

# Hiring the Construction Manager at Risk

The When and The How

Texas School Construction and Procurement Conference - November 29, 2023



## CONSTRUCTION MANAGER AT RISK

### QUICK RECAP:

- *CMAR IS HIRED SOON AFTER ARCHITECT*
- *2 PHASES TO CMAR CONTRACT:*
  - *PRE-CONSTRUCTION*
  - *CONSTRUCTION*
- *AFTER PRE-CONSTRUCTION (WHEN DESIGN IS ALMOST DONE) CMAR PROPOSES A GMP*
- *DURING CONSTRUCTION, CMAR IS ESSENTIALLY A GENERAL CONTRACTOR PAID ON A COST + FEE BASIS*



## CMAR COMPENSATION

- *PRE-CONSTRUCTION: TYPICALLY A FIXED FEE (E.G., \$30,000)*
- *CONSTRUCTION: "COST OF THE WORK" + FEE, SUBJECT TO A GUARANTEED MAXIMUM PRICE*
- *WHAT IS COST OF WORK? DEFINED IN THE CONTRACT. E.G., SUBCONTRACTS, OFFICE TRAILERS, PROJECT MANAGERS, JOB SUPERINTENDENTS, ETC.*



# CONSTRUCTION MANAGER AT RISK

STEP 1 ADOPT THE EDUCATIONAL SPECIFICATIONS

STEP 2 ADOPT THE LONG RANGE FACILITIES PLAN

STEP 3 SELECT METHOD OF DELIVERY

STEP 4 DELEGATE AUTHORITY

STEP 5 SELECT ENGINEER/ARCHITECT

**STEP 6 DECIDE SELECTION CRITERIA/  
WEIGHTS**



# CONSTRUCTION MANAGER AT RISK

# SELECTION

# CRITERIA





## CMAR - SELECTION CRITERIA

- 👤 **QUALIFICATIONS:**
- 👤 **HIRED BEFORE THE DEVELOPMENT OF THE PLANS AND SPECIFICATIONS.**
- 👤 **PROVIDES PRE-CONSTRUCTION SERVICES.**
- 😊 **A CMAR SHOULD BE AN EXPERT COST-ESTIMATOR**

## CMAR - SELECTION CRITERIA

- 😊 **PRE-CONSTRUCTION IS WHERE VALUE ENGINEERING IS ACTUALLY SUPPOSED TO OCCUR.**
- 😊 **A CMAR PROVIDES INPUT IN THE DESIGN PROCESS.**
- 😊 **A CMAR ANALYZES LABOR MARKETS AND SCHEDULES.**
- 😊 **A CMAR CONDUCTS CONSTRUCTION TEAM MEETINGS.**
- 😊 **AT THE END OF THE DESIGN PHASE A CMAR PROVIDES A GUARANTEED MAXIMUM PRICE (A GMP)**



## CMAR - SELECTION CRITERIA ("GENERAL CONDITIONS" IS A RED HERRING)

- ☹️ YOU PICK A CMAR BASED ON QUALIFICATIONS
- ☹️ CMAR IS HIRED BEFORE YOU KNOW THE SCOPE, FINAL BUDGET, AND SCHEDULE?
- ☹️ DON'T BE DISTRACTED BY "GENERAL CONDITIONS."
- ☹️ "GENERAL CONDITIONS" IS A NUMBER CAN BE EASILY MANIPULATED TO MISLEAD AT THE RFP PHASE OF THE PROCUREMENT.



