

Comparison of ConsensusDOCS 300 and AIA IPD Documents

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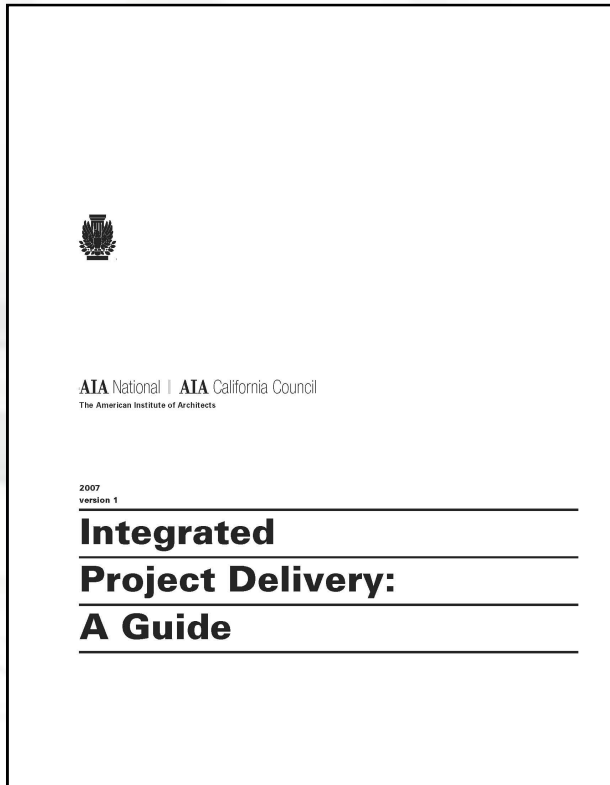
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IPD Definition

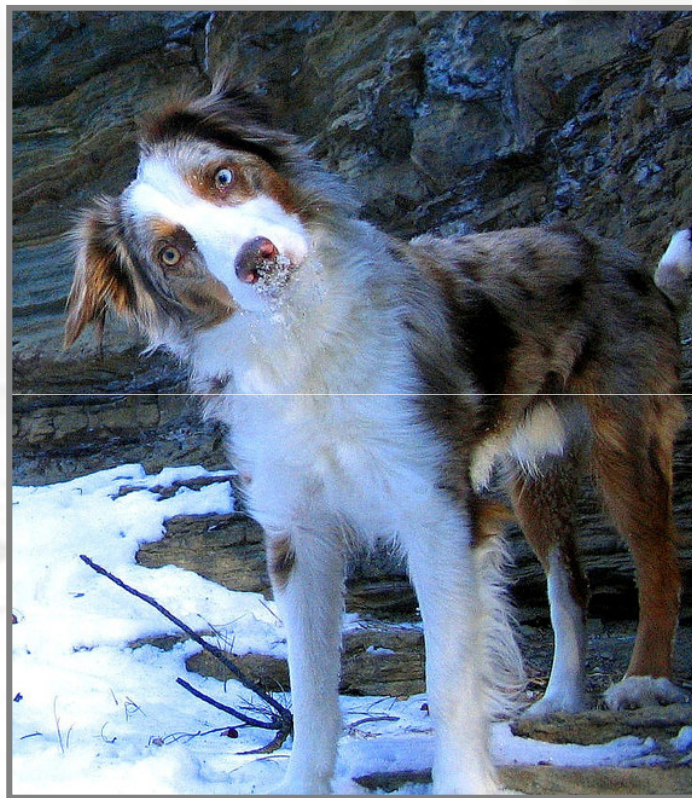
Integrated Project Delivery (IPD) is a project delivery approach that integrates people, systems, business structures and practices into a process that collaboratively harnesses the talents and insights of all participants to optimize project results, increase value to the owner, reduce waste, and maximize efficiency through all phases of design, fabrication, and construction.

IPD Guide



- Jointly drafted by AIA National and AIA California Council
- Sets forth broad principles relating to Integrated Project Delivery
- Describes how to set up and deliver an integrated project
- www.aiacontractdocuments.org

HUH?



