


CM at Risk Under
M.G.L. c. 149A

Legal Requirements
and
Practical Issues



Office of the Inspector General
Commonwealth of Massachusetts
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Excellence in Public Procurement

Introduction

- History of CM procurement
- Separate interests
- CM-R is not right for every project and every public owner

CM-R Advantages

- Select a CM/GC with emphasis on qualifications
- CM/GC brings expertise to planning and design
- CM/GC participates in trade contractor prequalification
- Can "fast track" for earlier project completion
- Enables collaboration throughout project

CM-R Risks

- Select CM/GC without a complete design
- Contract with CM/GC without a bid price
- Potential confusion about GMP
- New in Massachusetts – limited experience of public agencies, limited pool of experienced OPMS, architects, CM/GC firms, subcontractors

Strategy to minimize CM-R risks and realize benefits

- Strong and effective
 - Organization
 - Contractor selection and contracting
 - Project management

Organize for success

- Plan
 - Don't assume traditional organization, roles, and responsibilities are best
 - Go with your "A" team
 - Set clear roles and responsibilities
 - Owner
 - Architect
 - CM/GC

Contract for success

Architect

- Selection
 - CM-R experience
 - Ability to collaborate while maintaining independence
- Contract
 - Duty to work with CM/GC
 - Responsibility for multiple bid packages

Contract for success

CM/GC Selection

- Prequalify only good firms
- Require proven track record, on time, on budget
- Accurately convey scope, intent, and major contract terms in RFP
- Emphasize staff experience and expertise
- Confirm agreement on scope, intent, and major contract terms

CM-R GMP

- Fees
 - Preconstruction
 - Construction
 - + General Conditions
 - + Cost of Work
 - + CM/GC's Contingency
-
- = Guaranteed Maximum Price (GMP)

Example: \$50M high school project

Preconstruction Fee

- Compensated Like Professional Services
- Lump Sum
- Hourly Rate With Not-to-Exceed Limit
- Reasonable Value: \$250,000-\$300,000

Example: \$50M high school project

Construction Fee

- Lump Sum
- Percentage of Direct Cost of the Work plus General Conditions Cost
- Reasonable Value: \$800,000-\$1,600,000 (2%-4%)

Example: \$50M high school project

General Conditions

- Lump Sum
- Percentage of Direct Cost of the Work
- Reasonable Value: \$2,400,000 - \$3,200,000 (6%-8%)

Example: \$50M high school project

Direct Cost of the Work

- Based on Subcontract Bids or Estimates
- Reasonable Value: \$40,000,000

Example: \$50M high school project

CM/GC's Contingency

- Lump Sum
- Reasonable Value: \$1,200,000-\$2,000,000 (3%-5%)

Example: \$50M high school project

Owner's Contingency

- Lump Sum
- Covers Owner-Directed Scope Changes and Unforeseen Conditions
- When Used, Dollar Amounts are Added to the GMP
- Reasonable Value: \$2,000,000-\$4,000,000 (5%-10%)

Example: \$50M high school project

Project Budget	
Preconstruction Fee	\$ 300,000
Construction Fee	1,600,000
General Conditions	3,200,000
Direct Cost of the Work	40,000,000
Contractor's Contingency	2,000,000
Guaranteed Maximum Price	\$47,100,000
Owner's Contingency	4,000,000
Total	\$51,100,000

Example: \$50M high school project

CM/GC's Contingency	
Original Value	\$2,000,000
Less:	
Correction of Defective Work	(1,000,000)
Insurance Deductibles	(50,000)
Total Use of Contingency	(\$1,050,000)
Retained by Owner	\$ 950,000

Example: \$50M high school project

Owner's Contingency	
Original Value	\$4,000,000
Less:	
Scope Changes	(2,000,000)
Unforeseen Conditions	(1,500,000)
Added to GMP	(\$3,500,000)
Retained by Owner	\$ 500,000

Contract for success

CM/GC Contract Decisions

- When to set GMP
- Structuring fees and general conditions
- Limits on CM/GC-performed work

Contract for success

Trade Contracts and Subcontracts

- Selection
 - Foster competition
 - Prequalify only good firms
 - Issue - CM/GC performing trade work
- Contract
 - Lowest qualified bidder
 - Contract is with the CM/GC - NOT the owner

Manage for success

Unique challenges of CM-R

- Know your contracts
- Promote collaboration
- Negotiate the GMP
- Monitor progress and authorize payments
- Authorize changes and uses of contingencies
- Audit project close-out
