



NORTH AMERICAN CONSTRUCTION SUMMIT

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**Design Professional Contracts: Are They a Sword?
Are They a Shield? Are they Both or Neither?**



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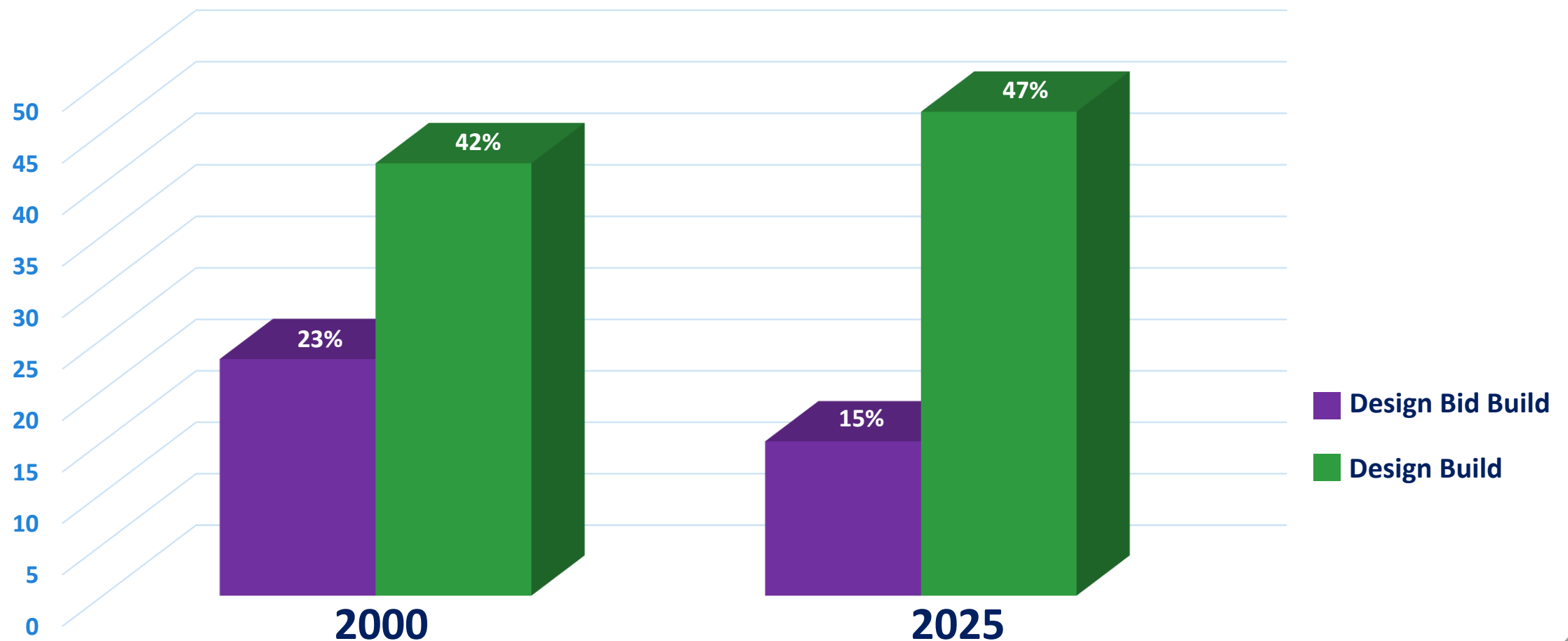
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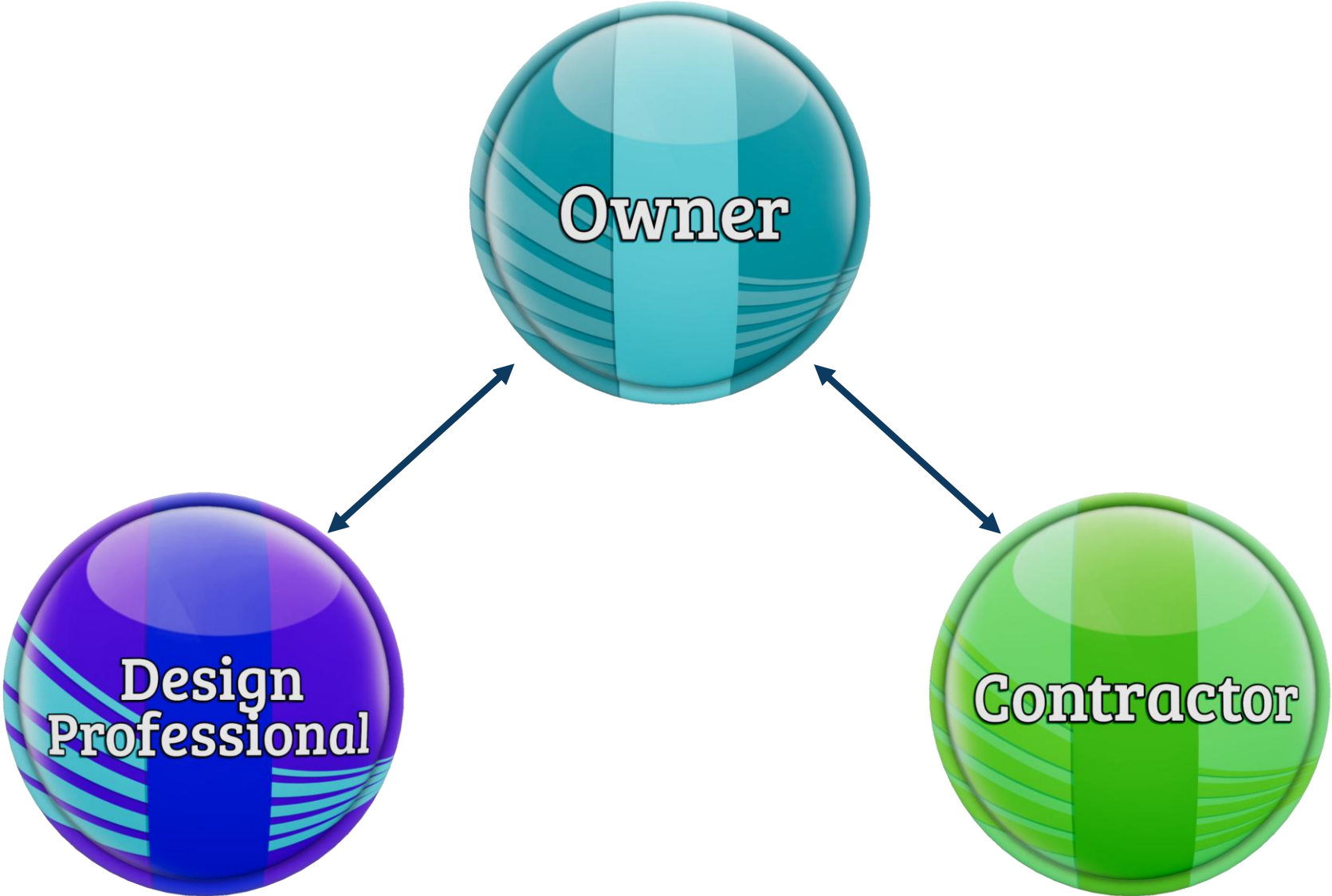
DESIGN BUILD V. DESIGN BID BUILD



