in the specified time period; and
3. Past performance on projects of a similar nature.

F. The Department shall advise the state agency of the methods to be used to conduct an evaluation, interview, selection, contract negotiation, and fee negotiation processes pursuant to rules promulgated by the Office of Management and Enterprise Services.

G. 1. Upon completion of contract negotiation with the highest qualified construction manager or consultant, which contract shall include a fair and reasonable fee, the Department shall approve and award the contract.

2. If the Department and the first-choice construction manager or consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the second-choice construction manager or consultant shall commence. If the Department and the second-choice construction manager or consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the third-choice construction manager or consultant shall commence. If the Department and the third-choice construction manager or consultant cannot reach an agreement, then all negotiations shall terminate. Should the Department be unable to negotiate a satisfactory contract with any of the three selected construction managers or consultants, the Department shall select additional construction managers or consultants in order of their competency and qualifications and shall continue negotiations in accordance with the provisions of this section until an agreement is reached.

H. Any plans developed pursuant to the process for selection of a contractor for construction of a facility authorized pursuant to Section 183 of Title 73 of the Oklahoma Statutes shall become the property of the State of Oklahoma as a condition of the award of the final contract for construction of the facility.

I. For all state agencies subject to the Public Facilities Act, Sections 202 through ~~220~~ 213 of this title, the Department shall perform the necessary procurement actions on behalf of a requisitioning agency as enumerated in subsections B through H of this section:

1. Determine or approve the agency's scope of a project and required services as provided in the Public Facilities Act;

2. Issue solicitations for construction manager and consultant services;

3. Conduct evaluations, interviews, selection, contract negotiation, and fee negotiation processes; and

4. Provide contract management services after award of a construction management or consultant contract.

J. In the selection of a ~~construction manager or~~ consultant, all political subdivisions of this state shall ~~follow these procedures:~~

~~The subdivision shall select a construction manager or consultant based upon the professional qualifications and technical experience of the construction manager or consultant. The subdivision shall negotiate a contract with the highest qualified construction manager or consultant, provided that a fee can be negotiated that is fair and reasonable to both parties. In the event a reasonable fee cannot be negotiated with the selected construction manager or consultant, the subdivision may negotiate with other construction managers or consultants in order of their qualifications.~~

K. In the selection of a construction manager, all political subdivisions of this state shall:

1. Extend consideration to construction managers from the file maintained by the Department of Real Estate Services of the Office of Management and Enterprise Services. Political subdivisions are not limited in the number of construction manager candidates from whom they intend on seeking proposals;

2. Evaluate the candidates' professional qualifications, licensing, registration, certifications, technical abilities and past experience relevant to the contemplated project. Only firms recognized as qualified construction managers by the Department of Real Estate Services of the Office of Management and Enterprise Services pursuant to this section may be considered for selection as a construction manager. The subdivision shall use procedures as described in this section and the Public Construction Management Act for Political Subdivisions or may adopt procedures established by the Office of Management and Enterprise Services for state agencies; and

3. The political subdivision shall select a construction manager based upon the professional qualifications and technical experience of the construction manager. The political subdivision

shall negotiate a contract with the highest qualified construction manager, provided that a fee can be negotiated that is fair and reasonable to both parties. In the event a reasonable fee cannot be negotiated with the selected construction manager, the political subdivision may negotiate with other construction managers in order of their qualifications.

SECTION 3. AMENDATORY 61 O.S. 2011, Section 113, as last amended by Section 1, Chapter 93, O.S.L. 2017 (61 O.S. Supp. 2018, Section 113), is amended to read as follows:

Section 113. A. Except as otherwise provided by law, within the period of time, not to exceed sixty (60) days, specified in the bid notice by the awarding public agency, a contract embodying the terms set forth in the bidding documents shall be executed by the awarding public agency or, where construction management at-risk is the project delivery method, by the construction manager and the successful bidder. No bidder shall obtain any property right in a contract awarded under the provisions of the Public Competitive Bidding Act of 1974 until the contract has been fully executed by both the bidder and the awarding public agency.

B. Except as otherwise provided by law, within the period of time specified in subsection A of this section, the following shall be provided by the contractor to the awarding public agency for contracts exceeding Fifty Thousand Dollars (\$50,000.00):

1. A bond or irrevocable letter of credit complying with the provisions of Section 1 of this title;

2. A bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing terms prescribed by the Construction and Properties Division of the Office of Management and Enterprise Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to ensure the proper and prompt completion of the work in accordance with the provisions of the contract and bidding documents;

3. A bond in a sum equal to the contract price or an irrevocable letter of credit containing terms as prescribed by the Division issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan

Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to protect the awarding public agency against defective workmanship and materials for a period of one (1) year after acceptance of the project, except when the awarding public agency is the Department of Transportation or the Oklahoma Turnpike Authority, in such case the period shall be for one (1) year after project completion; and

4. Public liability and workers' compensation insurance during construction in reasonable amounts. A public agency may require the contractor to name the public agency and its architects or engineers, or both, as an additional assured under the public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.

