



## Design-Build Update

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Design-build is the fastest growing method of project delivery in the United States and is even more popular abroad. According to statistics compiled by the Design-Build Institute of America and F.W. Dodge DATALINE, from April 1995 to April 1996 the number of design-build contracts increased 103% over the previous year. Of a total \$212 billion construction market, approximately \$37.2 billion (roughly 18%) was design-build. The strongest growth was in the category defined as "industrial plants, refineries, factories and warehouses," in which the use of design-build increased more than 300% from the previous year.

Schiff Hardin's Construction Law Group has been very involved in matters of design-build law and business. The following is a sampling of some of the most useful or interesting activities.

## Federal Design-Build Legislation

Mark Friedlander of Schiff Hardin's Construction Law Group is the Chairman of the Professional Practice and Contracts Committee of the Design-Build Institute of America, which has been lobbying for federal legislation authorizing sensible procurement of design-build services. On February 10, 1996, President Clinton signed the "Federal Acquisition Reform Act of 1996," which requires military and most civilian agencies to conduct a two-phase procurement when design-build project delivery is employed. Phase one consists of submittal of qualifications and related information in response to an RFP without any price or technical response information. The field is then narrowed to 3-5 qualified offerors who submit technical and price proposals. The legislation has been hailed throughout the construction community as fair and sensible, and is a model for other jurisdictions.

## Fifty State Survey of Design-Build Laws

Ken Roberts of Schiff Hardin's Construction Law Group was the lead author for a detailed and extensive article that surveys the laws of all fifty states and analyzes the statutory and regulatory impediments to design-build project delivery methods. Among the article's interesting facts and information are the following:

- Four states expressly prohibit the use of design-build for all or some public contracts.
- Two-thirds of the states permit design-build to varying degrees.

- Only a handful of states authorize design-build for all state agencies.
- Among the impediments to design-build are laws that effectively mandate the design-bid-build method, laws that require multi-prime contracts, and conflicting procurement procedures for awarding.

On the other hand, the laws of a number of states do not pose such obstacles but do not expressly allow design-build. The states that expressly allow the design-build method range from those allowing specifically designated projects or agencies to use the design-build approach to a general endorsement of the use of alternative construction methods. Design-build projects have been successful elsewhere for specific types of projects such as the building of local schools, sports stadiums, public housing and transit systems.

Copies of the article and related information may be obtained by calling Ken Roberts at 312.258.5704.

## Designer-Led Design-Build

Without a doubt, the hottest topic in design-build today is designer-led design-build. Traditionally, the design-build team is led by a contractor or developer, who contracts directly with the owner, and who enters into a subcontract with the architect or engineer. Design-build teams led by the design professional, who subcontracts the construction work to one or more contractors, are rare and all but ignored by the trade organizations that publish standard form contract documents.

Recently, a comprehensive study by the University of Redding (England) has corroborated the most commonly held opinion of design-build in this country: that it receives high marks for shortening project delivery time and providing single-point responsibility, but the quality of design suffers. The researchers suggest that designer-led design-build may be the answer.

Mark Friedlander of Schiff Hardin's Construction Law Group has developed a complete business plan for designer-led design-build, including model contract documents, establishment of the A/E's construction division and consultation to establish the process while avoiding the risks. He has developed solutions to the traditional obstacles to designer-led design-build: the designer's minimal financial strength, and its exposure to uninsurable construction risks. The business plan allows the design professional to multiply its profits by sharing in the construction revenue while at the same time increasing its market share by being able to guarantee in writing to

owners that the project will be built on time and within budget. It has the additional advantages of returning control of construction to the design professional while actually reducing the A/E's construction phase liabilities.

The entire business plan, including model contract forms, is available for a single fixed fee of far less than it would cost to assemble the materials and expertise individually. Further information on the designer-led design-build business plan is available by calling Mark Friedlander at 312.258.5546.

## Design-Build Institute of America

The "DBIA" is a rapidly-growing organization devoted to educating the public about the use of design-build methods of project delivery and facilitating its use. The organization is comprised of design professionals, contractors, public and private owners, and specialty subcontractors, as well as sureties, insurers, and attorneys. Its annual "Professional Design-Build Conferences" have achieved national acclaim. Please visit their Web site for more information: <http://www.dbia.org/>.

## About the Author

Mark C. Friedlander is a partner in the Construction Law Group at the law firm of Schiff Hardin LLP. He obtained his B.A. from the University of Michigan in 1978 and his J.D. from Harvard Law School in 1981. He is currently an adjunct professor at the University of Illinois at Chicago School of Architecture and a lecturer at Northwestern University's Engineering School, and had lectured at the Illinois Institute of Technology School of Civil Engineering from 1987-89, at the Engineering School of the University of Wisconsin in 1988 and 1990, and the Architecture School of the Georgia Institute of Technology in 1997-98. Mr. Friedlander concentrates his practice in construction law and litigation with particular emphasis on design-build methods of project delivery.

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