

PROFESSIONAL PRACTICE 544

CONTRACTING METHODS – ALTERNATIVE PROJECT DELIVERY 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

AIA Documents

- **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

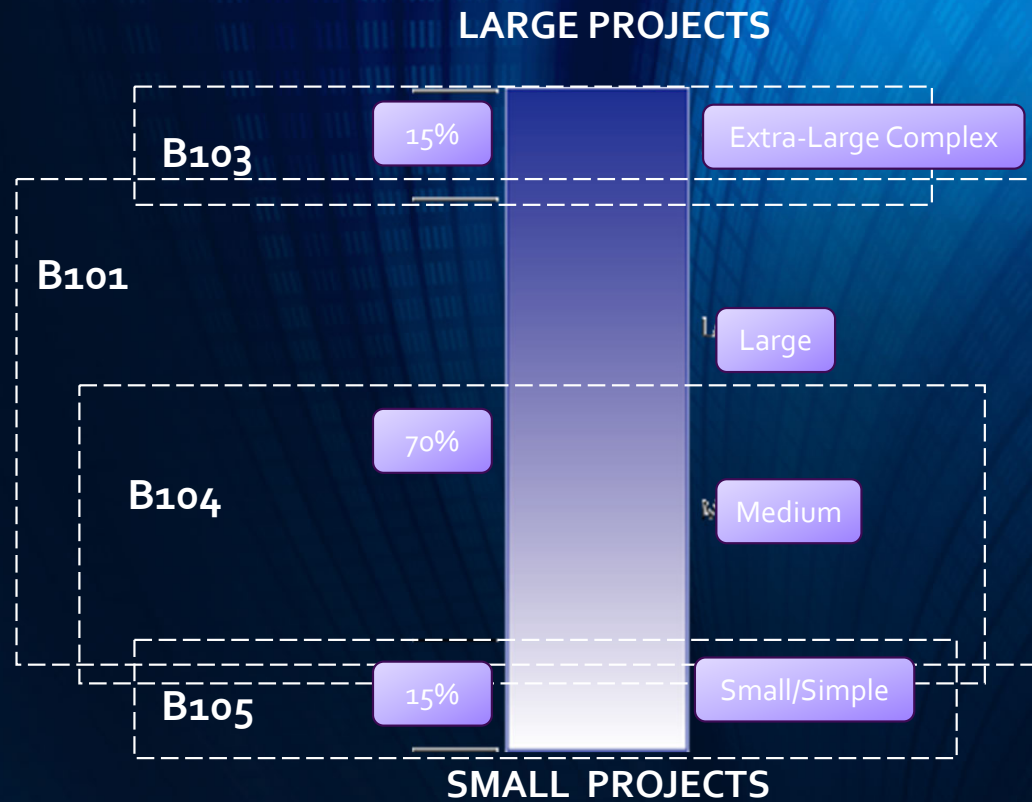
- **AIA A104**

- ❖ 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 known 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-Track 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-Track 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-Track Methods

Bidding errors – How are they addressed?

