

1 STATE OF OKLAHOMA

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

3 SENATE BILL 871

By: Murdock

4
5 AS INTRODUCED

6 An Act relating to Public Construction Management
7 Act; amending Section 10, Chapter 299, O.S.L. 2019
8 (61 O.S. Supp. 2020, Section 217), which relates to
9 construction managers; removing option for
10 subdivisions to require information on contracts;
11 updating statutory language; and providing for an
12 effective date.

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

14 SECTION 1. AMENDATORY Section 10, Chapter 299, O.S.L.
15 2019 (61 O.S. Supp. 2020, Section 217), is amended to read as
16 follows:

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

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

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

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

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

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

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

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

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

20 4. After trade contracts are awarded, the construction manager
21 will perform contract administrative services as set forth in the
22 agreement and may assist the subdivision with the review and
23 processing of progress and final payments to the subcontractors.
24

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

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

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

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

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

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

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

23 4. Once the bids are accepted by the construction manager and
24 awards made by the subdivision and the subdivision indicates its

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

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

23 6. The construction manager's work performed under this section
24 may be on a lump-sum basis and subject to the change order

1 limitations for a public construction contract as set forth in the
2 Public Competitive Bidding Act of 1974 or may be performed under a
3 cost-plus basis as determined by the subdivision;

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

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

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

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

22
23 58-1-1175 MR 1/21/2021 4:17:18 PM
24
25