International Municipal Lawyers Association



Construction Contract Drafting Initiative – CM at Risk

October 18, 2018

Introductions



Christopher J. Petrini - Moderator

Founding Principal, Petrini & Associates, P.C.



Dennis Cavanaugh - Partner Robinson and Cole



Doug Black

Senior Assistant City Attorney – Fort Worth Texas



Brian Goodreau, PSP, ENV SP

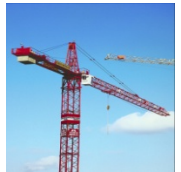
Arcadis Contract Solutions Operations Leader



Roy J. Cooper, PE

Arcadis Contract Solutions Senior Vice President

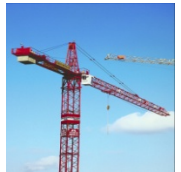






Project Delivery







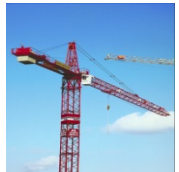
Four Main Project Delivery Methods

- Design-Bid-Build (Traditional Method)
- Multiple Prime
- CM-at-Risk
- Design-Build

CMAA

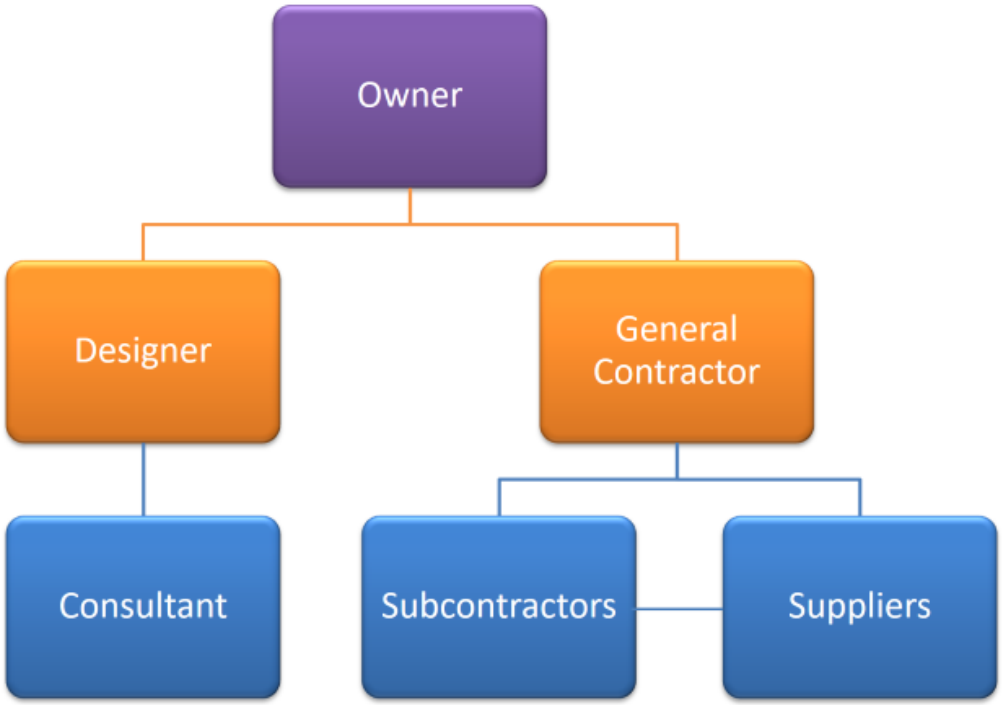
...promoting the profession of Construction Management and the use of qualified CMs on capital projects and programs.



