



## SB 914 – DODD

### CONSTRUCTION MANAGER AT-RISK CONTRACTING FOR COUNTIES

#### Summary

Senate Bill 914 would expand the tools counties have to plan and deliver infrastructure projects by extending construction manager at-risk (CMAR) authority to all types of infrastructure projects.

properly-phased, and cost-effective county infrastructure project.

California's counties currently have CMAR authority for the erection, construction, alteration, repair, or improvement of any building owned or leased by the county. Besides counties, the California Administrative Office of the Courts, University of California, California State University System, school districts, and some cities have used the CMAR method for building construction projects.

#### Background

The Local Agency Public Construction Act generally requires local officials to invite bids for construction projects and then award contracts to the lowest responsible bidder. This design-bid-build method is the traditional approach to public works construction.

SB 328 (Knight, 2013) authorized counties to use construction manager at-risk method for projects costing in excess of \$1 million, and allowed the county to award the contract to the lowest responsible bidder or by the best value method until January 1, 2018.

The method known as construction manager at-risk is another approach to public works construction and project delivery which combines elements of the design-bid-build and design-build methods. CMAR allows the owner of a project to retain a construction manager who provides pre-construction services during the design period and becomes the general contractor during the construction process.

AB 851 (Caballero, 2017) extended the sunset date for county authority for five years to January 1, 2023. AB 851 also added skilled and trained workforce requirements for projects built with county CMAR authority.

A CMAR contract is a competitively procured contract with an entity that guarantees the cost of a project and furnishes construction management services, including, but not limited to, preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services and construction administration.

Before construction can begin on a project, the owner and construction manager must agree on either a fixed price or "guaranteed maximum price" for the project. The construction manager is responsible for delivering the project within the agreed upon price, thereby assuming the risk for cost-overruns. The result is better-designed,

#### This Bill

SB 914 expands county authority to use the CMAR method for all infrastructure projects. The bill maintains the existing project cost threshold of in excess of \$1 million and skilled and trained workforce requirements.

#### Support

California State Association of Counties (CSAC) (Sponsor)

#### Opposition

None



## Contact

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**Introduced by Senator Dodd**  
(Coauthor: Assembly Member Grayson)

January 22, 2018

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An act to amend Section 20146 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 914, as introduced, Dodd. Local agency contracts.

Existing law authorizes a county, until January 1, 2023, with approval of the board of supervisors, to utilize construction manager at-risk construction contracts for the erection, construction, alteration, repair, or improvement of any building owned or leased by the county, subject to certain requirements, including that the method may only be used for projects that are in excess of \$1,000,000.

This bill would authorize the use of this method of contracting for the erection, construction, alteration, repair, or improvement of any infrastructure, excluding roads.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 20146 of the Public Contract Code is
- 2 amended to read:
- 3 20146. (a) A county, with approval of the board of supervisors,
- 4 may utilize construction manager at-risk construction contracts
- 5 for the erection, construction, alteration, repair, or improvement
- 6 of any ~~building~~ *infrastructure, excluding roads*, owned or leased
- 7 by the county. A construction manager at-risk construction contract

1 may be used only for projects in the county in excess of one million  
2 dollars (\$1,000,000) and may be awarded using either the lowest  
3 responsible bidder or best value method to a construction manager  
4 at-risk entity that possesses or that obtains sufficient bonding to  
5 cover the contract amount for construction services and risk and  
6 liability insurance as may be required by the county. Any payment  
7 or performance bond written for the purposes of this section shall  
8 be written using a bond form developed by the county.

9 (b) For purposes of this section, the following definitions apply:

10 (1) “Best value” means a value determined by objective criteria  
11 related to the experience of the entity and project personnel, project  
12 plan, financial strength of the entity, safety record of the entity,  
13 and price.

14 (2) “Construction manager at-risk contract” means a  
15 competitively procured contract by a county with an individual,  
16 partnership, joint venture, corporation, or other recognized legal  
17 entity, that is appropriately licensed in this state, including a  
18 contractor’s license issued by the Contractors’ State License Board,  
19 and that guarantees the cost of a project and furnishes construction  
20 management services, including, but not limited to, preparation  
21 and coordination of bid packages, scheduling, cost control, value  
22 engineering, evaluation, preconstruction services, and construction  
23 administration.

24 (c) (1) A construction manager at-risk entity shall not be  
25 prequalified or shortlisted or awarded a contract unless the entity  
26 provides an enforceable commitment to the county that the entity  
27 and its subcontractors at every tier will use a skilled and trained  
28 workforce to perform all work on the project or contract that falls  
29 within an apprenticeable occupation in the building and  
30 construction trades, in accordance with Chapter 2.9 (commencing  
31 with Section 2600) of Part 1.

32 (2) This subdivision shall not apply if any of the following  
33 conditions are met:

34 (A) The county has entered into a project labor agreement that  
35 will bind all contractors and subcontractors performing work on  
36 the project or contract to use a skilled and trained workforce, and  
37 the entity agrees to be bound by that project labor agreement.

