

CM at Risk for Public Building Projects
as part of the
Public Construction Reform Law
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Executive Summary

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AGC, ASM, BSA Agreements in Principal for Drafting CM at Risk Legislation:

- Agreement that a new system for all public agencies that allows a construction manager/general contractor to be secured soon after the designer to provide pre-construction services on scope, budget, drawings, constructability, and division of work, etc. will result in a better managed job, increased harmony, less change orders, etc.
- Agreement that Construction Management at Risk will be an alternative to, not a replacement of, the current public bidding process on appropriate public building projects
- Agreement that subcontractors should be pre-qualified and carry their own performance and payment bonds
- Agreement to allow CM at Risk for both state agencies and municipalities
- Agreement to utilize the 2002 DCAM Court House CM at Risk special legislation as a basis for a new CM at Risk bill
- Agreement not to address nor include design/build in proposed legislation
- Agreement to guarantee subcontractors the same/similar protections allowed under current Chapter 149

Project Applicability:

- A project will be authorized to use CM at Risk after receiving approval from the Inspector General
- Public Agency must submit an application to the Inspector General demonstrating it has the capacity to plan and manage the subject CM at Risk project, and has procedures in place for the procurement and administration of the CM process and that the project must have an estimated construction value over \$5 million.
- Public Agency must hire an "Owner's Project Manager (Owner's Rep./Program Manager) either as an outside firm or with in-house capability with applicable experience.
- DCAM, Massport, MWRA, UMass, and the State College Building Authority shall be exempt from the application process to the IG, but must conform to the

IG application requirements for their first CM project and then submit annually their detailed CM procurement and administration procedures to the IG for review and approval.

What Stays the Same:

- Public Agency continues to select the architect, as under the current system, who has complete control of the design.
- The CM at Risk is responsible for construction, and holds the contracts with the trade contractors.
- All trade contractors have access to the process. (they have the right to be considered for the RFQ - prequalification process.)
- The CM at Risk can be prequalified to self-perform a trade contract if they can demonstrate that they customarily perform the work.
- Trade contracts are awarded to the lowest bidders.
- Trade contractors enjoy the same contract and payment protections as under current law including the 2-page form of (Trade) subcontract, and direct payment rights.

What's New or Different and Why:

- Public Agency must engage an experienced Owner's Project Manager to serve as owner's representative and oversee the project to ensure efficient, timely and cost effective project delivery.
- CM at Risk comes on board at earlier stage (preconstruction) and works with designer up-front on design, scope, constructability, budget, division of work etc., which minimizes the opportunity for gaps in the documents that can lead to change orders, disputes and delays.
- CM at Risk is selected during a two-step RFQ – RFP process by a prequalification committee and a selection committee named by the public agency.
- Public agency must clearly spell out procedures to be followed in the prequalification and selection process and subsequent management of the project.
- Public Agency shall select a minimum of three firms to receive an RFP.
- Public Agency has more flexibility and discretion in selection of CM, however the RFP shall clearly spell out submission requirements including a separate price and technical merit component and other measurable criteria used in the ranking and selection.
- CM at Risk provides for a Guaranteed Maximum Price before the start of any construction work, (except in cases where the Public Agency executes a separate agreement to the contract with the CM at Risk detailing the scope of work selected to commence prior to the execution of the contract.) and is responsible for all cost overruns other than owner requested changes. The GMP shall be based on design documents that are no less developed than 60% Construction Documents. The GMP provides protection against cost increases, while also providing return of any cost savings. CM can participate in incentives.

- Trade Contractors in 44F trade categories and all other classes of work selected by the CM and Public Agency must be prequalified according to strict, fair and measurable criteria set forth in the legislation.
- CM at Risk and Trade Contractors must all provide payment and performance bonds, as an additional quality safeguard
- Trade Contractors where applicable certify that they will prequalify their sub subs. All other subcontractors will be selected by the CM and prequalified according to his own procedures.

Process at a Glance:

- Public Agency hires Owner's Project Manager or utilizes in-house professional with at least the same level of professional experience.
- Public Agency hires Designer.
- Public Agency decides to use CM at Risk, and gets approval of the Inspector General.
- Public Agency issues RFQ for CM at Risk.
- Public Agency sets up CM Prequalification Committee.
- Prequalification Committee evaluates responses to RFQ and selects at least three respondents to receive RFP.
- Public Agency issues RFP for CM at Risk, to prequalified CMs.
- Public Agency sets up CM Selection Committee (can be the same as the Prequalification Committee).
- Selection Committee evaluates and ranks proposers, and begins negotiations. starting with first-ranked proposer, which continue until reaching contract.
- CM at Risk works with Designer & Owner's Project Manager on preconstruction.
- CM and Public Agency negotiate a GMP before the start of any construction (in certain cases), at no less than 60% design. Public Agency has escape clause if unable to negotiate a GMP that lets them negotiate with the next ranked CM. If no agreement is reached with the second proposer, then the Public Agency must revert to Chapter 149, (but with a better set of plans).
- Public Agency issues Trade Contractor RFQ.
- Public Agency sets up Trade Contractor Prequalification Committee.
- Prequalification Committee evaluates responses to RFQ using strict criteria, and prequalifies all trade contractors with score of 70 or higher.
- Public Agency issues Request for Bid (RFB) to prequalified Trade Contractors. Bid packages include construction documents at 100% completion.
- Trade Contracts are awarded to lowest bidders. Trade Contract is essentially the same as in Ch. 149.
- Other subcontractors are prequalified and selected by the CM in a manner of his choosing.
- Construction of trade work begins.