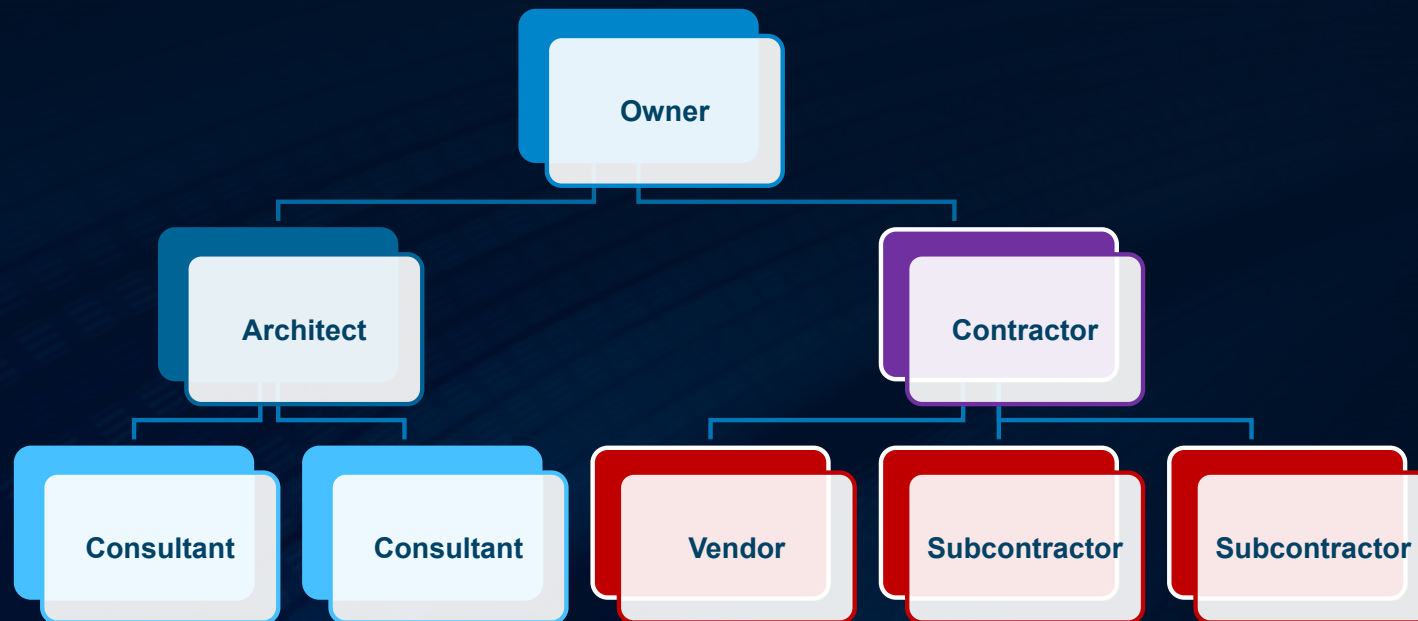
- Bids with clerical/arithmetic errors may be withdrawn (but not modified)
- Bids with judgment errors cannot be withdrawn
- Exception – The “snap-up” rule allows a party to withdraw its bid (where the owner should have known of the bidding mistake by comparison to other bids – gross disparity)

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DIFFERENT TYPES OF CONTRACTING METHODS

I. TRADITIONAL CONTRACTING MODEL

Traditional Owner-Architect-Contractor (OAC)



Traditional Owner-Architect-Contractor (OAC)

