

## Basic Risk Management Techniques for General Contractors Entering into Design/Build

by Cynthia Turner

To increase a firm's profitability, many general contractors are looking to increase the efficiency of its project delivery process. And why not? The buzz around the industry is that design/build is the wave of the future for maximizing profit. If design/build is a consideration for your firm, don't enter into it lightly. Do your research, understand the advantages and the risks, manage the exposures from the start, and hopefully you will reap the benefits of success commonly associated with this delivery method.

### EXPERIENCE AND RELATIONSHIPS

First, stick within your niche industry. Your industry experience is priceless. Next, pick team members wisely; this is a key factor in a successful design/build relationship. Use firms that you have a strong relationship with and who have experience in design/build, as well as personnel who know the design/build process. With firms in different roles and retaining different risks than with a traditional project delivery method, knowledge of the process, identification of the exposures and implementation of controls are critical.

Does your client understand the risks of design/build, or do they just believe it should give faster, cheaper results than traditional delivery methods? All team members, including the client, should be educated on, and understand, the risks, as well as the benefits of design/build. For example, many owners believe that change orders will not be generated by a design/build project. This is not the case, and the owner must recognize this before the project commences.

### THE RULES OF ENGAGEMENT

Check with legal counsel familiar with the construction industry to identify the legal nuances of design/build and design/build contracts. Counsel is also important to identify the legal climate in the geographical area of the project. Discuss the process with experienced design/builders in your industry. State statutes may require, or there may be legal or financial benefits to establishing a joint venture relationship or a separate entity to provide such a project. Again, discuss these issues with peers and legal counsel to identify the advantages and disadvantages of such. Industry meetings, as well as the Design/Build Institute of America are invaluable resources for information.

Picking a quality design professional experienced in the design/build delivery system will have a tremendous impact on the project, but you should also consider if they are risk savvy. Do they have adequate insurance? If not, require it. Risks can be

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contractually passed on to the design professional, but as the design/builder you have assumed vicarious liability for the professional services. Ensure that you are covered, both by requiring errors and omissions insurance retained by the designers and retaining similar insurance for your professional liabilities.

### SETTING EXPECTATIONS

Clear expectations are critical to project success regardless of the project delivery process. Communicate the need of setting expectations up front to the owner and design professionals. Encourage questions, share knowledge, and establish parameters for services (i.e., services included, services not included, and expectations of others). Assume nothing. Lack of established expectations will inevitably lead to discussions, disputes and possibly claims. All of which take up time and money.

### DESIGN LIABILITIES

Just how much more liability is involved with hiring the design professional? Previously, when plans and specifications were provided by the Owner, the contractor had an implied warranty on the accuracy of those plans offered by the Owner. However, now with their contractual relationship with the design professional that implied warranty is no longer valid. As long as the design services are provided consistent with industry standards, designers are not required by law (and should not so as to not compromise their professional liability policies) to guarantee their documents. Any issues that arise with the design of a project must now be managed directly between the contractor and the designer. This new arrangement is not necessarily negative, as long as the team has a good working relationship and issues can be quickly resolved.



### DOCUMENTATION AND COMMUNICATION

Once initial expectations are established, move to the communication and documentation phase. Expectations for comprehensive documentation to accurately reflect the project's progression should be established early. Have meetings to foster communication. Promote communication throughout the project team and work out problems early. Disputes that are not rectified quickly fester and cause a deterioration of the project relationship. Claims tend to follow shortly thereafter.

**SUMMARY**

Design/build holds liabilities for the contractor, more than just the hiring of the designer. The vicarious liabilities of the designer, knowledge of the progression of the design process, working relationships with the design professionals, construction phase administration services, the allocation of risks and the burden of the entire project's risks are all new or untraditional issues that must be dealt with by the contractor as the design/builder, and dealt with effectively to ensure positive project results. If you decide to enter into design/build, understand the nuances of this delivery method and understand the consequences of the liabilities assumed. Before you begin:

- Talk to peers
- Have someone on the team with hands-on experience in design/build
- Use design firms that you work well with and trust
- Establish expectations early with project team and Owner
- Anticipate a learning curve
- Ensure contract documents are applicable and appropriately allocate risks
- Document and communicate well and often

By addressing these risks, the chances of a successful project can only increase.

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