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## Owners have multitude of alternatives for construction project contracting

BY JAMES A. ZEHREN



Construction project owners have distinct alternatives available to them in contracting for design, construction and project management services.

### **Traditional approach**

The “traditional approach” involves a contract between the owner and architect to design the project, and a separate contract between the owner and contractor to construct the project.

This approach is simple, with clear lines of accountability. It allows for competitive bidding based on complete design documents, usually making possible a fixed price contract. It also results in a healthy “checks and balances” tension between the architect and the contractor.

However, the traditional approach requires the owner to have project management expertise and time to devote to the project. By requiring completion of the design before selection of a contractor, this approach can extend the project schedule and thus increase project costs. The separation of the design and construction processes may also result in unnecessary costs due to failures to identify design efficiencies.

### **Construction manager as agent approach**

The “construction manager as agent approach” involves a contract between the owner and construction manager to coordinate the project, a separate contract between the owner and architect to design the project, and a third con-

tract between the owner and either a contractor or multiple contractors to build the project.

This approach also has advantages resulting from the separation of the design and construction functions. It can lessen the knowledge and time the owner needs to commit, due to the construction manager’s role. The construction manager’s involvement can further the system of “checks and balances” and facilitate communication, cooperation and issue resolution. This approach also increases the likelihood that cost savings will be identified.

However, the addition of the construction manager can complicate a project and increase the owner’s costs for professional services. Lines of accountability can become blurred, and confusion can result if the construction manager and architect give inconsistent information or direction to the contractor. The owner also might be held responsible for the construction manager’s actions.

### **Construction manager at risk approach**

The “construction manager at risk approach” involves the owner entering into a contract with an architect to design the project and a second contract with a construction manager to both coordinate and build the project.

This approach reinforces the advantages of the construction manager as agent approach in that the owner need bring even less project management expertise and time to bear. The “checks and balances” system between the architect and construction manager also can operate to the owner’s benefit, especially during design, with the

*Continued on next page*



June 17, 2005

*Continued from previous page*

expectation of design efficiencies.

This approach is relatively complicated, however, and lines of accountability therefore can be blurred. The “checks and balances” system operates less well during construction, when the construction manager acts as the contractor rather than as the owner’s agent. The construction manager usually is in a strong bargaining position when the contract sum for construction is determined, because that typically occurs only after the design is completed. Competitive bidding for the construction normally is unavailable under this approach. It also is possible that the construction manager could be held to be the agent of the owner and on that basis the owner could be held responsible for problems caused by the construction manager.

### **Design/build approach**

The “design/build approach” involves the owner entering into a single contract with a design/builder to both design and build the project.

The lines of accountability are especially clear with this approach, and good communication, coordination and design efficiencies can be expected. Prior licensing, bonding and insurance complications, particularly in Oregon, have been resolved by legislative and other action. See, e.g., ORS 671.030(g), 672.060(11), 279.029(4)(b). Under this approach, the owner normally is not held legally responsible for problems caused by the design/builder.

The advantages of the design/build approach relate to its disadvantages. The owner usually must choose between agreeing to an overall price at the start or waiting until the design is completed to negotiate a separate construction price. If the former, the price is likely to be high given the design/builder’s need to protect itself against unknowns. If the latter, the design/builder will be in a strong position to negotiate the construction price. Given the owner’s single

contract with the design/builder, the owner often has little or no involvement in selecting the architect and little if any control over the design process. Competitive bidding for the construction is essentially unavailable. This approach results in fewer “checks and balances” and typically results in loss of objectivity among project team members.

### **CM/GC and other hybrid approaches**

Some of the disadvantages of these various approaches can be addressed by “hybrid approaches”.

For example, the “traditional approach” can be used but with the contractor retained during the design process to provide input regarding constructibility, alternative materials, value engineering, cost estimating, scheduling, approaches to subcontracting, etc. This is essentially the “CM/GC” (construction manager/general contractor) approach used in Oregon in recent years. See OAR 125-310-0220.

Another example of a “hybrid approach” is the “construction manager as agent” approach except with the architect’s role during construction limited to change order and redesign work. (Note that the architect on a nonresidential project administered in this way would be legally required to notify all permitting agencies and the State Board of Architect Examiners. See OAR 806-010-0050(2).)

These and other “hybrid approaches” have certain advantages and disadvantages corresponding to the advantages and disadvantages of the basic approaches discussed above.

The prudent project owner carefully considers its alternatives and then selects the approach to contracting for design, construction and project management services that best meets the needs of the owner and the project. Paying attention to the alternative approaches to contracting that are available can be critical to project success.

Jim Zehren is a partner at Steel Rives LLP and a member of the firm’s Construction & Design Section. He can be reached at [jazehren@stoel.com](mailto:jazehren@stoel.com) and 503-294-9616.