PROFESSIONAL PRACTICE 544

CONTRACTING METHODS – ALTERNATIVE PROJECT DELIVER METHODS

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THE AIA DOCUMENTS

AIA Documents

A Series

- Owner & Contractor Documents (including bond forms)
  - **A201**
    - Project General Conditions – Integrates with most forms

B Series

- Owner & Architect Documents
  - **B101**
    - Owner-Architect Agreement – Most common design agreement

C Series

- Other Agreements (subcontractors, consultants, construction manager-not at risk)

G Series

- Standard Forms - Payment Documentation, Change Orders, RFIs

The A-Series Owner-Contractor Contracts Related To Project Payment Method

AIA A101

- Standard Form of Agreement Based on a Stipulated Sum (Lump Sum)

AIA A102

- Standard Form of Agreement Based on the Cost of the Work Plus a Fee with a Guaranteed Maximum Price (GMP)

AIA A103

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

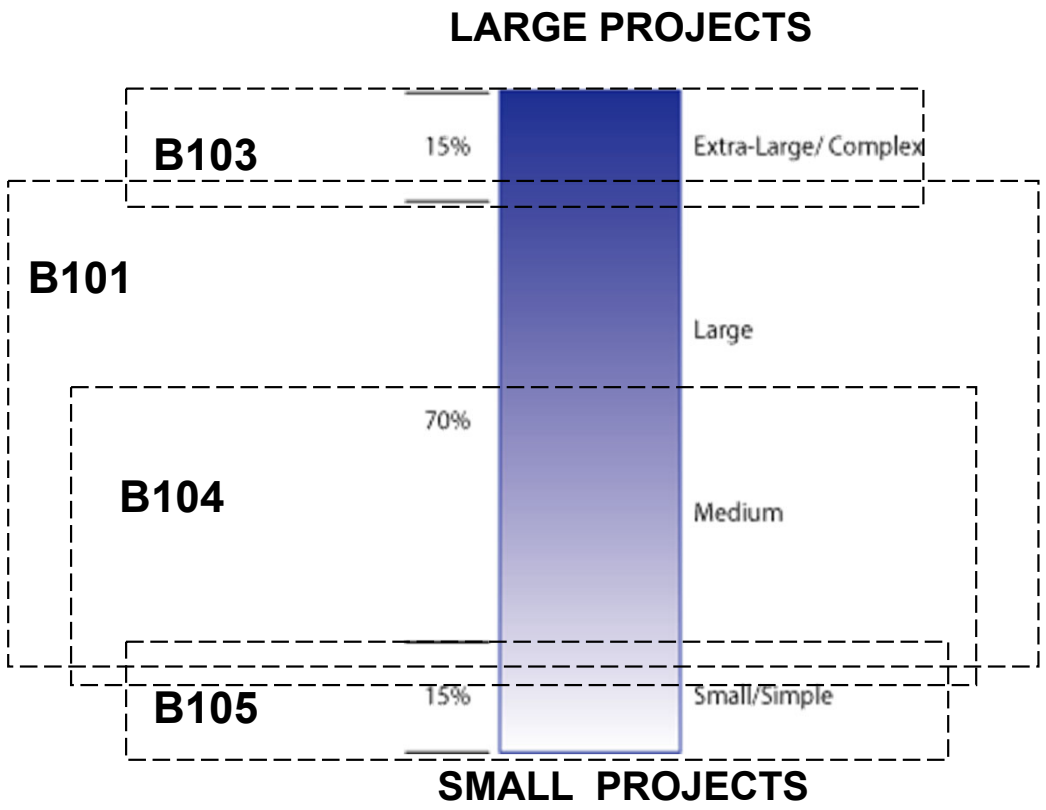
AIA A104

- Standard Abbreviated Form of Agreement Between Owner and Contractor – Can be any of the three payment methods

AIA A141, 141/2 - 2014

- Standard Form of Agreement Between Owner and Design-Builder

2017 B-Series Owner-Architect Agreements – Related to Project Size



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PRICING VARIATIONS IN CONSTRUCTION CONTRACTS

Pricing Variations in Construction Contracts

Fixed Price contracts (lump sum) (A101)

