

UC PURCHASING DEPARTMENT  
310 FLATBUSH AVENUE  
KINGSTON, NY 12401-2742  
(914) 340-3400/ FAX (914) 340-3434

## MEMORANDUM

DATE: December 15, 1999  
TO: Law Enforcement Facility RFP Committee Members  
FROM: Arlene L. Kerans, P.A. *AK*  
SUBJECT: Meeting of December 6, 1999

A meeting of the above committee was held and the following member were in attendance:

Arlene L. Kerans  
Bob Carey

Ward Todd  
Marc Phelan

Harvey Sleight  
Rich Bockelmann

John Morrow was absent.

Draft # 2 of the proposed RFP was discussed. The main problem with the document seems to be the SCOPE of work for the Architect. The scope is important in that it directly affects the amount of time a Firm must put into the project. Marc and Arlene will work on this part (Section 3.0) and bring it to the next meeting.

Please read through this DRAFT #3 and bring it to the meeting.

The time line listed in the previous memo seems to be holding with the RFP being finalized by December 30.

If we can agree on this third draft, it will then go to Frank Murray for approval.

On Construction Management Companies: Arlene will gather sample specs and contracts for Construction Management Companies and also obtain names of Construction companies. (See notice that was published in Construction newsletters).

NEXT MEETING: WEDNESDAY, DECEMBER 15, 1999  
11:00 AM COB - LIBRARY

# COUNTY OF ULSTER

PURCHASING DEPARTMENT  
310 FLATBUSH AVENUE  
KINGSTON, NEW YORK 12401-2742  
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Central Services Div.  
914-334-5378

Central Auto Div.  
914-334-5406

Arlene L. Kerans, CPPC  
E MAIL - aker@co.ulster.ny.u  
Purchasing Agent

Robin L. Hurley-Perus  
E MAIL - rper@co.ulster.ny.u  
Deputy Purchasing Agent

DATE: February 4, 2000

MEMO TO: LAW ENFORCEMENT RFP COMMITTEE MEMBERS

FROM: Arlene L. Kerans, Purchasing Agent *ak*

RE: Update from February 2 Meeting - RFP Law Enforcement Facility 00-17

PRESENT: John Morrow, Ward Todd, Harvey Sleight, Marc Phelan, Arlene Kerans

Please be advised that on the last meeting held on February 2, 2000 the following was established:

- 1) Tentative Specifications for Construction Manager were reviewed and approved by the committee.
- 2) The specifications will be sent to the Architects so that they can use them for reference in preparation of their individual proposals.
- 3) The question of \$5M coverage for Professional Liability Ins. being too much and too costly for U.C. was brought up by one of the Architects. It was discussed in committee and the decision was that we would change to 2M after conferring with the S. Ins. Officer. NOTE: One February 3, 2000 the Ins. Office stated that ONE Million would suffice and she was comfortable with that figure, however, if we chose to use 2M it would be ok.
- 4) The above information concerning the Professional Ins. reduction will be passed on to the Architects along with the CM information.
- 5) Committee members are to read over the evaluation sheet and make recommendations to Arlene (in writing or by phone). Arlene will update sheet and bring to next meeting. Marc Phelan will be on vacation until end of February.

5) Arlene will begin work on the specifications for the CM immediately and will send a copy to Frank Murray for his input prior to our finalizing the document.

The time schedule and planned meetings are tentatively scheduled as follows:

February 22 (Tuesday)	RFPs are due in. Arlene will distribute to all members. Members are to read each proposal.
March 8 (Wednesday)	Committee Meeting COB - Start discussions Regarding evaluating proposals.
March ____	Committee to meet and determine who the finalists will be.
March/April	Committee members to interview finalists and to visit sites
April	RFP for Construction Manager to be finalized and mailed
May 1, 2000	Committee to finalize choice of Architect & award
May	RFP for CM to be received & evaluated. Interviews & possible site visits for CMs Architect of choice will assist in choice.

