

## 2018 Kansas Statutes

### **76-786. Procedures for acquiring construction, architectural, engineering and other services for certain projects; statutory exemptions; construction manager at-risk procedures and authorities; powers, duties and functions of secretary of administration and division of facilities management; change orders; progress reports.** (a) As used in this section, unless the context expressly provides otherwise:

(1) "Ancillary technical services" include, but shall not be limited to, geology services and other soil or subsurface investigation and testing services, surveying, adjusting and balancing of air conditioning, ventilating, heating and other mechanical building systems, testing and consultant services that are determined by the board of regents to be required for a project;

(2) "architectural services" means those services described as the "practice of architecture," as defined in K.S.A. 74-7003, and amendments thereto;

(3) "construction services" means the work performed by a construction contractor to commence and complete a project;

(4) "construction management at-risk services" means the services provided by a firm which has entered into a contract with the board of regents to be the construction manager at risk for the value and schedule of the contract for a project, which is to hold the trade contracts and execute the work for a project in a manner similar to a general contractor and which is required to solicit competitive bids for the trade packages developed for a project and to enter into the trade contracts for a project with the lowest responsible bidder therefor, and may include, but are not limited to, such services as scheduling, value analysis, systems analysis, constructability reviews, progress document reviews, subcontractor involvement and prequalification, subcontractor bonding policy, budgeting and price guarantees, and construction coordination;

(5) "division of facilities management" means the division of facilities management of the department of administration;

(6) "engineering services" means those services described as the "practice of engineering," as defined in K.S.A. 74-7003, and amendments thereto;

(7) "firm" means: (A) With respect to architectural services, an individual, firm, partnership, corporation, association or other legal entity which is: (i) Permitted by law to practice the profession of architecture; and (ii) maintaining an office in Kansas staffed by one or more architects who are licensed by the board of technical professions; or (iii) not maintaining an office in Kansas, but which is qualified to perform special architectural services that are required in special cases where in the judgment of the board of regents it is necessary to go outside the state to obtain such services; (B) with respect to engineering services or land surveying, an individual, firm, partnership, corporation, association or other legal entity permitted by law to practice the profession of engineering and provide engineering services or practice the profession of land surveying and provide land surveying services, respectively; (C) with respect to construction management at-risk services, a qualified individual, firm, partnership, corporation, association or other legal entity permitted by law to perform construction management at-risk services; (D) with respect to ancillary technical services or other services that are determined by the board of regents to be required for a project, a qualified individual, firm, partnership, corporation, association or other legal entity permitted by law to practice the required profession or perform the other required services, as determined by the board of regents; and (E) with respect to construction services, a qualified individual, firm, partnership, corporation, association, or other legal entity permitted by law to perform construction services for a project;

(8) "land surveying" means those services described as "professional surveying," as defined in K.S.A. 74-7003, and amendments thereto;

(9) "negotiating committee" means the board of directors of the subsidiary corporation formed under K.S.A. 2018 Supp. 76-781, and amendments thereto;

(10) "project" means: (A) The project for the KSU food safety and security research facility; (B) the project for the KUMC biomedical research facility; (C) the project for the WSU engineering complex expansion and research laboratory; or (D) the project for the acquisition and installation of equipment for the KU biosciences research building, which are funded from the proceeds of the bonds authorized to be issued under K.S.A. 2018 Supp. 76-783, and amendments thereto, within the limitation of \$120,000,000, in the aggregate, plus all amounts required for costs of any bond issuance, costs of interest on any bond issued or obtained for such scientific research and development facilities and any required reserves for payment of principal and interest on any such bond, and from any moneys received as gifts, grants or otherwise from any public or private nonstate source;

(11) "project services" means architectural services, engineering services, land surveying, construction management at-risk services, construction services, ancillary technical services or other construction-related services determined by the board of regents to be required for a project; and

(12) "state building advisory commission" means the state building advisory commission created by K.S.A. 75-3780, and amendments thereto.

(b) The board of regents, when acting under authority of this act, and each project authorized by the board of regents under this act are exempt from the provisions of K.S.A. 75-1269, 75-3738 through 75-3741b, 75-3742 through 75-3744, and 75-3783, and amendments thereto, except as otherwise specifically provided by this act.

(c) Notwithstanding the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto, or the provisions of any other statute to the contrary, all contracts for any supplies, materials or equipment for a project authorized by the board of regents under this act, shall be entered into in accordance with procurement procedures determined by the board of regents, subject to the provisions of this section, except that, in the discretion of the board of regents, any such contract may be entered into in the manner provided in and subject to the provisions of any such statute otherwise applicable thereto. Notwithstanding the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto, if the board of regents does not obtain construction management at-risk services for a project, the construction services for such project shall be obtained pursuant to competitive bids and all contracts for construction services for such project shall be awarded to the lowest responsible bidder in accordance with procurement procedures determined and administered by the board of regents which shall be consistent with the provisions of K.S.A. 75-3738 through 75-3744, and amendments thereto.

