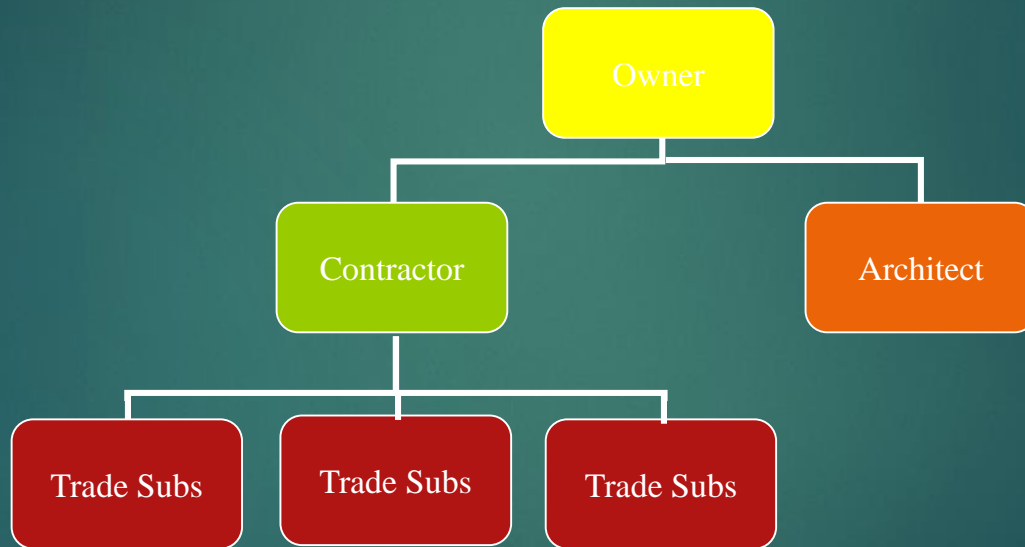




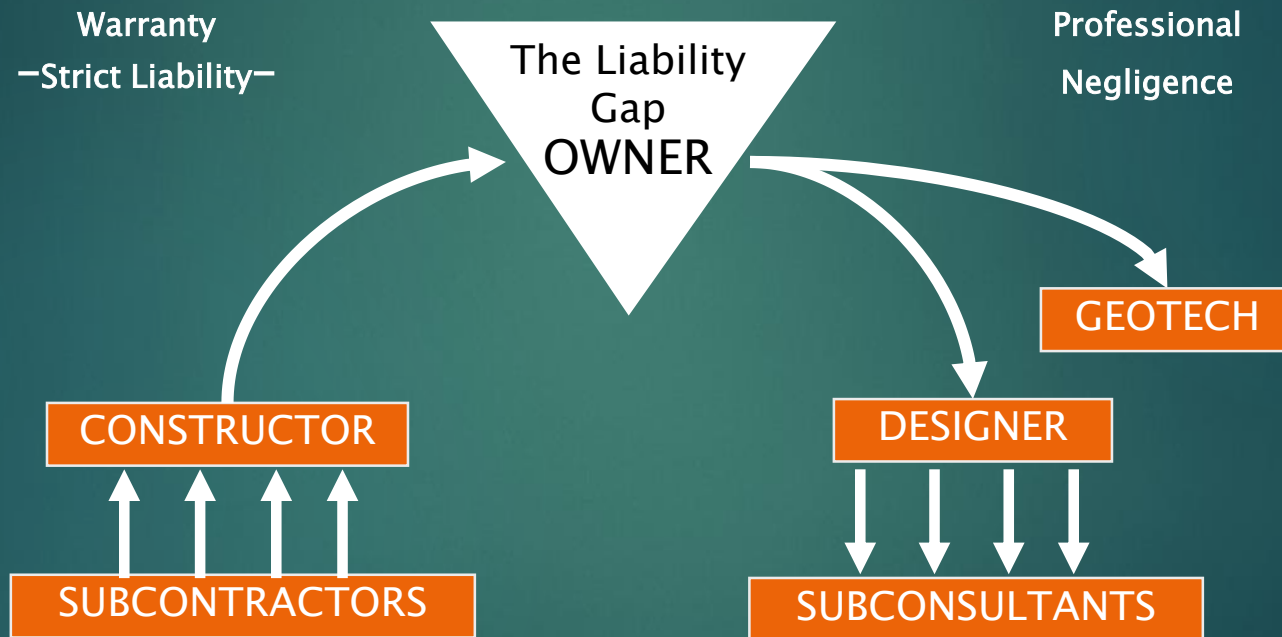
Design-Build Delivery

Robynne Parkinson
Thaxton Parkinson pllc

Traditional Design-Bid-Build Project

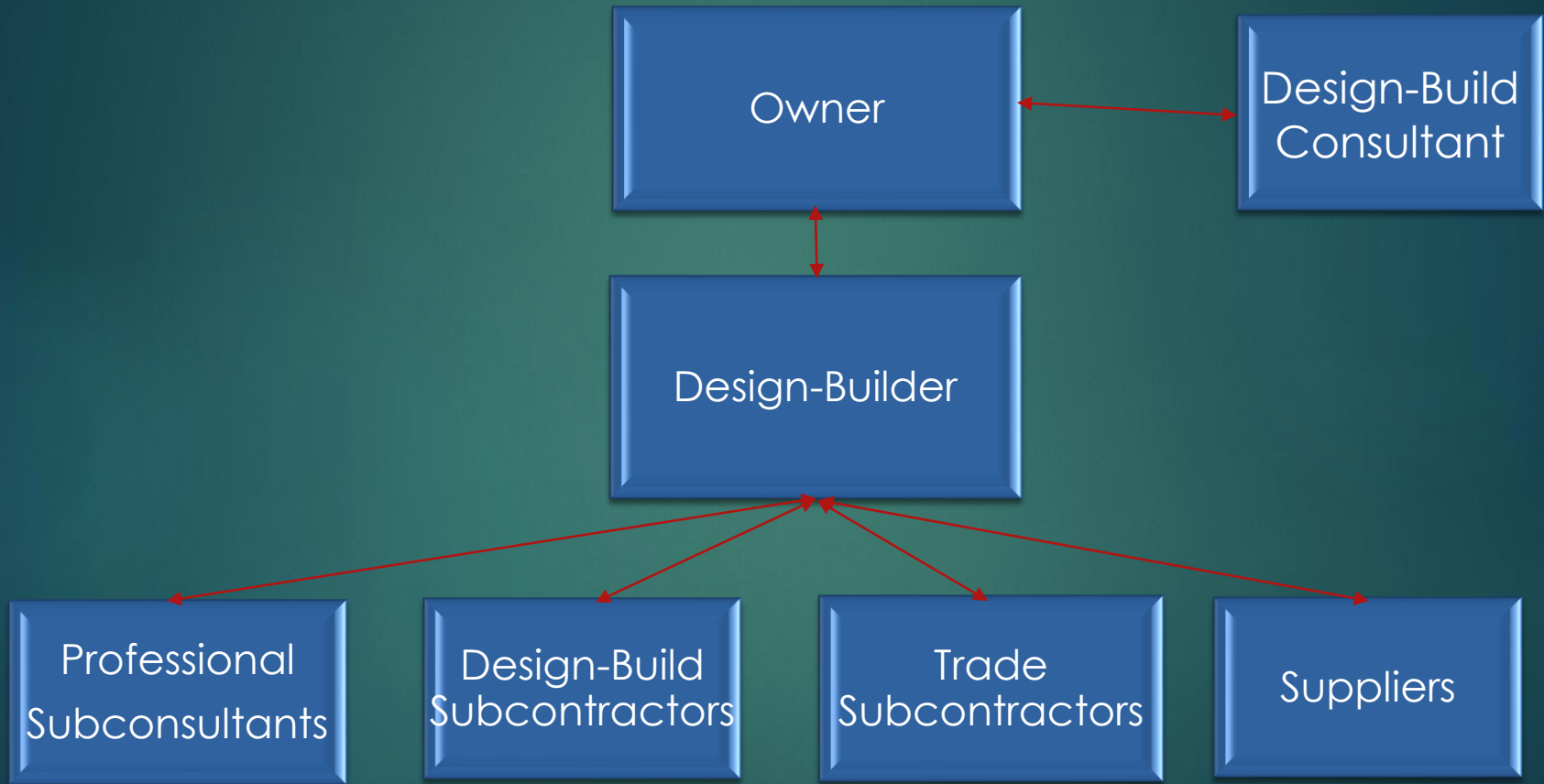


Liability Gap in Design-Bid-Build



Design-Build Basic Structure

4



Benefits of Design-Build

- ▶ Performance warranty from design-build team.
 - ▶ Insures project quality
- ▶ Ability to select team based on qualifications rather than price.
- ▶ Faster delivery.
- ▶ Fewer claims.
- ▶ Knowledge and guarantee of project cost earlier than any other delivery model.



