



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

MAY 21 2009



Department of the Interior Acquisition Policy Release (DIAPR) ARRA-2009-07

Subject: USE OF DESIGN-BUILD CONTRACT METHOD FOR IMPLEMENTATION OF AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) PROJECTS

**References: Federal Acquisition Regulation (FAR) Parts 19 and 36,
Department of the Interior Acquisition Regulations (DIAR) Part 1436
Updated Implementing Guidance for the American Recovery and Reinvestment Act
of 2009, dated April 3, 2009**

1. **Purpose:**

This DIAPR establishes Departmental policy regarding the use of Design-Build procurement methods to implement projects funded with ARRA funds.

2. **Effective Date:**

Upon signature.

3. **Expiration Date:**

This DIAPR will remain in effect until canceled or superseded.

4. **Background and Explanation:**

Departmental bureaus have requested guidance on proper use of Design-Build procedures in order to streamline the acquisition of projects under the American Recovery and Reinvestment Act (ARRA). Design-Build is a procurement tool for well-defined, minimally-complex projects that need to be delivered quickly. This memo provides guidance to help bureau managers mitigate risks specific to the use of Design-Build contracts.

Design-Build must not be used without regard to its suitability and risks to a project nor should it be employed as a substitute for proper planning and execution of a project. Project risks include the use of less-experienced personnel resulting in lack of quality assurance of the Design-Build process, ill-defined project scope and criteria resulting in scope creep, cost overrun, and overdependence on contractor quality control. Appendix A to this memo provides a checklist of significant risks which can be used as a tool to aid in assessing risks when considering the use of the Design-Build Contract Method for individual projects.

Federal Acquisition Regulation Part 36 prescribes the Design-Build procedures that can be used by DOI bureaus and offices as appropriate. The following guidance augments FAR Part 36.

5. Action Required:

When considering the Design-Build approach it is important that the project sponsor be responsible for establishing the programmatic requirements of the project and conveying those requirements via the Request for Proposals (RFP). These requirements may be established as part of the preliminary (schematic or conceptual) design work performed by in-house designers or under contract by Architect-Engineer design firms. The project team should consider the overall cost and complexity of the contract action in determining suitability and should consider the cost to offerors in responding to the RFP as part of the determination of the most appropriate contracting methodology.

FAR 36.3 describes two-phase Design-Build procedures that may be used in accordance with this memo. The two-phase Design-Build selection procedure is a method in which a limited number of offerors are selected during Phase One to submit detailed proposals for Phase Two in response to a solicitation combining design and construction requirements, resulting in a single contract being awarded to one contractor.

Bureaus are encouraged to consider using small business authorities available under FAR Part 19 in implementing ARRA Design-Build projects, in accordance with Section 6.1(6) in the Office of Management and Budget's (OMB) Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, dated April 3, 2009. These small business authorities include Section 8(a) of the Small Business Act covered in FAR 19.8 and other DOI DIAPRs, Historically Underutilized Business Zone (HUBZone) set-asides covered in FAR 19.13, Service-disabled veteran-owned small businesses covered in FAR 19.14, and other types of small business set-asides described in FAR 19.5. The ARRA OMB guidance contains a strong preference for small business participation, but bureaus should also keep in mind that the requirements of FAR Part 19 are the same for both ARRA and non-ARRA contracts.

Bureaus intending to use Design-Build procurement methods for ARRA projects need to describe how the bureau will manage its portfolio of ARRA Design-Build projects in order to mitigate risks associated with the use of Design-Build. This description is to be incorporated into the overall Bureau Implementation Plan due to the Department of the Interior's ARRA Coordinator in June. The Design-Build component of the Implementation Plan needs to provide the list of bureau ARRA projects for which a Design-Build approach will be used, with estimated dates for the following milestones:

- Concept/Scope Finalized and Approved by Sponsor
- RFP Issued
- Contract Award
- Design Completion
- Construction Completion (Government Acceptance)

The Design-Build component also needs to address the elements outlined in Appendix B.

Bureaus intending to use Design-Build procedures need to have an approved overall Implementation Plan prior to conducting any Design-Build procurements funded by ARRA. Bureaus may proceed with acquisition planning and synopses of Design-Build requirements prior to Implementation Plan approval, but must not issue Design-Build solicitations until the overall Plan is approved. Individual Design-Build projects funded by ARRA are also subject to the review threshold requirements contained in DIG ARRA-2009-01, "Development of an American Recovery and Reinvestment Act (ARRA) Acquisition and Financial Assistance Project Review Plan."

As your bureau considers this approach for ARRA projects, please be aware that the DOI and other civilian agencies are not allowed to use the Department of Defense "one-step turn-key selection procedures" Design-Build process authorized by 10 U.S.C. 2862. Furthermore, Bureaus must not use financial assistance agreements (including cooperative agreements or grants) to implement Design-Build projects.