I will provide a new draft of the RFP for the CM at the next meeting (March 8, 2000)

Attachment (Rich & Bob – Evaluation Sheet)

Copies sent to all committee members: Ward Todd, Harvey Sleight, Marc Phelan, John Morrow, Bob Carey, Rich Bockelmann and Robin Peruso

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310 FLATBUSH AVENUE  
KINGSTON, NY 12401-2742  
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**MEMORANDUM**

**DATE:** February 11, 2000  
**TO:** Members of Jail RFP Architect/CM Committee  
**FROM:** Arlene L. Kerans, Purchasing Agent *AK*  
**SUBJECT:** Progress on Construction Management Project

**Please see attached legal notice that will be advertised in the following construction newsletters: Browns Letters, Dodge Reports and Construction News. It will also be publicized as a notice in our legal papers, Ulster County Townsman and Times Herald Record.**

**Also enclosed is the information and instructions to guide the interested firms in answering our query for qualifying them. We will use the same procedure as with the Architects.**

**I am compiling a list of CMs who have asked to be put on the list and a list of CMs who I have found through other sources. I am enclosing a list of these companies for your information. If there are any other firms you wish me to contact, please call me immediately and I will forward info to them.**

**Ward Todd  
Rich Bockelmann  
Marc Phelan  
John Morrow  
Bob Carey  
Brian Cunningham**

DATE: April 17, 2000

MEMO TO: Jail RFP Committee Members

FROM: Arlene L. Kerans, P.A.

RE: Meeting Dates Changes

I have been asked by Ward Todd to notify you that the meeting to discuss the CM responses scheduled for Wednesday, April 19 has been cancelled.

A new meeting is scheduled for Wednesday, April 26 at 1:00 PM in the Legislative Library to discuss the RFP for the Architect. **Please bring with you the information previously distributed regarding the Construction Management firms.**

Members:

Bob Carey  
Ward Todd  
Brian Cunningham  
Richard Bockelmann  
Marc Phelan  
John Morrow  
Arlene Kerans

00-07Arpilmtg.

04/18/2000 14:53:14 -0400

From: Ward Todd <wtod@co.ulster.ny.us>

Organization: Ulster County

To: aker@co.ulster.ny.us

ne,

ou haven't already done so, please contact the committee and cancel  
row's meeting. Also notify everyone that we will meet on Thursday,  
1 27th at 1:00 pm to discuss the findings from the various trips.

ks,

Let's 6<sup>th</sup> Feb

Rich Bockelmann-

Please confirm  
w/ Arlene x3404

Arlene

# Construction Management Firm, Contract Considerations.

## *Responsibilities not specifically mentioned under Contract*

- 1 Manage and Coordinate the work of the project as a whole.
- 2 Establish a project organization of Home Office and site staff.
- 3 Number of Staff members (and names) to be utilized.
- 4 Preparation of Bidders list.
- 5 Pre-Construction services.
  - a. Evaluate available data and design program.
  - b. Extent of local Construction industry capacity.
  - c. Evaluate design and/or construction constraints. \_\_\_\_\_
  - d. Develop procedure manuals
- 6 Provide recommendations on construability and site use. \_\_\_\_\_
- 7 Provide recommendations on availability of materials.
- 8 Provide recommendations of alternative designs or materials.
- 9 Value Engineering Study (of at least 5 days.)
- 10 Providing Web-based project management services.
- 11 Provide schedules with detailed milestones.
- 12 CPM Network Diagrams (Schedules)
- 13 Participation in Pre-Bid Conferences and Bid Tabulations.
- 14 Maintain a record of progress photo's both digital and conventional film.
- 15 Establishing of a 2400+ square foot field office on the site.
- 16 Preparation of a quality control plan.

## *ems promised under Bovis's May 30, 2000 presentation*

- 1 Project Understanding, "Project Quality Planning"
  - a. Team Roles and Responsibilities
  - b. Project Master Schedule
  - c. Budget Management/Estimate Formats
  - d. Lines of Communications
- 2 Design Phase
  - a. Risk Management Analysis
  - b. Prepare Cost Estimates
  - c. Prepare Schematic Development Report
  - d. Define and Evaluate Options
- 3 Pre construction Support Team
  - a. Value Engineering Workshops
  - b. 4 Individuals, (Wade Utter, Jim Wallace, Robert Barnes, Bill Lankford)
  - c. PQP (Project Quality Planning) Sessions.
  - d. Team Leader, Kyle Tuttle

# ULSTER COUNTY ATTORNEY

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**WENDY S. RICKS**  
*Assistant County Attorney*  
845-340-3685

May 19, 2006

Mitchell Morris, Esq.  
Office of the NYS Comptroller  
110 State Street  
Albany, New York 12236

RE: Ulster County Law Enforcement Center

Dear Mr. Morris:

In regards to the question you raised regarding the response in the County's letter to your office dated May 8, 2006 from Chairman David Donaldson, please be advised that I have reviewed the issue that you raised.

