



**Speak Out —  
Design-Build Provides “An Opportunity for  
Architects to Return to the Status of Master  
Builders.”**

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As a lawyer who counsels architects, I firmly believe that architecture as a profession is headed in the wrong direction. Other professions are performing many of the services traditionally performed by architects, and architects disappoint their clients by contractually disclaiming responsibility for budgets, construction procedures, and other aspects of projects.

Architects have been somewhat hostile to design-build, classifying it as another encroachment on their status and services since they are usually subcontractors of the design-builder. However, design-build can be an opportunity for architects to return to the once exalted status of master builders—provided they seize the initiative by agreeing not only to design but also to construct the project.

For years, lawyers and insurers have told architects that they cannot guarantee construction prices or completion dates or take responsibility for the actual construction of what they design. These warnings are wrong. By structuring projects carefully and intelligently, architects can increase their prestige, self-esteem, and earnings as design-builders.

The key to the business structure is for the architect to form a separate construction company that enters into a strategic alliance with one or more general contractors. The architect's construction company assumes all of the usual risks to the owner, but subcontracts them all to the general contractor, who is the source of construction experience and financial/bonding capacity. The general contractor provides pre-construction services to enable the architect to commit to a construction price and completion date in exchange for being awarded a 100 percent subcontract to construct the project

The marketplace has shown that the architect can earn a "fee" (really a mark-up) of up to 5 percent of the construction cost over and above its design fee. The fee is not compensation for sharing construction risks; it is akin to a finder's fee as compensation for awarding the 100 percent subcontract to the general contractor.

This fee does not come from the owner's pocket. It is generated by the synergy and efficiency of designer-led design-build. Experience with design-build has shown that it offers contractors substantially larger profit margins than competitively bid or even negotiated projects. Furthermore, in designer-led design-build, general contractors have no marketing overhead for projects and no time wasted estimating projects that are not ultimately awarded to them. The contractor also saves money by being able to learn the design intent and bid the project in a deliberate,

cooperative manner with the architect and from the architect's friendly, affirmatively helpful construction administration.

The benefits to the architect of designer-led design-build are huge:

**Greater profits.** In addition to the 5 percent mark-up, the architect shares in the savings of any projects brought in under budget. Furthermore, the architect saves the labor involved in "defensively detailing" the construction documents.

**Marketing.** Architects will be able to make the same guarantees of cost and schedule as design-build contractors, but architect-led design-build is a more flexible structure than contractor-led design-build and more responsive to owner interests.

**Control.** The architect can ensure that the construction conforms to the design and can also make any necessary or advisable design changes during construction with minimal cost and consequence.

**Reduced liability.** Architect-led design-build results in reduced professional liability compared to traditional construction.

**Minimal risk.** The architect remains responsible for the usual professional design risks but, by delegating the entire construction to a financially sound general contractor, passes through all of the construction-related risks.

Architect-led design-build requires the architect and contractor to form a truly cooperative team that maximizes the interests of both. But in the long term, designer-led design-build allows the architect to reclaim status and control, returning the profession to its historic role as leader of the construction industry.

## 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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