



AIA Best Practices: Defining roles in design/build projects

Contributed by Victor

Summary

Contractor-led design/build and joint venture design/build are two common project delivery methods. The former method is typically covered by most professional insurance policies, while the latter is usually not covered. Liability issues, information about the client's role, and tips on project evaluation are presented.

Contractor-led design/build

In general, design/build refers to project delivery through a single entity responsible for providing comprehensive design and construction services.

Design/build projects often expose architects to additional risks. Architects may wish to carefully consider the following risk management factors:

- Architect's role in the design/build entity
- Contracts
- Licensing
- Insurance and surety bonding
- Liability exposure

Because design/build agreements tend to be customized rather than based on standard contract forms, architects are strongly advised to consult legal counsel before entering into such agreements.

There are many possible design-build business and contractual arrangements. In one common arrangement—"contractor-led" design-build—the contractor acts as the design/builder and retains the architect to provide professional design services. The respective roles and responsibilities in contractor-led design/build are like those in conventional owner-architect relationships—except that the design/builder, not the building owner, is the architect's client. This contractual arrangement does not normally require the architect to obtain any special insurance coverage; most professional liability insurance policies cover projects of this type.

The architect in a contractor-led design/build relationship still must guard against other risks inherent in this project delivery method. See the references at the end of this article for more information about these additional risks.

Joint venture design/build

A joint venture between an architect and a contractor is a more complex relationship that is not typically covered by standard professional liability insurance policies. Before entering into such a relationship, consult your insurance underwriter for advice on supplementing your professional liability insurance coverage.

A joint venture design/build arrangement changes the role of the architect in the building process. For an initial high investment of time and money, coupled with slow initial reward, the architect creates preliminary construction documents upon which the contractor relies to develop a cost proposal. Design/build proposals are typically based on a guaranteed maximum price (GMP); no price increases are considered post-award. The contractor controls the development of the initial cost proposal, bidding by subcontractors, and total project cost. As a result, the architect may be held accountable for the changes in cost that are likely to occur between preliminary and final construction documents, even though the architect had no role in developing the original cost proposal, no means of ensuring that adequate contingency funds were included for design changes, and no control over the expenditure of contingency funds post-award.

Realities that cannot be ignored

In the design/build delivery method, inherent tensions can develop between the contractor and the architect that they need to discuss, understand, and acknowledge.

Contractors often make decisions based on economics, whereas architects have a professional duty to base their decisions on principles of public safety and sound design. Architects place a high value on the quality of the design, long-term performance, durability, and low maintenance. The design/build contractor may or may not share these values. The contractor may be prepared to meet minimum design standards, while the architect may recognize that the minimum standard is not in the best interests of the client or the public.

A frank discussion among prospective design/build parties may help them decide whether they are suitable partners. It may also help them understand one another better, enter into agreements that address these issues forthrightly, and minimize the likelihood of future disagreements or disputes.

The role of the client

In the early days of design/build, the owner of the facility was not involved in preliminary design beyond developing the basic project parameters. It is now more common for the owner to participate in the development of the conceptual design. This may help ensure that the submitted proposals conform to the basic project requirements.

For example, whereas in the past a client might have simply specified a “sports arena,” today a client is more likely to retain a design consultant to conduct preliminary programming and prepare preliminary designs to establish general project requirements—such as, in this example, seating capacity, rink size, concession space, and HVAC specifications. Prospective design/build teams then further develop the preliminary design and prepare detailed cost proposals to deliver the project.

Evaluating design/build projects

The following checklist, while not intended to be comprehensive, may be helpful in evaluating prospective design/build projects:

- Has the client clearly described the project requirements, stated the performance criteria, produced a detailed scope of work, and written terms of reference?
- Does the Request for Proposal indicate a knowledgeable client? If not, has the client retained a professional consultant to advise the client on design and evaluate the construction?
- Does the client have the financial means to build the project, and does the contractor have the financial means to complete the project?
- Did the client prequalify a list of design/build contractors?
- Does your design/build contractor partner (in a joint venture) or client (if the project is contractor-led) have a good track record on similar projects?
- For public projects, is there strong political support and adequate funding?
- Are there any environmental problems or political opposition?

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