DESIGN-BUILD BEST PRACTICES GUIDELINES

PUBLIC WORKS IN WASHINGTON STATE REGULATED BY RCW 39.10

REVISED

CAPITAL PROJECTS ADVISORY REVIEW BOARD | DESIGN-BUILD BEST PRACTICES COMMITTEE | MAY 2018

INTRODUCTION

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The Design-Build Best Practices Guidelines focus is on design-build project delivery as regulated by the Revised Code of Washington State (RCW) 39.10, which is administered by the Capital Projects Advisory Review Board (CPARB) and applies to all public bodies in Washington State except the Washington State Department of Transportation. WSDOT's use of design-build is regulated by RCW 47.20.

The guidelines are intended to fill the gap between Washington State's unique statutes and practice, with the goal of enabling public agencies to effectively utilize design-build. They are generally applicable to horizontal and vertical construction.

Recognizing design-build procurement varies from agency-to-agency and project-to-project, the guidelines seek to establish some common understandings and terms in order to facilitate communications among agencies, contractors and design professionals. They consider the impact of design-build on design professionals and contractors. They promote transparency and fairness in competing for and doing the work. They can be utilized as a checklist that enables public bodies to make appropriate choices based on the specific circumstances of a project.

The guidelines are recommendations, not requirements. They do not propose modifications to the statute. They are not policy of any public agency. They supplement the wide range of readily available resources that inform design-build project delivery, many of which were consulted as part of the development of the CPARB Design-Build Best Practices Guidelines.

WHY DESIGN-BUILD BEST PRACTICES?

INCREASING USE, LACK OF CONSTRAINTS

Design-build is increasingly used to procure public works in Washington State. The statutes give owners significant latitude, providing them with a wide range of choices from team selection to risk transfer. There are issues with agency compliance with the statute.

There is no mechanism to regulate compliance. The Project Review Committee (PRC), whose members are appointed by CPARB, evaluates the ability of a public agency to utilize alternative project delivery methods. The PRC's review occurs at the beginning of the process, when an application for project approval or agency certification is submitted. There is no formal process to ensure that the statutes or best practices are followed afterwards.

Design-build provides unique opportunities. Public owners can, based on the statute, weight their design-build team evaluation criteria to meet their needs. They may determine that qualifications and project approach are the most important factors in selecting a team. Or, they may determine that lowest cost is most important.

Design-build has unique challenges. It leads to fundamental changes in the relationships between owners, designers and contractors. Agencies may not understand the resulting changes in their responsibilities or the impacts to contractors and design professionals.

There are variations between agencies for all forms of project delivery. However, there is less consistency in design-build procurement than design-bid-build or General Contractor/Construction Manager (GCCM).

Design-build is significantly less restrictive. Participants in the process do not share a common understanding of how the process works. Public owners benefit from the flexibility of design-build, but the resulting lack of consistency has a negative impact on designers and builders pursuing and implementing the projects.

2015 AELC WASHINGTON REPORT ON ALTERNATIVE PROJECT DELIVERY

The Architects and Engineers Legislative Committee (AELC Washington) conducted a study on alternative project delivery in 2014-15. Design-build emerged as the central topic of concern to design professionals. The procedure transfers the designer's contractual relationship from the owner to the contractor, making the architects and engineers subcontractors rather than prime consultants. Professionals indicated that the scope of A/E services and engagement with the end user was typically reduced and that owners were often unprepared to fulfill their obligations. There was significant concern about the increased cost and risk associated with competing for the work.

The AELC Washington Report was presented at the Capital Projects Advisory Review Board in January of 2015 with the recommendation that CPARB form a committee to evaluate these issues and make recommendations on best practices for the use of design-build project delivery.

SECTION 1096 OF THE 2015 STATE CAPITAL BUDGET

The 2015 State Capital Budget directed CPARB and the Department of Enterprise Services (DES) to make recommendations to the legislature and the governor on ways to improve design-build:

> *(3) The department [of Enterprise Services], with assistance from the capital projects authority [advisory] review board [CPARB], shall provide recommendations to the governor, house capital budget committee, and senate ways and means committee, on ways to improve the project delivery methods. It must include, at a minimum, methods to incorporate more architectural and engineering firms and contractors to be eligible for design-build projects…*

The 2015 capital budget included funding for several projects with the stipulation that design-build with energy performance guarantees be utilized. Design professionals, contractors and owners questioned the stipulation of project delivery method in legislation. There was a broad consensus that public owners should have an opportunity to select the method that is the best fit for their project based on their understanding of project goals and risks.

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EXECUTIVE SUMMARY

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The Capital Projects Advisory Review Board established the Design-Build Best Practices Committee in February 2015, directing the committee to identify guidelines to assist public agencies in the effective utilization of design-build. The fifteen committee members include representatives from public owners, contractors, architects, engineers, and the Office of Minority and Women-Owned Business (OMWBE). Many others participated over the course of two and a half years of meetings. Meeting agendas, minutes, drafts of the guidelines and presentations were posted online and distributed via email to an open list that grew to 111 people. Outreach included presentations at Design-Build Institute of America (DBIA) forums in Seattle and the annual Washington State University Design-Build Forum on the Pullman campus in July of 2015, 2016 and 2017.

DESIGN-BUILD BEST PRACTICES GUIDELINES

The guidelines consist of five chapters.

Design-Build Types

Compares different approaches to design-build procurement – progressive, traditional and bridging – in terms of contract scope and price, selection criteria, opportunities, and level of effort and risk to compete.

Evaluating the Use of Design-Build

Identifies issues to be considered in aligning project delivery type with owner needs and goals: agency preparedness, program definition and stakeholder involvement, contractual relationships, cost certainty, owner involvement, changes in project scope, subcontractor involvement and self-performance, performance guarantees, and funding.

Design-Build Procurement

Outlines the process for preparing for and managing the process of selecting a design-build team: aligning scope, schedule and budget, preparing pre-solicitation documents, setting evaluation criteria for the selection, considering alternative technical concepts, requesting teaming agreements, assembling the selection panel, conducting Request for Proposal (RFP) phase meetings and interviews, establishing honoraria and the scope of deliverables, and the use of proposals after the competition.

Encouraging Competition

Identifies the challenges for firms to compete for design-build contracts: relationships, business development, risks, selection criteria, and business diversity. Offers strategies to encourage competition: providing advance notice, broadening selection criteria, limiting consultant team exclusivity, promoting diversity. Considers the issue of competitive advantage for firms that have worked on a preparatory phase of the project.

After Design-Build Team Selection

Describes the design-build project after the team is selected: final definition of program, design and cost proposal, validation, design-build contract execution, choosing a lump sum contract versus guaranteed maximum price (GMP), design completion and construction, stakeholder input, ongoing owner involvement, design management, scope and cost management, escalation, design quality, document efficiency, and the commissioning, closeout and post-occupancy phases of the project.

Appendix

Includes a bibliography, list of committee members and the design-build specific sections of RCW 39.10.

IMPLEMENTATION

The committee makes three recommendations for the implementation and continuing development of the Design-Build Best Practices Guidelines:

- The guidelines should be reviewed by agencies applying to the Project Review Committee (PRC) for either project approval or agency certification. The PRC application and review process should refer agencies to the guidelines and serve as a checklist to demonstrate the public body is prepared to administer the design-build procedure.
- CPARB should collect case studies on the use of design-build. The case studies would provide a database and lessons learned to inform future procurements and maintain the relevancy of the guidelines.
- The guidelines should serve as a syllabus for an AGC Education Foundation course based on the successful format of the GCCM course that is given several times each year.

DESIGN-BUILD TYPES

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STATUTES

RCW 39.10

RCW 39.10, Alternative Public Works Contracting Procedures regulates design-build (DB), general contractor/construction manager (GCCM) and job order contracting (JOC) for all public agencies in Washington State except the Washington State Department of Transportation (WSDOT). Design-build is a specifically authorized in RCWs 39.10.300, 39.10.320 and 39.10.330. WSDOT's use of design-build procurement is separately authorized by RCW 47.20, Miscellaneous Projects, RCW 47.20.780, and RCW 47.20.785.

Administration and Authorization of Use

CPARB reviews the use of alternative project delivery methods defined in RCW 39.10 and advises the legislature on policy related to public works delivery methods as defined by RCW 39.10.220 and 39.10.230. The Department of Enterprise Services (DES) maintains a website for CPARB: https://des.wa.gov/about/boards-committees/capital-projects-advisory-review-board.

The Project Review Committee (PRC) reviews applications from public agencies to use either design-build or general contractor/construction manager contracting procedures on individual projects. The PRC also reviews applications from public agencies to be certified to use design-build or general contractor/construction manager contracting procedure, or both. A public body may use the contracting procedure for which it is certified on individual projects without seeking PRC approval for a period of three years. The certification can be renewed.

RCWs 39.10.240, 39.10.250, 39.10.260, 39.10.270, 39.10.280 and 39.10.290 define the PRC's membership and process. DES maintains a website for the PRC which includes applications and scoresheets for design-build projects and design-build agency certification: https://des.wa.gov/about/boards-committees/capital-projects-advisory-review-board/project-review-committee.

RCW 39.10.330 (3) allows the use of design-build for portable facilities or pre-engineered buildings without approval by the PRC.

OTHER REQUIREMENTS

Requirements in addition to state law may apply to design-build projects. Funding sources, such as the federal government, may have additional constraints.

DESIGN-BUILD TYPES

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There are three basic formats for design-build project delivery:

PROGRESSIVE

TRADITIONAL

BRIDGING

The key difference between them is the point in the process that the contract scope and price are established. The owner must provide a target budget in the RFP. The selection process for all three methods requires competing teams to submit, at minimum: qualifications, a technical approach design concept and cost or price-related factors. Competing teams that are not awarded the contract must be given an honorarium.

ISSUE	PROGRESSIVE	TRADITIONAL	BRIDGING
Contract Scope & Cost	Established after the design-build team is selected. The term progressive derives from the fact that scope and cost are agreed upon through a series of steps taken jointly by the owner and the design-builder.	Established at the time the design-build team is selected. Often referred to as a "design and price competition" or "competitive design-build" because teams selected to participate in the RFP phase of the selection process submit firm proposals for the design and price.	Established at the time the design-builder is selected. The term bridging derives from the fact that the owner's separate design architect/engineer provides bridging documents that prescribe a design solution which the design-builder implements.
Selection Criteria	The design-builder is selected based on qualifications and cost factors, prior to submittal of a final design and firm cost proposal. RFP requirements may include a management plan and/or an initial design concept. Qualifications typically play a larger role in team selection than other design-build types.	The design-builder is selected based on qualifications, a design concept and a firm cost proposal. The quality of the design proposal is very important in some selections. Cost is more important in others.	The design-builder is selected based on qualifications, a management plan to implement the owner's design concept and a firm cost proposal to complete the project. Selection is typically focused on cost.

TABLE 1: DESIGN BUILD TYPES

ISSUE	PROGRESSIVE	TRADITIONAL	BRIDGING
Project Criteria Documents	The owner may provide detailed project criteria prior to commencing the design-build team selection process or the detailed project criteria may be developed with the selected design-build team. Project scope, budget and schedule do not have to be aligned before the selection process commences. The services of a separate architect/engineer to prepare the project criteria may or may not be required.	The owner must provide detailed project criteria prior to commencing the design-build team selection process. Project scope, budget and schedule must be aligned before the selection process commences. Project criteria typically consist of performance requirements and may include some prescriptive requirements. The services of a separate architect/engineer to prepare the project criteria and assist the owner in evaluating RFP submittals are typically required.	The owner must provide detailed project criteria prior to commencing the design-build team selection process. Project scope, budget and schedule must be aligned before the selection process. Project criteria typically include prescriptive requirements for the overall design concept and may include some performance requirements for engineered systems. The level of development of the bridging documents, which can range from schematic design to nearly complete construction documents, depends upon the project. The services of a separate architect/engineer to prepare the project criteria are always required. The owner's designer typically assists in evaluating RFP submittals and verifying that the design-builder's work aligns with the intent of the bridging documents.
Opportunities	Takes advantage of the design-build team's ability to participate in the development of the project goals, program, performance criteria, and project budget. Increased opportunity for owner participation. Integrates the owner, contractor, and designer within the programming and planning process. An effective method if limited scope and cost information are available, or difficult to ascertain, at the time of design-build team selection.	Significant track record of use in Washington State. Allows owners to choose amongst alternate proposal for design, cost and value.	Opportunity for owner involvement and design control. Owners who develop horizontal projects typically use prescriptive project criteria due to the complexity of land use requirements and alignments, to ensure consistency and systems operation and to meet federal funding requirements. Retains single point of responsibility for implementation.