- Contractor bears risk of cost overruns
- Contractor has possibility of windfall profits
- Can more readily lead to adversarial relationships between owner and contractor
- Change orders modify what the Contractor is actually paid

Cost-plus contracts (time & materials – cost of the work) (A102 & A103)

- Fee can be a percentage, fixed sum, or any agreed-on formula
- May have a cap know as a Guaranteed Maximum Price (GMP) (A102)
- Can be difficult for owner to control costs – unless there is a GMP
- May have a savings sharing clause with GMP agreements
- Change orders for cost of the work Contractor paid for the work performed
- Change orders for GMP agreements only change the GMP and may not change payment actually paid to the Contractor

Pricing Variations in Construction Contracts

Unit Prices

- 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-Tracked Methods

Competitive Bidding – Required for Public Projects; May be used with Private Projects

- Lowest Responsible and Responsive Bidder
- Best Value Method – Design Build (not allowed in all states for public projects)
- Exception – sole source contracts (very rare in public projects)

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

“Short-Listing” of bidders – before and after the RFP process

- Pre-qualification process
- After proposals are received

Competitive Bidding – Traditional and Fast-Tracked Methods

The typical process

- Invitation to bidders
- Submittal of bids/proposals
- Opening of bids/proposals
- Evaluation of bids/proposals
- Notification of award of project
- Signing a formal contract

Competitive Bidding – Traditional and Fast-Tracked Methods

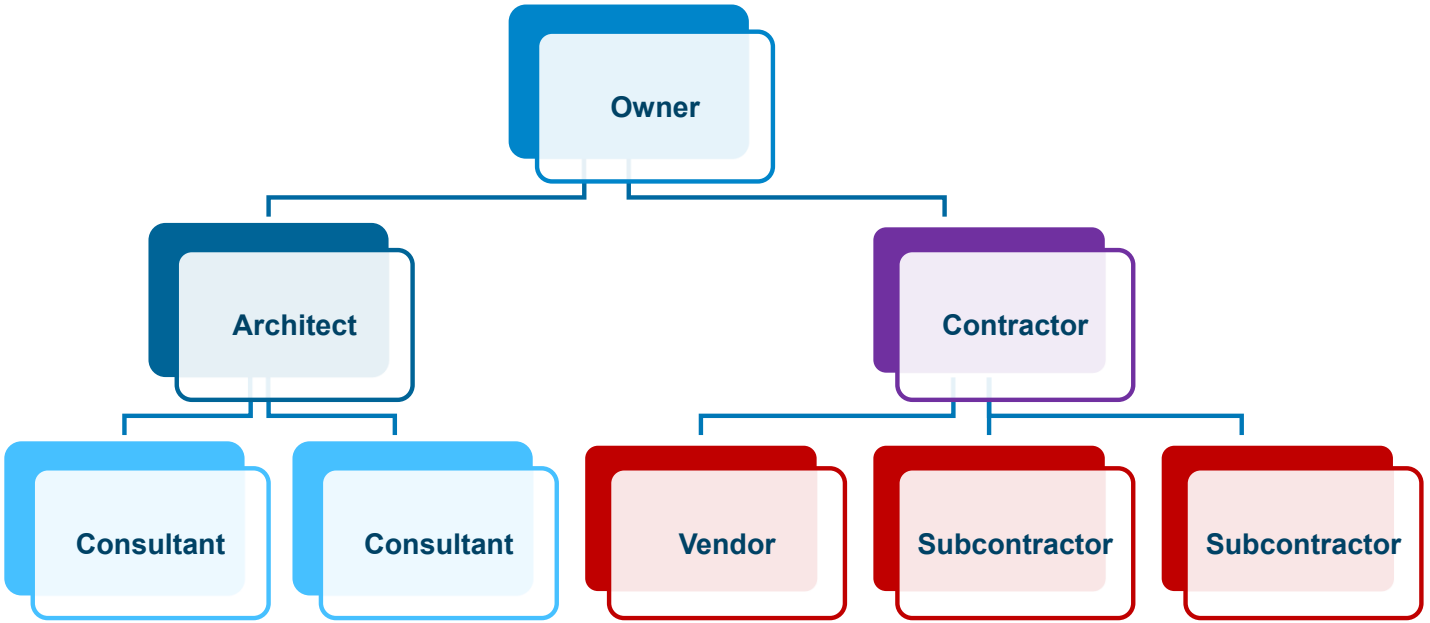
Bidding errors – How are they addressed?

