

Part 2: Legal Issues and Liability Considerations

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This DSV Special Newsletter focuses on the legal issues 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? In Part II of the Newsletter Series we are discussing the legal issues and liability considerations arising out of the use of the bridging method. Finally, Part III will speak to the marketing trends and hot topics developing from the use of the bridging method in the design-build project delivery system.¹

Legal Issues and Liability Considerations

1. Use of Design-Build on Public Projects

Traditionally, there has been a conflict between Design-Build and Competitive Bidding Laws in Indiana and other states, based upon a Design-Bid-Build Project Delivery System. The prospect of departing from the traditional price-based “low-bid” system by consolidating design and construction responsibilities into a single contracting entity is understandably intriguing to some public owners, design professionals and contractors. In general, public works projects undertaken by governmental bodies in Indiana are subject to a competitive bidding system in which a public owner is expected to conduct design and construction procurement in a sequential manner, beginning with the owner’s employment of a design professional who designs the project to meet the owner’s criteria and requirements.

Upon approving the design, the owner makes it available to prospective bidders in the form of plans and specifications, and each bidder then submits a bid offering to build the job, as specified, for a stated price that can be compared quantitatively with bids received from other bidders. The contract is then awarded to the qualified bidder who submits the lowest bid. In this fashion, a pre-existing design serves as a unifying standard or common denominator for establishing cost, selecting a contractor and bringing the completed project to fruition.

In the context of a public works project, design-build operates in a fundamentally different way, by repositioning

project design at the end of the procurement sequence instead of the beginning, by assigning design responsibility to the bidders themselves. The owner, on its own or by engaging a design criteria consultant (“DCC”), develops design criteria, layout, performance standards and other information describing the general characteristics being sought for the project. This is much like the information an owner would provide a design professional hired to prepare a final design on a traditional job.

Each competing design-build entity then uses that information as a focal point to develop and produce its own design and set of plans and specifications. The design-build price proposal is then submitted, consisting of two elements, a design and a price based on that design. The lack of a pre-established final design applicable to all prospective bidders is the defining characteristic of design-build that sets it apart from the traditional design-bid-build model. But it is also the very feature that puts design-build at odds with long-standing views expressed by Indiana courts as to how competitive bidding is intended to operate.

In Indiana, this conflict has been resolved by the Indiana legislature, which passed a new law in 2005 allowing the design-build project delivery system as well as the bridging method on public projects in the State of Indiana. The new statutory provisions authorizing design-build contracts on public works projects are altering the landscape of public construction contracts and warrant further review and consideration.

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¹ As discussed in Part I of this Newsletter series, the bridging method is a hybrid of traditional design-bid-build and design-build wherein the owner hires a design consultant or DCC who will be in direct contractual privity with the owner. The DCC develops a project design through design development (approximately 30% - 50% of the design work) and to prepare scope of work documents which form the basis for competitive selection of the project delivery team.

With the 2005 creation of the new Indiana Design-Build Public Works Projects Law (“Design-Build Statute”) public owners in Indiana may now use the design-build delivery system in conjunction with the bridging method as an option on publicly funded projects. This new law, which became effective July 1, 2005, is codified as Title 5 of the Indiana Code, and specifically at Ind. Code §5-30.

The following is a summary of the key provisions of the Indiana Design Build Statute:

Applicable entities: A public agency that can use the design-build delivery system includes the department of administration, state educational institutions, cities, towns, school corporations and school building corporations, and a body corporate and politic created by state statute. This statute, however, specifically does not include the Indiana Department of Transportation.

The Design-Build Statute makes \$833 million in annual schools projects and \$70 million in annual public works projects eligible for the design-build project delivery method.

Initial agency resolution: The first step which must be undertaken by a public agency which desires to use the design-build delivery system as well as the bridging method is to adopt a resolution authorizing the use of the design-build contracting method. This must be done at a public meeting. The resolution must contain a statement that the agency intends to procure construction projects using design-build as a delivery system. The resolution must also contain the names of the Technical Review Committee to be created by the agency.

Technical Review Committee (“TRC”): A key component of the design build process under the Design Build Statute is the role of the Technical Review Committee (“TRC”). In essence the TRC is responsible for rating prospective design-build contractors and their qualitative proposals. The TRC must include a representative of the public agency and at least two of the following: a registered architect, a professional engineer and/or a qualified contractor. Additionally, the design criteria developer (i.e., an architect or engineer who is responsible for preparing the design criteria package) or DCC may serve as a full member or a nonvoting advisor of the TRC.

