

## Owners - Who's Watching Your CM?

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### Introduction

Construction management (CM) is a form of project delivery characterized by the addition of a construction manager (CM) to the project team. There are two common forms of CM contracts: CM as agent and CM as constructor.<sup>1</sup> This article will focus on the CM as agent contract.

A CM as agent has a contractual relationship only with the owner, whereas the CM as constructor also enters into contracts with trade contractors. This is the main difference between the CM as agent and the CM as constructor models. The contractual relationships involved in the CM as agent model are presented in Figure 1.

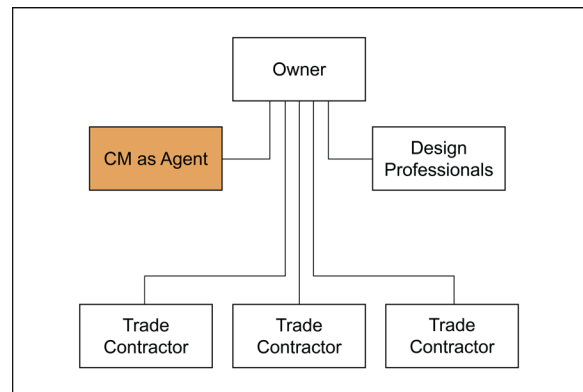


Figure 1 – CM as Agent Contractual Structure

### Roles and Advantages

As agent of the owner, the CM is retained on a fee-for-services basis to provide advisory and administrative services during the pre-construction and construction phases of the project.

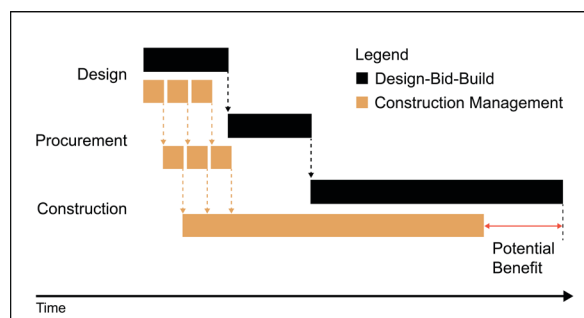
During the pre-construction phase, the CM's responsibilities generally include assisting with the development of the overall project concept, budget and master schedule, coordinating with local stakeholders, offering constructability advice, as well as providing value engineering input and other advice on design solutions being considered by the design professionals, which is one of the main advantages of the CM model.

The CM may also be responsible for assisting the owner with insurance, permitting, implementing a health and safety program, providing general site facilities, administering the tender of trade contracts and preparing a list of recommended bidders based on pre-qualifications, coordinating the tender documents, reviewing tenders and providing tender recommendations to the owner.

During the construction phase, the CM provides supervision and ensures the coordination of the different trade contractors. Effective site coordination is required to minimize the impacts of trade stacking and provide optimum work front availability for each trade, among other things.

The CM has a critical role in fixing the contract period for each trade. This is usually done via a detailed master schedule which incorporates input from the different trade contractors. The CM updates the master schedule at regular intervals, based on actual progress. The CM must correctly define these periods as they are the basis of the owner’s contracts with the trades.

Another advantage of the CM model is that it can allow construction to commence earlier than in a design-bid-build model. In the CM model, the scope of work is subdivided into lots or phases of work, allowing construction of parts of the project to begin before the overall project design is complete (see Figure 2). This is commonly referred to as “fast-tracking”.



**Figure 2** – Schedule Comparison between Design-Bid-Build and Construction Management Models

As shown, the phased approach allows procurement and construction activities to start earlier, which in turn allows for the possibility of the project being completed earlier. The CM is generally responsible for helping the owner determine the right procurement strategy in terms of the division of lots, the timing of contract award and the identification of long lead items.

The CM also administers progress payments and changes to the trade contracts and, takes the lead in amicably settling disputes on behalf of the owner (or administering the dispute resolution process when this is not possible).

The CM can help the owner and its design professionals understand the impact of late design changes under consideration so that their commercial impacts can be considered before such changes are made.

The quality of the CM’s scheduling, site coordination, change management and overall administration of the trade contracts is directly linked to successful project outcome.

