

# Negotiate or Bid....But Not Both!

Richard A. Skendzel, AIA  
Steven J. Steimel, PE

Selecting a construction project delivery method is one of the most important decisions that an owner makes when contemplating a new building or renovation project. This decision should be made early in the design phase of the project since it impacts not only the contractual relationship between the owner and contractor, but also the scope of design services required for the project and thus the relationship between the owner and the architect. In many cases this decision comes down to a simple question: Will the construction of the project be based upon competitive bidding between multiple contractors, or will a negotiated agreement be made with a pre-selected contractor? Either approach can yield successful results: a good product, delivered timely and at a fair price. Each has advantages and disadvantages which must be weighed against the unique objectives of the specific client and project. What is most important is that one or the other is selected and adhered to; not a combination of both.

The fundamental *quid pro quo* in construction contracting is a specific scope of work to be delivered for a corresponding agreed-upon price, at an agreed-upon time. In negotiated agreements a single general contractor (and sometimes a team of multiple contractors) is selected and brought into the project early in the design process to work in conjunction with the design team (the architect and its engineering and other specialty consultants) to effectively integrate the design service with construction pre-planning. The effect of this collaboration can be to reduce design service fees since the contractor(s) can interpret much of the particulars of the design based upon verbal communications and understanding, and some decisions can be made by the owner, designers, or contractor while the project is under construction. Another effect is that construction cost can be quite fluid. Time-and-material contracts, or cost plus a fee, usually with an estimated total cost, are common with negotiated agreements. In some cases an upper limit or "not-to-exceed" price is established between the owner and the contractor. Guaranteed maximum price or not, successful negotiated projects rely on a high level of trust between the owner and the contractor since the total cost of the project is not firmly established at the start of construction.

Where the intention is to bid the work of construction to multiple prospective contractors, the emphasis in the design phase is to define and specify as completely as possible the scope of the proposed construction work so that all bidders are clear on its requirements and, as a result, all bids received will reflect the same end product. This method of project delivery has traditionally been known as "design-bid-build." Initial design fees for projects using this method generally will be higher than those for negotiated work since more design and documentation efforts are required prior to bidding. As a balancing effect, however, the bid prices received are a) fixed (based on a complete scope of work represented in the bidding documents), and b) as low as possible (due to the competitive nature of the bidding process). All except the most minor and insignificant of design decisions have been made and are reflected in the bidding documents (drawings and specifications), including general requirements and conditions of the contract. Bids received from prospective contractors represent delivery of a complete building project, in a specified amount of time, and for a stated total cost.

A summary of the characteristics of both negotiated and bid project delivery methods is given in figure-1 below. The decision to use one or the other should be based upon the specific goals and objectives of each individual project. Small renovation projects often benefit from using a negotiated delivery method due to

the higher proportional cost of complete design and documentation services that would be required to successfully establish the scope of work and then bid them. Frequently an owner has established a good trust relationship with a particular contractor, or an owner wants to have the flexibility to make construction design and detail decisions as the work is progressing. In these cases the negotiated delivery method can also be used effectively, especially when undertaken with an "open-book" policy between owner and contractor in which costs are monitored and verified throughout the construction phase. Negotiated work can also be advantageous for those projects which must be completed as quickly as possible since the design phase can more easily overlap into the construction phase with many of the details of construction (e.g., finishes, casework, lighting) being resolved after construction has started.

For new commercial construction work, the traditional design-bid-build approach still has many advantages. A project that is well-designed, detailed, and specified prior to establishment of a construction contract gives the owner the greatest probability that the initial bid price will be very close to the actual construction cost at project completion. In the process of competitive bidding, two important indications are revealed. One is that the completeness and clarity of the scope of construction work is reflected in bid results that fall within a reasonable price range. In other words, when the bids are close, we can assume that a specific scope of work was effectively communicated in the bidding documents and that each contractor has submitted a bid representing essentially the same end product. The other information that can be gleaned from construction bid results is the amount of savings the owner will realize by selecting and entering into a construction contract with the lowest qualified bidder. In many cases the cost difference between highest and lowest bidders is greater than the design fee paid to produce the complete and accurate set of bidding documents necessary to properly bid the project. This cost difference does not necessarily equate to savings over a negotiated contract, but it is indicative of the range of possible construction prices for the intended work, and the relative value of a complete set of bidding documents used in a competitive bidding process.

