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Damages for Delay; An Owner's Perspective

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Learning Objectives

- Define Damage for Delay From a Capital Project Delivery Perspective
- Review DFD from a Risk Management Perspective
- Explore Solutions to Secure Benefits
- Share DEP Experience

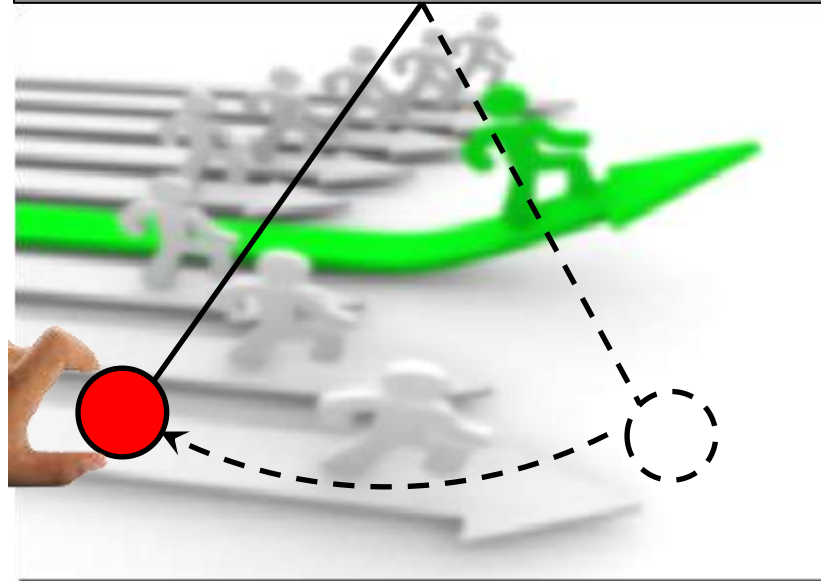
Damage for delay clause resets risk pendulum

Owner



**More accountability
for decision-making**

Risk of damage for delay



Contractor



**Willing to bid
at fair price**

Why stop no damage for delay

“No damage for delay” clause limits competition; competitive procurement becomes selective



- Excessive capital** to carry overhead due to owner's delay
- Capability and capacity to win a share through long **claim and litigation** process
- Experience with Bureaucracy** to eliminate potential coordination delay

