Avoiding Design-Build Project Disasters

Design-Build Best Practices for Small Projects
Richard Shelton
Royce Construction Services
President

Labor Compliance: The USACE Perspective
Vanessa Shaw-Jennings
USACE
Office of the Chief Counsel
HQs Labor Advisor
Stages of Design

Program Development
Defining the Problem

Conceptual Design

Design Development
Creating a Solution

Construction Documents
Project Delivery Method: Design-Bid-Build

Owner

Lead A/E Firm

A/E Subconsultants

General Contractor

Design-Build Subcontractors

Trade Subcontractors

Hosted by the Society of American Military Engineers
Project Delivery Method: Design-Build
Benefits of Design-Build

- Ability to fast-track a project
- Ability to prequalify or shortlist firms based on qualifications and experience
- Ability to select a firm based on technical approach, conceptual design and price (best value)
- Early knowledge of project costs
- Allows the owner to obligate both design and construction dollars one time
- Risk of project performance is shifted to the Design-Builder
- Single point of responsibility for the Owner
- Reduction in RFIs, change orders and “finger pointing”
- Opportunity for the Design-Builder to exceed the Owner’s expectations
- Lower unit costs, faster construction and overall project delivery, and decrease in cost and schedule growth.
Conduct a two-phase procurement process.
- Request for Qualifications (RFQ)
- Request for Proposals (RFP)

Shortlist only three design-builders.

Provide a stipend/honorarium to non-selected teams to increase competition.

Use performance requirements in lieu of prescriptive specifications

Disclose schedule requirements and budget; select best solution.

Include contract incentives to encourage desired behavior.
Net-Zero Water, Equipment Wash Facility

• Owner wanted a sustainable project
• Shifted site location and conceptual design
• 250 to 1,000 gallon rainwater tank
• Filtration process included manufactured limestone filter sands
• Rainwater collection included vortex cleaning and storage
• Many LEED items (recycled content, local materials, bio-swales, etc.)
• 100% rainwater use, 0% VA potable water
• 2013 DBIA Regional and National Awards
• Recognize it’s a different delivery method and consider training
• Limit prescriptive specifications, rely on performance requirements
• *Don’t let your Design-Builder learn how to do design-build on your project*
• Conduct a partnering session & design charrette with all key stakeholders
• Assign the right personality to project, be prepared to switch
• Use the same project management (COR) throughout project
• Allow DB to modify design but hold responsible for performance
• Use caution when ‘controlling design’
• Recognize it’s a different delivery method and consider training

• **Don’t let your Owner learn how to do design-build on your project**

• Treat your design A/Es and key subcontractors as partners, not as commodities

• Involve team members early, conduct early team strategy meetings

• Encourage all to suggest value engineering throughout the entire project, it’s design-build

• Assign the right personalities to the project

• Focus the majority of your design effort early

• Train your Owner but with humility

• Take every opportunity to exceed your Owner’s expectations
Design-Build Resources

- **Education**
  - Core curriculum focused on DBIA professional certification
  - Additional courses focused on specific needs such as BIM management, conceptual estimating, design management, etc.
  - Webinars
  - Owner focused curriculum

- **Conferences**: Federal Projects, Water/Wastewater, and Transportation

- **Project database**

- Design-Build [Manual of Practice](#) and [Best Practices](#)

- Design-Build [contracts and teaming agreements](#)

- **Owner’s Hotline**
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Labor Requirements

- DBA
- SCA
- CWHSSA
- EO 11246
- PCA
- VEVRAA
- CA

Federal Contractors
Contract Clauses

- 52.222-6 – Davis-Bacon Act (DBA)
- 52.222-41 – Service Contract Act (SCA)
- 52.222-4 – Contract Work Hours and Safety Standards Act (CWHSSA)
- 52.222-20 – Walsh-Healey Public Contracts Act (PCA)
- 52.222-35 - Veterans of the Vietnam Era, other Veterans (VEVRAA)
- 52.222-10 – Copeland Anti-Kickback Act (CA)
- 52.222-26 – E.O. 11246 (EEO)
Contractor Requirements

- **DBA - $2,000 Threshold**
  - Wage and Benefit Payment
  - Weekly Payroll Requirement

- **SCA - $2,500 Threshold**
  - Wage, Benefit, and Health and Welfare Payment
  - Bi-Weekly Payroll Requirement

- **CWHSSA - $100,000**
  - T ½ After 40 Hours
  - Self Executing

- **PCA - $15,000**
  - Minimum Wage Requirement
  - Prohibits Employment of Children Under 16
Contractor Requirements continued

- **VEVRAA - $25,000**
  - VETS-100 Reporting Requirement
  - $50,000 – Must have an Affirmative Action Plan

- **CA – $2,000**
  - Regulates Deductions Under DBA & Wage Kickbacks
  - Regulates the “Statement of Compliance” Under DBA

- **E.O. 11246 - $10,000**
  - Prohibits Discrimination in Employment Decisions on the Basis of Race, Color, Religion, Sex, or National Origin

- **FLSA- $7.25**
  - Typically Applies When Other Coverage Requirements Fail
Common Violations

• DBA
  – Misclassification
  – Conformed classifications
  – Failure to pay prevailing wages/benefits
  – Failure to pay overtime
  – Inadequate recordkeeping
  – Inadequate apprenticeship documentation
  – Inadequate weekly payroll submissions
  – Failure to meet posting requirements
Common Violations continued

- SCA
  - Underpayment of service workers due to misclassification
  - Erroneously considering workers exempt without regard to 29 C.F.R. Part 541 rules
  - Failure to make timely payment of wages or fringe benefit contributions
  - Lack of proper recordkeeping when cash payments are made to satisfy fringe benefit requirements
  - Failure to post the “Notice to Employees Working on Government Contracts” at a prominent and accessible place at the worksite
  - Failure to implement rate increases
Available Resources

• Agency Labor Advisors
  www.wdol.gov/ala.aspx

• Labor Information for Services & Construction Contracts

• Wage Determinations On-Line
  www.wdol.gov

• Compliance Assistance – Government Contracts
  http://www.dol.gov/whd/govcontracts/

• VEVRAA
  www.dol.gov/compliance/laws/comp-vevraa.htm

• DoL Prevailing Wage Resource Book
  http://www.dol.gov/whd/recovery/pwrb/toc.htm
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