

Discussion with Design-Build Expert

1. The obvious first question is why would a client/Town want to go to a design-build contract vs. a conventional client design-tender-build project. Ron Martin has never been involved with a design-build project and he felt that in a conventional project the architect, structural engineers and contractor all work for the Town. Martin's opinion is that in a design-build project they all work for the contractor.
 - Benefits of design-build including:
 - Single source of accountability – one entity is accountable for everything
 - Budget Management – once the budget is set, over runs/extras rarely occur
 - Enhanced Communications
 - Fast Delivery of Project
 - Quality Control
 - Continuity – the firm is involved from start to finish and reduces things falling through the cracks.
 - Cost savings – typically a design-build can save the client in several areas including the design, the construction fee and the general conditions.

Evidence: Page 29, Sentence 20

MS. KATE MCGRANN: Had you worked or did you have any experience with design build construction contracts or projects before -- before this one?

MR. RON MARTIN: No.

2. The next item is the need for a Performance Bond. Ron Martin was "surprised" that there was not a performance bond. He stated that it is an insurance that would guarantee that the project would be completed and that not having a performance bond would put the citizens at risk. We need to explain:
 - Performance bonds are not simply an insurance policy

- There are significant costs that are attributed to bonding a project and typically the contractor adds his overhead on top of the bond.
- If a contractor can be bonded do you really need one.
- In this situation, Sprung was already 125 years in business and BLT had a long track record as well.

Evidence: Page 198, Beginning at Sentence 16

MR. RYAN BREEDON: Right. Okay. And you were asked a number of questions about performance bonds. Had you ever been involved in a construction project on behalf of the Town that did not include a performance bond?

MR. RON MARTIN: Maybe some small ones.

MR. RYAN BREEDON: Anything of this size?

MR. RON MARTIN: No. No, no.

MR. RYAN BREEDON: Had you ever seen a construction project of this size that didn't include a performance bond?

MR. RON MARTIN: Not that I'm aware of.

MR. RYAN BREEDON: Ever even hear of one?

MR. RON MARTIN: Never heard of one.

MR. RYAN BREEDON: Did anybody explain to you why nobody at the Town had requested or required BLT to post a performance bond?

MR. RON MARTIN: No.

Evidence: Page 33, Beginning at sentence 4

MS. KATE MCGRANN: I'm going to turn to the payment provisions as set out in this contract in a second. One (1) thing we haven't seen is any indication that a performance bond was taken by the Town on this construction project. Had you seen those used on construction projects you had done with the Town other than this one (1)?

MR. RON MARTIN: Yes. And -- and normally what I've been used to is -- is when a -- when a project is tendered, there's a couple of bonds submitted a long with a tender, one (1) being a bid bond that basically the contractor will honour that price that they've submitted so they don't just change their mind and walk away. And then the second bond that's usually put in place, the performance bond, prior to or in conjunction with signing the contract is that, if -- if something should happen halfway through a project to the -- to the contractor, like, receivership or bankruptcy, then really the performance bond, which is just insurance, is that an insurance company will then come in and complete -- complete the project for the original contract price.

So, my understanding has always been, if something happened to the contractor halfway through and we were losing a lot of money, we'll just walk away. But with a performance bond, then -- then the insurance company has to come in and complete the project.

MS. KATE MCGRANN: Do you know if there was a performance bond taken in association with these construction projects?

MR. RON MARTIN: I don't know. I don't know. I don't think there was. I didn't see one (1). Let's say that.

MS. KATE MCGRANN: Are you aware of any reason why a performance bond wouldn't be taken by the Town on these construction projects?

MR. RON MARTIN: I don't know. I don't know why they wouldn't. It costs money. A performance bond is just like an insurance policy, so it -- it does cause -- it's a price that's put into the -- the original construction cost. Certainly, the client or the Town would have paid for it indirectly.

3. We need to understand the benefits of Sole Sourcing and the possible pitfalls. What are the experiences of sole sourcing? The Town, after review realized that there was only one company that build fabric buildings such as Sprung. The Town also tried to have Sprung/BLT know that we were investigating others types of construction to ensure they keep their pencils sharp.

Evidence: Page 194, Sentence 18

MR. RYAN BREEDON: Did you find it unusual that you didn't have the detailed specifications of what it was that the Town had actually bought when you got brought in to do this?

MR. RON MARTIN: I did.

