

# New Construction Project Delivery Methods and When to Use Them

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For about as long as anyone can remember, public entities in Missouri have used a design-bid-build framework for their construction projects. While there are certainly many laudable aspects of this project delivery method, other methods have gained popularity in more recent years, especially in the private sector. Despite this private sector popularity, public sector entities like school districts generally lacked authority to utilize these other project delivery models.

All of that changed last year. That's when House Bill 2376 went into effect, authorizing political subdivisions of the state, including school districts, to use two other project delivery methods: design-build and construction manager at risk. Of course, just because you now have a few new tools in your tool belt doesn't mean that they're the right tool for the job. Let's discuss what the three project delivery methods available to Missouri school districts entail, what the benefits of each are, and when each might be a good fit for your project.

## The Options

The three step design-bid-build process is probably well known to any school district official with experience in school construction. First, the district works with an architect (or engineer) to design their project. Second, the district advertises and solicits bids based on that design. And finally, the winning bidder builds the project based upon the specifications put forth in their bid.

The benefits of this tried and true approach are numerous. For one, the district retains control. You choose the architect, approve the design, handle the bidding, and contract directly with the builder. Another benefit is that by separating the design responsibilities from the construction responsibilities, your architect can effectively be an independent set of eyes overseeing your builder's work. Finally, the design-bid-build process substantially reduces conflicts of interest and appearances of favoritism. By using a sealed bidding process and awarding the construction contract to the lowest, responsive, responsible bidder, the ability of the public entity (or the architect) to "play favorites," or even appear to be doing so, is greatly diminished.

Design-build, as the name suggests, bears some relation to the traditional design-bid-build method, but obviously is missing a "bid" step. How do you pick a builder if you don't bid? Simple: the designer *is* the builder. One firm handles both design *and* construction. In some cases, one large firm has both a design team and a construction team, while in others an architecture group and a construction contractor may create a joint venture or otherwise work together to present one complete package to the district.





Having one entity handle both your design and the construction has two main benefits. First, there's no question where the buck stops. Anyone who has ever dealt with a construction hiccup where the contractor points at the architect, but the architect points back at the contractor can imagine how nice it would be to avoid all of the finger pointing. Second, the budget for the project can be better understood and controlled at earlier stages. Rather than sending out your design and then crossing your fingers that the low bid comes in under your budget, your design-build firm can usually work with you to adjust the design as needed to match your budget. In addition to these benefits, skipping the bidding process often saves time, allowing you to go from concept to reality faster.

Construction manager at risk also has a lot in common with design-bid-build; in fact, it is effectively an extra layer on top of the old standby. The district selects an architect in the same manner, most of the construction work is still decided by a sealed bid process, and a separate entity from the designer still performs the construction. However, either contemporaneously with the architect selection or at any time before bidding, the district selects a construction manager. The construction manager acts as a consultant for the district, overseeing the construction and, if brought in early enough, advocating for you during the design process as well. Once the design process progresses to completed construction documents (and before bidding), the construction manager and district agree a guaranteed maximum price. The construction manager then effectively acts as your general contractor, but most of the work is performed by subcontractors selected pursuant to a sealed bidding process.

As the name suggests, one of the main benefits of a construction manager at risk is the shifting of risk from the district to the construction manager. That is to say, if the bids come in higher than expected, the construction manager is the one on the hook for amounts over the guaranteed maximum price. In addition, the district will have a knowledgeable advocate in its corner whose interests are largely aligned with your own.

### **Decisions, Decisions**

So, with these three options now at your disposal, which one is right for your project? There are no hard and fast rules, but here are some suggestions. First, take outside advice with a grain of salt. For example, firms that specialize in design-build are probably going to tell you, regardless of the details, that your project is a perfect fit for design-build. Carefully consider their arguments and explanations, but don't feel compelled to jump to the same conclusions that they do.

Second, the enabling legislation for the new project delivery methods sets minimum dollar amounts: \$3 million for construction manager at risk, and \$7 million for design-build. So while these may be options for your larger projects, many of your projects will only be eligible for design-bid-build.

Indeed, most of your construction projects should probably continue to use design-bid-build. The old adage, if it ain't broke don't fix it, applies here. There's nothing inherently wrong with design-bid-build, so unless there is a particular advantage with one of the newly available methods that is desirable for your specific project, design-bid-build should probably remain your default.

Design-build may be a good option for a new project that needs to be completed quickly and has a straightforward, well-defined scope and objectives. As mentioned, design-build can often be completed more quickly than other methods. But adjusting scope or objectives mid-stream can be quite difficult, and costly. Additionally, should you find yourself in a disagreement with your design-builder, you won't have anyone extra in your corner; your architect won't be there to help you argue with your contractor because they are one and the same.

Construction manager at risk may be your best bet for a complex project. That complexity can be overcome by the construction manager's expertise, and the district can avoid some of the risk associated with a complex project. However, keep in mind that construction manager at risk is rarely the least expensive option. The construction manager will expect to be appropriately compensated for the risk it is assuming. Moreover, while a guaranteed maximum price sounds great in theory, keep in mind that it only applies to the project design as of the date the price is finalized. It is not uncommon for those designs to need adjustments, and those adjustments will come at extra cost to the district.

One final word of caution: always check your Board of Education policies. Across Missouri, policies are slowly being updated to reflect the project delivery options that have been added by law, but many districts still have policies in place that require the use of design-bid-build. You can't utilize design-build or construction manager at risk unless both the law and your board policies allow it.