- Bids with clerical/arithmetic errors may be withdrawn (but not modified)
- Bids with judgment errors cannot be withdrawn
- Exception – The "snap-up" rule allows a party to withdraw its bid (where the owner should have known of the bidding mistake by comparison to other bids – gross disparity)

DIFFERENT TYPES OF CONTRACTING METHODS

I. TRADITIONAL CONTRACTING MODEL

Traditional Owner-Architect Contractor



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Traditional Owner-Architect Contractor

Advantages

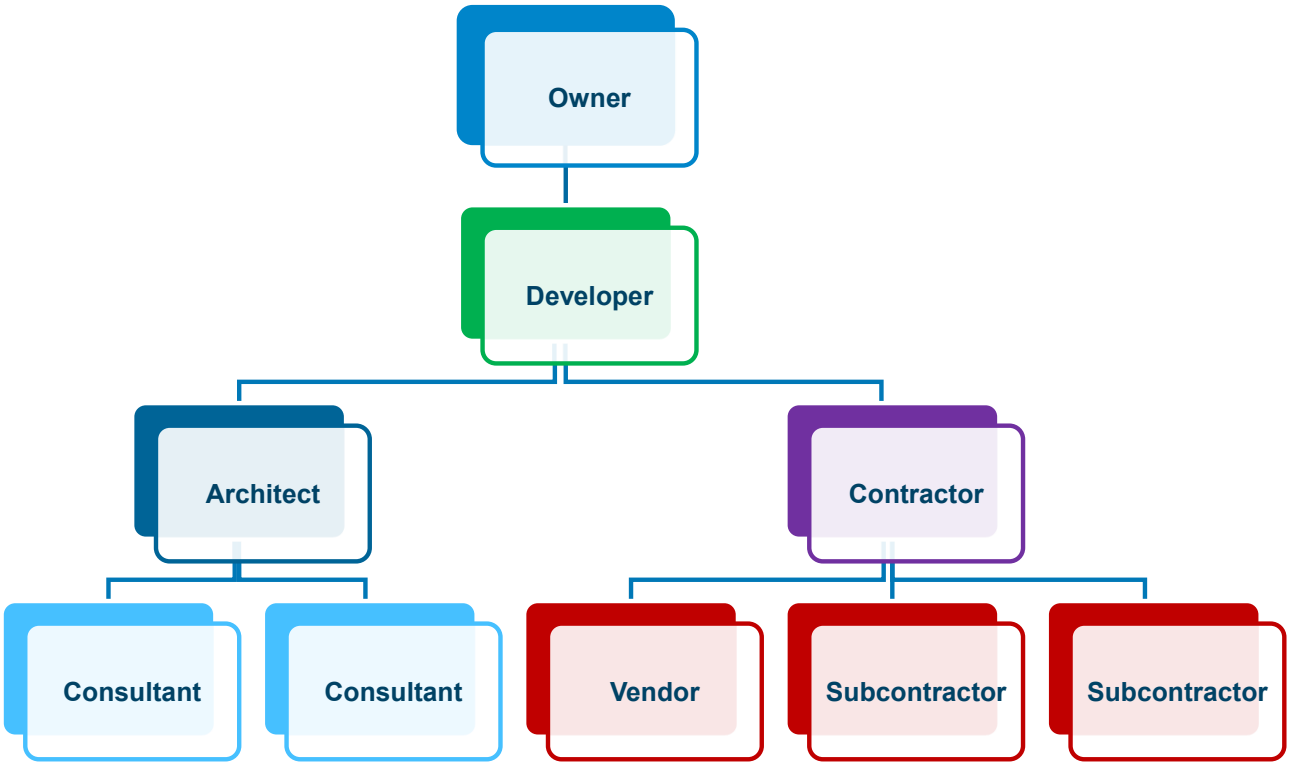
- It is common, so the marketplace is comfortable with it
- Plans are usually complete prior to bidding or final pricing
- Architect remains independent
- Will work with lump sum, cost of the work plus, and GMP agreements

