

Demystifying Alternative Delivery Methods in Construction

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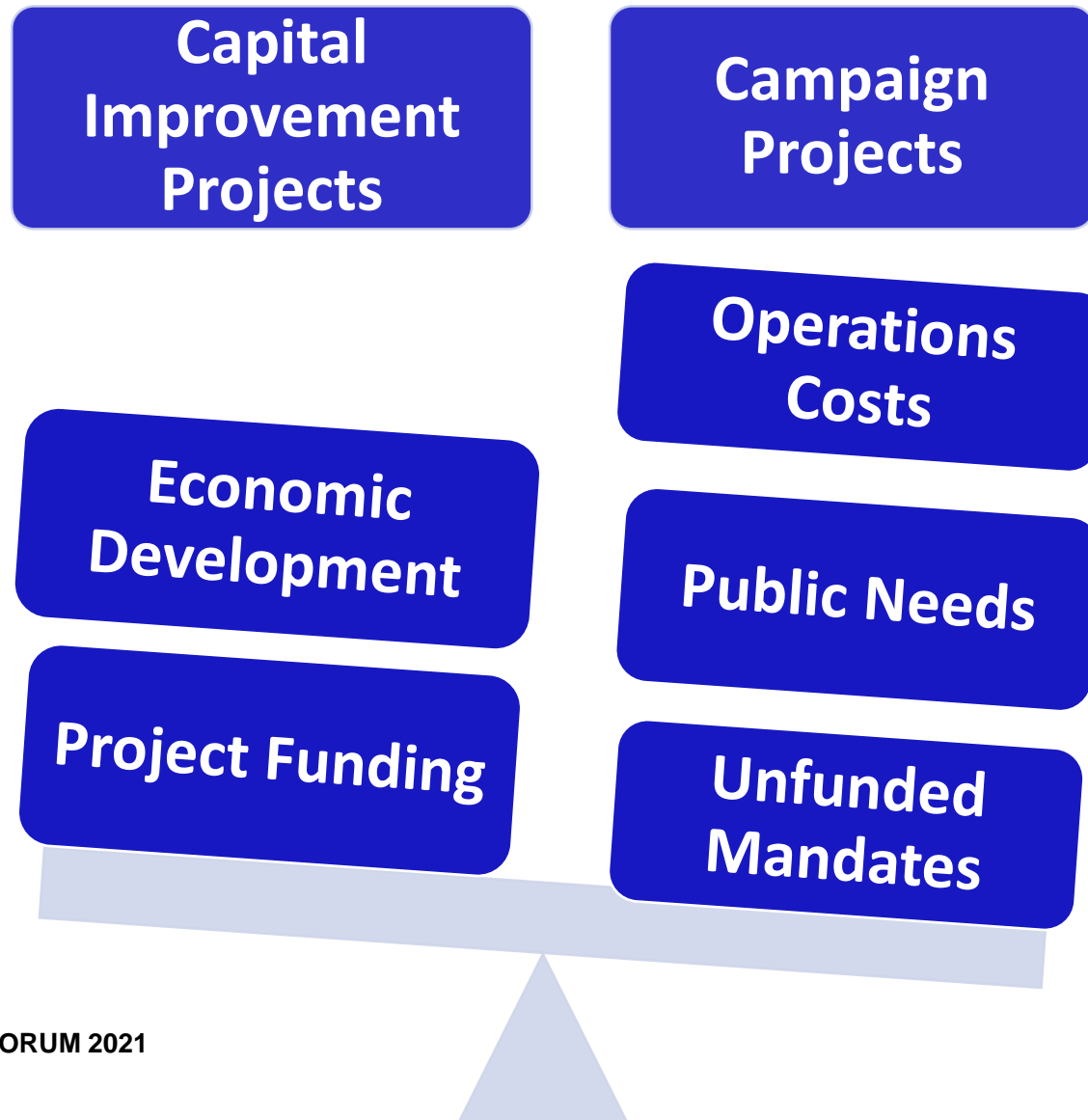
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Demystifying Alternate Construction Delivery Methods by Finding the Right Balance



What Are We Balancing?



