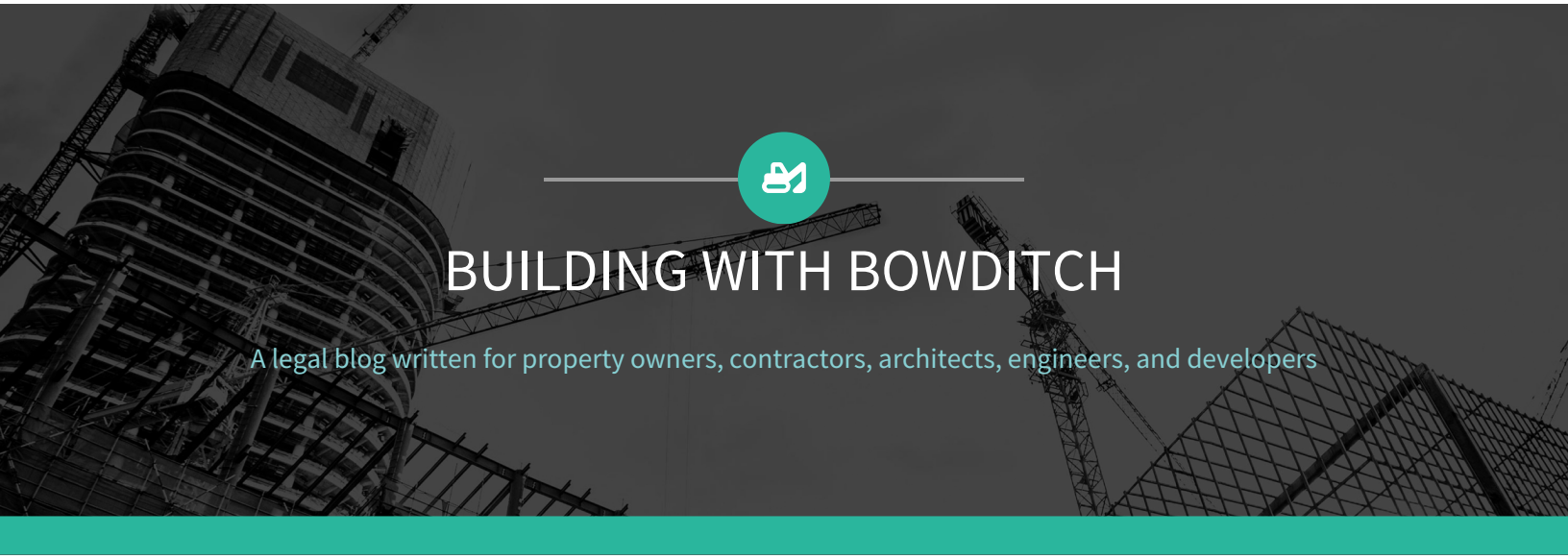

BUILDING WITH BOWDITCH

A legal blog written for property owners, contractors, architects, engineers, and developers

Building Across the Public-Private Line in New England

BY M. MATTHEW MADDEN, JR. • SEPTEMBER 17, 2026

Across New England, public-private projects are becoming an increasingly important part of the construction landscape. They may involve housing, transportation, health care, education, energy, redevelopment, infrastructure, or mixed-use projects that bring together private developers, public agencies, municipalities, lenders, contractors, and design professionals.

For contractors, these projects can present real opportunity. They are often significant in size, visible in the community, and connected to long-term public and private investment. But they also carry risks that are not always obvious when the job first goes out to bid.

The difficulty is that public-private projects rarely fit neatly into one box. A project may be privately led but publicly funded in part. It may be built on public land, depend on public approvals, or require work tied to roads, utilities, schools, transit, or other public infrastructure. A contractor may have a private contract, while still being affected by public requirements, agency oversight, special reporting obligations, labor rules, funding conditions, or community commitments.

That mix can affect price, schedule, payment, change orders, and closeout.

UNDERSTAND THE PROJECT BEHIND THE CONTRACT

Before bidding, contractors should look beyond the immediate contract and understand what is driving the project. Is public funding involved? Is the site publicly owned or publicly controlled? Does a public body have approval rights over design, changes, payment, or completion? Are grant, financing, or reimbursement conditions built into the project documents?

These questions matter because public-side obligations often find their way into private construction contracts. A contractor may be asked to comply with requirements contained in development agreements, funding documents, ground leases, agency approvals, or other materials it has not reviewed. When that happens, risk can be assumed

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before it is understood.

WATCH THE FLOW-DOWN

Public-private projects often involve several layers of documents. Broad flow-down language can make outside agreements part of the contractor's obligations, even if those agreements were not drafted with the contractor in mind.

That language deserves careful attention. It may contain schedule commitments, labor obligations, insurance requirements, reporting duties, indemnity provisions, closeout conditions, or limits on payment and change orders. The issue is not whether those requirements are legitimate. Often, they are. The issue is whether the contractor has seen them, priced them, and has the ability to manage them.

FOCUS ON CONTROL, SCHEDULE, AND PAYMENT

A recurring problem on these projects is the gap between responsibility and control. Contractors may be held to milestone dates that depend on agency approvals, municipal action, utility coordination, environmental review, funding releases, public meetings, or work by others. If those events are delayed, the contract should provide a practical remedy.

Payment should be equally clear. The owner may be private, but the money may move through lenders, grants, reimbursement programs, tax incentives, or public funding streams. Contractors should understand who is obligated to pay, what approvals are required, and whether payment depends on events outside their performance.

Change-order authority also needs clarity. On a public-private project, direction may come from several sources, not all of whom can approve additional time or money. Written records of direction, cost impacts, schedule impacts, and claim notices are essential.

THE PRACTICAL POINT

Public-private work can be valuable, but it should not be approached casually. Contractors should ask early what public requirements apply, what outside documents are incorporated, who controls approvals, who can authorize changes, and how payment will actually be made.

The goal is not to complicate the project. The goal is to understand the risk before it becomes a dispute.

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