

# SUPPORT HB 2634

## Ensure Fair Competition in Construction Manager-at-Risk (CMAR) Contracting

**HB 2634 by Representative John Kuempel**

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**Senate Sponsor Senator Judith Zaffirini**

**Co-Sponsor Senator Juan “Chuy” Hinojosa**

Industry best practices and current laws across the United States require the award of separate contracts for Construction Manager-at-Risk (CMAR) projects with distinctly different roles and responsibilities for design and Construction. Current Texas law for CMAR projects is structured in a way that allows the same or related entities to be awarded both the design and the construction contracts. This unintended loophole is a flaw in Texas CMAR contracting law and fails to expressly ensure separation.

Under alternative project delivery methods in the construction contracting process, allowing the same or related entity to be awarded both the design and the construction contracts is an inappropriate use of the CMAR method which results in de-facto Design-Build, a wholly different delivery method.

Misuse of CMAR as de-facto design-build places taxpayer dollars at risk, removes safeguards, and places Texas construction and design firms at a competitive disadvantage.

This misuse of CMAR law removes checks and balances and allows conflicts of interest that fail to protect owners and the public. CMAR qualifications and selection criteria that favor the same or related construction entities of designers fail to maintain the integrity of the public procurement system and can be used to influence the CMAR contractor selection process in a way that undermines competition.

Texas contracting law should not be used to manipulate market share. Current CMAR contracting authority has been abused placing taxpayer dollars at risk and undermining competition.

- *HB 2634 will ensure fair competition*
- *HB 2634 does not take away the CMAR method as alternative project delivery option*
- *HB 2634 reforms contract law by requiring separate contracts for design and construction with unrelated entities according to industry best practices*
- *HB 2634 ensures CMAR is used correctly and is not abused to manipulate outcomes*
- *HB 2634 does not inhibit the ability of political subdivisions to use CMAR on projects, prevents conflicts of interest, and ensures appropriate safeguards*
- *HB 2634 protects and benefits the public, owners, and promotes a competitive marketplace*

Preserving competition and fairness in the Texas is fundamental to a vibrant economy that promotes responsible stewardship of taxpayer dollars. The public has a right to expect appropriate safeguards are in place to ensure accountability, transparency, and competition for construction projects paid for with public dollars.

*HB 2634 unanimously passed the Texas House (143-0), and Government Transparency & Operations Committee (7-0).*

*HB 2634 passed out of the Senate Business and Commerce Committee (6-2).*

*HB 2634 is supported by the Texas Water Infrastructure Network (TxWIN), the Associated Builders and Contractors of Texas (ABC), The Associated General Contractors of Texas (AGC) Building Branch, The Associated General Contractors of Texas (AGC) Highway, Heavy, Utilities and Industrial Branch, and the Texas Society of Professional Engineers (TSPE).*

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