(d) When it is necessary in the judgment of the board of regents to obtain project services for a particular project by conducting negotiations therefor, the board of regents shall publish a notice of the commencement of negotiations for the required project services at least 15 days prior to the commencement of such negotiations in the Kansas register in accordance with K.S.A. 75-430a, and amendments thereto, and in such other appropriate manner as may be determined by the board of regents.

(e) (1) Notwithstanding the provisions of subsection (b) of K.S.A. 75-1251, and amendments thereto, or the provisions of any other statute to the contrary, as used in K.S.A. 75-1250 through 75-1270, and amendments thereto, with respect to the procurement of architectural services for a project authorized by the board of regents

under this act, "negotiating committee" shall mean the board of directors of the subsidiary corporation formed under K.S.A. 2018 Supp. 76-781, and amendments thereto, and such board of directors shall negotiate a contract with a firm to provide any required architectural services for the project in accordance with the provisions of K.S.A. 75-1250 through 75-1270, and amendments thereto, except that no limitation on the fees for architectural services for the project shall apply to the fees negotiated by the board of directors for such architectural services.

(2) Notwithstanding the provisions of subsection (e) of K.S.A. 75-5802, and amendments thereto, or the provisions of any other statute to the contrary, as used in K.S.A. 75-5801 through 75-5807, and amendments thereto, with respect to the procurement of engineering services or land surveying services for a project authorized by the board of regents under this act, "negotiating committee" shall mean the board of directors of the subsidiary corporation formed under K.S.A. 2018 Supp. 76-781, and amendments thereto, and such board of directors shall negotiate a contract with a firm to provide any required engineering services or land surveying services for the project in accordance with the provisions of K.S.A. 75-5801 through 75-5807, and amendments thereto.

(3) In any case of a conflict between the provisions of this section and the provisions of K.S.A. 75-1250 through 75-1270, or 75-5801 through 75-5807, and amendments thereto, with respect to a project authorized by the board of regents under this act, the provisions of this section shall govern.

(f) (1) For the procurement of construction management at-risk services for projects under this act, the secretary of administration shall encourage firms engaged in the performance of construction management at-risk services to submit annually to the secretary of administration and to the state building advisory commission a statement of qualifications and performance data. Each statement shall include data relating to: (A) The firm's capacity and experience, including experience on similar or related projects; (B) the capabilities and other qualifications of the firm's personnel; and (C) performance data of all consultants the firm proposes to use.

(2) Whenever the board of regents determines that a construction manager at risk is required for a project under this act, the board of regents shall notify the state building advisory commission and the state building advisory commission shall prepare a list of at least three and not more than five firms which are, in the opinion of the state building advisory commission, qualified to serve as construction manager at risk for the project. Such list shall be submitted to the negotiating committee, without any recommendation of preference or other recommendation. The negotiating committee shall have access to statements of qualifications of and performance data on the firms listed by the state building advisory commission and all information and evaluations regarding such firms gathered and developed by the secretary of administration under K.S.A. 75-3783, and amendments thereto.

(3) The negotiating committee shall conduct discussions with each of the firms so listed regarding the project. The negotiating committee shall determine which construction management at-risk services are desired and then shall proceed to negotiate with and attempt to enter into a contract with the firm considered to be most qualified to serve as construction manager at risk for the project. The negotiating committee shall proceed in accordance with the same process with which negotiations are undertaken to contract with a firm to be a project architect under K.S.A. 75-1257, and amendments thereto, to the extent that such provisions can be made to apply. Should the negotiating committee be unable to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations with that firm shall be terminated and shall undertake negotiations with the second most qualified firm, and so forth, in accordance with that statute.

(4) The contract to perform construction management at-risk services for a project shall be prepared by the division of facilities management and entered into by the board of regents with the firm contracting to perform such construction management at-risk services.

(g) (1) To assist in the procurement of construction services for projects under this act, the secretary of administration shall encourage firms engaged in the performance of construction services to submit annually to the secretary of administration and to the state building advisory commission a statement of qualifications and performance data. Each statement shall include data relating to: (A) The firm's capacity and experience, including experience on similar or related projects; (B) the capabilities and other qualifications of the firm's personnel; (C) performance data of all subcontractors the firm proposes to use; and (D) such other information related to the qualifications and capability of the firm to perform construction services for projects as may be prescribed by the secretary of administration.

