

1 **SENATE FLOOR VERSION**

2 February 17, 2022

3 **AS AMENDED**

4 SENATE BILL NO. 871

5 By: Murdock

6 [**Public Construction Management Act - information on**
7 **contracts**]

8
9 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

10 SECTION 1. AMENDATORY 61 O.S. 2021, Section 217, is
11 amended to read as follows:

12 Section 217. A. Construction managers shall be selected by the
13 political subdivision following the requirements set forth in
14 subsection K of Section 62 of ~~Title 61 of the Oklahoma Statutes~~ this
15 title.

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

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

22 2. The cost or basis of cost expenses incurred by the
23 construction manager to be reimbursed by the subdivision for normal
24 general conditions and general requirements necessary for the work

1 but not applicable to a particular subcontractor, trade contractor
2 or supplier; and

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

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

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

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

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

17 4. After trade contracts are awarded, the construction manager
18 will perform contract administrative services as set forth in the
19 agreement and may assist the subdivision with the review and
20 processing of progress and final payments to the subcontractors.

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

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

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

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

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

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

13 3. Bid packages with a value less than or equal to Fifty
14 Thousand Dollars (\$50,000.00) may be awarded by the political
15 subdivision based on written comparative quotes. Bid packages with
16 a value less than or equal to Twenty-five Thousand Dollars
17 (\$25,000.00) may be awarded by the political subdivision to any
18 qualified vendor;

19 4. Once the bids are accepted by the construction manager and
20 awards made by the subdivision and the subdivision indicates its
21 bonding preference, as noted below, but before written agreements
22 are executed, the construction manager will prepare a guaranteed
23 maximum price (GMP) for the project or relevant portion of the work,
24 as an amendment to the contract. After the subdivision approves the

1 construction manager's GMP amendment, the construction manager shall
2 enter into written subcontractor and supplier agreements for the
3 work previously awarded by the subdivision. Upon receiving a notice
4 to proceed with the work from the subdivision or its designee, the
5 subdivision shall ~~have the option, but not mandate,~~ to require the
6 construction manager to provide performance, payment and maintenance
7 bonds, or any combination, in an amount equal to one hundred percent
8 (100%) of the value of the work, excluding the construction
9 manager's fee, general conditions, reimbursements and insurances.
10 "Payment bond", "performance bond" and "maintenance bond", as used
11 herein, mean and refer to those bonds as defined in the Public
12 Competitive Bidding Act of 1974;

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

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

24

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
19 February 17, 2022 - DO PASS AS AMENDED
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