



## CEAC Administrative Committee Meeting

16<sup>th</sup> Annual CEAC Policy Conference

Thursday, September 16, 2021|11:00 am – 12:15 pm

Join Zoom Meeting

<https://us02web.zoom.us/j/86386227832?pwd=WGdUTnpuTWZ2VnV6SDRpMUFPZGE5UT09>

Meeting ID: 863 8622 7832

Passcode: CEAC2021

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### AGENDA

Chair, Brian Balbas, Contra Costa County  
Vice Chair, Mark Pestrella, Los Angeles County  
Vice Chair, Phil Doudar, Los Angeles County  
Vice Chair, Tom Mattson, Humboldt County

- 11:00 am I. **Welcome and Opening Remarks**  
*Chair, Brian Balbas, Contra Costa County*
- 11:05 am II. **Construction Manager at Risk (CMAR) Legislative Proposal – Action Item**  
*Francisco Barajas, Legislative Manager, Orange County Public Works*  
*Chris Lee, Legislative Representative, CSAC*  
Attachment One: CMAR Legislative Proposal
- 11:15 am III. **Continued COVID-19 Response – Roundtable**  
*Chair, Brian Balbas, Contra Costa County*
- 11:40 am IV. **CARB Fleet Regulations – ZEV Regulations**  
*Chair, Brian Balbas, Contra Costa County*
- 12:00 pm V. **General Roundtable**  
*Chair, Brian Balbas, Contra Costa County*  
*Vice Chair, Phil Doudar, Los Angeles County*  
*Vice Chair, Tom Mattson, Humboldt County*
- 12:15 pm VI. **Closing Comments and Adjournment**

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#### Zoom call-in instructions:

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One tap mobile

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**LIST OF ATTACHMENTS**

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**Construction Manager at Risk (CMAR) Legislative Proposal – Action Item**

Attachment One.....CMAR Legislative Proposal

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**Attachment One**  
CMAR Legislative Proposal



## County Engineers Association of California **LEGISLATIVE PROPOSAL ACTION REQUEST FORM**

Please return this form by COB Friday, August 13, 2021

In order for your proposal to be considered, please respond to ***all*** questions included in this form. Proposals must be submitted to CEAC through your Public Works Director or Department Head. Please submit this form to Marina Espinoza at [mespinoza@counties.org](mailto:mespinoza@counties.org).

Proposals will be referred to the appropriate policy committees and considered during the 2021 CEAC Policy Conference.

Contact Name: James Treadaway

County: Orange

Position: Public Works Director

Phone: (714) 667-9700

Email: james.treadaway@ocpw.ocgov.com

Brief Description of Legislative Proposal:

Prior to 2019, Section 20146 of the Public Contract Code (PCC) authorized counties to use CMAR for contracts exceeding \$1M for the erection, construction, alteration, repair, or improvement of any building owned or leased by the County. Passage of SB 914 (Dodd), a CSAC sponsored bill, expanded the PCC by authorizing a county, or dependent districts of counties, to use 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.

While SB 914 (Dodd, 2018) expanded the use of CMAR, it did not extend the sunset date. As such, for the county to continue using the authority, legislation would be needed to extend CMAR. The requested legislation would simply delete the existing sunset date to make the authority to use CMAR permanent.

## I. BACKGROUND INFORMATION

### A. Problem

- (1) What problem does the proposal address? Please share specific facts and examples to illustrate the problem.

In the traditional Design-Bid-Build (DBB) method of construction procurement; the design and contracting phases are sequential, with no direct collaboration process. For more complex projects, early contractor involvement is essential. The cost impact for OCPW to procure each individual board approved contract is approximately \$100,000. Allowing alternative delivery methods for construction projects gives counties the ability to make the most cost-effective and advantageous decision for a particular project.

Under the CMAR method, the CMAR entity acts as the general contractor during the construction phase and retains the responsibility for monitoring design changes under a guaranteed maximum price (GMP) contract. Thus, using the CMAR method for more complex projects facilitates the completion and delivery of horizontal public works construction projects efficiently and cost effectively.

Section 20146 of the Public Contract Code (PCC), which grants the authority for the use of Construction Manager At Risk (CMAR) to counties, is set to expire on January 1, 2023 per subsection (h):

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

As such, legislation is needed to extend the authority.

- (2) Does the proposal address a problem of statewide significance? Give specific facts and examples, which demonstrate a statewide need for the proposal.