(2) The construction manager at risk shall publish a construction services bid notice in the Kansas register and in such other appropriate manner as may be determined by the board of regents. Each construction services bid notice shall include the request for bids and other bidding information prepared by the construction manager at risk and the state board of regents with the assistance of the division of facilities management. The current statements of qualifications of and performance data on the firms submitting bid proposals shall be made available to the construction manager at risk and the board of regents by the state building advisory commission along with all information and evaluations developed regarding such firms by the secretary of administration under K.S.A. 75-3783, and amendments thereto. Each firm submitting a bid proposal shall be bonded in accordance with K.S.A. 60-1111, and amendments thereto, and shall present evidence of such bond to the construction manager at risk prior to submitting a bid proposal. If a firm submitting a bid proposal fails to present such evidence, such firm shall be deemed unqualified for selection under this subsection. At the time for opening the bids, the construction manager at risk shall evaluate the bids and shall determine the lowest responsible bidder. The construction manager at risk shall enter into contracts with each firm performing the construction services for the project and make a public announcement of each firm selected in accordance with this subsection.

(h) The division of facilities management shall provide such information and assistance as may be requested by the board of regents or the negotiating committee for a project, including all or part of any project services as requested by the board of regents, and: (1) Shall prepare the request for proposals and publication information for each publication of notice under this section, subject to the provisions of this section; (2) shall prepare each contract for project services for a project, including each contract for construction services for a project; (3) shall conduct design development reviews for each project; (4) shall review and approve all construction documents for a project prior to soliciting bids or otherwise soliciting proposals from construction contractors or construction service providers for a project; (5) shall obtain and maintain copies of construction documents for each project; and (6) shall conduct periodic inspections of each project, including jointly conducting the final inspection of each project.

(i) Notwithstanding the provisions of any other statute, the board of regents shall enter into one or more contracts with the division of facilities management for each project for the services performed by the division of facilities management for the project as required by this section or at the request of the board of regents. The division of facilities management shall receive fees from the board of regents to recover the costs incurred to provide such services pursuant to such contracts.

(j) Design development reviews and construction document reviews conducted by the division of facilities management shall be limited to ensuring only that the construction documents do not change the project

description and that the construction documents comply with the standards established under K.S.A. 75-3783, and amendments thereto, by the secretary of administration for the planning, design and construction of buildings and major repairs and improvements to buildings for state agencies, including applicable building and life safety codes and appropriate and practical energy conservation and efficiency standards.

(k) Each project for a state educational institution shall receive a final joint inspection by the division of facilities management and the board of regents. Each such project shall be officially accepted by the board of regents before such project is occupied or utilized by the state educational institution, unless otherwise agreed to in writing by the contractor and the board of regents as to the satisfactory completion of the work on part of the project that is to be occupied and utilized, including any corrections of the work thereon.

(l) (1) The board of regents shall issue monthly reports of progress on each project and shall advise and consult with the joint committee on state building construction regarding each project. Change orders and changes of plans for a project shall be authorized or approved by the board of regents.

(2) No change order or change of plans for a project involving either cost increases of \$75,000 or more or involving a change in the proposed use of a project shall be authorized or approved by the board of regents without having first advised and consulted with the joint committee on state building construction.

(3) Change orders or changes in plans for a project involving a cost increase of less than \$75,000 and any change order involving a cost reduction, other than a change in the proposed use of the project, may be authorized or approved by the board of regents without prior consultation with the joint committee on state building construction. The board of regents shall report to the joint committee on state building construction all action relating to such change orders or changes in plans.

(4) If the board of regents determines that it is in the best interest of the state to authorize or approve a change order, a change in plans or a change in the proposed use of any project that the board of regents is required to first advise and consult with the joint committee on state building construction prior to issuing such approval and if no meeting of the joint committee is scheduled to take place within the next 10 business days, then the board of regents may use the procedure authorized by subsection (d) of K.S.A. 75-1264, and amendments thereto, in lieu of advising and consulting with the joint committee at a meeting. In any such case, the board of regents shall mail a summary description of the proposed change order, change in plans or change in the proposed use of any project to each member of the joint committee on state building construction and to the director of the legislative research department. If the board of regents provides notice and information to the members of the joint committee and to such director in the manner required and subject to the same provisions and conditions that apply to the secretary of administration under such statute, and if less than two members of the joint committee contact the director of the legislative research department within seven business days of the date the summary description was mailed and request a presentation and review of any such proposed change order, change in plans or change in use at a meeting of the joint committee, then the board of regents shall be deemed to have advised and consulted with the joint committee about such proposed change order, change in plans or change in proposed use and may authorize or approve such proposed change order, change in plans or change in proposed use.

(m) The provisions of this section shall apply to each project authorized by the board of regents under this act and shall not apply to any other capital improvement project of the board of regents or of any state educational institution that is specifically authorized by any other statute.

**History:** L. 2002, ch. 120, § 10; L. 2014, ch. 88, § 37; July 1.