



# The Top 10 Ways to Survive Design/Build

Prepared for CASH

By:

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February 27, 2002

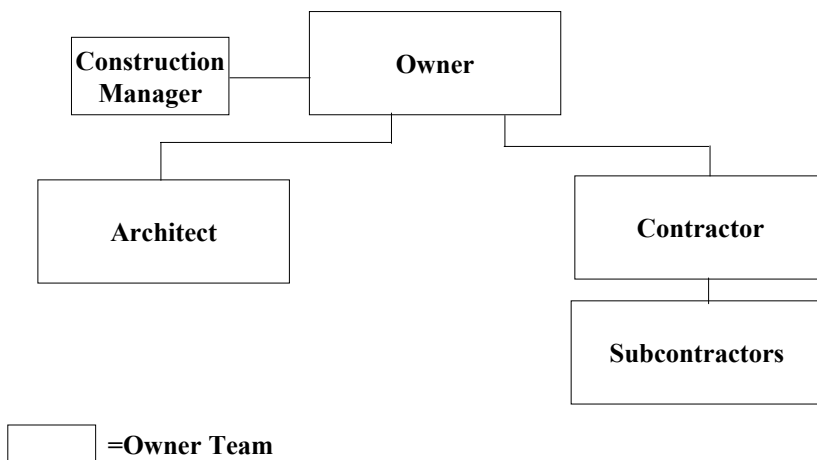
## Introduction: The Panel

- Thom Clark: Introductions
  - San Marcos USD
  
- Mark Kelley
  - Miller Brown & Dannis
  
- Brian Torone, AIA
  - Torone Consulting

# WHY DESIGN-BUILD?

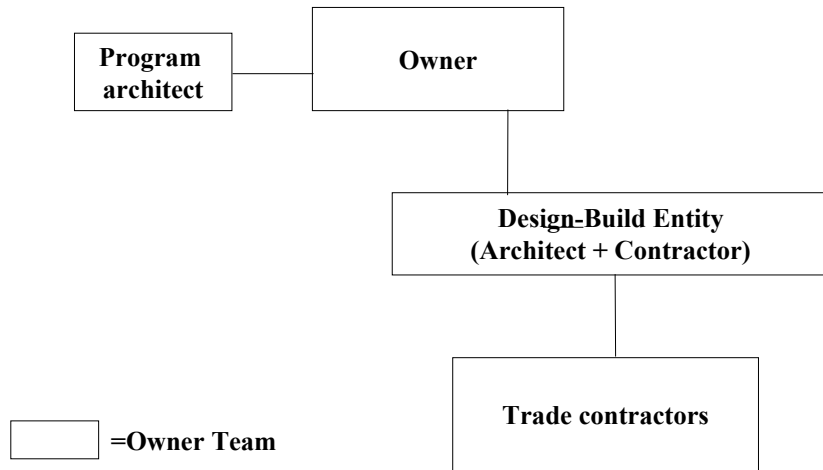
3

## Project Organization: Design/Bid/Build



4

# Project Organization: Design-Build



5

HOW DESIGN-BUILD WILL  
WORK UNDER THE NEW  
STATUTE

6

## AB 1402

- History of K-12 Design-Build
- New law effective as of 01/01/02
  - Education Code sec. 17250.10 *et seq.*
- Projects that qualify:
  - \$10,000,000 minimum total budget
  - New construction or modernization

7

## What The Legislature Thinks

- “The Legislature ... finds that the cost-effective benefits to the school districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity”
  - Ed.Code sec. 17250.10

8

## What The District Must Do

- Evaluate and make findings re: merit of Design-Build vs. traditional contracting
- Prepare a program
  - Specifications by an architect/engineer
- Prepare an RFP
  - Including factors that will be considered
  - Determine weight to be given to each
  - Determine whether or not to have interviews
- Establish procedure for final selection

