

RISK VS CONFLICT OF INTEREST – WHAT EVERY OWNER SHOULD CONSIDER WHEN USING CONSTRUCTION MANAGEMENT

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ABSTRACT

An especially savvy owner once said that he views each of the words and phrases in a CM contract as little “switches” that shift risk one way or the other, to the owner or to the CM. Each contract negotiation results in a mix of new, deleted and adjusted contract language that defines specifically how risk is allocated and to whom for that one project. No two contract negotiations and the resulting contract language and risk equation are the same.

Owners need to understand that shifting risk to the CM creates the potential for conflict of interest between the parties. Typically, the more risk, the greater potential for conflict of interest, and the more attention the owner needs to pay to the CM's actions.

Often these risk shifts are of themselves small and incremental as the language is negotiated. But the final contract can be a significant departure from where the parties started out. Owners can find themselves in a contractual relationship that they didn't envision at the start and they need to recognize these incremental shifts along the way.

This paper looks at a number of “milestones” along that path of increasing risk and potential conflict of interest. Understanding these points will help owners better understand the entire spectrum of risk vs. conflict of interest and other incremental points between the milestones. With this better understanding, owners should be better able to place their CM at the point along that spectrum that best suits each specific project.

BACKGROUND

For millennia, design and construction was handled by one entity, commonly known as the Master Builder. Master Builders had to deliver, essentially, a defect free project. They worked on it until they got it right.

Around the middle of the 19th century that began to change. Architecture emerged as a profession separate from construction. Design was seen as a service, and a building as a product.¹

¹ The concept of professional architects with academic qualifications developed during the 19th century. Architecture courses began at The Ecole des Beaux-Arts in Paris in 1819; the Architectural Association in London in 1847; the Massachusetts Institute of Technology in 1868, Cornell University in 1871, and the University of Illinois

Additionally, buildings went from simple structures of iron, stone and glass to assemblies of steel, reinforced concrete, plumbing and electrical systems. And technical complexity increased decade by decade. Contractors became specialists in specific building systems and the Master Builder approach was fragmented into thousands of pieces.²

As buildings became more complex, general contractors who traditionally self-performed most of the work found themselves sub-contracting more and more of the construction to these specialty contractors. During the bidding process they essentially became brokers, responsible for assembling a price. During construction they managed their sub-contractors and sometimes self-performed a small portion of the work.

At the same time, during the 1960's and 1970's, design professionals began backing away from responsibilities during the construction process. Liability concerns were riving up their insurance costs and making some services uninsurable. Their involvement on the job site shifted from "hands-on" with the contractor in the 1950's to "hands-off" in the 1970's. In the 1970's and 1980's, the construction industry often interchanged the expressions "construction supervision", "construction administration", "construction observation" and "construction-related services."

Around the same time, owners were experiencing chronic problems with their projects. Projects were typically over budget and behind schedule in a time of high inflation.³ Bidding competition became tougher and margins were squeezed. To successfully assemble a low bid, contractors had to take advantage of every missing item in the documents and every potential claim to be "read low" on bid day. If they included extra dollars for work not shown on the documents, but obviously necessary to complete the project, odds were they wouldn't get the job. The result was that during construction, contractors had to make claims for *any* work not shown or implied on the documents, but necessary to complete the project. Otherwise the contractor would not come out whole at the end of the project.

So the architect, the owner's traditional advocate and agent, was backing away from the construction process. At the same time the contractor, in a business relationship that places him at high risk, of necessity joined into an increasingly adversarial relationship with the owner. With the increased risk of low bid contracting came increased conflict between the contractor and the owner.

At about the same time, the Construction Management (CM) profession emerged. It began spontaneously and independently in different parts of the country, largely in response to

in 1873. The State of Illinois passed the first licensing law for architects in 1897. Great Britain didn't follow until 1931. Microsoft Bookshelf 98 names Charles Bulfinch (1763-1844) as the first American-born professional architect.

² "Construction Management-A Professional Approach." Kavanaugh, Muller, O'Brien. McGraw Hill 1978. p. 21.

³ The Business Roundtable, in its 1983 report "Cost Effectiveness in the Construction Industry" stated: "...by common consensus and every available measure, the United States no longer gets its money's worth in construction..."

these market conditions.⁴ Because of inflation, Owners needed to accelerate their projects, requiring bidding the project in phases to separate contractors. This required an entity to coordinate the work of those contractors. Additionally, owners were looking for an advocate on the construction side of the table. Construction Management placed the construction entity on the owner's side of the table with minimal conflict of interest.

As an agent of the owner, the CM was responsible for managing the individual trade contractors in the owner's best interest. The CM essentially replaced the general contractor/broker by competitively bidding all of the construction work at the trade contractor level. Contractors who had been sub-contractors to general contractors now became prime contractors to the owner, coordinated by the Construction Manager. This process was commonly known as Pure Agency – Multi-Prime Construction Management.

EVOLUTION OF CM SERVICE

This CM process was widely used in the private sector and also applied to the public sector, most notably on K-12 projects. The Construction Manager was selected on the basis of qualifications and the fee was negotiated; the same process was used to select architects/engineers. The CM bidding process satisfied the competitive bid requirements of public procurement by publicly bidding all the construction work at the trade contractor level.

