

Date of Hearing: March 23, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1932 (Daly) – As Introduced February 10, 2022

**SUBJECT:** Public contracts: construction manager at-risk construction contracts.

**SUMMARY:** Eliminates the sunset date of January 1, 2023, from existing law authorizing counties to enter into construction manager at-risk (CMAR) contracts.

**EXISTING LAW:**

- 1) Requires, pursuant to the Local Agency Public Construction Act (LAPC Act), local officials to invite bids for construction projects and then award contracts to the lowest responsible bidder under the traditional design-bid-build project delivery system.
- 2) Authorizes, until January 1, 2023, counties to use CMAR for the construction of buildings costing in excess of \$1 million and allows a county to award the contract to the lowest responsible bidder or by the best value method.

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Local Government Contracting.** The LAPC Act 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, and most widely-used, approach to public works construction. This approach splits construction projects into two distinct phases: design and construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers. Once project designs are complete, local officials invite bids from the construction community and award the contract to the lowest responsible bidder. However, many local public agencies have grown frustrated with the traditional method of project delivery, design-bid-build, arguing that it is slower and more costly than other procurement methods. In response, the Legislature has adopted several bills over the years to give explicit authority to use alternative methods, such as CMAR.
- 2) **Construction Manager At-Risk (CMAR).** According to the American Institute of Architects, “Construction management at-risk is a process that allows the client of a project to choose the CM (construction manager) before the design stage is complete. The CM is chosen based on qualifications, and then the entire operation is centralized under a single contract. The architect and CM work together in order to cultivate and assay the design. Then, the CM gives the client a guaranteed maximum price, and coordinates all subcontract work. The architect/engineer (A/E) is hired separately from the CM at-risk and the traditional client - A/E relationship is maintained. However, A/Es can generally perform the CM role, with various restrictions imposed based on state.

“Proponents have cited many advantages to construction management at-risk over traditional methods of procurement. These advantages are:

- a) Increases the speed of the project and can also strengthen coordination between the A/E and the CM;
- b) The client hires the CM based on qualifications, thus better ensuring a CM with a strong allegiance to the client, because their business relies on references and repeat work;
- c) CMs, A/Es, and the client all collaborate. This creates enhanced synergies throughout the process; and,
- d) Transparency is enhanced, because all costs and fees are in the open, which diminishes adversarial relationships between components working on the project, while at the same time eliminating bid shopping.”

SB 328 (Knight), Chapter 517, Statutes of 2013, authorized counties to use CMAR contracts for projects exceeding \$1 million, using low bid or best value to award these contracts. SB 328 contained a sunset date of January 1, 2018, which was extended to January 1, 2023, via AB 851 (Caballero and Gloria), Chapter 821, Statutes of 2017.

- 3) **Bill Summary and Author’s Statement.** This bill eliminates the sunset date of January 1, 2023, from existing law authorizing counties to enter into CMAR contracts, and makes a technical correction to these statutes. This bill is sponsored by the California State Association of Counties.

According to the author, “This bill gives counties the flexibility to build projects they need in the most efficient manner possible. Extending this authorization will preserve a tool for counties to deliver-fiscally responsible public infrastructure projects, ensure high-quality construction at a guaranteed maximum price, reduce public sector liability and ensure more timely completion of public works projects.”

- 4) **Previous Legislation.** SB 914 (Dodd), Chapter 108, Statutes of 2018, expanded the types of projects counties can deliver using the CMAR contracting method.

AB 851 (Caballero and Gloria), Chapter 821, Statutes of 2017, extended the sunset date on the authority of counties to use CMAR contracting until January 1, 2023, and extended CMAR contracting authority to the City of San Diego for specified projects.

SB 328 (Knight), Chapter 517, Statutes of 2013, authorized, until January 1, 2018, counties to use CMAR contracts for projects in excess of \$1 million on county-owned or leased buildings.

- 5) **Arguments in Support.** The California State Association of Counties, sponsor of this measure, writes, “Existing statute grants counties the authority to use Construction Manager at Risk (CMAR) contracts on any infrastructure owned or leased by the county, excluding roads, but including buildings, utility improvements associated with buildings, flood control, underground utility improvements, and bridges. Allowing CMAR for construction projects has already given counties the ability to make the most cost-effective and advantageous decision for individual public works projects, thereby stretching limited local funds and

improving on-time completion of complex projects. In the traditional ‘Design-Bid-Build’ method of construction procurement the design and contracting phases are sequential, with no direct collaboration process. For more complex projects, the early contractor involvement provided by CMAR is essential. AB 1932 would allow counties to continue using this authority indefinitely.”

6) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California State Association of Counties [SPONSOR]  
County of Santa Clara  
Rural County Representatives of California

**Opposition**

None on file

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