9

## Selecting The Design-Build Entity

- Program architect is disqualified
- Base selection on either low bid or objective "best value", including:
  - Price
  - Features and functions
  - Life-cycle costs
  - Plus technical expertise, misc.
- Make findings in writing re: basis of selection
  - Including ranking and scores

10

## The Design-Build Entity

- Must provide bonds and insurance
  - Including errors and omissions coverage
- Any trade contractors not part of the proposing entity must be selected after semi-public bidding
  - Successful trade contractors protected by subcontractors' listing law
- No deviation from District's Program
- Retention to be set by District

11

## District's Responsibilities

- Prepare labor compliance program
- Retain architect/engineer to monitor compliance (recommended)
- Retain project inspector
- Obtain DSA approval of plans and specifications prior to construction
- Follow state guidelines (to be issued by July 2002)
- Submit final report to Legislative Analyst

12

# **THE TOP 10**

13

## **10. Understand the Motivations of the Parties**

14

## 10. Understand the Motivations of the Parties

### ■ The Problem

- The Program sets the standard
- The economic interests of all parties are shifted
  - \* District to Architect
  - \* Architect to Builder
  - \* Builder to District
- Changes to the Program are disruptive -- and expensive

15

## 10. Understand the Motivations of the Parties

### ■ The Solution

- Make sure the Program really is what the District wants -- all of the decision-makers
- Acknowledge the roles and economic interests of each party as part of deciding whether or not to use Design-Build
- Remember that the other parties will view the District differently too

16

## 9. Select the Right Owner's Team

17

## 9. Select the Right Owner's Team

### ■ The Problem

- The most common complaint: unsophisticated owners
- Aside from the Program Architect, District is on its own
- Like traditional construction, no substitute for adequate in-house staffing and oversight -- i.e., \$\$\$

18

## 9. Select the Right Owner's Team

### ■ The Solution

- Consider what outside consultants to retain
  - \* Program Architect
  - \* Construction management services?
- Realistically assess in-house capabilities
- Assign roles specific to Design-Build
- Who will report to the Board and public?

19

## 8. Draft Good Contracts

20

## 8. Draft Good Contracts

### ■ The Problem

- District is handing over control much earlier than on traditional projects
- The less involvement and control the owner has, the more important the agreements become
- Easy to forget the basics with new contracting methodologies

21

## 8. Draft Good Contracts

### ■ The Solution

- Understand Design-Build
- Focus on basics first:
  - \* Who is responsible for what
  - \* Money: what is the maximum the District can pay?
  - \* Program: what is the minimum the District can accept?
- Don't necessarily rely on standardized forms

22

## 7. Tie Scope to Schedule and Budget

23

## 7. Tie the Scope to Budget and Schedule

### ■ The Problem

- Everyone wants everything for nothing
- Owner hasn't established a project scope or budget
- Design/Build team doesn't set limits
- Owner sets unrealistic schedule

24

## 7. Tie the Scope to Budget and Schedule

### ■ The Solution

- Everyone has realistic expectations
- Owner understands and provides a succinct project scope
- Everyone shares in refining budget and schedule

25

## 6. Document and Track the Project

26

## 6. Document and Track the Project

### ■ The Problem

- Stakeholders are not acting as a team
- Lack of decision making documentation
- Stakeholders do not know the delivery method process/needs

27

## 6. Document and Track the Project

### ■ The Solution

- Roles of participation are understood
- Everyone participates in setting realistic milestones
- Accurate documentation to speed decision making process
- Strong management practices are used

28

# 5. Don't Tinker with the Design

29

## 5. Don't Tinker with the Design

### ■ The Problem

- Team is working independently and not at a team
- Owner doesn't make timely decisions
- Design phase of project is never allowed to end

30

## 5. Don't Tinker with the Design

### ■ The Solution

- Owner needs to set well defined project scope/criteria at beginning
- Team efforts provide decisions everyone lives with throughout the project

31

## 4. Don't Assume It's the Best Alternative

32

## 4. Don't Assume It's the Best Alternative

### ■ The Problem

- The rep of design/build
- Well-publicized great projects

33

## Bill 1402 for Projects Over \$10M

The benefits of a design-build project delivery include an accelerated completion, cost containment, reduction of construction complexity, and reduced exposure to risk for the school district.