TABLE 1: DESIGN BUILD TYPES

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ISSUE	PROGRESSIVE	TRADITIONAL	BRIDGING
Owner Risks	Competition based on price-related factors. No cost certainty at the time the design-builder is selected. The final price is a negotiation between the owner and the design-builder. The owner must have the resources necessary to know that the price is fair which typically includes retaining a cost consultant. The owner carries a burden to demonstrate the appropriate use of public dollars.	Additional costs to prepare project criteria that are adequate for RFP phase and honoraria for losing teams. Limited engagement between owner and design-builder during RFP phase in which design and cost are being developed. Risk involved with setting a price prior to confirming the alignment of a design proposal and cost with the owner's programmatic and operating needs.	Owner responsibility for content of bridging documents. Prescriptive solutions may reduce the opportunity for innovation and integration between the designer and builder. Requiring a design-builder to guarantee a prescriptive design has the potential to create a conflict between the owner's separate designer and the contractor.
D-B Level Of Efffort/Risk To Compete	Limited scope of technical approach design concept and cost or price related factors reduces level of effort and risk to compete compared to Traditional and Bridging procurements.	Preparing the design concept and cost proposal typically requires significant effort for the competing teams. Typically, costs for competing in RFP phase are not adequately compensated by honoraria. Significant risks for design-builder to propose contract price based on the limited information contained in a schematic design.	Preparing technical and/or management proposals and a final cost proposal typically requires a significant effort for competing teams.
Contracts	The contract for design and construction may be awarded through a single contract with the cost to be set later or there may be two separate agreements for the design and construction phases which allows for termination of an unsuccessful relationship after the design phase.	Typically, a single contract for design and construction.	Typically, a single contract for design and construction. The architect-of-record is a member of the design-build team.

TABLE 1: DESIGN BUILD TYPES

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Timelines for the three methods of procurement tend to be very different. The chart indicates the relative points in time for design-build team selection, development of the design and cost proposal, and completion of design and documentation for construction. However, the transition between phases of the project is variable, particularly for progressive and bridging procurements as indicated by the overlapping bars in the schedule.

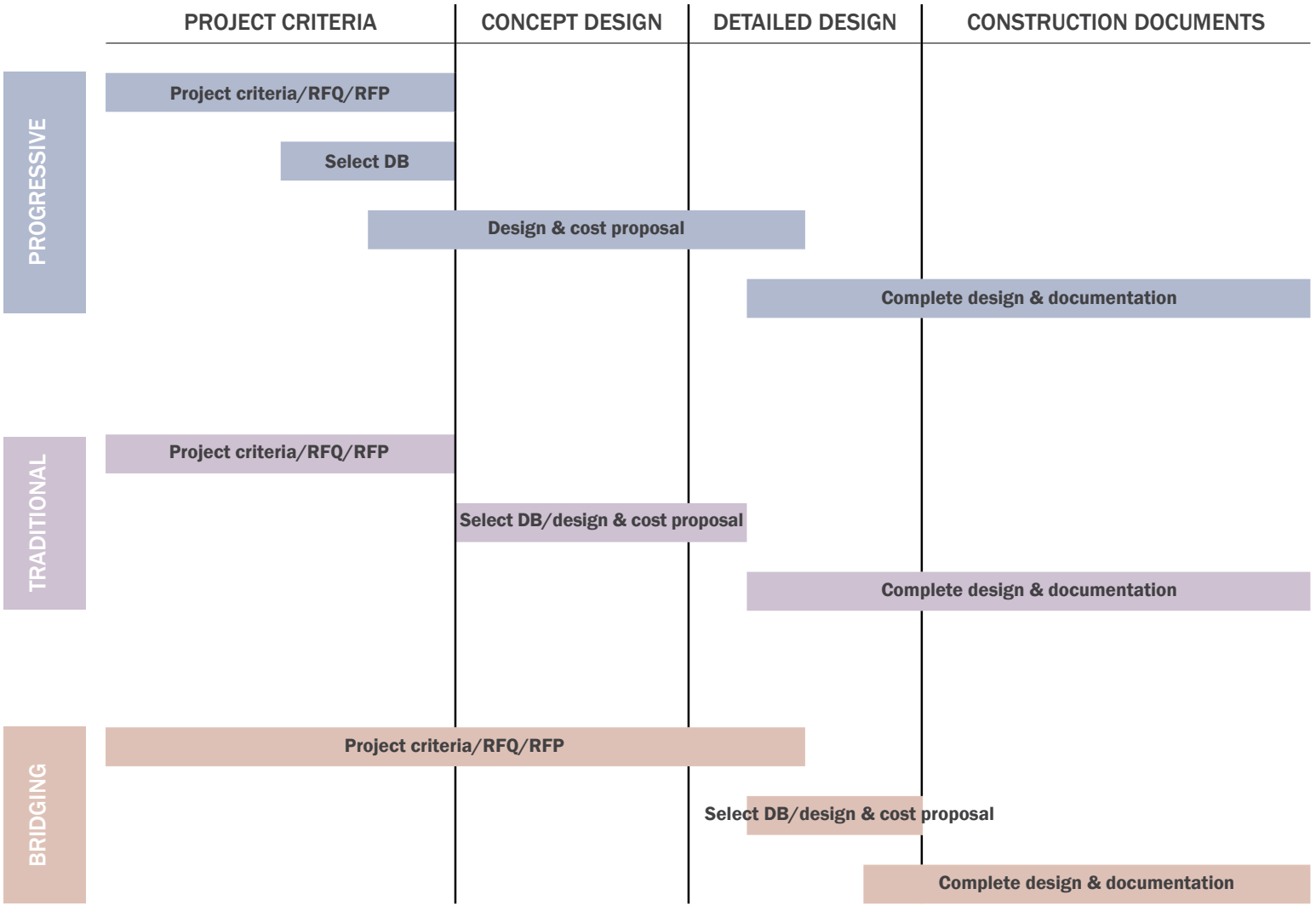

TABLE 2: ILLUSTRATIVE TIMELINES FOR PROCUREMENT

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EVALUATING THE USE OF DESIGN BUILD

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TOOLS & STATUTES

TOOLS

Every project has unique circumstances that should be considered in selecting a project delivery method. Choosing between design-build, design-bid-build and general contractor/construction manager (GCCM) requires a detailed evaluation of project-specific issues including project goals and objectives, specific conditions and potential risks. Following is a partial list of resources that explain the pros, cons and differences among delivery types and tools that help identify the appropriate method of procurement given the nature of a project. Please note that the resources tend to reflect the institutional agendas of the organizations that prepared them.

CMAA: OWNER'S GUIDE TO PROJECT DELIVERY METHODS,
http://cmaanet.org/files/Owners%20Guide%20to%20Project%20Delivery%20Methods%20Final.pdf

DBIA: CHOOSING A PROJECT DELIVERY METHOD,
https://www.dbia.org/about/Documents/db_primer_choosing_delivery_method.pdf

TRANSIT COOPERATIVE RESEARCH PROGRAM REPORT 131: A GUIDEBOOK FOR THE EVALUATION OF PROJECT DELIVERY METHODS,
http://www.trb.org/Publications/Blurbs/161690.aspx

WSDOT PROJECT DELIVERY SELECTION GUIDANCE
https://www.wsdot.wa.gov/Projects/delivery/designbuild/PDMSG.htm

STATUTE

RCW 39.10.300, which limits the use of the design-build for public works to projects with a total project cost over $2 million, provides three reasons for using the procedure:

- design-build is critical to developing a methodology for highly specialized construction, or
- there are opportunities for greater innovation or efficiencies between the designer and the builder, or
- there will be significant savings in project delivery time.

Public bodies may use design-build for parking garages regardless of cost. There is no time constraint on utility and approved demonstration projects. The procedure also allows for procurement of operations and maintenance services for up to three years.

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AGENCY PREPAREDNESS

Design-build requires a public agency to understand and fulfill its responsibilities, from preparing for and conducting the team selection process to understanding their role after the contract scope and price have been established. The process and the relationships among owner, contractor and design professionals are fundamentally different from other project delivery types. Traditional and bridging procurements in particular require significant, upfront effort for owners. Designers and builders have expressed their concern that owners do not always understand their obligations or the differences between design-build and other procurement methods.

The Project Review Committee's application to use the design-build procedure requires the agency to provide its qualifications, an organizational chart for the project, and resumes indicating the relevant experience of individuals assigned to manage the job. The agency's project management team must be independent of the design-build team. RCW 39.10.280(c) and (d) allow an owner to engage a consultant to manage the process. For public agencies considering the use of design-build for the first time, it may be a good idea to choose a project with limited scale, cost and complexity.

CONTRACTS

Relationships

Design-build allows the owner to contract with a single entity that will be responsible for design and construction, taking the owner out of the middle of the relationship, reducing the owner's responsibility for errors and omissions claims.

Design-build changes the relationships between the owner, architect and contractor. The owner does not have a direct contractual relationship with the designer. The architect-engineer/contractor relationship becomes a contractor/subcontractor relationship, a business model that has significant implications in practice. There is a loss of the checks and balances that go with a tripartite relationship.

Trade Partners & Self-Performance

Design-build allows the contractor to get subcontractors involved at any time. Trade partners can provide input on how to build and stage the work. Subcontracts do not have to be competitively bid, which provides flexibility in terms of qualifications-based selections and meeting agency goals for business diversity. There are no limitations on contractor self-performance.

Cost Certainty

Design-build allows the project scope and cost to be established earlier in the process than other project delivery methods, often during schematic design or during design development. It does not, however, relieve the owner from latent conditions, changes in code requirements, owner-initiated scope changes or other issues beyond the control of the design-builder.

The risk of cost changing is related to the point in the process that the contract is awarded. The earlier in the process it is established, the greater the potential for costs to vary due to the limited amount of project definition and the number of variables that exist. The later in the process it occurs the more difficult it can be to shift the risk for scope and budget to the design-builder.

Modifying project scope after the price is established requires a change order to the design-build contract, which may have significant cost impacts. It is a change to a construction contract. This may, under some circumstances, reduce the owner's inclination to make changes.

Performance Guarantees

Design-build is a performance-based contract. It provides a single contractual entity that is responsible for guaranteeing performance. If a building system does not perform, the team is responsible for dealing with the issues. The owner is not typically responsible for dealing with the fact that it is a design issue, a construction issue, or both. As a result, design-build and design-build-operate-maintain are typically the only procurement methods utilized for energy performance guarantees and/or operations and maintenance contracting.

OWNER INVOLVEMENT

Design-build transfers more risk to the contracting team than other project delivery methods. This has an impact on owner involvement after the scope and price are established. In order to manage risk, the owner must be willing to allow the design-build team to make decisions that maintain alignment between that scope, budget and schedule. In doing so, the owner typically relinquishes the level of control beyond the performance and prescriptive and criteria that are defined by the contract. Stakeholder involvement may be limited and the owner may have less control over the details than is typical of other procurement types. The design-build team's ability to organize their process to solicit and accommodate owner input may be important to a successful project.

