

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 HOUSE BILL 1661

By: West (Kevin) of the House

5 and

6 **Leewright** of the Senate

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9 AS INTRODUCED

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

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

17 SECTION 1. AMENDATORY Section 10, Chapter 299, O.S.L.
18 2020 (61 O.S. Supp. 2020, Section 217), is amended to read as
19 follows:

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

23 B. A written contract between the political subdivision and the
24 construction manager shall set forth the obligations of the parties,

1 which, at a minimum, shall include the construction manager's scope
2 of services, fees and expenses, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (\$25,000.00) may be awarded by the political subdivision to any
2 qualified vendor;

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

21 5. The construction manager may require bonds from
22 subcontractors or suppliers in an amount equal to one hundred
23 percent (100%) of the value of their bid packages for subcontractors
24 or suppliers not subject to bonding requirements of the Public

1 Competitive Bidding Act of 1974. In such cases, the bonding
2 requirements shall be set forth in the bidding documents;

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

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

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

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

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

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3 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated
4 02/17/2021 - DO PASS, As Coauthored.
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