In terms of conflicts of interest, 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 design-builder can not subcontract any service back to any member of the TRC.

The TRC has considerable influence in the selection of the design-builder. First, it qualifies potential design-builders using the Request for Qualification procedure proscribed by Ind. Code §5-30-5 et seq. The Committee

members are allowed to interview offerors but otherwise must conduct its business in open public meetings.

Request for Qualifications (“RFQ”): The public agency next must publish a RFQ from the prospective design-build offerors. The notice requesting qualifications must generally include an overview of the project and selection process, the general qualifications for prospective offerors, the project specification qualifications for prospective offerors, and a description of the qualifications statement evaluation process.

Statement of Qualifications: The potential design-builder must respond to the RFQ by submitting a verified Statement of Qualifications setting forth its qualifications. The statute defines what must be included in the RFQ.

TRC rates Statement of Qualifications: After the design-build offerors have submitted their respective Statements of Qualifications, the TRC next must rate the potential design-builders responding to the RFQ based on the rating system described in the RFQ. The rating system may include consideration of any of the following: experience; financial and bonding capacity; managerial resources and management plan; safety record; past performance and capacity to perform; ability to complete the work in a timely and satisfactory manner; and other criteria set forth or verified in the RFQ.

The TRC cannot consider cost or price related factors at this point. Based on the Qualification Statements the TRC selects at least three potential design-builders considered to be the most highly qualified to perform the required services based on the rankings. If only two potential design-builders respond to the RFQ the committee may report that the two responders are qualified. However, if only one potential design-builder responds to the RFQ or only one of the potential design-builders responding to the RFQ is qualified to perform the required services, the public agency may not use the design-build contracting method unless the governing body of the agency adopts a resolution authorizing the agency to send the one potential design-builder a request for proposal.

Request for Proposals (“RFP”): After the RFQ process has been completed the agency issues an RFP to the design-builders determined to be qualified by the RFQ process. Each RFP must include a design criteria package that is the heart of the procurement. The design criteria are developed by the “design criteria developer” who is defined to be a registered architect or a professional engineer. While the detail of the design criteria is not defined the design criteria package may include: legal descriptions and surveys; interior space requirements;

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material quality standards; preliminary design criteria; special equipment requirements; cost or budget estimates; quality assurance and quality control requirements; site development requirements; compliance with applicable codes and ordinances; permits and connections to utilities; requirements for storm water and roads; parking requirements; soil borings and geotechnical information or performance specifications; life cycle costing and energy consumption requirements; performance specifications, including warranties; and project schedule.

Additionally, the design criteria package *must* include: instructions; proposal forms and schedules; general and special conditions; the basis for evaluation of the proposals, including a description of the selection criteria with the weight assigned to each criteria; a determination of the common construction wage; and any other instructions, documents or information the agency considers relevant.

Note: the RFP must include the requirement that a proposal be submitted in two packages - one being the *qualitative* proposal, the other being the price proposal. Both the qualitative and price proposals must be submitted simultaneously in separately sealed and identified packages. The agency may also provide a stipend to a non successful *bidder* to encourage competition. The price proposal must remain sealed until opened in a public meeting. The price proposal must (1) contain one lump sum cost for the design, construction engineering, inspection and construction costs of the proposed project; or (2) establish a maximum cost of the design-build contract that will not be exceeded *if the proposal is accepted without change*. The qualitative proposal must identify each person with whom the offeror proposes to enter into subcontracts for primary design services and primary construction services including any subcontracts. It must also include all documents, information and data requested in the RFP.

Conflicts of Interest: The design-build offerors' proposals must identify each entity with whom the offeror proposes to enter into subcontracts with for primary design services and primary construction services, including any subcontractors, under the design-build contract. Therefore, the design-build team is established prior to the award. Moreover, those identified in the proposal may not be replaced without the approval of the public agency and a written determination by the public agency that a legitimate reason exists for the replacement. The Design-Build Statute also prohibits an individual from being a part of the TRC where there may be a conflict of interest so that each member of the TRC must certify for each RFP there is not a conflict of interest between the TRC member and the design-builder responding to the RFP. If a conflict exists, the TRC member must be replaced prior to the scoring of the proposals.