Difference between no DFD and DFD from capital delivery view

No damage for delay

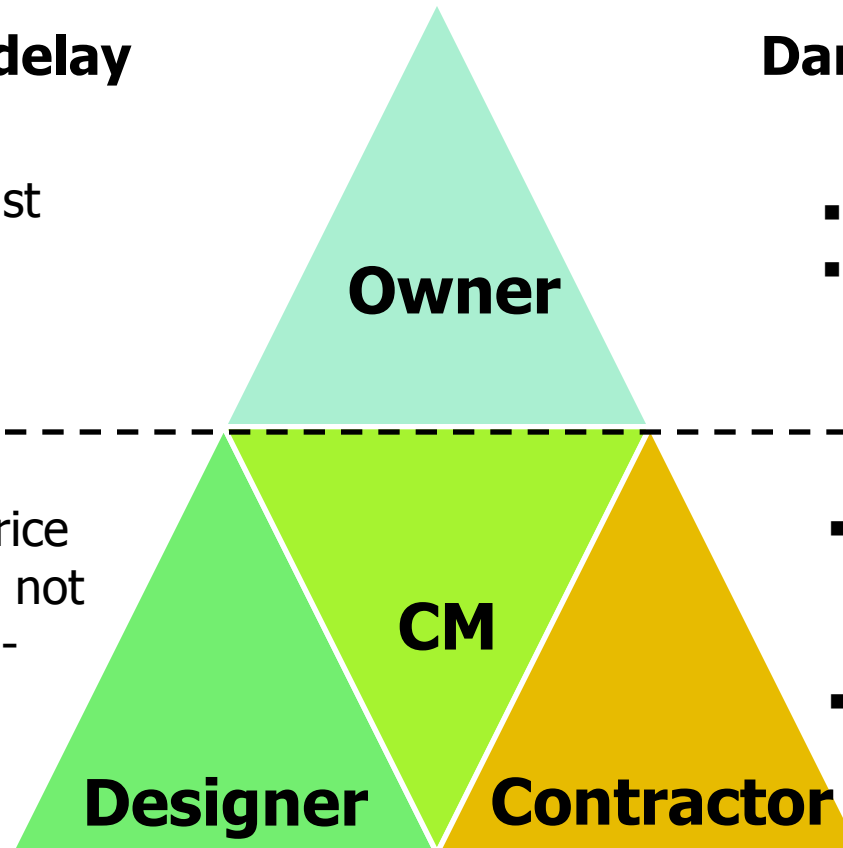
- Make your wish list
- CYA mindset

Damage for delay

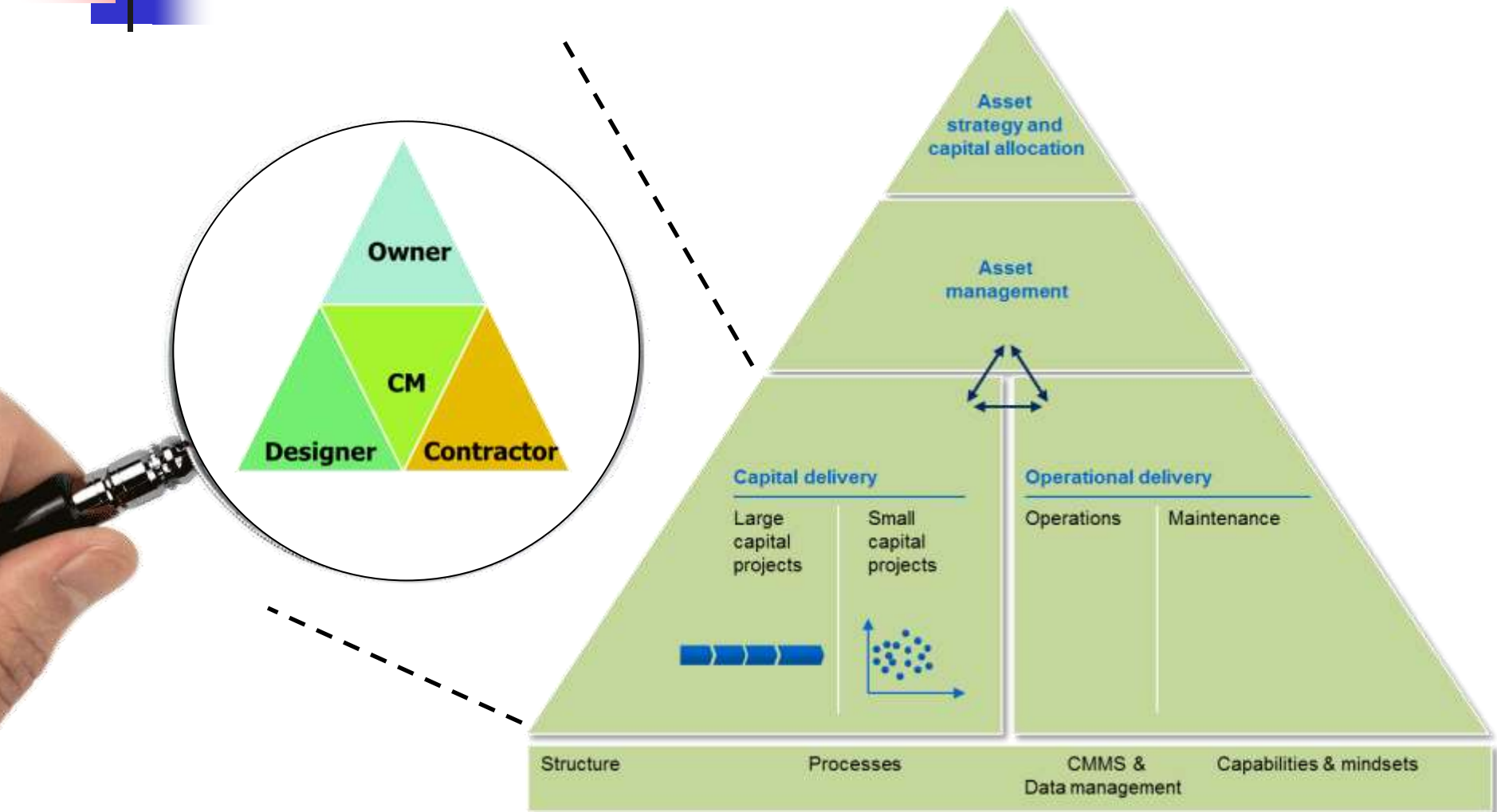
- Scope management
- Accountability and transparency

