

CAPITAL PROJECTS ADVISORY REVIEW BOARD  
**DRAFT DESIGN-BUILD BEST PRACTICES GUIDELINES**

14 SEPTEMBER 2017

# TABLE OF CONTENTS

0. EXECUTIVE SUMMARY
1. TYPES OF DESIGN-BUILD PROCUREMENT
2. CONSIDERING THE USE OF DESIGN-BUILD
3. DESIGN-BUILD PROCUREMENT
4. ENCOURAGING COMPETITION
5. AFTER TEAM SELECTION
6. APPENDIX

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# 0. EXECUTIVE SUMMARY

## **EVOLVING PROCUREMENT METHOD**

- Increasing use in Washington State.
- Recently authorized methodology – progressive design-build.
- Statutes give owners significant latitude.
- Issues with RCW compliance.
- No follow-up after a project is approved or an agency is certified.
- GCCM is consistent, reliable – design-build is not.

## **2015 AELC REPORT ON ALTERNATIVE PROJECT DELIVERY**

- Concern about the impact of design-build on practice.
- Primary contractual relationship shifts from the owner to the contractor.
- Scope of A/E services and engagement with the end user is reduced.
- Owners are not always prepared to fulfill their obligations.
- Cost and fairness of competition.

## **SECTION 1096 OF THE 2015 STATE CAPITAL BUDGET**

- CPARB and DES: make recommendations that encourage competition.

## **CPARB DESIGN-BUILD BEST PRACTICES GUIDELINES**

- Focus on RCW Chapter 39.10
- Fill the gap between regulations and practice.
- Create a common language that facilitates communications.
- Assist public agencies in the effective utilization of design-build.
- Address owner readiness.
- Recognize that procurement varies depending upon agency and project.
- Consider the impact of design-build on the designers and builders.
- Create reasonable expectations about process and outcomes.
- Guidelines are recommendations, not requirements.
- No proposed modifications to the statute.

## **IMPLEMENTATION**

- Refer to guidelines in PRC application materials.
- A resource in preparing/reviewing PRC applications.
- Syllabus for AGC Education Foundation class (first session, November 2)
- Collect case studies and data that provide lessons learned.

# 1. TYPES OF DESIGN-BUILD PROCUREMENT

## DESIGN-BUILD TYPES

- Progressive, traditional and bridging.

## COMPARISON

### CONTRACT SCOPE & PRICE

PROGRESSIVE	TRADITIONAL	BRIDGING
Established after design-builder is selected.	Established at time design-builder is selected.	Established at time design-builder is selected.

### SELECTION CRITERIA

Qualifications typically play a larger role in team selection.	Design proposal is key in some selections, cost in others.	Selection is typically focused on cost.
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## PROJECT CRITERIA DOCUMENTS

PROGRESSIVE	TRADITIONAL	BRIDGING
Project scope, budget and schedule do not have to be aligned before the selection process commences.	Project scope, budget and schedule must be aligned before team selection. Project criteria are typically performance requirements.	Project scope, budget and schedule must be aligned before team selection Project criteria are typically prescriptive

## OPPORTUNITIES

Design-builder's participation in development of the project goals, program, performance criteria, and project budget. Increased opportunity for owner participation.	Significant track record of use in Washington State. Allows owners to choose amongst alternate proposal for design, cost and value.	Owner involvement and design control. Horizontal projects may use prescriptive project criteria due to the complexity of land use requirements, alignments, systems operation and federal requirements.
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## OWNER RISKS

PROGRESSIVE	TRADITIONAL	BRIDGING
Lack of competition for contract price. No cost certainty at the time the design-builder is selected.	Additional costs to prepare project criteria and honoraria. Limited engagement between owner and design-builder during concept development.	Owner responsibility for content of bridging documents. Prescriptive solutions may reduce opportunity for innovation and integration.

## D-B LEVEL OF EFFORT/RISK TO COMPETE

Limited scope of technical approach design concept and cost or price related factors reduces level of effort and risk to compete.	Preparing design/cost proposal is significant effort for competing teams. Typically, costs are not adequately compensated. Significant risks for design-builder to propose cost based on a schematic design.	Preparing technical and/or management proposals and a final cost proposal typically requires a significant effort for competing teams.
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## **CONTRACT TYPES**

- Guaranteed maximum price (GMP) or lump sum agreement.
- Open-book provides transparency, may yield cost savings to owner.
- Lump sum provides lowest contract price, aligns with risk transfer.

