



**DREWRY SIMMONS VORNEHM, LLP**  
**A T T O R N E Y S**

**DSV SPECIAL NEWSLETTER:  
THE DESIGN-BUILD BRIDGING METHOD**

**Part III – Developing Issues Arising from Bridging**

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**DSV SPECIAL NEWSLETTER:  
THE DESIGN-BUILD BRIDGING METHOD**

**Part III – Developing Issues Arising from Bridging**

The DSV Special Newsletter focuses on the legal issues and marketing trends raised by the use of the bridging method in conjunction with the design-build project delivery system. Part I of this Newsletter Series answered the question – What is bridging? Part II discussed the liability considerations arising out the use of the bridging method. Finally, this Part III will address developing issues arising from the use of the bridging method in the design-build project delivery system. Specifically, this Newsletter will address issues relating to ownership of the design and copyrights, design professional conflicts of interest, E&O insurance and the bridging consultant’s fee structure.

*Ownership and Copyrights*

An important issue in design-build is who owns the copyrights to the Instruments of Service prepared in connection with the Project. The design-builder in a contractor led design-build team will want to retain ownership and provide the Owner with a license to use the design documents or Instruments of Service. The project architect, under a Subcontract with the design-builder, in turn, will want to retain ownership or copyright to its work product. This is resolved as a matter of contract negotiation between the architect and the design-builder.

Generally, with respect to design-build, the AIA Contract Documents are not entirely clear as to who owns the copyrights. The AIA seems to imply co-ownership in the A141 Standard Form of Agreement Between Owner and Design-Builder. Specifically, ¶ A.1.6.1 of the A141 Exhibit A Terms and Conditions states that the “Design-Builder, Design-Builder’s Architect, and other providers of professional services individually shall retain” the copyrights to the design documents “furnished by them”. With this language, it is not clear if the design-builder has ownership rights in documents it “furnishes” to the owner. As stated above, the prudent design-builder should include such rights.

The subcontract between the design-builder and architect, AIA Document B143, ¶ 3.2.1, however, provides that the architect and its consultants are the authors and owners of all copyrights in their work and that the design-builder’s right to utilize the documents terminates if the architect’s services are terminated unless the termination was for cause. In the event of termination for cause, the design-builder can give the documents to another professional in an effort to complete the project. Finally, pursuant to ¶ 3.2.5 of the B143, the design-builder is explicitly prohibited from using the architect’s design documents on other projects unless the architect gives prior written consent.

Under the AIA design-build documents, the owner holds a nonexclusive license to reproduce the documents for the project and the design-builder may receive such a license from its architect and other professionals. Additionally, pursuant to ¶ A.1.6.4 of the A141 Exhibit A Terms and Conditions, the owner is granted a license by all of the design professionals upon termination of the design-builder to use the documents for completion of the project, provided

that the owner assumes the design-builder's duties to the design professional and pays all amounts due the design professional and its consultants. If, however, the owner does not agree to assume said duties, it can still use the documents to finish the project, provided the owner indemnifies and holds harmless the design professional from claims, expenses and attorney's fees incurred as a result.

DBIA's policy is that the design-builder should retain ownership of the design documents. DBIA's official position is as follows: "As to the ownership of the completed construction documents once the project is built by the design-builder, DBIA believes that the documents are instruments of service and that the design-builder should retain ownership thereof. The owner, however, is permitted to make and retain copies of the documents and use them in connection with the use and occupancy of the project. . . . [W]ith the design-builder being afforded appropriate consideration, the documents should not be used for alterations to either the project or on another project. Any reuse without verification or adaptation by the design-builder for the specific purpose intended must be at owner's risk and without liability to the design-builder." The owner can only use the document without the design-builder's permission in the event of a termination for default, although it can use them in connection with owner's occupancy of the project once the design-builder is paid in full and indemnified.

