

Prior law prohibited a construction manager or any other third-party consultant employed by a public entity from managing a construction project as a general contractor or acting in the role of the general contractor to oversee, direct, or coordinate individual trade contractors on behalf of the public entity, or accepting bids or itself bid on the public works or components of the public works with respect to which the manager or consultant is employed or contracted to manage or consult.

New law authorizes an owner who is a public entity to use the construction management at risk or CMAR project delivery method to contract for public works.

New law defines the "construction management at risk", or "CMAR", method to mean a delivery method by which the owner uses a design professional, who is engaged by the owner for professional predesign or design services, or both. The owner contracts separately with a CMAR contractor to engage in the preconstruction phase. As specified in new law, the same CMAR contractor may also provide construction services to build the project.

New law defines "CMAR contractor" as a person, sole proprietorship, partnership, corporation or other legal entity, properly licensed, bonded, and insured, who may assume the risk to construct the project for a guaranteed maximum price or who provides construction experience to the owner or its design professional during the preconstruction phase regarding the constructability of the project, or both.

New law defines "design professional" as an engineer, architect, or landscape architect who has secured a professional license from a Louisiana registration board as required by state law and who is selected by an owner in accordance with state law.

New law defines "selection review committee" to mean the committee appointed by the owner to review the request for qualifications, score the proposers, and recommend award to a CMAR contractor. The committee shall consist of no more than five individuals as follows:

- (1) One design professional in the discipline of but not involved in the project.
- (2) One licensed contractor in the discipline of but not involved in the project.
- (3) One representative of the owner.
- (4) Two members at large.

New law defines "owner" as a public entity as defined in R.S. 38:2211.

New law requires an owner who determines to use the CMAR method to indicate such intent in the RFQ to procure a CMAR contractor and the reasons it deems such method to be in the public interest and beneficial to the owner.

New law prohibits challenges by any legal process to the choice of the successful CMAR contractor except for fraud, bias for pecuniary or personal reasons not related to the taxpayers' interest, or arbitrary and capricious selection by the owner.

New law requires an owner to select and contract with a design professional for design services in the manner provided for by law.

New law requires advertisement of the RFQ to award a contract for CMAR services in the owner's official journal, and on the owner's Internet website, if available. The RFQ shall be advertised at least two times within the 30 day period prior to the deadline for receipt of responses.

New law lists specific items the owner shall include in the RFQ. Allows the owner to include other listed items in the RFQ. Requires review and grading of proposals by a review committee identified in the RFQ. Provides that the review committee results, inclusive of its findings, grading, score sheets and recommendations are available for review by all proposers and shall be deemed public records.

New law requires the review committee to make its recommendations to the owner within 90 days after the deadline for submission of responses to the RFQ. Requires the proposer recommended by the committee as the CMAR contractor to work with the owner's design professional for the project on constructability and construction phasing and sequencing prior to the owner's award to construct the project.

New law requires the owner to select the CMAR contractor either before, but not later than, when the design professional design is not more than 30% complete if the benefits of the CMAR method reduce as the design process progresses.

New law requires the owner to obtain an opinion of probable cost from the design professional and the CMAR contractor when final project design is not more than 60% and again when final design is not more than 90% complete.

New law requires the CMAR contractor to provide the owner a guaranteed maximum price, or GMP, before or upon completion of final design.

New law provides that, if the owner and CMAR contractor are able to negotiate, establish, and agree upon such GMP for rendering construction services for the project, the owner may authorize the CMAR contractor to undertake construction services. Further provides that an owner may determine and authorize a CMAR contractor to undertake specific items provided such undertaking is beneficial to the project, including but not limited to items that require a long lead time, further understanding of unknown site conditions, or other issues.

New law requires the owner to readvertise and publicly bid utilizing the design-bid-build delivery method when the owner and the CMAR contractor do not reach a negotiated agreement.

New law does not supersede any conflicting law, including but not limited to Chapter 10 of Title 38 of the LRS, but the Chapter shall otherwise apply to such contracts.

Effective August 1, 2014.

(Adds R.S. 38:2225.2.4)