

Design-Build for Public Works Projects

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Agenda

1. The Baseline: Design-Bid-Build
2. Existing Design-Build Statutes
3. Overview of Design-Build Process
4. New Design-Build Statutes Under SB 785
5. Prequalification of Proposers
6. RFP Process
7. Limitations on Design-Build Authority
8. Advantages of Design-Build
9. Suggestions and Observations





The baseline: Design-Bid-Build (DBB)

- Must award to lowest bidder, can't select best or most preferable contractor
- Can't negotiate the contract terms
- Contract docs must be complete before advertisement for bids





Long-standing public policy behind DBB approach

- Transparency
- Eliminate favoritism, fraud and corruption
- Avoid misuse of public funds
- Benefit from competition in the market



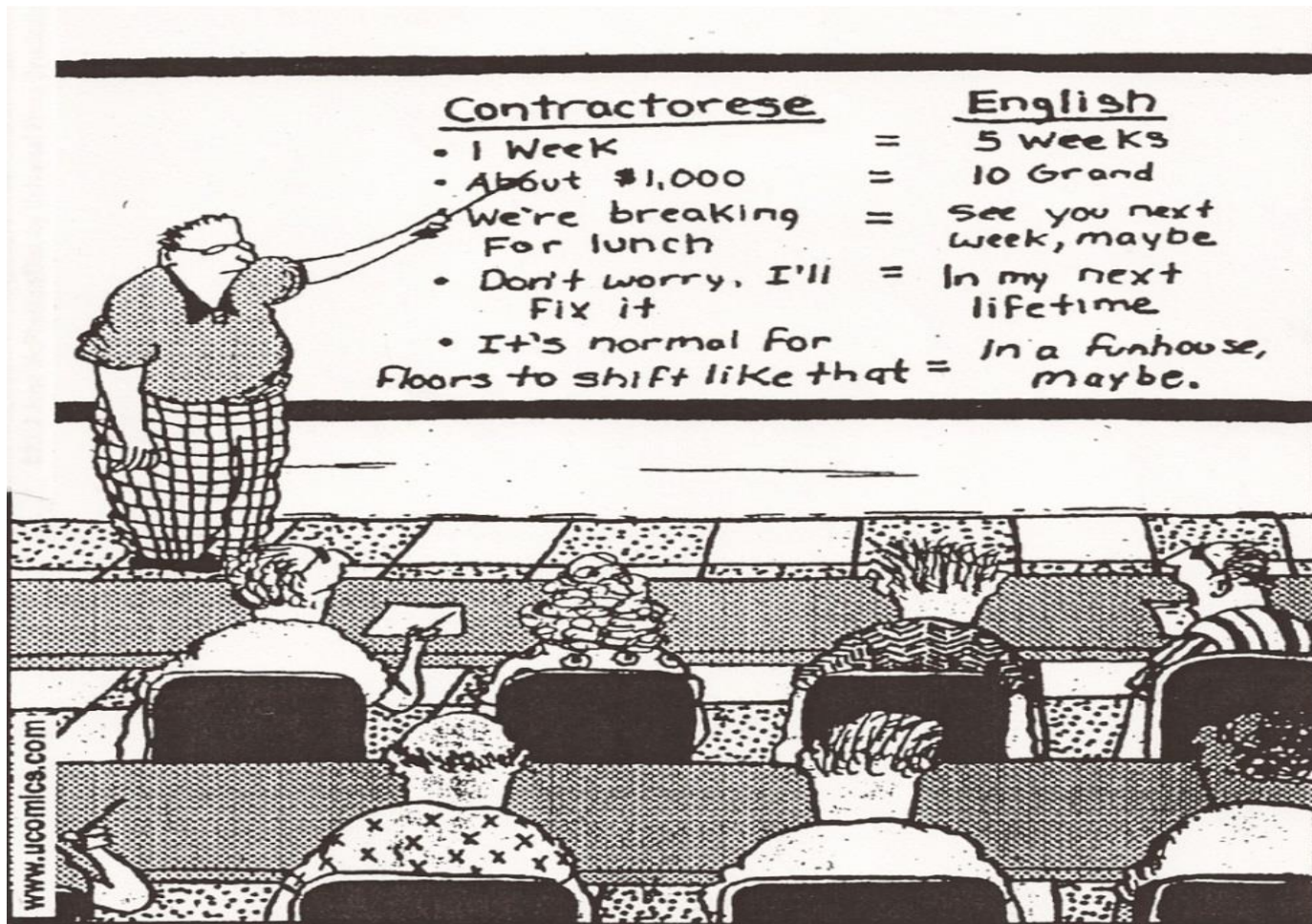


Many challenges with DBB

- Poor construction quality
- More claims
- Costs are frequently higher than original bid
- Adversarial relationship between agency, designer and contractor



Leads to mistrust of contractors



At the National Contractor Institute.



