A DESIGN-BUILD INSTITUTE OF AMERICA PUBLICATION

FEDERAL SECTOR BEST PRACTICES

A Design-Build Done Right® Primer

WHAT'S UNIQUE ABOUT THE FEDERAL SECTOR?

The Federal Acquisition Regulation (FAR) provides uniform procurement policies and procedures for use by all executive Agencies, specifically the two-phase Design-Build selection procedures authorized by FAR Part 36.3 (10 USC 2305a and 41 USC 253m). Additionally, the Office of Management and Budget (OMB) provides further guidance by issuance of its Capital Programming Guide, Supplement V 3.1 (2021/2022) to Circular A-11. OMB also provides direction to Agency Chief Acquisition Officers and Senior Procurement Executives through the issuance of various memoranda by the Office of the Federal Procurement Policy (OFPP). Over the last two decades, there have been numerous changes to the FAR, many of these changes centered on giving the Agency Contracting Officer (CO) greater latitude when developing acquisitions.

Most Agencies further supplement the FAR with Agency-specific policies and procedures tailored to their specific mission. Like most regulations, the interpretation of such rules is not always consistent from Agency to Agency (and frequently inconsistent within various Agencies). Some COs take a very narrow view of the latitude permissible within the FAR in implementing Design-Build Best Practices, while other COs view the same regulation(s) much more broadly. The Design-Build Institute of America (DBIA) recommends that Agencies recognize the flexibility that is provided in FAR 1.102(d), "The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. *In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.* (emphasis added)" FAR 1.102(4) further states that "… absence of direction should be interpreted as permitting the Team to innovate and use sound business judgment that is otherwise consistent with the law and within the limits of their authority. *Contracting officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound.* (emphasis added)"

Additionally, since there are several misconceptions regarding what the FAR allows (and/or precludes), OMB issued four "Myth Busting" memoranda, which dispelled many of the misconceptions and clarified significant differences between "low bid" procurements and "negotiated" best value acquisitions (also see DBIA's Position Statement on Lowest Price Technically Acceptable Procurement). In summary, the DBIA Best Practices highlighted in this document meet the intent of the FAR and OMB guidelines.

This update to the Federal Sector Design-Build Done Right® was led by a workgroup within the DBIA Federal Committee composed of current and former senior executives with decades of experience leading Federal Agencies' Design-Build programs. The workgroup solicited recommendations from Agencies throughout the federal sector and from associations with members covering all

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disciplines (contracting professionals, builders, specialty subcontractors, professional architects and engineers, technical representatives, attorneys, etc.) involved in federal integrated design and construction. Consequently, the result of this collaborative revision process is to further increase the probability of a successful project that meets the expectations of all stakeholders by implementing these Best Practices on federal Design-Build projects. Stated differently, if these practices are not implemented, there is an increased probability that the project's performance will be compromised and that some or all the stakeholders will be disappointed.

For ease of reference, this document is organized into three primary sections:

I. **Procuring Design-Build Services**
II. **Contract Formation for Design-Build Services**
III. **Executing Design-Build Projects**

Each section contains overarching principles that represent the "Best Practice." Each Best Practice is supplemented by several techniques that provide guidance on specific ways to implement the Best Practice — essentially "mini Best Practices." The combination of Best Practices and Implementing Techniques are the basis for "Design-Build Done Right®."

DBIA recognizes that specific Implementing Techniques might differ slightly from one Agency to another. Accordingly, this document was developed specifically for Design-Build contracting with Federal Agencies with references to the FAR, OMB and OFPP.

It is important to note that Design-Build contracts integrate the primary services of the design and the construction contract, i.e., construction of a complete and usable facility with design-related services. They are not "Architect-Engineer" contracts under the FAR Subpart 36.6, Brooks Act selection procedures, nor are they typical "construction" contracts. They are a specialized procurement that integrates both professional design services and construction into a single contract. Such contracts are generally competitively negotiated, firm fixed-price, and awarded using the procedures in FAR Parts 15 and 36.3.

Specialized training in Design-Build for all stakeholders is essential to maximizing the utility of integrated Design-Build project delivery. It is important to understand why Design-Build is significantly different than the traditional linear design/bid/build method. Primarily, the professional responsibility for the design and design integrity resides with the Design Professional(s)-of-Record on the Design-Build Team, not the government. Accordingly, it is very important to clearly define the different roles and responsibilities of the parties for an integrated Design-Build contract versus a standard construction contract.

The post-award design management contract administration function is one of the most challenging phases of a Design-Build contract. The relationship between the government and the Design-Build Team, composed typically of a contractor and the Design Professional(s)-of-Record, is paramount to a successful project. The post-award submittal process and subsequent acceptance/conformance phase is much different than the traditional enforcement mentality for a standard construction contract. This process requires a high level of collaboration within the Design-Build Team. (Note: Throughout this document the term "team" refers to all participants/stakeholders, to include key Agency personnel.) Hence, adequate training is critical to properly identify, assign and mitigate risk.

Guiding Principles

The practices identified in this document are anchored by these guiding principles:

Universal Ethical Conduct: Everyone involved in a Design-Build project should conduct themselves with high standards of honesty, transparency and integrity in compliance with the DBIA Code of Professional Conduct and other applicable ethical obligations.

Demonstrated Competence: Several Best Practices and Implementing Techniques in this document emphasize the importance of training and experience in Design-Build project delivery. Wherever possible, training and competence of those involved should be demonstrated by attaining appropriate professional certifications [e.g., DBIA Certification, professional licensure and Third-Party Certifications (i.e., LEED, WELL Building, Energy Star, Green Globes, etc.)].

