

Multi-Prime CM and CM at-Risk in the Public Sector: “Kissing Cousins”

Chuck Klunker, FCMAA,
Vanir Construction Management

A recent CMAA survey on the use of CM Agents with various project delivery systems got my attention. It reported that over 60% of owners who use multi-prime CM employ a CM Agent firm to help them deliver their projects. With my practitioner’s hat on, I immediately leapt to the question: “If it’s multi-prime CM, why would an owner hire a second Agent CM on top of their Agent CM already delivering the project using the multi-prime delivery system? The firm delivering the project is already an agent of the owner. It seemed like a double layer of agents, adding cost to the project without adding value.

John McKeon, CMAA’s VP of Communications, reminded me that many owners who use multi-prime CM do it themselves, particularly in the private sector. They are staffed for this and gain the benefits without using an outside firm. But according to the survey about two-thirds of owners using the multi-prime delivery system aren’t staffed to manage the work themselves, and hire an Agency CM firm to help them with it. From my experience, it seems that many of these owners who use an outside Agency CM firm to help implement the multi-prime delivery system are in the public sector.

So this got me to thinking about the origins of this CM business, and the fact that multi-prime CM is a separate Project delivery system, same as Design/Bid/Build, CM-at-Risk and Design/Build. My comments are based on what I have seen, experienced, read and been told (and agreed with) over the last 35 years.

Multi-prime CM emerged fairly spontaneously in the public sector in the late 1960s and 1970s, in response to projects that were typically bid over budget, finished behind schedule, and were generating an increasing number of claims. It was one alternative to the traditional general contracting design/bid/build delivery strategy that worked within existing public procurement law. The CM firm was hired as an agent of the owner on a qualifications/fee basis, and all construction was competitively and publicly bid directly to the subcontractor tier. The owner then held 15, 20 or more individual prime trade and supply contracts, and the CM was responsible for managing and coordinating those individual prime contracts to meet the owner’s time, cost and quality requirements. The CM functioned as an advocate of the owner.

The owner received the cost benefits of procuring the construction directly from the trade contractor tier, the time benefits of phased (fast-track) design and construction, and the benefits of having the CM managing and coordinating the work of the trade contractors. The CM, as an agent of the owner, had a contractual duty to manage and coordinate those trade contractors in the owner’s best interests. Time, cost and claims were significantly reduced when projects were properly run.

Successfully providing multi-prime CM services required a firm with both the general contractor’s knowledge of construction and ability to take control of the trade contractors *plus* the agent’s ability to think and act on behalf of the owner. A number of GC’s got into the business, as did start-up CM firms. There were many successful projects. But CM firms lacking either the skills of the general contractor or of the agent of the owner (sometimes both) also got into the business and there were multi-prime CM projects that did not go well at all. As a result, multi-prime CM in the public sector got mixed reviews.

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But the delivery system continued to provide cost-effective projects when properly applied by competent CM firms. Multi-prime CM remains a viable option today for owners who want the cost benefits, direct control and CM advocacy that this delivery system provides.

Beginning in the 1990s, CM-at-Risk emerged in the public sector as an alternative to multi-prime CM as, state-by-state, procurement laws were opened up so public owners could take advantage of the CM-at-Risk project delivery system. Often, multi-prime CM was already an accepted delivery method when the prospect of CM at-Risk came upon the

scene. But the prospect of the CMs holding the trade contracts, bonding the job, guaranteeing the price, and taking on the contractual role of the general contractor was understandably attractive. Many public owners moved to this method because of the contractual guarantees, backed by a bond on the CM.

As CM-at-Risk emerged in the public sector some projects went well, and others did not. One reason for the mixed results was that some CM-at-Risk firms were not familiar, culturally or procedurally, with how to act as an agent of the owner. Additionally, some owners did not understand that by putting their CM in an at-risk contract, they were pushing the CM away from their side of the table and would not get the level of advocacy that they had come to expect. So, as with multi-prime CM, results were mixed. However, those CM-at-Risk firms that could take on the risks while retaining a meaningful level of owner advocacy have been successful and many have stayed in the game. Over time, more and more successful public sector CM-at-Risk projects are the result.

Through these same 15 or so years, CMAA has been developing its policies and guidelines for CM-at-Risk. The goal of these policies and guidelines is to provide the owner with the contractual guarantees of CM-at-Risk, while providing a level of advocacy that can approach that of a multi-prime CM. The intention is to keep the CM-at-Risk on the owner's side of the table as much as possible, considering the risks the CM is assuming.

These CMAA policies/guidelines are focused on reducing the potential for conflict of interest between the CM-at-Risk and the owner. Current thinking can be summarized by the following points:

- The CM-at-Risk is selected on the basis of qualifications, with the fee a consideration.
- The CM-at-Risk makes its money solely on its fee, not on general conditions or mark-ups on subcontracts or change orders.
- The CM-at-Risk does not self-perform construction.
- All parts of the subcontractor marketing and procurement process are open to the owner.
- All subcontracts are bid competitively, or negotiated if circumstances require.
- The owner should consider bonding the project at the subcontractor level, but not at the CM level.
- All of the subcontracts and the work is "open book" to the owner.
- All subcontractor and supplier payments are "open book" to the owner.

These prospective policies/guidelines have been generally understood and accepted within CMAA circles for some time, but have not been officially adopted. So they are open for discussion, and CMAA welcomes and needs your feedback.

So the development of multi-prime CM and the emergence of an approach to CM-at-Risk biased towards serving the owner's interests have given the public sector owner some viable alternatives to what was the conventional Design/Bid/Build approach. Successful application of these two alternatives requires a clear understanding of the points raised above and an engaged and informed owner. Selection of the CM that is right for the particular job is the first and arguably the most important task of the owner.

Approached correctly, CM-at-Risk can give the owner the best of both worlds; the strong advocacy that one receives from a professional CM firm, and the contractual guarantees that accrue from a CM-at-Risk contract. **CM**

Chuck Klunker, FCMAA, of Vanir Construction Management can be reached at chuck.klunker@vanir.com.

We welcome submissions for the Professional Practice Corner. Please send your ideas to John McKeon at jmckeon@cmaanet.org.

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