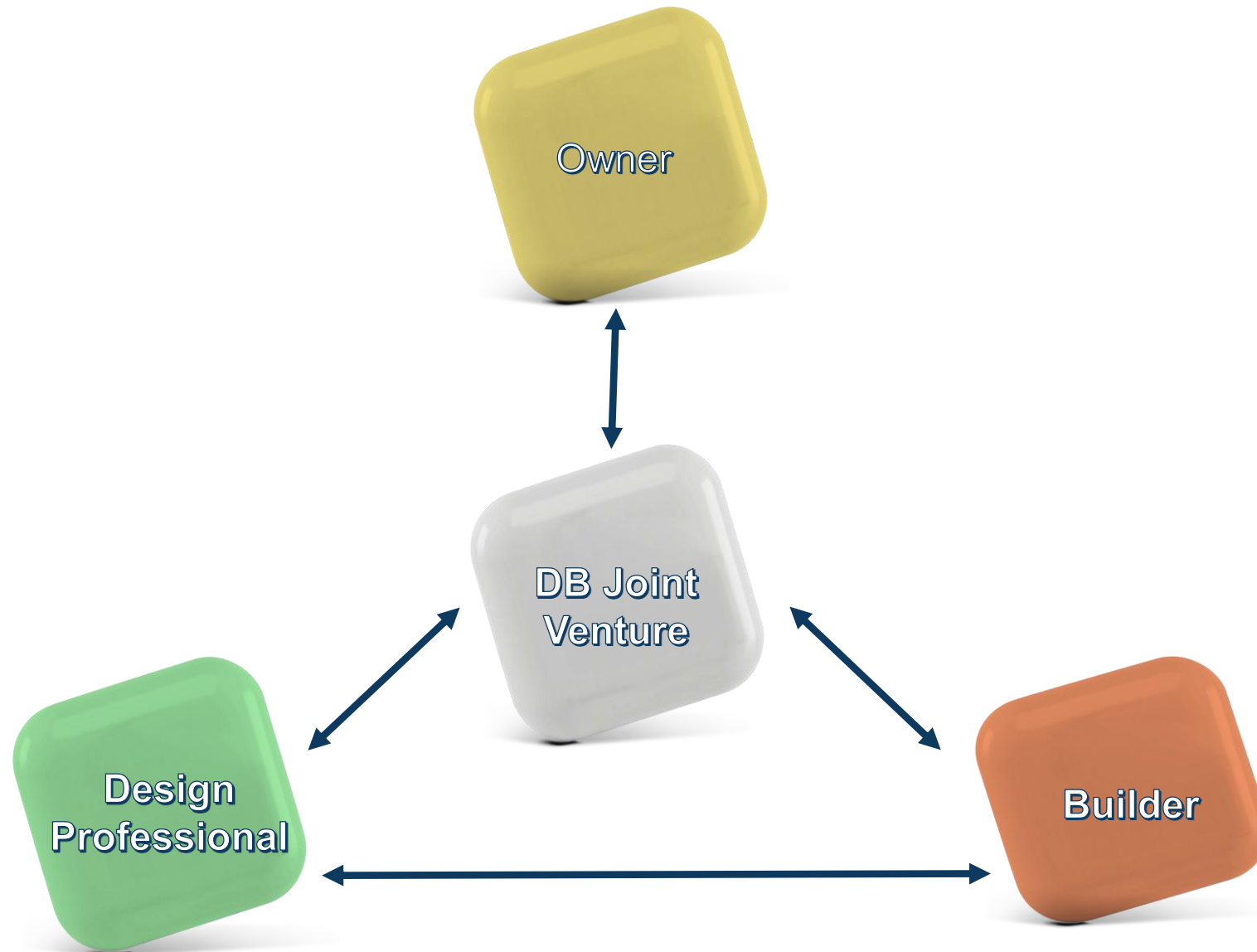
- Design-Build Projects will represent over 47% of U.S. construction spending by 2028, totaling more than \$1.1 trillion over the next five years.