INTEGRATED DESIGN

Bringing the designer and builder together as a team has the potential to increase the level of integration in design and construction. Design-build provides an opportunity for owners to get input from both designers and contractors on how to maximize the value of its investment. The level of value and innovation that design-builders can provide is directly related to the nature of the public owner's problem statement and the timeframe for developing a design solution and establishing a cost. This, in turn, is related to the decision to choose the progressive, traditional or bridging method. An open-ended problem statement such as "how can we maximize outcomes, in terms of program and budget, for a facility to house our science programs" suggests a progressive procurement. A clearly defined problem statement such as "can you deliver a 70,000 sf STEM education building for $40 million?" could be addressed by all three methods.

FUNDING

Public funding for capital projects is often separated into allocations for design and construction phases, which is a challenge for all types of project delivery, and design-build in particular. This creates issues in terms of the project schedule, construction cost escalation, changes in the owner's, contractor's and designer's team, building codes and technology. Unanticipated changes in construction phase funding may result in significant costs to redesign a project.

Bifurcating the funding is a particular challenge for design-build procurement where a construction contract defining scope and cost is typically executed during the design phase. Ideally, design and construction funding would be in a single allocation. This aligns with the nature of a project delivery method that brings the designer and builder together as a team. It takes advantage of design-build's potential to reduce costs by expediting the schedule. Team continuity and cost certainty are facilitated. A single allocation allows the design-builder an opportunity to realize the rewards that balance their risks.

RFPs and contracts should anticipate the possibility that funding may not be provided. In the case of a project that is not funded after the RFP phase is complete, the selected team should receive compensation equivalent to the level of effort required to compete. For example, if schematic design was required then the compensation should be equal to the schematic design fee. In the case of a project that is not funded after the design phase, compensation related to termination should be defined in the owner/design-builder agreement.

The type of design-build procurement selected should align with the outlook for project funding. Progressive design-build provides some flexibility since the scope and price can be established after the construction phase funds are allocated. Ideally, construction funding is allocated before team selection occurs in traditional design-build to provide certainty that a contract can be awarded and teams are fairly compensated for the risks they take in competing. Bridging design-build provides some flexibility if the design-build team is selected after the construction phase funds are allocated.

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DESIGN-BUILD PROCUREMENT

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Picking the right team, as an agency, depends upon a selection process that is organized with an understanding of owner needs and goals. It should demonstrate the agency's ability to be an effective partner. Competing for a project, as a design-build team, depends upon having adequate information about the project. Firms should be able to evaluate the risks inherent in pursuing the work in relationship to their ability to prepare a credible submittal and potential to win the job.

The minimum requirements for design-build procurement, as defined by RCW 39.10.300, RCW 39.10.320 and RCW 39.10.330, allow for a great deal of latitude in how the procedure is applied. As a result, there is significant variation within and between agencies which is challenging for the designers and builders pursuing the work. Establishing consistent standards for design-build procurement promotes transparency, fairness and encourages firms to pursue design-build opportunities which is likely to increase competition.

Owners must be aware of the time and effort required to prepare for and conduct the design-build contract award process. The complexity and risks are higher than the selection of an architect-engineering team for design services. Washington State regulations include protest procedures for both phases of the selection process, the Request for Qualification (RFQ) and Request for Proposals (RFP).

STATUTE

RCW 39.10.320 defines project management and contracting requirements for design-build. A critical requirement is that a public body utilizing the procedure must provide staff or consultants with expertise and prior experience in the management of comparable projects.

PROJECT CRITERIA DOCUMENTS

Owners should develop their project requirements (project criteria) prior to commencing the design-build contract process in order to develop their procurement requirements and to be ready to comply with RCW 39.10.330(4) which requires the following in the requests for proposals:

- programmatic, performance, and technical requirements and specifications;
- functional and operational elements;
- building performance goals and validation requirements;
- minimum and maximum net and gross areas of any building;
- at the discretion of the public body, preliminary engineering and architectural drawings; and
- the target budget for the design-build portion of the project.

The level of detail must align with the design-build method (progressive, traditional or bridging) to be employed. Evaluating how much preliminary information is available and how many decisions can or should be made prior to engaging the design-build team helps the owner select the most appropriate form of design-build.

A clear statement of the owner's project criteria enables design-build teams to compete for the contract award. It sets the stage for a successful project in terms of program, budget and schedule. Owners should allow adequate time for preparation of documents defining their project criteria. The documents should be complete and available to prospective competitors at the time of advertisement for the Request for Qualifications (RFQ).

DOCUMENTATION

Performance And Prescriptive Criteria

Most projects involve a combination of performance and prescriptive criteria. Performance criteria identify the owner's goals for an element or elements of the project. They allow for a range of solutions that achieve the intended outcome. Prescriptive criteria identify specific solutions and/or systems that must be implemented.

Design Standards

Design standards provide assurance that the project will align with the owner's maintenance and operations protocols.

- Progressive procurements allow design standards to be developed as part of the planning and design process which may allow more opportunity for value analysis.
- Traditional and bridging procurements depend upon clearly defined design standards which are included in the procurement documents. Finalists' proposals are typically evaluated for their ability to meet these requirements.

Agency standards should be reviewed and updated prior to each procurement to ensure alignment with current protocols, codes and technology.

Predesign Studies

Some agencies conduct a predesign study as a means to develop the project criteria. A typical predesign defines the scope of the project in terms of Owner's Project Requirements (OPR), functional program, regulatory and site constraints, schedule and budget. It often includes conceptual drawings that demonstrate the feasibility of the project (a test-to-fit scenario) and are the basis for a cost estimate which confirms the alignment of project scope and budget. The predesign is meant to provide a solid foundation from which to commence design but it should not impose constraints that cannot be altered during the design process as additional information becomes available. A predesign may be completed prior to starting a progressive procurement or it can be part of the design-build team's effort after selection.

- A predesign level of programming and planning is typically required for a traditional, design and price competition.
- A predesign could be the first step in developing bridging documents but would not typically have adequate information to provide the prescriptive design intent for the project.

Bridging Documents

Bridging documents are always required for a bridging procurement. They typically include prescriptive requirements for the overall design concept and may include some performance requirements like engineered systems. The level of development of the bridging documents, which can range from schematic design to nearly complete construction documents, depends upon the specific needs of the project.

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Use of Consultants

Agencies may require the support of a consultant team to develop the project criteria depending on the design-build method to be utilized. The consultant can assist in identifying the agency's intent, translating it into documents that become part of the RFP and confirming it is implemented. They can provide support for proprietary meetings, on-going review of design and evaluation of completed project performance.

- Agencies with significant design-build experience may choose to select consultants with programming and/or project type experience but limited or no experience with preparing design-build project criteria. These agencies typically have the ability to prepare the RFQ and RFP solicitation documents.
- Agencies with limited design-build experience should select consultants that have design-build experience to help them understand what documents are required and how competing teams will use them. They may need additional support in terms of preparing the RFQ and RFP solicitation documents.

ISSUE	PROGRESSIVE	TRADITIONAL	BRIDGING
Project Criteria	May not be required. It depends upon how clearly the owner wants to define the project before selecting the design-build team.	Consultant support typically required to develop a realistic program, scope and budget that enables teams to compete effectively, provide a design and cost proposal that can be implemented.	Always required. The consultant's bridging documents form the basis for the agreement between the owner and design-builder.
Post Contract Award	Not typically retained.	Varies. The consultant may be a continuing advisor to ensure that project criteria are implemented, support owner during construction phase.	Typically retained to ensure that project design is implemented.

TABLE 3: AGENCY USE OF CONSULTANTS

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ALIGNING SCOPE, SCHEDULE, BUDGET AND FUNDING

Progressive

Owners must develop adequate information to meet the statutory requirements of RCW 39.10.330(4). The progressive method allows the owner and selected design-build team to work together to refine the relationship between these parameters before establishing a final design concept and cost proposal.

Traditional and Bridging

It is critical for owners to align scope, schedule, budget and funding before commencing traditional and bridging procurements where finalists are required to submit a firm cost proposal to implement the project. Discovering a misalignment between program, scope, and budget during the RFP phase, as teams are working to develop the technical/ cost proposal on deadline, creates risks for the owner and the finalists. Agencies should provide the following:

- Establish priorities amongst the four key project parameters of scope, quality, schedule, and budget.
- Identify desired betterments in addition to a baseline program that aligns with scope, budget and funding. If there is a prospect for lower funding than anticipated that amount should be used to set the baseline. Betterments would be included if full funding is provided.
- Set a target budget that is feasible to implement a project. Asking teams to bridge a gap between the owner's desired scope and the constraints of available funding puts them at risk.
- Avoid modifying scope, schedule, budget and funding during the design-build contract award process.

For all three types of design-build, agencies should carry an adequate project contingency. RCW 39.10.320 (1)(a) requires that the owner's project budget include reasonable contingencies of no less than five percent of the anticipated contract amount. Agencies should consider project-specific circumstances to determine if more than the minimum is required.

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SOLICITATION DOCUMENTS

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RCW 39.10.330 defines the minimum requirements for information that must be provided to firms submitting for the Request for Qualifications (RFQ) phase and selected to participate in the Request for Proposals (RFP) phase. Additional information is typically required to address the unique circumstances of each project, allow the agency to clarify its goals, objectives and process, and provide firms with information that enables them to effectively compete for the contract. Providing complete information about the project in both phases of the selection process promotes transparency and fairness.

REQUEST FOR QUALIFICATIONS

The statute identifies the minimum requirements for the request for qualifications documents.

- A general description of the project sufficient for proposers to submit qualifications and the reasons for using the design-build procedure.
- A description of the process the agency will use to evaluate RFQ and RFP submittals including evaluation factors, their relative weight and any specific forms to be used.
- A description of required qualifications including proposer's accident prevention program.
- Evaluation factors including (but not limited to) technical qualifications, capability to perform, past performance of the proposer's team including the architect-engineer and construction members, and other appropriate factors. Evaluation factors may also include the proposer's past performance in utilization of small business entities and disadvantaged business enterprises.
- Protest procedures, the form of the contract to be awarded, the amount of the honorarium payment, the schedule for the procurement process and the project, and other information relevant to the project.
- Cost or price-related factors are not permitted in the RFQ phase.

The "general description of the project sufficient for proposers to submit qualifications," should be adequate for proposers to understand the scope of the project, assess the feasibility of the budget and determine if the project aligns with their skills and experience. The RFQ solicitation documents should give proposers an opportunity to evaluate the risks and cost to compete. They should ensure that all proposers have equal access to information about the project. To achieve this level of transparency, agencies should consider providing:

- Preparatory documents for the project which may include the master plan, funding request and/or project criteria documents.
- The project budget, evidence of project funding and the date it will be received.
- The general conditions of the contract for construction.
- A list of deliverables required in the RFP phase.
- Notice of intent to validate the selected design-build team's technical design concept and cost proposal including the scope of the effort and related compensation.

Agencies should consider providing a draft RFP for proposers to review. This gives firms a clear picture of the entire scope of the project and enables them to propose the best team.

RCW 39.10.330(5) requires the agency to identify in the RFQ which of the two allowed procedures will used to award the design-build contract:

(a) evaluate and score the finalists' proposals based solely on the factors, weighting, and process identified in the request for qualifications and published addenda.

(b) determine that all finalists are capable of producing a design that meets project requirements and award the contract to the firm that submits the responsive proposal with the lowest price.

REQUEST FOR PROPOSALS

The statute identifies the minimum requirements for the request for proposal RFP documents.

- Evaluation factors for finalists' proposals:
  - the factors listed in RFQ requirements of the RCW;
  - technical approach design concept and cost or price-related factors that may include operating costs;
  - ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected workloads of the firm; location; and
  - the agency may also consider a proposer's outreach plan to include small business entities and disadvantaged business enterprises as subcontractor and suppliers for the project.
- Required information about the project:
  - a detailed description of the programmatic, performance, and technical requirements and specifications; functional and operational elements; building performance goals and validation requirements; minimum and maximum net and gross areas of any building;
  - at the discretion of the agency preliminary engineering and architectural drawings; and
  - the target budget for the project.