Yes. PCC 20146 allows all counties in the state to use CMAR.

- (3) Have counties been involved in any litigation regarding this problem? If so, cite the case.

We have not seen any litigation involving PCC 20146.

- (4) What other source materials, case law, or data, document the existence of the problem (e.g. periodicals, government agency reports, private studies, law review articles, newspaper articles)?

**B. Interested Parties**

- (1) What counties, organizations or individuals are interested in the problem?

Orange County Public Works (OCPW)

- (2) What counties, organizations or individuals would be sources of information about the problem?

Orange County Public Works, CSAC

- (3) Who would be likely to support/oppose the proposal? Why?

Counties would be supportive of this legislation. It is a local government efficiency and cost savings tool that provides counties with more options to deliver projects.

- (4) Identify groups or other governmental agencies that could be affected by the proposal, either favorably or adversely? Please Discuss.

As written, the authority can be used by counties and public entities with approval from their governing boards. We do not foresee any groups being adversely affected by this proposal.

Several bills, in addition to SB 914 (Dodd, 2018), have shaped the authority into its current form, during which negotiations were had with affected parties, including SB 328 (Knight, 2013) and AB 851 (Caballero, 2017). This proposal does not seek to make any alterations to the authority beyond extending it.

**II. PROPOSAL**

**A. Existing Law**

- (1) What are the statutory provisions currently applicable to the proposal?

Current code (PCC 20146 of Chapter 1 of Part 3 of Division 2, Article 3.5 Counties) allows for counties or public entities to use the CMAR authority with approval from their governing boards.

The code allows counties to use CMAR for contracts exceeding \$1M for the erection, construction, alteration, repair, or improvement of any infrastructure, excluding roads, and including, but not limited to, buildings, utility improvements associated with buildings, flood control and underground utility improvements, and bridges, owned or leased by the county.

- (2) What case law is relevant to this issue? Please summarize and cite.

PCC 20146 of Chapter 1 of Part 3 of Division 2, Article 3.5 Counties.

- (3) Why is existing law inadequate to deal with the problem?

Subsection (h) states:

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

Legislation is needed to extend the authority.

## **B. Suggested Legislation**

(1) Describe the specific bill proposal.

We are seeking to have subsection (h) deleted, making PCC 20146 permanent.

(2) Do similar provisions exist in other California laws?

- PCC 20175 of Chapter 1 of Part 3 of Division 2, Article 4. Cities.
  - This section extends the CMAR authority solely to the city of San Diego for projects in the city in excess of \$25M. It too expires on January 1, 2023.
- PCC 20928.1 of Chapter 1 of part 3 of Division 2, Article 60.6. Surface Storage Projects.
  - This section allows for a surface storage project identified in the CaLFED Bay-Delta Program Record of Decision, dated August 28, 2000, to use CMAR, DB, and DBO.

(3) Describe a hypothetical application of the proposal

OCPW has used the CMAR authority to deliver several flood channel projects. See Attachment A for list of projects and project summaries.

## **C. Fiscal Impact**

(1) Would there be any potential fiscal impact on counties under the proposal? If so, describe.

The ability for counties to continue to use the CMAR method for construction would allow for procurement, construction, and delivering of the project earlier and for less cost than comparable DBB projects in certain situations.

(2) Would there be any potential financial impact on other persons or organizations, public or private?

Other public entities, as identified in PCC 20146, would equally continue to benefit.

## **D. History**

- (1) Has this proposal ever been introduced in the Legislature? If so, what was the bill number and why did it fail?

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.

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.

SB 914 (Dodd, 2018) expanded the authority to use the CMAR method for all infrastructure projects, with the exception of roads, over \$1M.

This will be the first time the specific proposal is brought forward to eliminate the expiration date.

- (2) Is judicial or executive branch resolution of the problem possible? Explain.

Unknown.

#### **E. Public Policy**

- (1) What are the public policy reasons in support of this proposal? Against?

Allowing alternative delivery methods for construction projects gives counties and other public agencies the ability to make the most cost-effective and advantageous decision for a particular project.

Under the CMAR method, the CMAR entity acts as the general contractor during the construction phase and retains the responsibility for monitoring design changes under a guaranteed maximum price (GMP) contract. Thus, using the CMAR method for more complex projects facilitates the completion and delivery of horizontal public works construction projects efficiently and cost effectively.

- (2) Would any related public policy be affected by this proposal? If so, describe.

Besides PCC Section 20146, no other codes would be affected.