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C.A.S.H. WORKSHOP
“Choosing a Project Delivery Method”

Monday, October 8, 2007

12:00 p.m. to 4:00 p.m.

Westin South Coast Plaza

686 Anton Blvd.

Costa Mesa, California

CM AT-RISK

Terry Street

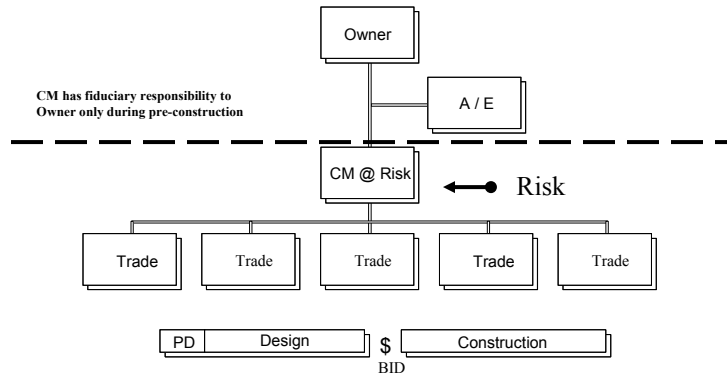
Robbelen Construction Management Services



Choosing a Project Delivery Method

- CM @ Risk

The CM @ Risk project delivery method is used to select a CM @ Risk by an RFP process based on qualifications



Choosing a Project Delivery Method

- CM @ Risk Legal Framework

- No appellate review since enactment of statute establishing selection of construction managers (1974).
- Competitive Bid required for school construction projects of more than \$15,000.
- Construction Management Contracts not required to be competitively bid (Gov. Code, Sec. 4525 [1974])
- CM @ Risk a Construction Contract or a Construction Management Contract?
- BRCO vs Folsom Cordova/Roebbelen
- Contract Validation Action- Not Mandatory but recommended by some Counsel
- Illegal Contract vs. Public Contract Code 5110

Process:

RFP per Gov. Code 4525/4526

CM-Prepare Bid Packages

Public Agency Competitively Bid Trade Packages

Establish GMP after trade package bidding

Assign Trade Contracts-Dual Oblige Bonds

Validate CM @ Risk Contract if agreed





Choosing a Project Delivery Method

- CM @ Risk *PROS*
 - The CM manages the trade contractors in lieu of a general contractor (GC). By way of an RFP process, the District can pick their CM instead of relying on the services of whoever the low responsive GC bidder is.
 - The owner has a defined requirement and a fixed price from trade contractors based on complete documents (change orders depend on documents being complete and free from errors).
 - Clients have a professional construction manager on their side to represent the District's interest, and a single point of contact until the assignment at risk.



Choosing a Project Delivery Method

- CM @ Risk *PROS*
 - The multiple trade construction contracts are fixed-price after competitive bidding.
 - The scope can be broken down into smaller contracts, which will minimize duplication of mark-ups and minimize overhead costs.
 - The process allows for a greater participation by local trade contractor
 - Quality of contractors and the competitiveness of their bids are enhanced because the organization and abilities of a good construction manager provides a more efficiently run project.
 - Some risk is assigned to CM





Choosing a Project Delivery Method

- CM @ Risk *CONS*

- CM costs will be higher; however the end result may provide reduced costs of the overall project.
- The CM will have to provide insurance for the overall cost of the assigned work, which would not be a cost to the District if they were to contract directly with the trade contractors.
- Some parties have challenged the legality of the “CM @ Risk,” so the District needs to recognize they could be subject to such a challenge.
- Construction can't start until design is complete
- Increased fees for CM assuming risk
- Potential conflict of interest if CM also performs GC with subcontractors on other projects



Choosing a Project Delivery Method

- CM @ Risk *LEGAL CONSIDERATIONS*

- Potential legal exposure if legal obligations are not satisfied by CM
 - Competitive bidding
 - Payment/performance bonds
 - Improperly defined scopes
 - Recourse against a single entity unlikely
 - CM acting as GC
- Legal concerns and challenges exist
 - Assignment of contracts
 - Union versus non-union forces
 - Self performance of work





Choosing a Project Delivery Method

- CM @ Risk

Factors in Selection of Construction Manager

- CM should have a valid contractor's license in order to provide "CM @ Risk" services.
- Select a CM who has a strong presence in the community as a builder, who could not afford to damage their reputation by failing to perform in the education marketplace.
- Select a CM who has a strong reputation with Trade Contractors in the area and is aware of work force capacities.
- Select a CM who has the "in – house" capabilities to provide estimating, value engineering, constructability, logistical planning and scheduling services.
- Base your selection on the individuals that the firm is willing to commit to your program. Their services will only be as good as the people on the front line.