MR. RYAN BREEDON: And of course by this point, we know that the Town had already paid BLT \$3 million. Right? I mean, before you even come into the project, they're already out \$3 million. Were you concerned about that in light of the questions about what it was that had actually been bought?

MR. RON MARTIN: I was -- sure I was concerned. That's why I -- obviously, like we talked about earlier, tried to rejig the payment schedule to -- to something I was a little bit more comfortable with.

MR. RYAN BREEDON: You've testified that you yourself had not been involved in a design build contract of this type before this project?

MR. RON MARTIN: That's correct.

MR. RYAN BREEDON: And do you know whether the Town had been involved in this kind of contract before? Maybe not you personally but for some other project?

MR. RON MARTIN: Certainly not that I'm aware of -- that I'm personally aware of, but whether they did or not -- I mean, I was around for most of the major capital building projects, and I don't ever remember one being done like this before.

MR. RYAN BREEDON: Did anybody ever explain to you why the Town had decided to enter into this type of contract?

MR. RON MARTIN: To explain to me why? I -- I think there was some discussion -- general discussion before I was involved with the project. Sort of the -- the appeal, I guess I could say, of the Sprung structures. But not specifically the sole source system that ended up through the -- the BLT/Sprung combination.

MR. RYAN BREEDON: Well, the sole source is a separate piece. I'll -- I'll ask you about that, too. But in terms of the decision to go ahead with a design build contract as opposed to the sort of traditional contract that you've described, did anybody explain to you why the decision had been made to go ahead with this design build scheme?

MR. RON MARTIN: No.

MR. RYAN BREEDON: Okay. Did you ask?

MR. RON MARTIN: I -- I don't even know who I would have asked.

MR. RYAN BREEDON: And did anybody explain to you just on the sole source point why this contract had been awarded sole source?

MR. RON MARTIN: No.

MR. RYAN BREEDON: Is this the sort of thing that you would expect to have been tendered?

MR. RON MARTIN: This project? Both projects?

MR. RYAN BREEDON: Yes.

MR. RON MARTIN: I guess in my opinion, it could have been tendered, and I'll clarify that a little bit. Even if -- if the Town was totally committed to the Sprung structure, I think the project could have been tendered with that as a pre-determined piece of the project 'cause everything else -- electrical, mechanical, concrete, drywall, paint -- could -- could have gone through the general bidding process with the general contractor carrying the Sprung, just essentially, I guess, like BLT did as a -- as a component of that big building.

4. This item is in regards to site works. Ron Martin stated that it was unusual that the town vs. the general contractor were going to do the site works. He also stated that this was a safety issue. He left the impression that having two contractors on the same site would cause some type of accident. Martin found it odd that the design-build contractor was only responsible for 10 feet outside the building. Clarity needs to be given that:

- There is no safety issue at all. The Ministry of Labour may/would insist on one point of contact but this could ensure increased safety
- There is savings to be realized. Typically, when a general performs all of the site works, they add their overheads on top of the site works costs.

Evidence: Page 47, Sentence 18

MR. RON MARTIN: Well, I think when I originally reviewed this contract, I realized that the contract, the Sprung BLT contract, was for the building itself only and didn't include -- and just sort of around the perimeter of the building didn't include site work, civil work, parking lots, services, anything like that, that was to be under a separate contract.

MS. KATE MCGRANN: And were you involved in creating or awarding the contract for the work that BLT was not going to do, or the contracts?

MR. RON MARTIN: No. There was a little bit of overlap, coordination, because I was sort of doing the building and -- but the -- the engineering, the civil works were done through -- through Mr. Houghton's office, through engineering.

MS. KATE MCGRANN: In the work that you had done on construction projects for the Town before, had those projects involved a physical division of -- of responsibilities or parties responsible for the construction work in the way that this did?

MR. RON MARTIN: No. Generally speaking, a project was the entire project.

MS. KATE MCGRANN: Were there any issues or complications presented by the fact that there was this physical division of responsibilities on the site?

MR. RON MARTIN: There were. I think -- do you want me to describe a few of them?

MS. KATE MCGRANN: Yes, please.