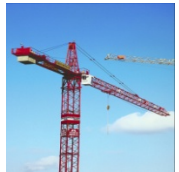




Design-Bid-Build



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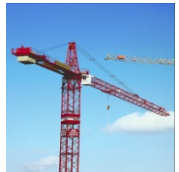

D-B-B Advantages & Disadvantages

ADVANTAGES	DISADVANTAGES
• Widely applicable • Understandable • Owner retains control • Owner "knows" cost prior to start • Cost risk transferred to contractor	• Relatively slow • Owner is liable for the design • Constructibility issues • Adversarial relationships fostered

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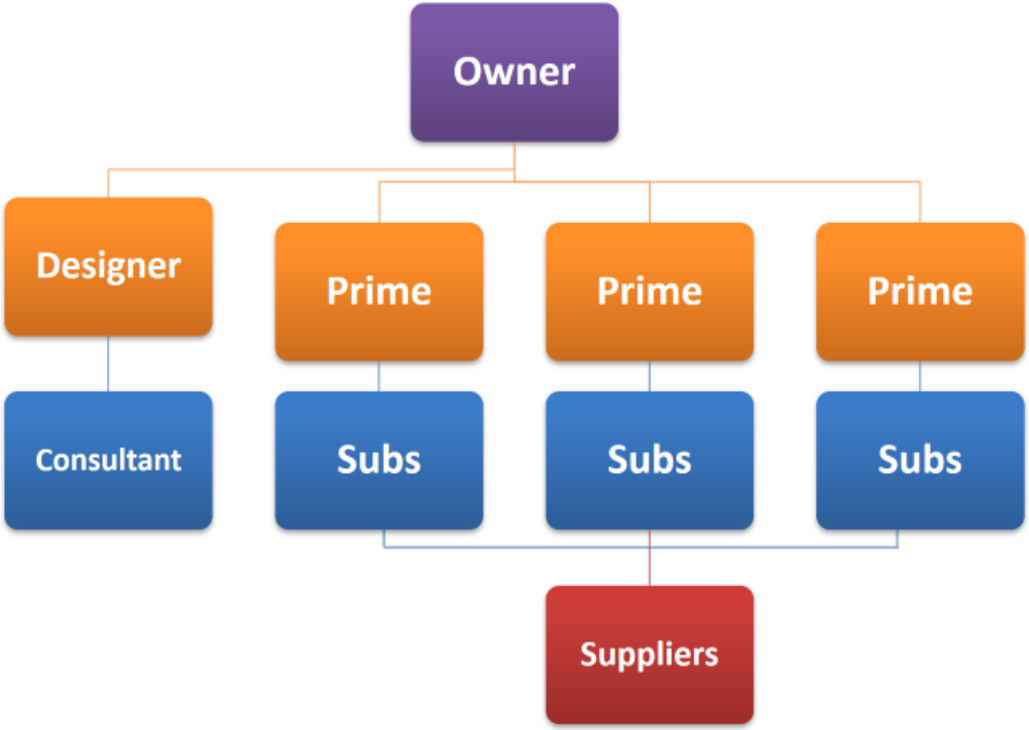
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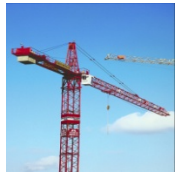
Multiple Prime



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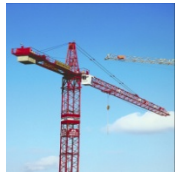
Multiple Prime

ADVANTAGES	DISADVANTAGES
• Increased owner control • Work easily fast-tracked • Save general contractor markups • Some states require it • Owner has risk of controlling time and coordination	• Multiple accountability for performance • Unknown "final" cost at construction start • Same owner risks as traditional approach • Boundary & scope overlap issues