Apart from the DBIA position, one recommendation for the design-builder, as a proposed modification, is to amend the AIA A141 Exhibit A Terms and Conditions to provide that the design-builder, in exchange for the payment in full for performance of the work, may grant the owner a limited license to use the project's design documents, subject to the following:

- If the design-builder terminates the agreement, upon payment of the monies the design-builder is entitled to, the owner has the right to use the design documents to complete the project. If, however, the agreement is terminated for cause (i.e., design-builder uncured default in performance), the owner is entitled to a limited license to use the design documents.
- Pursuant to the limited license, the owner may use the design documents for subsequent renovation and remodeling of the project, but not for other projects without the express written consent of the design-builder. Moreover, the owner's use of the design document is at its sole risk.
- The design-builder obtains from its subcontractors property rights and rights of use that correspond to those extended to the owner from the design-builder.
- The design-builder and architect may utilize the project information in promotional and marketing materials except that distinctive architectural components of the design shall not be utilized without the owner's written consent.

What happens to the ownership of the design documents under the design-build delivery system when there also is involved a bridging consultant? Design criteria consultants ("DCC") are aware that another design professional will use their preliminary design to complete the project; thus, the DCC must authorize the successful design-build team to reproduce and use its

design. The DCC, however, may want to restrict the use of the design to this one project so that a successful design could be used again under the control of the DCC.

What the DCC may do is to modify the Design Criteria to specifically address this ownership and copyright to the DCC work product. It may provide that the Design Criteria and other documents prepared by the DCC constitute the DCC's Instruments of Service and therefore ownership and copyright to those Instruments of Service remain in the DCC. When the successful design-build proposal is accepted by the owner, the DCC agrees to furnish a limited or restricted license to utilize the Design Criteria and other DCC Instruments of Service, in similar fashion to what an architect would do under a standard arrangement with the owner for design services. In other words, the existence of the bridging role serves to narrow or limit the scope of the design documents from the DCC rather than to differently define the ownership of those documents.

What is the effect of bridging under the AIA's provisions as to who owns the copyrights? There is nothing specific that would change the above result under the AIA documents. The AIA's B142 Owner-Consultant Agreement states in ¶ 3.2.1 that "Drawings, specifications, and other documents, including those in electronic form, prepared by the Consultant and its sub-consultants are Instruments of Service for use solely with respect to the Project. The Consultant and its sub-consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights." If the owner and DCC were to execute a B142 Agreement, pursuant thereto, the DCC grants the owner only a license to reproduce and use the documents in connection with the project "including the Project's further development by the Owner and others retained by the Owner for such purposes, including the Design-Builder and the Design-Builder's design professionals." The license extends specifically to the design-builder and its design professionals.

From the owner's perspective, it may seek to alter this arrangement and to secure a more broad-sweeping license or even outright ownership of the DCC Instruments of Service just as an owner may seek to secure ownership of the design documents under traditional design-bid-build project delivery systems. It becomes a matter of contractual negotiation.

### *1. The Effect of Paying a Stipend on Ownership and Copyrights*

Use of stipends paid to unsuccessful design-build proposers is intended, in part, to encourage proposers to make the effort and investment in time to put together design-build proposals so that the owner can actually have alternatives or options from which it can select its team and design. By payment of a stipend, if provided for in the Design Criteria, the owner also may be able to gain rights of ownership, including the right to use ideas and concepts presented by the unsuccessful design-build proposers.

An owner that wants to use the design concepts of an unsuccessful design-build proposer can essentially "buy" the unsuccessful proposer's work product through the use of stipends paid to all proposers. In this regard, the owner paying a stipend to the unsuccessful proposer can

structure the payment as consideration for delivery of the work product as opposed to just structuring that payment as a small recompense for the costs of putting together the design-build proposal. This may cause concern for those design-build teams that want to accept the stipend simply to offset the costs of submitting a proposal to the owner, but wish to maintain ownership of their team's work product. Where minimal stipends are awarded to unsuccessful proposers, the amount received typically does not come close to covering the cost of the design services. Only large firms are financially capable of participating in expensive design competitions. Therefore, if the Design Criteria provide for the obtaining of usage rights in the unsuccessful design-build proposer's design, either in the form of outright ownership or license, the design-build team needs to carefully weigh the true cost of obtaining such a stipend. At the very least, restrictions on the owner's subsequent use of the design-build team's work product needs to be carefully defined and limited, if possible.

The question arises as to whether design liability exists for an unsuccessful proposer who "sold" its design to the owner for payment of a stipend? In this regard, it is advisable to enter into a formal agreement whereby in exchange for the owner securing use of the work product in consideration for the stipend (which grants the owner a limited license) the owner agrees to indemnify the unsuccessful proposer against any changes or alterations in the proposer's design documents as well as indemnity against the owner's use of those documents. Such an agreement should reflect the types of terms that control owner usage and ownership of design documents when there has been a termination of the design-builder during the actual construction of the project.

