Design-Build Options for Public Projects

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Most Municipal Construction
Design – Bid – Build

- **OWNER**
  - A/E (Consultant)
    - Consultant
  - General Contractor (Sub)
    - Sub

Design → Bid → Build
Reasons Why Municipal Construction Does Not Work Well Today

- Lengthy project duration: back-to-back-to-back phases
- Cumbersome bidding process
- “Lowball” claims contracting
- Late pricing input: not until contract documents are complete (or nearly so)
Advantages of Design-Build Over Other Project Delivery Methods

• Shortened project duration
• Reduced cost escalation
• Early determination of true costs
• Greater budgeting confidence
• Single point responsibility
• Claims litigation reduced 60%
The Two-Step Approach to Design-Build

- Selecting a short list based solely on qualifications
- Seeking and evaluating competitive proposals from the short-listed firms
Problems Experienced by Public Bodies with Two-Step Approach

• Inefficiency from the change of teams — the “criteria professional” who helps to develop the RFP is not part of the design-build team
• There is still “lowball” claims contracting — the disputes concern scope of the project and errors or omissions in the RFP documents rather than in the construction documents
• There is still a cumbersome RFP process
• Many good companies/teams refuse to participate because the cost of preparing competitive proposals outweighs the profits from the percentage of projects actually awarded to them
• Most design-build teams are led by the contractor, so the A/E will owe its loyalty to the contractor rather than to the owner
The Private Sector’s Solution

• Negotiated design-build contracts with the Design-Builder’s “open book” allowing competitive pricing of subcontracts and material/equipment purchases
• This approach is possible because of the absence of a competitive bidding requirement for private work
• The private sector has determined that “it gets what it pays for”
  – It chooses this structure as the most efficient
  – The “open book” keeps everyone honest
The Public Sector Equivalent: Construction Management at Risk by the Design Professional
CM at Risk by the A/E is Legal Under Most States’ Laws

• Construction management is usually deemed to be a professional service for which competitive bidding is not necessary
• Competition occurs at the trade contractor level
Construction Management at Risk by the Design Professional is Essentially the Same as Design-Build With “Open Books”

- The construction bond comes from the general contractor member of the team
- The CM is affiliated with the A/E and guarantees the pricing and schedule during the design phase in exchange for a negotiated fee for construction management
- The CM is a joint business venture of the general contractor and a company affiliated with the A/E
Sequential Design-Build
Public Sector
The Most Practical Structure for CM at Risk by the A/E Involves Sequential Contracts

- Design contract
- Price/schedule guarantee
- Construction management agreement
Advantages of CM at Risk by the A/E

- Better design quality
- The owner has the flexibility in deciding whether and when to convert the project to design-build
- The A/E is prime to the owner, and does not owe its loyalties to the contractor
- Continuity: the design professional is involved from beginning to end of the project
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