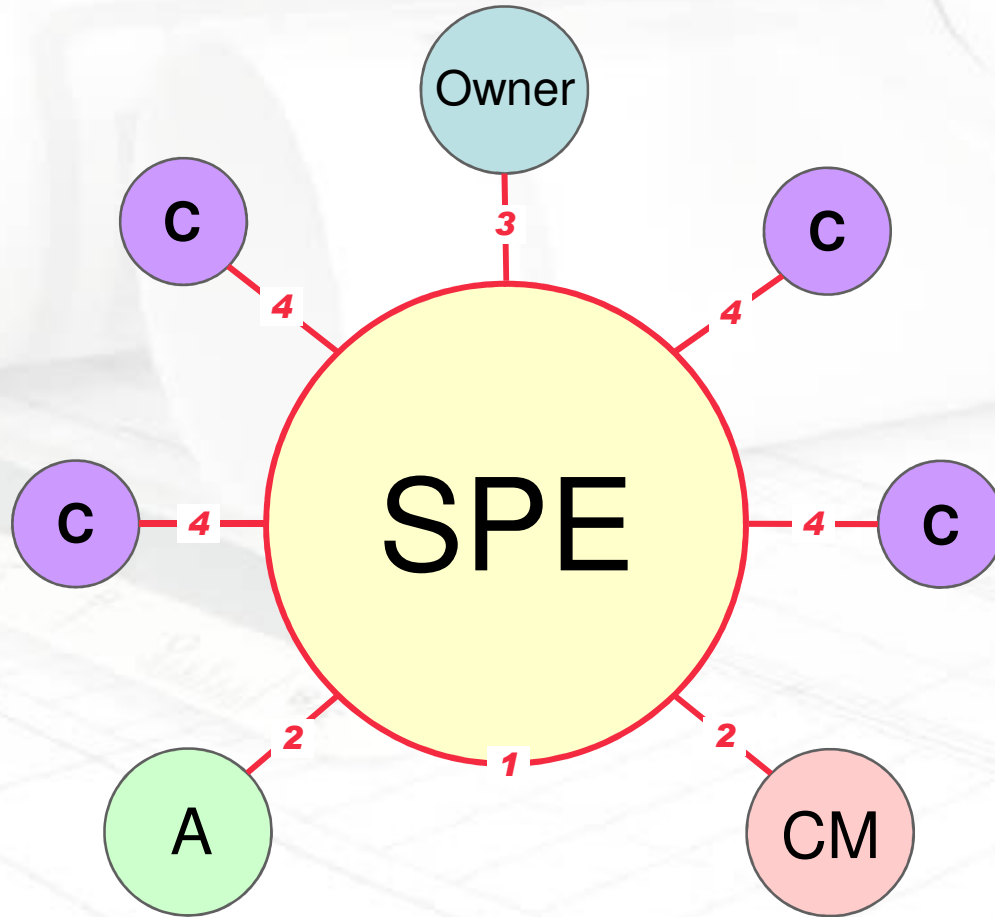
IPD Principles

- Mutual respect and trust
- Mutual benefit and reward
- Collaborative innovation and decision-making
- Early involvement of key participants
- Early goal definition
- Intensified planning
- Open communication
- Appropriate technology
- Organization and leadership

Legal Relationship

- **ConsensusDOCS 300 is a "tri-party" agreement among the Owner, Designer, and Constructor**
- **Contractual relationship is expressly not intended to create a partnership or joint venture (§24.5)**

SPE Contract Structure



1. SPE Agreement
2. SPE Member Services Agreement
3. SPE Owner Agreement
4. Non-Member Agreement

SPE – Choice of Entity

- Why form a separate legal entity?
 - Allows parties to integrate their interests and goals more than any other business arrangement
- Why did the AIA choose a Limited Liability Company?
 - Available in all jurisdictions
 - Provides benefits of limited liability among its Members
 - Unlike a partnership – LLCs do not have joint and several liability among its Members
 - Three party agreements can be treated as a partnership, resulting unintended joint and several liability

Project Management Structure

- **Management Group:**
 - Overall project management vested in the "Management Group" consisting of authorized representatives of the Owner, Designer, and Constructor
 - The initial Management Group may invite other project participants to join (and may remove them from) the Management Group (§4.1)

Project Management Structure

- Among the Management Group's many functions are:
 - assisting the Owner in developing the Owner's Program if one has not been prepared at the time of contracting (§4.7.1)
 - establishment of a Project communications protocol (§4.9.1)
 - development of a preconstruction site investigation plan (§5.1)
 - management of the budget to "further the Project objectives" (§5.2)

Project Management Structure

- **Management Group functions (cont'd):**
 - oversight of development of design documents (§6.2)
 - establishment of design document standards (§6.8)
 - establishment of BIM parameters, standards and technological requirements if the parties decide to use BIM (§6.9)
 - development of detailed Target Value Design methods (§6.13.2)