However, the argument can be made that these terms and conditions probably should go even further because at the proposal stage, the design concepts are just that – concepts, as opposed to fully developed design documents from which the project can be constructed. In the latter case, it seems only reasonable to still look to the owner regarding the adequacy of the ultimate design when the owner's ultimate designer (including the DCC in conjunction with the design-builder's architect) has had the time and effort to fully develop the documents for construction. This is a very different situation from the more limited, and necessarily schematic nature of the design documents associated with putting together a proposal for a design-build project. An owner that takes an unsuccessful proposer's design concepts, and through others, develops them into a full set of design and construction documents should take on the design liability that accompanies such a task. The unsuccessful design-build proposer should be indemnified by the owner in such a situation from any liability associated with the owner's subsequent use of the proposer's design concepts since the control over and input into that ultimate design passes to the owner and either the DCC or the successful design-builder's team, including the team's designers.

## *2. Building Information Modeling*

The use of BIM also raises copyright and licensing issues. With multiple parties contributing to the project design, sharing information and adding to the design, who owns the copyright? An owner that pays for the design may feel entitled to own the copyright; however, the design-build team members are responsible for providing the proprietary information for use on the project. Such proprietary information should be protected. This issue needs to be

addressed in the Contract Documents to avoid disputes if certain design elements are used on later projects. Further, this issue needs to be addressed in the event liability arises out of the design elements.

The parties are encouraged to address this issue at the outset with the best solution being setting forth in the Contract Documents ownership rights and responsibilities. An older example is provided by the AIA Document 511-2001, Guide for Amendments to AIA Owner-Architect Agreements, ¶ 10. This particular AIA Document sets forth model language containing an indemnification running from the Owner to the Architect for claims arising out of the “unauthorized reuse of Drawings, Specifications, electronic data or other Instruments of Service.” The DCC should negotiate such that it may benefit from such indemnification language as well. Further, the DCC needs to ensure the term “electronic data” is included in the contractual provisions relating to ownership and copyrights.

The new AIA 2007 Documents also attempt to address the issue of ownership and licensing in the context of BIM in their forms. The 2007 AIA A201 General Conditions place an increased emphasis on use of electronic documents. First, there is a new definition of Instruments of Service which includes electronic documents and media in the paragraph designated at ¶1.1.7 as Instruments of Service (formerly the “Project Manual”). Second, the provisions of ¶¶1.5.1 and 1.5.2 deal with ownership and licensing and use of the Instruments of Service. Section 1.5.1 has been modified to now be consistent with the definition of Instruments of Service found in ¶1.1.7. The Architect and its consultants own the Instruments of Service and the constructors shall have the ability to use them but not own them. The following provision, ¶1.5.2, expands on this concept by establishing that the constructors shall have limited licenses to use the electronic data, or Instruments of Service. This license also shall be limited to exclusive usage with the work on the particular project. Third, there is a new provision, ¶1.6, on transmission of data in digital form. This represents a major change and effort to try and deal with electronic documents. This provision references establishing protocols governing electronic transmissions.

To further carry out these licensing and protocol concepts for electronic data and its usage, the AIA has established two new forms with the 2007 documents to address establishing relationships when sharing digital data and protocol for digital transmissions. The first of these new documents is the C106 – 2007 Digital Data Licensing Agreement. This is a document that is intended to create a licensing arrangement between the sender and receiving party on electronically transmitted data. In other words, it is to be used in conjunction with the type of electronic data discussed above in the A201 General Conditions. Second, there is the E201 – 2007 Digital Data Protocol Exhibit. This is a document that is intended to be attached to a multitude of contracts on a construction project, including the contracts with the general contractor and various subcontractors as well as those on the design side. It is a companion document to the C106 Digital Data Licensing Agreement and it also is to be used in conjunction with the type of electronic data discussed above and the general conditions requirement for establishing project protocols as specified in ¶1.6 of the A201 General Conditions.

While these two forms are not targeted specifically toward BIM or integrated practice, we understand that the AIA is working towards a set of integrated practice documents that will specifically address joint ownership, liability and control when using Building Information

Modeling. These forms likewise are not designed exclusively for design-build delivery systems but they have promise of working with design-build because of their emphasis on interactive participation in the design and its development. Thus, it is not a far stretch to seeing those documents and their concepts also being utilized on a design-build project on which bridging is utilized.