Scoring the Proposals: The TRC next reviews the qualitative proposals, but not until after the design criteria developer provides its professional opinion that the proposal conforms to the design criteria. The TRC then reviews the qualitative proposal and establishes a written composite score for each proposal based on the factors weighting and process identified in the RFP. After the qualitative proposals are scored the agency opens the price proposals at a public meeting and the prices are publicly read. Each price proposal is then divided by the offeror's composite score to obtain an adjusted price. The agency accepts the price proposal that provides the agency with the lowest adjusted price providing the best value to the taxpayer. It is clear, however, that the agency does not have to accept the lowest price proposal. It is the adjusted price that is the determining factor.

Awarding the Contract: Once the agency accepts a particular proposal, the agency may negotiate any contract term with the offeror except any term identified in the RFP as nonnegotiable. If the agency is unable to negotiate a contract with the first selection, the agency may terminate negotiations with that offeror and negotiate with the next lowest adjusted price offeror. The negotiations continue until a contract is reached.

A design-build contract may be conditional upon subsequent refinements in the scope and price and may permit the agency to make changes in the scope of the project. Any person identified as a person with whom the design-builder proposes to enter into a subcontract may not be replaced without the approval of the agency, and if a design-builder violates this requirement the agency may cancel the award or terminate the design-build contract. Performance and payment bonds are still required for the construction portion of the project.

With the award of the contract and the negotiation of the terms, the contract is executed and the work is ready to proceed using the design build delivery system.

2. Design Liability - The Spearin Doctrine

There is a large body of state and federal case law which holds the owner or the preparer of the plans and specifications liable for any deficiencies therein. The basis of liability is an implied warranty of the fitness of the specifications that if they are followed a satisfactory product will result. If the specifications prove to be defective, unworkable, or incomplete the contractor is entitled to recover additional compensation for the extra work required in attempting to perform under the defective specifications, or to do corrective work necessitated by the defects.

The landmark decision on this principle, and the doctrine

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by which it is known, is the United States Supreme Court case of *United States v. Spearin*, 248 U.S. 132 (1918). In *Spearin*, the federal government was held to warrant that the project could be satisfactorily completed by following the specifications, so that the breach of this implied warranty entitled the contractor to recover all costs resulting from its attempt to comply with the defective specifications. The implied warranty allowed the contractor to use standard industry means and methods of construction.

A number of federal court decisions have followed *Spearin*. The *Spearin* doctrine has been followed in most state jurisdictions in which the issue has been raised. These state courts have held that in the absence of obvious or patent defects which are so apparent that they summon forth a duty on the part of the contractor to alert the owner, the owner impliedly warrants the adequacy of the plans and specifications to be fit for their intended purpose. As such, the risk of loss due to defective plans and specifications falls on the owner or the preparer of the plans and specifications, and a contractor who subsequently performs in accordance with those defective plans and specifications is entitled to recover for extra work. *Miller v. Guy H. James Constr. Co.*, 653 P.2d 221 (Okla. Ct. App. 1982); *W. H. Lyman Constr. Co. v. Village of Gurnee v. Sordoni Constr. Co.*, 403 N.E.2d 1325 (Ill. Ct. App. 1980), *appeal after remand*, 475 N.E.2d 273 (1985).

Indiana has recognized the doctrine, though not explicitly by name. In *Connersville Country Club v. F. N. Bunzendahl, Inc.*, 222 N.E.2d 417 (Ind. Ct. App. 1966), the project could not be constructed in accordance with the plans and specifications as originally furnished, and the owner made changes in the plans. The court held the changes were of the magnitude of deviation which does not normally arise in construction, thereby granting judgment in favor of the contractor for recovery of its extra work that was unforeseen and unanticipated. In *Allied Structural Steel Co. v. State*, 265 N.E.2d 49 (Ind. Ct. App. 1971), the contractor attempted to recover for its extra work performed under its contract with the state on the basis of the implied warranty of adequacy of the specifications. Although the court held that there was no breach of the warranty under the facts of the case, the importance of the decision is that the court expressly adopted the rule, citing *Connersville Country Club*, that recovery of additional compensation for breach of warranty in Indiana is possible where the necessity for extra work resulted from the acts, errors or mistakes of the owner's engineers, or where the structure could not be constructed according to furnished plans and specifications.

