

FEDERAL SECTOR

Design-Build Done Right

BEST DESIGN-BUILD PRACTICES



DBIA
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FEDERAL SECTOR

BEST DESIGN-BUILD PRACTICES

A DESIGN-BUILD INSTITUTE OF AMERICA PUBLICATION

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 U.S. Office of Management and Budget (OMB) provides further guidance by issuance of Supplement V-2.0 (2006) to Circular A-11, Part 7 (Capital Programming Guide). 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 agencies greater latitude to the Contracting Officer (CO) 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.

There are several misconceptions regarding what the FAR allows (and/or precludes). OMB issued a 13-page memo dated February 2, 2011, titled "Myth Busting," which dispelled many of the misconceptions and clarified significant differences between "low bid" procurements and "negotiated" best value acquisitions. In summary, the DBIA Best Practices highlighted in this document are in compliance with the FAR and OMB guidelines.

Stated differently, implementing these practices on federal design-build projects increases the probability of a successful project that meets the expectations of all stakeholders. If these practices are not implemented, there is an increased probability that the project's performance will be compromised and that some or all of the stakeholders will be disappointed. For ease of reference, this document is organized into three (3) primary sections:

Procuring Design-Build Services

Contracting for Design-Build Services

Executing the Delivery of 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." In many cases these implementing techniques are further refined with federal agency specific techniques. The combination of **best practices** and **implementing techniques** are the basis for "Design-Build Done Right™."

COVER PHOTO CREDITS

Top Row, Left to Right:

Left and center photos: **Henry M. Jackson Federal Building Modernization**, Owner: U.S. General Services Administration (GSA), *2014 National Design-Build Award*; Right photo: **Colonel James Nesmith Readiness Center**, Owner: Oregon Military Department, *2013 National Design-Build Award*

Bottom Row, Left to Right:

Marine Corps Support Facility at Federal City, New Orleans, Louisiana, Owner: HRI/ECC/LLC, *2012 Design-Build Honor Award*
U.S. Coast Guard Houston-Galveston Sector Building, Owner U.S. Coast Guard, *2015 Design-Build Merit Award*
Naval Hospital at Camp Pendleton, Owner: Naval Facilities Engineering Command (NAVFAC), *2014 Design-Build Merit Award*

DBIA recognizes there are real-world differences among design-build market sectors (e.g., water/wastewater, transportation, federal projects) and that specific implementation 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, as DBIA recognizes that some agencies may want further explanation to fully appreciate the thought behind the principles in this document.

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. These are not “Architect-Engineer” contracts under the FAR Subpart 36.6, Brooks Act selection procedures, nor are they typical “construction” contracts, but moreover a specialized procurement that *integrates* both professional design services and construction into a single contract. Such contracts are generally competitively negotiated, firm fixed-price, 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 is with the Designer-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 Designer(s)-of-Record, is paramount to a successful project. The post-award submittal process and subsequent approval 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 assign risk and mitigating such risk factors.

DBIA intends to continually update its portfolio of publications, tools and other resources so that design-build stakeholders will have access to leading-edge information that will allow them to execute Design-Build Done Right™ in accordance with the concepts expressed in this document.



Left to Right:

Advanced Metal Finishing Facility / Ground Support Equipment Facility, Owner: U.S. Army Corps of Engineers – Savannah, *2013 Design-Build Merit Award*

Fairfax County Parkway, Phases I, II and IV, Owners: Virginia Department of Transportation, FHWA Eastern Federal Lands Highway Division, U.S. Department of Transportation, *2013 National Design-Build Merit Award*

PROCURING DESIGN-BUILD SERVICES

An agency's choices of 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 and how the key project stakeholders communicate and relate to each other. In making these choices, it is critical for an agency to consider the particulars and circumstances of each project, including the procurement options available to the agency. After thoroughly considering these issues, an agency should make a strategic decision as to how to take full advantage of the many benefits that are inherent in the design-build process.

