



Understanding the Vulnerabilities and Liability Pitfalls for a Design Professional in the Various Project Delivery Systems

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TYPES OF PROJECT DELIVERY SYSTEMS

- Design-Bid Build
- Design Build
- CM at Risk
- CM (Program Manager)
- Integrated Project Delivery (IPD)

CATEGORIES OF RISKS

- Project Development Risk
- Design Risk
- Construction Risk
- Schedule Risk
- Price Risk

ISSUES FOR DESIGN-BID-BUILD

- Standard of care/architect responsibilities
- Defective construction based on site evaluations
- Delays arising from deficient plans
- Failing to approve equivalent substitute equipment or materials
- Defective construction

ISSUES FOR DESIGNER IN DESIGN BUILD

- Professional licensing issues
 - Joint Ventures and Single Purpose Entities
 - State work funded with federal money

ISSUES FOR DESIGNER IN DESIGN BUILD

- Allocation between Design and Construction Services
 - AIA Documents A141-2004 ed.
 - ConsensusDOCS 410, Article 3

ISSUES FOR DESIGNER IN DESIGN BUILD

- The designer is not the owner's consultant
 - ConsensusDOCS 410, Article 2.1.3.1
 - AIA A141 – Not addressed

ISSUES FOR DESIGNER IN DESIGN BUILD

- Preparation and Maintenance of Construction Estimate
 - ConsensusDOCS 420 Article 3.2.4
 - AIA A141, Ex. B., Art. B.1

ISSUES FOR DESIGNER IN DESIGN BUILD

- Use of Teaming Agreements During Preparation of Technical Proposals

ISSUES FOR DESIGNER IN DESIGN BUILD

- Exposure to Risks outside of Professional Negligence
 - Design-builder looks more like contractor
 - Strict liability
 - Job site safety/OSHA issues

ISSUES FOR DESIGNER IN DESIGN BUILD

- Lack of Change Orders for Errors/Omissions in Design
- Insurance/bonding issues

ISSUES FOR DESIGNER IN CONSTRUCTION MANAGEMENT

- Exceeding the GMP
- Design errors and omissions
- Constructability reviews

ISSUES FOR DESIGNER IN IPD

- Safe harbor decisions or waiver of consequential damages
- Sharing in financial risks