C. A single irrevocable letter of credit may be used to satisfy paragraphs 1, 2 and 3 of subsection B of this section, provided such single irrevocable letter of credit meets all applicable requirements of subsection B of this section.

If the contractor needs additional time in which to obtain the bond required pursuant to subsection B of this section, the contractor may request and the awarding agency may allow the contractor an additional sixty (60) days in which to obtain the bond.

D. 1. After the award of a contract, but prior to its execution, an awarding public agency, upon discovery of an administrative error in the award process that would void an otherwise valid award, may suspend the time of execution of the contract. The agency may rescind the award and readvertise for bids, or may direct correction of the error and award the contract to the lowest responsible bidder, whichever shall be in the best interests of the state.

2. If the awarding public agency has a governing body, the agency shall, at the next regularly scheduled public business meeting of the governing body of the agency, upon the record, present to the governing body that an error has been made in the award process and shall state the nature of the error. The governing body, upon presentation of the facts of the error, may rescind the award and readvertise for bids, or may direct correction of the error and award the contract to the lowest responsible bidder, whichever shall be in the best interests of the state.

E. No public agency shall require for any public construction project, nor shall any general contractor submit a project bid based on acquiring or participating in, any wrap-up, wrap-around, or controlled insurance program. For the purposes of this subsection, "wrap-up, wrap-around, or controlled insurance program" means any insurance program that has the effect of disabling or rendering inapplicable any workers' compensation, commercial general liability, builders' risk, completed operations, or excess liability insurance coverage carried by a subcontractor that is engaged or to be engaged on a public construction project unless this is a cost savings to the public or the need exists for a specialized or complex insurance program and shall not apply to contracts less than Seventy-five Million Dollars (\$75,000,000.00).

F. This act shall not apply to the public construction projects of constitutional agencies which had authorized a wrap-up, wrap-around, or controlled insurance program on or before April 11, 2000.

SECTION 4. AMENDATORY 61 O.S. 2011, Section 121, as last amended by Section 1, Chapter 68, O.S.L. 2017 (61 O.S. Supp. 2018, Section 121), is amended to read as follows:

Section 121. A. Change orders or addenda to public construction contracts of One Million Dollars (\$1,000,000.00) or less shall not exceed a fifteen percent (15%) cumulative increase in the original contract amount.

B. Change orders or addenda to public construction contracts of over One Million Dollars (\$1,000,000.00) shall not exceed the greater of One Hundred Fifty Thousand Dollars (\$150,000.00) or a ten percent (10%) cumulative increase in the original contract amount.

C. Change orders or cumulative change orders which exceed the limits of subsection A or B of this section shall require a readvertising for bids on the incomplete portions of the contract.

D. If the awarding public agency does not have a governing body, the chief administrative officer of the awarding public agency shall approve change orders. The State Construction Administrator of the Construction and Properties Division of the Office of Management and Enterprise Services, or the Administrator's designee, shall sign and execute all contracts and change orders, as they relate to state agencies.

E. If the awarding public agency has a governing body, all change orders shall be formally approved by the governing body of the awarding public agency and the reasons for approval recorded in the permanent records of the governing body. The governing body of a municipality or technology center may delegate approval of change orders up to Forty Thousand Dollars (\$40,000.00) or ten percent (10%) of any contract, whichever is less, to the chief administrative officer of the municipality or technology center or their designee, with any approved change orders reported to the governing body at the next regularly scheduled meeting.

F. The Oklahoma Veterans Commission, as the governing body of the Oklahoma Department of Veterans Affairs, is authorized to delegate to the Director of the agency the authority to approve change orders on a construction contract provided that the individual change order does not exceed Forty Thousand Dollars (\$40,000.00) in expenditure, and complies with the limits established by this section. Change orders approved by the Director pursuant to a delegation of authority shall be presented to the Commission during the next regular meeting and the reasons for the orders recorded in permanent records.

