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Construction manager as advisor versus construction manager as constructor - which is right for your project?

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There are a wide variety of project delivery and contract methods, each with unique wrinkles, responsibilities, and roles for the parties. A frequent topic that arises is whether a construction manager should be used and whether the construction manager should be “as advisor” or “as constructor,” this latter one also referred to as “at risk.” There are lots of factors to consider; this article digs a little deeper into the roles of a construction manager as advisor (CMa) and construction manager as constructor (CMc).

The benefits of a construction manager

The single biggest benefit of a construction manager—regardless of CMa or CMc—is that the construction manager is involved in the preconstruction process to advise and assist the owner and design professional. During preconstruction, owners have a vision for their project and the property, but they are often ill-equipped to evaluate the potential construction aspects of the project. Similarly, design professionals are often ill-equipped to evaluate certain aspects of the pending construction project, such as potential costs, sequencing, and schedule. The construction manager (or perhaps a contractor) tends to have the best ability to advise on anticipated costs, schedule, alternative means and methods for sequencing, and unique input on value engineering. Thus, the construction manager is an ideal player to assist the owner and design professional during preconstruction by providing valuable comment and insight as to the actual anticipated construction. Sometimes this preconstruction service is referred to as “design assist,” where input and comment are provided to the owner and design professional in a collaborative environment to identify the potential impact of the preconstruction design on the actual construction of the project.

Generally, the construction manager is only assisting with the design and does not take responsibility for any of the design specifications or performance specifications. This is not to be confused with “delegated design,” wherein the owner and design professional provide the construction manager (or contractor) with performance specifications for which the construction manager then becomes responsible for the design on that specific item, including any licensed engineering/architecture within that scope of delegated design.

One of the variables that can arise on any project is the unique allocation of design responsibility. The parties should ensure that the contract documents properly memorialize and identify whether the design is merely being commented on, or whether the design is being fully delegated. Standard contract templates do not always properly identify custom allocation of responsibility; thus, it is important to use tailored contract documents that expressly identify which scope is “design assist” versus “delegated design.”

The different roles of CMa and CMc

During the preconstruction phase, generally, the roles of the CMa (as advisor) and CMc (as constructor) are the same. In both instances, they provide design assist services by advising and providing comment to the owner and design professional. Once the design has evolved to contract documents, the project is then put out for bid or procurement.

The difference between CMa and CMc comes into truer contrast during the construction phase of the project (sometimes referred to as “construction administration”). When the construction manager is a CMa (advisor), it is acting in an advisory capacity to assist and advise the owner on the construction project as it progresses. Thus, the CMa will not hold any contracts with contractors or subcontractors for the work, and the CMa usually will not self-perform any of the work. Instead, the CMa acts as resource to the owner for the purpose of monitoring and overseeing the work, and the CMa will advise the owner on decisions pertaining to change orders, payments, schedule, progress, quality of workmanship, and conformance to the contract documents. This is similar to the role that the traditional Architect of Record would play on a traditional design-bid-build project delivery method. Because the CMa is not holding any of the contracts for the work, it is merely advising the owner on how to handle or enforce

the contracts for the work as the project progresses. Ultimately, the risk and enforcement of the contracts for the work falls on owner.



Figure 1. When acting as advisor, a construction manager does not have ultimate responsibility for the subcontractors or quality of the work.

The CMc (constructor), on the other hand, acts as the constructor during the construction of the work. The CMc will accordingly enter into contracts and/or subcontracts with the trades performing the work, and portions of the work might be self-performed by the CMc. Accordingly, in this project delivery method, the CMc is holding the risk of contract performance.



Figure 2. When acting as a constructor, the construction manager has responsibility for the subcontractors and quality of the work.

Choosing the construction manager role that is right for your project

Proper selection and agreement on a CMa or CMc reduces confusion and allows for a more efficient project. Often, the parties will have specific preferences to customize the relationship—sometimes multiple parties, contractors, or subcontractors act in coordination to fulfill the various roles; sometimes the design work is split-up amongst various players on the project; and other times certain pricing methods are adjusted to allow for various savings and incentives, which might include a hybrid mixture of fixed price components and cost plus fee work.

A project that begins with constructive dialogue to flesh-out the desired roles, rights, and obligations of the players, and then utilizes the correct contract documents (with legal assistance to customize the documents to the actual project) tends to run more smoothly than ones where the parties grab template form documents off the shelf that fail to accurately identify whether it is a CMa or CMc, and other custom modifications that are unique to the project's delivery method and pricing.

Saxton & Stump attorneys [Ron Pollock](#), and [Matt Chabal](#) are available to advise on these types of issues, including the drafting or negotiation of custom contract documents, or the litigation of any project disputes that arise with custom contract terms or unique project delivery systems.

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