Specifically, your question was what is the authority for the response of the County which stated "it is our understanding that penalty clauses are illegal in public contracts without incentive clauses"? The County has been advised by its consultant that the most recent industry standard requires that a contract should have both an incentive clause and a disincentive clause in order for it to be enforceable.

Recently a number of states have expanded the application of incentive/disincentive clauses beyond the concept of assuring a timely completion and are selectively using them to control the quality of performance or materials as incorporated into the work. The legal basis for incentive/disincentive clauses rests largely on the established foundations and enforceability of the liquidated damage provision found in the typical construction contract. I am annexing information received from our consultant, Hill International, Inc., regarding this issue which appeared in various publications or articles as annexed.

As you know, the requirement that liquidated damages be reasonably proportionate to actual damages stems from the fact that courts have traditionally refused to enforce what amounts to a penalty for breach of contract. One primary objection to penalties is that while the law favors reimbursement for loss, it does not approve of granting windfalls or unearned profits even to an innocent party. To allow an



injured party to recover an amount in excess of the actual damages it has suffered would, in effect, put that party in a better position than it would have been in had the contract been performed. This result would be inconsistent with the basic theory of contract damages (see Vernitron Corporation v CF 48 Associates, 104 A.D.2d 409 (2<sup>nd</sup> Dept. 1984) and City of Rochester v E & L Piping, Inc., 196 Misc.2d 572 (Supreme Court, Monroe County, 2003). (See also United States v Swanson, 618 F. Supp. 1231 (E.D. Mich. 1985).)

If you have any questions, please feel free to contact me.

Very truly yours,



Beatrice Havranek  
First Assistant County Attorney

BH:gr  
enclosures

VIA FACSIMILE

cc.: Hon. David Donaldson, Chairman, Ulster County Legislature (w/encs.)  
Joshua Koplovitz, Esq., Ulster County Attorney (w/encs.)



"Ronan, Timothy"  
 <TimothyRonan@hillintl.com>  
 >

05/18/2006 04:42 PM

To <bhav@co.ulster.ny.us>

cc

bcc

Subject Incentive/Disincentive

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**Title:**

**LEGAL IMPLICATIONS IN THE USE OF PENALTY AND BONUS PROVISIONS OF HIGHWAY CONSTRUCTION CONTRACTS: THE USE OF INCENTIVE AND DISINCENTIVE CLAUSES AS LIQUIDATED DAMAGES FOR QUALITY CONTROL AND FOR EARLY COMPLETION**

**Accession Number:**

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**Record Type:**

Component

**Abstract:**

Recently a number of states have expanded the application of incentive/disincentive (I/D) clauses beyond the concept of assuring a timely completion and are selectively using them to control the quality of performance or materials as incorporated into the work. Early examples of I/D clauses include adjustments up and down (plus and minus) in payment for materials to reflect the content of quality components. This paper does not advocate for or against the propriety or use of I/D clauses in any particular situations. Instead, it focuses on the legal considerations and implications that should be taken into account before deciding whether or not to employ such a clause as to a particular aspect of contract performance. At the same time this paper assists in drafting I/D provisions and in deciding to what extent these clauses will be enforced by the courts in a given situation. The legal basis for the I/D clause rests largely on the established foundations and enforceability of the liquidated damage provision found in the typical construction contract. Therefore, a brief review is made of the authority and vitality of the law of liquidated damages as it pertains to the field of construction contract law. A review is also made of additional concerns, constitutional, statutory and judicial, that can impact I/D clauses.