Benefits of Design-Build

- ▶ Collaborative Team
- ▶ Able to fully utilize most advanced design and construction techniques.
 - ▶ BIM
 - ▶ Lean Construction



Why would an owner *NOT* USE DESIGN-BUILD

- ▶ Maintain control over design/Direct relationship with designer
- ▶ Familiarity with Design-Bid-Build
- ▶ Project does not meet statutory requirements/No approval by CPARB PRC

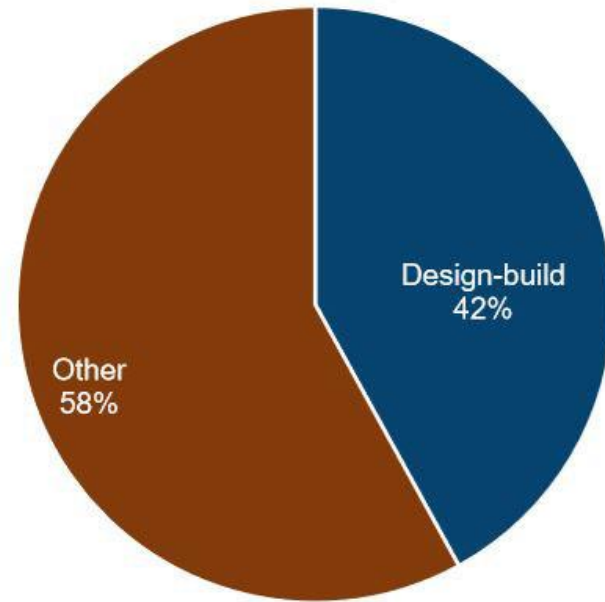


Design-Build Market Penetration

Source: Design-Build
Utilization Combined Market
Study

FMI June 2018

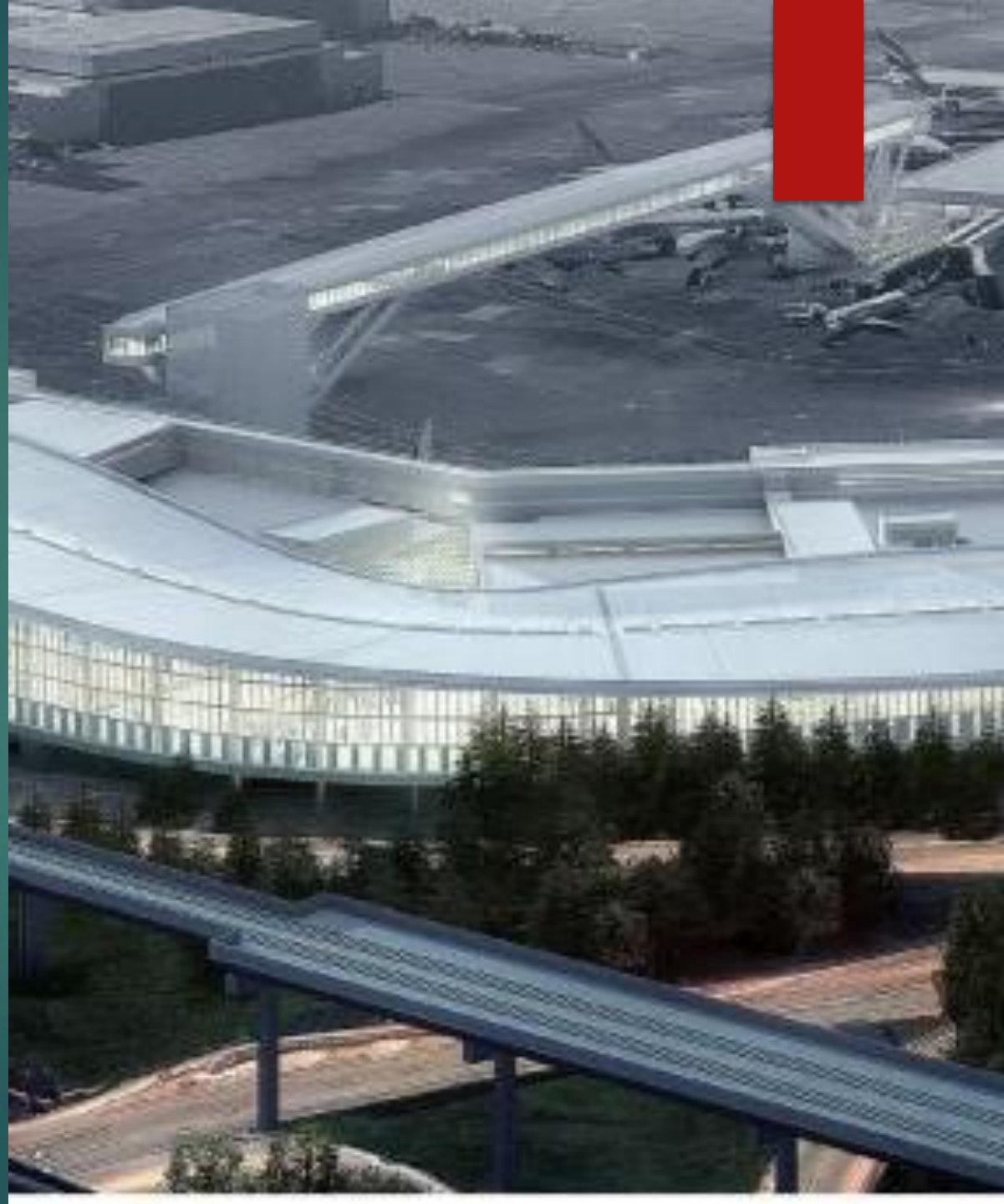
2013-2017 CPlP: \$2,167B



Managing Risk

- ▶ Select the right Design-Build Team
- ▶ Determine the right Design-Build structure
- ▶ Equitable contract performance

Select the Right Design- Build Team



Is the project right for design-build?

- ▶ Is the owner a control freak? (Are there so many prescriptive requirements that design-build does not make sense)
- ▶ Does the owner play well with others? (Is the owner's internal culture amenable to collaboration)
- ▶ Does the owner have or is the owner willing to hire the expertise to manage the project?
- ▶ Are there risks that effect the project's viability?
- ▶ Are there regulatory barriers?
- ▶ Are there political barriers?
- ▶ Are there design-builders in the geographic area?

Initial Risk Assessment

- ▶ BEFORE procurement
 - ▶ Updated regularly
 - ▶ Engages Stakeholders
- ▶ Common Risks:
 - ▶ Site conditions
 - ▶ Regulatory
 - ▶ Hazardous Materials
- ▶ Project Specific Risks
 - ▶ Performance Requirements
 - ▶ Schedule Restrictions
 - ▶ Stakeholder Requirements