Disadvantages

- Often little input from contractor during design
- Slower delivery time due to linear / back-to-back phasing
- Can create an adversarial relationship between G.C. and A/E
- Price competition reduces profits or renders some projects unobtainable
- Claims Contractors – low bid, but is the bid accurate
- Truth in Bidding

II. DEVELOPER AS PRIME MODEL

Owner – Developer Model



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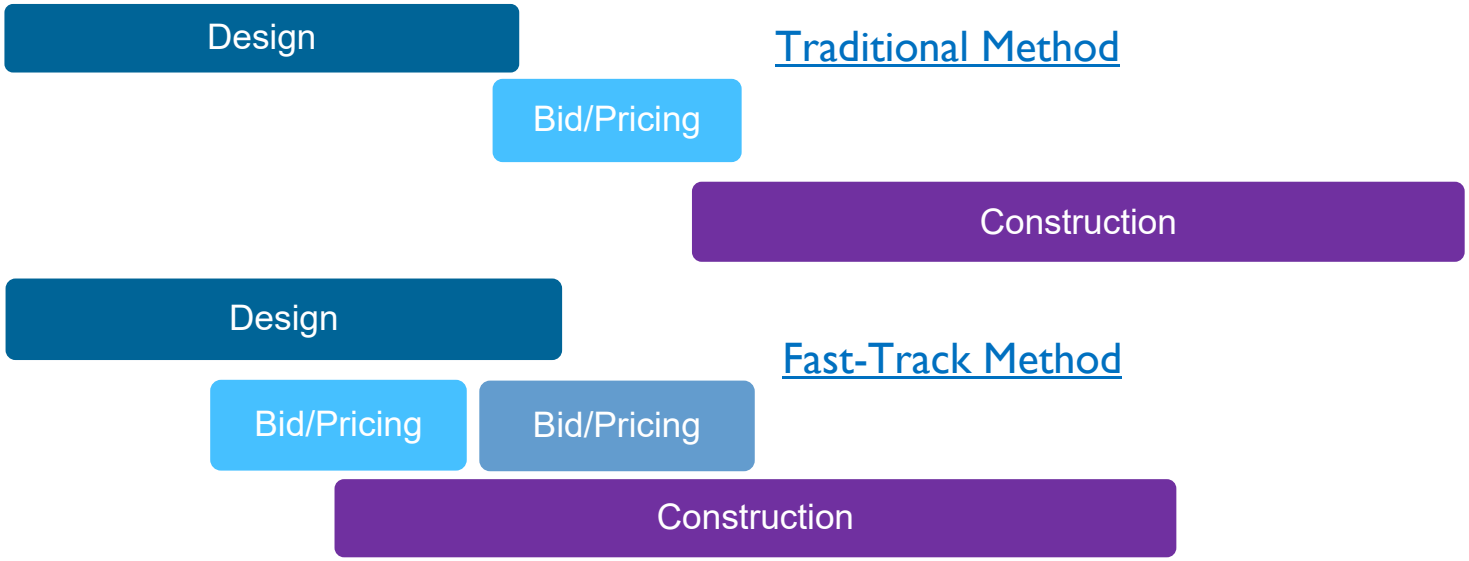
III. FAST-TRACKING MODEL

Traditional v. Fast Tracking



- Traditional – linear
- Fast-Track – overlapping
- Fast-Track Advantage – Delivery speed of a completed project.
- Fast-Track Disadvantage – More difficult to control cost estimating and construction costs.