Project Management Structure

- **Management Group functions (cont'd):**
 - review and approval of the Designer's and Constructor's joint preliminary evaluation of the Owner's Program and the Project requirements (§7.1)
 - review and approval of the Milestone Schedule (§7.3.1) and Construction Schedule (§7.3.2)
 - assisting the Constructor with establishment of the Construction Budget (§8.1.3)

Project Management Structure

- **Management Group functions (cont'd):**
 - review and approval of Preliminary and subsequent Cost Models (§8.2) and the Project Target Cost Estimate
 - Approval of the Constructor's use of the Construction Contingency (§8.3.)
 - development of a financial incentive program (§11.2)

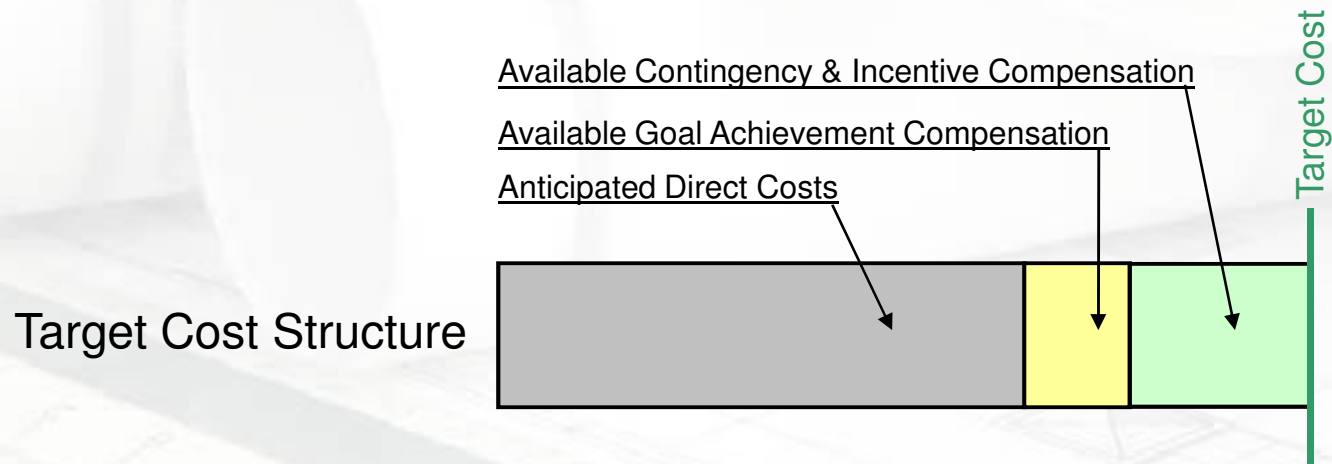
Project Management Structure

- **Collaborative Project Delivery Team:**
 - **Owner, Designer and Constructor form the Collaborative Project Delivery Team for purposes of actually carrying out the Project (§3.3)**

SPE – Project Management

- Members establish Project Goals, Project Definition, and Collaboration Standards
- Members develop a Risk Matrix and complete Integrated Scope of Services matrix to allocate responsibilities
- Members establish a Project Management Team
- Members provide Owner with a Target Cost no later than conclusion of Criteria Design
- All decisions requires unanimity, unless otherwise carved out in Agreement

Target Cost



Target Cost

- At outset of project, working collaboratively within the Management Group:
 - **Owner provides an estimated Project Budget based upon Owner's Program (§8.1.1)**
 - **Designer provides a Design Budget (§8.1.2) and**
 - **Constructor provides a Construction Budget (includes design, construction, estimating and escalation contingencies) (§8.1.3)**

Target Cost

- **CPD Team, by means of Target Value Design support and Target Value Pricing, works to design the project so that it may be constructed without exceeding the Construction Budget (§8.1.5)**

Target Cost

- **As design progresses, Constructor prepares a Preliminary Cost Model, which forms the basis for the Target Value Design efforts**
- **If BIM is used, the Target Value Design is a continuous effort throughout the design process**
- **If BIM is not used, the cost model is updated at the end of the traditional design phases - SD Cost Model followed by DD Cost Model followed by the CD Cost Model**
- **All subject to Management Group review and approval (§8.2)**

Target Cost

- **When Construction Documents are 100% complete, Constructor prepares an estimated Cost of the Work, which is rolled into the Project Target Cost Estimate ("PTCE") (§8.3.1)**
- **The PTCE includes the Owner's costs, Designer's costs, and Constructor's costs (including contingencies for construction, design (if further design is warranted), and permitting)**
- **A detailed, written statement of its basis is included with the PTCE (§8.3.3)**