Advantages

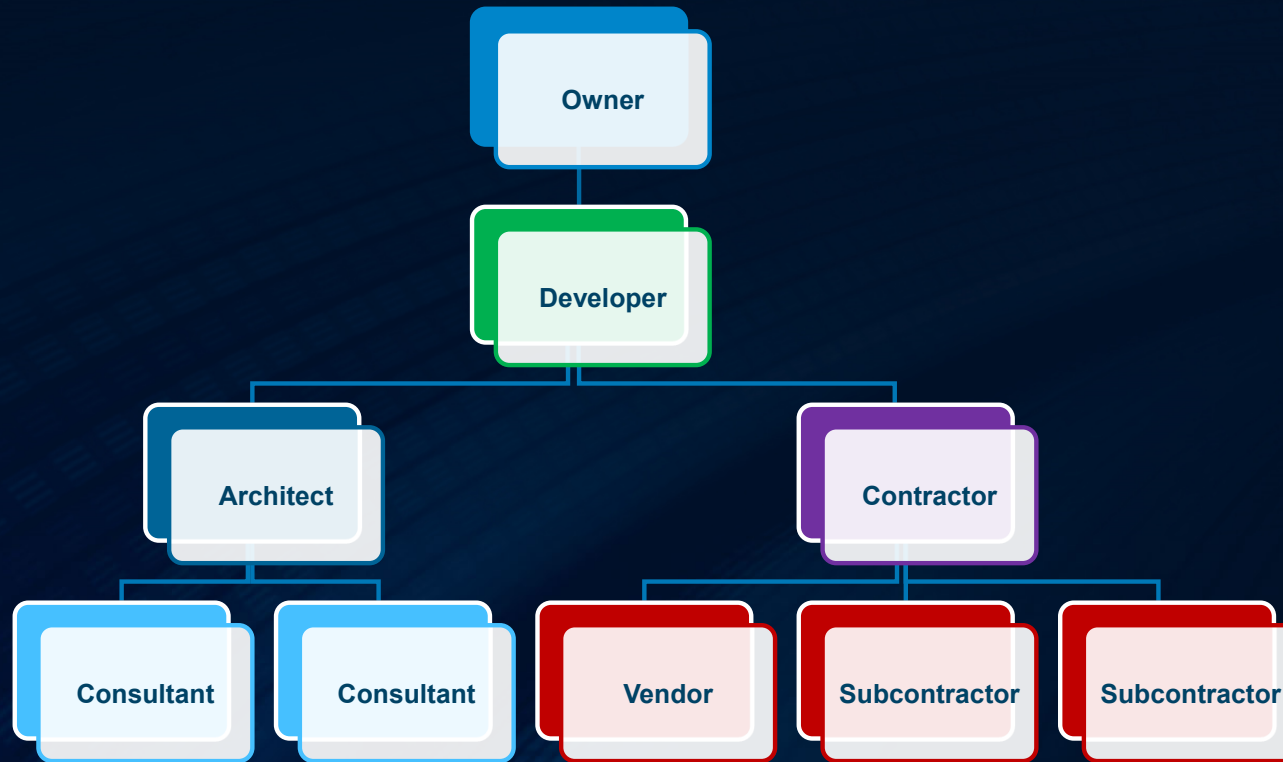
- It is common, so the marketplace is comfortable with it
- Plans are usually complete prior to bidding or final pricing
- Architect remains independent
- Will work with lump sum, cost of the work plus, and GMP agreements

