

© 2002, Victor O. Schinnerer & Company, Inc. The information presented here is for risk management guidance. It is not legal advice nor should it be construed to be a determination on issues of coverage for specific claims.

PROJECT DELIVERY METHODS

Although various project delivery methods that integrate the design of a project and its construction have been used for decades, design-build seems to be gaining momentum. Often touted as a more efficient and effective method of accomplishing a construction project, many of the problems with design-build appear to be hidden by the present enthusiasm.

Clients, contractors and design professionals are still learning about the changes design-build brings to their interrelationships. Among the concerns design professionals have expressed are design-build's tendency to inhibit innovation and the pressure it can place on contractors to cut quality so they can submit competitive bids.

Design-build changes how design professionals work, and that has important implications for their professional liability insurance. Historically, to establish professional negligence, a plaintiff had to prove that the design professional had not rendered services with the same standard of care that other design professionals would have rendered under similar circumstances for equivalent projects. Under a design-build contract, however, the design-builder provides an express or implied guarantee to the client that the project will be fit for the intended purpose; the client merely has to establish that a deficiency or defect exists in the project in order for a claim to be successful. (See *'Warranties and Guarantees'* in the *'Contracts'* section.)

Traditional project delivery—design-bid-build

Under the 'design-bid-build' method of project delivery, a client enters into an agreement with a design professional for design services. After the bid or negotiation process, the client contracts independently with a contractor to build the project.

During construction, the design professional often administers the construction project as an agent of the client. Under the design-bid-build method, the construction contractor is principally responsible for the means, methods, techniques, sequences and procedures of construction needed to build the project.

There is no contractual relationship between the contractor and design professional under this method. Because design professionals represent clients, their duty is to obtain a project that generally complies with the requirements of the contract documents.

Even though there is no contractual relationship with the contractor, design professionals have the obligation to be fair and impartial if they are called upon to mediate disputes between clients and contractors during the construction phase. Also, design professionals assume liability because the contractor depends on preliminary design information to prepare their bids; if subsequent changes increase costs, contractors will submit claims against the client to recover those costs, or may sue the design professional in tort. (See *'Design Growth.'*)