MR. RON MARTIN: I think one (1) of 25 the biggest ones, and the -- and was health and safety. Because basically what you ended up with is two (2) contractors on one (1) piece of property with -- both have -- have their on-site health and safety reps. I know BLT had a third party monitoring theirs, they would come to the site all the time to make sure everything was in order. And then the -- the site work people had their own. So we ended up with a bit of a situation, fortunately it didn't happen, but should someone get injured on the site, on this side of line or on this side of the line, where did the responsibility fall. And -- and it got even a little more difficult because you had to go across the site work project to get to the BLT project. So there was some pretty -- pretty tense meetings for a while about that. And -- and the two of them, it was up to the two of them because my version was look, you guys both accepted these contracts, you knew what it was when you got into this, so you're going to have to work it out between the two of them. And they did. And -- and thank -- you know, luckily nothing happened, but that was one (1) of the main things. The other thing that we found a little bit -- when it's all under one (1) roof, when it's one under contractor (sic), the water line, the excavation, the gas line coming in, the hydro is all -- I'm dealing with one person representing that contractor. But well that -- that's not me, that's the --

that's the water guy, or that's not under us. So there was a -- the -- the BLT contract would, for instance I'll just use electrical, they had -- they were involved in all the electrical inside the building. But the outside was a different contractor coming in. So where does all the conduit go out through the wall to match this guy coming in? Well, no, I put it here. Well, I'm -- I don't want to go there, I want to go over here. So there was that kind of stuff that was -- that happened that was, I guess I could say not as smooth as you would if it was all under -- under one person's responsibility.

MS. KATE MCGRANN: Okay. Just a couple of follow up questions on what you just said there. You said it was between the two (2) of them to figure out. Who are the two (2) of them?

MR. RON MARTIN: The two of them at the time was the BLT folks and I think -- and I could be corrected -- I think it was Arnotts that ended up doing all the site work. Parking lots and stuff like that.

MS. KATE MCGRANN: And I take it from the way you described that to me, but you'll correct me if I'm wrong, that -- let me do it this way. How much of the issues that you identified just there had been contemplated, discussed, addressed before you became construction coordinator?

MR. RON MARTIN: I have no idea.

MS. KATE MCGRANN: Okay. While you were working on it, was it the case that the issues kind of came up as they came up and were -- were dealt with in real time?

MR. RON MARTIN: Sure, we had to. It had to be dealt with.

THE HONOURABLE FRANK MARROCCO: It would seem they weren't addressed until you started addressing them. Just before you -- I just want to ask one other question. Mr. Martin, was there a separate contract then, between the Town and whoever was doing the site work?

MR. RON MARTIN: Yes, there was. I --

THE HONOURABLE FRANK MARROCCO: And you had -- sorry, go ahead. I didn't mean to interrupt.

MR. RON MARTIN: I think that was -- it was tendered separately and awarded completely separately from the -- from this original contract.

THE HONOURABLE FRANK MARROCCO: And that contract was -- went -- went out according -- was tendered, is your understanding?

MR. RON MARTIN: As far as I know, yes.

THE HONOURABLE FRANK MARROCCO: All right. And between the Town and the contractor that was doing the site work?

MR. RON MARTIN: I think. I wasn't involved, so I'm kind of guessing a little bit here.

THE HONOURABLE FRANK MARROCCO: All right.

MR. RON MARTIN: As far as I know, the -- through the engineering department the -- it was put out for tender -- it was put out for tender and -- and bids were received and the award was -- was submitted or the contract was submitted. Yes.

THE HONOURABLE FRANK MARROCCO: Thank you.

5. The next concern was the payment schedule and the large upfront costs. Ron Martin stated that he was “surprised” when he saw this even though it was explained to him. He made the comment that we paid 25% upon signing the agreement and then 25% on ground preparation. He stated that we have paid for 50% of the project and no shovel in the ground.
- The Sprung facility required a large payment to begin the design of the structures and as well the ordering of the membrane materials.
 - It is not correct that in a conventional project, you would have already paid for the architectural fees, you would have paid for the structural fees and possibly for anything else that required a deposit like the ice making equipment, the Zamboni, etc.?

Evidence: Page 36, Sentence 5

MS. KATE MCGRANN: This is the payment schedule that was attached to this contract. And it provides for a 25 percent deposit on the day of signing, a 25 percent draw on the completion of ground preparation, 25 percent draw on the delivery of the -- or the arrival of the Sprung structure to the site, and 15 percent on substantial completion with a 10 percent final payment forty-five (45) days after substantial completion. What was your reaction to this payment schedule when -- when you saw it?

MR. RON MARTIN: I was a little surprised.

MS. KATE MCGRANN: What about the payment schedule was surprising to you?