Progressive design-build requirements for the technical approach design concept typically include a project approach and a management plan.

In addition, an agency must:

- Identify how it will define a "responsive proposal" if the agency has indicated, in the RFQ, its intent to follow RCW 39.10.330(5)(b) and award the contract to the firm that submits the responsive proposal.
- Identify if it will provide incentive payments to contractors for early completion, cost savings per RCW 39.10.320(2).
- Provide information and data that is necessary to meet RFP requirements, such as topographic and utility surveys, geotechnical data and/or measured drawings.

It should:

- Allow finalists to observe existing site and facility conditions to increase their general understanding of project conditions.
- Consider providing previous studies which can inform finalists' efforts to prepare the technical approach design concept and cost or price-related factors. Clearly identify whether the materials are for information only or contain any performance and/or prescriptive criteria that must be included in the finalists' proposals.
- Identify the anticipated level of owner involvement after agreement on final design and cost.

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RFQ/RFP SUBMITTAL COMPONENTS	PROGRESSIVE		TRADITIONAL		BRIDGING	
	RFQ	RFP	RFQ	RFP	RFQ	RFP
Project Purpose/Mission Statement	x	x	x	x	x	x
Project Scope Definition	x	x	x	x	x	x
Detailed Room by Room Requirements				x		x
Detailed Systems Requirements				x		x
Project Budget Definition	x	x	x	x	x	x
Project Schedule Definition	x	x	x	x	x	x
Project Competition Schedule	x	x	x	x	x	x
RFP Submittal Requirements	x	x	x	x	x	x
Extent of Team Requirements	x	x	x	x	x	x
Extent of Design Submittal Requirements	x	x	x	x	x	x
Extent of Pricing Submittal	x	x	x	x	x	x
Honorarium Payment - Amount/When Paid	x	x	x	x	x	x
Selection Criteria and Weighting (RFQ)	x		x		x	
Selection Criteria (RFP)	x	x	x	x	x	x
Sample of Agreement & General Conditions	x	x	x	x	x	x
MWBE/SBE Requirements	x	x	x	x	x	x
Interview/Proprietary Meeting Requirements	x	x	x	x	x	x
Sustainability Requirements	x	x	x	x	x	x
Performance Requirements/Guarantees	x	x	x	x	x	x
LEED, Living Building, misc Certifications	x	x	x	x	x	x
Status/Schedule of Funding	x	x	x	x	x	x
Level of Funding Certainty	x	x	x	x	x	x
Definition of Site						
Location	x	x	x	x	x	x
Utilities				x		x
Geotechnical				x		x
Topography				x		x
Master plan Context				x		x
Owner Team Definition	x	x	x	x	x	x
Conflict of Interest Policy (non-compete clause)	x	x	x	x	x	x

TABLE 5: RFQ/RFP SUBMITTAL REQUIREMENTS

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RFQ/RFP SUBMITTAL COMPONENTS	PROGRESSIVE		TRADITIONAL		BRIDGING	
	RFQ	RFP	RFQ	RFP	RFQ	RFP
Rules of Engagement/Communications	x	x	x	x	x	x
Pre-RFQ Conference/Info Distribution	x		x		x	
Selection Committee Members	x	x	x		x	x
Definition of Owner Contact Restrictions	x	x	x	x	x	x
Definition of Owner-provided Scope/Services			x	x	x	x
Responsibility for Regulatory Approvals		x		x		x
Required or Desired Future Expansion				x		x
Owner Involvement After Contract Award	x	x	x	x	x	
Performance Incentives if Included	x	x	x	x	x	x

TABLE 5: RFQ/RFP SUBMITTAL REQUIREMENTS

COST & PRICE-RELATED FACTORS

Cost or price-related factors are a required evaluation factor for finalist proposals in all types of design-build procurement. The owner must provide a target budget.

RCW 39.10.330 defines the requirements for RFQ and RFP submittals.

- The RFQ must include a description of the process that will be used to evaluate finalists' proposals, including cost and price-related factors. The relative weight of factors and any specific forms to be used by the proposers must be provided.
- The RFP must include the cost or price-related factors.

The RFP should also define any additional information required of the finalists including specific basis of cost or price submittal components, such as scope of work, schedule and other project conditions and/or performance metrics.

Scoring

Transparency, consistency and fairness are critical in the evaluation and scoring of cost proposals. Some owners grade costs and/or price-related factors according to a predetermined formula. Any formula should be identified in the RFQ and the RFP.

Owners have significant latitude in determining the extent to which the cost and price factors influence the outcome because there are no requirements for relative weight of these factors in relation to other selection criteria. If cost is a primary consideration, the related factors can be given significant weight. If qualifications and/or the technical design concept are primary considerations, the weight of cost and price-related factors can be minimized.

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PROGRESSIVE	TRADITIONAL	BRIDGING
Given that the selection is made prior to development of a firm design and price proposal, the design-builder's fee is typically required to meet the required cost or price-related factors. Where qualifications are more important than cost, a limited number of points is assigned to this selection criteria.	Owners typically designate a fixed price for submittals when design quality and program functionality are their highest priorities This approach focuses on the evaluation on qualifications, design quality and value. The owner may identify betterments in addition to the baseline program to encourage teams to provide additional value within the fixed price. Owners typically seek the lowest cost proposal from a qualified design-build team when economy is their highest priority. This often works best for simple programs and limited design goals. The cost submittal should align with design proposal requirements which typically include schematic design documents. The proposed total cost is typically broken down into multiple categories, including owner-stipulated allowances.	Given the prescriptive nature of bridging documents owners typically seek the lowest cost proposal from a qualified design-build team. The cost submittal should align with design proposal requirements which typically include design development documents. The proposed total cost is typically broken down into multiple categories, including owner-stipulated allowances.

TABLE 6: SCORING OF COST PROPOSALS

Agencies should test the weighting of the cost and price-related factors in relation to other RFP scoring criteria prior to issuing the RFQ and RFP to evaluate the impact of cost on the overall score and ensure it aligns with overall project goals for program, quality and cost.

In addition to the owner's target budget, some agencies establish a not-to-exceed or maximum allowable amount for the cost proposal. If the submittal exceeds this amount it is deemed to be non-responsive and rejected. This approach constrains the agency from requesting best and final offers from proposers who are considered non-responsive. Some agencies use a different approach, where a cost proposal that exceeds the maximum gets zero points for the cost criteria but the firm is not rejected.

Cost Submittals

It is typical to specify that all cost related information be submitted in a separate, sealed envelope to ensure that the selection panel's evaluation of other criteria is not influenced by the cost proposals. The cost elements are scored separately and added to the scoring for other criteria to establish a final score for each proposal. Some agencies, however, evaluate price along with the technical proposal in order to assess the value of elements within the proposal. Either way, an agency should clearly explain to all finalists and selection panelists how they intend to evaluate the cost portion of the proposal. Public opening of cost proposals, while not required, provides transparency.

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ALTERNATIVE TECHNICAL CONCEPTS

Alternative Technical Concepts (ATC) are proposals submitted by finalists that deviate from the project criteria published in the RFP. They enable finalists to propose innovative strategies for achieving or exceeding an agency's project goals for performance, value and/or cost.

Agencies that allow ATCs to be submitted must establish clear guidelines on the submittal and review process, including required timelines. Agencies must identify how finalists incorporate approved ATCs into their proposals and provide an appeals process for rejected ATCs.

- Allow finalists to identify potential ATCs at the proprietary (one-on-one) meetings. Considerable effort and cost may be required to develop and submit them. A preliminary discussion allows finalists to gauge the agency's willingness to approve their proposals, allowing them to invest in ATCs that have an opportunity to be approved.
- If possible, avoid putting a limit on the number of ATCs submitted.
- Identify the level of agency approval required for inclusion in the finalist's proposal (i.e. approval, supplemental approval, et cetera).
- Identify how approved ATCs are to be included in the proposal, including required documentation. Consider requiring firms to highlight the incorporated ATC along with ATC approval documents to allow the agency to quickly and accurately verify the ATC was incorporated as approved.
- Identify individuals within the agency and/or third parties who will be part of the review and approval process. Third party approvals may take more time than internal ones which should be reflected in the RFP phase schedule.

Design-specific solutions or technical innovations should be proprietary. The agency should evaluate whether the scope of a proposed deviation modifies the intent of the project criteria provided in the RFP while also evaluating what extent the information must be shared with all of the teams. In this case, the details of the finalist's specific ATC proposal would remain proprietary but the general exception to the project criteria would be stated in an addendum.

Agencies should identify in the RFP how they intend to use ATC proposals from firms that are not selected for the project. Some agencies reserve the right to use those ATCs, some do not.

TEAMING AGREEMENTS

Many agencies require competing teams to submit the signed teaming agreement between the primary design professional and the prime contractor as part of the RFQ or RFP submittal.

A teaming agreement defines responsibilities and contractual terms between members of the design-build team. It describes team structure, roles and responsibilities and communications between design-build team members, the owner and its stakeholders. The agreement enables the agency to get a broad understanding of the commitment among design-build team members. It allows the agency to understand their access to the design professional and the extent of the designer's involvement in the project. This may be important to the agency given the change in relationship between owner and designer that is inherent in design-build.

Agreements typically define:

- Team structure and relationship, and communications with the owner and project stakeholders.
- Statement of qualifications and proposal preparation, contract negotiation (if the team is selected) and payments, ownership of work product, dispute resolution and term of the agreement.
- A matrix of responsibilities is typically attached to the agreement. It specifies the services to be provided by the contractor and the designer during the design and construction phases of the project.

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SELECTION

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STATUTES

RCW 39.10.330(2) defines requirements for evaluating the RFQ and selecting finalists.

- A committee appointed by the agency evaluates the responses based solely on the factors, weighting, and process identified in the request for qualifications and any published addenda.
- Not more than five responsive and responsible finalists shall be selected to submit proposals.
- The agency may reject all proposals and shall provide its reasons for rejection in writing to all proposers.

RCW 39.10.330 defines requirements for evaluating the RFP and awarding the design-build contract.

- A committee appointed by the agency evaluates the finalists' proposals. Depending on the process identified in the RFQ, the committee either:
  - (a) evaluates and scores the proposals based solely on the factors, weighting, and process identified in the initial request for qualifications and any published addenda published by the public body, or
  - (b) determines that all finalists are capable of producing a design that meets project requirements and awards the contract to the firm that submits the responsive proposal with the lowest price.

In the case of (a), agencies may request best and final proposals from finalists. They may initiate negotiations with the firm submitting the highest scored proposal. If they are unable to execute a contract with the firm submitting the highest scored proposal, negotiations with that firm the agency may proceed to negotiate with the next highest scored firm, continuing in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

PROCESS

The selection process requires the agency to be rigorous and objective. Agencies should strive for transparency. Giving potential proposers a clear picture of how they will be evaluated enables them to assess the time and resources required to compete and creates trust about the outcome. Agencies should allow adequate time to conduct the process including review and scoring of finalists' proposals.

SELECTION PANEL

The owner's project goals and selection criteria and should inform the make-up of the selection panel. Panelists should have the knowledge and experience to evaluate RFQ and RFP submittals in terms of the agency's programmatic, technical, aesthetic and budgetary goals.

- The number of voting members on the panel should be limited to promote fairness and efficiency.
- Many agencies have representatives from the owner's stakeholder group attend proprietary meetings to maintain continuity of information and, if included as part of the evaluation criteria, assess the finalists' performance at the meeting.
- A neutral, third-party panel member may provide a detailed understanding of the design-build procedure and increase objectivity of the selection process.
- Consultants who helped prepare the project criteria can be voting members of the panel or serve as technical advisor to support the panel's evaluation of the proposal.
- Technical support may be required to evaluate detailed elements of the proposals related to engineering and/or environmental issues. Agencies should determine their capacity to review these elements and identify if additional resources are required in advance of the selection process.

