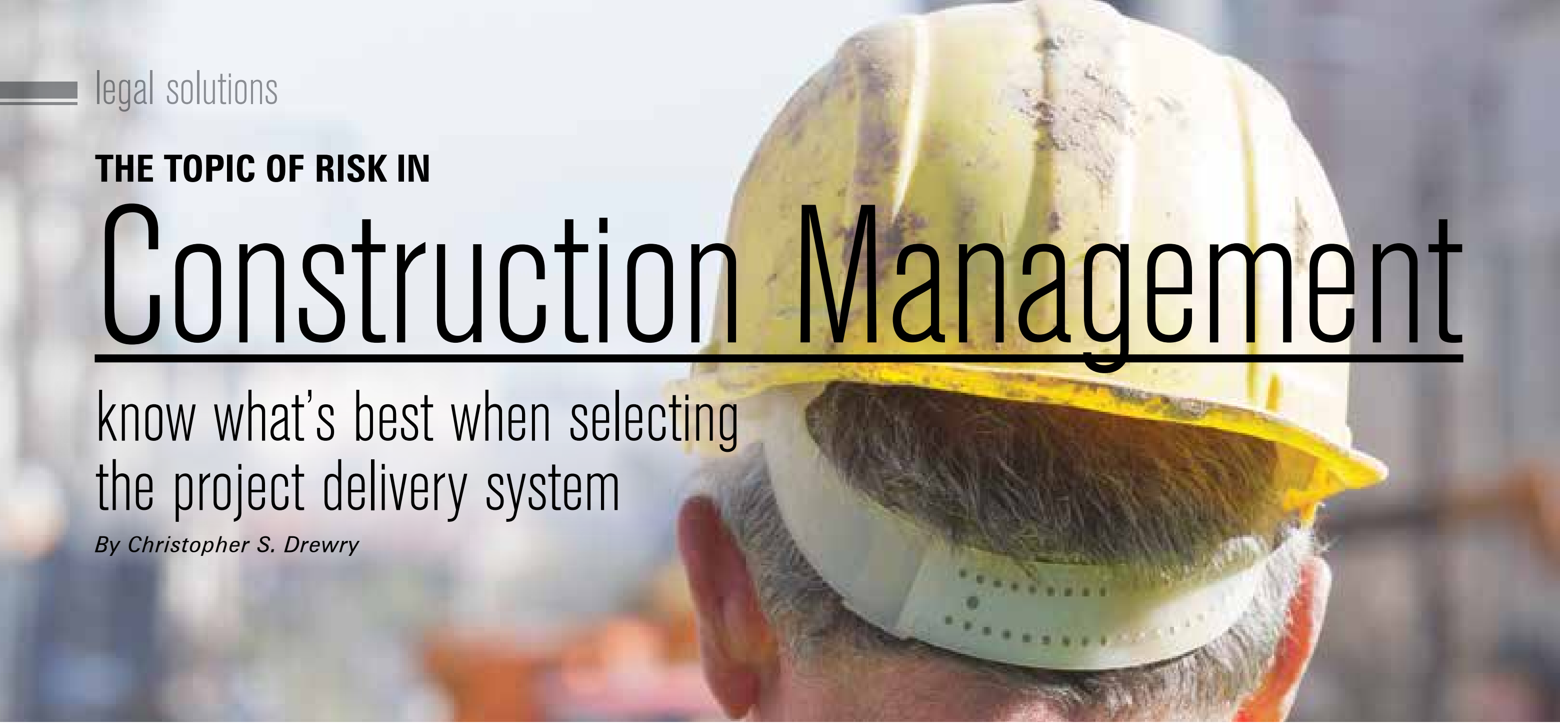

THE TOPIC OF RISK IN

# Construction Management

## know what's best when selecting the project delivery system

*By Christopher S. Drewry*

In today's construction industry there are multiple delivery methods for projects. Often the type of method a project owner will utilize depends on the nature and circumstances of each project, including time and budget. Types of project delivery systems that owners can use include the traditional design-bid-build model using a general contractor, design build, and construction management. The owner's chosen method may depend on its level of experience with construction, aversion to risk, the size and complexity of the project, and the amount of unforeseen changes that may occur.

