

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 HOUSE BILL NO. 2666

6 By: Wallace of the House

7 and

8 Leewright of the Senate

9 COMMITTEE SUBSTITUTE

10 An Act relating to public buildings and public works;  
11 amending 61 O.S. 2011, Sections 61, as last amended  
12 by Section 2, Chapter 71, O.S.L. 2016 and 62, as last  
13 amended by Section 3, Chapter 302, O.S.L. 2013 (61  
14 O.S. Supp. 2018, Sections 61 and 62), which relate to  
15 project consultants; modifying definition; defining  
16 term; modifying construction manager and consultant  
17 selection process; providing options between sets of  
18 procedures; limiting considerations; amending 61 O.S.  
19 2011, Sections 201, as amended by Section 6, Chapter  
20 302, O.S.L. 2013, 202, as last amended by Section 3,  
21 Chapter 71, O.S.L. 2016 and 202.1, as last amended by  
22 Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp.  
23 2018, Sections 201, 202 and 202.1), which relate to  
24 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

1 citation; declaring applicability; defining terms;  
2 identifying process for selection of construction  
3 managers by political subdivisions; requiring certain  
4 inclusions in certain written contracts; providing  
5 procedures for awarding certain work; requiring  
6 certain compliance with the Public Competitive  
7 Bidding Act and the Fair Pay for Construction Act;  
8 requiring payment of bonds under certain conditions  
9 in certain amounts; prohibiting rejections of bids  
10 under certain conditions; repealing 61 O.S. 2011,  
11 Section 220, as last amended by Section 18, Chapter  
12 302, O.S.L. 2013 (61 O.S. Supp. 2018, Section 220),  
13 which relates to the use of construction management  
14 by political subdivisions or school district boards  
15 of education; providing for codification; and  
16 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. 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

1 management which include, but are not necessarily limited to, design  
2 review, scheduling, cost control, value engineering,  
3 constructability evaluation, preparation and coordination of bid  
4 packages, and construction administration;

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

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

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

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

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

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

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

3           8.     "State agency" means an agency, office, officer, bureau,  
4 board, counsel, court, commission, institution, unit, division, body  
5 or house of the executive or judicial branches of state government,  
6 whether elected or appointed, excluding only political subdivisions  
7 of the state, the Oklahoma State Regents for Higher Education and  
8 its constituent institutions and the Commissioners of the Land  
9 Office; ~~and~~

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

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

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

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

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

23 C. The state agency shall issue a solicitation to construction  
24 managers or consultants that are registered with the Department and

1 capable of providing the services the state agency desires. The  
2 solicitation shall, at a minimum, contain:

3 1. Description and scope of the project;

4 2. Estimated construction cost or available funds, anticipated  
5 starting date, and completion date the state agency desires for the  
6 project;

7 3. Certification of funds available for the construction  
8 manager or consultant fee, including federal, state or other  
9 participation;

10 4. Closing date for construction manager or consultant to give  
11 notice of interest to the state agency; and

12 5. Additional data the state agency requires from the  
13 construction manager or consultant. The closing date for submission  
14 of construction manager or consultant notice of interest for  
15 consideration shall be within thirty (30) days of the date of the  
16 notice the state agency issues.

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

23 E. The state agency shall review the information the Department  
24 provides and shall select no less than three and no more than five

1 construction managers or consultants per contract for interviews.

2 The review shall include consideration of factors from the  
3 information the Department supplies including, but not limited to:

4 1. Professional qualifications for the type of work  
5 contemplated;

6 2. Capacity for completing the project in the specified time  
7 period; and

8 3. Past performance on projects of a similar nature.

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

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

17 2. If the Department and the first-choice construction manager  
18 or consultant cannot reach an agreement, the negotiations shall  
19 terminate and negotiations with the second-choice construction  
20 manager or consultant shall commence. If the Department and the  
21 second-choice construction manager or consultant cannot reach an  
22 agreement, the negotiations shall terminate and negotiations with  
23 the third-choice construction manager or consultant shall commence.  
24 If the Department and the third-choice construction manager or

1 consultant cannot reach an agreement, then all negotiations shall  
2 terminate. Should the Department be unable to negotiate a  
3 satisfactory contract with any of the three selected construction  
4 managers or consultants, the Department shall select additional  
5 construction managers or consultants in order of their competency  
6 and qualifications and shall continue negotiations in accordance  
7 with the provisions of this section until an agreement is reached.

