

CONSTRUCTION CONTRACTS

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Risk Allocation

- All project risk initially belongs to Owner.
- By contract, Owner allocates portions of that risk to third parties.

Project Delivery Systems

1. Design-Bid-Build (“DBB”)
2. Construction Management at Risk (“CM@R”)
3. Construction Management Agency (“CM Agent”)

Project Delivery Systems

4. Design/Build (“D/B”)
5. Integrated Project Delivery (“IPD”)
6. Public Private Partnership (“P3”)

Risk Analysis

1. DBB

- Traditional
- Well-Known
- Fixed Scope
- Silo
- Bid Process (Pre-Qualification?)

2. CM@R

- Pre-Construction Services
- Qualification-Based Selection
- Price and Schedule Guaranteed (...but subject to adjustment)
- CM Holds Trade Contracts

Risk Analysis

3. CM Agent

- Pre-Construction Services
- Independent Advisor
- Staff Supplementation
- Coordination with Architect
- Owner Holds Trade Contracts

4. Design/Build

- Single Source
- Fast Track
- Design Control
- Clear Program
- Design Warranty/Standard of Care

Risk Analysis

5. IPD

- Team Approach
- Mutual Claim Waivers
- Designer & Contractor Only Have Profit at Risk
- Incentivized to Achieve Project Goals

6. P3

- Alternative Finance Development Agreement
- Design-Build-Operate-Maintain

Industry Standard Forms

- AIA
- EJCDC
- ConsensusDocs
- DBIA

Standard Forms: Benefits & Risks

- Common Knowledge
- Integration
- Case Law Interpretation
- Document Bias

Construction Contracts: Key Risk Issues

- Indemnification
- Waiver of Consequential Damages
- Changed & Concealed Conditions
- Delays
 - Liquidated Damages
 - No Damage for Delay Clauses

Construction Contracts: Key Risk Issues

- Builder's Risk Insurance
- Warranty Period v. Corrective Period
- Delegated Design
- Contingency

Questions?