

The Construction Management at Risk Process (2006)

TERMS & ABBREVIATIONS

CM = construction manager (either at-risk or agent)
CMAR = construction manager at risk
GMP = guaranteed maximum price
GC = general contractor
CSP = competitive sealed proposal
AE = architect / engineer
AIA = American Institute of Architects
SF = square feet

THE VALUE OF CMAR

Many construction managers promote the benefit of their services in terms of cost savings. That is not necessarily the case, but is more likely if the CM has a broad following with the various trades & aggressively bids the project. The real value that I see in CMAR is in integrating the construction team into the design process. Their advice in matters of constructability, design review, budget & schedule is invaluable. Fromberg Associates has accumulated many of the ideas that CM's have brought to the table & incorporate those into our subsequent designs.

CMAR also allows high degree flexibility to the school district. First-built & long lead items may be bid early in the process, even before the construction documents are completed. I suggest early bidding for sitework, subgrade plumbing, foundation, metal building & structural steel. The district may also exercise some control over which subcontractors are used.

The negatives that I have experienced with CMAR mainly involve incomplete preconstruction services & guaranteed maximum prices that turn out not to be "guaranteed". Some CM's do not understand their contractual responsibilities & by habit end up acting like GC's. These issues can be resolved through proper contract enforcement.

Inherent in the process is the CM's far increased familiarity with the construction documents. The GMP amount provides for continued development of the design, to include all work as is "consistent with the contract documents & reasonably inferable therefrom." Any work not covered by a budget line item must be included in the contingency amount, unless it is added scope approved by the Owner & Architect.

I have found that the delivery method does not affect project success as much as the individuals involved. CM's just like architects should be selected based upon their qualifications, experience, integrity & "fit" with a particular school project. The results should be a cohesive & mutually respectful team, which is focused on the very best outcome for the school district.

PUBLIC NOTICE REQUIREMENTS

Below are the legal requirements for CMAR advertisement & suggested language for the ad. This will need to run twice (*once a week for at least two weeks before the deadline for receiving proposals*) in a "local paper" (*in the county in which the district's central administrative office is located*); please note the dates in the latest schedule that is attached.

"Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications; except that on contracts involving less than \$25,000, the advertising may be limited to two successive issues of any newspaper published in the county in which the district's central administrative office is located, and if there is not a newspaper in that county, the

advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located."

EXAMPLE SELECTION CRITERIA

ITEM	MAX SCORE
Responsiveness of Submittal	5
Reputation/ References	15
Company's experience & past performance	20
Experience in public school construction	
Experience in projects of similar scope	
Project history (completion, cost control, safety record)	
History of litigation or bankruptcy	
Proposed personnel and methodology	10
Staff qualifications	
Proposed subcontractors	
Understanding of project/ project approach	
Suitability of the Company's services	10
Current work load	
Stability/ years in business	
Proximity to site	
Size of this project to past work	
Past relationship with the Owner & Design Team	10
Proposed Fee	20
<i>(Short list determined from above & finalists proceed to interview)</i>	
Interview	10
TOTAL	100

CMAR PRECONSTRUCTION CONTRACT REQUIREMENTS (AIA Owner/ CM Agreement)

1. Provide a preliminary evaluation of the Owner's program and Project budget requirements. (2.1.1)
2. With the Architect, jointly schedule and attend regular meetings with the Owner and Architect. (2.1.2)
3. Consult with the Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. (2.1.2)
4. Provide recommendations on construction feasibility, time requirements for procurement, installation and construction completion and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economics. (2.1.2)
5. Prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. (2.1.3)
6. Obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. (2.1.3)
7. Coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect, and Construction Manager. (2.1.3)
8. Update schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information. (2.1.3)

9. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations. (2.1.3)
10. Make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction. (2.1.4)
11. Prepare for the review of the Architect and approval of the Owner a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques. (2.1.5.1)
12. When Schematic Design Documents have been prepared, prepare for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data; update and refine this estimate at appropriate intervals. (2.1.5.2)
13. When Design Documents have been prepared, prepare a detailed estimate with supporting data; update and refine this estimate at appropriate intervals. (2.1.5.3)
14. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations. (2.1.5.4)
15. Seek to develop subcontractor interest in the Project and furnish to the Owner and Architect for their information a list of possible subcontractors. (2.1.6)
16. Recommend to the Owner and Architect a schedule for procurement of long-lead time items and expedite the delivery of long-lead time items. (2.1.7)
17. When the Drawings and Specifications are sufficiently complete, propose a Guaranteed Maximum Price. (2.2.1)
18. Provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications. (2.2.2)
19. Include with the Guaranteed Maximum Price proposal a written statement of its basis. (2.2.4)
20. Meet with the Owner and Architect to review the Guaranteed Maximum Price. (2.2.5)

THE LAW

§ 44.038. Contracts for Facilities: Construction Manager-At-Risk

(a) A school district may use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a construction manager-at-risk, a district shall follow the procedures prescribed by this section.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the school district regarding construction during and after the design of the facility.

(c) Before or concurrently with selecting a construction manager-at-risk, the district shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as applicable. If the engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The district's engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the construction manager-at-risk.

(d) The district shall provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by

the district. The district shall select those services for which it contracts in accordance with Section 2254.004, Government Code.

(e) The district shall select the construction manager-at-risk in either a one-step or two-step process. The district shall prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, estimated budget, and the time and place for receipt of proposals or qualifications, as applicable, a statement as to whether the selection process is a one-step or two-step process, and other information that may assist the district in its selection of a construction manager-at-risk. The district shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the district may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, the district may not request fees or prices in step one. In step two, the district may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

(f) At each step, the district shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the district shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Within 45 days after the date of opening the proposals, the district shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

(g) The district shall select the offeror that submits the proposal that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate with the selected offeror a contract. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(h) A construction manager-at-risk shall publicly advertise, in accordance with Section 44.031(g), and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the district determines that the construction manager-at-risk's bid or proposal provides the best value for the district.

(i) The construction manager-at-risk and the district or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or district. All bids or proposals shall be made public after the award of the contract or within seven days after the date of final selection of bids or proposals, whichever is later.

(j) If the construction manager-at-risk reviews, evaluates, and recommends to the district a bid or proposal from a trade contractor or subcontractor but the district requires another bid or proposal to be accepted, the district shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the district's requirement that another bid or proposal be accepted.

(k) If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

(l) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the district must each be in an amount equal to the project budget, as specified in the request for qualifications. The construction manager shall deliver the bonds not later than the

10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the district to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Added by Acts 1997, 75th Leg., ch. 1179, § 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1225, § 8, eff. Sept. 1, 1999.