Contracting Issues in the Construction of Facilities

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Overview of Facility Construction Market

• Enormous market
• Public and private sector
• Wide range of discrete industries
  – Multifamily housing
  – Hotels & casinos
  – Correctional facilities
  – Office buildings
  – Manufacturing & laboratories
  – Hospitals & healthcare
Contracting Issues: Facility vs. Process Markets

- Role of aesthetics
  - Architect’s role
  - Creation of unique projects
- Measuring cost & time metrics
- Owner sophistication
- Use of standard form industry contracts
- Characteristics of prime contractor
Delivery Approaches: Facility Construction

- Traditional approach
  - Separation of design and construction
  - Low bid, lump sum
- Movement to team integration
  - Construction management
  - Design-build
Problems with Traditional Approach

- Non-integration of team
- Qualifications secondary to price
- Lack of accountability
- Inability to fast-track
- Late contractor involvement
- Infighting among team
CM- Advisor (Type 1)

- CM-Advisor
- Owner
- Architect/Engineer
- Contractor
- Trade Subcontractors
- Suppliers
CM- Advisor (Type 2)

- CM-Advisor
- Owner
- Architect/Engineer
- Trade Contractor 1
- Trade Contractor 2
- Trade Contractor 3
CM/GC

Owner

Architect/Engineer

CM/GC

Trade Subcontractors

Suppliers
Construction Management: Partial Team Integration

- Professional management
- Negotiated procurement
- Early contractor involvement
- Cost-based (GMP) contracting
- General contractor as broker
- Owner’s unrealistic expectations of perfection
Design-Build: Full Team Integration

- Single point of responsibility
- Early firm pricing
- Need for speed
- Lack of Owner resources to manage process
- Public sector endorsement
Team Integration: Reasons for Success

- Relationships enhanced
- Scope of project better defined
- Selection of qualified players
- Owner’s drivers better understood
Studies of Facility Contracting Practices

- Sanvido/Konchar study for CII
- 351 facility projects
- Delivery systems considered:
  - traditional
  - at-risk CM
  - design-build
Attributes of Best Performing Projects

- Adequate to excellent ability of owner to make decisions
- Adequate to excellent scope definition
- Excellent team communications
- Qualified contractor pool
- High ability to restrain contractor pool through prequalification & shortlisting
Attributes of Worst Performing Projects

- Contractor engaged late in design process
- Limited or no prior team experience
- Onerous contract clauses
- Poor ability to make decisions
- Did not prequalify bidders
Facility Team Integration: Impact on Contracting Practices

- Product mentality of Owner
  - Pressure on A/E for perfection
  - Parties not used to pricing risk
- Move to performance specifications
- Determining when to set the price
Facility Team Integration: Impact on Contracting Practices (cont’d)

• Incentives
  – few early completion bonuses
  – lots of cost savings provisions
  – consideration of creative quality incentives
• Public sector procurement changes
• Teaming arrangements between A/Es and contractors
Conclusion: Contracting Strategies Make a Difference

- Delivery system facilitates, but does not ensure, success
- Balance procurement and delivery approaches
- Need reasonable allocation of risk
- Understand project and owner drivers
- Establish early integration of design and construction teams