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

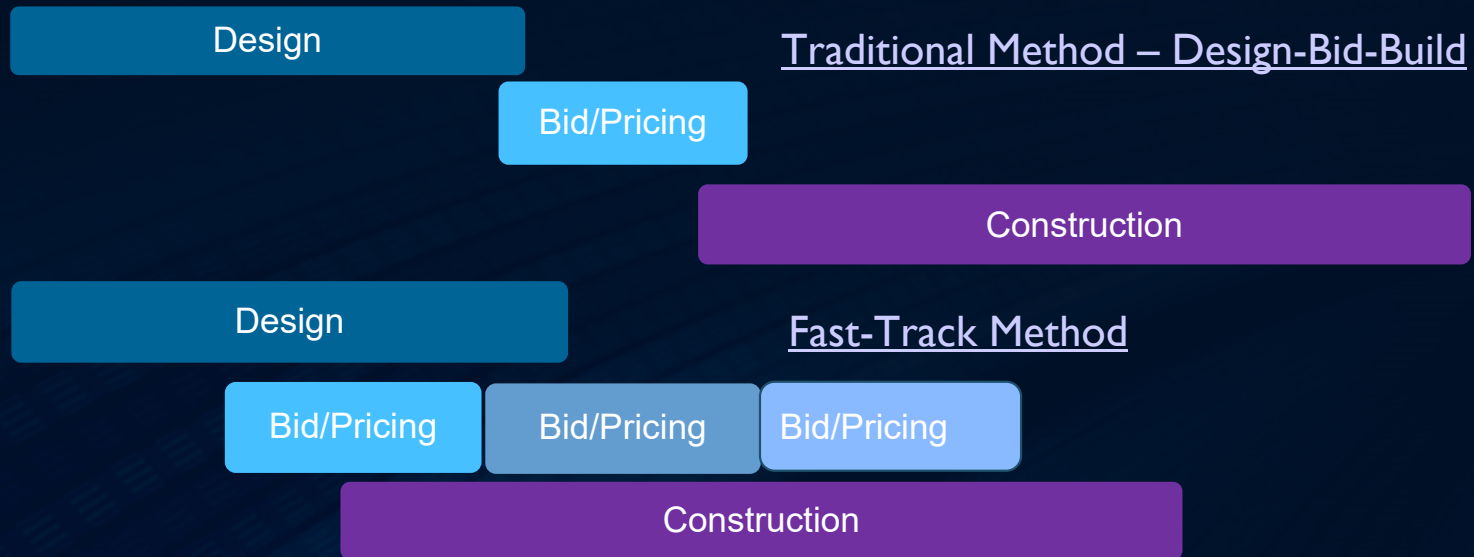
II. DEVELOPER AS PRIME MODEL

Owner – Developer Model



III. FAST-TRACKING MODEL

Owner – Developer Model

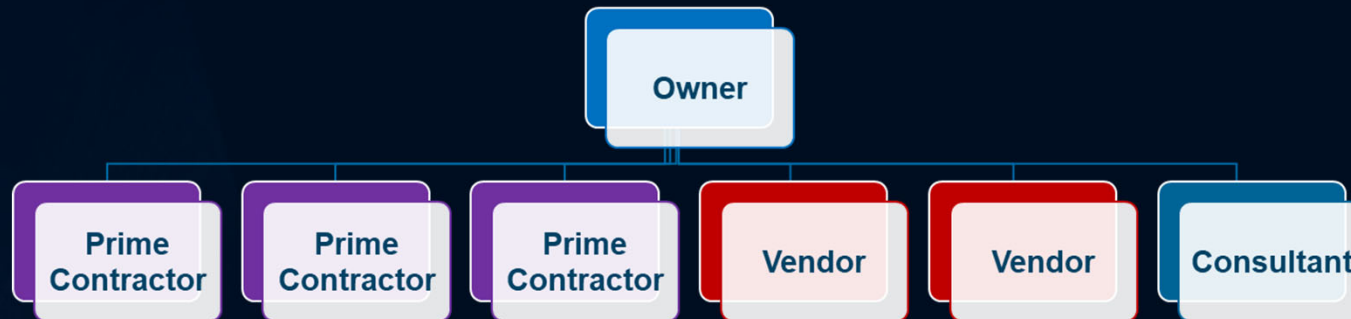


- Traditional – Linear
- Fast-Track – Overlapping
- Fast-Track Advantage – Delivery speed of a completed project
- Fast-Track Disadvantage – More difficult to control cost estimating and construction costs

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IV. MULTIPLE-PRIME CONTRACTING MODEL