This process was largely successful. Owners reaped the benefits of having the construction entity on their side of the table, managing and coordinating the trade contractors in their best interest with minimal conflict of interest. But some owners felt that placing the Construction Manager at some type of financial risk would help insure top performance on the project and better results. This approach can have benefits, but owners also need to understand that, as they place risk upon a Construction Manager, they push the CM away from their side of the table. This is a cause/effect relationship.

The Construction Management Association of America (CMAA) understood this concept. CMAA wrote their initial Guidelines for CM Practice (Standards) around Pure Agency Construction Management services, with the CM in the professional services relationship with the owner. This approach created the least conflict of interest between the owner and the CM, and was the most owner-oriented approach to Construction Management, and was used as a foundation for the Standards.

CMAA later added a Guaranteed Maximum Price (GMP) CM commentary to the Standards.⁵ This addresses the potential for conflict of interest that enters the Owner/CM relationship when the Construction Manager takes on some risk. It also advises on how to

⁴ "The CM Contracting System-Fundamentals & Practices." C. Edwin Haltenhoff. Chapter 3. p. 1. Prentice Hall, Inc. 1998.

⁵ Construction Management Association of America, Inc. "Standard CM Services and Practice." 1993.

mitigate that risk. GMP CM is also commonly referred to as "At-Risk" CM. A copy of the GMP CM commentary is contained at the end of the paper.

INCREMENTAL EFFECTS OF RISK SHIFT ON THE OWNER/CM RELATIONSHIP

Following is a discussion of CM contractual relationships from pure agency to various forms of At-Risk CM. It should help owners decide what steps to take to protect their interests as they add more risk to the Construction Manager's contract. The approach is incremental, starting with the most owner-friendly forms of CM:

Diagram Conventions:

A solid line between boxes indicates a line of contractual responsibility and a line of communication. A dashed line indicates a line of communication, only.

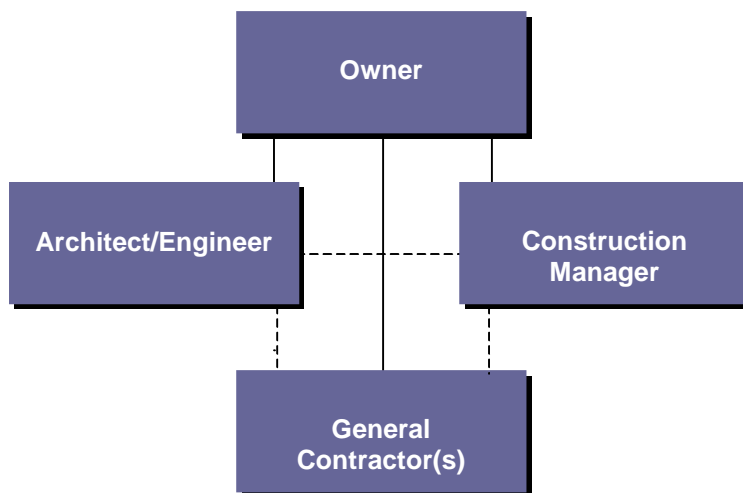
1. Pure Agency Construction Management with General Contracting and Hourly CM Fee

The Construction Manager works for the owner, managing a general contractor or several contractors. The CM works on an hourly basis, applying the hours needed for the level of service required. He typically works against a budget for his fees. The CM is responsible on a professional services basis to provide advice, guidance and counsel to the owner within the current standard of care for Construction Management practice.

The CM essentially has no cost risk, and gets paid for every hour he works at a rate which covers the CM's direct cost, overhead and agreed-to profit. The owner maintains full responsibility for the execution of the project, with the exception of any problems caused by the Construction Manager's negligence. The CM's performance risk is one of negligence, and should be covered by a combination of professional liability insurance and the assets of the firm.

The cost of the CM is offset by savings generated through cost and schedule management, value engineering, and helping the owner with good management practices throughout the planning, design and construction of the project.

Pure Agency CM with General Contracting and Hourly CM Fee



Advantages

1. CM reimbursed for every hour worked, within a budget, so no incentive for CM to cut services to maximize profits.

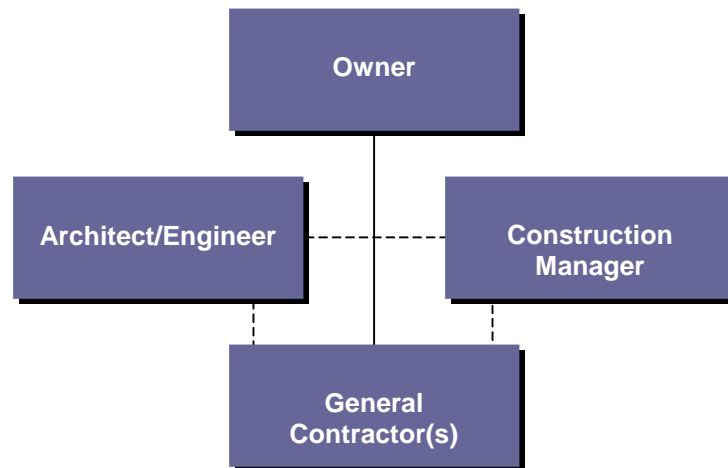
Disadvantages

1. CM may be tempted to work hours that are not needed to maximize fee.
2. CM and Owner need to carefully monitor CM's efforts vs. results.
3. Owner must litigate against CM to collect any damages for poor performance.