DESIGN BID BUILD CONTRACTS



DESIGN BUILD CONTRACTS



DESIGN BUILD PROCESS



- Project's Requirements Criteria and Guidelines
- Preliminary Plans (No Warranty of Fitness)

- Teaming Agreement
- Designer Prepares Preliminary Drawings (30% Design)
- Contractor Determine Price

- Estimated Costs Plus Contingency

- Price Driven

- Designer Builder Subcontract
- Designer Prepares Final Design Documents
- Contractor Constructs Project

KEY DIFFERENCES BETWEEN ENGAGEMENT TYPES



Item	Design-Build	Traditional Design-Bid-Build
Basis for Project Pricing	Preliminary Design + Contingency	Final Design
Designer's Client	Contractor	Owner
Control of Sequencing and Timing of Design	Designer must accommodate Contractor's sequencing demands	Owner
Responsibility for Constructability and Coordination	Blurred Responsibilities Between Designer and Contractor.	Clearly defined responsibilities between Designer and Contractor
Owner Influence	More contentious due to preferential owner judgements that are not resolved until after bid awarded and price fixed.	Owner preferences included in final design
Design Delegation to specialty vendors and suppliers and design-assist.	Design input needs to be timely.	Less design-delegation therefore less issue for integration.
Design Revisions	Continuous design revisions possible due to dynamic management attempts by the Contractor requiring constant coordination. Incorporating Means and Methods into Design.	Design revisions incorporated in Contractor bid package therefore less ongoing coordination with the contractor.
Mega Project Impact	Longer Duration Projects, discontinuity in decision-making due to large teams, and often greater project complexity lead to more design revision.	Design is flushed out before bidding so less issues.

KEY CONTRACT CHALLENGES



- Scope of Work
 - Fast track construction
 - Owner driven design revisions
 - Value Engineering Requests
- Standard of Care
 - Proposal Phase
 - Execution Phase
- Limitation of Liability
 - Consequential Damages
 - Delay Cost
 - Liability Caps
- Indemnification
 - Owner's Claims
- Choice of Forum