Sustainable Professional Development: When undertaking a Design-Build project, Agencies and practitioners should proactively engage emerging professionals in a meaningful way to help plan and execute Best Practices and Implementing Techniques. This practice will encourage each member of the team to grow professionally and play a more significant role on the team and within the industry on each successive project.

Supporting Diversity, Equity and Inclusion: When undertaking a Design-Build project, Agencies and practitioners should intentionally create opportunities to involve and engage historically under-represented companies and individuals, prioritizing fair treatment without any racism or bias.

These guiding principles are driven by the core belief that Design-Build projects are best executed within the context of an integrated collaborative team grounded in an atmosphere of mutual trust, transparency, respect and open, candid communications.

The sum of all of us is greater than the contribution of any team member. The best projects unleash the power of a "high performing team," and everybody should have the opportunity to grow professionally and contribute to the success of the project.

DBIA recognizes that there are real-world differences among Design-Build market sectors (e.g., water/wastewater, transportation, commercial development, federal projects, etc.), and flexibility in how Design-Build projects are procured, contracted and executed.

Consequently, specific implementation techniques might differ slightly from one market sector to another or between Design-Build variations.

DBIA recognizes that Agencies and practitioners may want further explanation to fully appreciate the thought behind the principles in this document. DBIA expects that many users of Design-Build would benefit from having detailed guidance on how to put these Best Practices and Implementing Techniques to use for their unique project.

Given this, DBIA continually updates its portfolio of publications, tools and other resources so that Design-Build stakeholders will have access to leading-edge information that defines Design-Build Done Right® in accordance with the concepts expressed in this document.

I. PROCURING DESIGN-BUILD SERVICES

An Agency's strategic choices of a project delivery system and procurement approach strongly influence project results.

These choices are among the first decisions an Agency makes on a project, and they form the foundation for how the project will be developed, procured and executed. They determine how the key project stakeholders communicate and relate to each other.

It is critical for an Agency to carefully consider the goals, objectives, opportunities and constraints particular to the project. This includes a thorough analysis of the procurement and delivery options available to the Agency.

Should Design-Build prove to be the best delivery method for the project, the Agency should proactively plan how to take full advantage of the many benefits that are inherent in the Design-Build process.

DBIA considers the following as five (5) Best Practices for project initiation and procurement:

1 | Strategic Project Delivery Planning

An Agency should conduct a proactive and objective assessment of its organizational culture and capabilities and the unique characteristics of its program/project before deciding to use Design-Build project delivery. *FAR 7.104, 7.105 and 36.301*.

IMPLEMENTING TECHNIQUES:

a. ***Agency Self-Assessment.*** Agencies should recognize their culture and capabilities to administer and utilize Design-Build project delivery method, understand the potential benefits, limitations and attributes of Design-Build, and make an informed decision as to whether the use of Design-Build will benefit their program/project. FAR 36.301(b). [Also see **The Building Owner's Assessment Tool (BOAT): Helping You Understand Your Culture and its Project Delivery Ramifications**]

1. Agencies should focus on project goals, challenges and constraints in deciding a project delivery method.
2. Agencies should not base their decision as to whether to use Design-Build on fiscal year-end needs to obligate funds.

b. ***Supportive Organization.*** Agencies should create an organizational culture that supports the successful procurement and execution of a Design-Build project, with key personnel (including consultants serving as an Owner Advisor as may be needed) who are trained and experienced in Design-Build Best Practices and understand among other things:
   1. The procurement, contract formation and execution of Design-Build projects;
   2. The importance of setting expectations and fostering an integrative and collaborative relationship among all members of the project team, to include key government personnel; FAR 36.301(b) and
   3. The potential impact of procurement and execution decisions on the Agency, Design-Builder and stakeholders; including attainment of project goals and critical success factors, as well as appropriate allocation of risk.

c. ***Stakeholder Engagement.*** Agencies should identify and involve key project stakeholders at the early stages of project planning. FAR 7.104(a). Stakeholder goals, expectations, challenges, constraints and priorities should guide all project planning, procurement, implementation and operations/maintenance. Stakeholder engagement should include:
   1. Training in the Design-Build process and unique project nuances [i.e., Federal Acquisition in Contracting (FAC-C) and for Contracting Officer Representatives (FAC-COR) Training, and DBIA Professional Certification as well as other DBIA Training] FAR 15.303(b);
   2. Determination and implementation of design excellence, sustainability, financial viability and any other project-specific goals;
   3. Definition of project lifecycle and durability expectations; and
   4. Identification of the use of physical and digital project documentation throughout the functional life of the project.

d. ***Senior Leadership Team.*** Agencies should establish a senior leadership team that demonstrates a commitment to the success of the Design-Build process, as this practice will foster a healthy and trusting relationship among the entire project team.
   1. Agencies should note that Design-Build project delivery requires a mental shift, a change in psychology that leads to positive behaviors amongst the parties (aligned goals and objectives) that yields better program/project outcomes.
   2. Agencies should note that this mental shift requires a significant investment from senior leadership to avoid regression to traditional adversarial behaviors (conflicting goals and objectives).

e. ***Market Research.*** Agencies should carefully research and assess current market conditions as they plan their Design-Build programs, as this will identify potential risks and opportunities. FAR Part 10. Among the issues to be researched and assessed include:
   1. Alignment of scope, budget and schedule for current market conditions;
   2. Procurement actions that could limit or expand competition, including advance notice to and engagement with industry (i.e., Industry Days, Pre-Solicitation Exchanges with Industry, Confidential Meetings, etc.); FAR 15.201(c).