2. Pure Agency CM with General Contracting and a Lump Sum CM Fee

This is essentially the same as #1, above, with one exception. Rather than getting paid for every hour he works, the CM has a lump sum fee for defined services for the duration of the project. This places the Construction Manager at cost risk for his fee, but no more. The owner benefits, as the Construction Manager has a contractual cap on fees, based on a defined scope of services. But the CM may be tempted to provide less service than what was contracted for to increase profits. This requires some diligence on the part of the owner, similar to what the owner would apply in managing his architect under a lump-sum fee arrangement.

Pure Agency CM with General Contracting and a Lump Sum CM Fee



Advantages

1. CM committed to provide defined services and results for a lump sum fee.
2. Requires thorough definition of results expected from CM's efforts and services required to attain such results prior to signing CM contract.

Disadvantages

1. CM may maximize profits by cutting corners on services at risk of not obtaining expected results.
2. Owner must litigate against CM to collect any damages.

3. Pure Agency CM with Phased Construction

In this scenario the owner bids the work to multiple contractors to meet a tight schedule. Site work will be bid before the building design is complete, and foundations may be bid before the building interior design is finished. There can be up to five or more separate construction contracts such as site work, site utilities, foundations, base building and interiors.

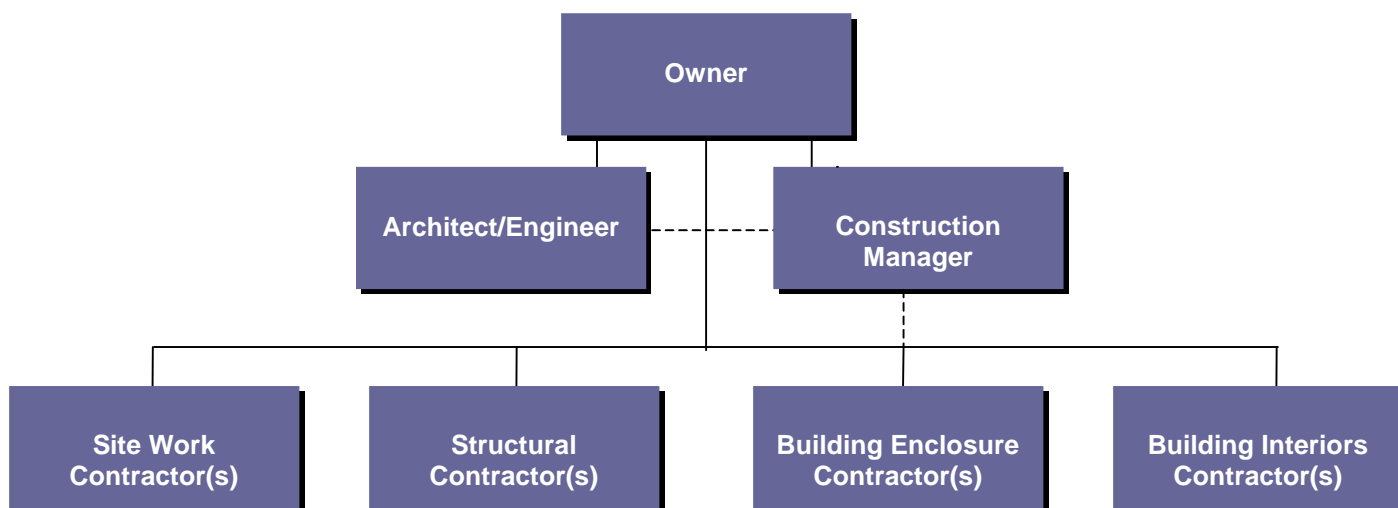
The Construction Manager takes on more risk and responsibility. The CM defines the interfaces between contractors and manages and coordinates the individual contractors to meet the owner's cost, schedule and quality requirements. This additional responsibility brings some added risk to the CM due to his coordination of separate contractors working on the same building. Poor coordination can cause delays and claims. But this is performance risk tied to delivery of professional management services. It does not place the CM at additional conflict of interest with

the owner, as the individual contractors are still responsible for the execution of the construction.

The CM's contractual responsibility to the owner remains in the agency category. While the increased responsibilities place greater duties upon the Construction Manager, the CM still serves as an agent to the owner and is on the owner's side of the table.

If the project is delayed because of the Construction Manager's negligence in coordinating contractors, the owner would have a claim against the Construction Manager. The Construction Manager's additional risk is still covered by a combination of its assets and professional liability insurance.

Pure Agency CM with Phased Construction



Advantages

1. Saves time.
2. Saves money due to lack of General Contractor mark-ups.
3. No added potential conflict of interest between Owner and CM.

Disadvantages

1. Potential risk for poor coordination if CM fails to perform; mitigated by owner's ability to claim against CM.

4. Pure Agency CM – Multi-Prime

This approach takes the phased construction approach one more giant step. The construction work is bid at the trade contractor level (concrete, painting, steel, carpentry, dry-wall, carpet, etc.) and the owner holds each of the individual contracts. The Construction Manager is responsible to the owner for managing and coordinating the contracts to the owner's cost, schedule and quality requirements.