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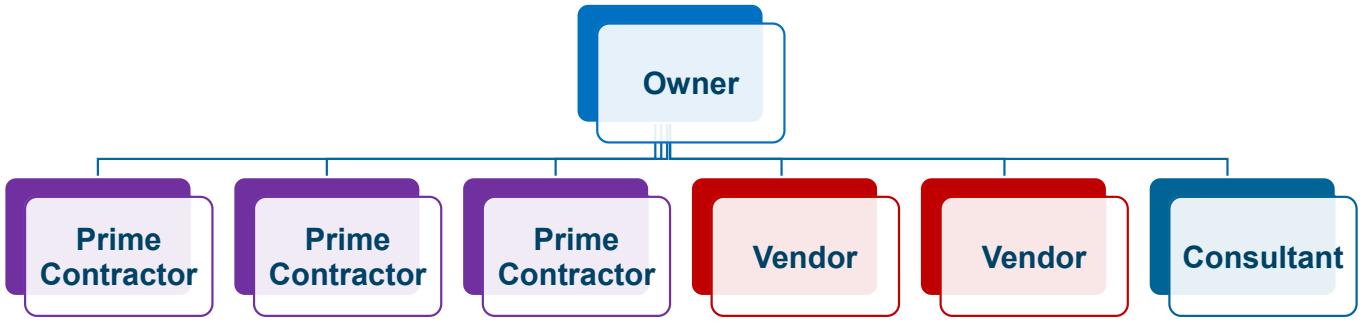
IV. MULTIPLE-PRIME CONTRACTING MODEL

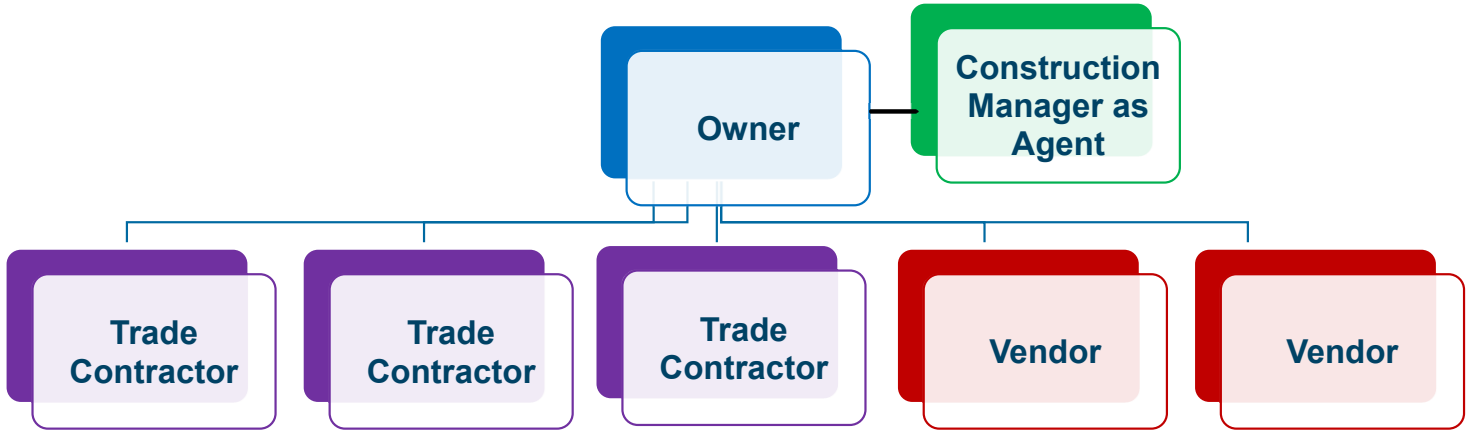
Owner – Multi-Prime Model



- No role for the general contractor
  - Owner has all contracts directly
  - There may be legal reasons for this contracting method
- Owners rarely are able to successfully manage and coordinate project
- Owner liable for management and coordination problems during construction
  - Time and cost management

V. CONSTRUCTION MANAGER CONTRACTING MODELS

Construction Management – Agency CM Model



- Retained to manage the construction
- Does not enter into the agreements with the trade contractors
- Also referred to as an Owner's Representative
- On-site observer – similar to architect's role
  - Time and cost management