Some agencies organize a blind evaluation process to increase objectivity. Proposals are submitted to the selection panel without the names of the finalists' teams. Transcripts and/or minutes from the proprietary meetings are provided to inform the panel about any direction given to the finalists by the owner's stakeholders.

Proposers and selection panel members should be constrained from communicating during the selection process. Agencies may disclose the names and/or roles of selection panel members, however not all agencies release this information during the process. Disclosing this information increases transparency, ensuring that all proposers have the same information.

Conflicts of Interest

Agencies should evaluate the potential for conflicts of interest between selection panel members and proposers. Previous and/or continuing relationships may interfere with a panelist's ability to fairly judge RFQ and RFP submittals. Agencies should establish a code of conduct for both agency panelists and third-party panelists. Agencies should consider having panel members sign a disclosure that indicates whether they have conflict of interest in relation to any of the proposers. Panelists from outside the agency should disclose whether they have a business relationship with firms who have submitted for the project. If so, the agency must determine if it is cause for the panelist to be recused from the process.

RFP PHASE MEETINGS & INTERVIEWS

Meetings between finalists and the agency are a critical component of the RFP phase. There are various potential meetings that agencies can utilize to improve the finalists' understanding of the project and the agency's understanding of the proposals. Most agencies utilize three types of meetings during the RFP phase; a pre-RFP meeting, proprietary (one-on-one or finalist) meetings, and final interviews. Each provides a different level of information sharing amongst the parties.

RFP Kickoff Meetings

A kickoff meeting that is chaired by the agency and attended by all the finalists provides a common forum to address administrative and procedural issues at the beginning of RFP phase. These meetings may be mandatory. The agenda may include identification of selection panel members, details of the selection process, deliverables, site access, access to reports on existing conditions, topography, soils, et cetera. Agencies should distribute an agenda in advance of the meeting and take and distribute meeting minutes afterwards. New information or answers to questions should be provided in writing to all finalists.

Proprietary Meetings

Proprietary meetings, also known as one-on-one or finalist meetings, provide opportunities for each competing design-build team to meet with agency stakeholders to discuss the project. Agencies do not typically share the content of the meeting or materials presented by one finalist with the other teams unless there are clarifications or modifications to the project criteria that would impact all of the teams.

One-on-one meetings provide the finalists an opportunity to engage agency stakeholders, ask questions about the owner's goals and project criteria, demonstrate team chemistry, and get owner input on management and/or design concepts which informs their final proposal. Agencies must structure the process so that all finalists are treated equally.

Agencies should define proprietary meeting protocols in the RFP.

- Define the meeting format. Identify whether the finalist or the owner is leading the meetings. Indicate which party is responsible for the agenda and minutes.
    - Documenting the meetings ensures there is clarity of understanding about what the discussion and any direction provided by the owner to the finalist.
    - Providing the minutes to the selection panel allows them to confirm direction given by the stakeholders to the finalists.
- Explain the rules and expectations for the meetings to the selection panel as well as the finalist teams.
- Respond to questions about the content or form of the RFP in writing and release to all teams simultaneously.
- Rotate the order finalists meet with the agency when there are multiple meetings during the RFP phase.
- Maintain confidentiality of each team's information.

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Consistent participation from an informed group of owner stakeholders is important.

- Require the owner's representative(s) to attend all of the meetings.
- Invite stakeholders who can speak to the project's strategic, programmatic, operational and aesthetic issues. Have the correct representatives from the agency at the meetings. Where appropriate, authorize members of the stakeholder group to obtain input from the rest of the agency.
- Provide consistent stakeholder participation at all meetings. Generally, stakeholders should attend all meetings for continuity. Where it is appropriate to invite a stakeholder to attend fewer meetings, ensure that all finalists meet with the same stakeholder the same number of times.
- Consider aligning some or all of the owner's proprietary meeting team with the selection panel to ensure that the selection is informed by the information that stakeholders provided to the finalists.

Proprietary meetings provide the agency with opportunity to see how each design-build team interacts amongst themselves and with the owner's stakeholders, providing insight into how the design-build will work during the project. If the meetings are part of the RFP evaluation criteria they should be included in the list of criteria and weighting provided in the RFQ and the RFP.

Final Presentations

Final presentations by finalists typically occur after the design-build proposals have been submitted and reviewed in detail by the owner's selection panel. They should be scheduled to allow adequate time for a thorough review of the documents. Final presentations allow the design-build teams to present their proposal and for the agency to ask detailed questions about the submittal.

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LEVEL OF EFFORT FOR PROPOSERS

Honorarium Payments

RCW 39.10.330(8) requires agencies to pay an honorarium to finalists who submit responsive proposals and are not awarded the design-build contract.

- Payments shall be sufficient to generate meaningful competition among potential proposers.
- The public body shall consider the level of effort required to meet the selection criteria in determining the amount of the honorarium.

The level of effort varies depending on the type of design-build procedure and the proposal requirements for each project.

Other factors include the duration of the RFP phase, the number of proprietary meetings and document printing costs. In order to better estimate future honorarium's, agencies can ask finalists to submit data on the cost of competition after the design-build team is selected. This can help the agency evaluate the relationship between the honorarium payments and the actual costs of pursuing the project.

PROGRESSIVE	TRADITIONAL	BRIDGING
The level of effort varies depending upon the requirements for the technical proposal. Developing and illustrating a preliminary design concept, even though it is not tied to the cost proposal, is significantly more work than preparing a narrative and graphics for a management approach.	Schematic design is typically required to prepare technical/cost proposal that meets submittal requirements. Agencies should review the state's Guidelines for Determining Architect/Engineer Fees for Public Works Building Projects to understand the cost of meeting the selection criteria. Costs incurred are typically higher than the Basic Services for fee schematic design. Drawings and specifications must have adequate detail for contractors to propose a firm price and for the agency to understand the value of the proposal. Specialized consulting may be required to prepare the design and cost. Renderings are typically required to illustrate the proposal.	A schematic design level of effort is typically required to prepare technical/cost proposal that meets submittal requirements. Agencies should review the state's Guidelines for Determining Architect/Engineer Fees for Public Works Building Projects to understand the cost of meeting the selection criteria. Costs incurred are typically higher than the Basic Services fee schematic design. Drawings and specifications must have adequate detail for contractors to propose a firm price and for the agency to understand the value of the proposal. Specialized consulting may be required to prepare the design and cost. Renderings are typically required to illustrate the proposal.

TABLE 7: LEVEL OF EFFORT

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Deliverables

Minimum deliverables for a proposal are defined by the submittal requirements in the RFP. In addition, finalists may produce handouts, renderings, three-dimensional models, computer models, videos, virtual reality environments or other collateral that illustrates the proposal for proprietary meetings, the proposal and the final interview. Defining reasonable submittal requirements and limiting the scope of materials used to illustrate the proposal creates a level play field for finalists and helps to reduce the cost of competing.

- Limit submittal requirements to the information required to allow the selection panel to make an informed decision. Documentation should be adequate to convey the value of a submittal in terms of the technical proposal and cost or price-related factors, and reasonable for the owner to review prior to team selection.
- Limit presentation materials to collateral that adequately illustrates the scope and value of the finalists' proposals or align the honorarium payment with requirements for additional deliverables such as physical models and/or a video fly-through. Recognize that capable firms have varying financial resources.
- Provide consistent requirements for proprietary meetings, the proposal and the final interviews.

Reducing submittal requirements can limit overall costs but may not reduce the effort required to arrive at fixed cost proposal for a traditional or bridging procurement.

USE OF PROPOSALS

RCW 39.10.470 requires that all public records relating to alternative public works transactions are subject to disclosure under RCW 42.56 with two exceptions:

- Trade secrets, as defined by RCW 19.108.010 or other proprietary information submitted by a proposer if the proposes identifies in writing the reasons why protection is necessary and the data or materials to be protected.
- Proposals submitted by design-build finalists are exempt from disclosure until the notification of the highest scoring finalist is made in accordance with RCW 39.10.330(5) or the selection process is terminated.

Some agencies reserve the right to incorporate proprietary information from unsuccessful proposals, such as design concepts and technical innovations, into the selected proposal. Agencies should consider a number of issues if they intend to use information provided in unsuccessful proposals.

- Identify the agency's right to retain ownership and use unsuccessful proposals in the RFQ and RFP.
- Fairly compensate the finalists by providing honorarium payments consistent with the level of effort required to develop the proposal.
- Limit use of unsuccessful proposals to approved alternative technical concepts. Do not select a team based on qualifications and/or cost and have them implement another team's technical design concept proposal which calls into question the integrity of the selection process.

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ENCOURAGING COMPETITION

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CHALLENGES

Design-build has specific challenges that can make it more difficult or expensive for contractors and design professionals to pursue than other types of procurement. Increasing use of design-build for public works presents challenges to owners, contractors and design professionals who have years of experience in capital projects but limited or no experience in this project delivery method. Because there are no requirements to bid the work, the opportunities to compete for subcontracts may be limited.

Owners should consider the opportunities to encourage firms to compete for design-build contracts in order to maintain the open competition that is part of the public works procurement process and ensure that they can select from the largest pool of qualified firms. Successful projects often involve agencies, firms and individuals that are working together for the first time.

Much of design-build is being done by a group of design firms and contractors who were early adopters of the project delivery method, have existing client relationships, experience as a team and the resources to deal with the cost of competing and risk of contracting. In order to be equitable, opportunities should be expanded to the entire industry.

RELATIONSHIPS

Design-build requires designers and contractors to find a partner in order to compete for projects that they would otherwise be able to pursue on their own. Design professionals can be successful in winning contracts for design services on design-bid-build or GCCM projects without a contractor. Contractors can bid on a design-bid-build or submit their qualifications for GCCM without having a design partner. Design-build may exclude qualified firms from competing if a suitable partner is not available.

BUSINESS DEVELOPMENT

Finding a partner and preparing for design-build pursuits typically requires firms to identify prospective projects and create partnerships months or years in advance of the time that a project is advertised for team selection. Many designers and contractors have the experience and resources to be effective partners on a design-build team but do not have the additional business development resources or relationships required to compete for design-build projects. It can be a significant challenge for medium and small firms.

RISKS & COST TO COMPETE

Design-build presents significant risks to the teams that compete for and do the work. It typically requires the design-builder to commit to the project scope, schedule and cost early in the process when many variables exist that may impact the final outcome. Owners may not be prepared to manage their responsibilities given the differences in stakeholder involvement and decision-making that result from the transfer of risk for delivering the project on schedule and budget.

The cost to compete can be significantly higher than for typical design-bid-build and GCCM pursuits, especially in traditional, design and price competitions. The prospective field of competitors for traditional procurements may be constrained by the limited number of times any size firm will compete for work in a year. The effort, cost, and risk may be too great for small and medium who otherwise have the requisite management, design and technical capabilities to do the work.

SELECTION CRITERIA

Selection criteria typically favor design-build teams that have previously worked together and/or previous design-build experience of firms and individuals which tends to exclude teams and firms that do not have design-build experience and are otherwise qualified to do the work. Firms that have demonstrated the requisite management and technical skills and have a track record of success on design-bid-build and GCCM projects of comparable scale, complexity and cost should be able to compete for design-build projects.

Successful projects for all delivery types are typically the result of the collaboration skills required for design-build. Teams that have worked together in the "forced marriage" environment of design-bid-build and GCCM should have the skills to work as partners from the beginning of the process.

Owners indicate a preference for teams where the partners have worked together because it may reduce risk. However, there is always an element of the unknown in terms of how firms and the client will work together. To some extent, it depends on the individuals and their commitment to teamwork on the project more than any other factor.

BUSINESS DIVERSITY

Equity in design-build procurement addresses both the size of firms that are eligible to compete and the opportunities for disadvantaged businesses to participate.