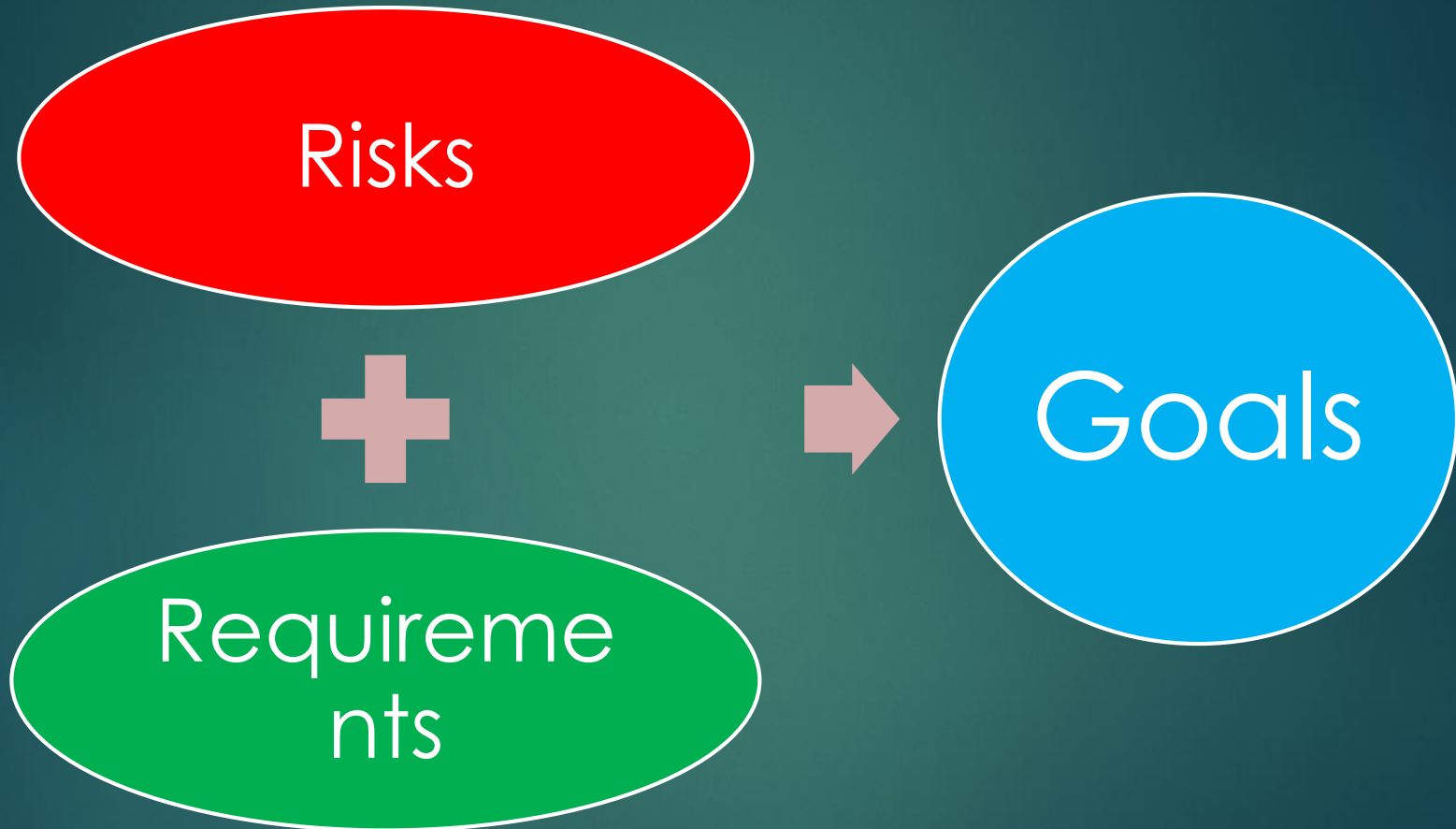


Project Requirements

- ▶ Initial programming exercise
 - ▶ Size, complexity, uses, schedule
 - ▶ What are the “Must Haves”
 - ▶ What are the “Want to Haves”
- ▶ Sufficient Information to
 - ▶ Select the right team
 - ▶ Provide parameters for initial programming and design



Develop Project Goals



Project Goals

- ▶ Project Goals are Aspirational
 - ▶ Simple compliance with Owner's Project Criteria is not a "Project Goal"
- ▶ Focus Proposer's submittals on exceeding Project Goals



Project Goals Example

Avoid This:

On Time
Completion

Meet
Environmental
Requirements

On Budget



Say This Instead:

Minimize
Schedule
Impacts

Minimize Impacts
to the
Environment

Below Budget

Design Excellence



Design Excellence is achieved with memorable design solutions that exceed the Owner's vision and defined functional requirements; include state of the art structures and facilities that are high performance and sustainable; and possess a holistic awareness that considers context, site and the environment.

Qualifications Focused Selection

- ▶ Consensus Scoring
- ▶ Assess strengths and weaknesses of proposals
 - ▶ Strength: More likely to exceed Project Goals and achieve Design Excellence
 - ▶ Weakness: Less likely to exceed Project Goals and achieve Design Excellence



Determine
the Right
Design-
Build
Structure



Types of Design-Build

- ▶ Bridging Documents
- ▶ Design Competition
- ▶ Progressive Design-Build

Bridging Documents

- ▶ Owner develops design to approximately 30%
- ▶ Design-Builder relies on the design for the purposes of pricing
- ▶ Owner selects based on experience and price
- ▶ Benefits
 - ▶ Price established at procurement
 - ▶ Owner involved in the design throughout the project
- ▶ Detriments
 - ▶ Longer time to prepare procurement
 - ▶ Owner is responsible for the cost if the bridging documents do not accomplish the performance requirements
 - ▶ Design-Builder restricted on innovation
 - ▶ Most expensive for the Owner

Managing Risk: Bridging

- ▶ Owner selects competent bridging designer
- ▶ Validation Period:
 - ▶ Thorough review of bridging documents to verify that documents are sufficient to build project
 - ▶ Owner reserves contingency to manage changes at the conclusion of the validation period
- ▶ Priced using both Guaranteed Maximum Price (GMP) and Lump Sum
- ▶ Design-Builders include contingency in price and fee to account for risk in estimating the project early