Construction Definitions

- Bid Opening
 - A poker game where the losing hand wins.
- Low Bidder
 - A contractor who is wondering what he/she left out.
- Engineer's Estimate
 - The cost of construction in heaven.
- Completion Date
 - The point at which liquidated damages begin.





Design-Build





Existing Design-Build Statutes

- Cities (PCC 20175.2)
- Counties (PCC 20133)
- Transit Operators (PCC 20209.5-20209.14)
- State of California, DGS (Gov. Code 14661)
- Community College Districts (Ed. Code 81700-81708)
- School Districts (Ed. Code 17250.10-17250.50)
- California State University (PCC 10708)
- Sonoma County Health Care District (H&S Code 32132.5)
- Wastewater, Solid Waste, Water Recycling Projects (PCC 20193)





Overview of DB Process

- Must prequalify all DB entities first
- RFP process follows prequalification
- Can award to lowest bidder or on a “**best value**” basis
- Best value award must establish objective criteria for award
- Significant benefits for DB contracts on larger projects





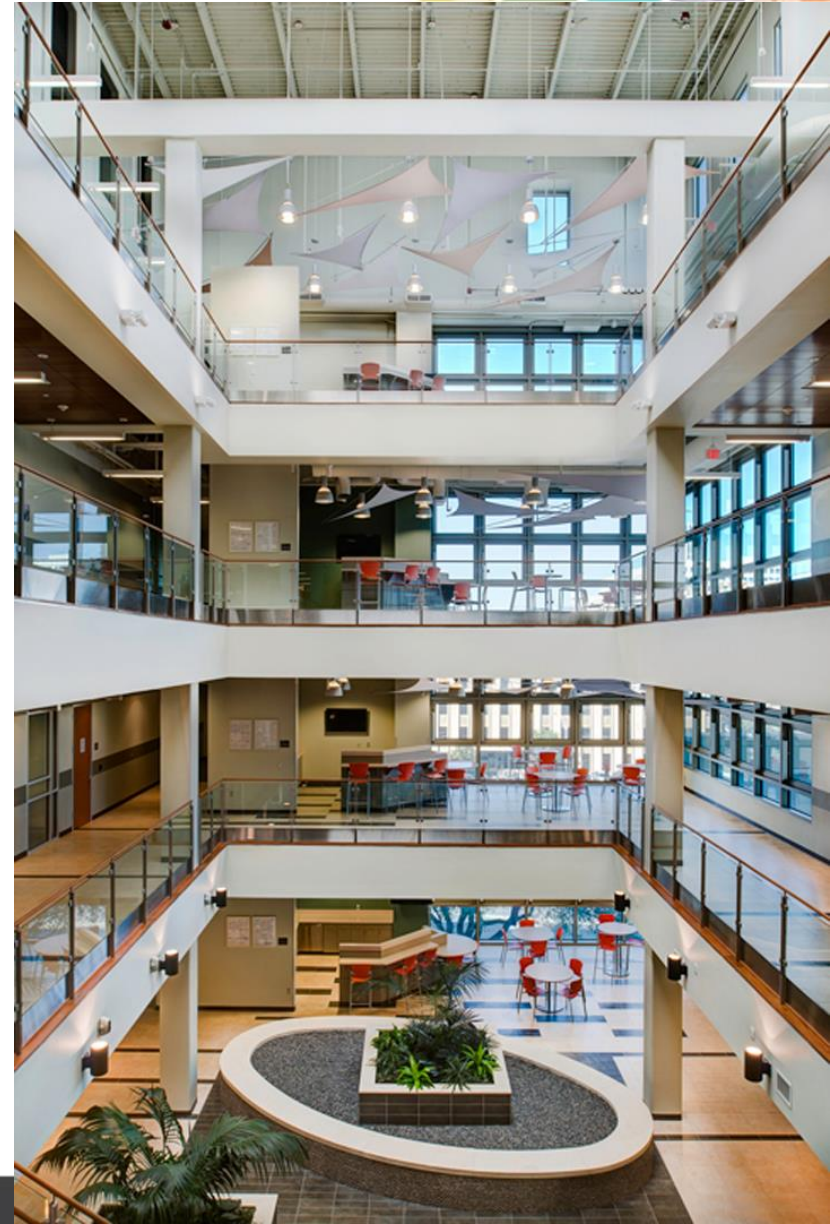
Recent report highlights successes of Design-Build approach