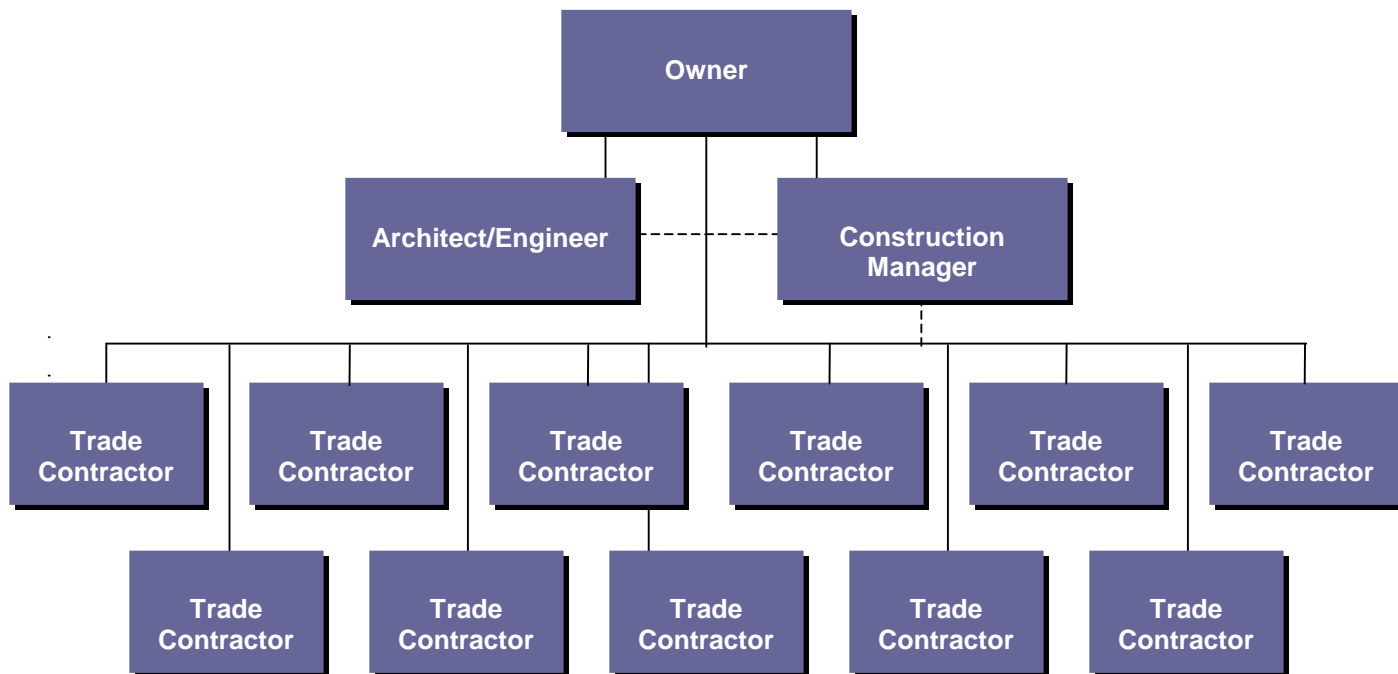
This is the classic form of Construction Management that emerged in the 1960's and 1970's. The CM is responsible for managing and coordinating the individual trade contractors, but remains on the owner's side of the table, still in an agency or professional services relationship.

The Construction Manager takes on a considerably increased performance risk. Interfacing and coordinating multiple contractors, sometimes thirty or more, requires heavy technical, managerial and leadership skills. This work is being done on behalf of the owner, so it places a high contractual duty upon the CM.

The Construction Manager still covers its performance risk with the combination of company assets and professional liability insurance, as above. Because of the high level of skill and experience required of the CM, owners need to be particularly diligent in selecting their Construction Manager.

In addition to the cost savings referenced above, the owner saves additional money through the efficiencies of procuring the entire project directly from the trade contractors and reduced exposure to claims and delays when the trade contractors are managed by a competent CM.

Pure Agency CM - Multi-Prime



Advantages

1. Saves time through phased construction.
2. Saves money through procuring construction at the trade contractor level and eliminating general contractor overhead and profit.
3. Reduced exposure to construction claims.
4. No added potential for conflict of interest between CM and Owner.