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Finch, O F

**Monograph Info:**

See related components

**Corporate Authors:**

- Transportation Research Board  
 500 Fifth Street, NW  
 Washington, DC 20001 USA

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- Transportation Research Board Business Office  
 500 Fifth Street, NW  
 Washington, DC 20001 USA  
 Order URL:

[http://nationalacademies.org/trb/publications/tris/out\\_of\\_print.html](http://nationalacademies.org/trb/publications/tris/out_of_print.html)

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**Subject Areas:**

H70 LAW  
 I10 Economics and administration



"Ronan, Timothy"  
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To <bhav@co.ulster.ny.us>  
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 Subject Public Work Contracts

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Thursday, May 18



**Construction contract incentive alternatives**

William H. Sewell, Jr., P.E.  
 Deputy Director  
 Department of Public Works  
 City of New Orleans, Louisiana

Thomas A. Fromherz, P.E.  
 Senior Civil Engineer  
 Department of Public Works  
 City of New Orleans, Louisiana

In this day of high construction costs, limited funding options, and the desire to limit the impact of construction on the user and general citizenry, public agency project owners are searching for additional bidding alternatives to the traditional "low-bidder" method historically used for awarding construction contracts. Louisiana, the Department of Transportation and Development and several parishes (counties) are using alternative methods for bidding and contract award on selected projects. The following is a description of four alternative contract options available to public agencies. Also, following this article is the story of a project recently completed in the New Orleans area that was bid and constructed as an alternative contracting project.

**The four alternative bidding options include:**

- Bid plus Time (A+B)
- Design/Build (A+B/C)-Design/Build With Warranty
- Lane Rental (A+B+L)
- Incentive/Disincentive

**Bid plus Time (A+B)**

Bid plus Time or A+B bidding is an alternate that factors in the time necessary to complete the project as a consideration of the contractor's bid. The monetary amount of the bid (A) is combined with the value of the time needed to complete the project (B) to determine the low bidder.

In a highway or street paving project, the owner determines a commuter user fee for the project. This dollar amount is the value of the use of that highway by the user, the contractor, and the public. It is expressed as a per-day amount that is multiplied by the number of days for project construction as determined by each bidder to the respective contractor's monetary bid. The resulting total amount is compared to the total submitted by all bidders, in order to determine the lowest as the contract award. However, the contract amount is only the amount of the contract bid items or lump sum (A).

A+B bidding allows the contractor to determine the length of the project, often resulting in a shorter contract schedule than the specifications would have a practical method to use when the owner is seeking to minimize contract time on high priority and high usage projects. A+B bidding often results in a better working relationship between the owner and contractor because timely resolution of possible issues are paramount to the overall project.

**Design/Build (A+B)/C-Design/Build With Warranty**

Design/Build is a method of contracting that allows the owner to select or "short-list" an interested contractor/design team based upon their history, capabilities, and experience. This method also allows a contractor and an engineer/architect, if "short-listed," to work together to design and determine the cost of a project. The submitted bid prices include the cost of design, permitting and extended warranty fees as well as the project construction costs. As in Bid plus Time contracting, the monetary amount of the lump sum bid or the contract bid (A) is combined with the value of the time needed to complete the project (B). To determine the low bidder, the owner utilizes a scoring method which takes into consideration a technical score (C) for the design as well as the price of construction. The sum of A+B is divided by the technical score (C) to determine the lowest aggregate score or price. Again the contract amount is only the amount of the contract item or the lump sum price (A).

There are several advantages of using this method of contracting. Design/Build results in a quicker delivery of the finished project. Construction begins while design is still in progress, causing overlap of events that are usually done in sequence. By allowing the owner to appropriate design and construction money at the same time, before design and permitting are complete, Design/Build can be a useful option when budget constraints mandate that funds be spent in a specific fiscal period.

Design/Build also enables a bid team to design a structure that is suited to the contractor's abilities and resources. For example, a piling contractor would design a pile supported structure rather than a structure supported by drilled shafts. Design/Build contracting also minimizes the number of claims because the contractor and designer are working as a team, thus eliminating the design issues that sometimes arise during construction. This method of contracting eliminates claim-oriented contractors from bidding because the owner can choose not to invite contractors with a poor claims history to bid the project.

Design/Build with Warranty offers further protection to the owner in the form of a guarantee which exceeds that of a one-year construction warranty. This places a higher responsibility on the contractor to build a quality project because that contractor will be responsible for maintaining the project for a specific length of time following completion. One disadvantage is that this method of contracting may preclude bidders who are unable to secure the additional bond necessary to guarantee the project.