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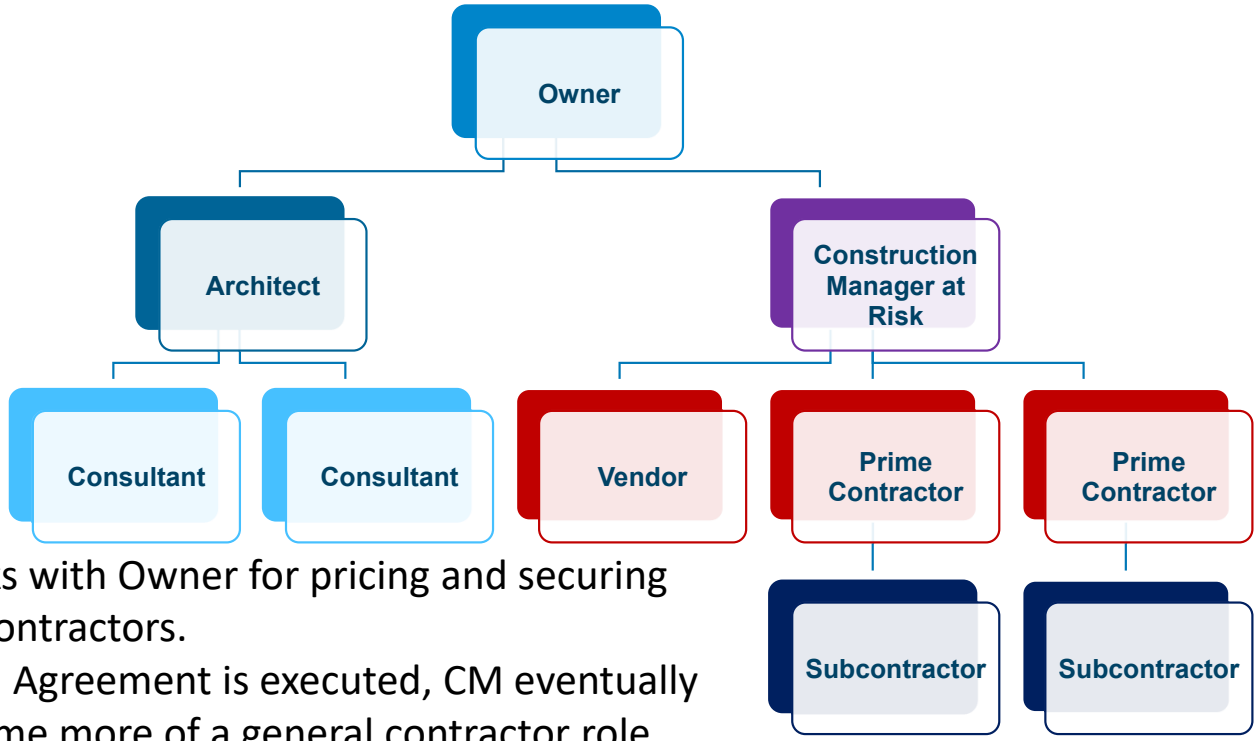
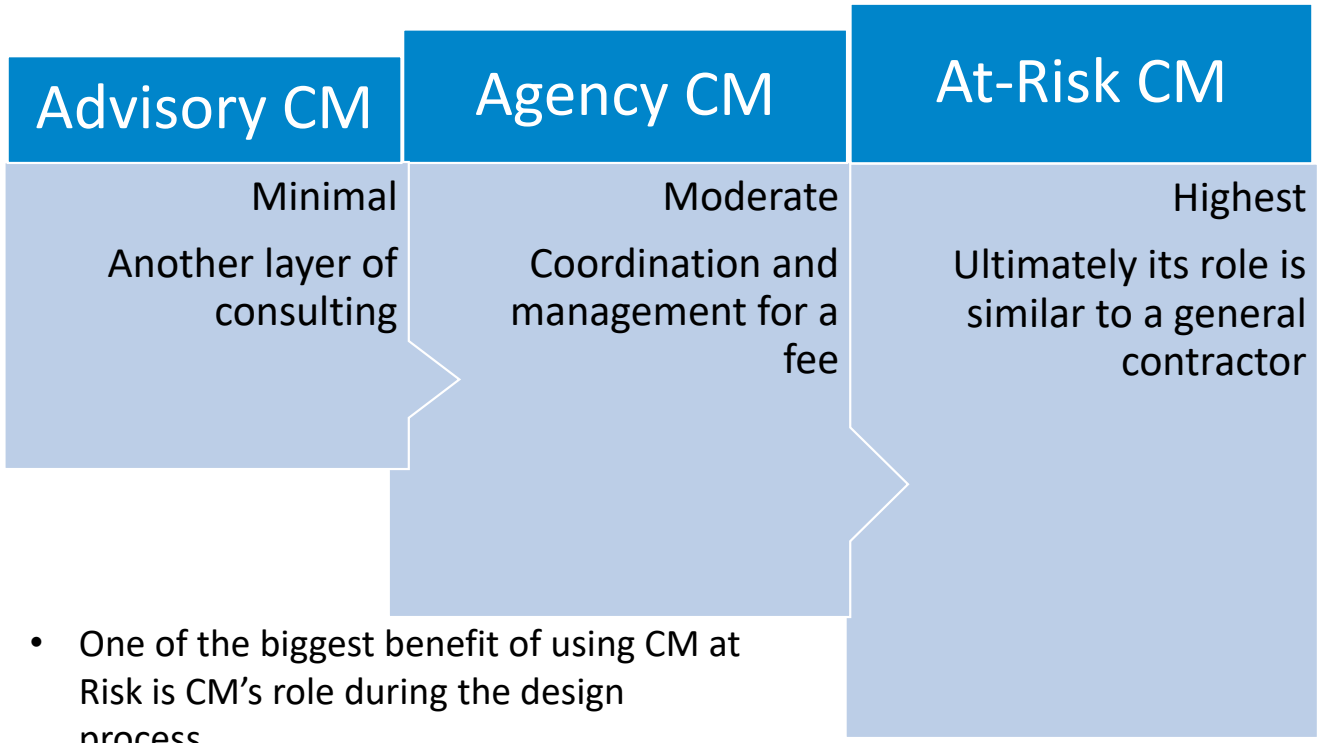
Construction Management – At Risk CM Model



