

Alternative Project Delivery Law Fact Sheet - Arkansas  
(As of 03/11/16)

State Agencies	CMAR Permitted (1)& (A)	DB Permitted	Qualifications Based Procurement	Price Based-best value-Procurement	Public Private Partnerships
Horizontal construction-transportation	No	Yes(2)	Yes(2)	Yes(2)	No
Horizontal construction-water and wastewater	No	No			No
Vertical construction-public buildings	?(1)	No			Yes(3)
Local Government	CMAR Permitted (1) & (A)	DB Permitted			Public Private Partnerships
Horizontal construction-transportation	No	No			Yes(6)
Horizontal construction-water and wastewater	No	Yes(4)		Yes	No
Vertical construction-public buildings	Yes(1)	Yes(5)		Yes	Yes(7)

Notes:

- (1) Municipal projects over \$2M. (A.C.A. 14-58-1001). It is unclear whether reference to “construction manager” in A.C.A. 19-4-1415 for projects exceeding \$5M is referring to CMA or CMAR or both. If the definition of construction management found in A.C.A. 19-11-801 can be argued to apply then it may open all projects to CMAR.
- (2) State Highway Commission has authority to do DB under Arkansas Code (A.C.A. 27-65-107). The limitations on the number of DB projects to 2 projects over \$50M that had been previously set in A.C.A. Sec. 27-67-206 was removed by HB 1702 in the 2013 legislative session. Qualifications bases selection is allowed under the provisions of Sec. 27-67-206(j)(1)(C)(1)(A) only for DB contracts.
- (3) A public institution of higher education when using private sources to finance the construction of public facilities which exceeds \$5M shall be governed by the provisions of A.C.A. 19-4-1413.
- (4) This authority is only limited to municipalities and sanitation authorities on design-build-operation-maintenance contracts for water, wastewater, storm water treatment systems or any combination. (A.C.A. 22-9-203).
- (5) This authority is limited to school districts. (A.C.A. 19-11-807).
- (6) This authority is limited to regional mobility authorities (county and municipalities A.C.A. 27-76-203) may enter into PPP for transportation projects concerning rail, waterway or trail (limitations on toll facilities). (A.C.A. 27-76-403). Counties may now use PPP as part of the unpaved road projects. (A.C.A. 14-305-102(b)(3)).
- (7) This authority is limited to school districts and public charter schools. (A.C.A. 6-20-402).

Other Comments:

A. Primary contract award method is competitive bidding for most construction projects over \$20,000.00. A negotiated award method is provided for state agencies and higher education institutions for projects exceeding \$5M. (A.C.A. 19-4-1415). An argument might be made that CMAR is permitted for transportation and water and waste water projects under the definition of construction management under A.C.A. 19-11-801.

Alternative Project Delivery Law Fact Sheet - Louisiana  
(As of 03/11/16)

State Agencies	CMAR Permitted(1)	DB Permitted(2)	Qualifications Based Procurement	Price Based-best value-Procurement	Public Private Partnerships(3)
Horizontal construction-transportation	Possible	Yes	No	Yes	Yes
Horizontal construction-water and wastewater	Possible	Yes	No	Yes	Possible
Vertical construction-public buildings	Yes	Yes	No	Yes	Possible
Local Government	CMAR Permitted(1)	DB Permitted(2)			Public Private Partnerships(3)
Horizontal construction-transportation	Possible	Possible			Yes
Horizontal construction-water and wastewater	Possible	Yes(2)	No	Yes	Possible
Vertical construction-public buildings	Yes	Yes(2)	No	Yes	Yes

Notes:

(1) Louisiana generally requires specific legislative approval to use CMAR by any public governmental entity within the state. Currently, CMAR authority exists for the following entities: the Coastal Protection and Restoration Authority Board “for construction, operation and maintenance of any integrated coastal protection project” (LA R.S. 49:214.6.2) and the New Orleans Aviation Board “limited to initial construction of airport terminal and related support facility, aviation facility or any combination thereof” (LA R.S. 38:2225.2.3). **Now any public entity may utilize CMAR for a project to construct public works section. (LA R.S. 38:2225.2.4).**