Large, Medium and Small Businesses

Large, national businesses with previous design-build experience tend to have an advantage pursuing design-build contracts. They have the financial resources to take on the risk of competition, especially for traditional, design and price competitions, and large portfolios. Small and medium-size local design firms, and medium-size local contractors have demonstrated their skills for large projects that are design-bid-build and/or GCCM. They should have the opportunity to compete.

Disadvantaged Businesses

Currently, there are 2,600 Office of Minorities and Women-Owned Business (OMWBE) certified firms in the state. Their ability to compete effectively for design-build projects is constrained by a number of factors. As a result, they may be discouraged from pursuing the work. Disadvantaged businesses may not have prior experience with the design-build process, relationships with contractors leading the teams or adequate bonding capacity. They may not be aware of contracting opportunities because design-build subcontracts are not required to be publicly bid.

OMWBE certification follows both Washington State law and federal rules which require that a firm is small and is owned and controlled by a person(s) who is both socially and economically disadvantaged. Certification is required to meet the state's aspirational goals and/or the federal government's mandatory goals. However, other jurisdictions allow firms to self-identify as a minority or woman-owned business or to be certified by a private or non-profit entity. This may be confusing for agency representatives, prime contractors and small firms pursuing the work.

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PROVIDE ADVANCE NOTICE

Public owners should provide advance notice of their projects to give firms a chance to find partners and get organized. Increasing the visibility of opportunities benefits owners. It increases competition from qualified firms. It promotes the involvement of disadvantaged businesses. Agencies should advertise their intent to select a design-build team six months to a year in advance of RFQ and identify the scope, approximate budget and selection criteria for the project.

Advance notice increases transparency. Some contractors and designers are aware of projects years ahead of the procurement enabling them to form teams very early on. Agency project managers may share upcoming project lists with a few preferred consultants and contractors. Everybody should have the same information at the same time, so there is a level playing field.

BROADEN SELECTION CRITERIA

Owners should reduce the constraints on the participation of new firms and teams in design-build project delivery. The selection criteria should be evaluated to ensure that its promotes broad competition. The agency should engage the selection panel for each project in a discussion of their goals for increasing participation.

Team Experience

Owners should consider the designer and builder's previous experience working together on design-bid-build or GCCM projects of comparable program, scope, complexity and/or budget as well as design-build projects. Those project delivery types are the result of a "forced marriage." If the team was successful they probably have the ability to work together on a project where they choose each other as partners.

Owners should recognize the ability of teams to bring value to the project even if they do not have previous experience working together. They should consider alternate means for teams to demonstrate their ability to work collaboratively such as office visits, proprietary meetings and interviews. They should require teams to provide a copy of their Teaming Agreement, which should describe their plan for working as an integrated design-builder, in their statement of qualifications.

During the RFQ phase owners should:

- Include selection criteria that allows teams to demonstrate experience with integrated project delivery. This could include design-build, GCCM and private sector negotiated contracts. Design-bid-build may also be relevant given the collaboration among design professionals to design high performance buildings or work effectively with the contractor after bid.
- Include selection criteria for the Teaming Agreement.
- Include selection criteria for management tools that promote teamwork.
- Include selection criteria for project approach which allows teams to demonstrate their ability to identify issues and solutions, think strategically and take advantage of design-build.

During the RFP phase owners should:

- Include selection criteria related to design-builder's performance as an integrated team in proprietary meetings and interviews.
- Evaluate criteria separately from RFQ phase to ensure that competitors get full credit for demonstrating teamwork.

Firm Experience

Agencies should consider the separate, relevant experience of both the designer and the builder.

- A designer or a contractor who has design-build experience with projects of comparable program, scope, complexity and/or budget but not with the partner on the proposed team.
- Designer and builder have design-build experience but not together.
- One of the team members, either the designer or the builder, has design-build experience and is partnering with a firm that does not.

Recognize the experience of firms working on private sector projects involving integrated delivery, collaboration, and early participation. In some cases, the private industry is out-performing the public sector in terms of cost and schedule metrics.

Previous Experience with the Public Agency

The 2015 State Capital Budget identified "experience with the public agency" as a potential selection criterion to expand participation on allocations for two community college design-build projects and a UW Bothell design-build project. It was meant to encourage competition by indicating that demonstrated experience working on similar projects that were not design-build was a means of qualification. It was not intended to disqualify firms that had not worked with the public agency. However, to promote fairness, most agencies keep the doors open the doors to firms that have not worked with the agency.

Individual Experience

Agencies should include selection criteria that enables individuals with design-build experience gained at other firms to contribute the qualifications of firms that do not have design-build experience. Indicate that experience of an individual with another firm should be clearly identified on individual resumes and separated from the firm portfolios.

SMALL PROJECTS

Agencies have had success using small projects to provide increased opportunities for new teams and small businesses to get experience. Small projects are a typical route for architects, engineers and contractors to get experience with public works. There is reduced risk for the owner and design-builder. They increase the number of firms that have the capacity to compete.

Agencies have reduced or eliminated the value of previous experience of designer and builder as a team in the scoring. They stated in their solicitation documents that they are opening the door to new teams and firms without previous design-build experience.

Owner v. Design-Build Team Experience

Public owners with significant design-build experience may have the skills to organize the project so that teams new to design-build can succeed. The qualifications of the agency and their knowledge in administering the project should create more opportunity for a design-builder with limited or no experience. A public owner without design-build experience, however, may not have the skills to work with a design-builder that has limited experience.

LIMIT CONSULTANT TEAM EXCLUSIVITY

Limiting exclusive relationships between the prime members of the design-build team and their prospective subconsultants and trade partners may increase opportunities for participation. This allows a wider range of firms to compete for the work and opens the door to firms that have limited or no design-build experience but are qualified in terms of project type, scale, complexity and cost.

Some agencies limit the firms named in the RFQ response to the architect and the contractor. Other agencies allow one or two key partners to be identified as part of the core team. The rest of the team is identified, with owner input, after the design-builder has been selected. This typically works best for progressive procurements. Traditional and bridging procurements require the input of subconsultants and trade partners to develop and price the site development and/or building systems that are part of the required cost proposal.

PROMOTE BUSINESS DIVERSITY

Agencies should provide a range of opportunities in both scope and scale for disadvantaged businesses. Owners should:

- Establish aspirational goals for small business entities, disadvantaged business enterprises, minority business enterprises, women business enterprises, and minority women business enterprises based on the estimated subcontracting opportunities in their projects and to the extent permitted by RCW 49.60.400.2.
- Make an effort to solicit proposals from certified minority or certified woman-owned contractors.

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- Provide advance notice of business opportunities and hold open houses that increase the opportunities for partnerships between primes and subcontractors.
- Open the door to firms that have not worked with the design-builder in addition to those that have previous experience.
- Take advantage of the design-build statute which allows the evaluation criteria for both the request for qualifications and the request for proposals to include meaningful diverse business requirements.
    - 39.10.330(1)(i) states that the RFQ evaluation factors "...may also include: (A) The proposer's past performance in utilization of small business entities; and (B) disadvantaged business enterprises."
    - 39.10.330(1)(ii) states that the agency may include in its RFP evaluation factors, "...a proposer's outreach plan to include small business entities and disadvantaged business enterprises as subcontractor and suppliers for the project."
- Require design-builders to solicit proposals from OMWBE certified firms and encourage participation by unbundling the work to align with available resources and bonding capacity.

CPARB's data collection for design-build projects should include participation rates for OMWBE certified small business entities, disadvantaged business enterprises, veterans, and women and minority-owned businesses.

Design-Build's Advantages

Design-build may provide more opportunities for business equity than other project delivery types. Because the work does not have to be bid, the design-builder and the owner have significant freedom to assign subcontracts to meet participation goals. It has the potential for higher participation rates than either design-bid-build or GCCM. The owner's goals and commitment to the process are critical.

Disadvantaged business may have greater opportunity to succeed when they are not forced into a low-bid competition that impacts their ability to do the work.

COMPETITIVE ADVANTAGE

Agencies have varying approaches to the issue of whether firms that prepare preparatory documents for the project, such as master plans, capital requests, feasibility studies and/or predesign studies can compete for the design-build contract. Some owners believe that it is an unfair competitive advantage for the firms to pursue the subsequent design-build contract because of the project-specific knowledge and relationships. Others have determined that they should be able to maintain access to the broadest group of qualified firms which may include the firm that worked on the preparatory documents.

There is an apparent gap between agency policy for design services and design-build. It is typical for public owners to allow firms who prepared a master plan, capital request, feasibility study and/or predesign to pursue a design services only contract even though the issues of project-specific knowledge and relationships are similar. In a design services-only competition, a firm that has been successful working with a client tends to have a significant competitive advantage. Design-build may actually level the playing field by adding the contractor's qualifications, technical approach and cost to the equation. In the case of a traditional procurement, the design proposal becomes a significant factor.

POLICIES AND PRECEDENTS

There is a difference between "unfair competitive advantage," which typically addresses issues such as developing preparatory documents for a procurement as opposed to "organizational conflict of interest," which typically addresses personal issues. These might include an agency employee working for a private sector firm competing for work, or a family member working for a public agency participating in a selection process that another family pursues.

Legal Requirements in Washington State

Washington, unlike many states, does not have a law or rule relating to organizational conflict of interest. Some public bodies within the state do have regulations.

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Federal Acquisition Regulation

Federal regulations allow firms that develop preparatory documents to pursue later phases of the project. The Federal Acquisition Regulation addresses the issue in Subpart 9.5 – Organizational and Consultant Conflicts of Interest. Section 9.505-2(a)(3) identifies the value to the government of consultant experience with a project and states, "while the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair; hence no prohibition should be imposed." 9.505-2(b)(3) states, "no prohibitions are imposed on the development and design contractors," who have prepared work statements for the competitive acquisition of services.

Public Owners in Washington State

Public owners in Washington State take different approaches to the issue. Some agencies have determined that developing preliminary documents for a project is an unfair advantage in a selection process, others allow firms that have prepared the preliminary documents to compete for the design-build contract.

- The Port of Seattle typically excludes firms that perform preliminary work, scoping and planning from the design-build selection process to avoids situations that might give rise to a protest.
- Washington State University precludes the teams that prepare the project criteria from competing for the design-build contract. It typically retains the architect who prepares the project criteria as an advisor during and after the design-build team selection. The university clearly identifies the exclusion from participation for future phases in its requests for qualifications for project criteria documents, which are typically predesign studies. Sound Transit's policies are similar.
- The University of Washington typically allows teams that prepare preparatory documents to compete for the design-build contract. Their approach is based on a belief that excluding firms may limit the pool of firms who pursue the project criteria documents. The pre-solicitation phase is typically separated from the RFQ/RFP phase. The project criteria consultant is not typically involved in preparing the RFQ/RFP. The project criteria documents are shared with all the competitors in the RFP phase.
- The Department of Enterprise Services allows firms that develop master plans, budget estimates, and site or feasibility studies to compete for design-build projects. Firms that prepared capital requests and/or pre-designs may also compete providing that the contracts for those services were closed at least six months prior to the design-build solicitation and the information is shared with all competitors. Consultants that assisted in the preparation of RFQ and RFP documents for the design-build selection are not eligible to compete.

RECOMMENDED PROCEDURES

Owners should be clear about their policies regarding competitive advantage:

- Any constraints on selection for future phases of service or work should be identified in the RFQ and owner/architect (or engineer) agreement for the preparatory services.
- The policies, once established, should not change on a specific project.
- Where agencies constrain firms from competing it is more typical that project-specific pre-solicitation documents are the cause for the limitation rather than a master plan or capital request.

