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<th>Name</th>
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<tbody>
<tr>
<td>Walter Schacht</td>
<td>Schacht Aslani Architects</td>
<td>Co-chair</td>
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<tr>
<td>Olivia Yang</td>
<td>WSU</td>
<td>Co-chair</td>
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<tr>
<td>Vince Campanella</td>
<td>Lydig</td>
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<td>Bill Kent</td>
<td>Mortensen</td>
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<td>Santosh Kuruvilla</td>
<td>Exeltech</td>
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<td>Becky Barnhart</td>
<td>Integrus Architecture</td>
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<td>George Shaw</td>
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<td>Lawrence Coleman</td>
<td>OMWBE</td>
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<td>Yelena Semenova</td>
<td>DES</td>
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<td>Steve Crawford</td>
<td>Issaquah School District</td>
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<td>Janice Zahn</td>
<td>Port of Seattle</td>
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<td>Linneth Riley-Hall</td>
<td>Sound Transit</td>
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<td>John Palewicz</td>
<td>UW</td>
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<td>Mark Gaines</td>
<td>WSDOT</td>
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0. EXECUTIVE SUMMARY

Evolving Procurement Method

- Increasing use in Washington State.
- Recently authorized methodology – progressive design-build.
- Statues give owners significant latitude.
- Issues with RCW compliance.
- No follow-up after a project is approved or an agency is certified.
- GCCM is consistent, reliable – design-build is not.
2015 AELC REPORT ON ALTERNATIVE PROJECT DELIVERY

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

SECTION 1096 OF THE 2015 STATE CAPITAL BUDGET

- CPARB and DES: make recommendations that encourage competition.
CPARB DESIGN-BUILD BEST PRACTICES GUIDELINES

• Focus on RCW Chapter 39.10
• Fill the gap between regulations and practice.

• Create a common language that facilitates communications.
• Assist public agencies in the effective utilization of design-build.
• Address owner readiness.

• Recognize that procurement varies depending upon agency and project.
• Consider the impact of design-build on the designers and builders.
• Create reasonable expectations about process and outcomes.

• Guidelines are recommendations, not requirements.
• No proposed modifications to the statute.
IMPLEMENTATION

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

DESIGN-BUILD TYPES

- Progressive, traditional and bridging.

COMPARISON

CONTRACT SCOPE & PRICE

<table>
<thead>
<tr>
<th>PROGRESSIVE</th>
<th>TRADITIONAL</th>
<th>BRIDGING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Established after design-builder is selected.</td>
<td>Established at time design-builder is selected.</td>
<td>Established at time design-builder is selected.</td>
</tr>
</tbody>
</table>

SELECTION CRITERIA

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

<table>
<thead>
<tr>
<th>PROGRESSIVE</th>
<th>TRADITIONAL</th>
<th>BRIDGING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project scope, budget and schedule do not have to be aligned before the selection process commences.</td>
<td>Project scope, budget and schedule must be aligned before team selection. Project criteria are typically performance requirements.</td>
<td>Project scope, budget and schedule must be aligned before team selection. Project criteria are typically prescriptive.</td>
</tr>
</tbody>
</table>

### OPPORTUNITIES

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

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

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

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

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

ALIGNING DELIVERY TYPE WITH OWNER NEEDS AND GOALS

AGENCY PREPAREDNESS

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

PROGRAM DEFINITION & STAKEHOLDER INVOLVEMENT

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

CONTRACTUAL RELATIONSHIPS

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

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

OWNER INVOLVEMENT

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

CHANGES IN PROJECT SCOPE

- Modifying project scope after price is set is a construction change order.
- May reduce the owner’s inclination to make changes.
SUBCONTRACTOR INVOLVEMENT & SELF PERFORMANCE

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

PERFORMANCE GUARANTEES

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

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

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

SCOPE, SCHEDULE AND BUDGET ALIGNMENT

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

PROJECT CRITERIA

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

Performance and Prescriptive Criteria

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

Design Standards

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

Predesign Studies

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

REQUEST FOR QUALIFICATIONS

RCW 39.10.330(1)(d)i

- Technical qualifications; capability to perform; past performance of the proposers’ team, including the architect-engineer and construction members; and other appropriate factors.