Design Competition

- ▶ Owner puts together performance requirements for the project
- ▶ Shortlisted Finalists (usually 3) provide designs to schematics and cost
- ▶ Owner selects based on experience, design ideas and price
- ▶ Benefits
 - ▶ Price established at procurement
 - ▶ Owner gets to select between several different design ideas
- ▶ Detriments
 - ▶ Most expensive for design-build teams, particularly designers
 - ▶ Less competition
 - ▶ Owner not involved in the design until after schematics

Managing Risk: Design Competition

- ▶ Owner selects Design-Build teams who are experienced in design competitions
 - ▶ Requires heavy early collaboration and experience in conceptual estimating
 - ▶ Most risk to Design-Builder
 - ▶ Design-Builders put contingency in both the price and fee to account for the potential that the designers miss elements of the design and for estimating the price early
- ▶ Priced using Guaranteed Maximum Price (GMP)
- ▶ Incentivize Design-Builders to come in under GMP
 - ▶ Savings
 - ▶ Performance

Progressive Design- Build

- ▶ Owner issues program describing the performance characteristics of the project
- ▶ There is no design at the procurement stage
- ▶ Owner selects based on experience, management plan and price element (usually fee)
- ▶ Benefits:
 - ▶ Fastest and least expensive procurement
 - ▶ Owner has input in the design throughout the project
 - ▶ Design-Builder has more responsibility for the design
- ▶ Detriments:
 - ▶ Price not established until after procurement

Progressive Design- Build: Managing Risk

Phase 1

- ▶ Subject to a guaranteed Not To Exceed amount
- ▶ Design-Builder verifies Owner provided information
- ▶ Design-Builder and Owner collaborate to develop final scope
- ▶ Deliverables From Design-Builder:
 - ▶ Contract Price and Schedule
 - ▶ Final Scope
- ▶ Contract Amendment with commercial terms

Progressive Design- Build: Managing Risk

Phase 2

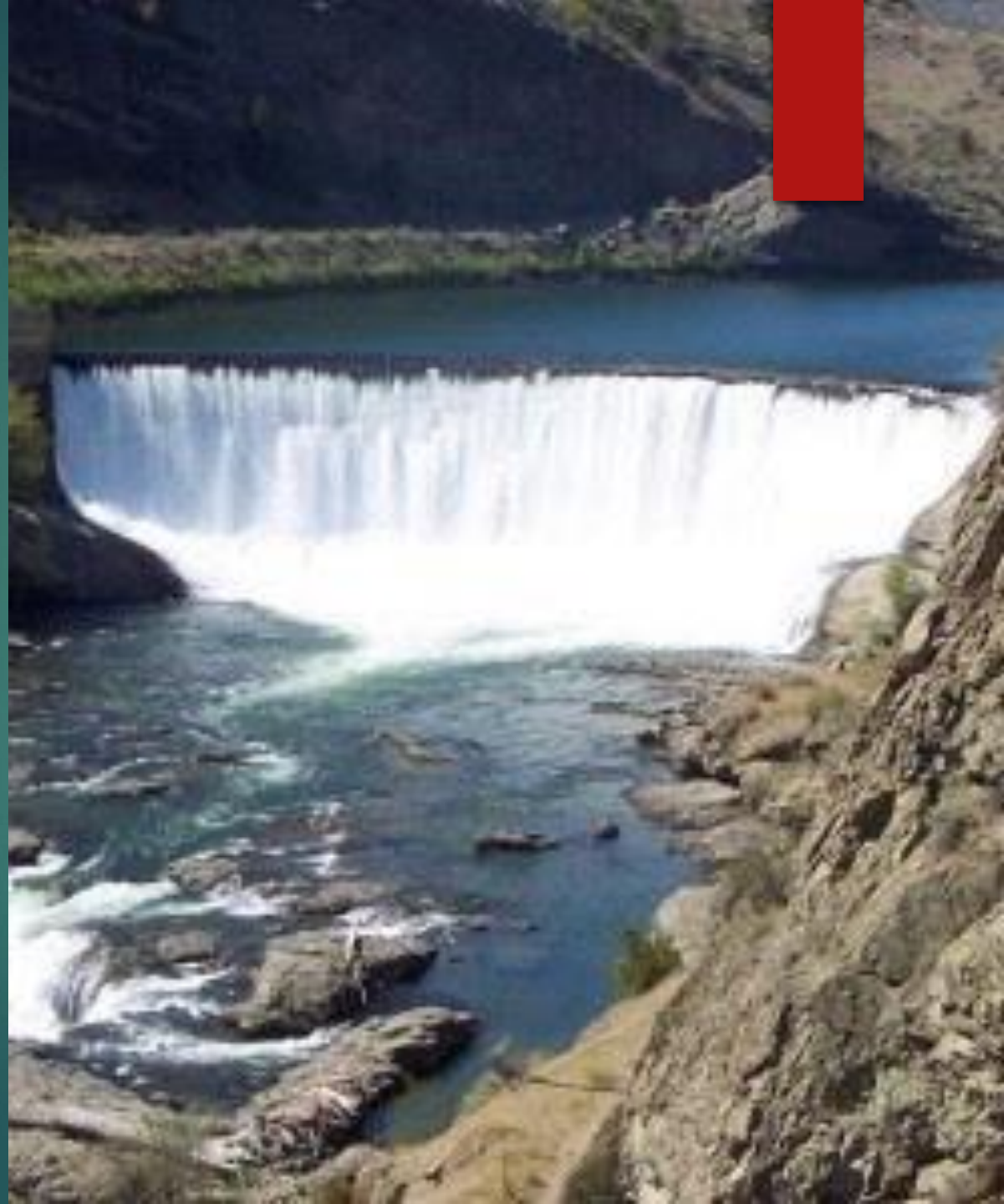
- ▶ Design-Builder completes design and constructs the project
- ▶ Design-Builder must meet the schedule and price
- ▶ The Owner's engineer will oversee testing