- LAO published report in 2010 regarding 15 design-build projects awarded by counties
- 5 projects were completed at time of report
- 2 of 5 completed projects below cost estimates; 2 projects at estimate; 1 was 5% over
- all 5 projects completed close to targeted completion date (longest delay of 3 months on 18 month project)
- all 15 awarded on “best value” basis
- each county supports DB going forward



San Antonio Public Safety Headquarters

San Antonio, Texas





U.S. Coast Guard Headquarters

Washington, D.C.





U.S. Federal Courthouse

Billings, Montana





New Design Build Statutes: SB 785

- SB 785 was passed by Assembly and Senate, and was signed by the Governor on September 30, 2014
- Legislature's goal is to consolidate authority and eliminate inconsistencies between DB statutes
- SB 785 repeals most of the existing design-build statutes in favor of a new set of statutes for "local agencies" and separate statutes for state agencies
- The statutory framework for DB contracts will be similar, but there are important differences.





New Design Build Statutes: SB 785

- New statutes will be located in PCC sections 22160-22169 (local agencies) and 10187-10196 (state agencies)

Local Agencies Covered	Eligible Projects
City, county, city and county	Buildings or building improvements; county sanitation wastewater treatment facilities; park and recreation facilities
Special district that operates wastewater, solid waste, water recycling or fire protection facilities	Regional or local wastewater treatment, solid waste, water recycling or fire protection facilities
Transit district	Transit capital project





New Design Build Statutes: SB 785

- SB 785 repeals or amends these statutes:
 - PCC 20209.5-20209.14 (transit operators)
 - PCC 20193 (wastewater, solid waste, recycled water)
 - PCC 20133 (counties)
 - PCC 20175.2 (cities)
 - Gov. Code 14661 (CA Dept of General Services)
 - Gov. Code 14661.1 (CA Dept of Corrections)
 - Health and Safety Code 32132.5 (Sonoma Valley and Marin Health Care Districts)
 - PCC 20688.6 (Redevelopment Agencies)
 - PCC 20301.5 (Santa Clara Valley Transportation Authority)





New Design Build Statutes: SB 785

- Unaffected DB statutes:
 - Education Code sections 17250.10-17250.50 (school districts)
 - Education Code section 81700-81708 (community college districts)
 - Public Contract Code section 10708 (California State University)





Changes Under SB 785

- \$1 million threshold to use DB authority
- Requires awarding authority to develop guidelines for organizational conflicts-of-interest in connection with DB projects
- Prohibits design-build-**operate** contracts
- Agency may now **pre-qualify** OR **shortlist** proposers for the RFP stage





Changes Under SB 785

- NO LABOR COMPLIANCE REQUIREMENT: no requirement to pay the DIR for compliance monitoring services, or to operate an in-house LCP
- BUT, requires enforceable commitment from DB entities to use a “skilled and trained workforce” (22164(c))
- No requirement to prepare a report to the LAO regarding success of project





Changes Under SB 785

- Only three evaluation factors specified instead of five (22164(f))
- Payment bond must not be less than performance bond (22165(a))
- Agency must issue a written decision supporting contract award (22165(e)(5))



