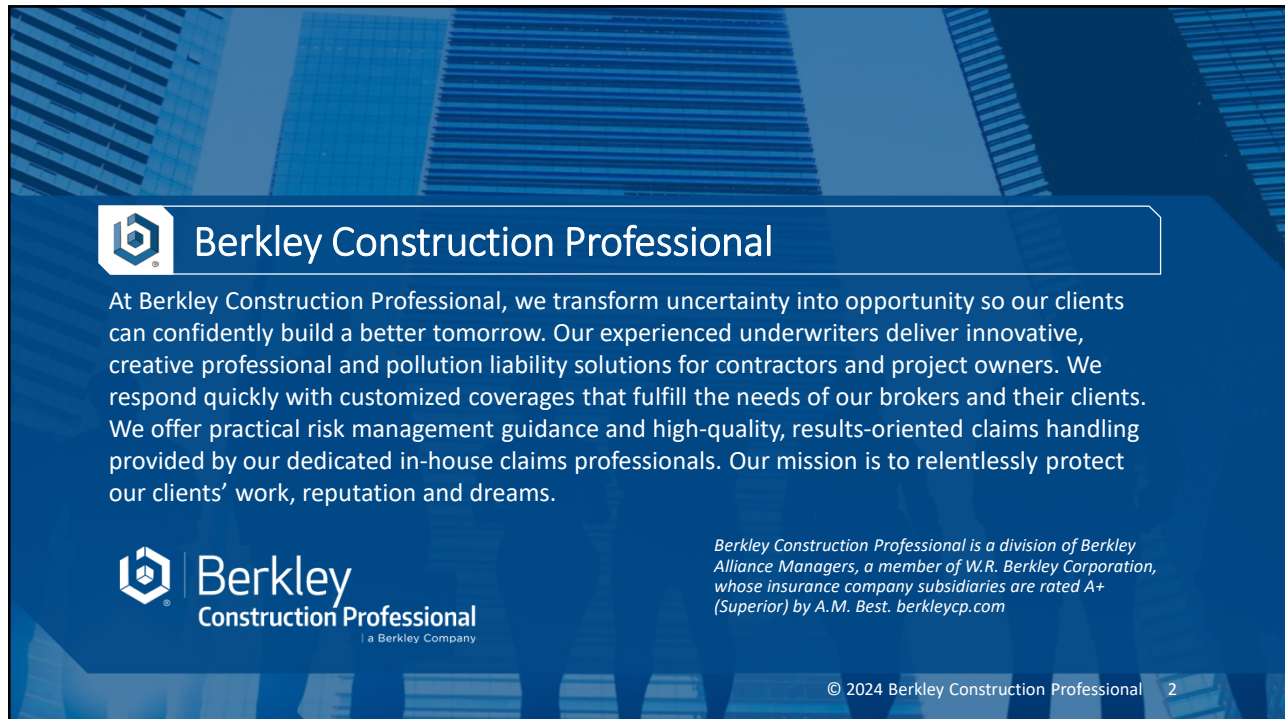




Integrated Project Delivery (IPD) is More than Collaboration


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2



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3



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David Pacifici
Senior Vice President

- 35+ years as an underwriter and licensed broker
- 25 years providing professional liability insurance to real estate developers, construction contractors and design professionals
- Provides strategic leadership and direction for crafting coverage to solve clients' professional liability insurance needs for alternative project delivery methods such as Integrated Project Delivery (IPD), Public-Private Partnerships (P3) and Progressive Design Build



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Andrew D. Mendelson, FAIA
EVP, Chief Risk Management Officer

- 10+ years as BAM Chief Risk Management Officer
- Licensed Architect, firm principal
- 36+ yrs experience, large firm A/E
- PM, Market Leader, Contracts, CFO, Director of Practice Management
- AIA Documents Committee 2003-2017
- LFRT Legal Subcommittee 2000-2010
- ACEC Risk Management Committee 2014+
- Risk+Project+Practice Management = Firm Success

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Why IPD?