CMAA

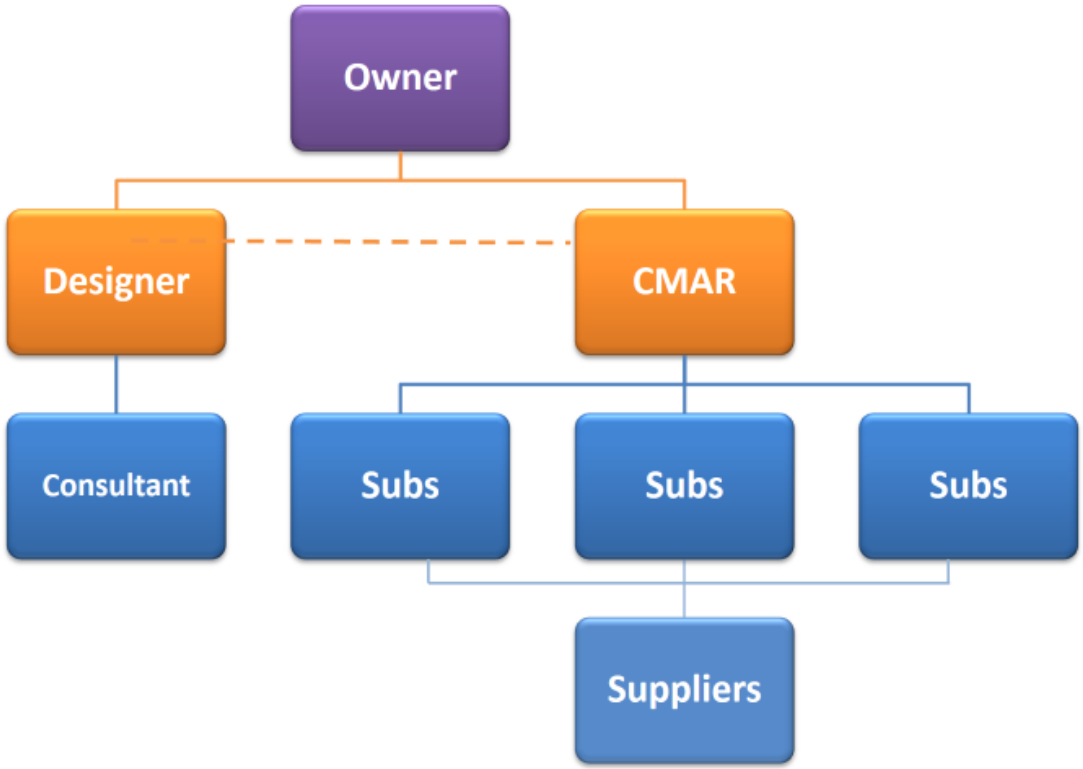
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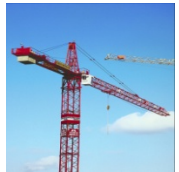




CM-at-Risk



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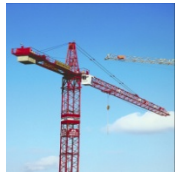

CM-at-Risk

ADVANTAGES	DISADVANTAGES
• Well-suited for fast-tracking • Early contractor (and subcontractor) input on design alternatives • Better cost info • Permits "picking" of the builder • Owner gets a GMP	• Change of CM's accountability role when construction begins • Tempted to sign GMP "too soon" • Variations in procurement methods • Potential bid shopping after GMP is set

CMAA

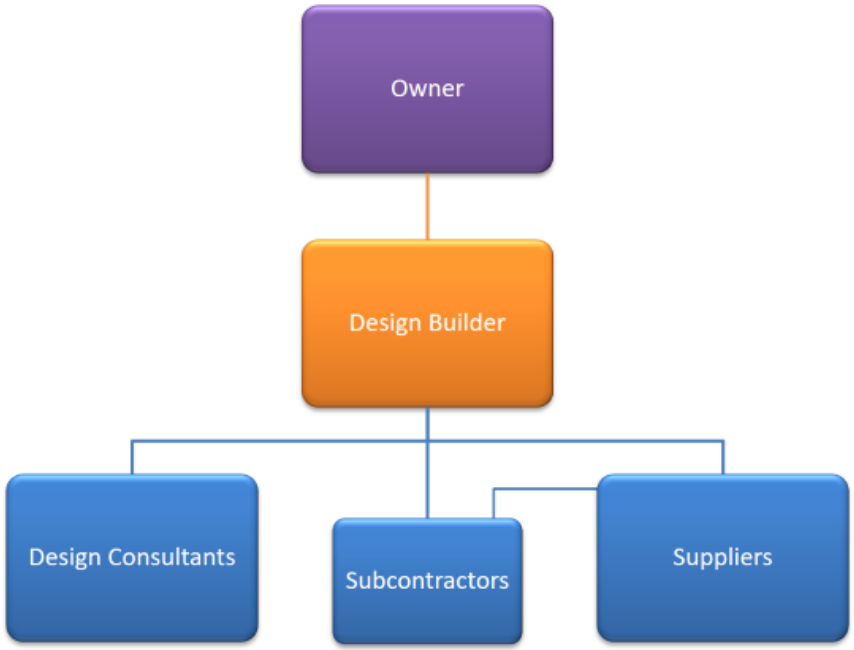
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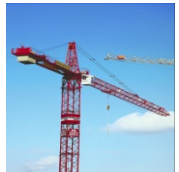
Design-Build