38 (B) The project or contract is being performed under the  
39 extension or renewal of a project labor agreement that was entered  
40 into by the county before January 1, 2018.

1 (C) The entity has entered into a project labor agreement that  
2 will bind the entity and all its subcontractors at every tier  
3 performing the project or contract to use a skilled and trained  
4 workforce.

5 (3) For purposes of this subdivision, “project labor agreement”  
6 has the same meaning as in paragraph (1) of subdivision (b) of  
7 Section 2500.

8 (d) Subcontractors that were not listed by a construction manager  
9 at-risk entity as partners, general partners, or association members  
10 in a partnership, limited partnership, or association in the entity’s  
11 construction manager at-risk bid submission shall be awarded by  
12 the construction manager at-risk entity in accordance with the  
13 process set forth by the county. All subcontractors bidding on  
14 contracts pursuant to this section shall be afforded the protections  
15 contained in Chapter 4 (commencing with Section 4100) of Part  
16 1. The construction manager at-risk entity shall do both of the  
17 following:

18 (1) Provide public notice of the availability of work to be  
19 subcontracted in accordance with the publication requirements  
20 applicable to the competitive bidding process of the county.

21 (2) Provide a fixed date and time on which the subcontracted  
22 work will be awarded in accordance with the procedure established  
23 pursuant to this section.

24 (e) A county that elects to proceed under this section and uses  
25 a construction manager at-risk contract for a building project shall  
26 make a copy of the contract available for public inspection on its  
27 Internet Web site and notify the appropriate policy committees of  
28 the Legislature with instructions on finding and accessing the  
29 stored contract.

30 (f) (1) If the county elects to award a project pursuant to this  
31 section, retention proceeds withheld by the county from the  
32 construction manager at-risk entity shall not exceed 5 percent if a  
33 performance and payment bond issued by an admitted surety  
34 insurer is required in the solicitation of bids.

35 (2) In a contract between the construction manager at-risk entity  
36 and any subcontractor, and in a contract between a subcontractor  
37 and any subcontractor thereunder, the percentage of the retention  
38 proceeds withheld shall not exceed the percentage specified in the  
39 contract between the county and the construction manager at-risk  
40 entity. If the construction manager at-risk entity provides written

1 notice to any subcontractor that is not a member of the construction  
2 manager at-risk entity, before or at the time the bid is requested,  
3 that a bond may be required and the subcontractor subsequently  
4 is unable or refuses to furnish a bond to the construction manager  
5 at-risk entity, then the construction manager at-risk entity may  
6 withhold retention proceeds in excess of the percentage specified  
7 in the contract between the county and the construction manager  
8 at-risk entity from any payment made by the construction manager  
9 at-risk entity to the subcontractor.

10 (g) If the county elects to award a project pursuant to this  
11 section, the contract between the county and construction manager  
12 at-risk entity shall be subject to subdivision (b) of Section 2782  
13 of the Civil Code. Any contract between the construction manager  
14 at-risk entity and a contractor or subcontractor shall be subject to  
15 Section 2782.05 of the Civil Code.

16 (h) This section shall remain in effect only until January 1, 2023,  
17 and as of that date is repealed, unless a later enacted statute, that  
18 is enacted before January 1, 2023, deletes or extends that date.

January XX, 2018

The Honorable Bill Dodd  
California State Senate  
State Capitol, Room 5064  
Sacramento, CA 95814

**Re: Senate Bill 914 (Dodd): Construction Manager At-Risk Contracting for Counties**

Dear Senator Dodd,

On behalf of (ORGANIZATION), I am writing to express support for Senate Bill 914.

A CMAR contract is a competitively procured contract with an entity that guarantees the cost of a project and furnishes construction management services, including, but not limited to, preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services and construction administration.

Before construction can begin on a project, the owner and construction manager must agree on “guaranteed maximum price” for the project. The construction manager is responsible for delivering the project within the agreed upon price, thereby assuming the risk for cost-overruns. The result is better-designed, properly-phased, and cost-effective county infrastructure project.

Current law allows counties to use CMAR on projects in excess of \$1 million for the erection, construction, alteration, repair or improvement of buildings. Counties may award the projects to the lowest responsible bidder or by the best value method. Counties have CMAR authority until January 1, 2023 and must also meet specified skilled and trained workforce requirements.

SB 914 expands county authority to use the CMAR method for other types of infrastructure projects. (INSERT ANYTHING SPECIFIC TO YOUR COUNTY IF APPLICABLE – EXAMPLE PROJECTS YOU WOULD LIKE TO USE IT ON, OTHER BENEFITS FROM USING IT IN THE PAST ON BUILDINGS, ETC.)

For the reasons stated, (ORGANIZATION) is pleased to support SB 914 and thank you for authoring this important measure.

Sincerely,