#### Lane Rental (A+L) or (A+B+L)

When Lane Rental is included in the bidding, the owner assigns a cost per hour to each lane of traffic. The bidding contractors estimate the number of hours of lane closures that figure by the hourly cost. The construction cost (A) is added to the resulting lane amount (L) to determine the total bid amount. This is sometimes added to the value of (B) to determine the total bid. The primary advantage of this method of contracting on highway projects is minimizing the impact to the traveling public in highly traveled areas. In Lane Rental contracting, the contract time and costs for the project may actually be increased because this method limits constructibility options. Contractors may choose methods that may take longer but minimize the number of lane closures.

#### Incentive/Disincentive

In addition to the above alternative methods, Incentive/Disincentive is used to encourage the contractor to devote additional or complete resources to the project. The Incentive/Disincentive contracting method often can produce a shorter delivery time for a project, accomplished by offering monetary bonuses for early completion and assessing penalties for late completion. The contract time is determined either by the owner or submitted by the contractor as part of his A+B bid. As in the A+B method, the Incentive/Disincentive method requires the establishment of a user fee (the value of the use of that highway to the public) for the project. This dollar amount is used as a basis to determine a bonus amount. The incentive for early completion of the project is a reward, determined by the number of days that the contractor finishes the project early multiplied by the penalty of the user fee. Conversely, if the contractor finishes after the contract time, he would be responsible for paying a penalty of the user fee multiplied by every day that the project is late from the scheduled completion. This penalty is imposed in addition to any liquidated damage provisions in the specifications. Often, the amount of incentive is limited while the disincentive is unlimited. Contractors working on Incentive/Disincentive projects monitor the construction schedule and activities very closely and, if impacted by factors beyond their control, request time extensions since the time considerations of the project are of such importance.

There is a variety of options when choosing a contracting method. When deciding whether to utilize traditional low-bid methods or to employ one of the alternative methods, the owner must give serious consideration to which method suits the project's specific needs and the advantages to the public.

#### Lapalco Boulevard Reconstruction, Jefferson Parish, Louisiana

Greater New Orleans, Louisiana is composed of portions of five parishes that surround the core. Jefferson Parish is the second largest parish, after Orleans Parish, in size and population. Jefferson Parish recently undertook a five-phase reconstruction of Lapalco Boulevard which is a major street located on the west bank of the Mississippi River. Barriere Construction Company LLC performed the reconstruction of Phase II of Lapalco Boulevard.

In order to expedite the reconstruction of Lapalco Boulevard, Phase II was bid as an A+B project (incentive/disincentive). An A+B project allows the contractor to bid the number of days required to build the project as well as a total cost to build the project. A value of \$8,000 per day was assigned by the Parish to the number of days chosen to complete the project, and that value was added to the cost to build the project. The summation of these costs became the bid price. An incentive was added to the contract with the incentive at \$8,000 per day for every day that the contractor completed the project ahead of schedule with a maximum of 50 days. A \$8,000 per day penalty for each day the contractor exceeded the contract days with no maximum days established. The Parish estimated it would take 630 days to complete this project. The contractor estimated 226 days, which was approximately 64 percent lower than the Parish estimate and 54 percent lower than the next best bid. The project was completed on the 156th day, April 5, 2002, 71 days ahead of schedule. This means that the contractor will receive the maximum bonus of \$400,000.

The original bid amount for the project was \$9.7 million, but with additions to the scope of work the final contract price was \$11.6 million. The project scope included to widen the 2.1 miles of roadway to three lanes in both directions, widen the Ames Canal bridge to three lanes; install 35,000 linear feet of concrete curb and gutter, upgrade 19,000 linear feet of existing drainage system, install 12,000 square yards of sidewalks and driveways, perform 27,000 square yards of new concrete and concrete patching in the concrete section, mill and overlay 1.1 miles of existing asphalt roadway in the asphalt section, and upgrade the traffic signal intersections along the project length.

With approximately 28,000 cars per day traveling the roadway, how was this project fast-tracked? The contractor had a superb project team with a deep core of experienced crew members, subcontractors and the engineers working tirelessly together. The project was bid by Jefferson Parish in May 2001, and the contractor started construction in October 2001, working seven days a week with day and night shifts. Due to heavy traffic and lane restrictions during the daytime hours, the contractor worked the drainage, median lane excavation and concrete paving at night. They installed approximately 6,000 feet of drainage, ranging from 15-inch RCP up to 48-inch RCP and excavated 24,000 cubic yards of subgrade and installed 12,000 cubic yards of sand for the new median lane at night. Once the median lane base was in place, their concrete paving crew slipformed approximately 12,000 square yards of 14- to 16-foot-wide, 10-inch thick concrete pavement. While these crews were working during the night, they also had crews working during the day installing 14,000 tons of base course, concrete curb and concrete pavement tie-ins to successfully complete the median lane.