Why Are We Balancing?



Construction Governance

Spearin Doctrine 1918

Under the *Spearin* doctrine, a general contractor is not liable for defects in the plans and specifications furnished by the owner if it constructs the project pursuant to the plans and specifications. This is because the owner impliedly warrants the plans and specifications that it furnishes to its contractor. The Supreme Court in *Spearin* stated:

“[I]f 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.

Brooks Act

The Brooks Act (Public Law 92-582), also known as Qualifications Based Selection (QBS), which was enacted on October 18, 1972, establishes the procurement process by which architects and engineers (A/Es) are selected for design contracts with federal design and construction agencies. The Brooks Act establishes a qualifications-based selection process, in which contracts for A/Es are negotiated on the basis of **demonstrated competence and qualification for the type of professional services required at a fair and reasonable price.**

Miller Act

The Miller Act applies to contracts awarded for the construction, alteration, or repair of any public building or public work of the United States Federal government. [5] While the Act provides that the bonds must be posted on contracts exceeding \$100,000, Federal Acquisition Regulation (FAR) Part 28 requires the bonds only on contracts that exceed \$150,000.

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Construction Basics – Procurement Terms

1. “Alternate bid” is the amount stated in the bid or proposal to be added to or deducted from the amount of the base bid or base proposal if the corresponding change in project scope or alternate materials or methods of construction is accepted.
2. “Base bid” or “base proposal” is the amount of money stated in the bid or proposal as the sum for which the bidder or proposer offers to perform the work.
3. “Bidder” is a person, firm or entity that submits a bid under the bid method.
4. “Bid bond” provides reimbursement to a local government if the bidder or offeror selected to perform the construction project does not enter into a contract with the local government

Construction Basics – Procurement Terms

5. “Bid method” or “competitive sealed bidding” is a method of soliciting public works construction contracts whereby the contract is awarded based upon the lowest responsive, responsible bid.
6. “Construction delivery method” is a method of designing and building a project.
7. “Construction manager agency” serves as an advisor and agent of the local government, as well as coordinates the design and construction teams on project. AKA Owner’s Rep
8. “Construction management at risk” is a construction delivery method in which the local government hires a construction manager at risk.

Construction Process

**Each State Governs
Engineering and
Construction Differently**

**In Florida Competition
Consultant Negotiation
Act is primarily adopted
from the Miller Act and
Brooks Act, although
Federal initially adopted
by many states**

- 1. Begins with a requirement**
- 2. What procurement type and process is needed?**
- 3. Sponsor and PM**
- 4. Funding Source**
- 5. Project timeline**