(2) Louisiana generally requires specific legislative approval to use DB by any public governmental entity within the state. (LA R.S. 38:2225.2). Currently, DB authority exists for the following entities: Jefferson Parish “hurricane protection and flood control projects” (LA R.S. 38:85); Algiers Development District “public improvements and facilities” (LA R.S. 33:2740.27); Gentilly Development District “public improvements and facilities” (LA R.S. 33:2740.70); The Coastal Protection and Restoration Authority Board “for construction, operation and maintenance of any integrated coastal protection project” including DB, DBOM, DBFOM (LA R.S. 49:214.6.2); the Downman Road Economic Development District “expedite the completion of public improvements and facilities” (LA R.S. 33:2740.70.1); Port Authorities “on any non-architectural project where the project involves the transport, production, storage, or manufacturing of port cargos and where sixty percent or more of the construction cost estimate in the “design criteria package”, as determined by the port's retained design professional, consists of engineered products and components and the services, fabrication, and installation for such products and components”. **They may now also use it for any project that a notice of intent is advertised as required (expires 12/31/20) (LA R.S. 34:3523, 3460 (although this statute is cross-referenced the LA legislature did not change its original expiration date of 12/31/15 as they extended 3523);** the Sewage and Water Board of New Orleans “construct a power plant NTE \$30.4M” (expires 7/10/15) (LA R.S. 38:2225.2.1); and the Department of Transportation and Development “if Secretary determine in best interest of taxpayers can combine design and construction phases of transportation facility

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or facilities, including by not limited to highways, interchanges, or bridges into a single contract” (must have approval of House and Senate transportation, highways, and public works committees) (LA R.S. 48:250.2, 250.3). **Any regional transit authority may let contracts for any new ferry on Mississippi River as a DB contract. (LA R.S. 38:2225.2.5). The Department of Transportation and Development on any bridge project where the bridge replaces a tunnel may use any contracting method to include CMAR or DB. (LA R.S. 48:232.1).**

(3) Louisiana generally requires specific legislative approval to use public-private partnerships (“PPP”) by any public entity within the state. Currently, PPP authority exists for the following entities: the Biodistrict of New Orleans “construct, reconstruct, rehabilitate, improve, repair, operate, lease wet labs, research facilities, manufacturing facilities, clinics, laboratories, or any other facility, building or structure develop biosciences” (LA R.S. 33:9039.69); state and local governmental subdivisions of date to create nonprofit economic development corporations (LA R.S. 33:9021, 9023); any contiguous parishes or municipalities can create local and regional economic development districts (LA R.S. 33:9039.104, 9039.107(8) and 9039.108(6)); certain transportation facility projects, roads, highways, transitways, to include rail, may qualify be allowed to use PPP method (LA R.S. 48:250.2, 48:250.3, 48:2084.13 - certain qualifying transportation projects when done as public-private partnerships); (LA R.S. 48:2020 - municipalities and parishes – highways, roads, transitways and other transportation facilities); (LA R.S. 48:2084 – state transportation authority – may include use of tolls); and (LA R.S. 48:2171 – railways).

Other Comments:

A. Primary contract award method is competitive bidding for most construction projects unless otherwise allowed by statute.

B. The CMAR, DB and PPP methodologies that are marked possible would be allowable as long as there is a specific statute authorizing the use of the specific methodology.

Alternative Project Delivery Law Fact Sheet - New Mexico  
(As of 03/11/16)

State Agencies	CMAR Permitted	DB Permitted	Qualifications Based Procurement	Price Based- best value- Procurement	Public Private Partnerships
Horizontal construction-transportation	No	No(2)			No
Horizontal construction-water and wastewater	No	Yes(2)	No	Yes(3)	No
Vertical construction-public buildings	Yes(1)	Yes(2)	No	Yes(3)	No
Local Government	CMAR Permitted	DB Permitted			Public Private Partnerships
Horizontal construction-transportation	No	No(2)			No
Horizontal construction-water and wastewater	No	Yes	No	Yes(3)	No
Vertical construction-public buildings	Yes(1)	Yes	No	Yes(3)	No

Notes:

(1) CMA only is allowed but cannot duplicate services provided under another contract. (N.M. Stat. 131-100.1). There is CMAR exception for educational facilities. (N.M. Stat. 13-1-124.1). Educational facilities include public school, locally chartered or state chartered charter school and certain state educational institutions as defined in N.M. Stat. Sec. 6-17-1.1.

