

LEGAL SPECS



STREU



HIRST

Is it time to rethink the traditional risk-allocation model in the construction industry?

Some believe the way we typically allocate risk on projects is impairing productivity and that we should look at new, more collaborative approaches to project delivery.

Traditional construction industry contracts place significant emphasis on the consequences of failure and tend to be focused on how risks are allocated between the contracting parties. The natural reaction to this type of contract is the reinforcement of self-protective behaviour where contracting parties perceive all risks on a contract as a "zero sum" game wherein project participants can only gain/profit at others' expense.

The arguable result of this focus on risk allocation has been the creation of a highly fragmented and adversarial industry. Some argue that this comes with significant hidden costs both in terms of lost productivity and an increase in costs designed by project participants to cushion possible risks.

In support of this view, commentators rely on two fairly well-known studies, one American in origin and one Canadian. The first is from the U.S. Department of Commerce, which reports that of major American industries, the construction industry is the only industry to have actually seen declines

in productivity since 1964. In the Canadian study, the authors conclude that the premium added by contractors to cover against the five most common exclusion/disclaimer clauses results in an estimated 8% to 20% impact on the contract price.

In the United States, the perception that the traditional risk-allocation model contract is inhibiting productivity and increasing the cost of construction is driv-

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ing a movement toward an altogether different contract model based on collaboration. Proponents of this collaborative model argue that a collaborative approach to construction contracting would go a long way toward resolving four key "systemic" problems with the traditional contract approach:

- the lack of innovation and sharing of information;
- the artificial limits placed on co-operation;
- the inability to co-ordinate; and
- the "zero-sum" perception

of construction industry participants.

This proposed collaborative approach, also known as integrated project delivery (IPD), seeks to focus all project participants on the completed product, the finished building.

The motivating idea behind IPD is that a focus on the finished building rather than an exclusive focus on each participant's part of the construction will result in a better product at an overall lower cost.

This delivery method relies on the early integration of project participants to collaboratively harness their talents and insights in order to optimize project results, reduce waste and maximize efficiency through all phases of design and construction.

There has been much academic discussion of IPD, and various blue-ribbon panels in the U.S. construction industry have discussed ways to implement IPD on a broader scale. Despite that, there appears to have been few projects completed using IPD. It will be interesting to see whether this idea gains any traction in the U.S. and Canada. ♦

Norm Streu is the chief operating officer of LMS Reinforcing Steel Group and a former chair of the Vancouver Regional Construction Association. Chris Hirst is a partner at and leader of the Construction & Engineering Group of the law firm Alexander Holburn Beaudin & Lang LLP.