- Factor risk into price
- Expect delay and not drive for decision-making from Designer and CM

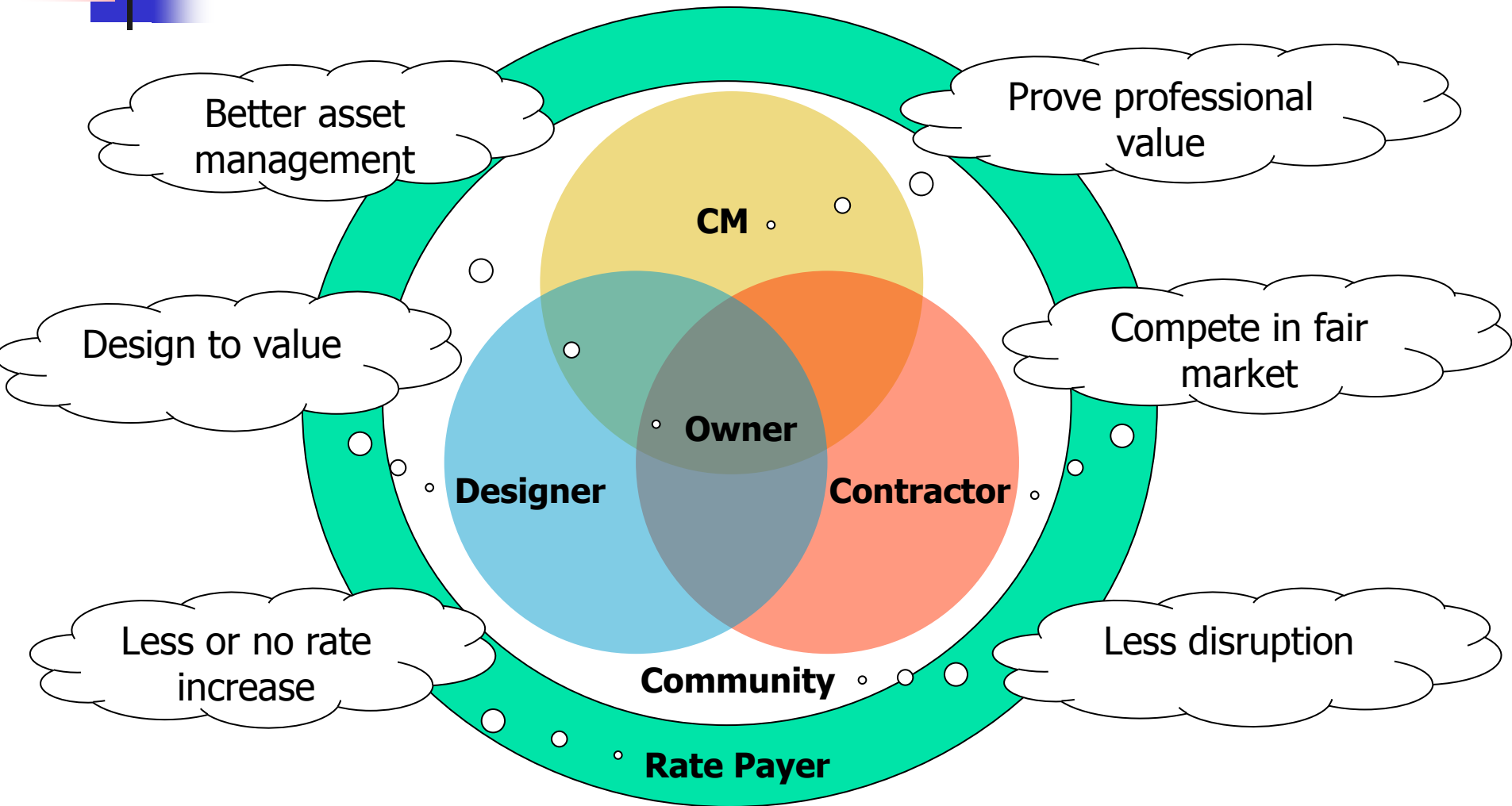
- No need to add premium for owner's delay
- Proactively manage schedule to clarify responsibility of delay