DBIA considers the following as three (3) best practices for agencies as they make their project delivery and procurement decisions.

1. An agency should conduct a proactive and objective assessment of the unique characteristics of its program/project and its organization before deciding to use design-build. *FAR Parts 7.104, 7.105, 36.301*

In furtherance of this practice, the following **implementing techniques** apply:

- a. Agencies should 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 Part 36.301(b)*
 - i. Agencies should focus on project goals, challenges and constraints in deciding a project delivery method and not based on fiscal year-end needs to obligate funds.
- b. Agencies should create and train an organization that supports the successful procurement and execution of a design-build project, with key personnel (including those advising/representing the agency) educated and trained in, among other things, (a) the procurement, contracting and execution of design-build projects; and (b) the importance of setting expectations and fostering a collaborative relationship among all members of the project team, to include key government personnel. *FAR Part 36.301 (b) (iii), (v), (vi)*
- c. Agencies should identify and involve key project stakeholders at the early stages of project planning, as stakeholder goals, expectations, challenges, constraints, and priorities should guide all project planning and procurement activities, including the determination and implementation of design excellence and sustainability goals.
 - i. Agencies should ensure key project stakeholders (particularly those involved in the source selection process and the post-award contract administration phases) receive adequate training on the significant difference between integrated design-build project delivery and other delivery methods. *FAR Part 15.303(b); Federal Acquisition Certification in Contracting FAC-C and Federal Acquisition Institute COR Training, and DBIA Professional Certification*
- d. Agencies should involve senior leadership that is committed to the success of the design-build process, as this will foster a healthy and trusting relationship among the entire project team.
- e. Agencies should carefully research and assess current market conditions as they plan their design-build programs, as this will identify potential risks and opportunities. Among the issues to be researched and assessed include: (a) procurement actions that could limit or expand competition; (b) projected labor, material and equipment availability; (c) lessons learned from similar projects; and (d) realism of budget and schedule estimates. *FAR Part 10*
- f. Agencies should use a rigorous and equitably-balanced project risk assessment process early in the procurement process and update/refine the risk assessment as the project proceeds from procurement through project execution. *FAR Part 7.105 (a) (7)*
 - i. Agencies should identify issues that may negatively impact the project schedule, budget and performance early in the acquisition process.

- ii. Agencies should assess the probability and impact of each risk issue identified.
 - iii. Agencies should align high risk issues with the source selection evaluation factors.
 - iv. Agencies should align high risk issues with the post-award incentive/award fee program.
- g. Agencies should understand all procurement constraints imposed or flexibilities afforded by their legislative, regulatory, or internal requirements. *FAR Parts 1.102 (d) & 1.102-4 (e)*
- h. 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 such design-build procurements. *FAR Parts 9.504 & 9.505-2*
- i. Agencies should make an early determination about their expectations for the design-builder's role in the start-up, commissioning and operation of the project and reflect expectations in their procurement approach. *FAR Parts 7.105 & 36.302*

2. An agency should implement a procurement plan that enhances collaboration and other benefits of design-build and is in harmony with the reasons that the agency chose the design-build delivery system.

In furtherance of this practice, the following **implementing techniques** apply:

- a. Agencies should use a procurement process that: (a) focuses heavily on the qualifications of the design-builder and its key team members rather than price; (b) evaluates both the past performance and the experience of both the Contractor and Designer(s) of Record; and (c) rewards (i.e., gives credit to) design-build teams that have a demonstrated history of successfully collaborating on design-build projects. *FAR Parts 15.3 & 36.303-1 (a) (2) (ii) and OMB memorandum titled "Making Better Use of Contractor Performance Information" dated July 10, 2014*
- 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 than cost or price."
 - ii. Agencies should ensure "past performance" and experience are the most heavily weighted source selection evaluation factors.
 - 1. Agencies should verify "past performance" and experience of the design-build entity, key subconsultants and key trade partners (projects within the past seven (7) years).
 - 2. Agencies should recognize the value of Designer(s)-of-Record (and key subconsultants) and contractor (and key subcontractors) that have performed together on previous projects.
 - iii. Agencies should require offerors to identify the "Design-Build Project Manager" in the Phase I – Request for Qualifications (RFQ) submissions.
 - 1. Agencies should require offerors to list specialized training/education/certifications of the Design-Build Project Manager such as LEED-AP, PMP, DBIA, CCM, CSI, etc.
 - iv. Agencies should require offerors to identify other key personnel in the Phase II – Request for Proposals (RFP) submissions/proposals.
 - 1. Agencies should require offerors to list specialized training/education/certifications of key personnel such as LEED-AP, PMP, DBIA, CCM, CSI, etc.