Target Cost

- **If the PTCE exceeds the Project Budget, the Owner has several options, including:**
 - **Increase the Project Budget**
 - **Terminate the project**

Target Cost

- **The Management Group may also send the project back for rebidding or may direct the CPD Team to revise the project scope to bring the PTCE within the Project Budget (§8.3.5)**

Target Cost

- **Once the PTCE is accepted, it is incorporated into the agreement by amendment (§8.3.6)**
- **After that, limitations are placed upon further changes, with the contingencies acting as the Constructor's cushion in the event of cost increases that do not form the basis for a Change Order (§8.3.7)**
- **Subject to Management Group approval**

AIA Cost Control

- Project Definition
- Collaboration Standards Workshop
- Risk Matrix
- Project Goals
- Integrated Services Matrix
- Project Schedule
- Funding Schedule

SPE – Cost Control

- Primary Goal to maintain Target Cost
 - Monthly costs projections reported to Members
 - Recovery plans written if Target Cost in jeopardy
 - Recovery plan may require changes to scope
- Target Cost may be adjusted only:
 - Owner-initiated changes in scope or schedule
 - Force Majeure events, or
 - Otherwise by unanimous, written agreement of Members

Risk Allocation

- **The ConsensusDOCS 300 offers two options for allocating risk among the parties (§3.8)**

Risk Allocation

- **"Safe Harbor Decisions" (§3.8.2.1):**
 - Parties release each other from liability from Project risks arising from collaboratively reached and mutually agreed-upon Management Group decisions
 - Not applicable to act or omission that amounts to a willful default of a contract obligation
 - A move toward "no blame" environment

Risk Allocation

- **"Traditional Risk Allocation" (§3.8.2.2):**
 - Each party "fully liable for its own negligence and breaches of contract and warranty arising from the performance of this Agreement."
 - Provides for optional dollar limits on the Designer's and Constructor's liability

AIA Liability Model (SPE)

- § 9.3 Members Liability to Company Limited to Required and Available Insurance
- § 9.4 Limitation of Member Liability to Other Member Limited to Required and Available Insurance; Member Assigns Claims Against Other Members to Company

AIA Liability Model (SPE)

- § 9.5 Company Indemnifies Members Against All Claims Not Paid by Insurance with Exception of Willful Misconduct
- § 9.6 Members Assign to Company all Claims Against Non-Members

Compensation

- **Both the Designer's compensation (Article 9) and the Constructor's compensation (Article 10) limited to what is stated in the PTCE**
- **Subject to adjustment as provided in the agreement (optional adjustment provisions are provided for negotiation at the time the agreement is drafted)**

Incentives

- **Hallmark of collaborative project delivery: parties share in the risks and rewards of achieving the Project's goals**
- **ConsensusDOCS 300 calls for the creation of a financial incentive program (§11.2)**
- **Rewards superior performance in the areas of "cost, quality, safety, schedule, planning system reliability, innovative design, construction processes and teamwork."**

Incentives

- Incentive program is funded by contingency preservation and through reduction in the actual Cost of the Work as compared with the costs contained in the PTCE (§11.3)
- Parties share those savings based upon percentages or other parameters agreed upon at the outset (§11.4)

Incentives

- **If the PTCE is exceeded, the Owner can agree at the outset to fund the excess**
- **Or, the parties can agree upon a percentage or other method of sharing the burden (§11.5)**
- **If the parties agree to share the cost overrun risk, the form provides the option of setting limits on the exposure of the Designer and the Constructor (§11.6)**

Member Compensation

- Non-Owner Members provide services at cost through separate agreements with the SPE
- Profit Earned in two ways
 - Additional Payments for Project Goal Achievement (Goal Achievement Compensation)
 - Percentage distribution of any savings realized by the SPE between the Actual Cost and the Target Cost (Incentive Compensation)

Goal Achievement Compensation

- Members jointly identify Project Goals
 - Can be both milestone goals and end of project goals
- Achievement of the Project Goals results in additional compensation to the Non-Owner Members
- Goal Achievement Compensation is all for one

Incentive Compensation

- Incentive Compensation = savings realized on the Project
 - Savings = amount Actual Cost is less than the Target Cost
- Non-Owner Members receive a portion of any savings as Incentive Compensation

IPD Re-Cap

- **SPE**
 - BIM
 - New Unitary Contract
 - Profits tied directly to Project Goals
 - Shared savings and losses
 - Open Book accounting
 - Limitation of liability
 - Waiver of claims, except for willful misconduct
 - Highly collaborative; early information sharing