MR. RON MARTIN: Well, I think what -- what surprised me the most when I saw this was that the contractor, builder, had 25 percent payment really with -- I had nothing. The Town had nothing other than a signed contract and they had percent of 'X' 25 million dollars. So, I found that rather -- going back to our discussion about you get paid for what you do, I -- the Town now has put out a considerable amount of money and really has nothing on our property. We have no building. We -- we have no work completed to date. That -- that I found rather unusual, to be honest with you.

MS. KATE MCGRANN: Looking at drawing number 1, what would the Town have at the time that drawing number 1 has been paid and, actually, 50 percent of the contract payment has been paid out?

MR. RON MARTIN: Yes.

MS. KATE MCGRANN: What --

MR. RON MARTIN: No, you're right, fif -- 50 percent of the project cost. And, basically, at that stage, I've got ground prep.

MS. KATE MCGRANN: For those of us who aren't familiar with construction projects, what does 'ground prep' mean?

MR. RON MARTIN: I don't even know because that -- ground preparation could be excavation, could be preparing the site, stripping the topsoil. You know, I think that could be interpreted a lot of ways. So, you're absolutely right. At -- at that stage in the process, the Town has paid 50 percent of the project cost for something prepared on the site.

MS. KATE MCGRANN: Had you seen a payment schedule like this on any of the construction work you had done before?

MR. RON MARTIN: No.

MS. KATE MCGRANN: Do you know who requested this payment schedule?

MR. RON MARTIN: No.

MS. KATE MCGRANN: Beyond other than being surprised when you saw this, did this payment schedule cause you any concern with respect to what the Town was embarking on?

MR. RON MARTIN: Well, it did. I mean, at this time I didn't know who BLT was or Sprung or anything else about them. So I think -- so now as I -- I'm theoretically a construction coordinator of something like this. Worst case scenario: Somehow a large amount of money has been paid and should have -- something happened and the contractor just say, bye, what would we -- what would we do? What position would the Town be in?

MS. KATE MCGRANN: Now, you mentioned that you didn't know BLT or Sprung at this time, and you describe a theoretical risk.

MR. RON MARTIN: Yeah.

MS. KATE MCGRANN: I take it that that risk did not -- did not actualize.

MR. RON MARTIN: No.

MS. KATE MCGRANN: But --

MR. RON MARTIN: No, it didn't. But obviously at the time, I didn't know, and this was of some concern that I think -- I think I didn't want to be the person standing up in front of Council explaining what happened to \$5 million. Yeah.

MS. KATE MCGRANN: Even though it didn't come true, it was a risk that existed --

MR. RON MARTIN: Yeah. MS. KATE MCGRANN: -- under the contract. MR. RON MARTIN: And I felt we should be better protected, let say -- put it that way. MS. KATE MCGRANN: Did you have

any discussions with anyone about -- about the risk you saw in this payment schedule when you looked at the contract?

MR. RON MARTIN: Yes, I did. I -- I think I spoke to -- well, I think my first discussion was with the treasurer at the time, Ms. Leonard. And I said, so what's this deposit all about? You know, I found it a little unusual for -- because, I mean, the government -- the Town paid their bills. There's no risk for the contractor at the other side. And I believe -- and certainly I'd want this confirmed if you folks speak to her -- is the explanation was something to the effect -- and it made a little bit of sense -- is that to fabricate these buildings, they're custom made, and there had to be a fairly substantial deposit made to this -- through BLT to the Sprung folks to -- to really make these structures 'cause you don't buy them off the shelf. So that's kind of where the -- where the 25 percent came into the picture. It made a bit of sense, I guess, at the time. It had already been spent, so I wasn't going to un-spend it.

6. This item is in regards to when Ron Martin became involved with the design-build project. He stated that like a conventional project he should have been involved at the beginning. He stated that when he received all of the drawings etc. and had discussions of what's in and what's out was a bit of a shock! Is it not true that the project coordinator does not need to get involved with the designs etc. since he has no experience in recreational facilities? Sprung is partnered with Performance Recreation Consultants who are the experts of these types of facilities.
 - We need to understand that in a design-build the Town needs to provide the desired components and the design-build team do the rest.
7. The question was posed to another witness about taking the Sprung building concept to the Building Department. The question related to the fire rating of the membrane itself. Sprung states that their membranes (fabric) and their building structure meets and exceeds all building codes. Inquiry Counsel then said "did you or anyone take this to the building department to see if these claims are correct?" When would you normally take a design-build concept to the building department for their review? It would be our position that the Building Department would tell us that they need to see the drawings before we will make any comment.
8. Does it make sense for a municipality to enter into a design-build project?