



**BRITISH COLUMBIA  
CONSTRUCTION ASSOCIATION**

**RECOMMENDED POLICY & PROCEDURE  
FOR DESIGN-BUILD PROJECTS**

**March 1997**

# DESIGN-BUILD POLICY:

## Background:

The Board of the British Columbia Construction Association appointed a Design-Build Task Force to develop a **policy** which contains **specific guidelines** for government bodies and agencies to follow when procuring projects using the Design-Build method. This policy attempts to provide a fair and equitable process resulting in a contract award based on maximum public accountability. The Task Force is neither recommending nor endorsing the Design-Build method as a preferred method of project procurement for public owners.

This policy also applies to privately funded Design-Build projects.

This policy does not recommend any contract forms, nor does it address the issues of bid security, contract security, and insurance.

## Intent:

This policy applies to privately and publicly funded projects in which the Owner intends to enter into a Design-Build contract with a contractor on land owned or controlled by the Owner.

*This policy is not intended to be used for other procurement methods involving the design-build process such as leasebacks, user-pay facilities (toll bridges or roads, water systems), property acquisition or ownership, (private) financing, or project management.*

## Definitions:

**Design-Build** is a project delivery method in which an Owner contracts with a single entity to provide both design and construction under one contract.

**Publicly Funded Projects** are those projects which are funded or underwritten by any level of government, whether represented by government ministries, crown corporations, public boards, municipalities, or government agencies.

**Owner** is the organization or body that owns or controls the land on which a project is built, and enters into a contract with a Design-Build Contractor.

**Design-Build Contractor** is a contractor who enters into a contract with an Owner to provide design and construction services for a project.

## **Projects Appropriate for Design-Build:**

Almost any type of project may be appropriate for Design-Build. This includes all types of buildings, renovations, civil structures, roads, and utility construction.

*Before determining if a project is suitable for Design-Build, an Owner should:*

- *be able to clearly and explicitly state his expectations and priorities for the project to all bidders.*
- *have (in house) or hire project management expertise and be prepared to commit these resources to the project.*
- *understand the Design-Build process, and fully understand the apportionment of risk between himself and the contractor.*
- *have the project financing in place and be prepared to award the contract within the tender/proposal validity period.*

## **Prequalification of Bidders:**

The Owner should prequalify no more than three bidders after publicly calling for prequalification submissions.

*As Design-Build contractors spend considerable time and money in preparing a Design-Build proposal, selection of three qualified bidders provides a competitive basis for bidding while giving the bidders a reasonable chance of being rewarded for their efforts. Unqualified bidders would not be wasting their time if they have little or no chance for award. The Owner should be able to commit more time to evaluating tenders/proposals if only three are received.*

Prequalification evaluation should be objective and clearly supportable. The Owner should provide the results of the prequalification evaluation to all proponents.

*The weighted evaluation criteria for prequalification should be described in the prequalification documents, with all priorities and preferences explicitly stated. All proponents should be given the detailed results of the evaluation for all contractors.*

Once prequalified, all bidders' Design-Build proposals shall be evaluated on their own merit, not on the relative qualifications of the bidders. Prequalification should occur shortly before a Request for Proposals.

## **Proposal Call:**

The Owner shall invite the prequalified bidders to submit design-build proposals based upon specific requirements.

*The document(s) accompanying the proposal call shall explicitly describe all the requirements of the proposal submission, relevant site and project information, the evaluation criteria for the proposal, any post-submission requirements, and the details of the proposed contract.*

A reasonable period of time should be provided for proponents to prepare their submissions.

*This would include the time required for design work, pricing, and preparation of the proposal submission.*

Submissions should be evaluated by the Owner without further corroboration from the bidders. All bidders shall be notified of the results of the evaluation, including a detailed scoring. The proposal submissions of all proponents shall be made available for viewing by all bidders shortly after award of contract. The Owner shall award the contract based only on the evaluation results.

The Owner should compensate the two unsuccessful proponents for their proposal submissions at a predetermined amount. The Owner, although compensating the unsuccessful parties for their proposal submissions, shall not be at liberty to use the design nor incorporate any part of an unsuccessful proponent's design into the project.

*Compensation covers only part of the proposal preparation cost, and the design ideas and innovations remain the property of the proponent.*

## **Contract Payment and Compliance:**

The Owner should engage and pay for an independent consultant, agreed to by the Design-Build Contractor, to inspect the Work and certify contract payments.

