



City of Cambridge

Executive Department

YI-AN HUANG
City Manager

February 13, 2023

To the Honorable, the City Council:

I am writing to request your approval to seek authorization from the Massachusetts Office of the Inspector General (the “IG”) for the City to use the Construction Manager at Risk (“CMaR”) procurement and construction method (the “CMaR Method”) in connection with the **Renovation of City Offices at 689 Massachusetts Avenue** project (the “Project”).

By way of background, the Massachusetts Legislature passed construction reform legislation in 2004 that allowed Massachusetts public agencies and municipalities to use the CMaR Method for the first time. Previously, the CMaR Method had been commonly used by the private sector as an alternative to the design-bid-build approach under M.G.L. c. 149. Since the CMaR legislation was enacted, many public entities have successfully applied for and been approved by the IG to use the CMaR Method.

The following is intended to summarize the CMaR Method, its advantages, the processes governing its use, and the reasons supporting its proposed utilization for this Project. This submission is the first step in satisfying the requirements necessary for seeking authorization from the state to use the CMaR Method for the Project.

What is Construction Management at Risk (CMaR) and how does it work?

Construction Management at Risk is a delivery method which requires a commitment by a construction manager to deliver the project with a guaranteed maximum price, such that the risk is largely borne by the construction manager.

The CMaR is selected through a competitive procurement based on qualifications and price. The City will procure the CMaR via a two-step Request For Qualifications (“RFQ”) and Request For Proposal (“RFP”) process.

The type of contract the City will enter into with the CMaR is a cost-plus fixed fee amount with a Guaranteed Maximum Price (“GMP”). The GMP is the sum of the CMaR fee, the costs associated with the CMaR’s general conditions for construction, all of the filed sub bid trade



contractors, and the CMAr estimates for any un-bid subcontractors at the time of the establishment of the GMP, including the CMAr's contingency. The CMAr agrees to pay for costs that exceed the GMP that are not the result of changes in the contract documents. This is one of the reasons a CMAr is selected prior to the plans and specifications being completed. The CMAr works with the owner and the architect to develop the scope delineated in the contract documents as part of the project team.

The fixed fee is a percentage of the cost of the work and is submitted by the CMAr during the selection process based upon an estimated cost of construction. The CMAr's contingency belongs to the CMAr if it is needed to pay for certain approved project-related costs but is turned over to the City if not used. The contingency is a line item within the GMP and is used to incorporate missing items undefined at the time the GMP is established that arise during the project.

By law, the GMP cannot be established until the drawings and specifications are at a minimum of 60% complete. The closer the documents are to being 100% complete, the less the CMAr's contingency line item is. The owner's contingency is for owner-directed changes or unforeseen conditions unknown at the time the GMP is established. The CMAr's contingency is included in the GMP; the owner's contingency is outside of the GMP.

Once authorized, the City Manager's project management staff would work closely with the City's architect, consultants and CMAr to determine the appropriate contingencies.

How does a municipality apply for Construction Management at Risk (CMAr)?

The Office of the IG has promulgated a set of procedures for using the CMAr Method. Once a municipality's governing body authorizes the use of the CMAr Method, the municipality submits an application to the IG, from whom the municipality's awarding authority must obtain a notice to proceed in order to use the CMAr Method. The application requires that the Municipality demonstrate the following:

- a) The Municipality has authorization from its governing body to enter into a contract with a CMAr contractor;
- b) The Municipality has the capacity and a plan and procedure that is in place to effectively procure and manage CMAr services for the specific project and has retained the services of a qualified owner's project manager;
- c) The Municipality has procedures in place to ensure fairness in competition, evaluation and reporting of results at every stage in the procurement process;
- d) The building project has an estimated construction value of \$5,000,000.00 or more; and
- e) The Municipality has determined that the use of the CMAr Method is appropriate for the building project and states the reasons in writing for the determination.

Has the City employed Construction Management at Risk (CMaR) in the past?

The City has previously been approved by the IG to use the CMaR Method for the 5 Western Avenue project, the Dr. Martin Luther King School on Putnam Avenue, the King Open/Cambridge Street Upper School and Community Complex project, the Foundry project, the Multi-Department Relocation Plan, the Tobin Montessori School/Vassal Lane Upper School project and the Fire Department Headquarters project, which was recently approved by the IG.

What are some of the benefits of using the CMaR method?

- The selection of the CMaR through an RFQ process allows the City to better define the specific requirements the City is looking for in a CMaR contractor. The submission of defined contractor qualifications and presentation of these qualifications by the CMaR team to a selection committee allows for greater interaction and more informed questions and answers to best determine the most qualified CMaR contractor for the project.
- The selection is based upon qualifications and experience relative to specific City requirements, not the lowest price. The CMaR is selected, rather than simply awarded due to the lowest bid. The working relationship between the CMaR, the owner and the architect are enhanced due to a working relationship that is developed during the process leading up to the establishment of the GMP.
- The CMaR is directly involved with the selection and management of the scope of work for the filed sub-bid trades. Because the CMaR takes the lead in defining the peripheral scope of work for staging, lifts, temporary lighting, miscellaneous patching, fire stopping, etc., scope of work disputes (which would be a cost to the owner if meritorious) are minimized. This coordination also places responsibility directly with the CMaR as the party responsible for defining each sub-bidders' drawings and specifications.
- The CMaR provides pre-construction services, which aids the City's project team with scheduling, budgeting, value engineering, phasing strategies, and constructability reviews.
- With the CMaR Method, early bid packages for demolition and abatement of hazardous materials can run concurrently while the project design is being finalized.
- The CMaR Method reduces the potential for change orders that occur as the result of gaps in the architect's scopes of work because the CMaR actively participates in the delineation of the scope of work during the pre-construction services.
- If the City and the selected CMaR do not come to an agreement as to the GMP, the City has the option of bidding the project.
- The CMaR Method mitigates and reduces the CMaR contractor's risk due to their early involvement during the design phase and the contingency established as part of the GMP.

- The City has an experienced construction management team that has successfully used the CMaR Method on several prior projects.

What is the timeline for the CMaR Method?

After approval by the City Council, the City will submit an application to the IG. The City's proposed application is attached hereto. The IG's response for approval or denial of the application is due sixty (60) days after submission.

Submission of the City's application in February 2023 would place the IG's approval around May 2023. This coincides with the Construction Documents Phase being prepared by the City's architect for the Project, Cambridge Seven Associates.

Having a CMaR under contract during the Construction Documents Phase will help provide critical information as to site logistics and how to best handle the variety of options available to expedite the completion of this Project.

I look forward to answering any questions you may have about the application and the CMaR Method that we propose to use for this Project.

Very truly yours,



Yi-An Huang
City Manager

Attachment(s)