NOTE: Phase I of the RFP is in accordance with FAR Part 36.3 and Phase II of the RFP is in accordance with FAR Part 15 source selection procedures with only the Phase I most highly qualified short-listed design-build teams. Phase I is typically referred to by industry as the Request for Qualifications (RFQ), with subsequent submissions to the Phase I RFQ referred to as Statements of Qualifications (SOQ).

- b. Agencies should use a procurement process that encourages the early participation of key trade contractors. *FAR Parts 36.303-2 (a) & 15.304 (b)*
 - i. Agencies should require all offerors list key trade partners in the Phase I submissions to the RFQ.
 - ii. 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.
- c. 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, which will allow the design-build team to meet or exceed the agency's needs through innovation and creativity. *FAR Parts 11.101 (a) (2) & 37.601*
- d. Agencies should develop realistic project budgets, and provide clarity in their procurement documents about their budgets, including, as applicable: (a) identifying "hard" contract cost/budget ceilings; (b) stating whether target budgets can be exceeded if proposed solutions enhance overall value; and (c) stating whether the agency expects proposers to develop technical proposals that will encompass the entire target budget.
 - i. In order to maximize 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 Part 36.609 for Architect-Engineer Services*) requiring the offerors to design and construct the project within funding limitations (keeping in mind in design-build the Designer(s)-of-Record is/are on the offeror's design-build team). The concept that the solicitation includes a target "design to" budget number is appropriate in allowing the agency to trade off cost and quality to achieve best value for the government.
 - ii. Agencies should structure the RFP to maximize the budget (in terms of quality, scope, energy efficiency, sustainability, durability, life-cycle 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.
 - iii. Agencies should encourage project enhancements/betterments within the budget ceiling, e.g., structured in a tiered manner, such as "desirable" enhancements; and "if possible" additions within the project funding limitation.



Left to Right:

Colonel James Nesmith Readiness Center, Owner: Oregon Military Department, 2013 National Design-Build Award

U.S. Federal Courthouse
Owner: U.S. General Services Administration, 2013 Design-Build Honor Award

e. Agencies should consider the level of effort required by proposers to develop responsive proposals, and should limit the deliverables sought from proposers to only those needed to differentiate among proposers during the selection process.

f. Agencies who require project-specific technical submittals (e.g., preliminary designs) for evaluating and selecting the design-builder should: (a) use a two-phase procurement process; and (b) limit the requirement for such submittals to the second phase, where the list of proposers has been reduced. *FAR Parts 36.303-1 (b) & 36.303-2 (a)*

NOTE: Use of Lowest Price Technically Acceptable (LPTA) (FAR Part 15.101-2) is NOT recommended for any type of design-build project (See DBIA Position Statement on LPTA Procurement). Additionally, use of the one-phase or turnkey process, which has limited authorization for use by DOD agencies (and should not be confused with Qualifications Based Selection, authorized in some states) is also NOT recommended, as such acquisition techniques are in direct contradiction to numerous best practices identified within this document.