### *Conflicts of Interest*

Several states have statutes that write the role of the DCC into the state's design-build procurement law. Further, in many states, the DCC preparing the design criteria is prohibited from participating on the design-build team competing for the project. This prohibition is based on the theory that it would give an unfair advantage to that firm as it would be most familiar with the design. Moreover, allowing the DCC to participate on the design-build team would create a conflict of interest if the owner retained the DCC to assist in construction administration.

With respect to conflicts of interest, the AIA Code states that "Members should avoid conflicts of interest in their professional practices and fully disclose all unavoidable conflicts as they arise. . . . A Member shall not render professional services if the Member's professional judgment could be affected by responsibilities to another project or person, or by the Member's own interests, unless all those who rely on the Member's judgment consent after full disclosure." The Department of Transportation's Federal Highway Administration regulations state that consultants who assist the owner in preparing the RFP will not be allowed to participate on a design-build team, unless the involvement is minimal.

A DCC that participates on a competing design-build team would likely give that team an advantage as no other team could match the level of familiarity that the developer of the scope of work would have with the project. Additionally, it would prohibit the owner from using that same design consultant for construction administration services during construction. It would defeat the purpose of having an "independent" architect/engineer if the bridge firm could prepare the design criteria package and then link up with a design-build team competing for the project. The better approach is to bar the bridge firm from participating on any of the design-build teams.

Under Indiana's Design Build Statute, codified at Indiana Code, §5-30 *et seq.*, due to the Technical Review Committee's ("TRC") considerable influence in the selection of the design-builder, a member of the TRC is prohibited from submitting a proposal for or furnishing design or construction services under a design-build contract and the selected design-builder cannot subcontract any service back to any member of the TRC. A similar statutory prohibition is not found for the "design criteria developer". However, the nature of the DCC's ongoing obligations to work with the TRC throughout the procurement of the design-build proposal and contract has the practical effect of preventing such an affiliation.

Several other states also have laws that prohibit architects and engineers from bidding on plans they prepare. South Carolina law bars architects and engineers who perform design services from performing any work on the same project as a contractor, either directly or through a business in which the architect or his or her firm has "greater than a 5% interest." Florida makes it clear that a "design criteria professional" who has been selected to prepare the design criteria package is not eligible to render services under a design-build contract executed pursuant to the design-criteria package.

One federal case has ruled that the bridge firm cannot be part of a contractor's design-build team. In *Matter of SSR Engineers, Inc.*, 1999 U.S. Comp. Gen. Lexis 139 (June 18, 1999), the Navy awarded a contract to SSR Engineers. The government issued an RFP for a design-build contract to perform a portion of the work, taking the statement of work directly from the SSR Engineers' master plan. SSR was contacted by several contractors to be part of their design-build teams, but the Navy said the firm was ineligible due to a conflict of interest. SSR protested the decision but the Comptroller General denied SSR's protest holding that Federal Acquisition Regulations barred such participation and that with SSR's participation, that team would have an unfair competitive advantage and an organizational conflict of interest.

The regulation at issue in *Matter of SSR Engineers, Inc.* was FAR, part 9.505-2 states, "[i]f a contractor prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or services – or provides material leading directly, predictably, and without delay to such a work statement – that contractor may not supply the system, major components of the system or the services." The regulation provides for certain exceptions. SSR argued that a different regulation specifically addresses design-build projects and use of consultants to develop a scope of work and that the regulation does not expressly preclude the firm developing the scope of work from being part of a design-build team. SSR further argued that it had not obtained any competitive advantage based on its prior work on the project. The Comptroller General rejected these arguments and found that organizational conflict precluded SSR from participating on any of the teams due to an unfair advantage.

FAR 9.502 states that an organization conflict of interest may result when there are factors that create "an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future acquisition." Participating on a competing team may give that team an advantage in terms of qualifications since no other team could match the level of familiarity that the developer of the scope of work would have with the project. It would also effectively prohibit the owner from using that same design consultant for construction administration services during construction, to the owner's disadvantage.

