



# Integrated

PROJECT DELIVERY  
SEMINAR SERIES

# 09

## Insuring & Bonding Projects Using Integrated Project Delivery

Issues, Challenges, Solutions

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Produced by:



HansonBridgett

McGraw Hill  
CONSTRUCTION



AIA California Council







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## Sounds Great but...

## Who is really taking the Risk?

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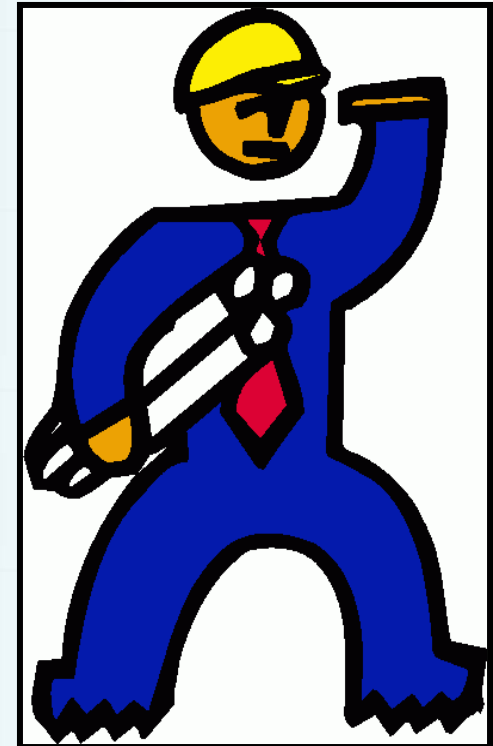
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# Contractor Thoughts on IPD

- Who is really taking the Risk?
- How will this impact my own insurance & surety program?
- Are Architects/ Engineers really sharing risk?
- How will I address this risk?
- Is the owner really going to participate in the risk?





# What is IPD?

- True IPD Occurs when:
- All key stakeholders are assembled early in the process (Owner, Designers, Builders)
- All Major stakeholders have shared risk/reward
- All Major stakeholders have joint control over their destiny
- Optimize project outcome vs. individual business outcome



# Everything Else:

## IPD ish

(Many projects to date and near future will likely be IPD ish)





## Snapshots

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Rising expenses will force me to  
beat an extra 15¢ out of you."





# Agenda

- Current realities
- Two Structures of IPD
- Issues concerning insuring IPD
- Common Insurance Policies carried and key issues/considerations with IPD
- Subguard, OCIPs, CCIP's,
- Surety considerations
- Solutions, Future



# Current Realities

- Projects are more complex with higher demands for quicker delivery
- Owners are demanding better value
- Lenders want less risk (no risk)
- Architects are not incentivized to produce complete and coordinated documents
- Architects are not capitalized to take on financial risk but want opportunity for more reward
- Productivity in the field is directly impacted by the lack of timely, accurate, coordinated information



## Insurance and Surety Industry Realities and Impact on IPD

- Insurance and Surety Industry not particularly creative or dynamic , slow to deal with innovation
- Litigation/legislation key drivers in policy terms and conditions
- Financial results/trends also key drivers
- Must look at market conditions for potential innovations in products/services
- Size matters – Economic Leverage. The Larger the Insured, the greater the flexibility/negotiating success



# Two Different Concepts

**B195 + A195 + A295**

**Design-  
Assist**

**C195 + Exhibits**

**Single  
Purpose  
LLC**

- Both being called  
"Integrated Project Delivery" (IPD) by AIA



## Unique issues with Single Purpose Entity

- More difficult to interest carriers in having SPE as first named insured
- Significant additional administrative costs for SPE
- Must maintain the SPE through statute of repose ( 10 years in CA)
- Professional Licensing Requirement may be an issue
- Tax consideration
- Collateral requirements of carrier may be difficult to meet (how capitalized)
- Management and compliance issues may be complicated



## Key concepts that must be maintained

- Architect primary responsibility for Design
- Contractor responsible for “Means & Methods”
- Risk Allocation must be consistent with Public Law Requirements
- Must also be clear and realistically achievable
- BIM Technology - Define ownership and use. Contractor and Subs must independently verify information
- Waiver of Consequential Damages s/b among all stakeholders and extended to subs