TERM OF ART

GENERAL

CONDITIONS

CONSTRUCTION MANAGER AT





**GENERAL  
CONDITIONS**

# TERM OF ART

**DEFINED TERMS:  
CONCRETE MEANINGS  
INDEPENDENT OF COMMON  
INDUSTRY USAGE.**

**CONSTRUCTION MANAGER AT**



**GENERAL  
CONDITIONS**

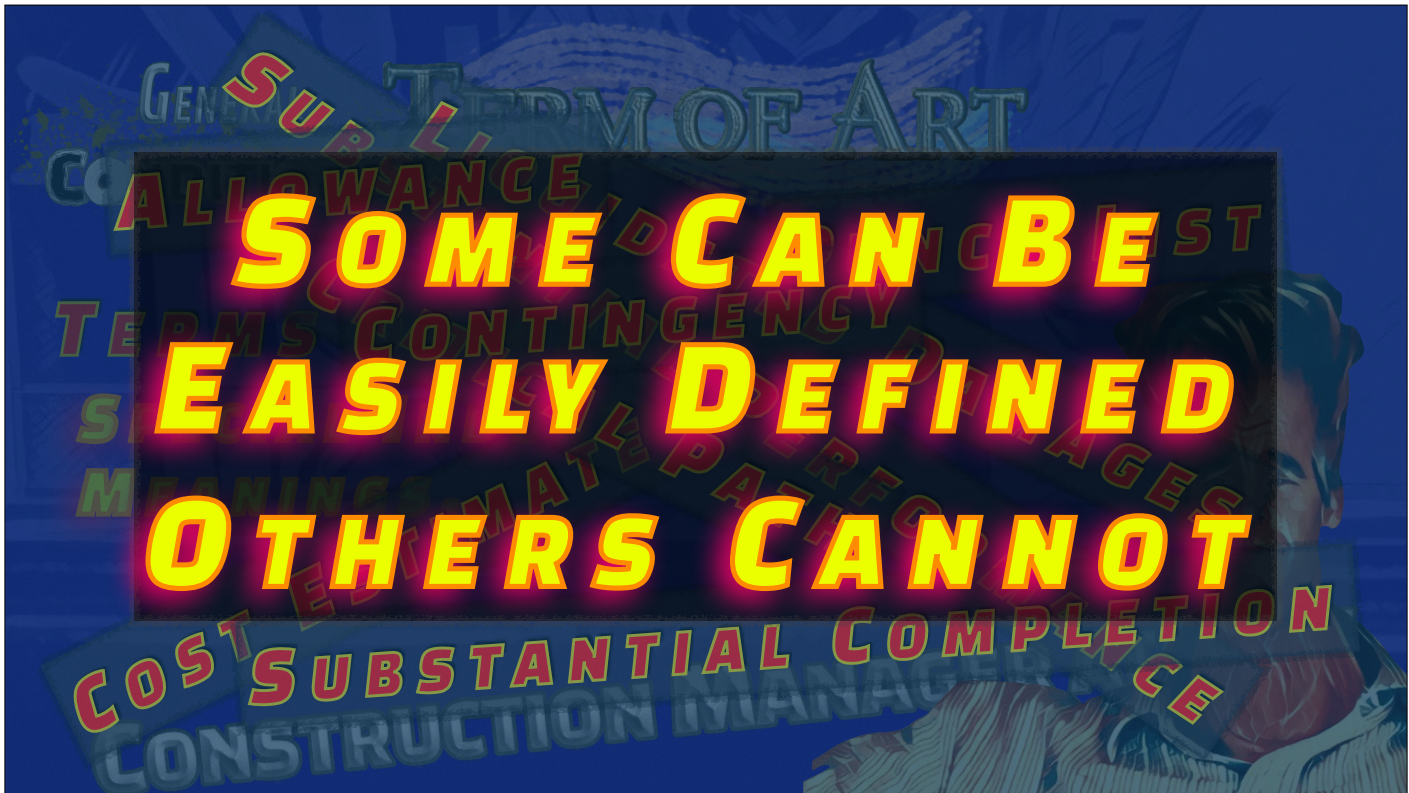
# TERM OF ART

**TERMS OF ART:  
SPECIAL INDUSTRY  
MEANINGS.**

**CONSTRUCTION MANAGER AT**







**GENERAL CONDITIONS**  
**TERM OF ART**  
**(RED HERRING)**

**GENERAL CONDITIONS**

- ☺ **IT IS THE TITLE OF THE AIA A201**
- ☺ **DESCRIBES THE MINIMUM DUTIES OF THE CONTRACTOR.**
- ☺ **WHEN USED IN CMAR PROPOSAL IT IS A MONEY TERM THAT IS PRACTICALLY IMPOSSIBLE TO DEFINE.**