Owner – Multi-Prime Model

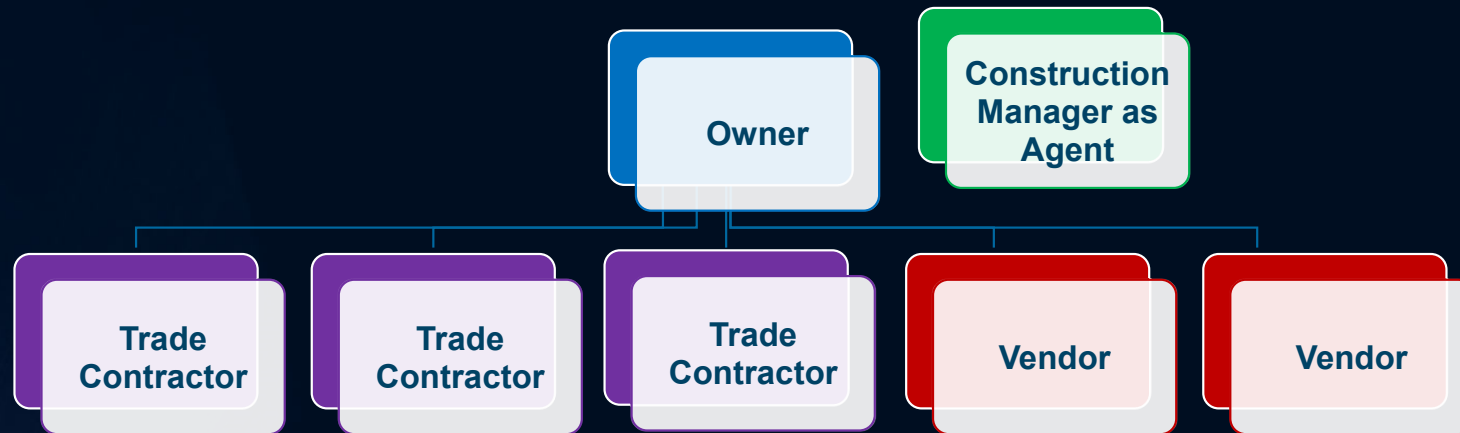


- No role for the general contractor
 - Owner has all contracts directly
 - There may be legal reasons for this contracting method
- Owners rarely are able to successfully manage and coordinate project
- Owner liable for management and coordination problems during construction
 - Time and cost management



V. CONSTRUCTION MANAGER
CONTRACTING MODELS

Construction Management – Agency CM Model



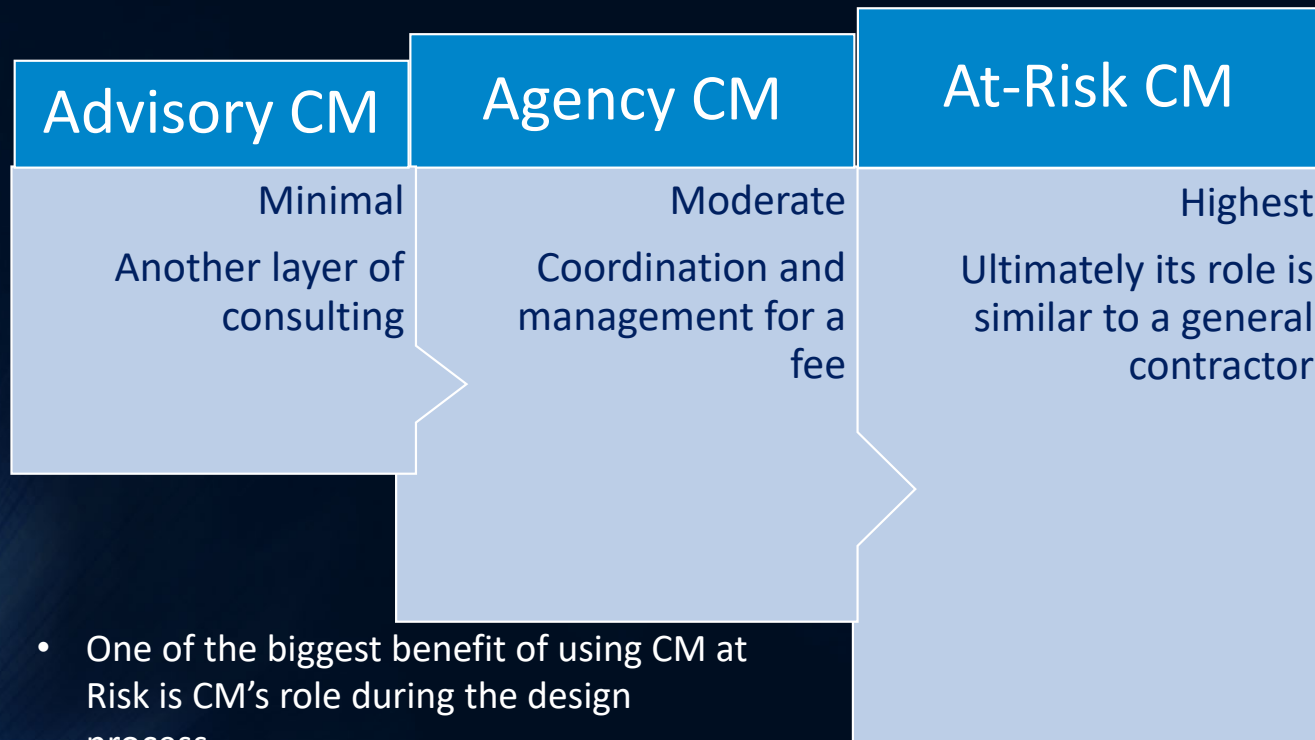
- Retained to manage the construction
- Does not enter into the agreements with the trade contractors
- Also referred to as an Owner's Representative
- On-site observer – similar to architect's role
 - Time and cost management