- May include past performance in utilization of small business entities and/or disadvantaged business enterprises.

- Cost or price-related factors are not permitted.

Additional Information

- Completed RFP.

- Agency’s master plan and other preparatory documents.

- Project budget with evidence of funding and the date it will be allocated.

- Proposed contract and general conditions of the contract for construction.

- List of required deliverables in the RFP phase.
REQUEST FOR PROPOSALS

RCW 39.10.330(1)(d)ii

• Technical approach design concept; ability of professional personnel; past performance; ability to meet time and budget requirements; ability to provide a performance and payment bond; recent, current, and projected workloads of the firm; location; and cost or price-related factors that may include operating costs.

• Agencies may also include in the evaluation criteria an outreach plan to include small business entities and disadvantaged business enterprises.

Additional Information

• Agencies should consider providing all previous studies and data.

• RCW 39.10.330 (b)(ii) allows the owner to award the contract to the firm that submits a responsive proposal with the lowest price. Therefore, it must clearly identify in the RFP what qualifies as a responsive proposal.
COST & PRICE-RELATED FACTORS

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

Submittals

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

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

TEAMING AGREEMENTS

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

SELECTION

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

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

Conflicts of Interest

- Establish a code of conduct for third-party owner’s representatives.
RFP PHASE MEETINGS & INTERVIEWS

PRE-RFP MEETINGS

• Provide general information from the agency to the finalists.

PROPRIETARY MEETINGS

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

FINAL INTERVIEWS

• Allow the finalist to explain their proposal.
• Allow agency to ask detailed questions about the proposal.
• Conduct after selection panel has adequate time to review proposals.
HONORARIA & SCOPE OF DELIVERABLES

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

DELIVERABLES

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

USE OF PROPOSALS

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

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

**CHALLENGES**

**RELATIONSHIPS**
- Need a partner in order to compete for projects.

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

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

SELECTION CRITERIA

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

Disadvantaged Businesses

- May not have relationships, experience or bonding capacity to compete.
- Change in subcontracting opportunities - no requirement to bid the work.
OPPORTUNITIES

PROVIDE ADVANCE NOTICE

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

BROADEN SELECTION CRITERIA

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

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

Firm Experience

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

Individual Experience

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

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

Owner and Design-Build Team Experience

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

LIMIT CONSULTANT TEAM EXCLUSIVITY

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

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

Design-Build’s Advantages

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

• Varying approaches to the issue of whether firms that prepare preparatory documents can compete for the design-build contract.

• Gap between agency policy for design services and design-build.

POLICIES AND PRECEDENTS

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

Legal Requirements in Washington State

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

Federal Acquisition Regulation Subpart 9.5

• Allows firms that develop preparatory documents to pursue later phases of the project.
RECOMMENDED PROCEDURES

• Identify constraints on selection for future phases of work in the preparatory services RFQ.

• Constraints, once established, should not change.

• Design contract and all services related to the preparatory documents should be completed prior to public advertisement of the design-build RFQ.

• A reasonable period of time should separate completion of the design contract and services and the design-build RFQ.

• All of the preparatory documents should be publicly available at the time of issuance of the RFQ.

• Preparation of the RFQ and/or RFP should be a constraint.
HONORARIA & QBS IN D-B PROCUREMENT

14 SEPTEMBER 2017
RCW 39.10.330(8)

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

- May a public body determine that honorarium payments are not required for Progressive and/or Bridging procurements?

- Does “shall consider” allow a public body to determine that they “shall consider but decide not to compensate for...”?

- How does the RCW 39.80, which requires qualifications based selections for architects and engineers, impact design-build cost proposals under 30.10?