3. An agency using a competitive design-build procurement that seeks price and technical proposals should: (a) establish clear evaluation and selection processes; (b) ensure that the process is fair, open and transparent; and (c) value both technical concepts and price in the selection process. In furtherance of this practice:

a. Agencies should perform appropriate front-end tasks (e.g., geotechnical/environmental investigations and permit acquisitions) to enable the agency to: (a) develop a realistic understanding of the project's scope and budget; and (b) furnish proposers with information that they can reasonably rely upon in establishing their price and other commercial decisions.

b. Agencies should appropriately short-list the number of proposers invited to submit proposals, as this will, among other things, provide the best opportunity for obtaining high quality competition.

NOTE: FAR Part 36.303-1 (a) (4) states no more than five (5) "most highly qualified," however, to further enhance competition at the highest level and reduce administrative burden to both industry and the government, the short-list should be no more than the three (3) most highly qualified. Three (3) finalists allows for a reasonable chance at success by proposers, which encourages innovation and best effort. Further, three (3) finalists better allows agencies to consider varied design solutions while appropriately limiting the administrative costs agencies incur reviewing multiple submittals.

c. Agencies should provide short-listed proposers with a draft of the design-build RFP (specifically the design criteria package) at the outset of the second phase of procurement, which: (a) provides proposers with an opportunity to provide feedback during the proposal process; and (b) enables the agency to affirm the scope, schedule and target budget are achievable. *FAR Part 15.201 and OMB Office of Federal Procurement Policy Letter dated February 2, 2011, titled, "Myth Busting" Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process.*

d. Agencies should conduct confidential meetings with short-listed proposers prior to the submission of technical and price proposals, particularly on high value projects, as this encourages the open and candid exchange of concepts, concerns, and ideas. *FAR Part 15.201 and OMB Office of Federal Procurement Policy Letter dated February 2, 2011, titled, "Myth Busting": Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process.*

e. Agencies should protect the intellectual property of all proposers and should not disclose such information during the proposal process. *FAR Part 3.104-4*

f. Agencies should offer a reasonable stipend to unsuccessful short-listed proposers when the proposal preparation requires a significant level of effort. *OMB Circular A-11, Part 7 (Capital Programming Guide) Supplement V-2.0 (2006)*

g. Agencies should ensure that their technical and cost proposal evaluation team members are: (a) trained on the particulars of the procurement process; (b) understand the critical aspects design-build project delivery; (c) unbiased; and (d) undertake their reviews and evaluations in a manner consistent with the philosophy and methodology described in the procurement documents. *FAR Part 15.303*

- h. Agencies should ensure that technical review teams do not have access to financial/price proposals until after completion of the scoring (i.e., adjectival evaluation) of the technical proposals (evaluation of proposals in accordance with the source selection criteria established within the RFP). *FAR Part 36.303-2 (b)*
- i. Agencies should provide all proposers with an opportunity to participate in an informative debriefing session. *FAR Parts 15.505 & 15.506* As stated in the FAR, at a minimum, the debriefing information should include: (a) the agency's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable; (b) 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; (c) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection; (d) a summary of the rationale for award; and (e) reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

NOTE: Historically, some agencies have not permitted face-to-face meetings with offerors before or during the procurement process for fear of a protest. As stated by OMB, 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 industry." Instead, OMB says it is a fact that "restricting 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."

CONTRACTING 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. DBIA also recognizes that the construction industry currently tends to focus on the contract between the agency and design-builder. For design-build to succeed, however, the principles must also be incorporated into 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 contracting.

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

In furtherance of this practice, the following **implementing techniques** apply:

- a. Contracting parties should proactively and cooperatively identify significant project-specific risks and clearly identify in the contract how such risks will be handled. *FAR Part 7.105(a)(7)*
- b. Contracts should reasonably allocate risks to the party that is best capable of addressing and mitigating the risk. Contracts should be solicited, negotiated and awarded with a sense of urgency so as to ensure the process does not become a protracted costly progression.
- c. Contracts should use language that is understandable to those personnel who are administering the project. Additionally, when using the Construction Specifications Institute (CSI) or Uniform Contract Format (UCF), agencies should develop language that is consistent with industry standard design-build contracts for the organization of the RFP. *FAR Part 15.204*
- d. Agencies should consider a standard format (e.g., the Construction Specifications Institute (CSI) UniFormat; CSI MasterFormat) to prepare the RFP design-criteria package (scope of work).
- e. Contracts should encourage, rather than hinder, communications among project stakeholders. *OMB memorandum titled "Myth Busting" dated February 2, 2011*

f. 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.

g. 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 parties' organizations. *FAR Part 33.214*

2. The contract between the agency and design-builder should address the unique aspects of the design-build process, including expected standards of care for design services.

