

Can project alliancing agreements change the way we build?

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<http://archrecord.construction.com/practice/projDelivery/0707proj-1.asp>

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Errors, omissions, inefficiencies, delays, coordination problems, cost overruns, productivity losses—the list of complaints against (and often by) architects and contractors is a long one. The Construction Users Roundtable (CURT) has characterized the difficulties experienced in typical projects as “artifacts of a construction process fraught by lack of cooperation and poor information integration.” The historical reasons for this dysfunctionality are many, including a multiplicity of participants with conflicting interests, incompatible cultures, and limited access to necessary information.

In an influential 2004 white paper titled in part, “Collaboration, Integrated Information, and the Project Lifecycle,” CURT said, “The goal of everyone in the industry should be better, faster, more capable project delivery created by fully integrated, collaborative teams.” It is increasingly believed that the achievement of this elusive goal, commonly called “integrated project delivery” (IPD), will be facilitated by the emerging technology of building information modeling (BIM).

While a number of architects and contractors are experimenting with BIM, the very definition of IPD is unclear to most industry participants. In an effort to remedy this confusion, the AIA California Council (AIACC) recently published a report titled, “Integrated Project Delivery—A Working Definition.” The report calls IPD “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 reduce waste and optimize efficiency through all phases of design, fabrication, and construction.” A key element of this process, says the report, is early, open, and collaborative participation by designers, constructors, and fabricators “beginning when the project is first conceptualized [and continuing] throughout the full life cycle of the facilities.”

Project alliancing agreements

The AIACC report does not recommend a specific contractual structure for an IPD project, but it does mention one possible model: the project alliance agreement. This model is also referred to in recent CURT white papers, and it is increasingly mentioned in programs, meetings, and symposia exploring the progress and potential of IPD. While virtually unknown until recently in the U.S., this model has a proven track record in Australia, most significantly in the design and construction of a new National Museum in Canberra.

In the National Museum project, the owner and the primary designers and constructors were organized into an integrated group called the Acton Peninsula Alliance, under a single agreement signed by all of them. Alliance members were

chosen through a rigorous process in which candidates were evaluated not only on their technical skills, but also on their ability to work effectively in a collaborative environment. The selected exhibition design team was led by a Boston-based firm, Amaze Design. Andy Anway, the president of the firm, has referred to the alliance as "a transformative experience that changed the life of everyone who participated in it."

The alliance agreement

had as its goal the alignment of interests for the benefit of the project as a whole. Each alliance member (other than the owner) was compensated on an open-book, cost-reimbursed basis, with a preestablished profit amount approved by all other Alliance members. In addition, all of the members received prenegotiated "Gainshare" bonuses if the project as a whole achieved or exceeded agreed-upon goals, and they all paid prenegotiated "Painshare" penalties if the project failed to meet the goals. There was no expressly stated limit on the reimbursable costs payable to each alliance member, although the owner was not obligated to pay more than the amount of the total project budget to all the other alliance members combined.

The alliance was managed

by a leadership team consisting of one senior representative of each alliance member, including the owner. One hundred percent attendance constituted a quorum at each monthly meeting of the leadership team, and all of its decisions had to be unanimous. A trained facilitator, paid out of the project budget, attended many of the meetings to help guide this unusual process.

Personnel of the alliance members were mixed and matched on a "best for project" basis, and problems were solved in a collaborative "no-blame" environment. In order to achieve that environment, the owner and all of the other alliance members agreed in advance to release one another from all liability arising out of the project except for "willful default" as defined in the alliance agreement. This definition excluded "any error of judgment, mistake, act, or omission, whether negligent or not, made in good faith by an alliance member," for which no claims could be made by the owner or any other alliance member either during or after the design and construction process.

