



AIA Best Practices: Alternative service delivery methods

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Summary

Design-build is just one of the service delivery methods that can replace the traditional design-bid-build method. A number of other alternatives present an array of risk/reward opportunities for architects, including construction manager at risk, project manager, construction agent, and architect as consultant.

Consult your attorney: *The information herein should not be regarded as a substitute for legal advice. Readers are strongly advised to consult an attorney for advice regarding any matter related to alternative service delivery methods.*

Construction manager at risk

A construction manager may also act in an advisory capacity as a representative and agent of the client. A CM-agent typically provides services for a fixed fee but assumes no risk for actual construction costs; cost savings or overruns are passed on directly to the owner. Either an architect or a general contractor can provide CM-agent services. Typically, the CM-agent has a direct agreement with the client, independent of the architect, contractor and any subcontractors.

Architects on projects for which the owner has retained an independent CM-agent are advised to confirm that the respective agreements with the owner and the general conditions of the construction contract clearly define roles and responsibilities. These documents should clearly state who has the final authority over such things as design decisions, review of submittals, construction observation, communication with the contractor and review and approval of the contractor's applications for payment.

Architects should be especially alert to the implications of a client engaging a CM if the professional agreement does not first address the relationship between the client and the architect.

Architects who successfully expand their practices to include CM-agent services can enjoy substantial rewards but also can incur new sources of risk. CM-agent services may subject an architect to greater liability for the risks assumed by the contractor in conventional design-bid-build projects, including job site safety, construction means and methods, construction scheduling and construction cost. It is advisable to carefully assess these potential risks and to evaluate whether the design firm has the requisite knowledge, experience and skill to assume them.

Most professional liability insurance policies for architects cover claims that arise from an architect's CM-agent services. However, policies typically do not cover claims for nonprofessional advice or services, which

could include the actual performance of construction work by the construction manager or others directly retained by the construction manager.

Project manager

Project management describes a range of consulting services, from project conception, through design and construction, to occupancy and facilities management. The architect in the project manager role performs tasks associated with management of the design team without engaging any construction contractors or performing any construction.

Owners contract directly with project managers to represent them and act as their agents. Typically, project managers provide a broader scope of services than they would as a traditional prime consultant, including such tasks as program definition; development of conceptual design; and services in the phases of predesign, design, construction and postconstruction. The project manager may act as an extension of the owner's staff, providing general management, program, site, scheduling and budget services.

Bridging

Bridging describes an arrangement under which a client retains one architect who reports directly to the client while another architect is part of the design-build entity. Risk management issues will vary depending on the party with whom the architect has reached an agreement. Some of those risks are described below.

Architect as consultant to owner

In this independent role under the design-build method, the agreement between the owner and the architect should clearly define the scope of responsibility for the review of design or construction documents. Under no circumstances should an architect acting as a consultant sign or seal construction documents prepared by the design-builder. If the independent design professional imposes design preferences or judgments on the design-builder, it may be construed as assuming some level of responsibility for the design.

The architect as consultant must guard against imposing or suggesting design preferences or judgments on the design-builder. Review the design or construction documents only after the design-builder has completed, signed, and sealed the documents. Review only those drawings or other submittals specified in the owner-consultant agreement. Make clear to the design-builder that any and all reviews are completed solely at the request and for the benefit of the client.

Architect as consultant to design-builder

Under this arrangement, the design-builder's architect may assume a significant amount of liability for any deficiencies that may result from incorporating the recommendations or requirements of the owner's consultant architect. If the design-builder's architect has any reservations about the recommendations or requirements, they should not be incorporated into the final design and construction documents.

The design-builder's architect should not expect the client's architect to assume liability for errors, omissions, or other deficiencies in the design and construction documents. During construction, the design-

builder's architect should have the primary, if not exclusive, communicative and administrative role in the project.

The design-builder's architect should not accept any directions from the client's architect that may be ill-advised. It is highly improbable that the design-builder's architect can avoid liability and responsibility by pointing to design changes or decisions imposed by the client's architect.

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