G. The governing body of the Oklahoma Tourism and Recreation Department is authorized, upon approval of a majority of all of the members of the Oklahoma Tourism and Recreation Commission, to delegate to the Director of the agency the authority to approve change orders on a construction contract provided that the individual change order does not exceed Twenty-five Thousand Dollars (\$25,000.00) in expenditure and complies with the limits established by this section. The Administrator of the Division shall sign and execute all contracts and change orders.

H. The Transportation Commission may, by rule, authorize the Director of the Department of Transportation to approve change orders in an amount of not to exceed Five Hundred Thousand Dollars (\$500,000.00). Change orders approved by the Director shall be presented to the Transportation Commission during the next regular meeting and the reasons therefor recorded in the permanent records. The Oklahoma Turnpike Authority may authorize the Director of the Authority to approve change orders in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00). Change orders approved by the Director of the Authority shall be presented to the Authority during the next regular meeting and the reasons for the orders recorded in permanent records.

I. All change orders for the Department of Transportation or the Authority shall contain a unit price and total for each of the following items:

1. All materials with cost per item;

2. Itemization of all labor with number of hours per operation and cost per hour;

3. Itemization of all equipment with the type of equipment, number of each type, cost per hour for each type, and number of hours of actual operation for each type;

4. Itemization of insurance cost, bond cost, social security, taxes, workers' compensation, employee fringe benefits and overhead cost; and

5. Profit for the contractor.

J. 1. If a construction contract contains unit pricing, and the change order pertains to the unit price, the change order will not be subject to subsection A or B of this section.

2. When the unit price change does not exceed Twenty Thousand Dollars (\$20,000.00), the unit price change order computation may be based on an acceptable unit price basis in lieu of cost itemization as required in paragraphs 1, 2, 3, 4 and 5 of subsection I of this section.

3. When the unit price change exceeds Twenty Thousand Dollars (\$20,000.00), any unit price for a new item established at or below the average eighteen-month-price history for the new item may be used in lieu of cost itemization as required in paragraphs 1, 2, 3, 4 and 5 of subsection I of this section.

K. Alternates or add items bid with the original bid and contained in the awarded contract as options of the awarding public agency shall not be construed as change orders under the provisions of the Public Competitive Bidding Act of 1974.

L. Where construction management at-risk is the project delivery method, the limits established by subsections A and B of this section shall be based upon the total cost of the project rather than the cost of the individual trade contracts.

SECTION 5. AMENDATORY 61 O.S. 2011, Section 201, as amended by Section 6, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018, Section 201), is amended to read as follows:

Section 201. Sections 202 through ~~220~~ 213 of this title shall be known and may be cited as the "Public Facilities Act".

SECTION 6. AMENDATORY 61 O.S. 2011, Section 202, as last amended by Section 3, Chapter 71, O.S.L. 2016 (61 O.S. Supp. 2018, 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 and the Commissioners of the Land Office.

SECTION 7. AMENDATORY 61 O.S. 2011, Section 202.1, as last amended by Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018, Section 202.1), is amended to read as follows:

Section 202.1 A. The design-build and construction management project delivery methods shall not be used without the written approval of the Director of the Office of Management and Enterprise Services, or the Director's designee, when those projects are constructed for a state agency or by an act of the Legislature specifying design-build or at-risk construction management for a project. In all instances where the design-build project or at-risk construction management delivery method is authorized, construction administration shall be performed by the State Facilities Director, the SFD's designee or designees, or otherwise by contract or contract provision approved by the Director of the Office of Management and Enterprise Services for construction administration by another party.

~~B. Municipalities, counties, public trusts, or any other political subdivision in this state shall not be required to get approval of any other state agency in order to use agency construction management or at-risk construction management as a construction delivery method. However, municipalities, counties, public trusts, and any other political subdivision shall be subject to Section 220 of this title.~~

~~C. The design-build and construction management project delivery methods shall not be used for any project unless the project meets the criteria established by the administrative rules promulgated as required by this act. Such methods shall not be used unless there is a need for compressed construction time as required to respond to a natural disaster or other emergency situation affecting public health and safety, or all of the following criteria for designation are met:~~

~~1. The project benefits the public;~~

~~2. There is a need for cost control; and~~

~~3. The need exists for specialized or complex construction methods due to the unique nature of the project.~~

~~D. The use of design-build and construction management project delivery methods shall not interfere or inhibit the opportunity for~~

subcontractors and trade contractors to openly and freely compete for subcontracts or trade contracts pursuant to the Public Competitive Bidding Act of 1974 with respect to public notices. The State Facilities Director, or designee, or the construction manager shall make the subcontracting and supply opportunities publicly known, as follows:

1. Whenever the estimated cost of the contract exceeds Fifty Thousand Dollars (\$50,000.00), public notice shall be given by publication in a newspaper of general circulation and published in the county where the work, or the major part of the work, is to be done. Such notice by publication shall be published in two consecutive weekly issues of the newspaper, with the first publication thereof to be at least twenty-one (21) days prior to the date set for opening bids; and

2. Notice thereof shall be sent to one in-state trade or construction publication for the publication's use and information whenever the estimated cost of the contract exceeds Fifty Thousand Dollars (\$50,000.00); provided, however, this section shall not be construed to require the publication of such notice in such trade or construction publication or to require the provision of such notice to more than one in-state trade or construction publication or to any out-of-state trade or construction publication.