Integrated Project Delivery (IPD) is a project delivery approach that is an important alternative to traditional methods of project delivery

The shortcomings of other methods of project delivery are the “why” of IPD

IPD avoids the zero-sum game, the cost and risk shifting of traditional project delivery methods



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IPD Team Member Benefits

- Collaboration between team members
- Achievement of same goal/milestones
- Mutual respect
- Innovation
- Open communication
- Due diligence
- Sharing of financial risk & reward
- Trust
- Valued based decision making



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Lean Construction & IPD

Lean Construction arose from the “Toyota Way” and Kaizen (Continuous Improvement)

- The Six Tenets of Lean Construction
 - Respect for People
 - Optimize the Whole
 - Generate Value
 - Eliminate Waste
 - Focus on Flow
 - Continuous Improvement
- Lean Construction does not require True IPD delivery
- Lean Construction without the waiver of liability and risk/reward incentives is IPD Lite

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IPD Terms

Target Value Design

A management practice that drives the design and construction to deliver customer values within project constraints

Project Validation

Project validation demonstrates whether the team can deliver a project to the owner's business case and scope within the allowable budget and schedule

Pull Planning

A construction scheduling technique that involves establishing project milestones and then working backward to outline steps to achieve them, characterized by a backward timeline and strong collaboration

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IPD Terms

Target Costs

Amount to complete the project to Target Value Design

- Does not include Contingencies and At-Risk Profit Pool
- Includes actual costs to be paid, including overhead to the IPD team

Contingencies

Amount budgeted for design and related issues that may arise

- Not for owner-initiated increases in project scope
- Senior Management Team (SMT) has authority to disburse

At-Risk Profit Pool

The “profit” portion of the compensation for the IPD team members

- Does not include actual costs and overhead
- Senior Management Team (SMT) has authority to disburse

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IPD Budget Terms

Definitions can vary in different contracts

Estimated Maximum Price

The Target Cost plus Contingencies and the At-Risk Profit Pool

Total Contract Price

Another term for the Target Cost plus Contingencies and At-Risk Profit Pool



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What is IPD a solution for?

IPD, together with Lean Construction...

Can achieve projects that are superior in delivering:

- Full project scope
- To budget
- To schedule

Can achieve projects that utilize:

- Collaboration between the team members to optimize the whole project, instead of each designer and contractor seeking to optimize their own scope
- Financial incentives and contract terms that align the interests of the design team and contractors with those of the project owner; greatly reduces conflict/friction

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True IPD & Contract Terms

The members of the design and construction team must be motivated to align interests

The True IPD contract is usually a multi-party contract that includes the key design firms, prime contractors, and the project owner

- The owner engages these firms early on by selection
- They are the IPD team
- These firms are subject to the contract's terms and the risk/reward incentives



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True IPD & Contract Terms

These firms participate in an iterative process in the “Big Room”



This is the Project Validation process by which the IPD team establishes the:

- Target Value Design
- Target Cost and Contingencies, Escalations
- At-Risk Profit Pool

The IPD contract requires full transparency, or “open book” for all aspects of the project

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True IPD & Contract Terms

The contract outlines the Target Costs and risk/reward incentive structure

- There is no stipulated amount (fixed price) or GMP (not to exceed price)
- There is an estimated Total Contract Price, which is the total of the Target Costs, Contingencies, and At-Risk Profit Pool (and Escalations)
- The owner is responsible for the payment of actual project costs and the overhead of IPD team members, even if the project is over budget
- Only the profit portion of the IPD team members' compensation is at risk



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True IPD & Contract Terms

The Senior Management Team (SMT) is established

It has the authority to make important decisions, including changes to the project

The SMT has one executive representative each from:

- Project Owner
- Prime Architect
- General Contractor



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Contract Terms – Waiver of Liability

The contract includes a waiver of liability provision, which has some exceptions and limitations

- The effect of the waiver is that the entire team is financially responsible for issues that usually would be resolved by a change order presented to the owner
- This change is key to understanding the challenge of insuring IPD projects for Professional Liability
- The contract authorizes the SMT to vote to disburse funds from the At-Risk Profit Pool for issues that cause the project cost to exceed the Target Cost and Contingencies and are not Owner-initiated changes or subject to the Escalations provisions of the contract
- This reduces the amount of the At-Risk Profit Pool that remains available to distribute at the end of the project to the IPD team

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Risk Allocation in True IPD



The cost to the project owner includes:

- The estimated Total Contract Price, which is the total of the Target Costs, Contingencies and At-Risk Profit Pool (and Escalations)
- If the project exceeds this amount, they are still required to pay the IPD team members for the actual costs and overhead of the remaining project scope
- In that situation, the total amount of the At-Risk Profit Pool would have been disbursed by the SMT for what would ordinarily be billed as change orders