# Issues with Insuring IPD

- Roles of parties blurred
- Shared risks may not be insurable by all team members
- Deductibles/Retentions must be financed and shared
- Standard policy terms and conditions built on the traditional delivery methods
- Some insurance policies must be customized to respond properly to IPD
- IPD not widely used. Few Carriers interested in developing new policies to respond to IPD
- Waivers of Subrogation may not be acceptable to some carriers (typically would make sense under IPD)



# Traditional Model

- Traditional (Design-Bid-Build)
  - Architect Designs Project
    - Typically limits risk to fees billed or insurance carried
  - Owner Warrants that Plans are Correct to GC
  - GC has no design risk if Project completed to Specs supplied by owner
  - GC Indemnifies owner for everything then seeks indemnity from subs



# IPD Model

- Project Specific Insurance may be required in order to achieve IPD risk sharing objectives
- Risk management team, including potential insurers should be engaged early in the process
- Tolerances for risks retained must be evaluated for all stakeholders
- Risk Assessment, Safety Plan, Project Labor Agreements, ADR for Workers Comp, etc. should be part of the early collaboration





# Builders Risk

- First Party coverage for loss or damage to insured property while under construction
- Can be extended to cover consequential damages, delay in opening and other “soft costs”
- Consideration should be given to structuring it to support the shared risk and reward objectives
- Retentions can be allocated to responsible party
- Lots of flexibility on coverage terms and conditions
- Negotiations should involve key stakeholders
- Waiver of subrogation can be a challenge with some carriers



## Owners Protective Professional Indemnity Insurance

- Provides 1<sup>st</sup> Party indemnity to the owner/contractor (insured) from damage they may incur as a result of negligence of the design Professional.
- Does not usually extend coverage to designer
- Is excess of Architect's Prof. Liability Ins.
- Can extend to pollution liability
- Term should start w/ design, course of construction plus 10 years extended reporting



# Professional Liability

- Architects E&O – Claims made coverage for third party claims for negligent acts, errors, or omissions
- Excludes Contractual Liability, Means and Methods
- Covers claims made during policy period
- Can negotiate extended reporting period
- Traditional policies do not mesh with IPD risk sharing principals
- For IPD, this must be coordinated with other stakeholders interests
- Project Specific policies are very expensive so Architect's E&O limits are spread over many projects
- Limits purchased are low (\$5mm & lower common)



# Contractors Professional Liability

- Covers GC/subs for damages that result from negligent acts, errors and omissions in professional services performed by or on behalf of the named insured.
- IPD greatly increases the potential exposure for Contractors, use of BIM also creates more exposure
- Is more difficult to get on a project specific basis if not carried on a blanket basis
- Can be extended to pollution/environmental coverage
- Term can include up to full statute of repose



# Workers Compensation

- Statutory Coverage required for work related injuries
- Project labor agreements/ADR can impact costs
- Safety key to containing costs
- OCIP/CCIP can result in significant savings on large projects with strong safety discipline
- OCIP approach can support risk/reward sharing principals of IPD



# General Liability

- Covers “Insured” for third party bodily injury and property damage and Products and completed operations claims
- Excludes Claims from design and other “professional services”
- Excludes most environmental exposures
- If not wrapped, each participant has their own policy with different terms, conditions, limits, retentions
- Individual policies would not support the IPD shared risk/reward principals
- No joint defense with individual policies



## 3 Standard ISO Exclusionary Endorsements available on CGL, very important consideration for IPD

- CG 22 43 – Excludes BI&PD “arising out of the rendering or failure to render ANY professional services by or for the named insured” – **BAD for IPD**
- CG 22 79 – “Professional Services do not include services within Construction means, methods,... in your capacity as a contractor” – **Better for IPD**
- CG 22 80 – exclusion for “Professional Services” only with respect to the contractor acting in the capacity as an engineer, architect, surveyor” – **Best for IPD**