(2) Road and highway construction or reconstruction projects specifically prohibited under N.M. Stat. 13-1-119.1. **However**, Sec. 13-1-119.2 provides an exception for road and highway projects where maximum allowable construction cost of more than \$50M funded in whole or in part by federal-aid highway funds (amended in 2016 by HB206/SB 215).

(3) N.M. Administrative Code, Title 1, Chapter 5, Part 7 sets forth criteria for use of DB. Two step process with request for proposal evaluation of technical competence and capability to perform and other criteria. Select a maximum of five firms for second portion of competition evaluating criteria in detail for decision. (N.M. Administrative Code 1.5.7.9). Both the architect or engineer and the contractor portions of the DB team must be licensed in New Mexico.

Other Comments:

A. Except for road and highway construction or reconstruction projects, a “design and build” project delivery system may be authorized when the state purchasing agent or a central purchasing office makes a written determination that it is appropriate or in the best interest of the state or local public body to use the system.

B. Unless DB allowed under N.M. Stat. Ann. Sec. 13-1-119.1 then must be done by competitive sealed proposals. (N.M. Stat. 13-1-111). Architects, engineers and construction managers selected based on qualifications. (N.M. Stat. Sections 13-1-120 through 13-1-124).

Alternative Project Delivery Law Fact Sheet - Oklahoma  
(As of 03/11/16)

State Agencies	CMAR Permitted(1)	DB Permitted(1)	Qualifications Based Procurement	Price Based-best value-Procurement	Public Private-Partnerships(3)
Horizontal construction-transportation	No	No			No
Horizontal construction-water and wastewater	No	No(2)			No
Vertical construction-public buildings	Yes	Yes	No	Yes	No
Local Government	CMAR Permitted(1)	DB Permitted(1)			Public Private Partnerships(3)
Horizontal construction-transportation	No	No			No
Horizontal construction-water and wastewater	No	No(2)			No
Vertical construction-public buildings	Yes	Yes(1)	No	Yes	No

Notes:

(1) State Agencies allowed to use CMAR or DB with the written approval of the Director of Office of Management and Enterprise Services. Must meet the criteria set forth in the administrative rules which are set forth in the Oklahoma Administrative Code, Title 260, Chapter 65, Subchapters 17 (CMAR) and 19 (DB). Director approval not required for non-state agencies for CMAR silent on DB. (61 Okl. St. Sections 202 and 202.1). CMAR bidding requirements are set forth for political subdivisions and school district. (61 Okl. St. Sec. 220). Certain state agencies, boards, commissions, offices, institutions, and other governmental bodies of the state are required to use mandatory consultant and construction contract forms. (61 Okl. Sec. 60). Oklahoma DOT and Oklahoma Turnpike Authority may use CMA. (69 Okl. St. Sec. 708.2)

(2) Water and sewer projects that are related to a structure or appurtenance thereto may be part of a design build contract.

(3) Although direct legislative authority cannot be found for use of public private partnerships in any of the construction or public works projects, Oklahoma has passed legislation that allows for subcontractor bond claims on public-private partnership projects. (61 Okl. St. Sec. 2).

Other Comments:

A. "Construction" is defined as process of planning, acquiring, designing, building, equipping, altering, repairing, improving, maintaining, or demolishing any structure or appurtenance thereto including facilities, utilities or other improvements to any real property but not including highways, bridges, airports, railroads, tunnels, sewers not related to a structure or appurtenance thereto, or dams. (61 Okl. St. Sec. 202(3)).

B. While not addressed in design-build statute or administrative code sections, licensing is required to perform work as architect or engineer. (59 Okl. St. Sections. 46.1 (architects) and 475.1 (engineers)).