Prequalification of Proposers

- Must **pre-qualify** all design-build entities (20164(b))
- Develop a request for qualifications (“RFQ”) which includes:
 - Basic scope of the project
 - Expected cost range
 - Methodology that will be used to
 - evaluation proposals
 - Procedure for final selection
 - Significant factors that agency will
 - consider in evaluating proposal
 - Standard template for Statement of Qualifications





Prequalification of Proposers

- The Statement of Qualifications must obtain the following information:
 - Type of legal entity (corporation, joint venture)
 - Proposer's experience and competency on projects of similar size, scope or complexity
 - Experience and training of key personnel
 - Required licenses, registrations and credentials
 - Capacity to obtain required bonding and insurance
 - Workers compensation experience history
 - Evidence of an acceptable safety record
 - Signed under penalty of perjury





Prequalification of Proposers

- Allow sufficient time for prequalification process:
 - Minimum of 3 months to advertise RFQ, host a prequalification meeting with Q&A, review and grade submissions, and allow for appeals
 - May need to revise pre-qualification requirements if too few proposers are qualified
 - May need to clarify responses and obtain supplemental information after SOQs have been submitted
 - Assume flexibility in scoring will be required





Prequalification of Proposers

- Prequalification requirements that could present difficulties for DB entities:
 - Specific experience requirement (i.e.-3 previous projects in last 5 years) required of EACH DB entity member
 - Requirement for an audited financial statement instead of just a “reviewed” financial statement
 - Requirement that licenses be held at time of prequalification instead of at contract award
 - Requirement that all DB entity team members possess California contractor or professional licenses
 - DB entities with foreign team members that can’t meet experience requirements in CA or the US





RFP Process

- May award either to lowest responsible bidder or on a “best value” basis
- “Best value” means:

A value determined by evaluation of objective criteria related to price, features, functions, life cycle costs, experience and past performance. A best value determination may entail selection of the lowest priced technically acceptable proposal or selection of the best proposal for a fixed price established by the procuring agency, or it may consist of a trade off between price and other specified factors.





RFP Process

- Should be clear, and tailored to the project
- Use best value whenever possible
- Assuming best value, must establish “objective criteria” with weighting for each
- Required factors: price; technical design & construction expertise; life cycle cost over 15 years
- Agency can add its own factors, and establish weight of each factor





RFP Process

- Agency should specify in RFP which subcontractors must be identified as part of DB team
 - Subs identified receive protections of Subcontracting Act
 - Subs added later can be by low bid or best value, but opportunities must be published
 - Subs added later also receive protections of Subcontracting Act





RFP Process

- Agency may reserve the right to “request revisions and hold discussions and negotiations” with proposers
 - Presumably after proposals submitted
 - Must specify negotiation procedures in RFP
 - Negotiations must be conducted in good faith
 - Could be established as a BAFO process
 - One-on-one meetings prior to proposal submission is not best practice





RFP/Contract Terms

- Payment bond can't be less than performance bond
- Errors and omissions insurance required for “design elements of the project”
- Guidelines re: organizational conflicts of interest
 - This will preclude A/E working on preliminary design from submitting a proposal for the contract
- Retention of progress payments is limited to 5% (same as other public works projects)
- Remember to include all public works contract requirements





Limitations on Design-Build Authority

- SB 785 precludes design-build-**operate** contracts
 - May include “operations” during a training or transition period
 - Can’t include “long-term operations”
 - Not clear whether maintenance can be included
- SB 785 does not authorize P3 contracts
- SB 785 does not authorize CM at Risk





Advantages of Design-Build

- **“Best value” award: value based selection**
- Single point of accountability
- Fewer change orders
- Fewer conflicts/claims
- Eliminates finger-pointing between contractor and A/E