3. Projected labor, material and equipment availability;
4. Available pool of experienced and qualified Design-Builders and trade partners interested in pursuing the project; and
5. Lessons learned from similar projects. [See **Design Excellence Program | GSA** and **The Design-Build Process for the Research Support Facility (RSF), Energy Efficiency & Renewable Energy (EERE, U.S. Department of Energy)**]

f. ***Risk and Opportunity Assessment.*** Agencies should implement a rigorous and equitably balanced project risk assessment early in the procurement process and update/refine the risk assessment as the project proceeds from procurement through project execution. FAR 7.105(a)(7). Agencies should utilize a formal Cost and Schedule Risk Analysis (CSRA) process. Agency risk and opportunity assessments should include:
   1. Identification of issues that have potential to negatively and positively impact project success;
   2. Assessment of probability of occurrence and impact of each risk and opportunity factor(s) identified;
   3. Alignment of risk and opportunity analysis with Design-Builder selection evaluation factors;
   4. Alignment of contract provisions, as well as incentives and/or award fees with risk analysis; and
   5. Agency requirement of regular, periodic meetings — whether monthly or quarterly — with senior leadership (Agency and Design-Builder) to meet and review status of the CSRA during the Execution Phase, discussed below.

g. ***Procurement Constraints.*** Agencies should understand all procurement constraints imposed or flexibilities afforded by their legislative, regulatory or internal requirements (e.g., governing board, senior-level approvals). FAR 1.102(d) and 1.102-4(e).

h. ***Conflict-of-Interest Policy.*** Agencies should make an early determination of their programmatic position on conflicts-of-interest policy for Design-Build procurements and promptly disclose this policy to the marketplace that will likely pursue these Design-Build procurements. FAR 9.504 and 9.505-2.

i. ***Start-up | Commissioning Clarity.*** Agencies should make an early determination about their expectations for the Design-Builder's role in the start-up, commissioning, turnover and operations/maintenance of the completed project and reflect those expectations in their procurement approach. FAR 7.105 and 36.302.

> An Agency should conduct a proactive and objective assessment of its organizational culture and capabilities and the unique characteristics of its program/project before deciding to use Design-Build project delivery.

2 | Design-Build Oriented Procurement Plan

An Agency should implement a procurement plan that enhances collaboration/integration and other benefits of Design-Build that is in harmony with the reasons the Agency chose Design-Build.

IMPLEMENTING TECHNIQUES:

a. ***Qualifications Focus.*** Agencies should use a procurement process that:
   1. Focuses heavily on the qualifications of the Design-Builder and its key team members more significantly than price; and
   2. Rewards Design-Build teams that have demonstrated:
      a) a history of successfully integrating and collaborating on similar delivery methods on projects;
      b) utilization of certified Design-Build professionals in key personnel roles; and
      c) exceptional past performance, particularly in Design-Build projects. FAR 15.3 and 36.303-1(a)(2)(ii).
         i. Agencies should develop evaluation factors in accordance with FAR 15.304, in which "all evaluation factors, other than cost or price, when combined are significantly more important that cost or price."
         ii. Agencies should ensure "past performance" and experience are the most heavily weighted source selection factors.
            (a) Agencies should verify "past performance" and experience of the Design-Build entity, key subconsultants and key trade partners for recent projects (five to 10 years).
            (b) Agencies should recognize the value of the Design Professional(s) of Record (i.e., Architect of Record, Engineer of Record, etc.), key subconsultants, the contractor and key subcontractors who performed on previous projects.
         iii. Agencies should require offerors to identify the "Design-Build Project Manager," also known as the "Integrated Project Leader," and a list of that individual's specialized training, such as LEED-AP, PMP, DBIA, COM, CSI, etc., in Phase I — Request for Qualifications (RFQ) submissions.
         iv. Agencies should require offerors to identify other key personnel (and a list of those individuals' specialized training/education, such as LEED-AP, PMP, DBIA, COM, CSI, etc.) in the Phase II — Request for Proposals (RFP) submissions/proposals.

            Note: Phase I of the RFP should be structured in accordance with FAR 36.3 and is typically referred to by industry as the RFQ phase. Offeror responses to the RFQ are called Statements of Qualifications (SOQs). Phase II of the RFP is in accordance with FAR Part 15 source selection procedures with only the most

highly qualified short-listed Design-Build teams from Phase I advancing to Phase II.

b. ***Disclose Form of Agreement.*** Agencies should provide proposers with a draft Design-Build contract at the RFQ phase of procurement which:
   1. Informs potential proposers of contract terms and conditions as they contemplate whether to pursue the opportunity;
   2. Informs potential proposers of conditions (e.g., contract incentives, partnering, commissioning, Third-Party Certifications, etc.) that could affect how they structure to deliver their services;
   3. Provides offerors with an opportunity to suggest modifications during the solicitation process; and
   4. Enables offerors to base their proposals on what will become the final version of the contract.

c. ***Trade Contractors.*** Agencies should use a procurement process that encourages the early participation of key trade contractors, subconsultants and suppliers. FAR 36.303-2(a) and 15.304(b).
   1. Agencies should consider requiring all offerors to list key trade partners in the Phase I submissions to the RFQ.
   2. Agencies should require all short-listed offerors to confirm the key trade partners listed in the Phase I RFQ are on its Design-Build team in the Phase II RFP proposals.

d. ***Performance Requirements.*** Agencies should develop their Design-Build procurement with the goal of minimizing the use of prescriptive requirements and maximizing the use of performance-based requirements (FAR 11.101(a)(2) and 37.601), such that:
   1. Performance requirements are based on recognized industry standards that are current, attainable and appropriate for the project;
   2. Performance requirements provide the Design-Build team adequate guidance and flexibility to optimize the balance between scope, quality, schedule and budget within current market conditions; and
   3. The Design-Build team is empowered to meet or exceed the Agency's needs through innovation and creativity.

