

# Issues for Design-Build Teaming Agreements

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# Structure of the Team

- Structure of the Business Relationship
  - One party prime, and the other as subcontractor
  - Joint business venture
    - Legal structure of venture: joint venture (partnership), corporation, limited liability company
    - Organization and control of the joint business venture
    - Capitalization and financial issues
- Lines of Communication

# Sharing of Risks and Rewards

- Compensation
  - Amount
  - Timing of payment
  - Conditions
- Project Profits and Losses
  - Allocation of savings if project exceeds goals
  - Allocation of losses if project fails to meet goals
- Other Risks and Rewards
  - Identify and describe each
  - Allocate consequences between the parties

# Design Phase Services

(that may be different from traditional projects)

- Services Provided by the Contractor
  - Costing, estimating
  - Value engineering
  - Assistance in analyzing owner-provided information
  - Constructability analysis
  - Preliminary scheduling
  - Checking design to anticipate problems
  - Acquisition of long-lead items
  - Procuring subcontractor participation and quotes
  - Negotiation with subcontractors/vendors

# Design Phase Services (cont.)

(that may be different from traditional projects)

- Services provided by the A/E
  - System-by-system design, with “looping” feedback from trade contractors
  - Greater (lesser) number of alternative designs
  - Informal communications rather than “defensive detailing”
  - MEP design only schematic, completed by trade contractors
  - Acceptance of greater-than-usual price constraints
  - Out-of-sequence provision of design details
  - Heavier reliance on performance specifications

# Construction Phase Services

(that may be different from traditional projects)

- By the Contractor
  - Anticipating and avoiding or minimizing the consequences of design problems
  - Fast-tracking the construction
- By the A/E
  - Informal provision of supplemental design information
  - Cooperative approval of substitutions
  - Cooperative trouble-shooting and problem-solving

# Protective Business Services

- Confidentiality of Information
- Exclusive Relationships or Agreements Not to Compete
- Future Marketing/Sales Efforts
  - Responsibility of each party
  - Provisions regarding mutual commitment, exclusivity

# Risk Transference

- Indemnity Provisions
  - A/E to indemnify contractor for claims arising out of breaches of A/E's duties
  - Contractor to indemnify A/E for claims arising out of breaches of contractor's duties
  - Provisions for cooperative defense or splitting costs of claims common to both parties
  - Provisions for indemnification by others

# Risk Transference (cont.)

- Insurance Provisions
  - Coverage to be procured by each party, including limits, terms, etc.
  - Allocation of cost of insurance
- Surety Bonds
  - Description of bonds to be procured, by whom, terms, etc.
  - Provisions for allocating costs of bonds

# Dispute Resolution

- Commencement of the Dispute Resolution Process
  - For claims initiated by or involving third parties, dispute process not to begin until third party aspects of claim are resolved
  - Provision tolling statute of limitations for claims involving third parties

# Dispute Resolution (cont.)

- Sequence of Dispute Resolution Actions
  - Step negotiations between senior management
  - Non-binding mediation
  - Binding arbitration (or court litigation)

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