## **2. CONSIDERING THE USE OF DESIGN-BUILD**

### **ALIGNING DELIVERY TYPE WITH OWNER NEEDS AND GOALS**

#### **AGENCY PREPAREDNESS**

- Unique process and owner/contractor/designer relationships.
- Increased agency effort to select team.

#### **PROGRAM DEFINITION & STAKEHOLDER INVOLVEMENT**

- Key factors in considering the use and type of design-build procurement.
- Stakeholder involvement may be more limited than other delivery methods.

#### **CONTRACTUAL RELATIONSHIPS**

- Change from a “three-legged stool” to a “two-legged stool” has significant implications for professional practice.
- Loss of the checks and balances that go with tripartite relationship.

## **COST CERTAINTY**

- Project scope and cost may be established earlier than other methods.
- Does not relieve owner from issues beyond the control of the D-B.
- Risk of cost changing related to the point in the process it is established.

## **OWNER INVOLVEMENT**

- Risk transfer to the D-B has an impact on owner involvement.
- Allow the D-B to maintain alignment between scope, budget and schedule.
- Outcomes are defined by performance and prescriptive criteria in contract.

## **CHANGES IN PROJECT SCOPE**

- Modifying project scope after price is set is a construction change order.
- May reduce the owner's inclination to make changes.

## **SUBCONTRACTOR INVOLVEMENT & SELF PERFORMANCE**

- No limitations on contractor self-performance.
- Subcontracts do not have to be competitively bid.
- D-B may involve trade partners subcontractors at any time.
- Flexibility in terms of meeting agency goals for business diversity.

## **PERFORMANCE GUARANTEES**

- Design-build is a performance-based contract.
- Allows energy performance guarantees and/or operations and maintenance contracting.

## FUNDING

- Design and construction funding should be in a single allocation.
- Take advantage of potential to reduce costs and expedite the schedule.
- Facilitate team continuity and cost certainty.
- Allow the D-B to realize the rewards that balance their risks.
- Type of procurement selected should align with outlook for project funding.
- Price should be established after construction funds are allocated.

### 3. DESIGN-BUILD PROCUREMENT

- Provide sufficient information on the project, agency values and funding.
- Provide information required for RFP response, such as topographic and utility surveys, geotechnical data and/or measured drawings.
- Conduct a transparent, fair selection process.
- Consistent administration of procurements encourage firms to compete.

#### **SCOPE, SCHEDULE AND BUDGET ALIGNMENT**

- PROGRESSIVE: can be generally defined.
- TRADITIONAL AND BRIDGING: must be clearly defined.
- Moving targets creates confusion amongst the finalists.
- Budget must be realistic.



# PRE-SOLICITATION DOCUMENTS

## PROJECT CRITERIA

- Allow adequate time to prepare documents before issuing RFQ/RFP.

### Performance and Prescriptive Criteria

- Performance criteria specify goals for elements of the project.
- Prescriptive criteria describe specific solutions and/or systems.

### Design Standards

- Progressive allows more opportunity for exploring the options .
- Traditional and bridging require design standards to even the playing field.

### Predesign Studies

- Typically required for major, state-funded projects.
- PROGRESSIVE: may be completed prior to or after team selection.
- TRADITIONAL: minimum level of programming and planning required.
- BRIDGING: may be first step in developing prescriptive design concept.

# EVALUATION CRITERIA

## REQUEST FOR QUALIFICATIONS

### RCW 39.10.330(1)(d)i

- *Technical qualifications; capability to perform; past performance of the proposers' team, including the architect-engineer and construction members; and other appropriate factors.*
- *May include past performance in utilization of small business entities and/or disadvantaged business enterprises.*
- *Cost or price-related factors are not permitted.*

### Additional Information

- Completed RFP.
- Agency's master plan and other preparatory documents.
- Project budget with evidence of funding and the date it will be allocated.
- Proposed contract and general conditions of the contract for construction.
- List of required deliverables in the RFP phase.