Greenhaven Corp. v. Hutchcraft & Assoc., Inc., 463 N.E.2d 283 (Ind. Ct. App. 1984), involved an architect suing on account for recovery of its architectural services.

The owner counterclaimed for negligent preparation of the plans. The architect prepared preliminary plans requiring two building exits, in conformance with the fire marshal's code. However, the owner, knowing that the code required two exits from the top floor, requested and directed the architect to change the plans to provide for only one exit. The architect did so, construction commenced, the architect attempted to secure approval for the modified plans or to obtain a variance from the fire code, but was unable to do so, and construction ultimately was stopped, with no approval being obtained from the fire marshal. The Court of Appeals expressly adopted the implied warranty of the specifications:

"There is implied in every contract between an architect and his employer an agreement that plans and specifications prepared by the architect will be suitable for the purpose for which they are prepared."

Finally, the most significant *Spearin* case in Indiana is *The Trustees of Indiana Univ. v. The Aetna Casualty & Surety Co.*, 920 F.2d 429 (7th Cir. 1990). An action was brought by the owner against the contractor's performance bond surety for breach of contract for the costs of repairs to defective brick work done by the surety's principal on four separate buildings at an IU regional campus. One of the surety's defenses was that by the owner specifying the brick to be used by manufacturer and trade name, the owner impliedly warranted that the brick was suitable for the particular purpose for which it was intended, citing the *Spearin* doctrine. The 7th Circuit agreed with the application of the *Spearin* doctrine to the facts of the case in upholding the lower court trial instructions and judgment in favor of the surety.

These cases illustrate the following principles:

- Detailed specifications imply a warranty.
- If the contractor is bound to build according to plans and specifications prepared by the owner, the contractor will not be responsible for the consequences of defects in the plans and specifications (based upon *Spearin*).
- The owner warrants to the contractor that if the contractor follows the owner's plans and specifications, then the owner impliedly warrants that the resulting structure and its component parts will be suitable for the particular purpose for which they are intended.
- If an owner specifies in a construction contract that a particular material is to be used, then the contractor is released from any promise or warranty as to the suitability of such material for use as intended in the contract.

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In two subsequent cases dealing with defective plans and specifications Indiana courts have addressed this implied warranty again without specifically identifying the *Spearin* Doctrine by name. These cases involve disputes between owners and contractors over defective construction and its causes. In each case, the defective plans and specifications were either owner-generated or contractor-generated. There were no third party architects or engineers involved.

In *Millner v. Mumby* (Ind. App. 1992), 599 N.E. 2d 627 a contractor built a 16 foot concrete retaining walls according to plans and specifications furnished by the owner. The wall was defective and had to be repaired. The contractor was entitled to recovery of its costs in doing so because the defective plans were furnished by the owner. In *Bee Window, Inc. v. Stough Enterprises, Inc.* (Ind. App. 1998), 698 N.E. 2d 328 the issue again was who was responsible for defective construction, this time involving windows that were installed pursuant to the specifications of the manufacturer under the contractor. Since the defective specifications were from the constructor side, and not the owner, there was no relief for the contractor from the costs of the defective windows.

What is bridging's effect on the *Spearin* Doctrine? Bridging's effect on the doctrine depends upon the level of design detail provided by the DCC and the amount of design discretion given to the design-build team. The Veterans Administration Board of Contract Appeals elaborated on this concept as follows: "A properly written and administered design build contract transfers the risk of design and sufficiencies from the [owner] to the design builder. The owner is shielded when the design results in cost over-runs or does not work. . . . Specifications included in a design-build contract, however, to the extent that specific requirements, quantities, and sizes are set forth in the specifications, place the risk of design deficiencies on the owner." *Appeal of Donahue Electric, Inc.*, 2002 WL 319, 27907 (VABCA No. 6618).

Therefore, once the Owner provides detailed specifications via its DCC the Owner will likely carry the risk that comes along with that substituted discretion under the *Spearin* doctrine. If the Owner provides erroneous or faulty information, the Owner will likely bear liability under an implied warranty.

