



Public Construction Statutes: If You Can't Beat 'Em, Join 'Em

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With Integrated Project Delivery's (IPD's) promises of high-quality, timely, and economical projects, why are budget-strapped governments not the first in line to see whether IPD lives up to its reputation? Unfortunately, state and federal statutes often bind government entities to more traditional construction delivery systems such as design-bid-build. Such statutes address concerns of fairness when awarding construction jobs. Increasingly, statutes are allowing design-build in public construction projects. In fact, just last year Ohio passed one of the most comprehensive design-build laws in the nation. But statutes governing public construction delivery have not yet caught up with the IPD trend. Still, design-build sets a nice stage for IPD-like project delivery.

While IPD contracts typically are multi-party contracts, design-build contracts govern a transaction between the owner and a single entity that both designs and constructs the project. Typically, the owner develops its programmatic and performance requirements before acquiring a design-builder. Once the owner selects the design-builder, the design-build team designs the project to meet the programmatic and performance requirements. Unlike IPD, the owner generally has a hands-off approach once it selects a design-builder. However, similar to IPD, the design and construction of the project result from collaboration among the design and construction professionals. This collaboration allows design-build contracts to establish an atmosphere conducive to IPD-like construction delivery.

With a few tweaks to the design-build contract, the parties can implement lean IPD:

- **Core Group:** A core group consisting of representatives of the owner, lead contractor, and lead designer could manage the project.
- **IPD Team:** The design-build contract could specify the obligations and formation of the IPD Team. Furthermore, members of the IPD Team could bind themselves to the design-build contract through joining agreements.
- **Target Value Design:** The lead contractor and major trade contractors would be involved in designing the project from the beginning. Together the designers and contractors would develop a design that fits the owner's parameters, while also keeping cost and constructability in mind.
- **Lean Processes:** Lean processes seek to maximize value while minimizing waste of time, efforts, and materials. Many of these processes can be incorporated into any construction project – despite the delivery method. Lean processes include BIM, pull planning, continuous improvement, Last Planner System, and more. The design-build contract could provide for the parties to use these processes during design and construction of the project.
- **Risk/Reward Sharing:** The design-build contract could provide for the owner, the design-build team, and any IPD team members to share the risks of project overruns and the rewards of project savings. However, this may be difficult in some jurisdictions with restrictions on owner's sharing in project risk.