Disadvantages

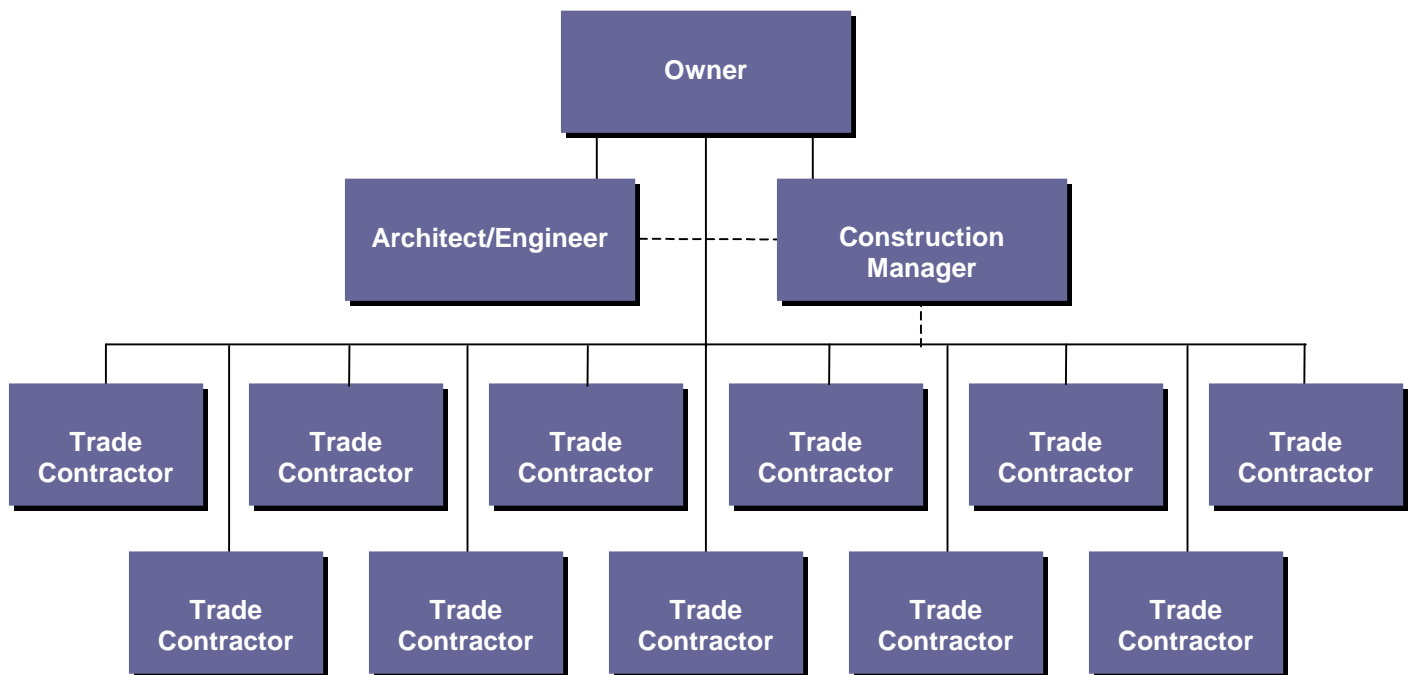
1. Potential risk of multiple contractor claims if CM fails to perform. Mitigated by owner's careful selection of CM and owner's ability to claim against CM.

5. Pure Agency CM – Multi-Prime with a “Soft” Cost Guarantee

This is the same approach as #4 above, with one additional wrinkle. The Construction Manager guarantees, by contract, that if the bids come in over budget, the Construction Manager will go through the re-packaging and re-bidding process to get the job within budget at no expense to the owner. Also, the CM either agrees to pay for re-design costs or the CM and the architect share in the expense of re-design and re-bidding.

The Construction Manager is still in a pure agency relationship, but its risk has been increased and tied directly to performance at one of the most visible times in the design and construction process – the bid opening. The Construction Manager is still in a professional services relationship with the owner and subject to performing to a standard of care. But the guarantee of bidding within budget provides added hard measurable criteria and an associated remedy to evaluate a critical component of the Construction Manager’s performance. And very little potential for conflict of interest has been added.

Pure Agency CM – Multi-Prime with a “Soft” Cost Guarantee



Additional Advantages over #4

1. Owner has stronger guarantee of bidding results with contractually-defined remedies.

Additional Disadvantages over #4

1. Owner must guard against CM being too conservative in estimating costs during the design phase.

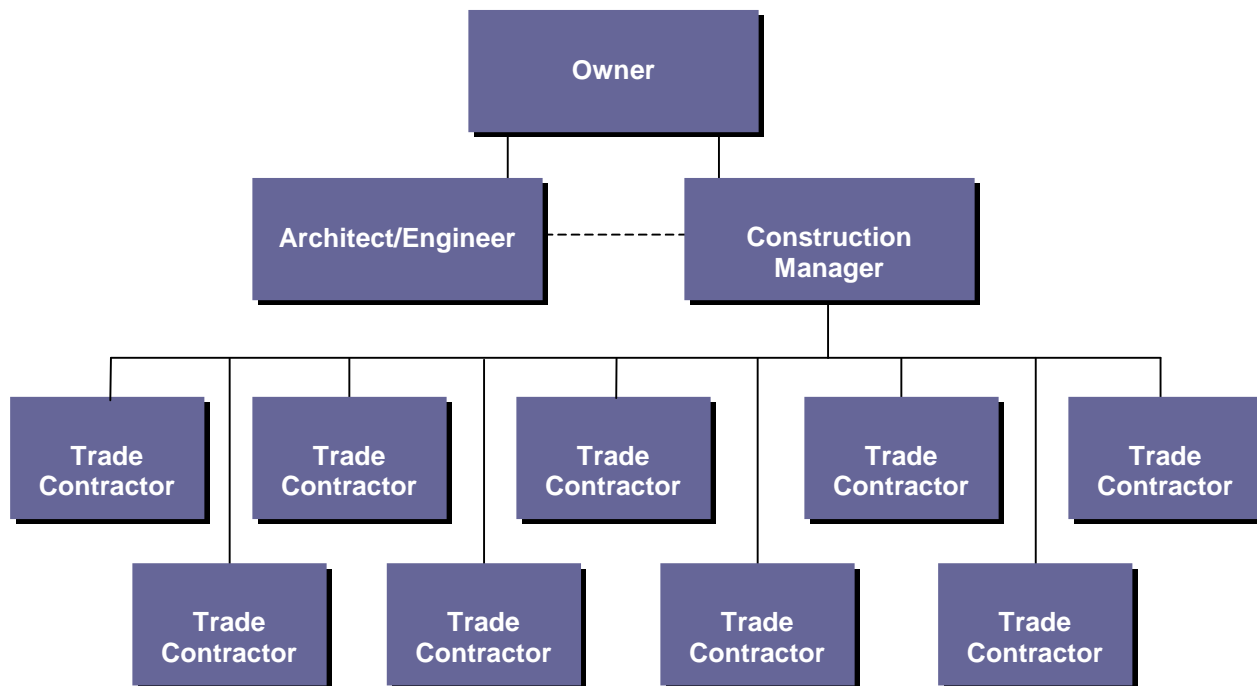
6. Pure Agency – Multi-Prime, CM Guarantees the Price at Bid Time, and Holds the Trade Contracts.