*Due to a potential conflict of interest, neither a consultant hired by the Design-Build Contractor nor a consultant hired by the Owner to prepare or review proposals should perform these functions.*

# DESIGN-BUILD GUIDELINES:

## Selection of Project for Design-Build:

The Owner should carefully consider his reasons for choosing Design-Build over other (more traditional) contracting methods. Design-Build should **not** be utilized where:

- The Owner has had detailed drawings and specifications prepared and is merely transferring risk to the contractor.
- The Owner is not prepared to commit the necessary resources to fairly prequalify bidders, prepare a comprehensive Request for Proposals, or fairly evaluate the proposals received.
- The Owner does not divulge all evaluation criteria for prequalification and proposal submissions to all bidders, or is not prepared to provide bidders with the evaluation results.
- The Owner intends to incorporate concepts submitted in Design-Build proposals into a subsequent re-tender (Design-Build or traditional).
- The Owner will not provide the bidders with adequate information regarding the site, the proposed functions of the project, or any other pertinent information.
- The contract award is contingent upon subsequent approvals from other authorities which are beyond the ability of the proponent to control the outcome (e.g. development permits, environmental permits, voter referenda).
- The Owner does not have the project financing in place and is not prepared to award the contract within a reasonable time period.

## Prequalification of Bidders:

The Owner shall publicly call for prequalification of bidders, and provide all interested parties with the prequalification documents. Documents should contain all relevant project information and specify all submissions required of the prospective bidder. Prospective bidders should be given adequate time to prepare their prequalification submissions and submissions received after the advertised deadline should be rejected. Only three bidders shall be prequalified to submit proposals for the project. Should one of the prequalified bidders decline from participating, the fourth ranked proponent shall be invited to submit a proposal.

The prequalification document should explicitly state all qualifications and experience required or preferred of the prospective bidders. Consideration should be given to financial and bonding capability, experience on similar projects, Design-Build experience, team organization & experience, local experience, and qualifications of key personnel to be assigned to the project. The relative importance of both the design and construction team members should be stated. An evaluation grid should be included with the maximum possible points indicated for each criterion. There may be certain fundamental criteria which are evaluated on a pass/fail basis.

The prequalification process should occur shortly before the Proposal/Tender Call. Should an interview or presentation be required subsequent to prequalification submissions, the Owner should clearly state the purpose and describe the process in the prequalification document.

All proponents should be evaluated based on the stated criteria and their prequalification submission. The Owner should not have any hidden preferences. All potential bidders shall be advised of their overall ranking, points awarded for each category, and the ranking/points awarded to all other potential bidders. Non-confidential information from other submissions should be made available to all proponents. Bidders should be notified of prequalification results within a reasonable period of time.

### **Request for Proposals:**

The Owner shall prepare a document(s) commonly called a Request for Proposals (RFP). The RFP shall describe all of the requirements of the proposal submission, the evaluation criteria and process, the project budget, required completion date (if significant), any post-submission requirements, and the proposed contract form. In many cases, the Owner will hire a consultant or consultants to prepare a functional program, land use study, geotechnical and environmental reports, topographical survey, and drawings of existing buildings or structures.

Proposals shall be submitted in a “two envelope” system. One “envelope” shall contain the design and technical submission, and the other “envelope” the price and bid security. As evaluation of the design and technical submission is a much more time consuming process, this may be evaluated independent of and prior to the price being submitted.

A proposal submission date and time should be stated in the RFP. The Owner should allow the bidders a reasonable amount of time to prepare their proposal submissions. Sufficient time should be provided to allow bidders to analyze the proposal document, prepare the design and preliminary drawings, evaluate various systems and materials, conduct engineering studies, ask questions and receive answers from the Owner, price the proposed work, and prepare the submission documentation. Bidders’ questions or clarifications should be submitted in writing and responded to by issuance of addenda.

The RFP should state the design parameters and performance specifications for the project rather than indicate design solutions or specific products or systems. This allows the bidders to explore creative and innovative design solutions within the context of the Owner’s requirements. Design parameters and/or performance specifications may include:

- functional program
- spatial planning and area relationships
- site orientation & use
- circulation and traffic flow
- applicable code requirements

- operating costs
- life cycle costs
- maintenance costs
- performance criteria for HVAC systems
- aesthetic considerations
- special equipment requirements
- illumination levels
- capacity for future additions or renovations
- special systems (e.g. security, data cabling, HVAC controls)
- compatibility with existing Owner facilities or systems

The Owner should carefully consider the relative importance of each of these parameters and assign evaluation points accordingly.