In furtherance of this practice, the following **implementing techniques** apply:

a. Agencies should, consistent with their overall procurement strategy, evaluate and use appropriate contractual incentives that facilitate the alignment of the performance of their design-build teams with the agency's project goals. *FAR Part 16 and OMB Circular A-11 Supplement V-2.0 Part 7 (2006)*

i. Agencies should develop an award fee program that encourages superior performance and customer satisfaction to the agency stakeholders. *DBIA High-Performance Incentive Contracting*

ii. Agencies should align the award fee program scoring factors to reflect a direct correlation between the design-build team's performance and the agency's project goals.

b. If the design-builder is expected to meet performance guarantees, the contract should clearly identify such guarantees, and the guarantees should be capable of being measured and reasonably achieved by a design-builder performing its work in a commercially reasonable fashion.

c. The contract should clearly specify the agency's role during project execution, particularly relative to (a) the process for the design-builder reporting to and communicating/meeting with the Agency; (b) the agency's role in acting upon design and other required submittals; and (c) the agency's role, if any, in QA/QC.

d. The RFP/contract should require the design-build entity to clearly define the role of the Designer(s)-of-Record within its organization and how the Designer(s)-of-Record will be involved and communicate throughout the life of the contract as the design-build entity interacts with the agency.

i. See implementing technique (a) below, regarding Design Commitment under best practice 4 of Executing the Delivery of Design-Build Projects, page 12.

e. The contract should clearly define the commissioning and project closeout processes, including documentation associated with such processes.

Left to Right:

U.S. Department of Energy's National Renewable Energy Laboratory Café, Owner: National Renewable Energy Laboratory, U.S. Department of Energy, 2013 *Design-Build Honor Award*

Federal Center South Building 1202 Redevelopment, Owner: U.S. General Services Administration, Acquisition Solutions Branch, 2013 *National Design-Build Award*



- f. The contract should clearly define requirements for achieving project milestones, inclusive of substantial completion, final completion and final payment.

3. The contracts between the design-builder and its team members should address the unique aspects of the design-build process.

In furtherance of this practice, the following **implementing techniques** apply:

- a. During the proposal phase, the design-builder should use written teaming agreements with each team member to develop and capture an understanding of their relationship and key commercial aspects of their relationship.
- b. The design-builder and its designer(s) should develop an understanding, at the outset of their relationship, of the key commercial aspects of their relationship, including: (a) the designer's compensation, if any, during the proposal period; (b) the designer's role in reviewing/approving the proposal; (c) the contractual liability of the designer for problems, including delays, during execution; and (d) the designer's right to use project contingency for its execution-related problems, and capture these understandings in the written teaming agreement.

NOTE: Utilization of the contingency should be a team discussion within the design-build entity.

- c. The contract should reflect that Designer(s)-of-Record are regularly and actively involved throughout the project's execution.
- d. The contract should establish the role and primary responsibilities that each party has relative to the design process.
- e. The contract should ensure that there is a clear understanding as to how the team members will communicate with each other and with the agency, including meetings that each party is expected to attend.
- f. The contract should have a clear and commercially-appropriate flow-down of obligations from the prime design-build contract.

EXECUTING THE DELIVERY OF DESIGN-BUILD PROJECTS

DBIA recognizes that the best practices associated with the execution of a design-build project are similar to those 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 upon relationships built upon trust, transparency and team integration. In design-build, the term "team" entails all participants/stakeholders to include agency key personnel. Individuals not only need to be competent in their specific areas of responsibility, but they also must 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 four (4) best practices in the execution of a design-build project.