Please disseminate this guidance within your bureau. It will also be available on the web at <http://www.doi.gov/pam/diapr.html>. You may contact Tiffany Schermerhorn of this office on (202) 513-0747 or at Tiffany.Schermerhorn@ios.doi.gov if you have any questions regarding this policy issuance. You may contact Ed Awni at (202) 208-3347 or at Ed.Awni@ios.doi.gov of this office if you have any design and construction project-related questions. We want to ensure that Design-Build is successfully used in your bureau. My staff is prepared to assist you and your bureau's managers.



Debra E. Sonderman, Director
Office of Acquisition and Property Management

Attachments

Checklist of Significant Risk Concerns Associated with Design Build (DB) Contract Method

Areas of Risk	Description of Risk	Impact of Risk	Probability of Risk Occurrence	Example of Mitigation Strategies
Scope	The scope of work is not well defined/ developed, not approved by the project sponsor, and not understood by all involved parties.			<ul style="list-style-type: none"> • Define simple projects without substantial design (when possible), in order to permit a firm pricing or estimate of cost, and, • Define project requirements in performance terms, rather than by prescriptive design. or, • If project is relatively intricate, a concept design should be prepared to reflect expectations as to siting, massing, general configuration, number of floors, total built-up area and quality of finishes (via outline specs). Level of effort (15 to 35% Design) should be commensurate with project complexity.
Complexity	When a project is complex and construction strategies are technologically advanced, and/or where the local market contractors are not familiar with the type of construction techniques that will be used.			Design-Build is not appropriate for complex projects such as hospitals, labs and/or unique facilities. Do not use Design-Build; use Design-Bid-Build for such projects.
Phasing	When the project is not executable in complete and useable phases (discrete and discernible elements, having intrinsic value).			Define project phasing as part of the programming / scoping effort.
Owner / Agent	When the project management's representatives do not have a			Use an Agent to function as an owner representative. An agent could be a

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	sophisticated understanding of design and construction administration techniques, willingness and ability to support throughout process, and adequate staffing is not available for oversight / quality assurance.			private A&E firm with expertise in design, construction, Design-Build process, similar projects, and preferably local. Other government agencies with presence in the project geographical area could also act as an agent. Agencies that provide such services include the US Army Corps of Engineers, GSA, and Naval Facilities Engineering Command.
Industry factors	Where experienced design-build firms are not locally available and interested to support delivery method and provide adequate competition. Extent and cost of proposal submission will have a significant impact on competition.			<ul style="list-style-type: none"> • Work with other government agencies to invite contractors who are already on contract with that agencies (such as the US Army Corps of Engineers, GSA, and Naval Facilities Engineering Command) • Simplify proposal submission requirements
External Influence Factors	When project has a high potential for delays or other complications, such as the need for environmental permits, real estate clearances, sensitive equipment installation, security requirements, clearance of contractors, limited site access, remoteness, etc.			<ul style="list-style-type: none"> • Do a thorough programming / scoping effort to anticipate all factors that may impact the project. • Exclude undefined / ill-defined or risky elements from the scope, if possible • Identify and use contractors who could satisfy unique project requirements such as security or working in remote or unique environments, such as Alaska.

**Elements to be Described in the Design-Build Component of the
Bureau Implementation Plan**

- **Design-Build Decision** – how does the bureau determine whether Design-Build is an appropriate approach to implement a project?
- **Project Risk Mitigation Plans** – what Design-Build project risks has the bureau identified and how will the bureau mitigate these risks)? (See Appendix A to this memo which provides a checklist of significant risks which can be used as a tool to aid in assessing risks when considering the use of Design Build Contract Method for individual projects)
- **Project Review and Approval Strategy** – subsequent to approval of the bureau’s Plan, who (at what level) in the bureau will review and approve each Design-Build project before the procurement is conducted, and is this strategy in alignment with the bureau’s ARRA Acquisition and Financial Assistance Project Review Plan required by DOI Guidance (DIG) ARRA-2009-01?
- **Acquisition Document Requirements** – what solicitation or contract documents will be reviewed (e.g. Acquisition Plan, Scope or Statement of Work, Evaluation Factors, Solicitation, Design Submissions, etc.), and by whom?
- **Qualifications of Acquisition Team for Design-Build Projects** – what training, experience, and/or certifications do bureaus require of individuals managing the Design-Build projects, including COTRs/inspectors?
- **Request for Proposals Template** – does the bureau’s template to be used for Design-Build procurements include ARRA terms and conditions and appropriate proposal instructions, evaluation factors and contract quality assurance requirements?
- **Conflicts of Interest** – typically Architect-Engineering firms under contract with DOI to provide preliminary concept/design work as part of the RFP are not eligible to compete for the subsequent Design-Build work. However, if the bureau has a situation where an exception must be made, how will the bureau mitigate conflicts of interest (See DIAR 1436.209)?
- **Sustainable Building and Energy-Efficiency Elements** – how have sustainable building elements described in the “Department of the Interior Sustainable Buildings Assessment and Compliance Tool” been addressed in the bureau’s Design Build projects involving the repair and rehabilitation of existing buildings with a current replacement value of \$2 million or greater and new buildings construction with a project cost of \$2 million or greater?