

*Contract Documents/Alternative  
Delivery Methods – Answers to those  
Questions you've Always Wanted to Ask*



2013 PNWS-AWWA Annual Conference  
Spokane, WA

WALLY MCCULLOUGH, PE EWEB  
JOE GLICKER, PE CH2M HILL  
DAVID MOSS, PE SPOKANE COUNTY UTILITIES  
THOMAS PAUL, MORTENSON CONSTRUCTION  
DAN BECKER, CCM, PMP, CCE HDR

# *Contract Documents/Alternative Delivery Methods*



- What are some key benefits of alternative delivery versus conventional delivery?

# Contract Documents/Alternative Delivery Methods



- How do you decide between conventional and alternative delivery?
  - is there a dollar value in estimated costs where one makes more sense?
  - are there project situations where one makes more sense?

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- How does the decision on conventional versus alternative delivery affect the minimum qualifications for a job and ultimately the quality of work?

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- I have a job coming up where I can proceed with all lump sum or a combination of lump sum and unit price on the bid form. Are there any guidelines or do you have any suggestions on how to decide?

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- How do you establish appropriate liquidated damages?

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- Is there contract language you can add to make LDs more easily enforceable?

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- Where/what are the rules governing CMGC and Design Build (I can't seem to find them in ORS)?



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- What are the major steps that need to be taken to get authorization to go CMGC or DB?

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- When should I consider going through bidder prequalification? How difficult is it to demonstrate that a bidder is unqualified and disqualify them?

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- In a CMGC contract, what is generally the best point to get the Guaranteed Maximum Price (I've heard that 90% and 100% completion are options)?

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- In a CMGC contract, who should lead the document distribution and bidding, Owner or CM?

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- Should you use special outside counsel to write the Draft Contract, and assist with procurement and negotiations?

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- Should you use special consultants to help with procurement and project implementation?

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- How do you establish minimum insurance types and coverage limits (contract size, risk, consequences of mistakes)?

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- When should I require builder's all risk insurance?



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- When should I consider including incentives in my contract? How is it usually done?

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- In a CMGC contract, how can the Owner best maximize competitiveness during the bidding process?

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- In a CMGC contract, if actual bid pricing comes in lower than the negotiated GMP, what are the options for sharing the difference between the Owner and CMGC?

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- In a CMGC contract, can the GMP be developed incrementally to accelerate schedule and are there risks of doing so?

# Design-Build Lessons Learned --- Advice to Owners



- **MINIMUM REQUIREMENTS**: Clearly establish minimum requirements that are critical to the Project and desired by the Owner. Though the Owner is relying on the Design-Build team to provide a compliant product, the Contractor will be motivated to focus more on the “process” components, and less on “non-process” facilities. Consider the following: What finishes are desired? What kind of flooring do you want? Do you want soffits? How are concrete cracks to be repaired? For materials, how about steel vs. aluminum vs. stainless? What are requirements for site layouts and coordination with adjacent properties and roadways? Be specific if you have preferences, otherwise you may not get what you want unless you pay more for it.
- **SERVICE CONTRACT**: You must embed all details of their Proposal, Appendices, Negotiations, etc. into the Service Contract. It is likely that at some point in the Project, such language will be used to manage the design, construction, or operations. All verbal agreements during negotiations should be documented in the Contract.
- **QUALITY ASSURANCE / QUALITY CONTROL**: It is very important to clearly delineate the roles and responsibilities for QA/QC, and to make sure there is a managed level of separation between the Construction Contractor and the quality team members. At minimum, the Constructor’s staff should not do QA/QC. The design team staff may be appropriate if properly separate from the Constructor/CM staff. Materials testing and specialty inspection should be performed by an independent, certified testing lab.

# Design-Build Lessons Learned --- Advice to Owners



- **APPROVAL AUTHORITY**: Decide who has what authority for approvals of CAMs, design documents, design changes, field construction changes, formal Change Orders, etc. Since Design-Build is “fast-track” the Owner should consider obtaining delegated authority for design-phase and construction-phase approvals from their Regulatory Agencies.
- **STAFFING**: The Project must be adequately staffed to address all important tasks. Documents come fast and furious and often the Contractor cannot wait very long for feedback. Make sure the Owner’s team members are very experienced and are able to spot issues and resolve them.
- **CHANGES**: What constitutes a change and who is authorized to approve each? What changes are allowed by the DBO team without Owner/Agency approval?
- **SCHEDULES/SUBMITTALS**: The overall schedule for the Project is important, but also of key importance is the working schedule for coordination between the Owner and the Contractor during submittal of documents for review. Specifically how many days? What items are submitted for formal review, and what items for information only?

# Design-Build Lessons Learned --- Advice to Owners



- **MEETINGS**: Regular coordination meetings should be held throughout the design-build phase, ideally at least once per week at the same time and location. Special meetings should be scheduled in addition to the regular meetings, for items like start-up coordination, etc.
- **DOCUMENT TRACKING SYSTEM**: A formal document tracking system should be implemented, with Owner/Consultant access at all times to key documents. Certain documents should be sent to the Owner/Consultant on a regular basis; other documents should be available for retrieval on an as-desired basis.
- **PARTNERING**: Facilitated partnering meetings should be held at least on 2 or 3 occasions to build and mature the overall Project team: at beginning, during design, and during construction. A tiered dispute resolution protocol should be developed which is easier and less formal than that in the Service Contract. This less formal process can be less costly and more efficient.