This is the same as Scenario #5 with the additional duty of the Construction Manager to hold the trade contracts. Trade contractors become sub-contractors to the Construction Manager.

This is often beneficial to an owner who does not want to hold multiple contracts, make multiple payments and hold multiple construction contracts. But there are some key points owners need to remember if they are to keep the Construction Manager focused on their interests:

- ❖ Owners must insist on privity of contract with the sub-contractors. They need to approve the sub-contract language, and see or be part of the sub-contractor payment process.
- ❖ All bidding of sub-contracts must be open to the owner. While the owner may work with the CM in pre-qualifying bidders, the CM needs to award to the lowest qualified bidder unless the owner agrees otherwise.
- ❖ The CM cannot have the opportunity to shop bids after bidding or to make any money on creating a difference between what the owner pays the CM for a sub-contract and what the CM pays that sub-contractor. This emphasizes the need for all transactions to be open to the owner.
- ❖ The Construction Manager still works for a straight fee or hourly rates. He does not have the opportunity to make money on change orders, buying out sub-contracts, etc. Eliminating this opportunity is critical to avoiding potential conflict of interest.
- ❖ Sub-contractors provide the performance and payment bonds, not the Construction Manager.

Pure Agency – Multi-Prime, CM Guarantees the Price at Bid Time, and Holds the Trade Contracts for the Owner’s Convenience



Additional Advantages Over #5

1. Claims between trade contractors and CM for coordination and associated delays are handled within CM’s contract. Owner does not need to get involved.

Additional Disadvantages over #5

1. CM may try to claim against Owner for some coordination or delay problems among trades to cover his coordination risk. Owner needs to be diligent in maintaining current access to, and knowledge of, the project record.

Up to this point, we have primarily kept the Construction Manager on the owner’s side of the table. We have added some risk, but not in an amount that should place the Construction Manager in significant conflict with the owner. The next step in this ascending risk staircase is a big one.

7. The CM Bonds the Project

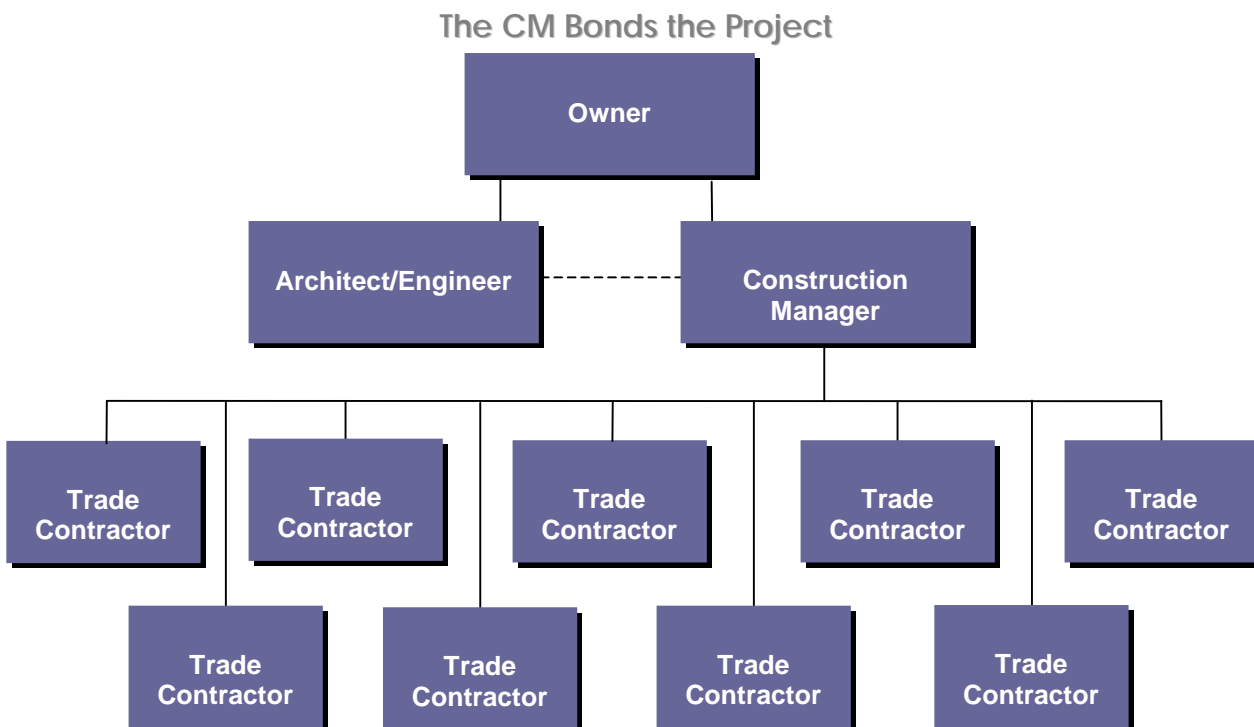
In this scenario, the Construction Manager provides bonds for the project. The trade contractors are also typically bonded. This places the assets of the CM firm, and the personal assets of the firm’s officers who are signatory to the bond, firmly at risk.