**CONSTRUCTION MANAGER AT RISK**



# GENERAL CONDITIONS

☺ **"GENERAL CONDITIONS" (RED HERRING)**

☺ **PORTABLE TOILETS**

☺ **DUMPSTERS**

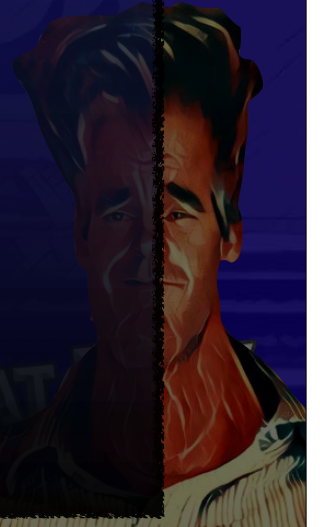
☺ **JOB TRAILER**

☺ **ON-SITE PERSONNEL**

☺ **PAPER**

☺ **COPYING**

☺ **"SIMILAR COSTS."**



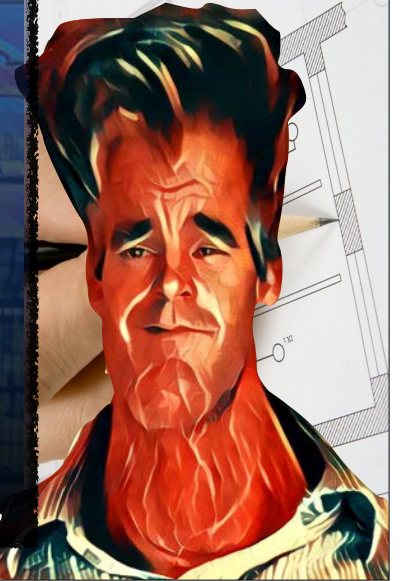
**PROCUREMENT TIME IS NOT THE  
TIME TO AGREE ON "GENERAL  
CONDITIONS\$."**

**THAT TERM WILL BE NEGOTIATED  
WHEN YOU ARE NEGOTIATING  
THE GMP - GUARANTEED  
MAXIMUM PRICE**



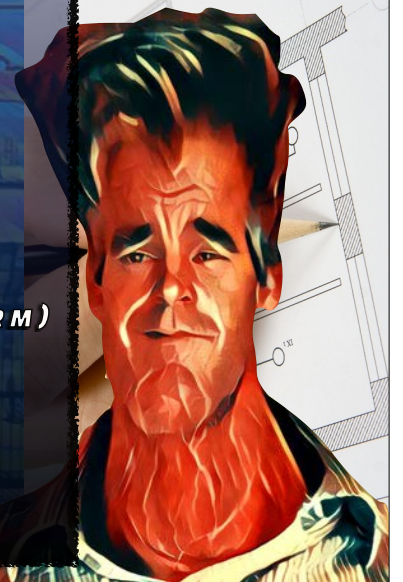
## CMAR - SELECTION CRITERIA - FEES

- ☺ **A CMAR CONTRACT IS A REIMBURSEMENT CONTRACT.**
- ☺ **IF THE FINAL AUDIT SHOWS THE COSTS TO BE LESS THAN THE GMP, THEN, DEPENDING ON YOUR CONTRACT YOU EITHER SPLIT THE SAVINGS OR TAKE THEM ALL.**
  - ☺ **A CMAR NEEDS TO BE REALLY SOLID IN THE ACCOUNTING DEPARTMENT.**
- ☺ **ONCE YOU ACCEPT THE GMP, A CMAR BECOMES LIKE A GENERAL CONTRACTOR WITH BIG ACCOUNTING RESPONSIBILITIES.**



## CMAR - SELECTION CRITERIA - FEES

- ☺ **WEIGHTS**
  - ☺ **QUALITY FIRST - BIG POINTS**
    - ☺ **COST ESTIMATING**
      - ☺ **TIE IT TO THE LAST ESTIMATE BEFORE THEY PROPOSED GMPs AT PREVIOUS JOBS.**
    - ☺ **PREVIOUS EXPERIENCE**
  - ☺ **FEES - MINIMAL POINTS**
    - ☺ **CM - FEE**
      - ☺ **(WILL BE NEARLY IDENTICAL FROM FIRM TO FIRM)**
    - ☺ **PRE-CONSTRUCTION SERVICES FEE**
      - ☺ **MINUSCULE COMPARED TO THE PROJECT COST**
    - ☺ **GENERAL CONDITIONS**
      - ☺ **WILL BE THE BIGGEST NUMBER BUT IT IS PREMATURE AND FAKE**