In sum, it is generally agreed, in both the public and private sectors, that the DCC should not participate on the design-build team, especially if the DCC is providing construction administration services to the owner. However, this is not to say that such a practice is prohibited in the private sector and many private owners have established relationships with the DCC such that the owner is comfortable with a DCC participating on the design-build team and providing the construction administration services.

### *Errors & Omissions Insurance*

The design-build delivery process changes the way in which insurance will be carried as compared to a traditional design-bid-build project. Contractors are accustomed to carrying commercial general liability ("CGL") policies that provide third party liability coverage to the contractor arising from its operations and premises which may be owned and/or under the control of the contractor. The CGL policy, however, only provides coverage for liability arising from

design which is incidental and necessary to the construction means and methods of the contractor. A design professional errors & omissions policy (“E&O”) provides coverage for damages arising from negligent design errors and omissions.

Under the A141 base agreement the parties have flexibility in the area of insurance in that the A141 simply provides a blank Exhibit C that the parties utilize to provide their own custom terms. Thus, the A141 has no specific type of coverage listed. However, ¶ 11.2 of the AIA B141 Exhibit A Terms and Conditions sets out eight types of insurance, but surprisingly omitted is E&O insurance. Like the A141, the DBIA No. 530, ¶ 10.1 similarly provides flexibility with respect to insurance. It does, however, address E&O coverage. *See* Doc. 535, ¶ 5.1.4.

Thus, owners will have to specify whether E&O coverage is required of its design-builder and its architect and the coverage limits. In an effort to obtain coverage for the redesign and reconstruction resulting from negligent design, as well as coverage for any economic loss that may be incurred by the design-builder or the owner, the design-builder should obtain an E&O policy to cover the design exposure of a design-build project. This is true whether the design is done in-house, via a subcontract, joint venture or by other means. It also is critical for the design-builder to carry adequate amounts of coverage because it will be insuring against loss to the entire project. Likewise, layered coverage with key subcontractors providing design services should be obtained as well as with the design professional subcontracts.

The involvement of a DCC further complicates the matter of insurance for the project. Specifically, the issue arises as to how you allocate risk with E&O coverage for the design-builder’s architect where there is a DCC doing anywhere from 20% to 40% of the design? Insurance statistics show that the majority of claims against A/E firms are for design errors or omissions.<sup>1</sup> Since the DCC develops as much as 30% of the schematic or design drawings, which typically are not sealed, it is likely that the design-build team will prepare the final technical details used for construction and seal those documents. Thus, if there is a design error or omission in the drawings or specifications, liability will most likely fall initially on the design-build team’s architect or engineer who prepared those documents and not on the DCC.

For the design-builder, it is common for it to carry its own E&O policy to cover all design work being performed under its own umbrella. In addition, it is typical for the design-builder to require E&O protection from the architect under a design subcontract with it, as well as the mechanical and electrical engineer (if not under the lead architect). If the civil engineering work is under separate contract with the design-builder, it also should be required to carry E&O coverage. The architect on the design-build team likewise should be required to mandate with its consultants (such as the structural engineer) that they furnish E&O coverage of their own. In this fashion, the design-builder can secure layered E&O protection for those doing design work under it.

The owner likewise should require E&O coverage of its DCC. Even though the bridging consultant has a narrower role than that of the traditional architect, to the extent that claims arise associated with design liability, it is not inconceivable to have some liability claimed to be

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<sup>1</sup> G. William Quatman & L. Tyrone Holt, *Use of Bridging Consultants in Design-Build Relationships*, American Bar Association Forum on the Construction Industry (Jan. 25, 2007).

traceable to the Design Criteria or related documents that the DCC will prepare for and on the owner's behalf. Hence, there remains potential *Spearin* Doctrine type of liability for the owner to the design-builder as discussed in the last newsletter. Likewise, there may be claims arising out of the DCC's role on other aspects of the project that could be covered by an E&O policy so it only makes sense for the prudent owner to require E&O coverage from its DCC. As a practical matter, the DCC will carry E&O coverage as part of its normal design practice so that the cost and effort in securing E&O coverage for a bridging agreement should not be excessive.