1. All design-build team members, to include government personnel and practitioners, should be educated and trained in the design-build process, and be knowledgeable of the differences between design-build and other delivery systems.

In furtherance of this practice, the following **implementing techniques** apply:

- a. All members of the design-build team 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.

- b. Projects should be staffed with individuals that are educated and experienced in the implementation of design-build best practices, and whose personalities are well-suited to the collaborative nature of the design-build process. *FAR Part 15.303(b)*
- c. All project teams should have senior leadership committed to the success of their projects and actively supportive of design-build best practices.
- d. The design-builder should recognize the benefit of including experienced design-build trade contractors on its team.

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

In furtherance of this practice, the following **implementing techniques** apply:

- a. Agencies and the appropriate members of the design-builder's team should co-locate when justified by project characteristics (e.g., project's complexity and volume of design submittals).
- b. Design-builders should strive to have their design and construction teams working in the same place as often as possible, including co-location if practical.
- c. 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 government must be more responsive to the information, review, and decision needs of the design-build team.

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

In furtherance of this practice, the following **implementing techniques** apply:

- a. The agency and design-builder should develop and use a structured partnering/teaming process, scaled appropriately to reflect the project's size and complexity. *FAR Part 33.214*
- b. The agency and design-builder should create an executive leadership group, including individuals from key members of the design-builder's team (e.g. Designer(s)-of-Record and key subcontractors) to meet regularly, monitor/measure the project's execution, and facilitate the understanding and achievement of the parties' mutual goals.
- c. The agency and design-builder should develop processes that enable key stakeholders (e.g., government agencies and third-party operators) to interface directly with the design-builder and its design professionals on significant elements of the work.
- d. 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.

Left to Right:

Fort Wainwright 336B Barracks,
Owner: U.S. Army Department of
Public Works, 2013 *Design-Build*
Honor Award

Battlespace Environment
Laboratory, Owner: U.S. Army
Corps of Engineers, 2014 *Design-*
Build Honor Award



- e. 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 that has the authority to make decisions and perform its project functions.
- f. The design-builder should clearly, thoroughly and expeditiously advise the agency about any issues that might impact the contract price, performance or schedule as this will, among other things, enable the agency to make an informed decision as to how to address such issues.

4. The project team should focus on the design management and commissioning/turnover processes and ensure that there is alignment among the team as to how to execute these processes.

In furtherance of this practice, the following **implementing techniques** apply:

- a. The agency and the design-builder should reach a consensus on the definition of "design commitment" and when design commitment occurs during the post-award process, most likely by phases, e.g., (a) the Designer-of-Record confirms the documents comply with the agency's project criteria and all codes and standards; (b) The design is confirmed to be within budget and schedule; and (c) agency review for compliance has been completed.

NOTE: The integrated project leader needs to facilitate decision making about the design-performance interface (particularly the QA side) and make the call as to when enough analysis has transpired, and design commitment must take place. Communication that design commitment has taken place is a BIG DEAL.

- b. The agency and design-builder should acknowledge the significant level of effort required to manage the development and review of the design and, consequently: (a) dedicate sufficient resources to foster a collaborative environment for this work; and (b) mutually develop a realistic design development plan that efficiently engages the Agency and key members of the design-builder's team (e.g., Designer(s)-of-Record and key subcontractors) in purposeful meetings.
- c. The agency and design-builder should agree upon clear, realistic and expeditious submittal and review/approval processes that are in harmony with the parties' schedule and other project-specific goals.