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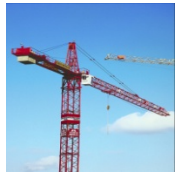
Design-Build

ADVANTAGES	DISADVANTAGES
• Accountability for project delivery • Reduced disputes • Can cut time and cost • Builder can have input in design / Constructibility • Budget established early on	• Early definition of the program required • Owner's loss of control during design • Potential for quality to be compromised

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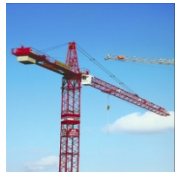


CMAR Round Table Discussion

IMLA

Topic 1

What are the most important factors in selecting a delivery method and then a CM and how and when the selection takes place?

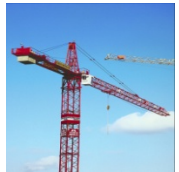




CMAR Round Table Discussion

IMLA

Topic 2

What are the significant differences between the roles of the contractor, owner and design professional on a CM at Risk contract, a CM Agency contract and a traditional design-bid-build contract?

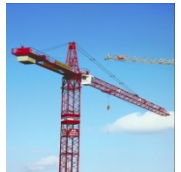

CMAR Round Table Discussion

IMLA

Topic 3

Discuss factors related to the establishment of the GMP. Discuss the difference between owner and CM contingency and how they are established and used.





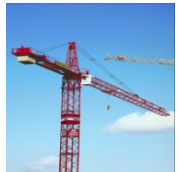


CMAR Round Table Discussion

IMLA

Topic 4

What are the ramifications of a CMR default and the issue of waiver of consequential damages and liquidated damages? Many Owners and contractors do not seem to understand the differences and Owners often do not comprehend the potential losses or how to calculate them.

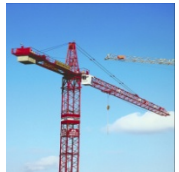

CMAR Round Table Discussion

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Topic 5

What are an Owner's financial responsibilities in evoking the right to terminate for convenience, including the payment for completed work?







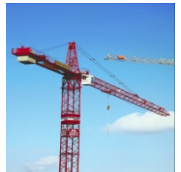
CMAR Round Table Discussion

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Topic 6

Discuss the advantage and disadvantages of CMAR from a time-schedule and cost perspective





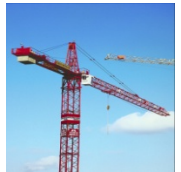


CMAR Round Table Discussion

IMLA

Topic 7

Regarding Insurance and bonding, on a large project, an Owner will likely face a complex set of risks and unknowns. Does everyone involved in the project have sufficient coverage? Are gaps in coverage increasing your risk and how best to identify any such potential gaps?


CMAR Round Table Discussion

IMLA

Topic 8

Should an Owner include a provision requiring a meeting of principals prior to formal dispute resolution (even as a contractual condition precedent). Should the standard clause with the AIA's proposed initial decision maker process be replaced whereby the Architect (or some other party whom the Owner and CM designate) makes an initial "decision". I think that the meeting of principals process where people with a vested interest sit down face-to-face is often productive where the non-binding initial decision process often is not, and may even lead to further entrenchment due to the necessary formality (and direct involvement of counsel).