- CM works with Owner for pricing and securing the subcontractors.
- After CM Agreement is executed, CM eventually will assume more of a general contractor role.
- CM at Risk is liable for management and coordination problems during construction.

Construction Management – Risk Spectrum



- One of the biggest benefit of using CM at Risk is CM's role during the design process.
- In all instances, a CM can help the Owner to manage costs.

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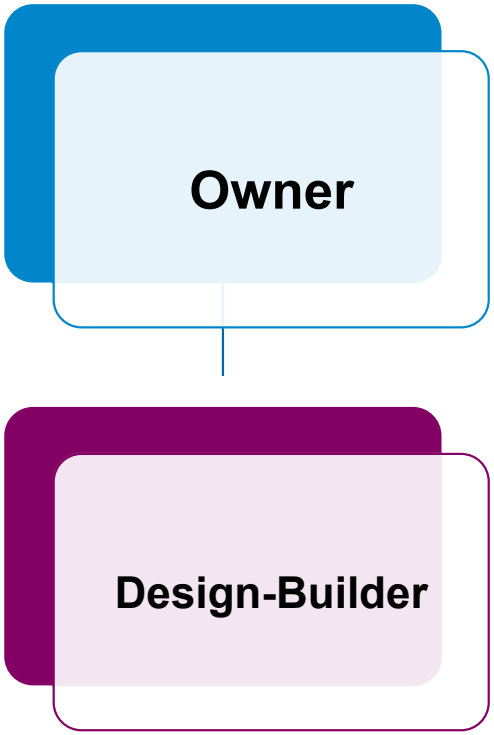
VI. DESIGN-BUILD CONTRACTING MODELS