# Subcontractor Default Insurance “Subguard”

- Risk Management Alternative to Subcontractor bonds
- Covers GC, Design Builder, or CM at Risk for costs incurred as a result of a subcontractor “default”
- Indemnifies for direct and indirect costs resulting from default in performance of any enrolled subcontractor
- Covers design/build subs (design portion < 50%)
- First party coverage gives Contractor more control and flexibility to take action to control and mitigate claims
- Claim amount not limited to defaulting subs contract value as it covers all costs caused by the defaulting sub.
- One carrier offers – Zurich
- Risk/Reward sharing of IPD can be accommodated



# OCIP's / CCIP's

- **Owner Controlled Insurance Program (OCIP)**
  - Owner buys all Project Specific Policies to cover all “enrolled” parties including owner, GC, subs
    - Builders Risk, Gen Liability, XS Liability, WC, OPPI
  - Architect’s Professional Liability excluded
- **Contractor Controlled Insurance Program (CCIP)**
  - Same as OCIP except contractor procures coverages. Is typically part of a rolling program



# Benefits of CIP's

- Can more easily negotiate special terms and conditions to match IPD objectives
- Eliminates inefficiency of multiple carriers and policies responding to same claim
- Can Promote risk/reward principals of IPD
- Provides consistent terms and conditions controlled by the sponsor (IPD team)
- Can result in substantial savings w/ strong safety and QA/QC programs
- Can negotiate to close out tail prior to Statute of repose



# Problem with OCIP- Professional Services Exclusion

- Exclusion: “Bodily injury”, “property damage” or “personal and advertising injury” arising out of the rendering or failure to render any “professional services” by you or any engineer, architect or surveyor...”
  - Professional Services defined as:
    - “Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, etc.”
    - “Supervisory, inspection, architectural or engineering activities”



# Remedy

## “E&O Lite” Endorsement

- Revises Exclusion
  - Makes Exclusion not apply to Bodily Injury or Property Damage
    - Exclusion still applies to Personal and Advertising Injury
  - Covers BI or PD claims for which “any licensed engineer, architect or surveyor may be held liable”
    - Must be enrolled in OCIP or CCIP
    - The BI or PD must be directly related to the Project



# Insurance Solution for IPD

- OCIP to cover the Owner, Constructors, Architect for traditional coverage's; GL,WC, Excess Liability, Builders Risk
- Revise GL and Excess to include “E&O Lite” and other terms and conditions to reflect IPD objectives
- Craft Project OPPI policy to cover the interests of the entire project team to work in conjunction with Architect’s E&O.
- Set Up Team Contingency fund to fund deductibles and other uninsurable risks



# Main Surety Issues



- Design Risk
  - Who covers this risk?
- New Roles and New Relationships
  - Experience with this arrangement
- Lack of Clear Scope
  - Does the Owner really know what he wants?
- Performance Warrantees
  - Not typically covered by the Surety



# Surety Underwriter Thoughts

- **Project Team must have experience with IPD and Design-Build**
  - Trouble for first-timers, relationship with owner and Architect is key
- **Surety exposure will be limited**
  - Construction portion of the project covered
  - Tough to get Surety coverage on design without prior experience (surety does not want to be E&O carrier)
- **Bond Form Language**
  - Will address the relationship between all parties involved not just the GC and Owner
- **Warrantees**
  - Limited to construction activities, not performance



# Future of Insuring/Bonding IPD

- Some (few) carriers are studying IPD; Zurich, Chartis (AIG), Arch, Ace. None have developed IPD ready products.
- Will rely on brokers and IPD players to educate them and bring ideas to them for their consideration
- Education key to getting the insurance and surety industry to understand that IPD, if done right, significantly reduces risk and exposure; mutual waivers, early collaboration, shared risk/reward including Owner
- Hanson Bridgett approach makes excellent sense and will work with carriers.



# Conclusion

- IPD Projects Create Special Issues regarding risk and insuring those risks. These must be addressed up front.
- Get Risk Management Team (risk managers, brokers, carriers) involved very early in the process as part of the IPD Team
- Risk allocation must be consistent with public law requirements
- OCIP + OPPI + Arch E+O + Subguard with specific negotiated language and endorsements best way to approach insuring IPD large projects
- Standard policies must be customized but can be structured to support IPD when project not large enough for OCIP
- There is no “one size fits all”
- Must be the right team to make it work
- The “deal” between stakeholders should be agreed to prior to drafting contracts



Thank You For Your Time



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