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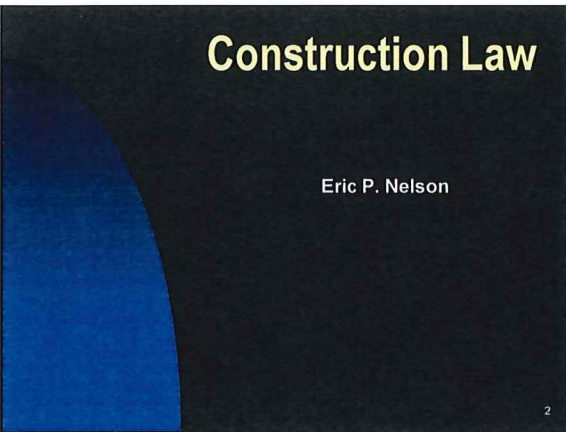
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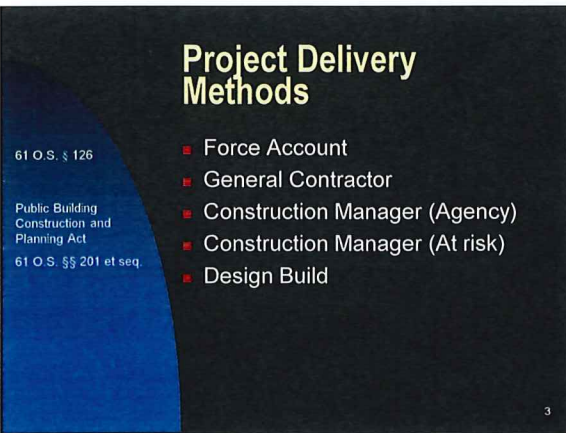
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## Construction Manager - Agency

- Construction manager is hired by the District to provide professional services including:
  - ◆ project planning and budgeting
  - ◆ design review
  - ◆ bid preparation and analysis, and
  - ◆ construction administration.
- District separately bids and contracts for each phase of construction as required by the Act.
- District is "at risk" for completing the project on time and within budget.

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## Construction Manager – At-Risk

- Construction Manager is hired by the District to provide professional services through the bid phase just as in Construction Manager – Agency.
- All trade contracts separately bid.
- After bidding, the CM offers a guaranteed maximum price ("GMP") to the District.
- If the District accepts the GMP, the CM enters into contracts with trade contractors and assumes the risk of completing the project on time and within budget.

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## Selection of Construction Managers and Consultants

- "Consultants" include architects, engineers, surveyors and contractors providing planning, design, construction administration or construction inspection services.
- Must be selected based upon professional qualifications and technical experience.
- Must extend consideration to and select CMs from list of qualified CMs maintained by OMES. No limit to number of candidates.
- Establish selection procedures or adopt OMES' procedures.
- Contract negotiated with the highest qualified candidate.
- If fee cannot be agreed upon, negotiate with other candidates in order of qualification.

(1 O.S. § 62(E))

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## HB2666 – Legislative Goals Met

- CM may bond and insure the project in lieu of individual trade contractors.
- Assignment of bids rather than executed contracts.

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## HB 2666 – Legislative Goals Met

- No specific criteria for authorizing the use of construction management as a project delivery method.
- The cap on change orders for CM At-risk projects is measured on the basis of the total cost of the project.

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## Public Construction Management Act for Political Subdivisions

61 O.S. § 217(C)

- Selection of CMs governed by Okla. Stat. tit. 61 § 62(K).
- Awarding work under Agency Construction Management.
  - ◆ Public bidding in compliance with the PCBA.
  - ◆ Subdivision to receive bids, award the contract and execute contract pursuant to PCBA.
  - ◆ CM to provide administrative services and advise subdivision.
  - ◆ Subdivision may not assign trade contracts to CM or provide CM with funds to pay trade contractors.
  - ◆ Trade contractors must provide bonds and insurance.