Where firms that provided services for preparatory documents are allowed to compete for the design-build contract:

- The design contract and all services related to the preparatory documents should be completed prior to public advertisement of the design-build RFQ.
- A reasonable period of time should separate completion of the design contract and services and the design-build RFQ.
- All of the preparatory documents should be publicly available at the time of issuance of the RFQ.
- Preparation of the procurement documents (RFQ and/or RFP) should always be considered a constraint to pursuing a design-build contract since those documents define the process and selection criteria.
- Preparation of bridging documents is typically considered a constraint to pursuing a design-build contract given the detailed nature of the documents and the role of the consultants reviewing the implementation of the documents on behalf of the owner.

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AFTER DESIGN-BUILD TEAM SELECTION

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After team selection, the owner and the selected design builder must agree to a final design-build proposal and execute the design-build contract. There are significant differences in this process for a progressive procurement compared to traditional or bridging. From that point forward, from design completion and construction to post-occupancy, the three design-build methods are generally similar.

Design-build is distinctly different from other procurement methods after the final design and cost have been accepted and the agreed-upon risk has been transferred to the design-builder. The level of owner involvement changes. The design-builder has increased responsibility for maintaining the alignment of design, scope and cost. There is a shift in the level of detail in construction documents because shop drawings can be prepared simultaneously. During construction administration, the designer works for the design-build team, not the owner. Design-build is also different after the facility is complete and in use due to the performance-based nature of a delivery method in which design and build are integrated.

FINAL AGREEMENT

Finalizing the design-build agreement is a critical milestone in the development of the project. It represents the point at which the project parameters are adequately fixed to allow the risk transfer from the owner to the design-build team to occur. Afterwards the design-build team's responsibility for managing the scope, quality, budget and schedule increases as the owner's responsibility and involvement in detailed project execution decreases.

The steps in finalizing the design-build agreement after team selection are different depending on the choice of design-build method. In progressive, the process of creating a fully developed technical design concept and cost proposal are just starting after selection. In traditional and bridging, the design-build team was selected based on their proposal and the process provides a last opportunity to confirm the design and cost parameters before the final contract is awarded.

ISSUE	PROGRESSIVE	TRADITIONAL	BRIDGING
Detailed Program, Scope, Schedule & Budget	May be modified and/or additional information may be added after team selection.	Modifications are typically limited after team selection.	Modifications are typically limited after team selection.
Final Design & Cost Proposal	Developed by after team selection.	Provided by selected design-build team's proposal. May be adjusted through validation.	Provided by selected design-build team's proposal. May be adjusted through validation.

TABLE 8: ISSUES AFTER DESIGN-BUILD TEAM SELECTION

ISSUE	PROGRESSIVE	TRADITIONAL	BRIDGING
Stakeholder Engagement	Comparable to typical design-only process.	Typically limited.	Typically limited.
Validation	Owner provided information and site conditions are validated throughout design phase. Firm design & cost proposal may be further developed to align with agency needs prior to executing design-build contract.	Owner provided information and site conditions are validated prior to executing design-build contract. Firm design & cost proposal may be subject to final validation by agency after submittal. Effort is typically limited due to agency involvement in design process.	Owner provided information and site conditions are validated prior to executing design-build contract. Firm design & cost proposal may be further developed to align with agency needs prior to executing design-build contract.
Schedule	Comparable to typical design-only process for the level of development required to prepare firm design and cost proposal.	One to three months.	One to three months.

TABLE 8: ISSUES AFTER DESIGN-BUILD TEAM SELECTION

KEY SUBCONSULTANTS AND TRADE PARTNERS

The scope of consultants and key trade partners that remain to be selected after design-build team selection depends upon the type of design-build being utilized.

- Progressive procurements may be limited to the prime designer and builder which provides the owner with an opportunity to provide input on the design-build team's choice of key subconsultants and trade partners. The team may also include key subconsultants and trade partners to demonstrate the qualifications of a fully integrated team.
- Traditional and bridging procurements typically require significant input from key subconsultants and trade partners during the RFP phase to develop the technical design concept and cost proposal. Owner opportunities for input may be limited.
- The owner's intention to provide input on the design-build team's choice of consultants and trade partners, if any, should be identified in the RFQ/RFP.

VALIDATION

Agencies use the term "validation" to describe the process of assessing and reducing risks after the design-build team is selected. Validation can occur before or after agreement to final design and price. The design-build team's services to validate the owner's project assumptions is an additional service should be compensated in addition to the honorarium.

Review Owner-Provided Information

Review owner provided information including the RFP and other project related materials such as environmental studies, surveys, geotechnical reports, as-built drawings and/or bridging documents to identify potential issues prior to executing the design-build agreement.

- Identify the required additional investigations/studies. Coordinate with the project schedule and design-builder's scope of work.
- If errors or omissions are discovered reconcile them with the design-build proposal.

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- Note that completeness and accuracy of owner-provided information should remain the responsibility of the agency.

Assess regulatory requirements to confirm design, submittal and permitting responsibilities relative to the RFP.

- Address discrepancies or omissions.
- In traditional and bridging procurement, the regulatory framework should be established through the owner's efforts to prepare the project criteria and/or bridging documents. In progressive, the design-builder may play a larger role in helping the owner establish the regulatory parameters for the project.

Development of RFP Submittal Prior to Contract Award

Provide services to further develop technical design concept and cost proposal prior to final design-build contract execution.

- Provide additional time for the selected design-build team and owner to collaborate on final definition of project scope and details, and ensure alignment with owner goals and objectives.
- Resolve design and technical issues that could not be addressed given the limited timeframe and stakeholder involvement in a traditional procurement.
- Allow the owner to make minor changes in the scope of work to maximize value and align with agency facility standards, maintenance and operations requirements.

The validation phase should not compromise the integrity of the design-build competition. It should not be used to resolve inherent scope and cost discrepancies between the selected team's technical design concept and their cost proposal, encouraging teams to promise more than they can deliver. The intent is to validate the winning proposal. The scope of work and compensation for the selected design-build team's effort should be defined in the agency's RFQ/RFP.

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BASIS OF DESIGN DOCUMENTS

Basis of design (BOD) documents represent the final design-build technical design proposal. Given that the contract for all three types of design-build is typically awarded prior to completion of construction documents, they utilize a combination of drawings and prescriptive and performance specifications to define anticipated scope and quality of construction. Renderings, finish schedules, product data sheets and a detailed cost estimate provide further definition. Under any circumstances they must provide adequate detail for ensure scope and cost alignment, and demonstrate that the owner's project criteria will be met.

Basis of Design documents must define the project adequately to ensure reasonable expectations by the owner, the designer and the builder. They define the design-builder's obligations and serve as point of reference for the owner to determine if their final project aligns with their project criteria. The earlier in the process that the basis of design and final cost are established, the more latitude the design-builder must and will have in translating the BOD into a final project.

PROJECT CONTINGENCIES

Project budgets must include an owner's contingency for costs that are beyond the control of the design-builder. These may include discovery of unknown site and building conditions and owner design changes. RCW 39.10.320 defines a minimum owner contingency of 5% of the value of the design-build contract. Owners should evaluate project-specific needs, such as existing conditions and their desired flexibility to modify the work to meet evolving needs over the course of design and construction, to determine if a larger contingency is required.

The design-builder's contract must include adequate design and construction contingencies to manage their risks which include agreeing to a price prior to completion of construction documents, errors and omissions in the design documents, gaps between elements of the bid packages, unanticipated work requirements, and market conditions. The amount of the contingency depends on the project. A design-build contract for a GMP should identify the appropriate uses of the contingencies and address issues such as expectations for the designers' standard of care and impact of detailing the Basis of Design on costs enumerated in the schedule of values.

GMP V. LUMP SUM

Two types of contracts are typically used for design-builder/owner agreements, a lump sum agreement or a guaranteed maximum price (GMP). Lump sum typically provides the lowest initial contract price due to its flexibility and may be appropriate to the design-builder's risk. GMP is an open-book accounting that provides transparency and may yield final cost savings to the owner.

ISSUE	LUMP SUM	GMP
Definition	The design-builder provides a fixed price for executing the entire scope of work defined by the contract documents.	The design-builder provides a schedule of values for the scope of work defined by the contract, a fixed fee and a maximum amount.
Risk/Reward	Earlier in the process there is more risk guaranteeing prices. Lump sum provides the contractor with flexibility in buying out the job and may reduce the contingencies and overall cost. Acknowledges the risk/reward nature of design-build procurement. The design-builder's incentive to complete the project ahead of schedule and below the contract amount aligns with the risks in making a design and cost proposal based on a schematic design or design development. Contractors indicate that they can offer a lower price in a lump sum bid because they can manage the cost of the work for the overall project in relation by balancing the losses and gains among individual subcontracts. Owners indicate that lump sum has the potential to reduce change order impacts.	A GMP makes more sense when the price is set later in the process and there is more certainty. Progressive method may involve less risk and provide more opportunities for the owner/design-build team to align scope and cost. GMP may provide a better gauge of the final project value. May include a shared savings clause gives both the design-builder and the owner an incentive to maximize efficiencies. Oversight required to ensure there is not a trade-off in terms of value. .
Accounting	Less work for the owner and design-builder to track during construction.	GMP tracking requires significant documentation and review. May require an audit, which adds cost.
Transparency	May require a third-party to verify that the cost and scope defined in the design-builder's proposal provide reasonable value.	Many owners believe that a GMP agreement is easier to defend in terms of the use of public dollars.

TABLE 10: DIFFERENCES IN CONTRACT EXECUTION

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OWNER INVOLVEMENT

The relationship between the owner and design-build team is substantially different than design-bid-build or GCCM. A single contract with the design-builder impacts how the owner communicates with the design professional and contractor. Early commitment to design and price transfers risk to the design-builder, giving them authority to make detailed decisions that maintain scope, budget and schedule and limiting the extent of the owner's review. Some owners have described the change in the relationship and roles as "exchanging scripts." Owners relinquish some responsibility, design-build teams assume more.

Impact of Risk Transfer

A design-builder agrees to implement the project for fixed price before the design is complete. Risk is transferred from the owner to the design-build team at a point when there are still significant variables that can impact the balance between scope, schedule and cost. In order to manage the risk, the design-builder must have appropriate latitude to make detailed decisions about how to meet the intent of the basis of design documents. Owners must understand and accept the limits on their direct control of project details. Effective design-builders keep the owner involved at the appropriate level throughout the process. They identify issues that require the owner's input, present cost-effective solutions and strive to serve the owner's interests.

The Owner's Team

Owner commitment to fulfilling their responsibilities facilitates the success of a project.

- Clear definition of the owner's team structure and commitment to timely decision-making is required. It increases the design-builder's ability to engage with the owner.
- Focus on getting significant stakeholder input before agreement on the final design and cost price. Streamline the process afterwards to take advantage of design-build's potential for cost-effectiveness and expedited schedule.

Establish a project steering committee and empower them to make decisions on behalf of the agency.

- Identify a team leader to oversee the committee and has authority to provide direction to the design-build team on its behalf.
- Select committee members who understand the project's programmatic and technical parameters, are connected to key constituents and can provide input that facilitates decision-making and keeps the project moving forward.
- Continuity of the owner's team – from establishing the project criteria through design completion and construction – provides clarity of understanding for the expectations that are defined by the basis of design documents.

Establish a meeting schedule that promotes effective communications. Progress meetings with the owner's project manager provide consistent touch points for the owner/design-build team. Steering committee meetings may be scheduled in relation to the design-build team's milestones for document submittal and review or more frequently if the design-build team needs additional input.

Communicating with the Design-Build Team

Owners should communicate with the design-build team through the design-builder's designated, authorized representative. Many design-builders allow the key players on their team to engage with the owner and/or other consultants and trade partners as long as their authorized representative is aware of the communication. Only the design-builder, however, is authorized to make decisions on the part of the team. Communications protocols are typically defined in the design-build teaming agreement. Owners should define their specific requirements for communicating with the design-build team, if any, in the RFQ/RFP.