An Owner providing preliminary design data through its DCC may not be able to disavow responsibility for the accuracy of the data by stating in an RFP that the Design-BUILDER is responsible for verifying and validating the accuracy of the design information when submitting complete design documents. In *Appeal of M.A. Mortenson Co.*, 1993 WL 261019 (A.S.B.C.A. 1993), the government issued an RFP for the design and construction of a proj-

ect and incorporated preliminary design documentation representing approximately 35% complete working drawings. The drawings stated the minimum requirements for the project and were provided to proposers for use in pricing their proposals. The work scope required the successful proposer to verify and validate the accuracy of the preliminary design information as part of its responsibility to prepare complete construction documents and to construct the project pursuant to such documents. The preliminary design documents were inaccurate, causing the design-builder to estimate or take off inadequate quantities of structural steel and concrete. Relief was afforded despite the design-builders' responsibility for verifying the accuracy of the preliminary documentation and preparing complete design documents. The Administrative Judge distinguished between the design-builder's responsibility as a contractor performing the work from that of its role as a proposer relying upon government-furnished information in the preparation of its proposal.

Additionally, ambiguous data provided by the Owner through its DCC will be construed against the Owner. In *Record Steel & Constr., Inc. v. United States*, 62 Fed. Cl. 508 (2004), the United States Army Corps of Engineers provided limited information regarding soils testing to a design-builder as part of a RFP. The soils information provided recommended over-excavation of the soil supporting the building's foundation. As part of its response to the RFP the design-builder informed the Corps that it intended to retain a geotechnical engineer to further determine whether over-excavation was necessary. After completing its testing, the engineer concluded that it was not necessary, however, the contracting officer directed the design-builder to comply with the RFP and over-excavate the foundation soil. After complying with the Corps' directive, the design-builder submitted a claim seeking to recover additional costs incurred in connection with the over-excavation. The United States Court of Federal Claims determined that the recommendations contained in the government's soil reports were ambiguous and that the ambiguity should be construed against the Corps. Thus, the court granted summary judgment in favor of the design-builder holding the RFP did not require over-excavation.

May the DCC be held liable to the Design-BUILDER for problems with the initial design data? In *Glacier Tennis Club at the Summit v. Treweek Constr. Co.*, 87 P.3d 431 (Mont. 2004), the Montana Supreme Court was presented with this question. The owner retained an architect to furnish preliminary design parameters and specifications for a tennis facility. The architect periodically reviewed the design-builder's plans. Upon completion, the building's

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exterior walls leaked and the floors bulged. The owner sued the design-builder who sought indemnification from the architect alleging it had negligently prepared the preliminary design and approved the design-builder's plans. The court ruled against the design-builder finding that the architect owed no duty to it and could not be held responsible for the construction and design defects. The design-builder failed to offer evidence that the architect communicated professional information to the design-builder with the intention that it rely on the information. Additionally, the architect's review of the design-builder's plans was limited to determining interim payments and did not extend to conveying professional information.

In Indiana, there is a published case that, while not involving bridging, does address the liability of a design professional that followed owner furnished criteria. In *Strauss Veal Feeds, Inc. v. Mead and Hunt, Inc.*, 538 N.E.2d 299 (Ind. Ct. App. 1989), an architect was engaged by the owner to design a plant suitable for the processing of liquid veal feed. The owner used a new process which was found to be in violation of state environmental laws. The plant was designed in compliance with codes and in compliance with the owner's process. The architect was found not to have breached its contract or to be negligent because it did not have a duty to provide sanitary engineering services with respect to waste treatment and disposal. Likewise, the architect did not breach its implied warranty that the plans and specifications would be suitable for the purpose for which they were prepared when the architect designed the plant in compliance with applicable building and zoning codes, designed the facility suitable for the process of veal feed, as that process was described by the owner, even though the facility violated state environmental laws when in operation.

By logical extension, if the architect was that of the Design-Builder, would the same result be achieved? The Design-Builder would make the same reliance argument as the architect made in *Strauss Veal*. To avoid such a result, the Owner should clearly define the Design-Builder's entitlement to rely upon the DCC's performance criteria. Regardless, the Spearin Doctrine may still come into play.

3. Performance v. Design Specifications

Does the presence of a performance or design specification impact whether the *Spearin* Doctrine implied warranty would apply? In a performance specification, the focus is on the end result desired, and the contractor has greater discretion. A pure performance specification will simply state the end result desired and leave to the contractor's discretion and expertise the methods and means, as well as to the materials and equipment needed to produce that end result.

