

## CHAPTER 1

# REPORT ON INTEGRATED PROJECT DELIVERY

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## § 1.01 FIRST, A STORY

“What do you know about integrated project delivery?” I don’t recall my exact reply. If I was truthful, as I hope—even though it was a tough admission for a lawyer—the answer was, “Nothing.”

It was the summer of 2006. The question came near the end of a meeting during the pre-design stage of the Wisconsin Institutes for Discovery (WID/MIR) project, a public/private microbiological research facility to be constructed on the University of Wisconsin campus in Madison. Site assembly and entitlements work had been ongoing for months. We were in the midst of drafting and negotiating several agreements that would establish and govern the development of the WID/MIR project as well as the ownership and operating relationships between: (a) the Board of Regents of the University of Wisconsin System—then the owner of the WID/MIR project site, and the intended owner of one of the two inter-disciplinary research institutes to be housed within the planned facility: the public Wisconsin Institute for Discovery (WID) and (b) the Wisconsin Alumni Research Foundation (WARF)—a supporting organization and technology-transfer arm of UW Madison, which would serve as project developer for itself and the University and would own the space occupied by the other research institute: the private Morgridge Institute for Research (MIR).<sup>1</sup>

The design team (A/E) selection process was about to get underway. Selection of the construction management team (CM/GC) would follow in rapid succession. Once on board, the A/E and CM/GC’s combined task would be to turn the \$150 million then committed to the project<sup>2</sup> into a world-class, state-of-the-art facility housing two complementary research institutes that, among other goals, would:

- Meet or exceed the quality of the most advanced and innovative research facilities in the country, against which the WID/MIR project was being benchmarked.
- Create a space fostering interdisciplinary collaboration among the resident scientists and researchers—the belief being such collaboration would yield scientific breakthroughs that might not be achieved in any other way.

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<sup>1</sup>For more information about the Wisconsin Institutes for Discovery, visit: <<http://www.discovery.wisc.edu/>>.

<sup>2</sup>\$50 million in State of Wisconsin funds; a \$50 million gift from University of Wisconsin alumni John and Tashia Morgridge; and \$50 million from WARF. The eventual project costs came in just above \$210 million due in large measure to the addition of an underground vivarium on an adjacent site, the relocation of an electrical substation, and lab fit-outs for the research scientists who will occupy the WID/MIR facility (and who were not selected until over two years into construction). WARF provided the additional funding.

- Provide maximum flexibility, keeping the facility relevant to advances in science and research methods for a century or more—a “100-year building.”
- Meet ambitious sustainability goals, including:
  - Recycling a high percentage of materials removed from the site—including from the demolition of the existing buildings (90% was achieved).
  - Energy and water consumption 50% lower than the typical research building on the UW Madison campus.
  - LEED certification.<sup>3</sup>

As if this was not challenging enough, shortly before project team selection began in earnest, a project consultant suggested that the owner consider having the WID/MIR project designed and constructed using an emerging new approach for delivering capital projects—a method based on creating a collaborative team among the owner, the designer and the constructor, aligning their economic interests through a multi-party agreement, thereby encouraging all project participants to act in the best interest of the project. Given the collaborative, interdisciplinary vision for scientific research embodied in WID/MIR’s mission, the notion that development of the WID/MIR facility might also help move the construction industry toward a more collaborative delivery model was an opportunity with tremendous appeal. Thus began our journey into Integrated Project Delivery, or “IPD.”<sup>4</sup>

## § 1.02 WHY THIS ANECDOTE?

First, notwithstanding the dizzying explosion of white papers, articles, conferences, seminars, webinars, power points, and other materials defining, discussing, debating, dissecting, debunking, and sometimes deriding IPD since that acronym first entered the WID/MIR project team’s consciousness over four years ago, I suspect that many, if not most, construction lawyers remain completely unfamiliar with Integrated Project Delivery, or perhaps at best, view it as a West Coast phenomenon that will burn itself out before long.<sup>5</sup>

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<sup>3</sup> Although LEED level was not specified in the final contract, LEED Silver is expected.

<sup>4</sup> The WID/MIR project was completed in late 2010, on schedule (despite both a three-month delay encountered early in the project and substantial scope additions), on budget (with collaborative design having driven millions of dollars of savings back into project scope and quality), and with among other achievements, an extraordinary safety record. A case study is expected to be released during the first half of 2011.

<sup>5</sup> By which I do not mean to suggest that the legal community has ignored IPD. For example, the ABA Forum on the Construction Industry Fall 2008 meeting in Chicago included several presentations dealing in IPD-related topics.

Second, although each construction project is unique, I believe the experience of the WID/MIR project team members is similar to that of many construction professionals who have encountered or will yet encounter IPD in that (a) the WID/MIR project was delivered using IPD, because that is what the owner wanted, that is, IPD begins with a motivated owner; and (b) none of the WID/MIR project team members had any prior experience actually working on an IPD project.<sup>6</sup>

Third, having seen IPD in action from project inception to completion, I believe it has much to offer the construction industry. Although it is fair to say there are still many questions about IPD, there are a lot more answers today than there were in 2006.

Finally, I think the legal community should be an active participant in this discussion. A white paper reporting on a series of Autodesk-sponsored roundtable events states that the most prominent issue raised by the roundtable attendees (“many of the more than 200 were principals or owners”) was “the need for new legal frameworks to match new IPD approaches.”<sup>7</sup> If they have not already done so, clients are going to be asking their construction counsel what we know about Integrated Project Delivery. My hope is that this piece will provide enough background for those interested in IPD to move toward an informed consideration of the subject.<sup>8</sup>

### § 1.03 WHAT IS INTEGRATED PROJECT DELIVERY?<sup>9</sup>

Here’s a lawyer’s answer: It depends.

Integrated Project Delivery is, first and foremost, an approach to capital project delivery—one that stresses a much higher level of collaboration among project participants than has heretofore been seen in the construction industry generally. When carried out under a multi-party contract entered into, at a minimum, by the owner, the designer and the constructor, IPD is coming to be

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<sup>6</sup> As one seminar panelist remarked in 2008, “If you have never been involved in an IPD project, you are only one project behind just about anyone who has.” Although the number of IPD projects is increasing, there are still very few exceptions to this generalization.

<sup>7</sup> *Improving Building Industry Results through Integrated Project Delivery and Building Information Modeling*, Autodesk Whitepaper, 2008, available at <[http://images.autodesk.com/adsk/files/bim\\_and\\_ipd\\_whitepaper.pdf](http://images.autodesk.com/adsk/files/bim_and_ipd_whitepaper.pdf)>.

<sup>8</sup> At the end of this chapter is **Appendix A**, listing what I consider to be some of the best resources currently available for those who find themselves involved in their first IPD project or who simply wish to expand their knowledge of IPD.

<sup>9</sup> I should note somewhere—and here seems as good a place as any—that the term Integrated Project Delivery was coined and registered (and as a process, IPD is trademarked) by Integrated Project Delivery® Inc. of Orlando, Florida, with certain use rights having subsequently been granted to the Lean Construction Institute. That said, the term Integrated Project Delivery and the acronym IPD appear to have become somewhat ubiquitous at this point, and, correctly or incorrectly, are being used generally without attribution.