# REQUEST FOR PROPOSALS

## RCW 39.10.330(1)(d)ii

- *Technical approach design concept; ability of professional personnel; past performance; ability to meet time and budget requirements; ability to provide a performance and payment bond; recent, current, and projected workloads of the firm; location; and cost or price-related factors that may include operating costs.*
- *Agencies may also include in the evaluation criteria an outreach plan to include small business entities and disadvantaged business enterprises.*

## Additional Information

- Agencies should consider providing all previous studies and data.
- RCW 39.10.330 (b)(ii) allows the owner to award the contract to the firm that submits a responsive proposal with the lowest price. Therefore, it must clearly identify in the RFP what qualifies as a responsive proposal.

## **COST & PRICE-RELATED FACTORS**

- Significant latitude determining what “cost or price-related factors” means.
- Significant latitude determining the weight of cost in the proposal score.
- Typically graded according to a pre-determined formula.
- Transparency, consistency and fairness in scoring are critical.

### Submittals

- Submit cost related information in a separate, sealed envelope.
- Public opening of cost proposals, while not required, provides transparency.
- Some agencies score cost elements separately and add them to the scoring for other criteria to establish a final score for each proposal.
- Some agencies evaluate price along with the technical proposal in order to put a value on the technical elements being evaluated.

## **ALTERNATIVE TECHNICAL CONCEPTS**

- Proprietary request to deviate from project criteria.
- Strategies that meet or exceed the agency goals, or reduce project cost.
- Agencies should provide clarity about submittal, review and use.

## **TEAMING AGREEMENTS**

- Define roles and relationship of the designer and the builder.
- Agencies should consider requesting as part of the RFP submittal.

## **SELECTION**

- Ensure that selection process is reliable, rigorous and objective.
- More discipline required to select D-B team than design or construction only.
- Selection process is more complex than other project delivery types.
- Allow ample time to review the proposals.

## **SELECTION PANEL**

- Identify members who can evaluate proposals in relation to desired outcomes.
  - Participants in proprietary meetings.
  - Participants with technical and program expertise.
- Diversity of representation may provide fairness in evaluation.
- Disclosing the names of the panel members promotes transparency.

## Conflicts of Interest

- Establish a code of conduct for third-party owner's representatives.

# **RFP PHASE MEETINGS & INTERVIEWS**

## **PRE-RFP MEETINGS**

- Provide general information from the agency to the finalists.

## **PROPRIETARY MEETINGS**

- Give owner and finalists an opportunity to engage.
- Allow finalists to understand agency priorities, test design concepts.
- Provide clear instructions to the owner representatives and finalists.
- Finalists should have access to information in a common time frame.
- Agency representatives should be the same throughout.

## **FINAL INTERVIEWS**

- Allow the finalist to explain their proposal.
- Allow agency to ask detailed questions about the proposal.
- Conduct after selection panel has adequate time to review proposals.

## **HONORARIA & SCOPE OF DELIVERABLES**

- Consider the different levels of effort for the three design-build methods.
- Traditional: consider using the state's A/E fee schedule for schematics.
- Collect data on the cost for design-build teams to compete.

## **DELIVERABLES**

- Align with the level of effort required to meet project criteria and provide a cost.
- Identify documents required to convey value of proposal.
- Reducing requirements may not reduce the work to arrive at fixed price.
- Provide consistent limits on physical and digital illustrations at all meetings.

## **USE OF PROPOSALS**

- Clearly identify use of proposals in the RFQ/RFP.
- Discourage incorporating substantial elements of other teams' designs into the selected proposal.



## 4. ENCOURAGING COMPETITION

- Agencies should encourage competition.
- Ensure selection is made from the largest pool of qualified firms.

### CHALLENGES

#### RELATIONSHIPS

- Need a partner in order to compete for projects.

#### BUSINESS DEVELOPMENT

- Must identify projects and partnerships months or years in advance.
- Significant challenge for medium and small firms.

## **RISK**

- Agreeing to project scope, design, cost and schedule early in the process.
- Owners who are not be prepared to manage their responsibilities.
- Cost to compete, especially for traditional procurements.

## **SELECTION CRITERIA**

- May favor teams with previous design-build experience as a team.
- May exclude firms that are otherwise qualified to do the work.