34

## Design/Build Dogma

- It's faster!
- It's cheaper!
- It reduces disputes!

## Design/Build Trends

- Growth in D/B projects
- More firms moving into D/B
- It may be a little faster and/or cheaper
- More claims and disputes

## 4. Don't Assume It's the Best Alternative

### ■ The Solution

- Critically analyze whether it's the right delivery method for your project
- Evaluate the relative success of your current delivery method

37

## 3. Pick the Right Design/Builder

38

## 3. Pick the Right Design/Builder

### ■ The Problem

- Believing that D/B solves your problems
- Inexperienced Design/Builders
- Parties agreeing to bad contract terms because of their desire to do D/B

39

## 3. Pick the Right Design/Builder

### ■ The Solution

- Understand your capabilities
- Know the capabilities of the design/builder
- Understand the other parties' intentions

40

## 2. Understand Design/Build Principles

41

## 2. Understand Design/Build Principles

### ■ The Problem

- One party conducts the job as design/build, the other doesn't
- Failing to communicate the delivery method to implementers

42

# Common Attitudes of the Parties

When only the Design/Builder is familiar with Design/Build

## ■ Design/Builder

- Keep your hands out of my design
- You've had your chance to make changes, so keep off
- I'm building, don't bother me

## ■ Owner

- It's design/build, so I can change anything I want
- The contract says I have design approval
- Our design changed, BUT IT'S STILL WITHIN THE D/B SCOPE!

43

# Common Attitudes of the Parties

When only the Owner is familiar with Design/Build

## ■ Design/Builder

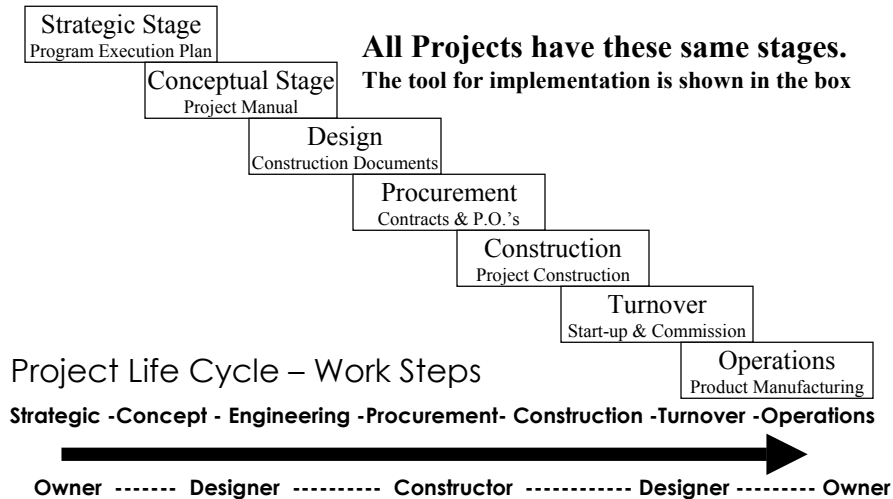
- Here's a change order because we had more design costs than planned
- Here's a change order for changed quantities of concrete