e. ***Achievable Budgets.*** Agencies should develop realistic project budgets and provide clarity in their procurement documents about their budgets, including, as applicable:
   1. Identifying "hard" and "soft" contract cost/budget ceilings;
   2. Stating whether target budgets can be exceeded if proposed solutions enhance overall value;
   3. Clearly identifying the status and constraints of funding for the project; and
   4. In order to optimize the budget in Design-Build competitive procurements, the Agency should disclose the target budget, not the Independent Government Estimate, in the RFP (similar to FAR 36.609 for Architect-Engineer Services, as opposed to FAR 36.204).
      a) This requires the offerors to design and construct the project within funding limitations (keeping in mind in Design-Build the Design Professional(s)-of-Record is/are on the offeror's Design-Build team).
      b) Agencies should structure the RFP to optimize the budget (in terms of

quality, scope, energy efficiency, sustainability, durability, lifecycle costs, etc.) awarding the contract to the best Design-Build team with the best solution, as opposed to the cheapest low bid meeting minimum requirements.

c) Agencies should encourage project enhancements/betterments within the target budget ceiling, e.g., structured in a tiered manner, such as "mission critical" (scope that must be achieved), "desirable" enhancements (scope that may be able to be achieved) and "if possible" betterments (further additions to scope that would provide value to the Agency) within the project funding limitation.

f. ***Limit Deliverables.*** Agencies should consider the level of effort required by proposers to develop responsive proposals, as well as the time and effort the Agency needs to evaluate the proposals. Agencies should limit the deliverables sought from proposers to only those in line with the scored/evaluated elements needed to differentiate between proposers during the selection process.

g. ***Confidential Meetings.*** Agencies should conduct confidential meetings with each shortlisted proposer prior to the submission of technical and price proposals, as this encourages the open and candid exchange of concepts, concerns, ideas and curtails wasted effort on unacceptable proposals. (In some instances, this is also referred to as Proprietary Meetings or One-on-One Meetings.) These meetings are an essential DBIA Best Practice. FAR 15.201.

Note: Historically, some Agencies have not permitted Confidential Meetings with offerors before or during the procurement process for fear of a protest. As stated by OMB/OFPP, it is a misconception to think that "[a] protest is something to be avoided at all costs — even if it means the government limits conversation with the industry." Instead, OMB states that "[r]estricting communication won't prevent a protest, and limiting communication might actually increase the chance of a protest — in addition to depriving the government of potentially useful information." OMB, Office of Federal Procurement Policy Letter dated Feb. 2, 2011, "Myth Busting": Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process.

h. ***Protect Intellectual Property.*** Agencies should protect the proprietary business information and intellectual property of all proposers and should not disclose such information at any time, except as required by law. FAR 3.104-4.

i. ***Technical Submittals.*** Agencies who require project-specific technical submittals for evaluating and selecting the Design-Builder should:

1. Use a two-phase procurement process; and
2. Limit the requirement for such submittals to the second phase, where the list of proposers has been reduced to not more than three Design-Build teams. FAR 36.303-1(b) and 36.303-2(a).

Note: Use of Lowest Price Technically Acceptable (LPTA) (FAR 15.101-2) is NOT recommended for any type of Design-Build project (See **DBIA Position Statement. "Federal, State and Municipal LPTA Procurement"**).

j. ***Agency's Evaluation Team.*** Agencies should ensure that their technical and cost proposal evaluation team members:

1. Are trained in Design-Build Best Practices and the particulars of the procurement process;
2. Are unbiased;
3. Are available to participate in the entire evaluation process;
4. Maintain confidentiality and are free from outside influence or conflict of interest; and
5. Undertake their reviews and evaluations in a manner consistent with the philosophy and methodology prescribed in the procurement documents. FAR 15.303(b).

k. ***Debriefing.*** Agencies should provide all proposers with an opportunity to participate in an informative oral or in-person debriefing session once the procurement is completed. FAR 15.505 and 15.506. As stated in the FAR, at a minimum, the debriefing information should include:

1. The Agency's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;
2. The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror and past performance information on the debriefed offeror;
3. The overall ranking of all offerors, when any ranking was developed by the Agency during the source selection;
4. A summary of the rationale for award; and
5. Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations and other applicable authorities were followed.

3 | Best Value Design-Build Procurement (2-Step Process)

An Agency using a competitive Best Value Design-Build procurement that seeks price and technical proposals should:

- **Establish clear evaluation and selection processes;**
- **Ensure that the process is fair, open and transparent; and**
- **Appropriately value both technical concepts and price in the selection process.**

IMPLEMENTING TECHNIQUES:

a. ***Front End Due Diligence.*** Agencies should perform appropriate front-end tasks and documents (e.g., zoning, site surveys, property entitlements, geotechnical investigations, environmental assessment and preliminary permit acquisitions) to enable the Agency to:

1. Develop a realistic understanding of the project's scope, budget and schedule;
2. Inform the risk and opportunity analysis process; and
3. Furnish proposers with information that they can reasonably rely upon in establishing their technical proposal, price and other commercial decisions.

b. ***Shortlisting.*** During Step 1 (RFQ) evaluation, Agencies should appropriately shortlist the number of offerors invited to submit Step 2 proposals to a maximum of three (3), as this will, among other things, provide the best opportunity for obtaining high-quality competition and focusing the Agency's time on the best, most highly qualified teams.

c. ***Draft RFP.*** Agencies should provide shortlisted proposers with a draft of the design-build RFP at the outset of the second phase of procurement, which:
   1. Provides proposers an opportunity to provide input during the proposal process, before the RFP is finalized; and
   2. Enables the owner to receive feedback as to whether the scope, schedule and target budget are achievable.