The RFP should describe all of the submission requirements in detail. Submissions should indicate the bidder's proposed design solution in sufficient detail so as to provide the Owner with enough information to properly evaluate the proposal. Detailed design calculations, construction details, detailed material and equipment specifications, and reiteration of the RFP requirements should **not** form part of the proposal submission. The Owner may request clarification from bidders, but should not enter into post-tender negotiations with any bidder until all evaluations are completed. All submissions shall be kept strictly confidential until after a contract is awarded.

The RFP should describe the contractual requirements and contract documents in detail. The RFP and the bidder's submission should form the basis of the contract with any other contract documents spelled out in the RFP. Bonding, insurance, certification and terms of payment, precedence of contract documents, dispute resolution, inspection and testing, warranties, taxes, and all other contractual matters should be included in the RFP.

The price or prices should be submitted on a tender/proposal form prepared by the Owner. The relative importance of the price should be indicated by assigning a weighted value in the evaluation grid. Alternatively, if the Owner's budget cannot be exceeded, this amount should be stated, and bidders submitting a price higher than this amount be disqualified.

If the Owner requires that certain subcontractors be named, these should be listed on the tender form. The Owner should carefully consider which subcontractors must be committed at this time.

If the contract completion date is critical, the tender form should state the required date or time for completion. If accelerated project delivery is important, the Owner shall indicate the relative importance by assigning a weighted value in the evaluation grid and the bidder shall state his completion date/time in his tender.

Alternate and separate prices are discouraged. If these are required by special circumstances, the evaluation weighting and award criteria should be clearly stated in the RFP.

The two unsuccessful proponents shall be paid an amount stated in the RFP for submitting their proposals. This amount is intended to compensate the bidders for some of their expenses in preparing their proposals. All proposals are considered intellectual property, and, although the Owner has paid partial compensation for the submission, he shall retain no ownership of any part of an unsuccessful submission. The Owner shall not use any part of an unsuccessful bidder's design at any time.

The Owner shall evaluate the proposal submissions based on the weighted evaluation grid contained in the RFP. There may be certain fundamental criteria which are evaluated on a pass/fail basis. Upon completion of the evaluation, the Owner shall award the contract based on the overall high score. Should the price submitted by the highest ranked proponent exceed the Owner's budget, the Owner may initiate negotiations with only that proponent to bring the project within budget. Should negotiations fail to reduce the price to an acceptable amount, the Owner may negotiate with the second ranked bidder, and, failing that, negotiate with the third bidder.

Should all tenders be rejected, all three proponents shall be paid for their submissions. The Owner may, after substantially revising the terms of reference in the RFP, invite the same three prequalified bidders to resubmit Design-Build proposals. The same guidelines used in the original proposal call shall be followed.

## **Contract Forms:**

A number of contracts may be entered into by the various parties in the Design-Build process:

1. Contract between the Owner and Design-Build contractor.
2. Contract between the Owner and any consultants he engages to perform preliminary studies, prequalification documents and evaluation, Request for Proposal documents and evaluation, and certification and inspection services.
3. Contract between the Design-Build contractor and any design consultants he engages.
4. Contract between the Design-Build contractor and his subcontractors.
5. Contract between a prime design consultant (hired by the Design-Build contractor) and a subconsultant.
6. Contract between a subcontractor and a sub-subcontractor.

Contract forms which are standardized and generally accepted in the industry shall be used. This report does not deal with recommended contract forms.



## **Compliance & Payment:**

The Owner, with the consent of the Design-Build Contractor, shall appoint and pay for an independent Consultant to inspect the work and certify contract payments. The consultant may engage sub-consultants to assist in inspecting and certifying payments for specialized parts of the project (e.g. Mechanical, Electrical). The Consultant shall report his findings to both the Contractor and the Owner and shall be, in the first instance, the interpreter of the requirements of the Contract Documents. Claims and disputes in which either party disagrees with the Consultant's interpretation shall be referred to the Disputes mechanism contained in the Contract.

This Consultant shall periodically inspect the Work to check for conformance to the Contract Documents. The Design-Build Contractor shall allow the Consultant reasonable access to the work for any such inspections. The Contractor shall not interfere with such inspections, and the Consultant shall not delay or interfere with the Work.

The Design-Build Contractor shall be paid monthly as the Work progresses, as certified by the Consultant. The Consultant shall establish when Substantial Performance of the Work has been reached, and advise both parties of this date.