An added benefit of working a day and night shift was being able to increase utilization on core pieces of equipment, which saved the project over \$15,000 in equipment costs. Utilizing the equipment 24 hours a day required a great deal of support from the maintenance division, which ensured that they had very little downtime.

Working at night posed several challenges. The drainage crew's work areas and supplies had to be laid out and organized during the day, and estimates and trucking for the base crews had to be calculated so that the work flowed correctly. Field engineers performed these tasks and kept quantities in order for the paving crews.

Once the median lane was constructed, the nighttime work was reduced to only drainage work, which was completed in January 2002. Their crews continued with excavation, base installation, pavement patching, and sidewalk preparation in both the asphalt and concrete sections. At the same time they were installing curb and gutter, pavement patching, sidewalks, driveways, and slope paving on the project.

While supervising their own crews, the project team also had subcontractors' crews to coordinate. They coordinated a subcontractor's drainage work in the asphalt section, the electrical contractor's equipment and conduit installation for the traffic signal systems, and the bridge widening subcontractor. Organizing the work of both contractor and subcontractor crews was no easy task. There were many instances where two crews had scheduled to set up high- and low-lane closures in the same direction, which would have shut down Lapalco. After a few weeks the project team was able to minimize these conflicts by closely monitoring contractor and subcontractor work areas in advance.

With 28,000 cars traveling daily through the work area, the contractor was very serious about safety. Their Safety Division did an outstanding job of assisting with area closures as well as responding to the few citizen complaints that were received.

This is an example of a successful incentive/disincentive project, which required incredible dedication by everyone involved. To complete an \$11.6 million project estimated by the parish to take 630 days in only 156 days was a real accomplishment and worthy of the maximum bonus established by the owner.

To reach William H. Sewell, Jr., call (504) 565-6850 or send e-mail to WILLIAMS@new-orleans.la.us; to reach Thomas A. Fromherz, call (504) 254-2101.

Acknowledgment: Ms. Leslie Trahan, Boh Bros. Construction Co. LLC, New Orleans, Louisiana; and Mr. Bart Breland, Barriere Construction Co. LLC, New Orleans, Louisiana



"Ronan, Timothy"  
 <TimothyRonan@hillintl.com>

To <bhav@co.ulster.ny.us>

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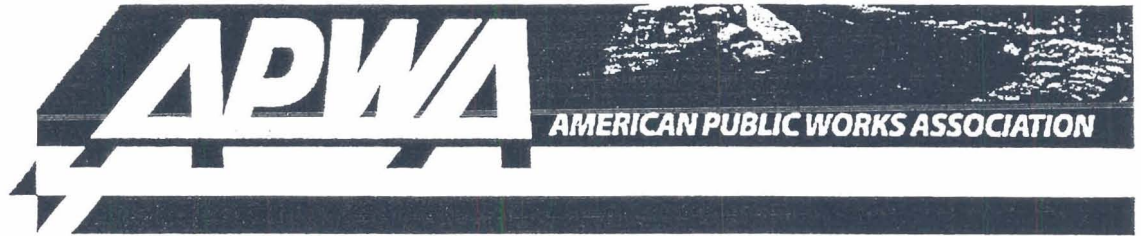
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Subject Types of Contracts

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Thursday, May 18



**Construction contract incentive alternatives**

William H. Sewell, Jr., P.E.  
 Deputy Director  
 Department of Public Works  
 City of New Orleans, Louisiana  
 Thomas A. Fromherz, P.E.  
 Senior Civil Engineer  
 Department of Public Works  
 City of New Orleans, Louisiana

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A+B bidding allows the contractor to determine the length of the project, often resulting in a shorter contract schedule than the specifications would have allowed. It is a practice when the owner is seeking to minimize contract time on high priority and high usage projects. A+B bidding often results in a better contractor being awarded the project because contractor approaches and contractor resources are significant factors in determining the length of the project. This contracting method also can create a better working relationship between the contractor and owner because timely resolution of possible issues are paramount to the overall success of the project.