   FAR 15.201 and OMB Office of Procurement Policy Memorandum dated Feb. 2, 2011, "Myth Busting": Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process.

d. ***Best Value.*** Agencies should seek proposals that provide the Best Value, through optimization of design, quality and other project goals attainable within the project target budget and schedule, rather than the lowest price offer meeting minimum requirements, including:
   1. Disclosing the budget ceiling;
   2. Declaring whether the Agency expects proposers to develop technical proposals that will encompass the entire target budget, encouraging project enhancements/betterments within the project ceiling; and
   3. Ensuring that non-cost/price factors dominate the selection process.

e. ***Stipend.*** Agencies should offer a commensurate stipend, announced at the RFQ phase, to unsuccessful shortlisted proposers to enhance competition and acknowledge the level of effort required to submit a fully compliant proposal. [See **Capital Programming Guide, Supplement V 3.1 (2021/2022) to OMB Circular A-11**, p. 29, Rationale for Providing Stipends, and **DBIA Position Statement, "Use of Stipends."**]

f. ***Evaluate Technical Proposals First.*** During Step/Phase 2 (Request for Proposals), Agencies should ensure that technical review teams do not have access to financial/price proposals until after the evaluation of technical proposals. FAR 36.303-2(b).

4 | Progressive Design-Build Procurement

DBIA's Universal Best Practices provides information on Progressive Design-Build (PDB). There is not a current federal-wide approach to PDB.

5 | Proposing on Design-Build Procurements

A Design-Builder seeking to respond to an Agency's procurement solicitation should:

- **Form a highly qualified team capable of delivering exceptional Design-Build services;**
- **Develop effective, integrated team dynamics to ensure a cohesive organization;**
- **Strategically analyze the Agency's project and procurement documents; and**
- **Persuasively respond to the Agency's solicitation.**

IMPLEMENTING TECHNIQUES:

a. ***Build Relationships.*** In advance of project pursuit, Design-Builder should intentionally develop professional relationships with potential team members and key individuals with shared values and compatible cultures.

b. ***Be Prepared.*** Design-Builder should proactively build the entire team's training, experience and knowledge base in Design-Build project delivery and pertinent subject matter expertise:
   1. Coordinate Design-Build training for all potential team members; and
   2. Identify potential team members with successful experience in Design-Build projects with similar size, scope and complexity.

c. ***Get Organized.*** The Design-Builder and its team members should mutually agree upon the tools and techniques that will cultivate an integrated and cohesive project team, including:
   1. Clarification of roles, responsibilities and communications protocols;
   2. Commitment to preliminary BIM Execution plans, shared software platforms and decision-making structures; and
   3. Building team trust, transparency and shared understanding of team vision, values and goals.

d. ***Teaming Agreements.*** During procurement, the Design-Builder should use written teaming agreements with key team members to develop and capture an understanding of their relationship and its key commercial aspects, including:
   1. The organizational structure of the team;
   2. Responsibility to maintain confidentiality of proposal-related information;
   3. The teaming party's compensation, if any, during the proposal period;
   4. The teaming party's role in reviewing/approving the proposal;
   5. The teaming party's role in collaborating with estimators in establishing and updating project cost estimates/cost models;
   6. The teaming party's ability to rely on the accuracy of the team's cost estimates in a design-to-budget process;

7. The form of the subsequent agreement, including the contractual liability of the teaming party for problems, including delays, issues during execution; and
8. The teaming party's ability to use project contingency.

e. ***Builder | Designer Interaction.*** The builder and designer(s) should agree on the extent of design advancement appropriate for the proposal and the reliability of information prepared during the procurement.

f. ***Strategic Response Analysis.*** Upon receipt of the Agency's procurement solicitation, the Design-Builder should conduct a thoughtful analysis of the project to strategically determine whether and how to respond, including:
   1. Carefully read all the procurement documents and discuss them among the entire team in order to achieve a shared understanding of the project and what is required to submit a winning response;
   2. Evaluate the Agency's implementation of Design-Build Best Practices, conduct an internal risk analysis and allocation process, and confirm whether the Design-Builder's team would be a "good fit" for this project;
   3. Mine the combined insight of the entire Design-Builder's team concerning the Agency, its goals and objectives, the project requirements and the expected deliverables for a response to the solicitation;
   4. If applicable, agree on a pre-design cost model, the level of design advancement required to respond to the solicitation, including critical tasks and schedule milestones for preparation of a response; and
   5. Making a formal "go/no-go" decision concerning a response.

g. ***Effective Response.*** To effectively and persuasively implement the strategic, project-specific plan to respond to an Agency's solicitation, all Design-Build team members should:
   1. Devote the time, resources and energy needed to effectively respond to the Agency's solicitation;
   2. Embrace opportunities to engage with the Agency during procurement (e.g., Agency briefings, pre-proposal breakout meetings and RFI processes) and demonstrate the team's integration and cohesion during those interactions;
   3. Avoid "boilerplate" responses and instead develop a laser-focus on directly, clearly and succinctly providing the information the Agency requests in its solicitation documents;
   4. Think beyond the solicitation documents to develop unique, insightful responses that add value beyond Agency's expectations that distinguish the Design-Builder's team;
   5. Execute quality-assurance/quality-control program for all procurement deliverables, including ensuring strict compliance with all solicitation instructions, prior to submitting them to the Agency; and
   6. Prepare and rehearse for any presentations/interviews that are part of the Agency's procurement process.