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

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

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

20 2. Issue solicitations for construction manager and consultant  
21 services;

22 3. Conduct evaluations, interviews, selection, contract  
23 negotiation, and fee negotiation processes; and  
24



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

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

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

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

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

23 2. Evaluate the candidates' professional qualifications,  
24 licensing, registration, certifications, technical abilities and

1 past experience relevant to the contemplated project. Only firms  
2 recognized as qualified construction managers by the Department of  
3 Real Estate Services of the Office of Management and Enterprise  
4 Services pursuant to this section may be considered for selection as  
5 a construction manager. The subdivision shall use procedures as  
6 described in this section and the Public Construction Management Act  
7 for Political Subdivisions or may adopt procedures established by  
8 the Office of Management and Enterprise Services for state agencies;  
9 and

10 3. Consider only professional attributes of the construction  
11 managers during the evaluation process and shall not discuss fees.  
12 Once the first-choice construction manager candidate is determined,  
13 the subdivision shall enter into contract negotiations with the  
14 candidate. If the subdivision cannot reach an agreement with the  
15 first-choice construction manager, the negotiations shall terminate  
16 and negotiations with the next-choice construction manager shall  
17 commence. The negotiations shall continue in this manner with each  
18 successive candidate until an agreement is reached. If the  
19 subdivision and any of the construction manager candidates cannot  
20 reach an agreement, then all negotiations shall terminate and the  
21 subdivision shall restart the process as described in this section  
22 and in the Public Construction Management Act for Political  
23 Subdivision, if applicable.

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1 SECTION 3. AMENDATORY 61 O.S. 2011, Section 201, as  
2 amended by Section 6, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,  
3 Section 201), is amended to read as follows:

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

6 SECTION 4. AMENDATORY 61 O.S. 2011, Section 202, as last  
7 amended by Section 3, Chapter 71, O.S.L. 2016 (61 O.S. Supp. 2018,  
8 Section 202), is amended to read as follows:

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

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

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

21 3. "Construction" means the process of planning, acquiring,  
22 designing, building, equipping, altering, repairing, improving,  
23 maintaining, leasing, disposing or demolishing any structure or  
24 appurtenance thereto including facilities, utilities, or other

1 improvements to any real property but not including highways,  
2 bridges, airports, railroads, tunnels, sewers not related to a  
3 structure or appurtenance thereto, or dams;

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

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

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

20 a. "agency construction management" whereby the  
21 construction entity provides services to the owner  
22 without taking on financial risks for the execution of  
23 the actual construction or time of performance, and  
24

1           the owner contracts directly with those awarded trade  
2           contracts for the work, and

3           b. "at-risk construction management" whereby the  
4           construction entity, after providing agency services  
5           during the pre-construction period<sup>7</sup>:

6           (1) takes on the financial obligation to timely carry  
7           out construction under a specified cost  
8           agreement, and

9           (2) enters into written subcontracts for the work in  
10           accordance with the construction management  
11           procedures for state agencies;

12           7. "Consultant" means an individual or legal entity possessing  
13           the qualifications to provide licensed architectural, registered  
14           engineering, registered land surveying, certified appraisal, land  
15           title, or abstract services or possessing specialized credentials  
16           and qualifications as may be needed to evaluate, plan or design for  
17           any construction or public work improvement project, or to lease,  
18           acquire or dispose of state-owned real property;

19           8. "Division" means the Construction and Properties Division of  
20           the Office of Management and Enterprise Services;

21           9. "Energy performance index or indices" (EPI) means a number  
22           describing the energy requirements at the building boundary of a  
23           structure, per square foot of floor space or per cubic foot of  
24           occupied volume, as appropriate under defined internal and external

1 ambient conditions over an entire seasonal cycle. As experience  
2 develops on the energy performance achieved with state construction,  
3 the indices (EPI) will serve as a measure of structure performance  
4 with respect to energy consumption;

5 10. "Facilities Director" or "SFD" means the State Facilities  
6 Director of the Department of Real Estate Services of the Office of  
7 Management and Enterprise Services;

8 11. "Life cycle costs" means the cost of owning, operating, and  
9 maintaining the structure over the life of the structure. This may  
10 be expressed as an annual cost for each year of the facility's use;

11 12. "Office" means the Office of Management and Enterprise  
12 Services;

13 13. "Procurement" means buying, purchasing, renting, leasing,  
14 allocating, trading or otherwise acquiring or disposing of supplies,  
15 services, or construction necessary to evaluate, plan, construct,  
16 manage, operate and preserve real property capital assets;

17 14. "Public improvement" means any beneficial or valuable  
18 change or addition, betterment, enhancement or amelioration of or  
19 upon any real property, or interest therein, belonging to a state  
20 agency and the State of Oklahoma, intended to enhance its value,  
21 beauty or utility or to adapt it to new or further purposes. The  
22 term does not include the direct purchase of materials used for  
23 general repairs and maintenance to state facilities;

24

1        15. "Shared savings financing" means the financing of energy  
2 conservation measures and maintenance services through a private  
3 firm which may own any purchased equipment for the duration of a  
4 contract. Such contract shall specify that the private firm will be  
5 recompensed either out of a negotiated portion of the savings  
6 resulting from the conservation measures and maintenance services  
7 provided by the private firm or, in the case of a cogeneration  
8 project, through the payment of a rate for energy lower than would  
9 otherwise have been paid for the same energy from current sources;  
10 and

11        16. "State agency" means an agency, board, commission, counsel,  
12 court, office, officer, bureau, institution, unit, division, body,  
13 or house of the executive or judicial branches of government of this  
14 state, whether elected or appointed, excluding only political  
15 subdivisions, the Oklahoma State Regents for Higher Education and  
16 its constituent institutions and the Commissioners of the Land  
17 Office.