Alternative Project Delivery Law Fact Sheet - Texas  
(As of 03/11/16)

State Agencies	CMAR Permitted(1)	DB Permitted	Qualifications Based Procurement (4)	Price Based-best value-Procurement(1)	Public Private Partnerships(5)
Horizontal construction-transportation	Yes	Yes(2)			Yes
Horizontal construction-water and wastewater	Yes	Yes(2)	No	Yes	Yes
Vertical construction-public buildings	Yes	Yes(3)	No	Yes	Yes
Local Government	CMAR Permitted(1)	DB Permitted	Qualifications Based Procurement (4)	Price Based Best Value Procurement(1)	Public Private Partnerships(5)
Horizontal construction-transportation	Yes	Yes(2)	No	Yes	Yes
Horizontal construction-water and wastewater	Yes	Yes(2)	No	Yes	Yes
Vertical construction-public buildings	Yes	Yes(3)	No	Yes	Yes

Notes:

(1) Authorization found in multiple statutes: Most public entities (Tx. Gov. Code, Chapter 2269, Subchapter F, Section 2269.251); Universities (Tx. Educ. Code, Chapter 51, Subchapter T, Section 51.782; Regional Tollway Authorities (Tx. Trans. Code, Chapter 366, Subchapter E, Section 366.185); Certain Water and Navigation Districts (Tx. Water Code, Chapter 60, Subchapter O, Sections 60.451, 454 and 462). However, Chapter 2269 does not apply to certain Local Government Corporation projects (2269.007). NOTE: Section 2269.252 has been amended to prohibit an architect or engineer that has served as the governmental entity's project architect or engineer from serving as a CMAR on the same project.

(2) Authorizes design-build for both vertical and horizontal construction. Authorization for most horizontal design-build is found in Texas Government Code, Chapter 2269, Subchapter H, Section 2269.351. Design-build methods do contain a step that is qualifications based. However, Chapter 2269 does not apply to any projects for Texas Department of Transportation, Regional Tollway Authorities, Regional Mobility Authorities, County Toll Authorities and Coordinated County Transportation Authorities (Sections 2269.004, .006, .008, .009 and .010). Authority for use of DB in certain transportation projects is found in multiple statutes: State highway system (Tx. Trans. Code, Chapter 223, Subchapters E – Comprehensive Development Agreements and F – Design-Build Contracts); Regional Mobility Authorities (Tx. Trans. Code, Chapter 370, Subchapter K – Design-Build Contracts); Regional Transportation Authorities (Tx. Trans. Code, Chapter 452, Subchapter C – Management of Authority). The Department of Transportation can accomplish 3 DB projects per year, but statutory threshold for use of DB has been increased from \$50M to \$150M. (House Bill 20, 2015 Session). With passage of HB 1, there may be funding limitations on the Department of Transportation's use of DB.

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(3) Authorization for vertical DB is found in multiple statutes: Most public entities (Tx. Gov. Code, Chapter 2269, Subchapter G, Section 2269.301); Universities (Tx. Educ. Code, Chapter 51, Subchapter T, Section 51.780); Navigation districts and port authorities (Tx. Water Code, Chapter 60, Subchapter O).

(4) Currently only purely qualifications based selection process in Texas involves the selection of professional services which is governed by Chapter 2254 of the Texas Government Code.

(5) Authorization for use of PPP for most Texas state agencies and local governmental entities will fall under the provisions and limitations set forth in Chapter 2267 of the Texas Government Code. Construction, design, operation or maintenance of state highway system or transportation authorities created under Chapters 451(Metro Rapid Transit), 452 (Regional Transportation), 453 (Municipal Transit Departments) or 460 (Coordinated County Transportation) of the Texas Transportation Code are not covered by Chapter 2267 of the Texas Government Code. Texas Transportation Code, Section 366.174 (regional tollway authorities) and 370.173 (regional mobility authorities) provides authority for use of revolving fund monies to provide matching funds for public-private partnerships. Chapter 371 of the Texas Transportation Code governs use of Comprehensive Development Agreements for highway toll projects.