II. CONTRACT FORMATION FOR DESIGN-BUILD SERVICES

The use of fair and clear contracts is fundamental to any delivery process. Because there are some important differences between Design-Build contracts and those for other delivery systems, it is particularly important for the individuals who administer the Design-Build procurement and execution to understand the contract's language and its practical application.

For Design-Build to succeed, these principles should be incorporated into prime contracts and the contracts of those subconsultants, subcontractors and major suppliers working within the Design-Build team.

DBIA considers the following as three (3) Best Practices in Design-Build contract formation.

1 | Design-Build Contracts

Contracts used on Design-Build projects should be fair, balanced and clear, and should promote the collaborative aspects inherent in the Design-Build process.

IMPLEMENTING TECHNIQUES:

a. ***Joint Risk Assessment.*** Contracting parties should proactively and cooperatively identify significant project-specific risks and clearly identify in the contract how such risks will be handled. FAR 7.105(a)(7).

b. ***Risk Allocation.*** Contracts should reasonably allocate risks to the party that is best capable of addressing and mitigating the risk (e.g., the Agency and the Design-Builder each taking responsibility for some Third-Party Approvals, such as permitting, the incorporation of the Economic Price Adjustment provision and the utilization of Allowances).

c. ***Understandable.*** Contracts should use language that is understandable to those personnel who are administering the contract and the people who are performing the work.

d. ***Communication Protocols.*** Contracts should encourage, rather than hinder, positive relationship building, alternative dispute resolution (ADR) and communications among project stakeholders.

e. ***Expedient Change Process.*** Contracts should contain a fair process that facilitates and expedites the review and resolution of potential changes to the contract and adjustments in the contract price and time.

f. ***Proactive Dispute Resolution.*** Contracts should contain a dispute resolution process that promotes the prompt identification and resolution of disputes at the lowest possible level of hierarchy within the Agency's and Design-Builder's organizations. FAR 33.214. (Also see III.3. Partnering.)

2 | Agency | Design-Builder Agreement

The contract between the Agency and Design-Builder should address the unique aspects of the Design-Build process.

IMPLEMENTING TECHNIQUES:

a. ***Cost Incentives and Award Fees.*** Agencies should, consistent with their overall procurement strategy, evaluate and use appropriate contractual cost incentives and/or award fees that facilitate the alignment of the performance of their Design-Build teams with the Agency's project goals. FAR 16.401 and **Capital Programming Guide, V3.1, Supplement to OMB Circular A-11 (2022): Planning, Budgeting and Acquisition of Capital Assets**.
   1. Agencies should develop an incentive and/or award fee program that encourages superior performance, collaborative/transparent behaviors and customer satisfaction to the Agency stakeholders.
   2. Agencies should align the incentive and/or award fee program evaluation factors to reflect a direct correlation between the Design-Builder's performance and Agency's project goals.

b. ***Performance Guarantees.*** If the Design-Builder is expected to meet performance guarantees, the contract should clearly identify such guarantees. All guarantees should be capable of being measured and reasonably achievable by a Design-Builder performing its work in a commercially reasonable fashion.

c. ***Agency's Role.*** The contract should clearly specify the Agency's role during project execution, particularly relative to:
   1. The process for the Design-Builder reporting to and communicating/meeting with the Agency;
   2. The Agency's role in acting upon design and other required submittals;
      a) The Agency should have a clear design review and approval process that is consistent with the overall project schedule. The process should be adequately staffed and include stakeholder review.
      b) The Agency should adequately staff construction submittal review and associated project decisions during construction.
   3. The Agency's role, if any, in quality assurance and quality control (QA/QC); and
   4. The role of a third-party Agency's advisor (known as an Owner Advisor in the industry) in fulfilling or supporting the role of the Agency.

d. ***Design Professional(s)-of-Record.*** The contract should clearly define the role(s) of the Design Professional(s)-of-Record and how each will communicate with the Agency.

e. ***Roles and Responsibilities.*** The contract should clearly define the roles and responsibilities of each party for processes requiring specific actions and documentation, such as:
   1. Commissioning
   2. Project Closeout
   3. Sustainability Certification (e.g., LEED, Energy Star, Well Building, Green Gloves, etc.)
   4. Facility Accreditation (e.g., ISO, ACA, ASCLD, JCI, ACHC, HFAP, HACCP)

f. ***Defined Milestones.*** The contract should clearly define requirements for achieving project milestones, inclusive of design commitment phases, Substantial Completion, Final Completion and final payment.

g. ***Standard of Care.*** The contract should clearly define expected Standards of Care for all professional services. Such definition should be in line with normal industry standards for each profession.

3 | Design-Builder | Team Member Subcontracts

The subcontracts between the Design-Builder and its team members should address the unique aspects of the Design-Build process.

IMPLEMENTING TECHNIQUES:

a. ***Clear Roles and Responsibilities.*** The subcontract should establish the roles and primary responsibilities of each entity on the Design-Builder's Team during each phase of the project, including:
   1. The regular and active involvement of the Design Professional(s)-of-Record (i.e., Architect of Record, Engineer of Record, etc.) throughout the project's execution;
   2. Primary design responsibilities, by system or project element;
   3. Design-assist | design review support (e.g., constructability, scheduling, peer-review, pricing, procurement, safety and logistics planning, etc.);
   4. Quality Assurance and Quality Control (e.g., document review, mock-ups, design advancement review, design commitment, submittal review, field interpretations, RFI support, punchlist and closeout);
   5. How the contingency will be developed and handled within the Design-Build team; and
   6. Construction and Construction Phase Services.

b. ***Team Communications.*** The subcontract should define how the team members will communicate, including regularity and whether in-person or virtual, with each other and with the Agency, including:
   1. Meeting attendance;
   2. Decision-making and issue resolution;
   3. Communication protocols and response times;
   4. Participation in common software platforms (e.g., project websites, document editing software, etc.);
   5. Expectations for physical co-location;
   6. VDC/BIM execution plan determination and compliance;
   7. Deliverables; and
   8. Reviews.

c. ***Flow-Down Provisions.*** Team member subcontracts should have a clear and appropriate "flow down" of obligations from the prime Design-Build contract.