In a design specification, the technical requirements for the work are set forth in great detail and little is left to the discretion of the contractor. A design specification includes the exact dimensions, the exact materials to be utilized, the specific type of services to be performed, and all structural and engineering design. There is little discretion left to the contractor. The contractor must perform in accordance with the design and dimensions spelled out in the technical requirements of the specifications.

As a general rule, when an owner adopts design specifications, he assumes the responsibility that the design is suitable for achieving the end result. If the owner uses a performance specification, he places the responsibility for the end results on the contractor. See *J. L. Simmons Co. v. United States*, 412 F.2d 1360 (Ct. Cl. 1969). Design specifications are subject to the implied warranty of the adequacy of the specifications. The implied warranty applies to specifications which prescribe the character, dimensions, and location of the construction work. *J. L. Simmons Co. v. United States*, 412 F.2d 1360 (Ct. Cl. 1969); *United States v. Spearin*; *J. D. Hedin Const. Co.; Laburnum Const. Corp. v. United States*, 325 F.2d 451 (Ct. Cl. 1963).

Even if the specifications are not design specifications, but are performance specifications, if they are absolutely impossible to perform, and the contractor did not assume that risk of impossibility, the contractor is still entitled to recover his increased costs of attempted performance. Even if the specifications appear to be a blend of design-performance specifications, or even a pure performance specification, if the end result required is impossible to meet, then a contractor may still be able to escape liability for failure to perform or may be able to recover his increased costs for attempting to perform. *Foster Wheeler Corp. v. United States*, 513 F.2d 588 (Ct. Cl. 1975).

It is common for a contract to contain both design and performance specifications. In this situation, the implied warranty of specification suitability will hold the Owner responsible for his or her specifications, but not for those created by the design-build team. Moreover, in cases where it is difficult to determine whether the specification is design or performance, other factors and contract interpretation devices can be utilized to determine the intention of the parties regarding allocation of design liability. These include the completeness of the contract plans; the circumstances surrounding the bidding; the amount of development and testing the contractor is expected to perform; the contractor's representations regarding its expertise; the terms of the contract; and the knowledge regarding design information that each party brings into the contract.

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On a design-build project the Owner usually provides general design criteria and desired performance standards (performance specifications) and the detailed construction plans and specifications are authored by the design-build team, not the DCC. Thus, the implied warranty of specifications will likely not run from the Owner to the Design-Builder and the Design-Builder bears the risk of non-performance. However, bridging may change this result. The more detail and prescription contained in a set of bridging documents the more likely the Owner will be deemed to warrant the adequacy of its documents.

4. A/E of Record

Another potential issue arising out of the bridging method is to see how design professionals will determine who is the A/E of record when one firm does preliminary design and another serves as the architect of the design-build team. Numerous AIA ethical complaints relate to one firm not giving proper credit to another firm. The label has no legal meaning or definition in standard contracts, but it causes confusion with the involvement of multiple design professionals.

AIA Ethical Rule 4.201 requires members “to accurately state the scope and nature of their responsibilities in connection with work for which they are claiming credit.” The commentary to this rule states that its intent is to prevent members from claiming credit for work they did not do and “denying other participants in a project their proper share of credit.”

Contractually, the Design-Builder has the responsibility for preparation and finalization of the Construction Plans and Specifications. This includes having those documents stamped by the Architect and Engineer of Record. Stamped drawings are required to obtain the requisite agency approvals to construct the project. Therefore, from the Owner and Design-Builder perspectives, the Architect and Engineer of Record should be the Design-Build Architect, and not the DCC.

Conclusion

The legal issues and liability ramifications of the use of design-build and the bridging method in public works projects have yet to be fully developed. In this newsletter the focus has been on the use of bridging in not only the private sector, but in the public sector as well, where the new Indiana Design Build Statute envisions the use of a DCC for the owner entity undertaking the project. Apart from this usage, there are legal issues and liability considerations for the Owner who wants to use a bridging consultant, or DCC. Liability for deficiencies in the DCC prepared portions of the design may result. Issues over project responsibility for the designer of record also must be addressed. Regardless, given design-build’s success in the private industry, it is likely that the public sector as well will reap the benefits of the design-build delivery system and so bridging’s role in this process will expand.

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