# Back To The Step-By Step

## CONSTRUCTION MANAGER AT RISK

*STEP 1 ADOPT THE EDUCATIONAL SPECIFICATIONS*

*STEP 2 ADOPT THE LONG RANGE FACILITIES PLAN*

*STEP 3: SELECT METHOD OF DELIVERY*

*STEP 4: DELEGATE AUTHORITY*

*STEP 5: SELECT ENGINEER/ARCHITECT*

*STEP 6 DECIDE SELECTION CRITERIA/WEIGHTS*

*STEP 7: SET PREVAILING WAGE RATE*

*STEP 8: GIVE NOTICE OF WORKER'S COMP COVERAGE*

*STEP 9: REQUIRE PAYMENT AND PERFORMANCE BONDS*

***STEP 10: - SELECT A CMAR USING A 1-  
STEP OR 2-STEP PROCESS.***





## CONSTRUCTION MANAGER AT RISK-2 STEP

☺ **ONE-STEP** PROCESS

☺ “REQUEST FOR PROPOSALS”

☺ IN A **TWO-STEP** PROCESS

☺ “REQUEST FOR QUALIFICATIONS

☺ **STEP 1 - QUALIFICATIONS**

☺ **STEP 2 - CAN CONSIDER PRICING**



# ONE STEP



## CONSTRUCTION MANAGER AT RISK - 1 STEP

- STEP 1 ADOPT THE EDUCATIONAL SPECIFICATIONS
- STEP 2 ADOPT THE LONG RANGE FACILITIES PLAN
- STEP 3 SELECT METHOD OF DELIVERY
- STEP 4 DELEGATE AUTHORITY
- STEP 5 SELECT ENGINEER/ARCHITECT
- STEP 6 DECIDE SELECTION CRITERIA/WEIGHTS
- STEP 7 SET PREVAILING WAGE RATE
- STEP 8 GIVE NOTICE OF WORKER'S COMP COVERAGE
- STEP 9 REQUIRE PAYMENT AND PERFORMANCE BONDS
- STEP 10 SELECT CONSTRUCTION MANAGER-AT-RISK USING A "ONE-STEP" PROCESS

**STEP 11 PREPARE THE ONE-STEP REQUEST FOR PROPOSALS.**



## CONSTRUCTION MANAGER AT RISK - 1 STEP

- **STEP 11 PREPARE THE REQUEST FOR PROPOSALS:**
- **MUST STATE: "THE ONE-STEP" PROCESS IS BEING UTILIZED FOR PROCUREMENT**
- **INCLUDE:**
  - **GENERAL INFORMATION ON THE PROJECT SITE AND PROJECT SCOPE;**
  - **SCHEDULE;**
  - **ESTIMATED BUDGET; AND THE**
  - **TIME AND PLACE FOR RECEIPT OF THE PROPOSAL**





# CMAR - ONE-STEP CHECKLIST

- STEP 1** ADOPT THE **EDUCATIONAL SPECIFICATIONS**
- STEP 2** ADOPT THE **LONG RANGE FACILITIES PLAN**
- STEP 3** SELECT **METHOD OF DELIVERY**
- STEP 4** **DELEGATE AUTHORITY**
- STEP 5** SELECT **ENGINEER/ARCHITECT**
- STEP 6** DECIDE **SELECTION CRITERIA/WEIGHTS**
- STEP 7** SET **PREVAILING WAGE RATE**
- STEP 8** GIVE **NOTICE OF WORKER'S COMP COVERAGE**
- STEP 9** **REQUIRE PAYMENT AND PERFORMANCE BONDS**
- STEP 10** SELECT **CMAR USING A "ONE-STEP" PROCESS**
- STEP 11** **PREPARE REQUEST: INCLUDE STATEMENT THAT: "ONE STEP" PROCESS IS BEING UTILIZED.**
- STEP 12** **PUBLISH REQUEST**
- STEP 13** **OPEN PROPOSALS**
- STEP 14** **EVALUATE/RANK PROPOSALS (WITHIN 45 DAYS OF OPENING) NEGOTIATE WITH OFFERORS, MOVING ON DOWN THE LINE**
- STEP 15** **MAKE SELECTION PUBLIC**



# Two STEP



## CMAR - TWO STEP

STEP 1 ADOPT THE EDUCATIONAL SPECIFICATIONS

STEP 2 ADOPT THE LONG RANGE FACILITIES PLAN

STEP 3 SELECT METHOD OF DELIVERY

STEP 4 DELEGATE AUTHORITY

STEP 5 SELECT ENGINEER/ARCHITECT

STEP 6 DECIDE SELECTION CRITERIA/WEIGHTS

STEP 7 SET PREVAILING WAGE RATE.