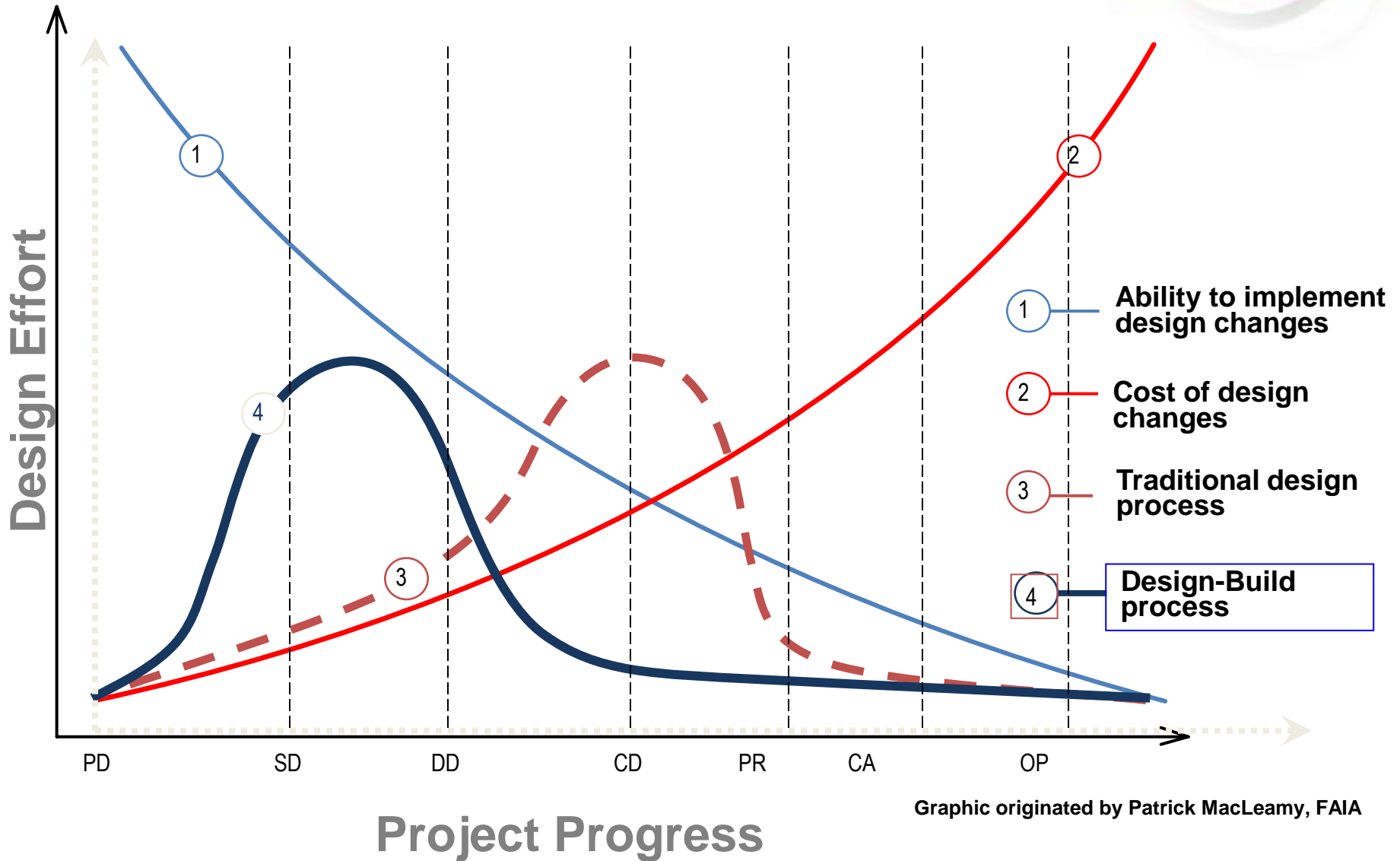


Advantages of Design-Build

- Faster project completion
- Lower project cost
- Allows for more innovation
- **Early involvement of key subs**