In essence, the CM is on site as an agent to the owner and is expected to use its experience and knowledge to protect the owner’s interests.

## Responsibility for Scheduling and Coordination Issues

In general, the trade contractors must endeavour to schedule and coordinate their work with that of the other trade contractors on site to respect the master schedule. However, trade contractors may not always have the authority required to ensure the cooperation of the other trade contractors.

In a Design-Bid-Build model, the general contractor assumes the responsibility for managing the schedule and coordinating

the work on site. As such, the consequences of problems stemming from planning or coordination issues fall on the general contractor. These can include project delays leading to subcontractor claims being issued to the general contractor.

In a CM as agent model, the owner relies on the CM to prepare the project schedule and coordinate work between the trade contractors. Due to the contractual relationships in place, if errors in the schedule, scope gaps between trade contracts or inadequate coordination impact the trade contractors' performance on site, the resulting claims will be directed to the owner and not the CM.

If the CM acts negligently and causes loss which was otherwise avoidable, the owner has little recourse against the CM unless such negligence can be proven. Accordingly, it is paramount that the owner have a high level of trust in the CM and that the CM's mandate be properly defined.

The CM model allows the owner to transfer the burden of managing the schedule and providing technical coordination on site to a potentially better suited party. In some cases, an owner may have experience managing construction projects and yet may simply not have the resources required to manage the construction project itself.

Although the owner can transfer certain tasks to the CM as agent, it ultimately remains responsible for the CM's performance, particularly in relation to the trade contractors.

## Importance of Selecting a Qualified CM

The extent of the benefits of using the CM as agent model is dependent upon the ability and experience of the CM selected.

Therefore, during the CM tender phase, the owner should pay close attention to what CM competency it is seeking. It is recommended that the evaluation criteria for the CM include a component that takes into consideration the CM's experience working on similar projects and that personnel resumes of the key individuals play a major part of the owner's evaluation criteria. The CM's experience and its personnel's competencies will critically impact the quality of the services rendered by the CM.

Once the CM contract is awarded, it is also important for owners to ensure that key members of the CM team who were included in the CM proposal remain assigned to the project or are replaced with members of equivalent experience.

## Importance of Owner Involvement

From the owner's perspective, it is important to consider the reality that no CM can perform its mandate flawlessly. Errors or omissions by the CM in preparing the project budget or schedule may occur to some degree and can be a cause of disputes on the project. For this reason, owners should remain as involved in the project as possible. This provides opportunities to identify any potential budget or scheduling issues early and increases the potential for mitigation.

Such owner involvement can include:

- Developing a project risk register with the CM and monitoring it with the CM during construction.
- Attending and participating in site meetings.
- Regularly visiting the site to observe progress.
- Reviewing the project schedule updates prepared by the CM and questioning any

significant or unexpected changes to the sequencing or duration of activities.

- Reviewing the budget updates and providing comments, if required.
- Keeping track of changes and change directives issued on the project and monitoring their potential impact.

If the owner does not have the resources or knowledge required to stay involved and perform meaningful reviews of the documentation prepared by the CM, it may be worthwhile to mandate an external resource to perform such oversight. Oversight using external resources is particularly worth considering for larger and/or more complex projects. This type of strategic owner oversight can be seen as an investment that can help minimize potential disputes from arising later on during the project execution.

## Conclusion

While this article draws attention to some important areas for consideration, the CM as agent model still offers benefits that can lead to a successful project.

To maximize the potential benefits of the CM as agent model, it is important to focus on the qualifications of the CM team during the tender process. Once the CM is selected, owners should monitor any significant changes to the CM team throughout the project lifecycle.

Owners should also remain as involved as possible during the project execution. Strategic owner oversight can help identify key issues on the project early on and mitigate the potential for future disputes.

<sup>1</sup> The Canadian Construction Documents Committee (CCDC) offer standardized models of CM contracts, the CCDC-5A Construction Management Contract – for Services (or CM as agent) and CCDC-5B Construction Management Contract – for Services and Construction contracts (or CM at risk). These are meant to be adjusted to meet the requirements of a specific project.

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