

SENATE BILL NO. 680 (Substitute of Senate Bill No. 552 by Senator Adley)

BY SENATORS ADLEY AND GARY SMITH

1 AN ACT

2 To enact R.S. 38:2225.2.4, relative to public contracts; to authorize use of the construction  
3 management at risk method for public contracts; and to provide for related matters.

4 Be it enacted by the Legislature of Louisiana:

5 Section 1. R.S. 38:2225.2.4 is hereby enacted to read as follows:

6 **§2225.2.4. Construction management at risk**

7 **A.(1) Notwithstanding any other provision of law to the contrary, a**  
8 **public entity may use the construction management at risk project delivery**  
9 **method to contract for a project to construct public works as set forth in this**  
10 **Section.**

11 **(2) Purpose. This Section creates an alternative project delivery method,**  
12 **known as "construction management at risk", or "CMAR", for use by a public**  
13 **entity to award a contract to construct public works when deemed in the public**  
14 **interest, beneficial to the owner, and in accordance with the procedures in this**  
15 **Section. The following are reasons to use the CMAR delivery method:**  
16 **collaboration and cost control; concurrent execution of design and construction;**  
17 **a complex project with a tight time frame; owner, designer, and contractor with**  
18 **mutual project goals; risk identification controlled by owner; and minimization**  
19 **of the risk of construction and design disputes by using a collaborative process.**

20 **(3) CMAR shall not be used for any project that is estimated to cost less**  
21 **than twenty-five million dollars.**

22 **B. Definitions. When used in this Section, the following words and**  
23 **phrases have the meanings ascribed to them in this Section, unless the context**

1 indicates a different meaning:

2 (1) "Construction management at risk" or "CMAR" means a delivery  
3 method by which the owner uses a design professional, who is engaged by the  
4 owner for professional predesign or design services, or both. The owner  
5 contracts separately with a CMAR contractor to engage in the preconstruction  
6 phase. As specified in this Section, the same CMAR contractor may also provide  
7 construction services to build the project.

8 (2) "Construction management at risk contractor" or "CMAR  
9 contractor" means a person, sole proprietorship, partnership, corporation, or  
10 other legal entity, properly licensed, bonded, and insured, who does one or both  
11 of the following:

12 (a) Provides construction experience to the owner or its design  
13 professional during the preconstruction phase regarding the constructability of  
14 the project.

15 (b) May contract with the owner to assume the risk to construct the  
16 project for a guaranteed maximum price, without re-procurement.

17 (3) "Design professional" means an engineer, architect, or landscape  
18 architect who has secured a professional license from a Louisiana registration  
19 board as required by state law and who is selected by an owner in accordance  
20 with state law.

21 (4) "Owner" means a "public entity" as defined in R.S. 38:2211.

22 (5) "Selection review committee" means the committee appointed by the  
23 owner to review the request for qualifications, score the proposers, and  
24 recommend award to a construction management at risk contractor. The  
25 committee shall consist of no more than five individuals as follows:

26 (a) One design professional in the discipline of but not involved in the  
27 project.

28 (b) One licensed contractor in the discipline of but not involved in the  
29 project.

30 (c) One representative of the owner.

1           (d) Two members at large.

2           (6) All other terms shall have the meanings as provided for in R.S.  
3           38:2211.

4           C. Any owner who determines to use the construction management at  
5           risk method shall indicate such intent in the request for qualifications to  
6           procure a CMAR contractor and the reasons it deems such method to be in the  
7           public interest and beneficial to the owner.

8           D. There shall be no challenge by any legal process to the choice of the  
9           successful construction manager at risk contractor except for fraud, bias for  
10           pecuniary or personal reasons not related to the taxpayers' interest, or  
11           arbitrary and capricious selection by the owner.

12           E. The owner shall select and contract with a design professional for  
13           design services in the manner provided for by law.

14           F. Request for qualifications, or RFQ, for construction management at  
15           risk contractor.

16           (1) A request for qualifications, or RFQ, to award a contract for a  
17           construction management at risk contractor for preconstruction and  
18           construction services shall be advertised in the official journal of the owner and,  
19           if one exists, on the Internet website of the owner. The RFQ shall be advertised  
20           at least two times within the thirty-day period prior to the deadline for receipt  
21           of responses.