The project alliance delivery method was developed for the purpose of overcoming extreme challenges and achieving "breakthrough" results, where "business as usual" performance would not be sufficient. It achieved these goals in the National Museum project, which was completed within a fixed budget and opened on schedule on the 100th anniversary of the Australian Federation. It has also been used successfully in several dozen Australian public works and infrastructure projects, and the government of the province of Victoria has recently promoted it in a detailed Practitioner's Guide (available online at www.dtf.vic.gov.au). However, project alliancing has not been used in any other Australian vertical building project since the completion of the National Museum in 2001. According to Carey Lyon, immediate past president of the Royal Australian Institute of Architects, possible reasons for this

include the reluctance of Australian contractors to give up the adversarial approach that is "built into their business model."

"However," says Lyon, "the use of BIM and integrated project delivery will take away the ability to drive wedges into the information chain. This will open up significant opportunities to redefine contracting, and could lead to wider use of project alliancing."

Adapting the alliancing model

Here in the U.S., it appears that no major owner has taken the plunge by sponsoring a "pure" project alliance on the National Museum model. However, a number of owners have committed themselves to collaborative, single-contract project delivery systems, in which interests are aligned and risks are shared to a greater extent than in traditional contractual structures. One such owner is Sutter Health Care in California, which has been using a multiparty "integrated agreement" for its \$6.5 billion building program.

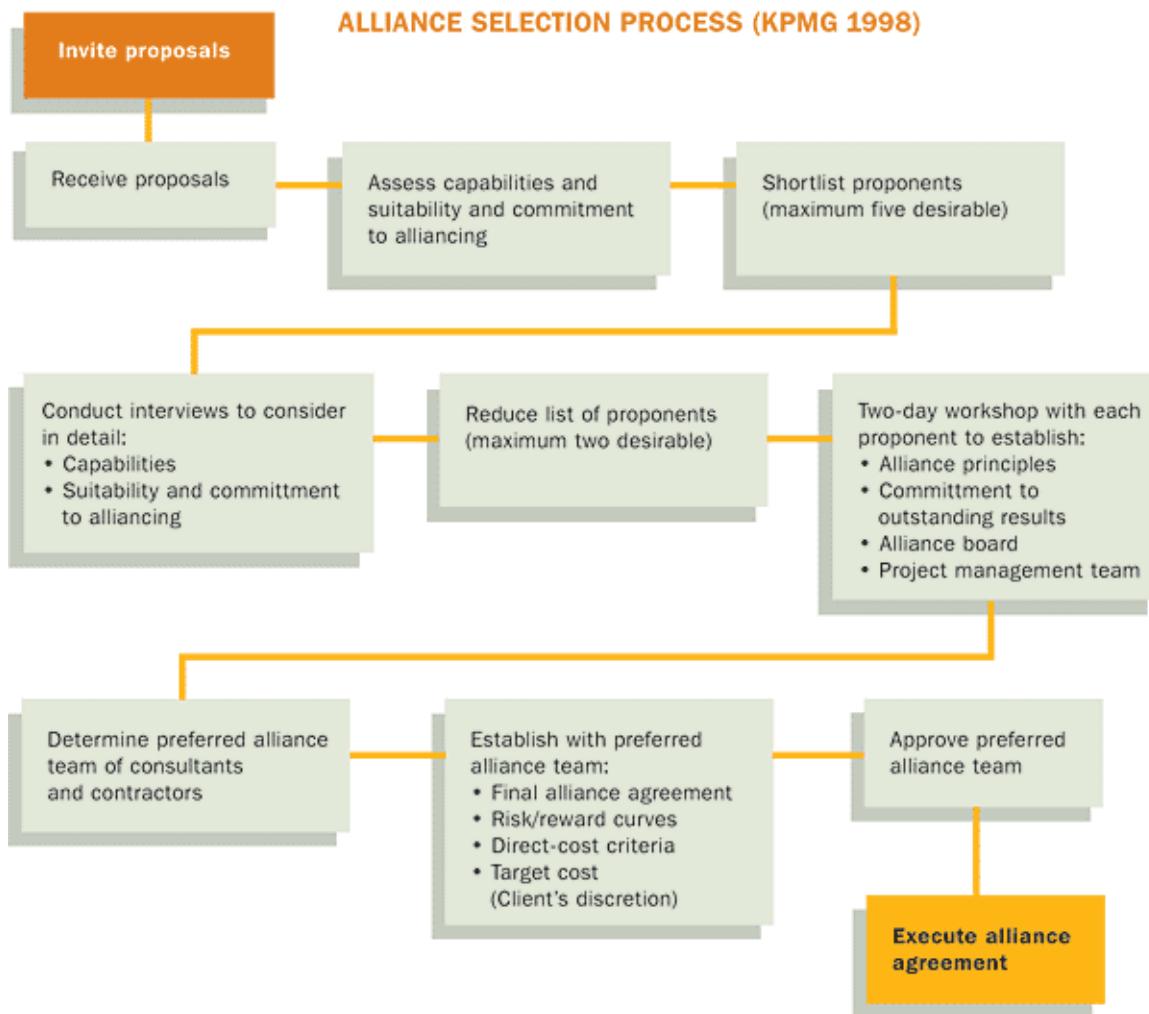
Drafted by Sacramento attorney Will Lichtig, the Sutter agreement seeks to promote collaboration and project success through such methods as early assembly of a core group consisting of the owner, architect, and contractor and an integrated project team jointly selected by the core group; joint management and decision making by the core group; establishment of contingencies and incentive pools shared by both designers and constructors; and application of "lean construction" principles developed and advocated by the Lean Construction Institute. The LCI is a nonprofit group which aims to apply techniques learned in manufacturing to help streamline construction.