**Design/Build (A+B)/C-Design/Build With Warranty**

Design/Build is a method of contracting that allows the owner to select or "short-list" an interested contractor/design team based upon their history, capabilities, and experience. This method also allows a contractor and an engineer/architect, if "short-listed," to work together to design and determine the cost of a project. The submitted bid prices include: permitting and extended warranty fees as well as the project construction costs. As in Bid plus Time contracting, the monetary amount of the lump sum bid or the contract bid combined with the value of the time needed to complete the project (B). To determine the low bidder, the owner utilizes a scoring method which takes into consideration a technical score (C) for the design as well as the price of construction. The sum of A+B is divided by the technical score (C) to determine the lowest aggregate score or price. Again the contract amount is only the amount of the contract item or the lump sum price (A).

There are several advantages of using this method of contracting. Design/Build results in a quicker delivery of the finished project. Construction begins while design is still in progress, causing overlap of events that are usually done in sequence. By allowing the owner to appropriate design and construction money at the same time and before design and permitting are complete, Design/Build can be a useful option when budget constraints mandate that funds be spent in a specific fiscal period. Design/Build also enables a bid team to design a structure that is suited to the contractor's abilities and resources. For example, a piling contractor would work with the engineer to design a pile supported structure rather than a structure supported by drilled shafts. Design/Build contracting also minimizes the number of claims because the contractor and design team, thus eliminating the design issues that sometimes arise during construction. This method of contracting also may eliminate claim-oriented contractors from bidding because the owner can choose not to invite contractors with a poor claims history to bid the project.

Design/Build with Warranty offers further protection to the owner in the form of a guarantee which exceeds that of a one-year construction warranty. This form of bidding places responsibility on the contractor to build a quality project because that contractor will be responsible for maintaining the project for a specified extended length of time following completion. One disadvantage is that this method of contracting may preclude bidders who are unable to secure the additional bonding necessary to guarantee the project.

**Lane Rental (A+L) or (A+B+L)**

When Lane Rental is included in the bidding, the owner assigns a cost per hour to each lane of traffic. The bidding contractors estimate the number of hours of lane closures that figure by the hourly cost. The construction cost (A) is added to the resulting lane amount (L) to determine the total bid amount. This is sometimes added to the value of (B) to determine the total bid. The primary advantage of this method of contracting on highway projects is minimizing the impact to the traveling public in highly traveled areas. Lane Rental contracting, the contract time and costs for the project may actually be increased because this method limits constructibility options. Contractors may choose cost methods that may take longer but minimize the number of lane closures.

#### Incentive/Disincentive

In addition to the above alternative methods, Incentive/Disincentive is used to encourage the contractor to devote additional or complete resources to the project. The Incentive/Disincentive contracting method often can produce a shorter delivery time for a project, accomplished by offering monetary bonuses for early completion and assessing penalties for late completion. The contract time is determined either by the owner or submitted by the contractor as part of his A+B bid. As in the A+B method, the Incentive/Disincentive method requires the establishment of a user fee (the value of the use of that highway to the public) for the project. This dollar amount is used as a basis to determine a bonus amount. The incentive for early completion of the project is a reward, determined by the number of days that the contractor finishes the project early multiplied by the predetermined user fee. Conversely, if the contractor finishes after the contract time, he would be responsible for paying a penalty of the user fee multiplied by every day that the project is delayed beyond the scheduled completion. This penalty is imposed in addition to any liquidated damage provisions in the specifications. Often, the amount of incentive is limited while the disincentive is unlimited. Contractors working on Incentive/Disincentive projects monitor the construction schedule and activities very closely and, if impacted by factors beyond their control, request time extensions since the time considerations of the project are of such importance.

There is a variety of options when choosing a contracting method. When deciding whether to utilize traditional low-bid methods or to employ one of the alternative methods, one must give serious consideration to which method suits the project's specific needs and the advantages to the public.

#### Lapalco Boulevard Reconstruction, Jefferson Parish, Louisiana

Greater New Orleans, Louisiana is composed of portions of five parishes that surround the core. Jefferson Parish is the second largest parish, after Orleans Parish, in size and Jefferson Parish recently undertook a five-phase reconstruction of Lapalco Boulevard which is a major street located on the west bank of the Mississippi River. Barriere Construction Company LLC performed the reconstruction of Phase II of Lapalco Boulevard.