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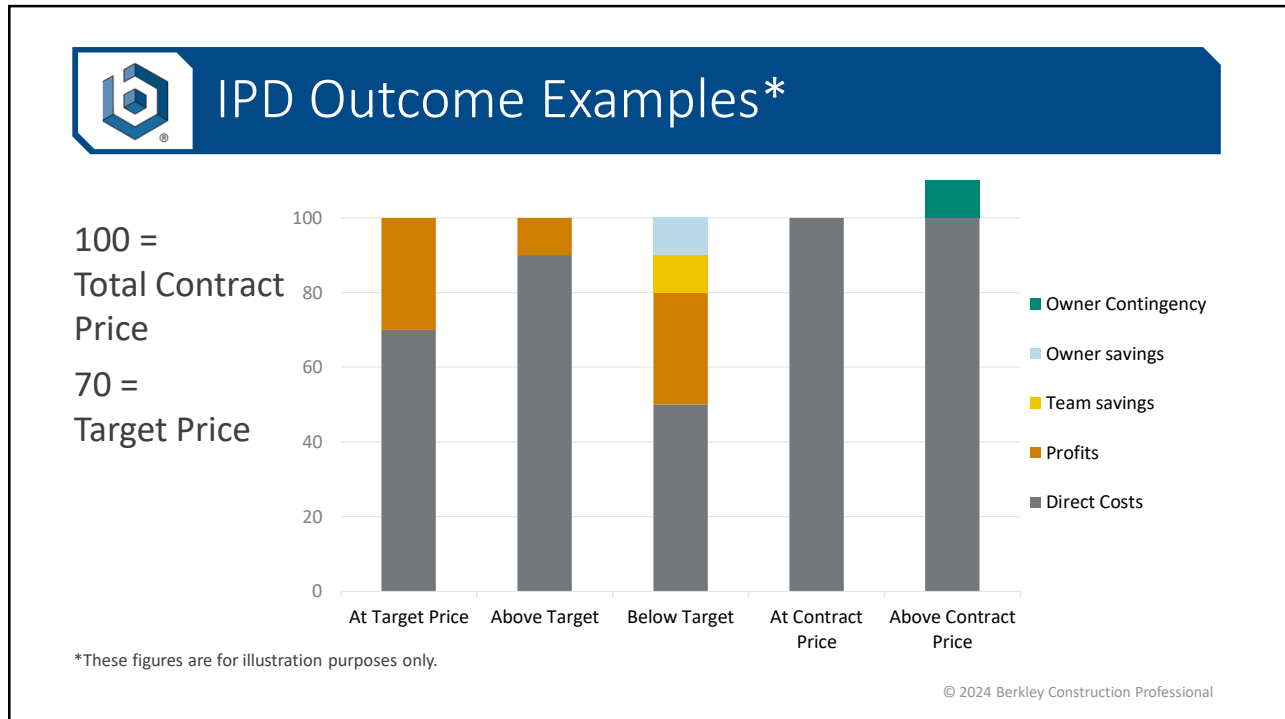
Risk Allocation in True IPD

The IPD team (other than the owner) bears substantial risk they do not have with other delivery methods

- The advantage of the IPD delivery is that the team is always seeking to maximize the amount of the Profit Pool available at the end of the project
- That is done by continually improving the workflow of the project to recover from issues that caused disbursements from the profit pool
 - This is NOT value engineering or other reductions in project scope, but improvements in efficiency.
- The “opportunity cost” to the IPD team members of losing the entire profit element on a multi-year project may be more than they can bear
- The IPD team would want insurance to reduce their exposure to losing the entire profit pool

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18




19

Integrated Form of Agreement (IFOA)

Within the contract (IFOA) seek out the:

- IPD team/parties in contract with Owner – only entities scheduled in a policy as Named Insureds and most often the Owner is First Named Insured
- Key contract term – may be identified as either
 - Waiver of Liability
 - Limitation of Liability



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The IFOA Requires

Costs that increase above the project's **Target Costs** will be reimbursed from the project's budgeted **Contingencies** and then from the **At-Risk Profit Pool**

At-Risk Profit Pool: Separate compensation that the Owner agrees to pay the Core IPD Team for delivering the project on time and under budget

This is not guaranteed!