Capital delivery is one segment of asset management



A holistic view of potentials from damage for delay



Benefits from DFD clause is sustainable and resilient

Less community disruption providing better service and improving agency's image

Better job completion Rate for New York City

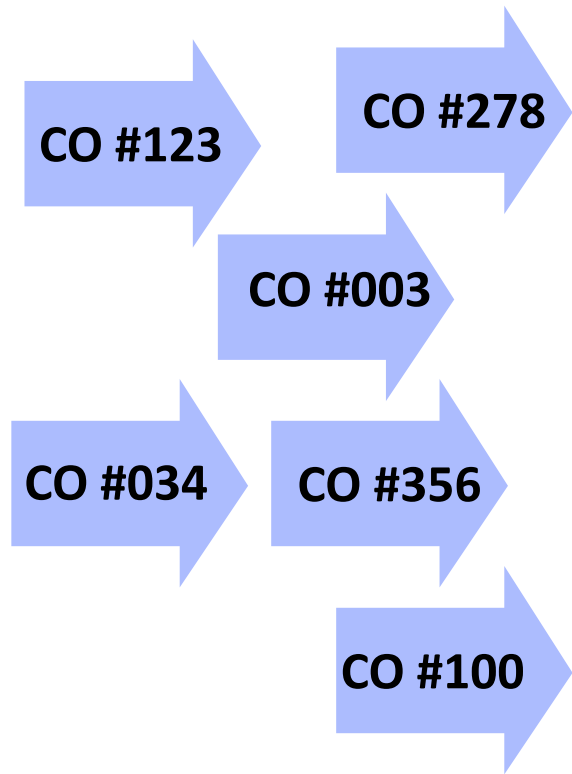
Less variable overhead cost for all parties: Owner, CM, Engineer, and Contractor

Lower financial threshold enabling more participation and encouraging competition; diversify capital program risks

Reset risk pendulum to reach fair market price of total construction cost and maximize value of CIP investment

Improve contractor's cash flow opening up opportunities for minority and local businesses and encourage diversity

Causes



- Unforeseen site conditions
- Lack of accountability
- Poor coordination and management
- Unavailability of site
- Delay in owner's process - change order approval, submittal/shop drawing review