18        SECTION 5.        AMENDATORY        61 O.S. 2011, Section 202.1, as  
19 last amended by Section 8, Chapter 302, O.S.L. 2013 (61 O.S. Supp.  
20 2018, Section 202.1), is amended to read as follows:

21        Section 202.1 A. The design-build and construction management  
22 project delivery methods shall not be used without the written  
23 approval of the Director of the Office of Management and Enterprise  
24 Services, or the Director's designee, when those projects are

1 constructed for a state agency or by an act of the Legislature  
2 specifying design-build or at-risk construction management for a  
3 project. In all instances where the design-build project or at-risk  
4 construction management delivery method is authorized, construction  
5 administration shall be performed by the State Facilities Director,  
6 the SFD's designee or designees, or otherwise by contract or  
7 contract provision approved by the Director of the Office of  
8 Management and Enterprise Services for construction administration  
9 by another party.

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

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



1 ~~1. The project benefits the public;~~  
2 ~~2. There is a need for cost control; and~~  
3 ~~3. The need exists for specialized or complex construction~~  
4 ~~methods due to the unique nature of the project.~~

5 D. The use of design-build and construction management project  
6 delivery methods shall not interfere or inhibit the opportunity for  
7 subcontractors and trade contractors to openly and freely compete  
8 for subcontracts or trade contracts pursuant to the Public  
9 Competitive Bidding Act of 1974 ~~with respect to public notices.~~ The  
10 State Facilities Director, or designee, or the construction manager  
11 shall make the subcontracting and supply opportunities publicly  
12 known, as follows:

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

21 2. Notice thereof shall be sent to one in-state trade or  
22 construction publication for the publication's use and information  
23 whenever the estimated cost of the contract exceeds Fifty Thousand  
24 Dollars (\$50,000.00); provided, however, this section shall not be

1 construed to require the publication of such notice in such trade or  
2 construction publication or to require the provision of such notice  
3 to more than one in-state trade or construction publication or to  
4 any out-of-state trade or construction publication.

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

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

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

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

20 SECTION 6. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 215 of Title 61, unless there is  
22 created a duplication in numbering, reads as follows:

23  
24

1 Sections 6 through 8 of this act shall be known and may be cited  
2 as the "Public Construction Management Act for Political  
3 Subdivisions".

4 SECTION 7. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 216 of Title 61, unless there is  
6 created a duplication in numbering, reads as follows:

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

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

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

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

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

24

1           3. "Construction management" means a public construction  
2 project delivery method based on an agreement whereby the owner  
3 acquires from a construction entity a series of services that  
4 include, but are not necessarily limited to, design review,  
5 scheduling, cost control, value engineering, constructability  
6 evaluation, preparation and coordination of bid packages and  
7 construction administration. Construction management includes:

- 8           a. agency construction management, and
- 9           b. at-risk construction management; and

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

19          SECTION 8.        NEW LAW        A new section of law to be codified  
20 in the Oklahoma Statutes as Section 217 of Title 61, unless there is  
21 created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

20 3. The construction manager shall evaluate all bids and  
21 recommend the lowest responsible bidder to the subdivision, who  
22 shall accept or reject the bids. The construction manager may  
23 assist the subdivision with the preparation of contracts and the  
24

1 receipt of insurance and bonds as required for public construction  
2 contracts by state law;

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

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

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

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

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

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

23 3. Bid packages with a value less than or equal to Fifty  
24 Thousand Dollars (\$50,000.00) may be awarded by the political

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

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

23 5. The construction manager may require bonds from  
24 subcontractors or suppliers in an amount equal to one hundred

1 percent (100%) of the value of their bid packages for subcontractors  
2 or suppliers not subject to bonding requirements of the Public  
3 Competitive Bidding Act of 1974. In such cases, the bonding  
4 requirements shall be set forth in the bidding documents;

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

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

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

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



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

3 SECTION 9. REPEALER 61 O.S. 2011, Section 220, as last  
4 amended by Section 18, Chapter 302, O.S.L. 2013 (61 O.S. Supp. 2018,  
5 Section 220), is hereby repealed.

6 SECTION 10. This act shall become effective January 1, 2020.

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