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61 O.S. § 217(D)

## Public Construction Management Act for Political Subdivisions

- Awarding work under At-Risk Construction Management.
  - Public bidding in compliance with the PCBA (over \$50,000) by written quotes (\$25,000-\$50,000) and to any qualified vendor (under \$25,000).
  - Subdivision awards trade contracts and states bonding preference.
  - CM offers GMP and, upon acceptance by subdivision, executes trade contracts and issues notice to proceed.
  - Subdivision may require CM At-Risk to provide bonds and insurance for the entire project.
  - CM may require trade contractors to provide bonds regardless of bonding requirements of the PCBA.

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## Public Construction Management Act for Political Subdivisions

- Bidding documents must specify bonding requirements applicable to trade contractors; CM contract must specify bonding requirements applicable to CM.
- Revised bonding scheme could result in double or triple bonding costs to subdivision.
- May not reject GC bids and convert project to CM project delivery method if bids are within available funding.

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61 O.S. §§ 101 et seq.

## Public Competitive Bidding Act of 1974

Eric P. Nelson

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## Competitive Bidding Required

- All "public construction contracts" must be awarded to the "lowest responsible bidder" by open competitive bidding process.
- Construction contracts exceeding \$50,000 require sealed bids; contracts between \$5,000 and \$50,000 require written bids or quotes.
- Schools may negotiate construction contracts under \$5,000 or \$25,000 for minor maintenance or repair.

61 O.S. § 103

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## Exception: Roofing Projects

- Roof Asset Management Program establishes state contracts for roofing projects.
- State has been divided into five areas and separate contracts awarded for each area.
- Obtain and approve proposal from contractor, submit PO to OMES – OMES administers for 5% fee.

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## Exception: Force Account

- Schools may construct buildings or make improvements on a "force account basis".
- Uses regularly employed labor and separate purchase of supplies.
- May combine force account with other project delivery methods.

61 O.S. § 103.4

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## Exception: Emergencies

- Notice and bid requirements of the Act do not apply to construction undertaken as in response to an emergency.
- "Emergency" means a sudden, unexpected happening or unforeseen occurrence or condition creating a risk to public health or safety.
- Requires 2/3 vote of the Board to declare an emergency (all members not merely a quorum).

61 O.S. § 130

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## Key Definitions

- "Public Construction Contract": a contract by a public agency to make public improvements, construct public buildings or make repairs or perform maintenance to public buildings.
- "Public Improvement": any beneficial or valuable change to real property intended to enhance its value, utility or to adapt it to a new or further use.
- Does not include (i) the direct purchase of building materials, supplies and equipment, or (ii) personal property, including property defined in 62 O.S. Sec. 430.1.

61 O.S. § 102

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## Bid Notices - Publication

- If cost of the project exceeds \$50,000, bid notices must be published in two consecutive weekly issues of a local newspaper with first publication at least 21 days before bid opening.
- Bid Notices must be sent to one trade or construction publication but need not require publication.

61 O.S. § 104

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## Bid Notices - Contents

- Complete description of the project with sufficient details to permit meaningful bid – may refer to other documents.
- Name and address of contact person and where bidding documents may be obtained; date, time and place of bid opening, and location for submission of bids.
- Any other information helpful to bidders.

61 O.S. § 105

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## Bidding Documents

- Includes bid notice, bidder qualifications, any special bid requirements, project plans, drawings and specifications, terms and conditions of the contract.
- Complete sets must be on file 20 days before bid opening at the main office with additional sets made available for each prospective bidder.

61 O.S. § 106

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## Bid Requirements and Procedure

61 O.S. § 107

61 O.S. § 108, 138

61 O.S. § 109

61 O.S. § 110

- Bids must be accompanied by a bid bond or cash equal to 5% of the bid.
- Bids must be accompanied by a business relationship affidavit and noncollusion affidavit.
- Bids must be received before, but not more than 96 hours before, bid opening.
- All bids must be opened at the specified time and read aloud in the presence of an administrative officer of the District.