Contract Protections

- ▶ Not to Exceed Amount/GMP:
Design-Builder never gets a blank check.
- ▶ Design Management:
Provide designs consistent with the agreed project scope and budgets.
- ▶ Cost Model:
Provide robust financial and project information, including weekly updates on budget and schedule.
- ▶ Transparency:
Audit rights.
- ▶ Incentives:
Savings, performance, time.



Equitable
Contract
Performance





The single biggest problem in communication is the illusion that it has taken place.

George Bernard Shaw

Kick Off Meeting

- ▶ Face to face introductions
- ▶ Review communication tools
 - ▶ Meetings: when, who, where?
 - ▶ How will you document decisions?
 - ▶ How will you communicate changes?
- ▶ Review key contract provisions
 - ▶ Contract phases/expectations



Keep Promises

- ▶ Maintain trust
- ▶ Listen
- ▶ Manage expectations





Daylight and resolve
issues early



Develop manageable
disputes process



Empower project
team

Document Reliable
Decisions



Create Logs



Track Trends



Agree On Change
Orders

Manage Stakeholders

- Coordinate owner input
- Input must align with project parameters





Progressive Design-Build Consulting, LLC



Robynne Thaxton Parkinson,
JD, FDBIA
9311 SE 36th St., Suite 103
Mercer Island, Washington
98040
(206)909-5290
robynne@progressivedb.com

Robynne Thaxton Parkinson is a Seattle based lawyer, consultant and a leading expert in construction law and alternative procurement both in Washington State and on a national basis. She served on the National Design Build Institute of America Board of Directors from 2010 – 2016. In addition, she is the vice chair of the DBIA National Education Committee, is a past chair of the DBIA National Legal and Legislation Committee and is instrumental in revising the DBIA form Design-Build contracts and subcontracts. She served as the President of the Northwest Region for DBIA from 2008 to 2010 and continues on its Board of Directors. Robynne is AV rated by Martindale-Hubble, and named as a Washington Super Lawyer in 2010-2018. Robynne was recently named to the inaugural class of DBIA “Fellows”, highlighting her long service to the industry. Robynne received her undergraduate degree from the University of Texas at Austin and her law degree from the University of Colorado, Boulder School of Law.

Robynne has her own consulting firm and primarily represents public owners on design-build projects. Her clients include the State of Washington, the Port of Seattle, Los Angeles County, the University of California System, the University of California at San Diego, the Bonneville Power Administration, Grant and Okanogan County Public Utility Districts, and the Cities of Seattle, Tacoma, Spokane, Richland, Airway Heights, and Liberty Lake.