**What are the
thresholds?
Grant requirements?
What Board Date?
Can we create
synergies?**

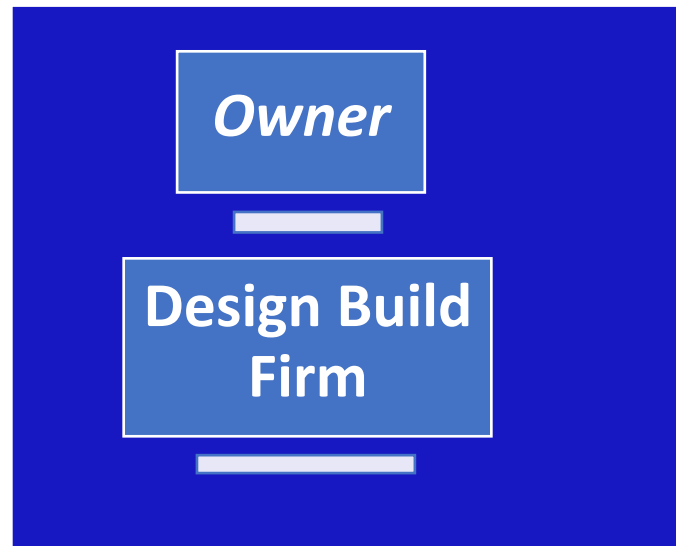
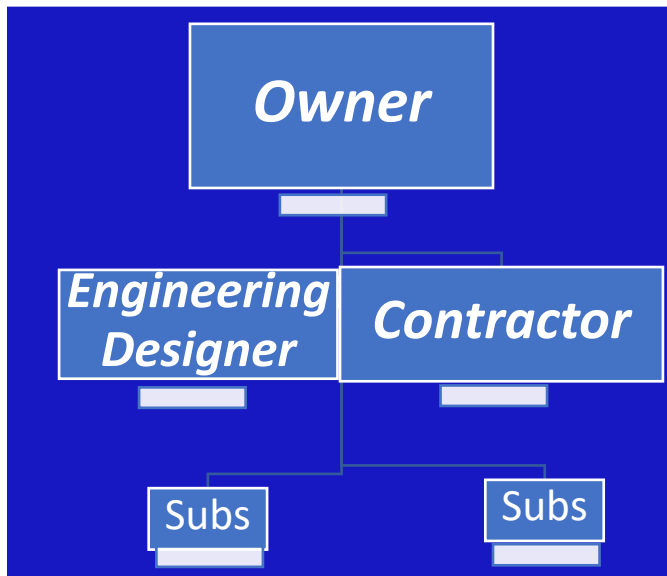
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Construction Delivery Method

“Design bid build” is a construction delivery method where a project is totally designed before the construction begins.

“Design build” is a construction delivery method where the owner manages one contract with one firm. The design is being completed while pricing is finalized.



Construction Project Delivery Type

“Design bid build”

There are times when this is the best method.

If less than 30% design build is possible

“Design build”

Two types of design build

“traditional and progressive”

Procurement Method

Const Manager at Risk

Invitation to Bid (Cost)