In order to expedite the reconstruction of Lapalco Boulevard, Phase II was bid as an A+B project (incentive/disincentive). An A+B project allows the contractor to select the number of days required to build the project as well as a total cost to build the project. A value of \$8,000 per day was assigned by the Parish to the number of days chosen to complete the project. That value was added to the cost to build the project. The summation of these costs became the bid price. An incentive/penalty was added to the contract with the incentive a dollar for every day that the contractor completed the project ahead of schedule with a maximum of 50 days, and an \$8,000 per day penalty for each day the contractor exceeded the contract time with no maximum days established. The Parish estimated it would take 630 days to build this project. The contractor estimated 226 days, which was approximately 64 percent below the Parish estimate and 54 percent lower than the next bidder. The project was completed on the 156th day, April 5, 2002, 71 days ahead of schedule. This means that the contractor received the maximum bonus of \$400,000.

The original bid amount for the project was \$9.7 million, but with additions to the scope of work the final contract price was \$11.6 million. The project scope of work was to reconstruct 1.1 miles of roadway to three lanes in both directions, widen the Ames Canal bridge to three lanes, install 35,000 linear feet of concrete curb and gutter, upgrade 19,000 linear feet of drainage system, install 12,000 square yards of sidewalks and driveways, perform 27,000 square yards of new concrete paving and concrete patching in the concrete section, overlay 1.1 miles of existing asphalt roadway in the asphalt section, and upgrade the traffic signal system at five intersections along the project length.

With approximately 28,000 cars per day traveling the roadway, how was this project fast-tracked? The contractor had a superb project team with a deep commitment from the contractor, subcontractors and the engineers working tirelessly together. The project was bid by Jefferson Parish in May 2001, and the contractor started construction in October 2001, working days a week with day and night shifts. Due to heavy traffic and lane restrictions during the daytime hours, they performed the drainage, median lane excavation and concrete tie-ins. They installed approximately 6,000 feet of drainage, ranging from 15-inch RCP up to 48-inch RCPA, and excavated 24,000 cubic yards of subgrade and installed 12,000 cubic yards of concrete pavement for the new median lane at night. Once the median lane base was installed, their concrete paving crew slipformed approximately 12,000 square yards of 14- to 16-foot-wide concrete pavement. While these crews were working during the night, they also had crews working during the day installing 14,000 tons of base course, concrete curb and concrete pavement tie-ins to successfully complete the median lane.

An added benefit of working a day and night shift was being able to increase utilization on core pieces of equipment, which saved the project over \$15,000 in equipment costs. Equipment 24 hours a day required a great deal of support from the maintenance division, which ensured that they had very little downtime on the equipment.

Working at night posed several challenges. The drainage crew's work areas and supplies had to be laid out and organized during the day, and estimates of materials and truck quantities had to be calculated so that the work flowed correctly. Field engineers performed these tasks and kept quantities in order for seven working crews.

Once the median lane was constructed, the nighttime work was reduced to only drainage work, which was completed in January 2002. Their crews continued to perform concrete installation, pavement patching, and sidewalk preparation in both the asphalt and concrete sections. At the same time they were installing concrete curb and gutter, pavement tie-ins, sidewalks, driveways, and slope paving on the project.

While supervising their own crews, the project team also had subcontractors' crews to coordinate. They coordinated a subcontractor's drainage work in the asphalt section, a subcontractor's equipment and conduit installation for the traffic signal systems, and the bridge widening subcontractor. Organizing the work areas for both contractor and subcontractor was no easy task. There were many instances where two crews had scheduled to set up high- and low-lane closures in the same direction, which would have shut down Lapalco Boulevard weeks. The project team was able to minimize these conflicts by closely monitoring contractor and subcontractor work areas in advance.

With 28,000 cars traveling daily through the work area, the contractor was very serious about safety. Their Safety Division did an outstanding job of assisting with work areas as well as responding to the few citizen complaints that were received.

This is an example of a successful incentive/disincentive project, which required incredible dedication by everyone involved. To complete an \$11.6 million project estimated to take 630 days in only 156 days was a real accomplishment and worthy of the maximum bonus established by the owner.

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