

Design Professionals Roundtable Recap: Contractor Involvement in Design: The Landscape of Delivery Approaches on Infrastructure Projects

By **David J. Hatem, PC**

October 1, 2026

Save the Date: This program was the first installment of a two-part series. Part Two, Revitalization of Design-Bid-Build on Tunnel Projects, will take place on February 9, 2027, from 2:30–4 p.m. ET, and will take a deep dive into the revitalization of the traditional Design-Bid-Build delivery method in the specific context of tunnel projects—timed to coincide with the ramp-up of major regional tunnel projects.

On September 30, 2026, MG+M The Law Firm hosted Part One of a two-part Design Professionals Roundtable series on delivery methods for infrastructure projects, led by MG+M Partner [David Hatem](#).

The session surveyed the range of delivery approaches used on today's infrastructure projects that allow for contractor involvement in the design of permanent work—including Design-Bid-Build, Design Assist, Design Delegation, Conventional Design-Build, Progressive Design-Build, and CM/GC—along with how each handles risk allocation, professional liability insurance, and the roles, responsibilities, and risks ("the 3Rs") among project participants.

Part One set the stage for Part Two, which will apply this framework to the specialized context of tunnel projects.

Key Takeaways

- + **Clarity in the “three R’s” is the universal fix.** Across every delivery method, most disputes trace back to unclear or inconsistent definition of design roles, responsibility, and risk allocation across the network of contract documents—not the delivery method itself.
- + **Spearin still matters, even with contractor design input.** The Coghlin Electrical v. Gilbane/DCAM case (Massachusetts, 2015) established that an owner's implied warranty for design doesn't disappear just because the contractor participated in design assist—but the contractor's degree of input can reduce its recovery. This is now cited nationally as the leading case on this risk allocation question.
- + **There's a real gap between “owner warranty” and “designer standard of care.”** Owners can be liable for design defects even when their design professional met the standard of care (a process-based test), because the owner's warranty obligation is judged on the end result. This gap is a frequent source of owner/designer tension.
- + **Design delegation clauses (e.g., AIA A201 §3.12.10) sound clean but litigate messily.** Splitting responsibility for “design criteria” (owner) from “final design” (contractor's designer) generates enormous case law over whether the owner's criteria were detailed/prescriptive enough to effectively become the design itself.
- + **Conventional design-build's fixed-price-at-tender model is structurally strained.** A 2001 Travelers study of 221 heavy civil projects found contractors can't accurately price work off ~30% design; the resulting cost overruns often get reframed as professional liability claims against engineers rather than accepted as commercial risk—~80% of such claims trace to proposal-phase issues, not final design errors.
- + **Progressive design-build (PDB) shows promise but is unproven and culturally demanding.** Early data (and Canada's ~18-month lead over the US in adoption) suggests ECI approaches address DBB's root problems, but success requires real behavioral/cultural adjustment from owners, designers, and contractors alike—not just new contract language.

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- + **“Off-ramp” is a real and recurring risk in PDB, not a rare edge case.** Notable megaprojects (BART Silicon Valley, Francis Scott Key Bridge) have off-ramped from PDB; contracts often fail to adequately address what happens to design rights, insurance, and phase-one participants' liability when that happens—this needs to be negotiated up front, not left ambiguous.
- + **Documentation of who contributed what design input is critical but rarely done.** In collaborative design-assist/PDB settings, sourcing decisions and design detail contributions often goes unrecorded (seen as “counter-cultural” to collaboration), which becomes a major liability exposure when disputes arise later.

MG+M's Design Professionals team closely monitors the legal and industry developments shaping delivery method selection and design risk allocation on infrastructure projects nationwide, and advises clients on practical, defensible strategies to manage risk and exposure throughout the design and construction process.