Another option for the owner is to purchase a project policy, paid for by the owner, that is sufficient in amount and with a low enough per claim deductible to cover *all* design professionals providing services on the project. If the owner agrees to a project policy, the owner needs to purchase adequate coverage to address all risks inherent with multiple designers on a job, recognizing that if there is a project professional liability policy, in the absence of a special endorsement, there may not be coverage available under the DCC's professional liability insurance policy standing alone to protect the owner. Further, if a project specific policy is obtained, the parties should negotiate and execute a deductible sharing or payment agreement to address deductible payment/sharing and project policy administration issues that affect all insureds, regardless of their role in the project. Finally, if the DCC's normal practice professional liability insurance policy is to be used, it should be noted that continued coverage is not guaranteed and the limits may be exhausted by other projects. At the very least, the owner needs to address securing excess coverage from the DCC and to having the E&O coverage extend more than a year or two past project substantial completion.

### *The Bridging Consultant Fee Structure*

A question is often posed by DCCs regarding the development of a fee structure when limited design services are performed on a project. This matter is further complicated because Indiana law does not permit percentage fees for design services on public works projects, which likely precludes a percentage fee structure in a DCC agreement on a public works design-build project.

With respect to design-build generally, a design-builder following the standard AIA procedure for design-build projects implements a two part process. The first part involves the conceptual or schematic design for a minimal fee. This allows the design-builder to develop the program and conceptual design as well as the associated construction cost without requiring the owner to move forward with a design or cost. In fact, many design-builders do not charge a fee for the conceptual or schematic design with the hope of satisfying the owner so that the design-builder is awarded the project.

However, this course of action is not acceptable to DCCs that will not become part of any design-build team. As noted in the prior newsletters in this DSV Newsletter Series, bridging is a target market for some design firms, even though the fees for DCCs are typically less than for traditional full scope services. For these DCCs, it is anticipated that the DCC will prorate from a full fee arrangement (i.e., charge 30% of a full fee when 30% of design is to be performed by the DCC). It is difficult to place a definitive percentage on the amount of design services to be performed by the DCC. Thus, it serves as the starting point that the DCC begin by determining

whether its services will be limited to preliminary design services, or encompass construction administration services as well.

Further, with respect to the design services, a DCC must determine the following: cost of project, type of project, scope of work required, and type of design services. The scope of service can further be broken down into the concept design, preliminary design, development design, detailed design and construction design. When the scope of work does not include all of the various levels of design, deductions should be made to the DCC's overall fee. Moreover, the DCC fee should be anticipated to increase when the scope of work includes any of the following: feasibility studies, preparation and advice on estimates, geotechnical investigations and reporting, site survey of levels, investigation of ground water conditions, evaluation of different design solutions, liaison with local authorities and obtaining building consent and/or resource consent, life cycle costing and considerations, schedule of quantities, economic studies, alteration and strengthening, acting as principal advisor for the project, and fast tracking the project.

The Office of Financial Management ("OFM") has issued Guidelines for determining design fees for public projects. This guideline likewise is helpful for breaking down the DCC fee into approximate percentages for each phase of work. Specifically, the OFM has established the following breakdown:

<b>Project Phase</b>	<b>Percent of Basic Services Fee</b>
Schematic Design	13
Design Development	20
Construction Document	36
Bidding	2
Construction	27
Project	2

According to the OFM, in the schematic design phase, the DCC provides those services necessary to prepare schematic design documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the owner. These services are essentially the same as those an architect would provide in a traditional design-bid-build method.

In relation to a DCC providing construction monitoring services, the factors influencing the DCC fee structure are as follows: size of the project, importance of the project, complexity of the construction works, and the experience and skill in quality management of the design-build team. Clearly, the cost of monitoring increases with higher levels of service.

Another issue the DCC faces is whether it should include compensation for the design risk it will incur as there is potential liability at the level of the DCC participation. It only makes sense that such a risk be considered and priced when determining the DCC fee structure as well as the indemnification risks discussed above.

## **Conclusion**

In sum, there are many issues that have arisen through use of the bridging method that have yet to be tested. This newsletter has attempted to focus attention on some of the more obvious developing issues present with utilization of the bridging consultant: ownership of the design documents and copyrights and how the industry is attempting to address this issue through licensing arrangements, particularly with the increasing use of electronic or digital design; design professional conflicts of interest for the DCC; the need for layered and multi-party design professional E&O insurance; and how the bridging consultant's fee may be structured. In the months and years ahead, new issues will emerge with bridging but it is a concept that appears to be firmly rooted in the design-build future.