III. EXECUTING DESIGN-BUILD PROJECTS

DBIA recognizes that the Best Practices associated with the execution of a Design-Build project are similar to projects delivered under other systems. It is not the intent of this document to focus on identifying general best practices associated with design, construction or project management. Rather, this document's Best Practices for project execution focus on unique features of the Design-Build process, where successful execution is based on relationships built upon trust, transparency and team collaboration/integration. In Design-Build, the term "team" includes all participants/stakeholders to include Agency key personnel.

Individuals should be competent in their specific areas of responsibility. They should understand the Design-Build process and that success is directly dependent upon the ability of the entire team to work together collaboratively.

DBIA considers the following as five (5) Best Practices for project initiation and procurement:

1 | The Right People

Everybody involved in a Design-Build project should be educated and trained in the Design-Build process. They should be knowledgeable of the differences between Design-Build and other delivery systems.

IMPLEMENTING TECHNIQUES:

a. ***Trust and Collaboration.*** Each individual participating in a Design-Build project must understand that the project's success is dependent on the ability of the team members to work collaboratively and to trust that each member is committed to working in the best interests of the project. FAR 1.102-2(c)(1).

b. ***Design-Build Mental Shift.*** Projects should be staffed with individuals who are well-educated and experienced in the implementation of Design-Build Best Practices and whose personalities and mindset are well suited to the collaborative/integrated nature of the Design-Build process. FAR 1.102-4(c).

c. ***Project Champions.*** All project teams should have senior leadership committed to the success of their projects and actively supportive of Design-Build Best Practices.

d. ***Trade Partners and Consultants.*** The Design-Builder should recognize the benefit of including experienced Design-Build trade contractors and specialty design consultants on its team early in the design process and procurement phase.

2 | The Right Tools

The project team should establish logistics and infrastructure to support integrated project delivery.

IMPLEMENTING TECHNIQUES:

a. ***Co-Location.*** Agency representatives and the Design-Builder's design and construction team members should physically co-locate when justified by project characteristics and generally adopt practices that support immediate and transparent communications (e.g., "Big Room" project headquarters, electronic meeting platforms, project websites, etc.). FAR Parts 1.102(c) and FAR 1.102-3.

b. ***Effective Administration.*** Agencies and Design-Builders should ensure that the administrative processes established for project execution are appropriate, well-understood and expeditious. In a fast-tracked Design-Build project, the Agency must provide appropriate staffing (i.e., contracting and technical staff, as well as consideration of an Owner Advisor) and demonstrate enhanced responsiveness to the information, review and decision needs of the Design-Build team.

3 | Exemplary Communication

The project team, at the outset of the project, should establish processes to facilitate timely and effective communication, collaboration and issue resolution.

IMPLEMENTING TECHNIQUES:

a. ***Partnering.*** The Agency and Design-Builder should develop and use a structured partnering process, scaled appropriately to reflect the project's size and complexity. FAR Part 33.214.

b. ***Validation.*** The Agency and Design-Builder should, as early as possible, conduct a rigorous review of the Agency's RFP, the Design-Builder's proposal, and all other available information to validate the basis of design and other commercial terms at the outset of the project. Validation activities may include:
   1. Review of project scope requirements and clarification of any ambiguities or inconsistencies;
   2. Agree on basis of design parameters, key design commitment milestones and any other aspects of advancement of design to completion;
   3. Achieve common understanding of the administration of any incentive and/or award fee programs;
   4. Review of status of permitting activity to date and remaining to complete;
   5. Review of existing project site conditions and any additional due diligence that is appropriate;
   6. Joint update of project risk and opportunity analysis;
   7. Joint review of project contingencies and/or allowances; and
   8. Clearly document the process and any clarifications in writing.

c. ***Executive Leadership Team.*** The Agency and Design-Builder should create an executive leadership group, including individuals from key members of the Design-Builder's team (e.g., Design Professional(s)-of-Record and key trade partners) to meet regularly, monitor the project's execution, and facilitate the understanding, support and achievement of the parties' mutual goals. FAR 33.214(a)(3) and (4).
d. ***Stakeholder Interfaces.*** The Agency and Design-Builder should develop processes that enable key stakeholders (e.g., end users, local community groups, government Agencies and third-party operators) to interface directly with the Design-Builder and its design professionals on significant elements of the work. FAR 1.102(c) and 1.102-3.
e. ***Integrated Design & Construction.*** The Agency and Design-Builder should, at the outset of the project, endorse and liberally use techniques that effectively integrate design and construction activities and take steps to continue these processes throughout the duration of the project.
f. ***Agency Engagement.*** The Agency should be fully engaged and prepared to make the timely decisions necessary to facilitate the Design-Builder's performance, including being represented by staff with the authority to make timely decisions and perform its project functions. FAR 1.102-4(a), (b) and (c).
g. ***Complete Transparency.*** The Design-Builder should clearly, thoroughly and expeditiously advise the Agency about any issues that might impact the contract price, schedule or material matters affecting the project, as this will, among other things, enable the Agency to make timely and informed decisions on how to address such issues. FAR Part 43.

