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## Insuring Projects Are Completed On-time and On-Budget

*The nation's hospitals and healthcare systems must address the effect of the passage of the federal health legislation (the Patient Protection and Affordable Care Act, Pub.L. 111-148, 124 Stat. 119 (2010)). The Act is estimated to add an additional 30 million patients to their existing healthcare facilities, translating to an immediate need for a minimum of 60 million square feet of facility construction. With the Act's passage, it is even more imperative that the institutions insure that construction costs are controlled, and projects are completed on time and on budget.*

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Regional and metro hospitals appear to be increasingly turning to affiliated and decentralized healthcare clinics to provide services to patients. The affiliations can be financially beneficial to the hospital and healthcare system, as well as to the physicians and surgeons who are principally involved in launching and operating the clinics. [\[1\]](#)

This article discusses effective solutions to insuring control over the construction process. Through design/build of healthcare clinics with the added requirement of fixed price contracts for construction, the owner can be certain the project will be completed on time and on budget.[\[2\]](#)

### Construction

Hospital outpatient clinics are complex buildings to construct. They deliver a wide range of services and contain discrete and different functional units. They may contain clinical laboratories, imaging and housekeeping modalities. The clinic calls for the design of highly complicated mechanical, electrical and structural systems.

There is a distinct advantage to the design/build integrated project delivery system for such clinic construction. Design build typically requires extra-diligent, minimum weekly back-and-forth sit down meetings between the architect and contractor.[\[3\]](#) Design build removes what may otherwise be an adversarial context in how the design professional and construction team typically build out a facility. Design/build also requires a conscientious effort by the client facility owner or operator to participate in the design and build review process, presupposing a facilities manager directly involved in the process.

### Avoiding Cost Overruns

Healthcare institutions are particularly vulnerable to unanticipated cost overruns in three ways – (a) incomplete plans because of the complexity and redundancy of their MEP and life safety systems, (b) the amount of time needed to successfully coordinate construction, and (c) end of project material and equipment substitutions that can shorten the lifespan of the facility. Use of the design/build modality insures the concerted cooperation to avoid such cost overruns.

As a single-source provider that encompasses architectural, engineering and construction services, the design/build team can provide a facility for a fixed sum. The consolidation of responsibility eliminates contractor claims of alleged errors and omissions by the design team. Change orders are limited to owner-initiated changes from the initial design, or unforeseen site conditions. To eliminate the traditional checks and balances that otherwise separate A/E exercises over the contractor, carefully drawn contracts with the single source provider are required.

Through design/ build, bids will come from the construction team, and work will follow, based on 100% complete Construction Documents. Through a coordinated effort with the owner and design professionals, the contractor will represent, prior to commencing construction, that the Construction Documents are in fact complete. To the extent the contractor identifies certain risks in the construction process; those risks will be allocated a certain value and bargained for up-front in the fixed price. In this structure, the contractor and owner are assured of a fixed-price for the completion of the project, only to be increased by scope changes at the election of the owner.

Through design/build, the client saves money. This translates to lower overall construction costs, but involves considerably more work on the part of the design team and contractor to coordinate early in the design phase and regularly through construction. The client medical facility will see considerably lower overall construction costs when the architect and contractor work all the details out in the design and drawing phase of the project. The savings may be as much as 30% on medical facility projects.

To mitigate construction cost overruns, healthcare institutions would benefit by taking the necessary time to fully define the project by entering into agreements with all team members—architects, engineers and the construction members—for fixed prices that would only be permitted to rise if the owner modifies the scope. This

means requiring the design team to prepare bid documents that are fully detailed, complete in all respects with each discipline. Similarly, construction managers need the opportunity to thoroughly review construction documents and field conditions to identify errors and omissions during the bid process. If conflicts or errors are found, the design team should correct them. Only then will contractors be ready to provide true, fixed-price proposals.

In today's economy, owners and lenders can no longer accept the risk that comes with funding projects that are destined to soar over budget. No standard AIA or AGC industry contract provides a strategy that allows owners and their lenders to reduce their risk on multi-million dollar loans by providing the certainty that construction loans will cover all completion and contingency costs on capital projects.

The current economic environment, and particularly given the strict limitations lenders place on credit availability to finance such projects, design/build works best when the contracts with the construction team are based on (a) fixed prices, (b) clear terms that the construction team have reviewed all the plans and drawings of the design team and confirm that they are able to build the project based on the plans and drawings, and (c) clear agreement that proscribes the narrow instances when change orders will be approved.

At the end of the day the strategy for healthcare systems is a project based on securing 100 percent complete project designs—which demands that contractors bid a fair price with fair profits. Owners will be provided with control of their projects through the use of powerful contract tools that provide strong assurances that projects will be completed for a true fixed price without unwarranted cost overruns.

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<sup>1</sup> Based on the authors' recent interview of the chief operating officer of a major regional metropolitan health care system, who served as former commissioner of a state department of health, it is apparent there are distinct financial advantages to decentralization of regional and metro hospitals through affiliated clinics that benefit from construction through the design/build delivery system.

<sup>2</sup> The design/build project delivery system involves coordination of the design team (architects, engineers and landscape architects) and the construction team (general contractor or construction manager and trade subcontractors who assist them) working together from the initial response to an owner solicitation, the request for proposal, to project completion.

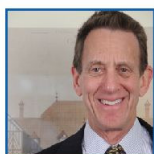
<sup>3</sup> The traditional approach for construction projects consists of the appointment of a designer on one side, and the appointment of a contractor on the other side. The design-build procurement route changes the traditional sequence of work. It answers the client's wishes for a single-point of responsibility in an alleged attempt to reduce risks and overall costs. It is now commonly used in many countries and forms of contracts are widely available.

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*Greg Korn, AIA, Leed Accredited, and Henry H. Korn, Esq., collaborated together on this article with the assistance of James Gillette. Greg Korn is a licensed architect with offices in Los Angeles and New York City whose practice includes design and build out of medical clinics. James Gillette has almost three decades professional experience in design, development, technical management and construction administration for hospitals, medical centers, large-scale additions, medical offices and outpatient clinics, O.R. and E.R. additions, surgery suites, biology laboratories and central plants. Henry Korn is one of the senior partners of LePatner & Associates LLP, headquartered in New York City. LePatner is a nationally recognized law firm that represents owners undertaking sophisticated construction projects. Henry Korn, with nearly four decades experience in construction law and other disciplines, heads the LePatner practice group involved in representing health care systems involved in construction.*