

AIA Iowa Government Affairs Committee

March 1, 2009

Policy: Alternate Project Delivery Methods for Public Projects

The **American Institute of Architects, Iowa Chapter (AIA Iowa)**, believes the current competitive bid method of procurement for construction services, known as Design-Bid-Build¹ (D-B-B), meets the need for fairness, fiduciary responsibility, and timeliness for most public building projects.

AIA Iowa recognizes that in certain limited instances, by exception, public building projects may be appropriately delivered under other methods common in the construction industry. AIA Iowa can support *Construction Manager at Risk*² (CM@Risk), *Integrated Project Delivery*³ (IPD), and *Design-Build/Qualifications Based Selection*⁴ (D-B/QBS) when well regulated as described in this policy.

AIA Iowa is OPPOSED to *Design-Build/Best Value*⁴ (D-B/BV) because it has proven to be economically untenable⁵ for architects, places the architect at arms-length from its primary design client, and too often results in a lesser quality of design due to over-emphasis on cost reductions.

AIA Iowa strongly opposes variations of Design-Build that include financing, operations and/or maintenance, believing such methods are monopolistic, financially disadvantageous to public bodies over time, and not in the public interest. Such variations are called “performance contracting”.

AIA Iowa therefore supports legislation to permit alternative project delivery (APD) methods for public projects using **CM@Risk**, **IPD**, and **D-B/QBS** provided all of the following issues are adequately addressed:

1. A pilot project approach is first adopted to test the viability of APD in Iowa. This should establish a specific number of diversified projects, such as 10 projects with specified varying characteristics, authorized within a specific period of time, such as 3 or 4 years. At the conclusion of the time period, a report to the legislature should objectively evaluate whether the method works well for public projects, and if so, new authorizing legislation could then be considered to establish a permanent APD process.
2. Alternatively to the pilot project approach, if permanent use of APD methods would be adopted, It must be permitted only by clear and limited exception to normal, well-established competitive bidding laws. There must be an extraordinary, justifiable advantage for choosing an APD process that cannot be achieved by the traditional D-B-B method. Limiting thresholds such as size, complexity and urgent schedule requirements should be considered to assure that extraordinary circumstances exist to warrant the exception to competitive bidding.
3. A checks-and-balance procedure is necessary to prevent abuse of the APD privilege. A governing public body should publish its intent to adopt APD and hold a public hearing before committing to the APD process. The Nebraska requirement that use of APD requires a 2/3 vote of the governing body should be considered. The hearing should focus on the reason for the exception, justify threshold conditions, and act as a “gatekeeper” to protect the intent of public competitive bidding laws by assuring that the adoption of an APD method meets stringent requirements as an exception. In order not to delay APD use, where speed of process is primary, the publication and hearing should occur within a concise period, such as 21 days.
4. Professional design services must be provided by licensed design professionals who are obligated to abide by all requirements of Iowa Code 544A (Architects), 542B (Engineers) and/or 544B (Landscape Architects) and Iowa Administrative Code 193B (Architects), 193C (Engineers) and/or 193D (Landscape Architects). This mandates an ethical code of conduct among other requirements.

5. Licensed design professionals must not be precluded from serving as Construction Manager or Design-Builder if properly qualified by credentials, experience, and by bonding capacity if applicable.
6. Licensed design professionals, construction managers and Design-Builders must be selected by a Qualifications Based Selection (QBS) method similar to that of the American Bar Association's "*The 2000 Model Procurement Code for State and Local Governments*", summarized as:
 - a. Evaluation of submitted qualifications leads to a group of 3 to 5 finalists.
 - b. A selection committee interviews finalists, and a rank order preference is established.
 - c. Negotiations considering scope and price are held with the top ranked proposer.
 - d. Price is not considered until the negotiations stage and must be fair and reasonable.
 - e. If negotiations with the top ranked proposer are not satisfactory, those negotiations are terminated and negotiations are undertaken with the next ranked proposer.
7. For D-B/QBS projects, the public body must be mandated to employ a design criteria consultant who is a licensed design professional to prepare design criteria sufficient to inform D-B competitors of the nature and scope intended. The design criteria consultant also will provide assistance to the public body in using the more complex APD process, including selection and implementation. This design professional must be wholly independent of the D-B provider to avoid conflict of interest.
8. For D-B/QBS projects, In order for design professionals to fulfill their legal duty to 1) exercise responsible control over the design; 2) protect the health, safety & welfare of the public; and 3) act in the owner's and project's best interest, the contract for design-build services must require the ability for direct communication between the owner and the design professional.

¹ "Design-Bid-Build" (D-B-B) is a project delivery method in which separate contracts are sequentially awarded, first for architectural and engineering services, selected on the basis of qualifications to design the project, and the second for construction of the project, selected on the basis of competitive bids.

² "Construction manager at risk" (CM@Risk) is a project delivery method in which a first contract separate from the owner-architect contract provides for preconstruction services and a second contract provides an at-risk obligation to carry out construction under a lump sum or guaranteed maximum cost agreement. CM@Risk is considered by the ABA "The 2000 Model Procurement Code" to be a variation of the design-bid-build method due to the competitive bidding methods inherent under the second contract.

³ "Integrated project delivery (IPD)" is a project delivery method based on extensive collaboration among the owner, design professional, constructor and other construction industry participants from the beginning of the project through to completion. Various types of contractual agreements can be used. The best for public projects may be the AIA "transitional agreements" *B195-2008 Owner-Architect for IPD* and *A195-2008 Owner-Contractor for IPD*. A detailed description, "Integrated Project Delivery: A Guide" is available at http://www.aia.org/ip_default. This guide suggests that, while many variations may exist:

1. Design-bid-build does not permit meaningful collaboration between designers and constructors.
2. CM@Risk is fairly well-suited to a modified version of IPD for public projects.
3. Design-build increases collaboration between designer and constructor but does not typically permit the owner's intensive collaboration prior to establishing the cost of the project.

⁴ "Design-build" is a project delivery method in which a single contract provides for both design and construction. At least two distinct versions of D-B have very different characteristics and consequences for architects. D-B/QBS (Qualifications Based Selection) selects the D-B team on the basis of qualifications to design and construct a "best" building for a specified budget. D-B/BV (Best Value Selection) selects the D-B team on the basis of a combination of total cost, design concept, and qualifications. D-B/BV usually results in the architect members of the several competing D-B teams performing significant professional architectural services at significant cost for little or no fee. Since the odds of being selected are typically between 1:3 and 1:5, this is an economically untenable position for architects.

⁵ See separate paper "Economics of D-B-BV for Architects" for example.