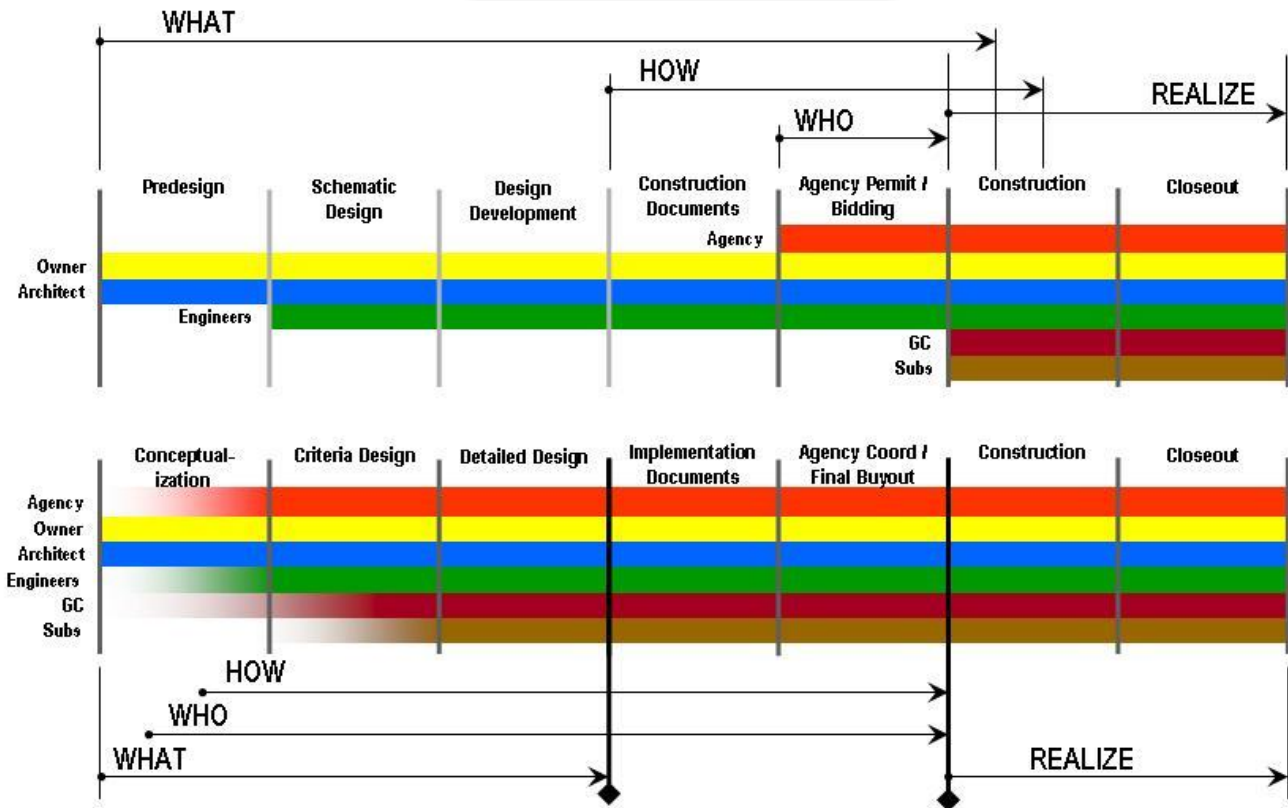


Early Involvement of Subs





Accelerating Engagement





Design-build can incorporate cutting edge contracting procedures

- Integrated Project Delivery (IPD)
- Early involvement of key subs during design phase
- Incentives for successful project outcome
- Reliance on Building Information Modeling