*NOTE: The U.S. Army Corps of Engineers has developed an "over-the-shoulder" review process to streamline the post-award design management phase of the contract. It is highly encouraged that the agency and design-builder develop an informal collaborative process for efficient communication to exchange information between appropriate agency, third-party operators and key design-build team members throughout the design process. Such 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. Implementation of this general process, referred to by some as the over-the-shoulder reviews, should maximize currently utilized documentation and communication tools already in place between the designer and the constructor (e.g., specific teleconferencing, virtual conferencing, documentation platforms). Also, specific processes should be developed with deliberate care that respects the valuable time of each participating member (such as limiting maximum time of virtual meeting, development and distribution of an agenda in sufficient time prior to the meeting to assure attendance of needed individuals, and organizing the agenda to most efficiently schedule discussions/personnel and then release of participating members from the meeting).*

- d. The design-builder should ensure that design advancement and changes to the contract documents are clearly, thoroughly, and contemporaneously documented, and that there is a clear understanding as to when the agency is integrated into the decision-making process for and notified of such advancement and changes.
- e. The design-builder and its team should: (a) establish a trend system early in the design development process to identify, track and evaluate any potential changes during the design evolution phase before they adversely impact the project's cost, performance or schedule; (b) clearly, thoroughly, and contemporaneously communicate to the agency the information derived from the trend system; and (c) maintain the trend tracking system throughout the construction process until it is no longer needed.

NOTE: In summary, during the post-award contract administration phase of a design-build contract, it is important for agencies to commit to interacting with the design-build team DURING design development and not just react through formal design reviews AFTER the design-build team has already invested time and resources developing the design with little or no government involvement. This timely direct interaction between the agency and the design-build team is a significant paradigm shift which enables both the government and the contractor to maximize the utility of integrated design-build project delivery.

NOTE: Each of the aforementioned best practices are permitted within federal regulations, e.g., the Federal Acquisition Regulation (FAR), Office of Management & Budget Circular A-11, Part 7, 2006 Version, and the Office of Federal Procurement Policy.

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.

FAR 1.102-4 (e) The FAR outlines procurement policies and procedures that are used by members of the Acquisition Team. If a policy or procedure, or a particular strategy or practice, is in the best interest of the government and is not specifically addressed in the FAR, nor prohibited by law (statute or case law), executive order or other regulation, government members of the team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the team to innovate and use sound business judgment that is otherwise consistent with 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.

As the Administrator of the Office of Federal Procurement Policy has previously stated regarding the FAR, "get across the message that if something is not prohibited, it is allowed; rather than the opposite."



Questions or Comments? Email BestPractices@dbia.org

The term "best practices" itself connotes an evolving process of continuous improvement. DBIA views this document to be the first of what will undoubtedly be many iterations of best practices and implementing techniques. As such, DBIA fully expects that the concepts expressed here will be refined and modified over time.

DBIA is the only organization that defines, teaches and promotes best practices in design-build project delivery. Agencies/Owners choose design-build to achieve best value while meeting cost, schedule and quality goals.

(April 2015)



MISSION:

DBIA promotes the value of design-build project delivery and teaches the effective integration of design and construction services to ensure success for owners and design and construction practitioners.

VISION:

DBIA will be the industry's preeminent resource for leadership, education, objective expertise and best practices for the successful integrated delivery of capital projects.

VALUES:

- Excellence in integrated design-build project delivery, producing high-value outcomes.
 - An environment of trust characterized by integrity and honest communication.
 - Mutual respect for and appreciation of diverse perspectives and ideas.
- A commitment to innovation and creativity to drive quality, value and sustainability.
 - Professionalism, fairness and the highest level of ethical behavior.

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Certification provides the only measurable standard by which to judge an individual's understanding of "Design-Build Done Right."

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DBIA offers two types of Certification.



Attaining the DBIA requires from two to six years of hands-on experience of pre and post-award design-build. Credential holders who display "DBIA™" after their names come from traditional design and construction backgrounds; they are private or public sector architects, engineers and construction professionals. Some attorneys and academic practitioners who specialize in design and construction generally and design-build specifically may also fulfill the DBIA™ requirements.



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DBIA extends a thanks to all of the industry leaders
who helped shape this document.

A special thanks is extended to the
Federal Sector Outreach Committee Thought Leader

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