22           (2) The RFQ shall include the following as well as any other pertinent  
23           information limited to the qualifications of a proposer that the owner  
24           determines a proposer may need to submit in a response to an RFQ:

25           (a) The preconstruction scope of services.

26           (b) Submittal criteria for the project.

27           (c) Procurement grading criteria.

28           (d) Scoring methodology.

29           (e) Total fees and compensation payable to the CMAR contractor for  
30           preconstruction services.

1           (3) The RFQ may request that proposers include the following in  
2           response to the RFQ, as well as any other appropriate factors that would, in the  
3           opinion of the owner, demonstrate the capability of the proposer to perform the  
4           role of CMAR contractor:

5           (a) The proposer's surety.

6           (b) Construction methodologies previously used by the proposer on other  
7           projects.

8           (c) Extent to which the proposer intends to self-perform portions of the  
9           work, if applicable.

10          (d) Past performance of the proposer including timely completion of  
11          other public works projects of similar complexity and size.

12          (e) Proposed management and staffing for the project.

13          (f) The proposer's last safety record to include current experience  
14          modification rate, or EMR, recordable incident rate, or RIR, lost work time  
15          incident rate, or other data as required by the owner.

16          (g) The proposer's standard safety plan.

17          (4) Within ninety days after the deadline for responses to the RFQ, a  
18          selection review committee chosen by the owner and identified in the RFQ shall  
19          make a written recommendation to the owner as to which proposer should be  
20          awarded the contract. The results of the selection review committee, inclusive  
21          of its findings, grading, score sheets, and recommendations, shall be available  
22          for review by all proposers and shall be deemed public records.

23          (5) If the benefits of using the CMAR method reduce as the design  
24          process progresses, the owner shall select the CMAR contractor either before,  
25          but not later than, when the design professional's design is not more than thirty  
26          percent complete.

27          G. After award and execution of the contract with the CMAR contractor,  
28          the following actions shall proceed:

29          (1) The design professional, in consultation with the CMAR contractor,  
30          shall proceed with design services.

1           (2) The owner shall obtain an opinion of probable cost of the project  
2           from both the CMAR contractor and the design professional when final design  
3           of the project is not more than sixty percent complete, and again when final  
4           design of the project is not more than ninety percent complete.

5           (3) The CMAR contractor shall provide to the owner a guaranteed  
6           maximum price for construction of the project, before or upon completion of  
7           the final design.

8           (4) If the owner and CMAR contractor are able to negotiate, and to  
9           establish and agree upon a guaranteed maximum price, or GMP, to render  
10          construction services for the project, and additionally, to agree upon  
11          constructability, construction phasing and sequencing, and the maximum  
12          number of contract days to complete the project, the owner may then award the  
13          contract for construction services to the CMAR contractor for the construction  
14          phase of the contract.

15          (5) Once a guaranteed maximum price is agreed upon, the owner may  
16          authorize the CMAR contractor to undertake construction services.  
17          Additionally, the owner may determine and authorize the CMAR contractor to  
18          undertake specific items of construction services prior to agreement upon a  
19          GMP for such items, provided such undertaking is for the benefit of the project  
20          and a GMP for the undertaking can be agreed upon between the owner and  
21          CMAR contractor. Such items may benefit the project, including but not  
22          limited to items that require a long lead time, may further the understanding  
23          of unknown site conditions, or other items.

24          (6) If the owner and the CMAR contractor are not able to agree upon  
25          constructability, construction phasing and sequencing, the GMP for the project,  
26          the maximum number of contract days to complete the project, and to reach a  
27          negotiated agreement, then the project shall be readvertised and publicly bid  
28          utilizing the design-bid-build delivery method.

29          H. The provisions of this Section shall supersede any conflicting  
30          provisions of any law, including but not limited to the requirements of Chapter

1            **10 of this Title, but the provisions of such Chapter shall otherwise be applicable**  
2            **to such contracts.**

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_