Traditional Design-Build Model



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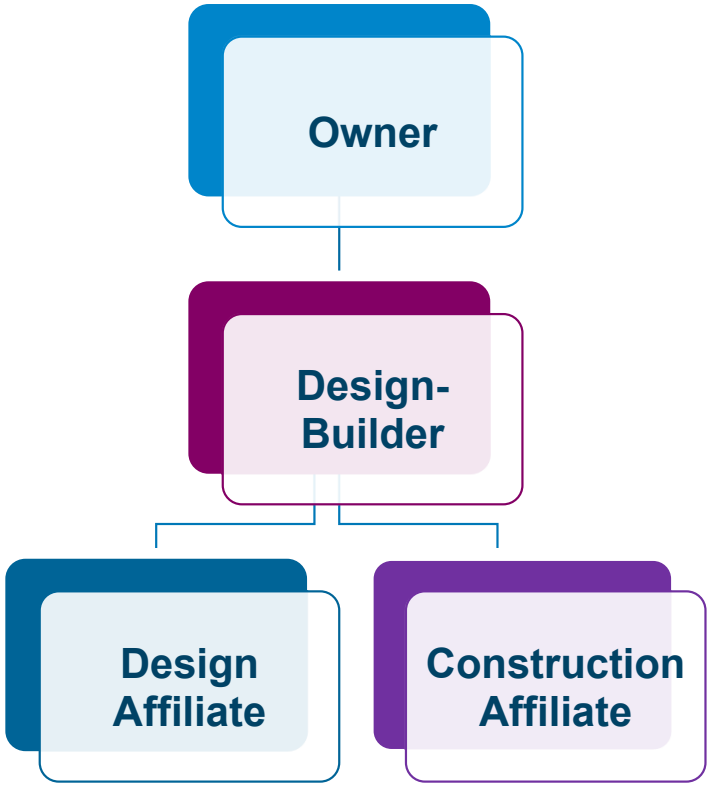
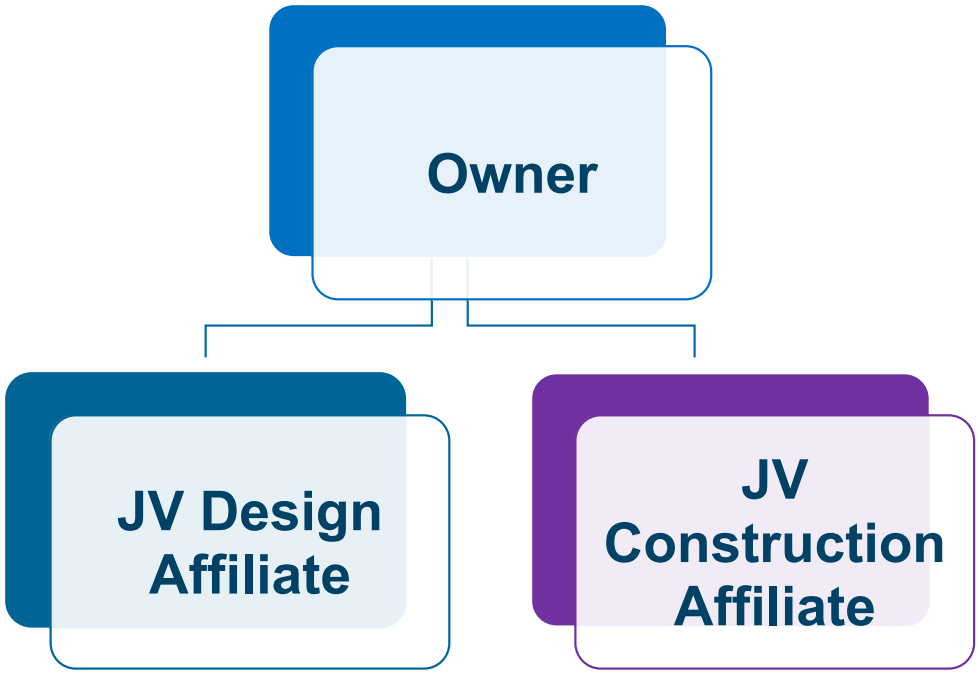
Design-Build Relationships – Various Types

- 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



Multiple Integrated Company Model



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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 the design arm to constructing arm
- Less litigation and/or disputes
- Greater control of information by design-build team
- Negotiated pricing
- A/E and GC not adverse to one another

Disadvantages of Design-Build

- Loss of architect as independent decision maker or “policing body” on the project
- Pricing may be suspect depending on when the fast-tracking took 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 is 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, and is ultimately designed and built by specialty subcontractors

Design-Build: Differences in Architect's Design Phase Services

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

QUESTIONS