Qualifications Based

Best Value

Contract Type

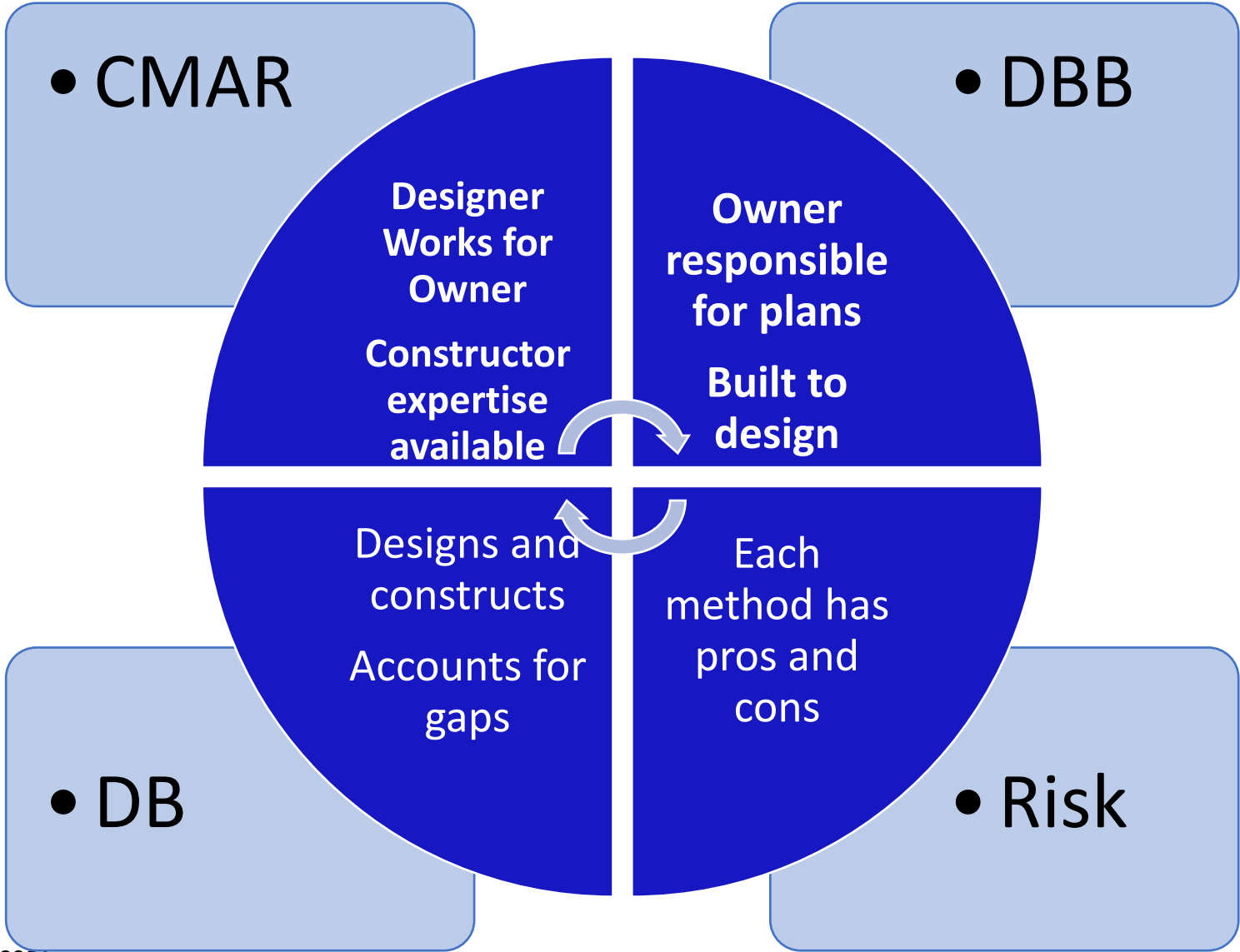
Unit Cost

Lump Sum-Fixed Price

Guaranteed Maximum Price

Price

Project Factors



Risks Considerations

Risk

- Is the consequence of uncertainty on the objectives of the project
- A risk can either manifest as a threat (negative impact) or an opportunity (positive impact)

Opportunity

- Is an event with an identifiable cause and a probability of occurrence that leads to a positive outcome
- An unexpected chance to enhance something

Threat

- Is the coordinated activity undertaken by the procuring agency to direct and control risks to achieve good public value
- Risk that affects the project's success

Risks Considerations

cont.

Expertise

- Staff must possess the expertise and diligence in project management, cost analysis, and plan review
- Procurement staff should be able to discern the viability of the plans by the schedule of values
- Project are based on agency goals, not savvy salespersons
- Process unfamiliar to staff and legal departments

Legislation

- Inconsistencies in government procurement offices results in national legislation favorable to firms
- Ensure your lobbyist informs procurement directly about pending reforms and changes