Roles / Responsibilities



Engineer/CM

Actively analyze performance, assess impacts, and elevate issues

Owner

Reinforce accountability and improve transparency: internally and externally

Contractor

Notification, execution, and documentation



Response

Transparency

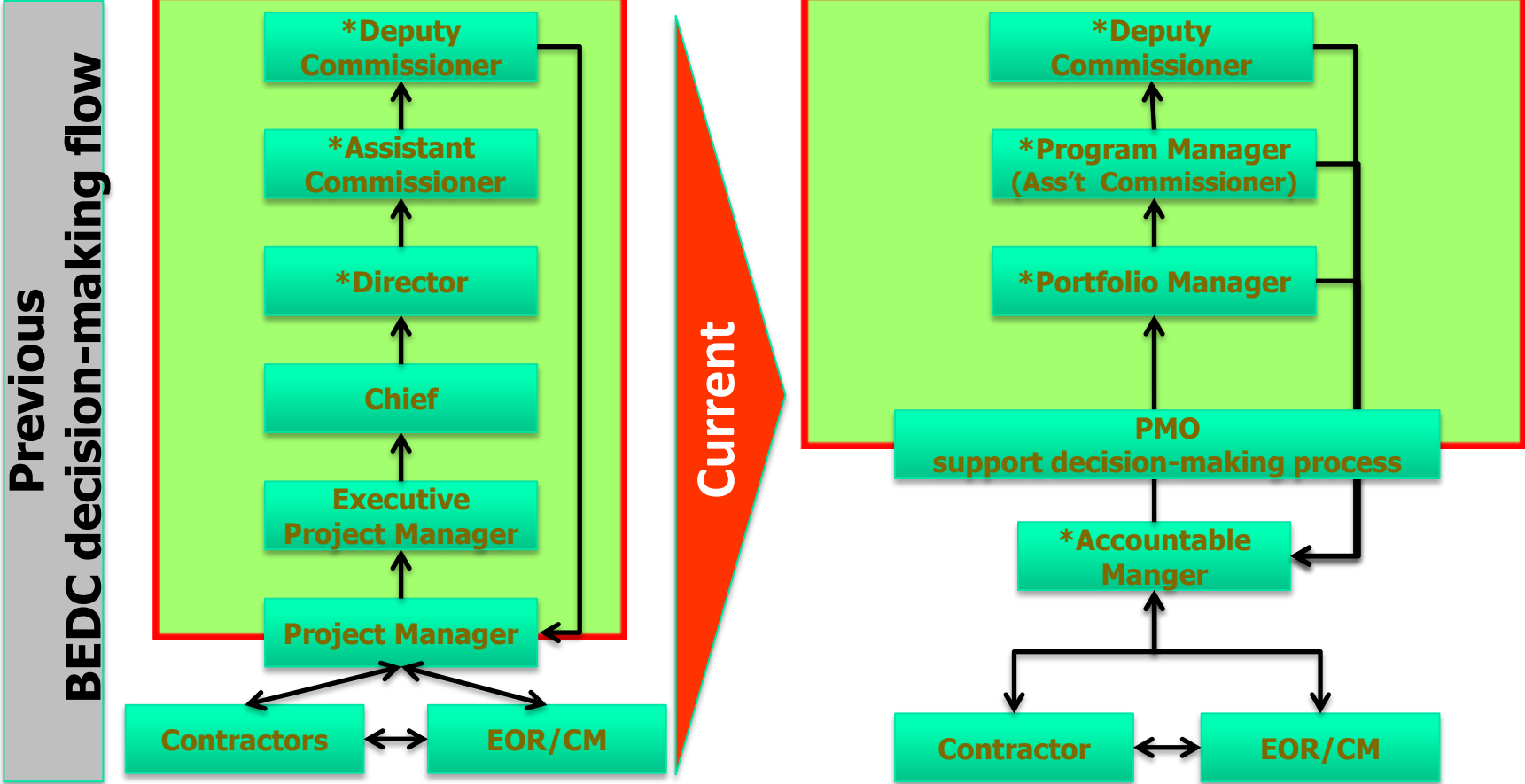
- Flattened management structure to streamline decision making
- PMIS/CMIS to facilitate effective and efficient coordination; boost transparency build trust
- Established PMO to integrate cost and schedule management

Accountability

- Improved design quality
- Mandated constructability and operability reviews
- Project manager certification program to build institutional capability

Response

Re-engineered organization structure to eliminate the inefficiency of bureaucracy and streamline the decision making workflow





Secure Benefits

Implementation and enhancement of PMIS/CMIS to facilitate document workflow management and to boost reporting and control capability

- All parties can see where submittals and correspondence are in the process
- Eliminate processing delays
- Project health is measured consistently and in context of the program



Secure Benefits

- **Owner** – accountability & transparency
- **Engineer/CM** – Actively analyze performance and impacts, elevate issues, document progress
- **Contractors** – notification, execution and documentation



Secure Benefits

- Flattened management structure to streamline decision making
- Improved design quality
- Mandate constructability and operability review
- Establish PMO to integrate cost and schedule management
- PMIS/CMIS to facilitate effective and efficient coordination; boost transparency to build trust
- Project manager certification program to build intuitional capability



Secure Benefits

Adapted schedule and cost control practice;
establish dedicated technical support groups

- Cost and Resource Loaded Schedules
- Preliminary Schedules (performance measurement from day one)
- As-Planned vs. As-built
- Reduced interim milestones
- Contract durations based on a realistic construction estimate



Secure Benefits

Reinforce design quality improvement; both constructability and operability reviews are included in the design review SOP

- Project Controls review during design gateways
- Development of detailed specifications tailored to the scope of work
- Separation of Design and CM contracts



Secure Benefits

Build institutional project management capability; roll out certification program to ensure continuous improvement on schedule and cost management

- Full-time In-house Scheduling Capabilities
- Integration with Cost Estimating
- Project Controls as “Support” not “Oversight”



Secure Benefits

What DEP expects from Engineer and CM

- Monthly Analysis of Contractor Performance
- CM “Projection”
- Firm adherence to the contract
- Develop Mechanism to Control Contractor Pacing



Implementation

What DEP expects from contractors

- Well defined plan
- Ongoing performance metrics
- Early notification
- Expeditious negotiation
- Transparency of cost data



Thank you for your time! **Last Slide**
QUESTIONS?

**This concludes The American Institute of Architects
Continuing Education Systems Program**

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