Problems often arise when some combination or hybrid of the negotiated and bid project delivery methods is used. Owners who want to minimize up-front design fees often decide that some form of negotiated agreement will be sought with a prospective contractor. In many cases, schematic design drawings are sufficient to begin this negotiation process. Most contractors are capable of giving an estimate or opinion of construction cost based upon a schematic floor plan, an exterior elevation or two, and a wall section with some notes defining the type of construction. This approach can work well if the owner restricts these negotiations to a single contractor. When an owner distributes such schematic drawings to multiple prospective contractors, however, the resulting estimates received can be mistakenly treated as bids. Since the drawings used to establish rough or preliminary construction costs are less detailed, it is all too easy for the unscrupulous contractor to artificially lower its estimate in order to be awarded the job and then rely upon increased costs due to subsequent clarifications and change orders in order to realize its profit. When a contractor is selected based upon "bidding" of schematic or incomplete design documents, one of two outcomes is the usual result. In one scenario, the design team is allowed to complete a detailed design of the facility. The selected contractor will then invariably raise the price of construction with the justification that the scope of work has been increased, or that certain aspects of the detailed design were not included in its original price. In the other scenario, the owner is convinced that, since the contractor has been selected and a construction cost agreed upon, the project should be constructed with minimal or no additional design services. In this case, an incomplete and poorly-detailed set of "permit drawings" is used for construction purposes and problems encountered and detailed design decisions made during the construction phase itself drive the cost of construction upward, while design integrity is usually sacrificed. The design fees may

have been lowered, but in the end, with change orders and extras charged by the contractor, the increased project costs can far outweigh the design fee savings, while the overall value of the completed project is reduced.

Difficulties can also arise when a project that is fully designed, detailed, and specified is bid, but major changes are made after a fixed price contract for construction is signed. In these projects, costs can be expected to rise - sometimes dramatically - as a result of "negotiated" change orders for which the contractor effectively has no competition. In this case, a complete design service has been provided up-front, but then its advantages are squandered during construction due to too many costly changes. One characteristic of the design-bid-build delivery method is that major changes made after the construction contract is established tend to come at a premium to the owner.

NEGOTIATED VS. BID APPROACHES TO CONSTRUCTION PROJECT DELIVERY		
	SCOPE OF CONSTRUCTION WORK	CONSTRUCTION COST
NEGOTIATED (T&M, COST-PLUS, OR NOT-TO-EXCEED)	NEBULOUS, BUT WITH LOWER UP-FRONT DESIGN FEES AND MAXIMUM CONTROL BY THE OWNER DURING CONSTRUCTION	UNCERTAIN, BUT WITH OPEN-BOOK ACCOUNTING AND THE OWNER'S ABILITY TO "STEER" COSTS DURING CONSTRUCTION
DESIGN-BID-BUILD (LUMP-SUM)	SPECIFIC AND PRE-DEFINED, BUT WITH HIGHER UP-FRONT DESIGN AND PRE-CONSTRUCTION SERVICE FEES	LOW-BID AND FIXED, BUT WITH CLOSED-BOOK ACCOUNTING AND THE POTENTIAL FOR COST INCREASES IF CHANGES ARE MADE DURING CONSTRUCTION

*figure-1*

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Richard Skendzel is president of Architecture Technology, P.C. Mr. Skendzel is a licensed architect and has served as president of the Northern Michigan Chapter and as a member of the Michigan Board of Directors of the American Institute of Architects.

Steven Steimel is president of Apex Engineering & Management, Inc. Mr. Steimel is a licensed professional engineer and a licensed builder and maintains memberships in the Structural Engineers Association of Michigan, the National Society of Professional Engineers, the American Institute of Steel Construction, and the American Welding Society.