The owner can still require all the procedures of open bidding, open-book contract administration, privity of contract, etc., mentioned in Scenario 6 earlier, but the Construction Manager is now covering the construction risk with its own assets.

Typically, the potential for conflict of interest is not felt if the project is going well. The Construction Manager will look out for and further the owner's interests, but will also need to be looking for ways to mitigate the construction risk to its shareholders and officers. If the job starts to get into trouble, for any reason - incomplete plans, sub-contractor failure, bad weather, etc. - the Construction Manager will, out of business necessity, have to look out for its own interests.

Unlike the previous scenarios, one bad project can significantly reduce or eliminate the equity of the company and the personal assets of the officers. So the CM tends to look out for itself first, and the owner second.

This, like any of the approaches discussed, can be a good process for owners, depending upon their needs and the specifics of the project. The owner simply needs to be very aware of the change in business relationship once the Construction Manager bonds the project. Owners need to pay much more attention to looking out for their interests themselves, staying on top of the project, and managing their CM.



Additional Advantages Over #6

1. Extra bonding protection for Owner.

Additional Disadvantages over #6

1. CM becomes necessarily more protective of its assets; may become more secretive in its dealings with trade contractors.
2. Owner needs to increase its diligence in maintaining on-going access to the project records.
3. Owner pays for double bonding trade contracts and CM contract.
4. Significant potential for conflict of interest between the owner and the CM.
5. Regarding Guaranteed Maximum Prices

Owners can require a guaranteed price from their Construction Manager at virtually any point in the design and bidding process. Some require it at schematic design phase or earlier; others do not require it until the bids are in and sub-contractor prices are known.

Keep in mind that the earlier in the design process an owner requires a guaranteed maximum price, the more measures the Construction Manager needs to put in place to compensate for that additional risk. This often leads to a detailed appendix to the proposal that documents every qualification in the guaranteed maximum price. The CM basically has to define the design that has not been firmly set by the architect, and often qualifies or takes exception to some parts of the design that are already finished. Often, many, if not most, of the CM's qualifications and exceptions end up in the final contract. The CM can then control the rest of the design process based on that contract.

When a guaranteed price is provided early, the CM could potentially "hold back" some value engineering ideas or cost savings ideas to protect their guaranteed maximum price should the project bid over budget. If their price is not guaranteed until after bids are in, they can be much more free in sharing cost savings ideas during design phase and having those ideas incorporated into the documents. Realize that the best price for an item comes from having it competitively bid, not negotiating a change after bids are in.

LIQUIDATED DAMAGES

Liquidated damages add a significant amount of risk to whatever other risks an owner might put on a Construction Manager. Owners may feel this is an easy, perhaps "automatic" way to cause the Construction Manager to perform. But liquidated damages often result in the CM's having to develop strategies to mitigate liquidated damages, should they be incurred. Remember, the Construction Manager is in control of the project. The CM controls and documents the activities at the job site and how things are handled and scheduled on a day-to-day basis. Here is one example:

During shop drawing review the Construction Manager is typically responsible to *expedite* the shop drawing review process to prevent possible delays to the construction schedule. This means identifying critical shop drawings during design, making critical document submittal schedules clear to the contractors, expediting contractor submittals and expediting the architect's review and return of these documents.

But what does "expedite" mean? If the CM does not have liquidated damages, his contract requires he do whatever he can, within the professional standard of care, to expedite critical shop drawings. The CM will identify critical drawings, expedite submittals from the contractors, advise the architect when the drawings are coming and follow up with the architect to be sure that the drawings are being processed. The CM may go to the architect's office and verify that the work is being done and that there are no misunderstandings that could cause delays in approval of the shop drawings. In other words, the CM will do whatever it can to *prevent any delays*.

If the Construction Manager is required to potentially pay liquidated damages, its responsibility regarding schedule may be narrowed by the contractual requirement to pay liquidated damages should the project be late. When the CM is subject to liquidated damages, its risk management strategy will typically have the component of demonstrating delays caused by others. This can over-ride more positive strategies designed to get the job done "regardless".

In this scenario the CM will identify time-critical shop drawings, expedite them from the contractors, send them to the architect with a note that they are time-critical and give the date they need to be returned. But he may not necessarily go to the A/E's office to verify progress. The CM has essentially done his job without that extra effort. He has not gone the extra mile, but is arguably within the performance requirements of the contract. Then if the shop drawings are late, the CM has a direct cause for delay of the project tied to the architect's late review of the shop drawings. The contract completion date is extended and the CM's risk of being assessed liquidated damages is reduced.

Remember that the CM is the entity with the direct, daily knowledge of the job. There are many ways to get a job done on time, and odds are that the specific late shop drawing will not necessarily result in a late completion. But the CM is managing, updating and revising the schedule and can use it to make a case for delay.