The Core Team agrees they are "**At Risk**" if the **Project Costs** exceed the **Target Costs** plus the **Budgeted Contingencies**

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Three Main Points

1. Post-project completion or some period after that, depending on the IPD contract, the Waiver or Limitation of Liability provision will no longer apply
2. During the construction phase, these provisions may mean that claims are not made at negligence, and therefore may not trigger coverage under the standard Professional Liability policies of the A & E firms, or of the GC and other contractors
 - Those entities' policies all include a broad exclusion for claims made contractually and so bar coverage for claims made under Professional Liability
3. This is the reason that a Project Specific policy is required and one that has a coverage that can be triggered without the Contractual exclusion barring coverage; Rectification or Indemnification

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22



IPD & Professional Liability

Must-Have Coverages for IPD Projects

Protective Indemnity

- Only applies when underlying claim is against sub-consultant that is not part of the IPD core team, not bound by waiver in IPD contract

Professional Liability

- 3rd party claims
- Claims against IPD team members by the owner, but only after project completion/final distribution of At Risk Profit Pool (I v I exception)



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IPD & Professional Liability

Must-Have Coverages for IPD Projects

Indemnification Loss Coverage/1st Party

- This is a replacement and an improvement over Rectification or Mitigation of Damages coverage as found on CPPI, PERFORM or similar competitor form
 - Claims between the Insureds allowed, but with no defense and excess of a very substantial retention
 - Coverage grant does not have the “overhead and profit” exclusion (or similar) found in most Rectification insuring agreements; recognizes that we are insuring a portion of the At Risk Profit Pool
- The target attachment point for the SIR is to be excess of the Target Cost (includes any contingencies)
 - Owner payment of SIRs, 25% – 40% of At-Risk Profit Pool

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Why Rectification Coverage is Required?

- Contractual exclusion and Insured vs. Insured (I v I) exclusions in CPPI/Professional Liability coverage
- Use of Rectification as a first-party cover that doesn't require a third-party claim and to which both the contractual and I v I exclusions don't apply
- Possible issues with "overhead and profit" exclusion, each claim SIR
- Overview of the original intent of Rectification to address Design/Build projects, with Contractor entity not being able to submit change orders, and not being able to wait for professional claim by Contractor against their design sub to be settled/adjudicated

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Advantages of Indemnification Loss approach

How Indemnification Loss differs from Rectification Coverage

Key coverage differentiators in our new IPD policy:

- There is no "overhead and profit" exclusion, which is a particular deficiency of Rectification. This contemplates that the coverage indemnifies reductions in the At-Risk Profit Pool; these are still triggered by negligent Professional Services
- The SIR applies on an aggregate basis, rather than "each claim"; this contemplates that we are addressing overall reductions in the At-Risk Profit Pool caused by disbursements approved by the SMT for issues that would be change orders in traditional project delivery.
- This coverage is not subject to Contractual exclusion or the Insured vs. Insured (I v I) exclusions that apply to Professional Liability claims.

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26



Most Likely IPD Project Types

Project Owners

- Public projects, either directly for public entities or for concessionaire entities delivering projects under a Public Private Partnership scheme
- Private (for profit) or other (not-for-profit) projects, most commonly for Healthcare/Hospital organizations, also other non-environmental projects for target Commercial, Institutional, Manufacturing/R & D, and more



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Most Likely IPD Project Types

Project Characteristics

- The common profile for these projects is that have critical schedule demands which require a great deal of coordination between the consultants, the GC and prime sub-contractors
- If there was a way to make the walls, floors and ceilings of a hospital “see through”, the number of cables, wires, pipes and other mechanical systems would immediately illustrate the high value of coordination
- The Owner’s perception that the project **must** be delivered to the desired scope, in full and within the required timeframe; cost is important but the owner is willing to pay a bonus for results

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28



Examples of Recently Delivered IPD Projects

Learn more about these high-profile IPD projects!

<https://southlandind.com/project/penn-medicine-pavilion>

<https://www.smithgroup.com/projects/california-pacific-medical-center-van-ness-campus>

<https://www.bartonmalow.com/projects/battery-cell-manufacturing-facility/>

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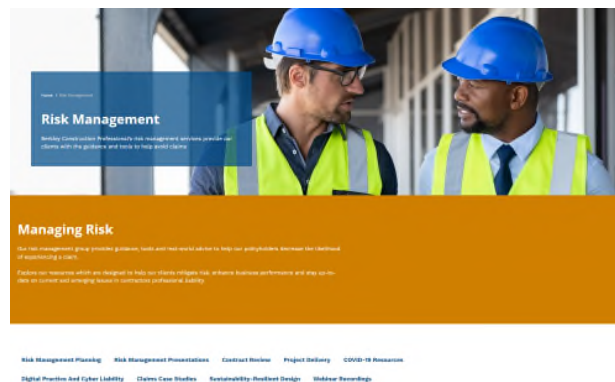
29



Summary

- Learned the key aspects of Integrated Project Delivery
- Understand what insurance is available

Available Risk Management Resources on berkeleycp.com



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30



Questions?

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