Culture

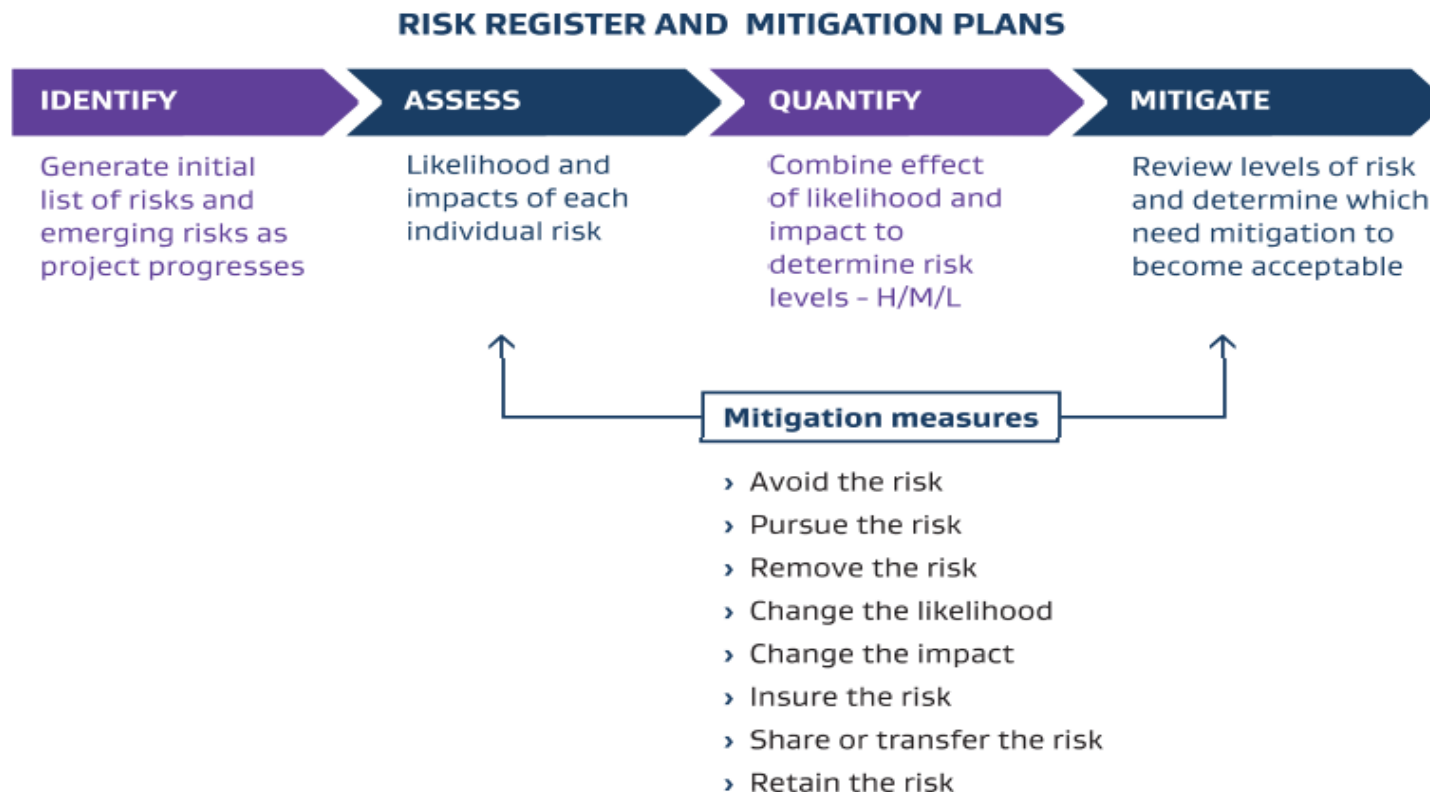
- Organizational culture impact to CIP and construction projects
- An avoidance culture will be unable to benefit from DB/CMAR

Risk Management as a Continuous Process

Risk management practice involves several stages:

- identifying risks
- assessing the likelihood and impact of risks
- quantifying risks
- mitigating risks
- monitoring and reviewing risks.

Risk management is a continuous process



Collaboration Versus Collusion

No private sector cone of silence

Protect your interest as the owner

Develop strong/strict conflict of interest agreement

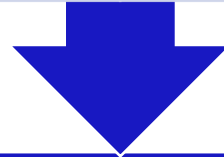
Ensure PMs and staff do not outsource their job

Summary

Balance

Consider balancing

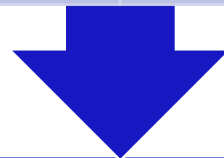
Who, what, and why?



Construction Process

What affects the Process?

Grants, boards, and culture



Project Delivery Types and Risks

DB, DBB, ITN, CMAR

Identify, assess, quantify

References

- ▶ *Brooks Act text[permanent dead link] posted by the Defense Acquisition University*
- ▶ *Listing of cited U.S. Code by Cornell University Law School*
- ▶ *"See Chapter 22 of Title 50 in the Official Code of Georgia". Archived from the original on 2009-05-02. Retrieved 2012-08-16.*
- ▶ *Ministry of Business. Guide to Procuring Construction. 14 July 2021, www.procurement.govt.nz/assets/procurement-property/documents/guide-risk-and-value-management-construction-procurement.pdf.*

Thank You!!

Questions and Comments



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