

**SUBJECT:** Requiring CMAR to use certain contract methods for government projects

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 13 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland,  
Hunter, P. King, Parker, Raymond, E. Rodriguez, Smithee, Springer

0 nays

**WITNESSES:** For — (*Registered, but did not testify:* Joe Streck, City of Lubbock; Ken Stringer, LEM Construction and TXWIN; Ronnie Smitherman, Texas Building Trades Council; Perry Fowler, Texas Water Infrastructure Network)

Against — None

**BACKGROUND:** Government Code ch. 2269, subch. F governs the construction manager-at-risk (CMAR) method for governmental entities by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a CMAR to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

Under sec. 2269.251, a CMAR is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity on construction during and after the design phase.

Sec. 2269.555 requires a CMAR to publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work.

Sec. 2269.256 requires all bids or proposals to be made available to the governmental entity on request and to the public after the later of the award of the contract or the seventh day after the date of final selection.

Some have suggested that the construction manager-at-risk delivery method is not sufficiently transparent and provides discretion to select a bid other than the one offering the lowest cost.

**DIGEST:**

CSHB 1752 would require a construction manager-at-risk (CMAR) to use the competitive bidding method or competitive sealed proposal method to consider a contract with a trade contractor or subcontractor under Government Code sec. 2269.251.

If a CMAR used the competitive sealed proposal method to consider the contract, price would have to be one of the selection criteria and the weighted value of price as a selection criterion would have to be 40 percent or more of the total weighted value of all of the selection criteria.

The bill would remove the requirement that a bid or proposal be made available to a governmental entity on request and instead would require a bid or proposal to be made available to the governmental entity and to the public no later than 7 days after the later of the award of the contract or the date of final selection of bids or proposals.

The bill would take effect September 1, 2019, and would apply only in relation to a contract for which a CMAR first advertised bids or proposals on or after that date.