



## The ABC's of IPD by Patricia Harris

School construction projects can be some of the most complicated building endeavors – not only because the construction itself may be difficult but because of the efforts required to get the shovel in the ground. In academic construction, planning requires the buy-in of an extraordinary number of constituencies, from the Board of Trustees to school administrators and faculty to students and parents. The process may be political, negotiated or truly collaborative, but it is rare that there is an independent decision-maker. Because schools often operate within a team decision-making framework, both with regard to construction projects and other major decisions, they are the perfect candidates to take advantage of the benefits of Integrated Project Delivery.

### What is IPD?

Integrated Project Delivery (IPD) is a project management and delivery system that is premised on collaboration among the key project participants – owner, architect, and contractor. In a traditional design-bid-build project, the owner engages the architect to develop plans and then hires a contractor separately to construct the project. Because the design professional and the contractor each contracts directly with the owner, each perceives its primary relationship to be with the owner rather than to the project itself, and each participant invariably ends up honing in on protecting its own "turf." As attorneys, we see these turf wars manifest as litigation or, more specifically, claims of design errors and omissions, delays and construction defects. Owners, at a minimum, experience change orders and scheduling delays.

In contrast, IPD strives to create a collaborative environment and relationships among owner, architect, contractor and other key project participants at the outset of the project. The goal of IPD is to minimize overall project cost and maximize the chances that the project will be completed on time. IPD has evolved as a viable delivery method due to, and leans heavily on, advancements in industry practice including technology such as Building Information Modeling (BIM) and principles of lean construction. IPD projects are differentiated from traditional design and construction projects in three key areas: the financial relationships among project participants; legal obligations and responsibilities of the participants; and management processes.

### **Financial Relationships**

The paramount theme of IPD projects is one of shared rewards and risks. Financial incentives and deterrents are a primary motivation for each of the owner, design team and construction team to complete the project on time and at or under budget. At its essence, in an IPD project, the major players are putting their profits at risk. Contractually, subject to any legal constraint upon the particular academic institution, the financial aspects of an IPD project can be created using traditional multiple agreements, a multi-party contract, a joint venture agreement, or through formation of a single purpose entity.

Typically, each project participant will share in an incentive pool. This is an opportunity for the project owner to prioritize those goals that are especially important to the owner and send that message to the other project participants in a very meaningful way. For example, the total project cost goal is defined at the outset, and owner, design team and constructor ultimately share in any underrun. Often, other performance factors are defined for which the parties may be compensated including early completion of the project, limited claims and changes, attainment of health and safety goals, sustainability goals and the like.

A contingency pool is also generally established for utilization in the event that the project does not go as planned. Again, any unused portion of the contingency pool may be shared by owner, contractor and design professional. This pool also serves as an incentive for project participants to step outside of their typical roles and work with each other (rather than in their traditional "silos") to approach the project as an organic whole.

### **Legal Aspects**

Carefully drafted legal documents should not be underestimated as a major contributing factor to the ultimate success of an IPD project. From establishing the correct legal vehicle by which to accomplish the project to setting out financial arrangements such as those discussed above and the management structure (discussed below), the contract stage is the most important opportunity that the owner will have to discuss and define the success of the contemplated project. Another unique

aspect of IPD projects is that the parties strive to see their lawyers only for contract assistance at the beginning of the project, not for litigation support during construction or after construction has been completed.

To that end, the parties agree to a general waiver of claims and liability (although their ability to sue due to intentional misconduct or gross negligence typically remains) so that the project participants can focus on true collaboration and open communications rather than finger-pointing and defensiveness. As discussed below, internal management structures are established for real time decision-making, dispute avoidance and dispute resolution. The contingency pool is accessible to cover unexpected costs. Finally, the close proximity and collaboration provided of all parties from day one should, in and of itself, result in less opportunity for claims to develop.

#### **Management Processes**

An essential part of IPD is the ongoing communication and dispute resolution process. This insertion of a more democratic management structure into the building process is, for some project owners, the most challenging aspect of the IPD model. A day-to-day project management team and an executive level leadership team are created in the initial documents. Both of these teams are populated with representatives of the owner, design and construction teams; other key consultants may be represented as well. The project management team has authority to administer and deal with day-to-day issues arising in connection with the project; typically, all decisions of the project management team must be unanimous. Should the project management team be unable to come to a unanimous decision, such issues are forwarded to the executive leadership team for consideration. That executive team also provides overall direction for the project. Finally, a dispute resolution committee is formed to aid the two management teams and, ultimately, keep the project moving forward. Often, the dispute resolution committee includes an external project neutral.

There is no one way to define Integrated Project Delivery - but its hallmarks are collaboration, financial risk-sharing and minimization of legal and litigation risk. Those principals enable IPD to achieve its goals of delivering a project on time and on budget, if not early and under budget. Academic institutions are already familiar with collaborative processes and collegial decision-making. Those contemplating significant construction projects would be well advised to delve deeper into the benefits of IPD.

The above article is an overview only, and should not be considered legal advice, which is dependent upon specific facts and circumstances. For more information, please contact Patricia Harris at 212.682.6800.