4 | Design Management

The project team should ensure there is alignment among the team as to how to execute design management.

IMPLEMENTING TECHNIQUES:

a. ***Design Review.*** The Agency and Design-Builder should acknowledge the significant level of effort required to manage development and review of the design and, consequently:
   1. Dedicate sufficient resources to foster a collaborative environment for this work; and
   2. Mutually develop a realistic design development plan that efficiently engages the Agency representatives and key members of the Design-Builder's team (e.g., Design Professional(s)-of-Record and key trade partners) in purposeful meetings.
   3. Commit to the review and comment resolution process;
   4. Involve key stakeholders early in the design process; and
   5. Have a clear process for review and acceptance of design after award (See 4.c.2. below).

b. ***Design Commitment.*** The Design-Builder should ensure that iterative design advancement and formal design commitment processes are clearly, thoroughly and contemporaneously documented. There must be a clear and mutual understanding as to how and when the Agency is integrated into the decision-making process for incremental design commitment, such that:
   1. The Design Professional(s)-of-Record confirm(s) that the Contract Documents conform with the Agencies' project criteria and the design meets all applicable codes and standards;
   2. The Design-Build team collectively confirms and agrees the design to be within budget and attainable on schedule, within the standard of care;
   3. The Agency is then engaged for review of Design Submissions and Construction Documents to affirm compliance; and
   4. The roles of the Integrated Project Leader and the Design Manager are understood by all parties.
      a) **The Integrated Project Leader** leads the project team, manages team dynamics and facilitates decision-making about the design-performance interface (particularly the QA side), as well as making the call as to when enough analysis has transpired and design commitment must take place.
      b) **The Design Manager** facilitates the "marriage" between design professionals and cost estimators, advocates for design excellence within the Design-Build team, ensures constructability input to the design, and manages design information flow and deliverables.
      c) The Design Manager has the critical position of interfacing with the Owner's Construction Manager and Project Manager and the Design-Builder's Build Manager to ensure that design development is fully integrated with the approved project schedule and that it is constructable, within budget and meets the contract requirements.
   5. This timely direct interaction between the Agency and the Design-Builder is a significant paradigm shift, which enables both the government and the contractor to maximize the utility of integrated Design-Build project delivery.

      NOTE: Clear and concise communication that design commitment has taken place is CRITICAL.

c. ***Submittal Review.*** The Agency and Design-Builder should agree upon clear, realistic and expeditious submittal and review/acceptance processes that are in harmony with the parties' schedule and other project-specific goals. Technical submittal review processes should recognize the Design-Builder's primary responsibility for both quality assurance and quality control (QA/QC) and the Agencies' responsibility for compliance oversight. The Agency's objective is to accept a design or each design package, which is in compliance with the formalized and accepted DB contract.
   1. It is highly encouraged that the Agency and Design-Builder develop an informal collaborative process for efficient communication to exchange information between appropriate Agency personnel, third-party operators and key Design-Builder members throughout the design process.

2. Many Agencies use an "over-the-shoulder" review process to streamline the post-award design management phase of the contract.
   a) This process should focus on providing a means for the Design-Builder to raise, address and resolve design questions with the Agency, as they relate to the RFP criteria requirements, at regular intervals between formal interim design review meetings.
   b) Implementation of this process should maximize documentation and communication tools already in place between the designer and the constructor (e.g., specific tele-conferencing, virtual conferencing and documentation platforms).
   c) Specific protocols should be developed with deliberate care that respect the valuable time of each participating member (i.e., establishing a maximum time for virtual meetings, distributing an agenda in advance to ensure attendance of needed individuals and organizing the agenda to most efficiently schedule discussions/ personnel).
3. During the post-award contract administration phase of a Design-Build contract, it is important for Agencies to commit to interacting with the Design-Builder *during* design development, instead of reacting through formal design reviews *after* the Design-Builder has already invested time and resources developing the design with little or no government involvement.

d. ***Trend Management.*** The Design-Builder and its team should establish a formal system from the outset of the Design-Build process to:
   1. Identify, track, evaluate, document and manage the evolution of the advancement of the design so that the project schedule or cost are not adversely impacted;
   2. Clearly, thoroughly, transparently and contemporaneously communicate to the Agency the information derived from the system; and
   3. Maintain the system for the entire duration of the project.

5 | Commissioning and Turnover

The Agency and Design-Builder, from the outset of the project, should establish a collaborative/integrated plan for commissioning, completion and turnover of the project.

IMPLEMENTING TECHNIQUES:

a. ***Roles and Responsibilities.*** Identifying each party's roles and responsibilities, including third-party commissioning agents where appropriate;
b. ***Engaging Stakeholders.*** Engaging end users and other stakeholders in identifying:
    1. Operational parameters that will drive programming of project systems (e.g., temperature controls, safety, security, traffic management, etc.) during commissioning; and
    2. Need for training, attic stock, spare parts, O&M manuals, record documents, etc.
c. ***Testing and Substantiation.*** Scheduling of testing and substantiation of installed systems, particularly where performance guarantees are part of the contract;
d. ***Conditions of Acceptance.*** Clearly defining conditions of acceptance of completed work; and
e. ***Completion and Turnover.*** Establishing processes for Substantial Completion and Final Completion of the project.

The Agency and Design-Builder, from the outset of the project, should establish a collaborative/integrated plan for commissioning, completion and turnover of the project.

For case studies and photos of award-winning projects using Design-Build Best Practices, visit our project database at projects.dbia.org.

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