C. Bids shall be publicly opened at the time and place designated in the public notice. A representative of the State Facilities Director shall be present at the bid opening.

~~E. D.~~ The provisions of subsections subsection A and B of this section shall not apply to projects by contract pursuant to an interagency agreement under Section 581 of Title 74 of the Oklahoma Statutes or to projects a state agency performs solely with the staff of the agency.

~~F. E.~~ The Office of Management and Enterprise Services shall, pursuant to the Administrative Procedures Act, promulgate rules to effect procedures, processes and design-build/construction management fee guidelines necessary to the fulfillment of its responsibilities under this section.

~~G. As used in the Public Facilities Act, public trusts shall not include state beneficiary public trusts.~~

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 215 of Title 61, unless there is created a duplication in numbering, reads as follows:

Sections 8 through 10 of this act shall be known and may be cited as the "Public Construction Management Act for Political Subdivisions".

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 216 of Title 61, unless there is created a duplication in numbering, reads as follows:

A. The Public Construction Management Act for Political Subdivisions shall apply to political subdivisions of this state.

B. As used in the Public Construction Management Act for Political Subdivisions:

1. "Agency construction management" means the construction entity provides services to the owner without taking on financial risks for the execution of the actual construction and/or time of performance, and the owner contracts directly with those awarded trade contracts for the work;

2. "At-risk construction management" means the construction entity, after providing agency services during the preconstruction period:

- a. takes on the financial obligation to timely carry out construction under a specified cost agreement, and
- b. enters into written subcontracts for the work in accordance with the Construction Management Procedures for Political Subdivisions;

3. "Construction management" means a public construction 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, and

b. at-risk construction management; and

4. "Political subdivision" or "subdivision" means any local governmental body formed pursuant to the laws of this state, including, but not limited to, school districts, vocational education districts, cities, counties, public trusts, public authorities, commissions or other local governmental bodies exercising their authority to contract for public construction delivery services. The term also applies to quasi-governmental and nongovernmental organizations delivering construction services using public funds or on behalf of a political subdivision.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 217 of Title 61, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

2. Public bidding on individual bid packages will comply with the requirements of the Public Competitive Bidding Act of 1974;

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

4. After trade contracts are awarded, the construction manager will perform contract administrative services as set forth in the agreement and may assist the subdivision with the review and processing of progress and final payments to the subcontractors. However, under no circumstances shall construction managers receive funds from subdivisions for payments of trade contractors;

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

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

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

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

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

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

4. Once the bids are accepted by the construction manager and awards made by the subdivision and the subdivision indicates its bonding preference, as noted below, but before written agreements are executed, the construction manager will prepare a guaranteed

maximum price (GMP) for the project or relevant portion of the work, as an amendment to the contract. After the subdivision approves the construction manager's GMP amendment, the construction manager shall enter into written subcontractor and supplier agreements for the work previously awarded by the subdivision. Upon receiving a notice to proceed with the work from the subdivision or its designee, the subdivision shall have the option, but not mandate, to require the construction manager to provide performance, payment and maintenance bonds, or any combination, in an amount equal to one hundred percent (100%) of the value of the work, excluding the construction manager's fee, general conditions, reimbursements and insurances. "Payment bond", "performance bond" and "maintenance bond", as used herein, mean and refer to those bonds as defined in the Public Competitive Bidding Act of 1974;

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

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

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

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

E. When bids for a public construction project have been received from general contractors pursuant to the Public Competitive Bidding Act of 1974 and the lowest responsible bid is within the subdivision's available funding, the subdivision shall not reject

all bids and subsequently award the project to a construction manager.

SECTION 11. REPEALER 61 O.S. 2011, Section 220, as last amended by Section 18, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018, Section 220), is hereby repealed.

SECTION 12. This act shall become effective January 1, 2020.

Passed the House of Representatives the 30th day of April, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 24th day of April, 2019.

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: _____