While it doesn't eliminate disputes and liability through a "mutual release" such as that found in the National Museum alliance agreement, the Sutter agreement provides for the establishment of a multitiered system of risk sharing for both negligent and non-negligent design errors and omissions. A "deductible" for paying such costs is funded by one of the contingencies, above which the designer is responsible up to a prenegotiated cap, without proof of negligence. Above these combined amounts, proof of negligence is required.

Many of the principles of the Sutter agreement have been adapted and refined in an integrated contract developed by the U.S. offices of the architectural firm NBBJ. Tom Owens, a principal and general counsel at NBBJ, describes the Sutter and NBBJ forms as "alliancing lite." Owens says, "They go about as far in the direction of project alliancing as they reasonably can in the current U.S. marketplace." He freely offers the NBBJ form to owners, architects, and others at www.nbbj.com/access/intdeldraftnbbj.doc.

An integrated contractual approach is being used for a project at the University of Wisconsin that will house the public Wisconsin Institute for Discovery and the private Morgridge Institute for Research. Madison, Wisconsin, attorney Kevin Delorey says that the drafting team started out with something similar to the Sutter form, but over the course of contract negotiations "has departed substantially from that form."

As more information becomes available about this innovative project, it may set a new standard for IPD.



Other owners are putting their toes in the IPD water by developing common project conditions that are intended to be incorporated into separate design and construction contracts. This approach is being taken by Yale University and the Hammes Company, a large health-care development consultant. While these documents are intended to coordinate project relationships and reduce disputes, they don't adopt as many of the IPD principles identified in the AIACC report as the Sutter and NBBJ contract forms do.

Integrated project delivery has captured the attention of both the AIA and Associated General Contractors, which are each planning to issue some kind of IPD contract materials within the coming year. According to AIA Documents Committee chair Tim Twomey, "the task group charged with developing the AIA's materials is looking carefully at current examples of IPD contracts, like the project alliance, Sutter, and

NBBJ documents, to be sure that whatever is issued by the AIA benefits from the experience of current approaches."

Changing the system

It may ultimately come to pass that integrated project delivery will transform the contentious, litigious, and notoriously inefficient American construction industry, and that it will provide a safe contractual environment for collaboration and the sharing of information through BIM. While some hold out the hope that project alliancing will help to create such a paradise, others are working on more conventional approaches that will move in that direction but can be more easily applied, tested, and learned from in today's marketplace.

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