Construction Management – At Risk 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

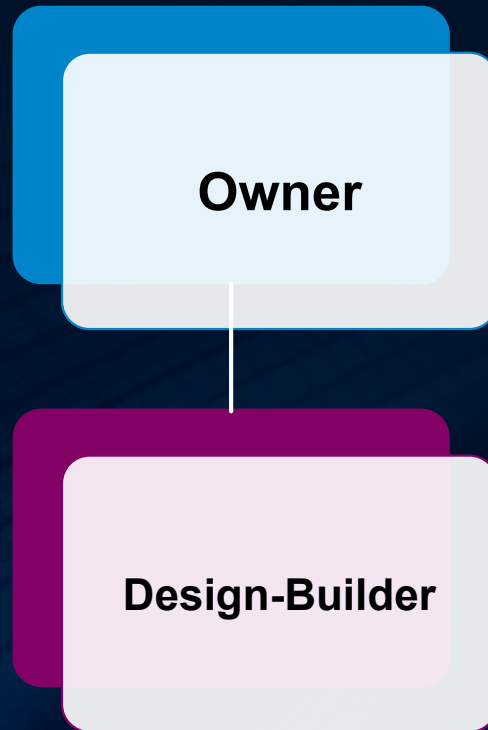


- One of the biggest benefit of using CM at Risk is CM's role during the design process.
- In all instances, a CM can help the Owner to manage costs.

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VI. DESIGN-BUILD CONTRACTING MODELS

Traditional Design-Build Model



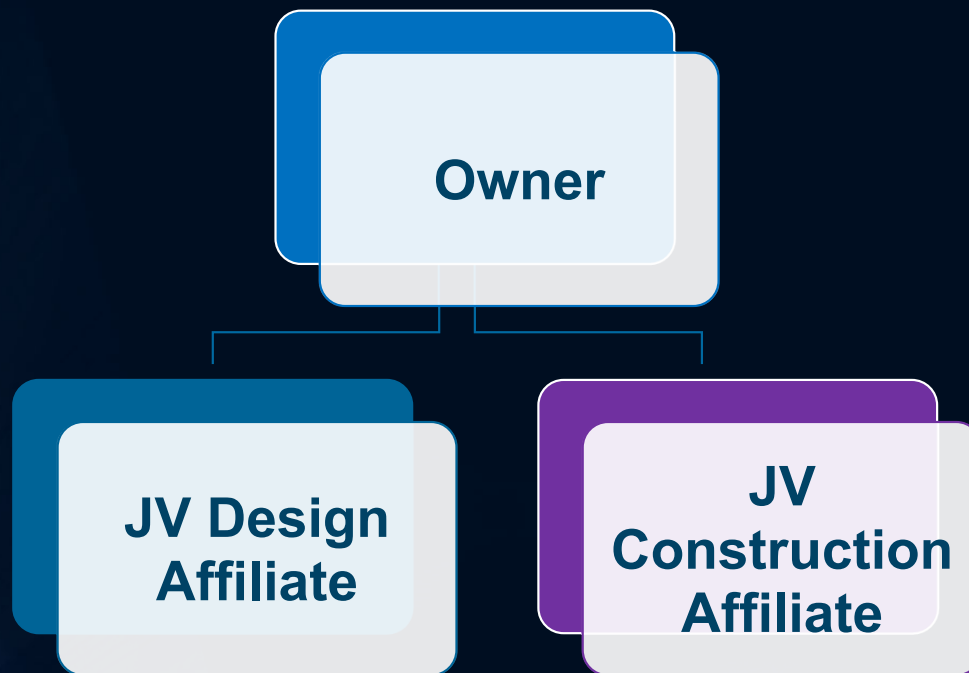
Design-Build Relationships – Various Types

- ❖ 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



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 an 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