## ■ Owner

- That's your risk
- That's your risk

44

# The Project Life Cycle Must Still Be Followed



45

## 2. Understand Design/Build Principles

### ■ The Solution

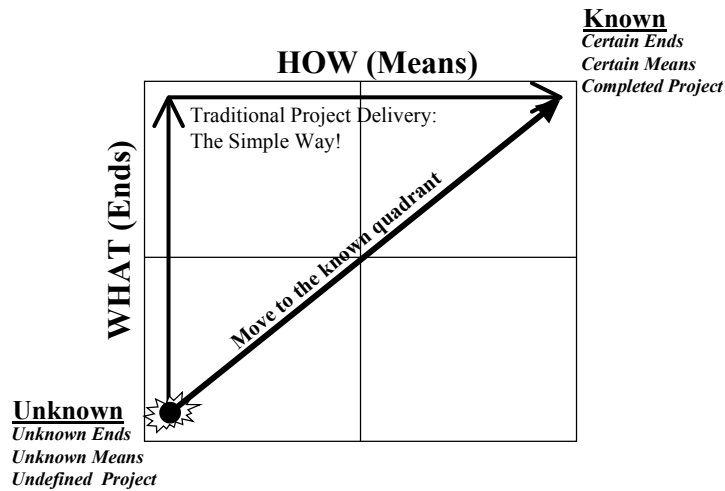
- Follow the same Project Life Cycle, but acknowledge different overlaps
- Have all parties understand the project delivery method and what it means

46

# 1. Define the Scope Appropriately

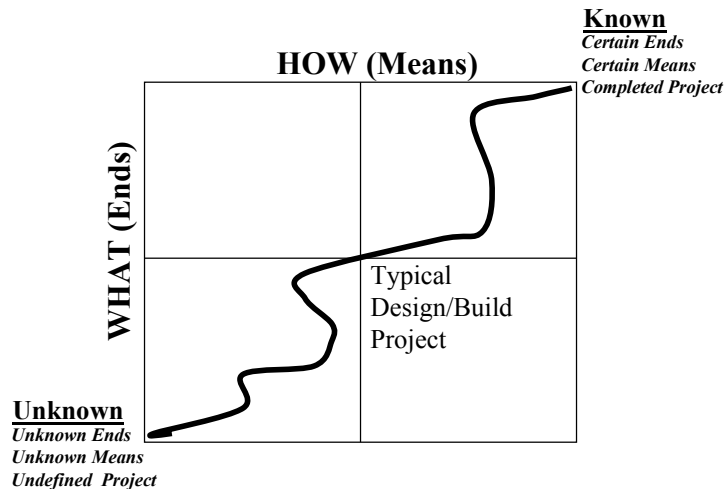
47

## Certainty Chart: Traditional Project Delivery



48

# Certainty Chart: Design/Build



49

## 1. Define the Scope Appropriately

### ■ The Problem

- The agreement is silent
- The agreement is ambiguous
- Disputes over both performance and prescriptive specs

50

# 1. Define the Scope Appropriately

## ■ The Solution

- A good agreement
- Invest in a Design Criteria Package
- Consider Bridging
- Don't Use Design/Build

51



# Conclusion

# Overarching Principles of Design/Build

- The project should be matched to the appropriate delivery method
- Communication is crucial
  - Contract
  - Scope definition
- Your people need to be:
  - Experienced in design/build
  - Understanding of the design/builder's mindset

53

## The Panel

### ■ Thom Clark

- Thom Clark is an architect, and is currently the Director of Facilities & Planning for the San Marcos USD. Thom has worked on the design and construction of several schools as an architect prior to working as a public employee. He has spoken at several workshops and conferences regarding the Lease/Lease Back delivery method and has participated with one school project using a modified design/build delivery method. He is currently working with the California Department of Education on writing the guidelines for AB1402.
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### ■ Mark Kelley

- Mark Kelley is a partner with Miller, Brown & Dannis in San Francisco. Mr. Kelley specializes in resolving contract and claim issues on public works projects such as schools, municipal buildings, and public housing. He has extensive experience with contract formation, and all forms of alternative dispute resolution. He frequently speaks on construction issues, including giving training in construction dispute avoidance and resolution. He is a frequent speaker at the CASH Annual Conference and at the American Institute of Architects' National Conventions.
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### ■ Brian Torone

- Brian Torone, AIA, is the founder and principal of Torone Consulting in Oakland, California. He has analyzed claims on a wide variety of K-12 projects, university projects, high-rise office buildings, and public buildings. He has participated in numerous mediations, arbitrations, and trials as an expert on cost overruns, schedule delays, management issues, and technical issues. Many of his cases have involved complex design/build issues.
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