## **BUSINESS DIVERSITY**

### Disadvantaged Businesses

- May not have relationships, experience or bonding capacity to compete.
- Lack of uniformity in defining “disadvantaged business” in Washington State creates additional challenges.
- Change in subcontracting opportunities - no requirement to bid the work.

# **OPPORTUNITIES**

## **PROVIDE ADVANCE NOTICE**

- Provide opportunity for firms to find partners.
- Advertise intent to select six months to a year in advance of RFQ.
- Identify scope, approximate budget and selection criteria.
- Provides more opportunities to engage disadvantaged businesses.

## **BROADEN SELECTION CRITERIA**

- Reduce constraints to the participation of new firms and teams.
- Engage selection panel in discussion about goals for encouraging competition.

## Team Experience

- Consider designer and builder's previous experience working on design-bid-build or GCCM projects of comparable scope, complexity and/or budget.
- Recognize ability of teams to bring value to the project even if they do not have previous experience working together.
- Consider alternate means for teams to demonstrate ability to collaborate.

## Firm Experience

- Designer or builder that has design-build experience with projects of comparable program, scope, complexity and/or budget but not with the partner on the proposed team.

## Individual Experience

- Consider experience of individuals with experience gained at other firms.

## **SMALL PROJECTS**

- Opportunities for new teams and small businesses to get experience.
- Increase the number of firms that have capacity for risk.
- Indicate intent to qualify new firms and teams in solicitation documents.

### Owner and Design-Build Team Experience

- Public owners with significant design-build experience may have the skills to organize the project so that teams new to design-build can succeed.
- A public owner without design-build experience may not have the skills to work with a design-builder that has limited experience.

## **LIMIT CONSULTANT TEAM EXCLUSIVITY**

- Limiting exclusive relationships between the D-B and their sub-consultants and trade partners may increase participation.

## PROMOTE DIVERSITY

- Include meaningful diverse business requirements in RFQ selection criteria.
- Consider making participation a requirement for all selections.
- Take advantage of RCW 39.10.330(1)(1) “...*Evaluation factors may also include: (A) The proposer’s past performance in utilization of small business entities; and (B) disadvantaged business enterprises.*”
- Hold open houses to communicate the subcontracting opportunities.
- Maximize participation by unbundling the work.

### Design-Build’s Advantages

- D-B has freedom to assign subcontracts to meet participation goals.
- Potential for higher participation rates than design-bid-build or GCCM.
- Disadvantaged business may have greater opportunity to succeed when not forced into a low-bid situation.

## **COMPETITIVE ADVANTAGE**

- Varying approaches to the issue of whether firms that prepare preparatory documents can compete for the design-build contract.
- Gap between agency policy for design services and design-build.

## **POLICIES AND PRECEDENTS**

- Difference between “unfair competitive advantage” and “organizational conflict of interest.”

### Legal Requirements in Washington State

- Washington does not have does not have a law or regulations relating to organizational conflict of interest. Some public bodies within the state do have regulations.

### Federal Acquisition Regulation Subpart 9.5

- Allows firms that develop preparatory documents to pursue later phases of the project.



## RECOMMENDED PROCEDURES

- Identify constraints on selection for future phases of work in the preparatory services RFQ.
- Constraints, once established, should not change.
- Design contract and all services related to the preparatory documents should be completed prior to public advertisement of the design-build RFQ.
- A reasonable period of time should separate completion of the design contract and services and the design-build RFQ.
- All of the preparatory documents should be publicly available at the time of issuance of the RFQ.
- Preparation of the RFQ and/or RFP should be a constraint.

# **HONORARIA & QBS IN D-B PROCUREMENT**

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## RCW 39.10.330(8)

- *The public body shall provide appropriate honorarium payments to finalists submitting responsive proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, **the public body shall consider the level of effort required to meet the selection criteria.***
  - May a public body determine that honorarium payments are not required for Progressive and/or Bridging procurements?
  - Does “**shall consider**” allow a public body to determine that they “**shall consider but decide not to compensate for... ?**”
  - How does the RCW 39.80, which requires qualifications based selections for architects and engineers, impact design-build cost proposals under 30.10?
-