

Integrated Project Delivery: A Valuable Tool For Owners Who Want To Achieve On-Time And Under-Budget Construction Projects

By Timothy F. Hegarty, Zetlin & De Chiara LLP



Integrated Project Delivery (IPD) is a relatively new project delivery approach and, at its basic core, is a formalized, contractual collaboration between the owner, architect and contractor. Like the older concepts of 'teaming' and "partnering," this project delivery mechanism fosters teamwork, but IPD takes those concepts a giant leap further by adding a strict legal contractual framework. In other words, instead of politely asking the design team and the contractors to play nice in the sand box with the owner playing the role of the parent, IPD puts the owner, architect and contractor on a more level playing field. Unlike the more traditional contracting methods such as design-build, design-bid-build, and construction manager at risk, IPD involves one contract between all three parties. In other words, instead of having two separate contracts with one between the owner and architect and a second one between the owner and contractor, IPD involves drafting, negotiating and executing only one tri-party contract between owner, architect and contractor, all of whom are in contractual privity with each other.

To foster collaboration on construction projects, IPD generally requires transparency and accountability. Because of this, the legal side of IPD is a key element in ensuring the model's effectiveness as a collaborative instrument.

The Key Differentiators of IPD

First, accountability to the team is anchored by a mutual waiver of negligence-based claims by each party. With those claims off the table, the parties can focus on getting the work done, the project is more likely to be completed quickly and on or under budget. In addition, while basic compensation structure is such that the architect and contractor are generally reimbursed their costs plus a fee, they also have "skin in the game" to the extent the budget is exceeded.

Second, owner, architect and contractor are required to collaborate and prepare, update and finalize a detailed scope of responsibilities. This particular document establishes clearly-defined, universally-acknowledged roles for all team members and includes a detailed integrated scope of services that allocates duties and responsibilities among the parties. Through this definitive contractual tool, every key project task is defined, assigned and agreed upon, from the beginning.

Third, owner, architect and contractor are required to prepare estimates such that all costs are reviewed, shared and updated

as the design moves forward. When the design is complete, the parties are required to establish a total output cost (TOC) for the project and amend the contract to reflect this cost. Thus, full and uninhibited communication and transparency are critical to a successful project. If the final TOC is less than the TOC set forth in the contract, all parties will share in the savings. The mechanism to incentivize the parties to meet budget, schedule, safety and quality goals by sharing the savings, if any, is through the development of key performance indicators (KPIs), which must also be set in the contract. All parties shall be compensated for achieving those KPIs.

Fourth, regardless of the delivery method, there will always be unforeseen circumstances and IPD is no exception; however, the parties will endeavor to identify risks, mitigate or quantify them, and accept them in the best interests of the project. In a pure IPD setting, with collaboration being the main tenet, it should come as no surprise that a project leadership team (PLT) is formed that consists of one representative from each party with equal voting rights. Put another way, the owner, architect and contractor must come to a unanimous agreement on key decisions that impact cost and schedule. If the team representatives are unable to reach a unanimous decision on a matter, any party's PLT representative may refer the matter to the dispute resolution board (DRB). The DRB is comprised of one representative from each party and, to the extent that no unanimity is reached, a neutral third-party is added to resolve any stalemates.

A Viable Collaborative Approach

While not a panacea for all pitfalls inherent in construction, IPD is a viable option for parties that are open to trying a new approach in exchange for an opportunity to work in a collaborative environment. For the owner, through early and intense collaboration, exposure to cost overruns and delays are reduced. For the architect and contractor, they receive fair compensation, an opportunity to share in savings and a limitation of liability if things do not go well. In other words, some may say that IPD provides a "win-win" situation.

Timothy F. Hegarty
Partner
Zetlin & De Chiara LLP
801 2nd Avenue #17
New York, NY 10017
Tel: 212-682-6800
www.zdllaw.com