STEP 8 GIVE NOTICE OF WORKER'S COMP COVERAGE

STEP 9 REQUIRE PAYMENT AND PERFORMANCE BONDS

STEP 10 SELECT CONSTRUCTION MANAGER-AT-RISK USING A "TWO-STEP" PROCESS

**STEP 11 PREPARE REQUEST FOR QUALIFICATIONS:  
INCLUDE STATEMENT THAT "TWO-STEP" PROCESS IS BEING  
UTILIZED.**



## CMAR - TWO STEP - STEP ONE

☺ **STEP 11 PREPARE REQUEST FOR QUALIFICATIONS:  
INCLUDE STATEMENT THAT "TWO-STEP" PROCESS  
IS BEING UTILIZED.**

☺ **MAY NOT REQUEST FEES IN STEP ONE.**

☺ **MUST INCLUDE: "GENERAL INFORMATION ON :**

☺ THE PROJECT SITE AND PROJECT SCOPE;

☺ SCHEDULE,

☺ ESTIMATED BUDGET;

☺ THE TIME AND PLACE FOR RECEIPT OF THE  
RFQ; AND

☺ "A STATEMENT" THAT "THE SELECTION  
PROCESS IS" A "TWO-STEP" PROCESS.

☺ **STEP 11 PUBLISH THE REQUEST**





## CMAR - TWO STEP

- STEP 1 ADOPT THE EDUCATIONAL SPECIFICATIONS
- STEP 2 ADOPT THE LONG RANGE FACILITIES PLAN
- STEP 3 SELECT METHOD OF DELIVERY
- STEP 4 DELEGATE AUTHORITY
- STEP 5 SELECT ENGINEER/ARCHITECT
- STEP 6 DECIDE SELECTION CRITERIA/WEIGHTS
- STEP 7 SET PREVAILING WAGE RATE.
- STEP 8 GIVE NOTICE OF WORKER'S COMP COVERAGE
- STEP 9 REQUIRE PAYMENT AND PERFORMANCE BONDS
- STEP 10 SELECT CONSTRUCTION MANAGER-AT-RISK USING A "TWO-STEP" PROCESS
- STEP 11 PREPARE REQUEST FOR QUALIFICATIONS: INCLUDE STATEMENT THAT "TWO-STEP" PROCESS IS BEING UTILIZED.

**STEP 12 PUBLISH NOTICE OF THE REQUEST FOR QUALIFICATIONS**



## CMAR - TWO STEP - 2ND STEP

- 🕒 **STEP 13 OPEN SUBMISSIONS - SELECT 5 OR FEWER.**
- 🕒 **RANK BASED ON QUALIFICATIONS - ONLY**
- 🕒 **STEP 14 SECOND STEP—REQUEST ADDITIONAL INFORMATION - MAY ASK FOR FEES/PRICES**
- 🕒 **APPLY THE PRICE POINTS TO OBTAIN THE FINAL RANKING**





## CMAR - TWO STEP CHECKLIST

- STEP 1** ADOPT THE **EDUCATIONAL SPECIFICATIONS**
- STEP 2** ADOPT THE **LONG RANGE FACILITIES PLAN**
- STEP 3** SELECT **METHOD OF DELIVERY**
- STEP 4** **DELEGATE** AUTHORITY
- STEP 5** SELECT **ENGINEER/ARCHITECT**
- STEP 6** DECIDE **SELECTION CRITERIA/WEIGHTS**
- STEP 7** SELECT **CONSTRUCTION MANAGER-AT-RISK USING A "TWO-STEP" PROCESS**
- STEP 8** SET **PREVAILING WAGE RATE.**
- STEP 9** GIVE NOTICE OF **WORKER'S COMP** COVERAGE
- STEP 10** REQUIRE **PAYMENT AND PERFORMANCE BONDS**
- STEP 11** PREPARE REQUEST FOR **QUALIFICATIONS: INCLUDE STATEMENT THAT "TWO-STEP" PROCESS IS BEING UTILIZED. DO NOT REQUEST FEES/PRICES IN STEP ONE.**
- STEP 12** **PUBLISH** REQUEST
- STEP 13** OPEN SUBMISSIONS - **SELECT 5 OR FEWER.**
- STEP 14** **SECOND STEP**—REQUEST **ADDITIONAL INFORMATION - MAY ASK FOR FEES/PRICES**
- STEP 15** OPEN **PROPOSALS**
- STEP 16** **EVALUATE/RANK** FINALISTS (WITHIN **45** DAYS OF OPENING)
- STEP 17** **NEGOTIATE** WITH OFFEROR **MOVING ON DOWN THE LINE**
- STEP 18** **MAKE SELECTION PUBLIC**