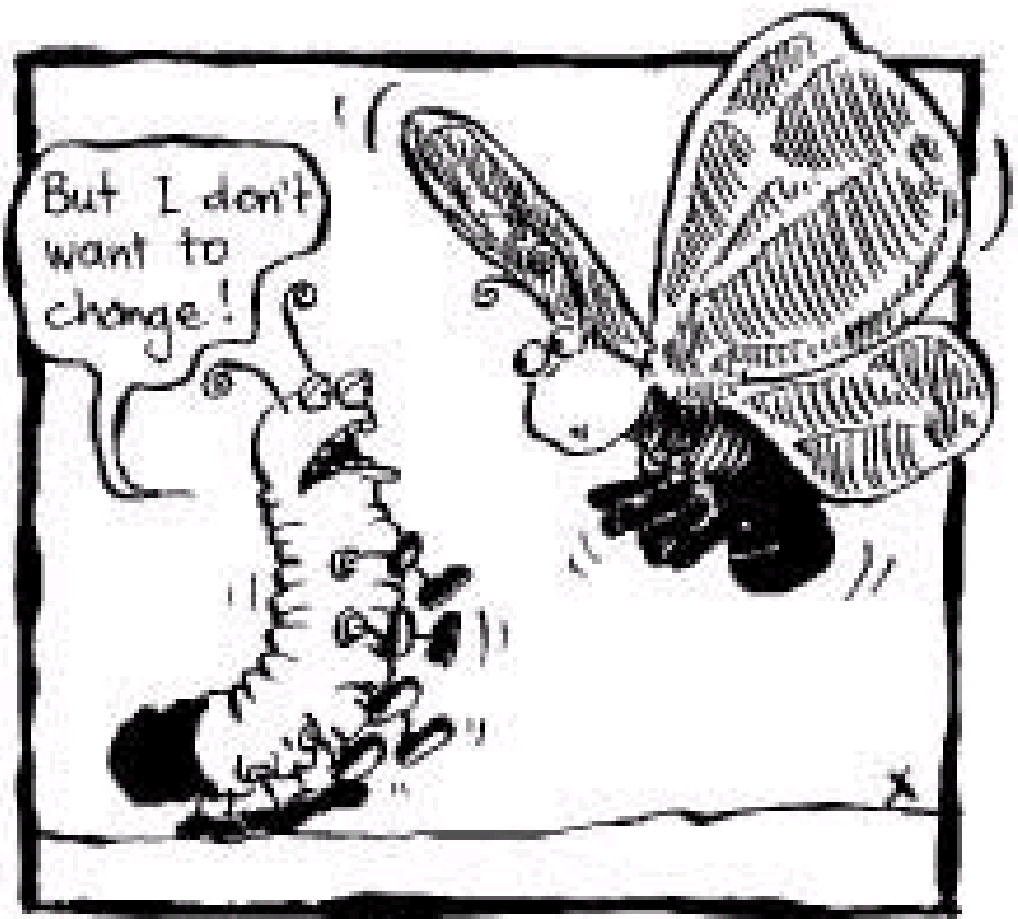




Design-Build also has some (minor) disadvantages

- Agency has less control over details of design
- Pre-qualification requirement extends contract award process
- Initial designer can't propose for the design-build contract
- For those agencies that have not tried design-build, there may be a hurdle to overcome in terms of expertise, and willingness to try a new approach







Suggestions and Observations

- Be flexible regarding Pre-Qualification process
- Maintain fairness and transparency in competitive process even with a “best value” award
 - Establish clear and objective procedures
 - Stick to those procedures
 - Use normal RFP best practices
- Clarify responsibility for various permit approvals and fees in the RFP





Suggestions and Observations

- Assemble the right project team:
 - Initial designer/architect
 - Owner's representative /Project Manager is very important to coordinate all efforts
 - Legal counsel
- Interview Design-Build Entities during the RFP process
- Request alternate conceptual designs
- Make clear that agency owns rights to designs submitted





Suggestions and Observations

- Consider a stipend or honorarium for all proposers that submit during the RFP phase
 - This will likely increase participation
 - Result in better proposals
 - Result in higher quality firms participating
 - Can be tied to ownership of alternative concepts
- Build in the ability to conduct a BAFO process
- Don't take bridge design too far





Factors to consider in determining whether to use Design-Build

- project size & complexity
- cost
- schedule issues
- necessity for control over design details
- agency experience/staff capability
- ensuring sufficient competition
- lifecycle costs
- sustainable design goals
- importance of claims avoidance





Conclusions

- DBB has significant disadvantages
- Design-Build presents a very useful alternative for larger/complex projects that is likely to provide a successful outcome
- Key benefits: fewer claims, faster, cheaper, early involvement of subs
- Each project must be evaluated separately
- **“Don’t know why more agencies aren’t using design-build.” – GM of local transit agency**





Hanson Bridgett Construction Practice

- Hanson Bridgett has both a well-respected public agency practice and a national level construction practice focusing on complex infrastructure and commercial projects.
- Clients include transit agencies, water districts, fire districts, cities, counties , as well as contractors, major private sector developers, and “ENR Top 50” designers.
- **Recent design build projects** include: Caltrain Electrification Project; desalination plant on the central CA coast, a bus fuel and wash facility, and seismic retrofit of a hospital
- Other public works projects include: city buildings; highway and light rail; tunnels and pipelines; hospitals , and water infrastructure