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## Awarding the Contract

61 O.S. § 111

- The contract must be awarded within 30 days after bid opening.
  - ◆ May unilaterally extend for good cause - 15 days for state funded or 90 days for federally funded projects.
  - ◆ Upon mutual written agreement with lowest bidder, may extend time by 120 days.
- Bids must be retained for at least 5 years after bid opening.

61 O.S. § 112

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## Contract Execution

61 O.S. § 113

- Contract must be signed within 60 days after the award of the contract by the District or by the CM where CM At-Risk is the project delivery method.
- Contract cannot be signed until bidder furnishes insurance certificates (CGL and workers' compensation) and payment, performance and defects bonds (if required).
- Bidder has no rights in the contract until it is signed and delivered by both parties.
- Correction of administrative errors may be allowed after award but prior to execution.

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## Contract Requirements

61 O.S. § 113.1, 226

- Contract must provide for:
  - ◆ partial payment based upon work completed to date;
  - ◆ retainage of 5% which is due 21 days after substantial completion if work is satisfactory and the surety consents.
  - ◆ may retain 150% of estimated cost to achieve final completion and correct defective work

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## Conflicts of Interest

- Superintendents, Board Members and their relatives may not have a financial interest in the District's construction contracts.
- Violation renders the contract void.
- Willful violation is a felony and results in removal from office.

61 O.S. § 114

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## Collusion

- Any agreement among bidders, prospective bidders or suppliers to fix bids or to otherwise affect the bidding process is illegal and voids all bids involved in the agreement.
- Willful violation is a felony.
- All bids must be accompanied with a non-collusion affidavit.

61 O.S. §§ 115, 138

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## Disclosure of Bid Terms

- It is illegal for any person to solicit or for any District employee to provide non-public information regarding specific bids, the bid terms or the bid process until it is made available to all prospective bidders and the public.
- Violation is a felony and voids the bid process.

61 O.S. § 116

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## Lowest Responsible Bidder

61 O.S. § 117

- Public construction contracts are to be awarded to the "lowest responsible bidder".

- Award to other than the lowest bidder requires that the action be accompanied by a public statement describing the reasons for the action.

61 O.S. § 118

- District may require prequalification of bidders by including the requirement in the bid notice.

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## Failure to Award Contract

61 O.S. § 119

- Board may vote to reject any or all bids and re-bid the project.

- Board may vote to rescind prior action awarding the contract at any time prior to execution.

61 O.S. § 119.1

- If no bids are received, the Board may negotiate a contract if:
  - the contract is for less than \$50,000;
  - the work is as specified in the initial bidding documents; and
  - all other requirements of the Act are met.<sup>29</sup>

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## Change Orders

- Public construction contracts may be amended to increase the contract sum without rebid if the cumulative increase:

- is less than 15% on contracts under \$1,000,000, or 10% on contracts over \$1,000,000 (no limit on deductive change orders).

- When CM At-Risk is the project delivery method, limits are based on total project cost, not the cost of individual trade contracts.

- All change orders must be approved by the Board of Education.

61 O.S. § 121

- Technology Center Boards may delegate approval authority up to \$40,000 or 10%.

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## Contract Splitting

- Contracts may not be split into 2 or more contracts for the purpose of avoiding the requirements of the Act.
- Violations are punishable as a misdemeanor.

61 O.S. § 131

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## Remedies for Violation

- Taxpayers and unsuccessful bidders may bring suit to prevent performance of the contract if entered in violation of the Act.
- Suit must be commenced within 10 days after the contract is executed.

61 O.S. § 122

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## Payment Obligations

- Progress payments require that the Board or its representative inspect the project for compliance with plans and specifications.
- Requests for payment must be accompanied by an architect's certificate that work has been performed and that work conforms with plans and specifications.

61 O.S. § 124

61 O.S. § 123

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