# THE GMP PROPOSAL



**CONSTRUCTION MANAGER AT RISK - PRE-CONSTRUCTION**

★ *When the Drawings and Specifications Are Sufficiently Complete, the Construction Manager Shall Propose a **Guaranteed Maximum Price.***

★ *The Guaranteed Maximum Price Is the the Sum of the Estimated Cost of the Work and the Construction Manager's Fee.*

**MISSION CRITICAL.**



# SUBCONTRACTOR BIDDING





## CONSTRUCTION MANAGER AT RISK

### • **Subcontractor Bidding -**

- ★ **REQUIRED:** Construction Manager-at-Risk **Must Publicly Advertise for all Major Elements of Project**
- ★ **REQUIRED:** Newspaper in County of Administrative Office
  - ★ Time and Place Where Bids Will Be Received / Opened
  - ★ Once a Week for at Least Two Weeks Before Deadline
- ★ **Recommend Practice:** Construction Manager and District Review Bids
- ★ District May Reject Construction Manager's Recommendations, **but Might Have To Pay for It**



## CONSTRUCTION MANAGER AT RISK

• **If the CMAR Is Performing Part of the Work,**

- ★ **It Must Submit a Bid or Proposal in Same Manner As Other Subcontractors**
- ★ **If a Subcontractor Fails To Perform, the Construction Manager May Perform Work Itself, or Pick Other Subcontractor, Without Advertising**





# BID STACKING

## BID STACKING

THE GMP

CMANR-STYLE

\$

COST OF THE WORK

CM-FEE



## CONSTRUCTION MANAGER AT RISK - PRE-CONSTRUCTION

**A GMP IS NOT  
IMMUNE FROM  
CHANGE ORDERS.**



## CONSTRUCTION MANAGER AT RISK - THE GMP

- ★ *The GMP Has To Include the Basis for the Price (the Scope of the Work):*
  - ★ *A List of the Drawings and Specifications, Including all Addenda*
  - ★ *A List of the Clarifications and Assumptions*





## CONSTRUCTION MANAGER AT RISK - THE GMP

- ★ *A Statement of the Estimated Cost of the Work Organized by Trade Categories or Systems, Allowances, Contingency, and the Construction Manager's Fee*
- ★ *The Substantial Completion Date*
- ★ *A Date by Which the Owner Must Accept the Guaranteed Maximum Price.*



## CONSTRUCTION MANAGER AT RISK - THE GMP

- ★ *Upon Acceptance by the Owner of the Guaranteed Maximum Price Proposal, the Guaranteed Maximum Price and its Basis Shall Be Set Forth in the Guaranteed Maximum Price Amendment.*
- ★ *You Have To Have Your Attorney Do This for You.*
- ★ *Many Surprise Amendments Have Not Turned Out To Be the Good Kind of Surprise.*

**MISSION CRITICAL.**





# The Construction Auditor

## ROLE OF THE CONSTRUCTION AUDITOR

- ***CMAR PROJECTS SHOULD NOT BE CLOSED WITHOUT AN AUDIT***
- ***AUDITOR WILL REVIEW BILLINGS AND COMPARE AGAINST CONTRACT TO IDENTIFY IMPROPER / UNSUBSTANTIATED CHARGES***





## **ROLE OF THE CONSTRUCTION AUDITOR**

- **AUDITOR CAN ALSO ASSIST IN REVIEWING THE GMP PROPOSAL**
- **AS WELL AS REVIEWING BILLINGS DURING THE COURSE OF THE PROJECT**
- **AUDITOR IS HIRED SEPARATELY FROM CMAR/ARCHITECT**



## **Questions**

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