One of the problems many owners experience in the more traditional models is the perceived adversarial relationship between owner and contractor. Whether this is true or not is often the subject of debate, but the perception has led to the increased utilization of construction management. This particular method has evolved into two "subparts": (1) "Agency CM" where the owner employs a construction manager (CM) to act as agent by overseeing the work in delivering the project to completion, and (2) "CM as Constructor" or "CM at Risk" (CMAR) where the CM holds the contracts with the trades while also representing the owner's interest before and during construction.

While these project delivery systems have been available in the private sector, not all have been recognized by state legislatures for public projects. Most notably, the use of CMAR on public projects has become more prevalent across the United States. Stated differently, CMAR as a project delivery system is a popular choice among owners, regardless of private or public status.

### WHAT IS CMAR AND HOW IS IT DIFFERENT FROM AGENCY CM?

During the design phase, the CMAR acts in much the same capacity as the Agency CM. The CMAR assists the owner and design team on site consideration, project parameters (i.e., material and equipment options and delivery ramifications), budgetary input, constructability analyses, value engineering, systems selections, subcontractor utilization, scheduling and bidding. However, it is at this point that the similarities between CMAR and Agency CM by and large end.

During the construction phase, and following completion of the construction documents, the CMAR submits a proposal to construct the project. Once agreement is reached on terms, including the price of the work—typically expressed as a Guaranteed Maximum Price (GMP)—the contract is converted into a general construction agreement. The CMAR, acting as constructor during this phase, holds the contracts with the subcontractors and is responsible for performance of the work.

### HOW DOES THE RISK SHIFT BETWEEN AGENCY CM TO CMAR?

The major difference between Agency CM and CMAR is that the CMAR contractually is responsible for performing the actual construction work as well as supervising and managing the trades. The CMAR also is responsible for maintaining the construction schedule and deadlines and supervising the individual subcontractors. This changes the CMAR's role—and therefore the associated risk—during the construction phase to one that is closer to that of the traditional general contractor, notwithstanding having acted as the owner's agent and advisor during the design phase. The CMAR now is responsible for the project completion date, is bound by a contract price and has full responsibility for construction means and methods. Adding these terms and duties to the contract considerably changes the relationship between the owner and the CMAR. Ultimately, an element of arm's length self-interest on the part of the CMAR and the owner is interjected into the parties' otherwise fiduciary relationship.

## USE OF CMAR ON PUBLIC PROJECTS

On the public side, the process for selecting the CMAR generally begins with the owner selecting an evaluation committee and issuing a Request for Proposals (RFP) (a preliminary qualifications process may precede the RFP). The RFP often includes a statement of criteria, the process and procedures on evaluation and selection of the CMAR, how the GMP is to be established, and insurance requirements. (*Note: The specific procedures may vary by state, but the process is generally similar across jurisdictions which allow CMAR by statute.*)

Once the owner makes its award and decides to continue, contract negotiations with the selected firm begin. The contract will identify any incentives or adjustments to the GMP, may describe any delay damages or early completion, and will describe if and when the GMP is to be determined and all clarifications and assumptions on which the GMP is based. Often self-performance is allowable but may be limited (for example, in Indiana the CMAR can self-perform up to 20 percent of the project value).

Given the nature of the delivery system and the differences from more "traditional" models, public procurement statutes which allow for CMAR are not without their shortcomings. There are often several details on the selection of the evaluation committee, selection of the CMAR and terms for performance that cannot be spelled out in the statute, creating areas of potential ambiguity and possible variances in the statutory application.

## CLOSING THOUGHT

The construction industry recently has seen widespread use of CMAR on more and more projects, in both the private and public sectors. Where there are strict time restrictions on the schedule or complex work is required, the value of CM input on the design can be critical—and particularly with CMAR where the CM acts as constructor where fast tracking design and construction is more readily achieved. Having CMAR available for the right type of project can be a huge benefit to public and private construction alike and deserves consideration when selecting the project delivery system. ■


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