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Contracting Methods
Alternative Project Delivery Methods

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* The provisions contained herein are taken directly from the AIA Document A201 – 2007 General Conditions of the Contract for Construction.
AIA DOCUMENTS

AIA A201
• Project General Conditions – Integrated with most forms

A Series
• Owner – Contractor Documents (including bonds)

B Series
• Owner – Architect Documents

C Series
• Other Agreements (construction manager, consultants)

G Series
• Payment documentation, Change Orders, RFIs
The Various 2007 A-Series Owner-Contractor Contracts: Related to Project Payment Type

**AIA A101**
- Standard Form of Agreement Based on a Stipulated Sum

**AIA A102**
- Standard Form of Agreement Based on the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

**AIA A103**
- Standard Form of Agreement Based on the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

**AIA A107**
- Standard Form of Agreement for Project of a Limited Scope

**AIA A141 141/2 - 2004**
- Standard Form of Agreement between Owner and Design-Builder
The Various 2007 B-Series Owner-Architect Contracts: Relationship to Project Size

- B103: 15% Extra-Large/Complex
- B101: 70% Large
- B104: 15% Medium
- B105: 15% Small/Simple

Small Projects

Large Projects
PRICING VARIATIONS IN CONSTRUCTION CONTRACTS
Pricing Variations in Construction Contracts

**Fixed price (lump sum) contracts**
- Contractor bears risk of cost overruns
- Contractor has possibility of windfall profits
- Encourages adversarial relationships

**Cost-plus (time & materials) contracts**
- Fee can be a percentage, fixed sum or any formula
- Difficult for owner to control costs
- May have a Guaranteed Maximum Price (GMP)
- May have a savings sharing clause with a GMP or target price
- Change orders only change GMP or target price
Pricing Variations in Construction Contracts

**Unit pricing** –
- Owner pays a specified cost for a particular quantity of work
- Best for repetitive types of work (concrete, roadways, etc.)
COMPETITIVE BIDDING
Competitive Bidding – Traditional and Fast-Track Methods

Required for public projects

Purposes: To achieve the lowest cost, and an impartial forum for contractor selection

“Short-listing” bidders (pre-qualification)

The typical process
- invitation to bidders
- submittal of bids/proposals
- opening of bids/proposals
- evaluation of bids/proposals
- notification and award of project
- signing a formal contract
Competitive Bidding – Traditional and Fast-Tracking Methods

Bidding errors

- Bids with clerical/arithmetic errors can be withdrawn (but not modified)
- Bids with judgment errors cannot be withdrawn
- Exception: the “snap-up” rule (where owner should have known of the bidding mistake by comparison to other bids)
DIFFERENT TYPES OF CONTRACTING METHODS
TRADITIONAL CONTRACTING MODEL
Traditional Owner-Architect-Contractor
Traditional Owner-Architect-Contractor

Advantages
• It is common, so the marketplace is comfortable with it.
• Plans are usually complete prior to bidding or final pricing.
• Architect remains independent.

Disadvantages
• Often little input from contractor during design.
• Slower delivery time due to back-to-back phasing.
• Often adversarial relationship between G.C. and A/E.
• Price competition reduces profits or renders some projects unobtainable.
• Other problems.
  – Claims Contractors
  – Truth in Bidding.
DEVELOPER AS PRIME MODEL
FAST-TRACKING
Traditional v. Fast Tracking

**Traditional Method**
- Design
- Bid/Pricing
- Construction

**Fast-Track Method**
- Design
- Bid/Pricing
- Bid/Pricing
- Construction

- Advantage – Delivery speed of a completed project.
- Disadvantage – More difficult to control cost estimating and construction costs.
MULTIPLE PRIME CONTRACTING MODELS
Owner – Multi-Prime

- No role for the general contractor
  - Owner has all contracts directly
  - May be legal reasons for this contracting method
- Owners rarely able to manage and coordinate project successfully
- Owner liable for management and coordination problems during construction
  - Time and cost management
CONSTRUCTION MANAGER
CONTRACTING MODELS
Construction Management – Agency CM

- Retained to manage the construction
- Does not enter into the agreements with the trade contractors
- On-site observer – similar to architect’s role
  - Time and cost management
Construction Management – At Risk CM

- CM works with Owner for pricing and securing the subcontractors.
- After CM Agreement is executed CM essentially become general contractor.
- CM at Risk is liable for management and coordination problems during construction.
## Risk Spectrum of Construction Management

<table>
<thead>
<tr>
<th>Advisory CM</th>
<th>Agency CM</th>
<th>At-Risk CM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimal</td>
<td>Moderate</td>
<td>Highest</td>
</tr>
<tr>
<td>Another layer of consulting</td>
<td>Coordination and management for a fee</td>
<td>Ultimately its role is similar to a general contractor</td>
</tr>
</tbody>
</table>

- Biggest benefit of using CM is CM’s role during the design process.
DESIGN-BUILD CONTRACTING MODELS
Traditional Design-Build

Owner

Design-Builder
Types of Design-Build Relationships

• Integrated Company
• Contractor is the Prime, A/E is the Sub
• A/E Prime is the Prime, Contractor is the Sub
• A/E is the Prime, Multiple Trade Subs retained
• Design-Builder Prime, A/E and Contractor Each Subs (Multiple Integrated Company)
• Joint Venture between A/E and Contractor (joint and several liability)
Multiple Integrated Company Model

- Owner
- Design-Build
  - Design Affiliate
  - Construction Affiliate
Multiple Integrated Company Model

Owner

JV Design Affiliate

JV Construction Affiliate
Advantages of Design-Build

• Speed of project delivery.
• Owner can look to design-builder for single-point responsibility.
• Obtain cost-certainty earlier and with better results.
• Better communication of design intent from design arm to constructing arm.
• Less litigation and disputes.
• Greater control of information by design-build team.
• Negotiated pricing.
• A/E and GC not adversarial.
• Need to learn new relationships.
Disadvantages of Design-Build

- Loss of architect as independent decision maker or “policeman” on the project.
- Pricing may be suspect depending on when the fast-tracking take place.
- May be more of an economic risk depending on the design-builder entity.
- Who is back-checking for the owner?
Design-Build: Differences in Architect’s Design Phase Services

- System-by-system design with “looping” feedback
  - Each system designed semi-independently
  - Design of each system constantly modified by feedback from the construction team
- Informal communications rather than “defensive detailing”
- Greater incentive to explore alternative design concepts
- MEP/FP only schematic, design-built by specialty contractors
Design-Build: Differences in Architect’s Design Phase Services

• Greater than usual pricing constraints and pricing input
• Out-of-sequence provision of design details to meet contractor’s need to price the project
• Heavier than usual reliance on performance specifications