So the CM's focus, out of business necessity, shifts toward documenting causes for delay that are applied as delay claims at the end of the project. The owner becomes embroiled in complicated claims and lawsuits at the end of the project trying to prove that the CM was not delayed, while the CM is trying to prove they *were* delayed and do not owe the owner liquidated damages. Meanwhile the project has finished late and has an on-going trail of controversy, expense and disappointment.

Therefore liquidated damages on CM contracts are counter-productive. They add considerable risk to the CM's contract and the CM needs to respond accordingly. The CM becomes the adversary, rather than the advocate of the owner.

CONCLUSION

It is the owner's choice whether to have the Construction Manager completely on his side of the table and expect a professional services relationship. The CM manages all the work strictly in the owner's interest and underwrites his performance with company assets and professional liability insurance. In that case, the owner needs to manage its risk by being diligent in selecting the Construction Manager on the basis of past performance, reputation and the capabilities and qualifications of the CM's office and field staff, and the level of professional liability insurance.

Or the owner can place a carefully considered amount of risk upon the Construction Manager. But increasing risk pushes the Construction Manager toward the other side of the table. In this case the owner will need to get more heavily involved in managing the project; how *much* more is directly proportional to the amount of risk placed upon the CM and the resultant potential for conflict of interest. The owner then will need to keep track of and manage the project more closely. He will need to be sure that the architect isn't causing delays, that the CM's guaranteed maximum price is not inflated, that sub-contracts are being handled properly, that sub-contractors are being paid and that he is not creating real or potential delays on the job site. And the amount of direct management required of the owner is directly proportional to the amount of risk placed upon the CM and the resultant potential for conflict of interest.

It must be an informed choice. The owner, finally, has the benefit of the project, and each project has its own bundle of risks that must be mitigated. The owner needs to make those fundamental decisions of shifting risk vs creating conflict of interest before the architect or CM are under contract.

The owner is not limiting its choice of CM firms with these risk strategies. There are many CM firms that are comfortable with and will do a good job in any of the risk environments described.

KEY WORDS: *Risk, Construction Management, Multi-Prime, Agency, CM Fee, Liquidated Damages*

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GMP/CM COMMENTARY

CMAA has established "Standard Guidelines for CM Services and Practice" ("Standards") based upon the Agency Form of Construction Management. This form of CM is clearly owner-oriented, placing the Construction Manager in the capacity of a fiduciary to the Owner. There are other forms and variations of Construction Management that are valid project delivery strategies, given certain requirements of individual projects.

For example, some Owners have need to establish a reliable and enforceable price for the construction project prior to the end of the design phase. When such an Owner-requirement exists, the Guaranteed Maximum Price/Construction Management (GMP/CM) approach is a valid project delivery strategy. This delivery strategy is also sometimes referred to as the "GC/CM" approach.

The Owner's decision to use the GMP/CM approach should be made as early as possible in the project. With this approach, the CM typically begins providing services as an Agent of the Owner. However, once the Guaranteed Maximum Price contract is executed, the CM is no longer providing a service for a fee but rather becomes an Independent Contractor, who is selling a product for a profit, i.e., the construction.

CMAA's goal is to provide Owners with a clear understanding of the services and level of fiduciary responsibility and advocacy they should expect to receive with any form of Construction Management. This GMP/CM commentary will assist in that endeavor by serving as a "modifier" to the Agency "Standards". The CM practitioner, by using the "Standards" and this Commentary, should seek to clarify the Owner's expectations regarding what the Owner gains and, potentially, gives away in putting the Construction Manager under a Guaranteed Maximum Price arrangement.

Prior to execution of a Guaranteed Maximum Price (GMP), the Construction Manager is essentially in a fiduciary role. Part of the CM's role in that capacity is to advise the Owner on what areas of project knowledge should be paid particular attention to early in the project, considering the potential for an independent contract relationship (with a reduced sense of fiduciary responsibility for the CM) after execution of the GMP. Such areas include:

- ❖ The Owner should establish the budget, or, if the Construction Manager establishes the budget, the Owner should do a close check of it to avoid inflation of the GMP.
- ❖ The Owner, the Construction Manager and the Design Professional should seek thorough and specific definition of project requirements prior to execution of the Guaranteed Maximum Price. The more completely the design is developed, the better. Regardless of the stage to which the design is completed when the GMP is established, the design documents should be clear, accurate, and properly coordinated.

- ❖ Once a GMP is established, the Construction Manager switches from a fiduciary to an independent contractor relationship with the Owner. The Construction Manager's fiduciary responsibility is now to the CM firm's own stockholders; the CM must make this fact clear to the Owner. The Owner can then decide on what level of vigilance and service will have to be provided by the Owner's staff, the Design Professionals, and other third parties to satisfy the Owner's fiduciary responsibility to its own organization. As an example, after the GMP has been established, some functions previously performed by the CM such as estimating the cost of a change in the work, would need to be performed by another party, and would merit the close attention of the Owner.

In summary, while still in a fiduciary relationship with the Owner, the CM presents a clear picture to the Owner on the changes in the focus of the CM's services and level of advocacy which occur when the GMP is signed. The Owner must understand that the CM's role will change from one of being the Owner's Agent, to being an Independent Contractor. The CM also advises the Owner on what other steps the Owner can take to help ensure that the Owner's project objectives will ultimately be satisfied upon completion of the project.