The integrated design process works best when all of the key players are engaged in a dialogue about the project. Owners and prime contractors should endeavor to bring the entire owner/design-build leadership team

together to discuss management, design, technical, cost, and schedule issues in order to take advantage of the collective knowledge and wisdom of the group.

Design Progress Reviews

Planning for design progress reviews should be considered before the team selection commences. The owner's requirements for the scope and frequency of design progress reviews should be defined in the RFQ/RFP to provide proposers with an understanding of the owner's goals.

The design-builder is responsible for keeping the owner informed about the progress of the design completion documents and identifying changes that occurred following the previous review that require the owner's input. Effective design-builders make the owner part of the integrated team, engaging them in a dialogue about the challenges and solutions as the documents are developed and the project is built. Owners should respect the design-builder's responsibility to make decisions that keep the project on track with the basis of design, cost and schedule as defined in the contract.

Owner progress reviews should focus on verifying that the design completion documents meet the requirements of the basis of design. The level of owner review depends upon the amount of detail provided in basis of design. More prescriptive BOD documents should require less owner verification to ensure that the project will align with the owner's programmatic requirements, operational protocols and maintenance standards.

DESIGN MANAGEMENT

Integrated design is a collaborative process that leverages the collective knowledge and skills of the owner, prime contractor, design professionals, and trade partners increasing the opportunities for interdisciplinary coordination, efficiency, and innovation. It is a partnership that is based on shared goals and trust. The opportunity and the challenge in realizing the potential for collaboration lies in the differing orientations and internal processes of owners, designers and professionals. Integrated design is not exclusive to the design-build procedure however there are unique opportunities given that designers and contractors are members of the same team.

The nature of the integrated design process varies depending upon the design-build method used. Progressive offers the greatest opportunity for integrating the owner's input into the design-build process. Traditional allows the designers and builders to integrate but limits the participation of the owner because they become part of the equation after the technical design concept and cost have been developed. In bridging, the technical design concept is formulated before the design-build team is selected, limiting the potential for designers and builders to contribute to an integrated design process.

Design-build teams often assign a design manager to oversee the process. It is important to establish expectations, define roles and responsibilities, indicate how team members interface, invite everyone to contribute and provide a road map for decision-making that coordinates with the design completion and construction schedule.

SCOPE & COST MANAGEMENT

Design-builder's frequently use a target value budgeting process to manage scope and cost. It is a proactive approach that forecasts the project schedule of values at the beginning of the project, encouraging the team to develop design solutions that align with the budget. It reverses the role of cost estimating as a reactive report on the progress of the design documents.

The target value budget is regularly updated as the design progresses. The costs within the schedule of values may be redistributed in response to the evolving design concept, identification of regulatory issues and the construction marketplace. The goal is to trade-off increasing and decreasing costs to ensure that the project remains on budget.

Managing scope and budget after the final design and cost have been agreed upon depends on a shared commitment by the owner and design-builder to the continuing use of the target value budgeting process. Owner input, technical design, regulatory and marketplace issues will impact the project scope and cost as the documentation of the project evolves. In a GMP contract the owner plays a role in this process when they are asked to review potential trade-offs between elements of the schedule of values.

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Scope and cost management also depends upon the available contingency in the design-builder's contract amount which must be adequate to cover the cost of unknowns that come to light as the design is developed.

Alternates provide another means of managing scope and cost when the owner wants to include betterments that do not fit within the budget allotted for the contract amount. The alternates can be incorporated into the project under a number of circumstances: if there are available reserves in the owner's contingency at the end of the project or if there are cost savings in a GMP contract.

The owner plays a role in this process in a GMP contract when they are asked to review potential trade-offs between elements of the schedule of values. An open dialogue about the reasons for redistributing the subdivisions of the cost helps everyone understand the reasons for the proposed change.

Scope and cost management also depends upon the available contingency in the design-builder's contract amount which must be adequate to cover the cost of unknowns that come to light as the design is developed.

Alternates provide another means of managing scope and cost when the owner wants to include betterments that do not fit within the budget allotted for the contract amount. The alternates can be incorporated into the project under a number of circumstances: if there are available reserves in the owner's contingency at the end of the project or if there are cost savings in a GMP contract.

DESIGN QUALITY

Process, schedule and budget can have an impact on the quality of details and finishes in a design-build project. The builder has control over decisions for which the designer has primary responsibility in design-bid-build and GCCM. The price is typically set before the details have been developed. The designer's assumptions about finishes, materials, light fixtures may not be reflected in basis of design and final cost proposal. In a traditional procurement, the quality of finishes and materials may be limited due as part of a finalist's effort to submit a competitive price. Although the owner's project criteria can provide requirements for performance in terms of durability that may not be translated into the design expression of the completed project.

CONSTRUCTION DOCUMENTS

Construction documentation for design-build projects should take advantage of the integration of trade partners who can provide the documents for their components of the project. Shop drawings can be prepared during the process and incorporated into the documents. There is potential to reduce the level of effort required to prepare documents that will be bid by multiple subcontractors. An integrated approach should provide more surety that details align with the trades approach to construction techniques. Designers should be able to increase their focus on conveying design intent and coordinating systems. Owners who are accustomed to reviewing detailed construction documents prior to bid may have to adjust.

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APPENDIX

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COMMITTEE

WALTER SCHACHT (CO-CHAIR)	SCHACHT ASLANI ARCHITECTS
OLIVIA YANG (CO-CHAIR)	WSU
VINCE CAMPANELLA	LYDIG
NICK DATZ	SOUND TRANSIT
BILL KENT	MORTENSON
SANTOSH KURUVILLA	EXELTECH
BECKY BARNHART	INTEGRUS ARCHITECTURE
GEORGE SHAW	LMN ARCHITECTS
LAWRENCE COLEMAN	OMWBE
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STEVE CRAWFORD	ISSAQUAH SCHOOL DISTRICT
JANICE ZAHN	PORT OF SEATTLE
LINNETH RILEY-HALL	SOUND TRANSIT
JOHN PALEWICZ	UW
MARK GAINES	WSDOT

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CHAPTER 39.10 RCW: DESIGN-BUILD SECTIONS

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The design-build procedure is regulated by Chapter 39.10 RCW: http://app.leg.wa.gov/RCW/default.aspx?cite=39.10.

The entire chapter applies to the use of the procedure. Four sections address the specifics of design-build.

39.10.300
DESIGN-BUILD PROCEDURE—USES.

(1) Subject to the requirements in RCW 39.10.250, 39.10.270, or 39.10.280, public bodies may utilize the design-build procedure for public works projects in which the total project cost is over ten million dollars and where:

(a) The construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or

(b) The projects selected provide opportunity for greater innovation or efficiencies between the designer and the builder; or

(c) Significant savings in project delivery time would be realized.

(2) Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may use the design-build procedure for parking garages, regardless of cost.

(3) The design-build procedure may be used for the construction or erection of portable facilities as defined in WAC 392-343-018, preengineered metal buildings, or not more than ten prefabricated modular buildings per installation site, regardless of cost and is not subject to approval by the committee.

(4) Except for utility projects and approved demonstration projects, the design-build procedure may not be used to procure operations and maintenance services for a period longer than three years. State agency projects that propose to use the design-build-operate-maintain procedure shall submit cost estimates for the construction portion of the project consistent with the office of financial management's capital budget requirements. Operations and maintenance costs must be shown separately and must not be included as part of the capital budget request.

(5) Subject to the process in RCW 39.10.280, public bodies may use the design-build procedure for public works projects in which the total project cost is between two million and ten million dollars and that meet one of the criteria in subsection (1)(a), (b), or (c) of this section.

(6) Subject to the process in RCW 39.10.280, a public body may seek committee approval for a design-build demonstration project that includes procurement of operations and maintenance services for a period longer than three years.

39.10.320
DESIGN-BUILD PROCEDURE—PROJECT MANAGEMENT AND CONTRACTING REQUIREMENTS.

(1) A public body utilizing the design-build contracting procedure shall provide:

(a) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;

(b) Staff or consultants with expertise and prior experience in the management of comparable projects;

(c) Contract documents that include alternative dispute resolution procedures to be attempted prior to the initiation of litigation;

(d) Submission of project information, as required by the board; and

(e) Contract documents that require the contractor, subcontractors, and designers to submit project information required by the board.

(2) A public body utilizing the design-build contracting procedure may provide incentive payments to contractors for early completion, cost savings, or other goals if such payments are identified in the request for proposals.

39.10.330
DESIGN-BUILD CONTRACT AWARD PROCESS.

(1) Contracts for design-build services shall be awarded through a competitive process using public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the public work will be done, a notice of its request for qualifications from proposers for design-build services, and the availability and location of the request for proposal documents. The request for qualifications documents shall include:

(a) A general description of the project that provides sufficient information for proposers to submit qualifications;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications to be required of the proposer including, but not limited to, submission of the proposer's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers;

(i) Evaluation factors for request for qualifications shall include, but not be limited to, technical qualifications, such as specialized experience and technical competence; capability to perform; past performance of the proposers' team, including the architect-engineer and construction members; and other appropriate factors. Evaluation factors may also include: (A) The proposer's past performance in utilization of small business entities; and (B) disadvantaged business enterprises. Cost or price-related factors are not permitted in the request for qualifications phase;

(ii) Evaluation factors for finalists' proposals shall include, but not be limited to, the factors listed in (d)(i) of this subsection, as well as technical approach design concept; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected workloads of the firm; location; and cost or price-related factors that may include operating costs. The public body may also consider a proposer's outreach plan to include small business entities and disadvantaged business enterprises as subcontractor and suppliers for the project. Alternatively, if the public body determines that all finalists will be capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price;

(e) Protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(f) The form of the contract to be awarded;

(g) The honorarium to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;

(h) The schedule for the procurement process and the project; and

(i) Other information relevant to the project.

(2) The public body shall establish an evaluation committee to evaluate the responses to the request for qualifications based solely on the factors, weighting, and process identified in the request for qualifications and any addenda issued by the public body. Based on the evaluation committee's findings, the public body shall select not more than five responsive and responsible finalists to submit proposals. The public body may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers.

(3) The public body must notify all proposers of the finalists selected to move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer not selected as a finalist, the public body must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the

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finalists must file the protest in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision is transmitted to the protestor.

(4) Upon selection of the finalists, the public body shall issue a request for proposals to the finalists, which shall provide the following information:

(a) A detailed description of the project including programmatic, performance, and technical requirements and specifications; functional and operational elements; building performance goals and validation requirements; minimum and maximum net and gross areas of any building; and, at the discretion of the public body, preliminary engineering and architectural drawings; and

(b) The target budget for the design-build portion of the project.

(5) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection. The public body must identify in the request for qualifications which procedure will be used.

(a) The finalists' proposals shall be evaluated and scored based solely on the factors, weighting, and process identified in the initial request for qualifications and in any addenda published by the public body. Public bodies may request best and final proposals from finalists. The public body may initiate negotiations with the firm submitting the highest scored proposal. If the public body is unable to execute a contract with the firm submitting the highest scored proposal, negotiations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(b) If the public body determines that all finalists are capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price.

(6) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a finalist firm, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(7) The firm awarded the contract shall provide a performance and payment bond for the contracted amount.

(8) The public body shall provide appropriate honorarium payments to finalists submitting responsive proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, the public body shall consider the level of effort required to meet the selection criteria.

39.10.470
PUBLIC INSPECTION OF CERTAIN RECORDS—PROTECTION OF TRADE SECRETS—PROTECTION OF PROPOSALS SUBMITTED BY DESIGN-BUILD FINALISTS.

(1) Except as provided in subsections (2) and (3) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this chapter shall be open to the inspection of any interested person, firm, or corporation in accordance with chapter 42.56 RCW.

(2) Trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter 42.56 RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected.

(3) Proposals submitted by design-build finalists are exempt from disclosure until the notification of the highest scoring finalist is made in accordance with RCW 39.10.330(5) or the selection process is terminated.

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