
Introduced by Senator Dodd
(Coauthor: Assembly Member Grayson)

January 22, 2018

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.