Committee Of the Whole

Progressive Design-Build

ROBYNNE THAXTON, JD, FDBIA
Traditional Design-Bid-Build

- Owner
  - Designer
    - Subconsultant
  - Contractor
    - Specialty Trades
DBB Liability Gap

Contractor builds what is in the plans

Designer provides imperfect plans

Owner warrants performance of the plans
Design-Build Basic Structure

Owner

Owner’s Advisor

Design-Builder

Professional Subconsultants

Design-Build Subcontractors

Design-Assist Subcontractors

Trade Subcontractors

Suppliers
Design-Builder Liability to Owner

- One stop for liability.
- Design-Builder takes on more liability than any other delivery method.
- Contract consists of performance, not prescriptive, requirements.
- Owner no longer in the middle of conflict between designer and contractor.
Progressive Design-Build Characteristics

- Design-Builder retained early in the life of the project
- Design-Builder selected primarily on qualifications
- Delivered in two distinct phases
The parties have not finalized the commercial terms when the Design-Build contract is signed.

- Price and Scope are not established (neither maximum price nor scope established)
- Scope is not established (maximum price established, flexible scope)

The parties work collaboratively after Design-Build contract is signed to finalize commercial terms.
Why Use Progressive Design-Build?

- Streamlined Procurement
- Increased Owner Input/Owner has more control over design
- Fewer Deliverables from Design-Builder in procurement
- Transparency into the Design-Builder's Costs/Price efficiency
- Unknown conditions require investigation by design-build team before final price can be established
- Collaborative Single Point of Responsibility
- Off-Ramp for Owner
Cast of Characters

- Owner/Haines
- Owner's Advisor/ R&M
- Progressive Design-Build Team
  - Lead PDB
  - Design Team
  - Design-Build Subcontractors
  - Design-Assist Subcontractors
  - Trade Subcontractors
  - Material Suppliers
Single Contract

- Phases outlined in the contract
- Pause “Off Ramp” at the conclusion of each scope
- Negotiated Contract Amendment
- Flexible and allows for early construction work
PDB Phases

- **Phase 1**
  - Validation/Programming
    - DB validates design, project requirements and project restrictions
    - DB provides conceptual estimate to validate budget
  - Development of Design and Maximum Price
    - All parties collaborate to develop commercial terms (scope/schedule/price)
    - Break project into WBS and scope teams
    - Robust and frequent deliverables

- **Phase 2**
  - Completion of Design
  - Construction/Commissioning
Phase 1 Deliverables

- Initial Deliverables
  - Schedule
  - Schedule of Values
  - Cost Model
  - Subcontractor Procurement
  - Safety Plan

- Interim Deliverables
  - Design Submissions
  - Pricing Information

- Phase 1 Report
Developing the Scope and GMP

- Divide into design packages
- Obtain design and cost information by package
- Build the GMP in blocks
- Review budget for each line item
- Be prepared for the administrative burden
Collaborative Effort

- Must be constant collaborative effort
- All costs are transparent
- Final GMP, Scope, and Schedule developed through iterative meetings
Phase 1 Report/GMP Proposal

- GMP Pricing
- Final Basis of Design Documents
- Project Schedule
- Final Schedule of Values and Cost Model
- List of assumptions regarding price
- Final Project Safety and Site Hazard Report
- Project Phasing
- Permitting Strategy
- QA/QC Plan
- Contract Close Out
- Differing Site Conditions Report
Negotiate and Agree

- Owner reviews report
- Parties negotiate scope/schedule/price
- Contract Amendment
- Continue with contract

Terminate Contract

- “Off Ramp”
- Establish ownership of intellectual property
- Possible to assign subcontracts to complete design
- DB paid for work performed
Contract Amendment: Price, Scope, and Schedule

- Incorporates negotiated GMP Proposal
- Goal no surprises!
Phase 2

- Completion of Drawings/Specifications
- Construction
- Closeout/commissioning
Gathering the Team
Procurement Process

- **Selection of Owner’s Advisor**
  - Completed competitive selection process
  - Contract approved by Borough
  - The OA will work with Borough project staff

- **Selection of Design-Builder**
  - Completed Request for Qualifications
  - Completed Interview/Interactive Meetings
  - Received Proposals
  - Next step: Complete evaluation of proposals and selection of Design-Builder
Soliciting public involvement has been a focus of both the interviews/interactive meetings and proposals.

Design-Builder will work with the Borough to determine appropriate input for public involvement:
- Planning Commission: 35%, 65%, 95% design
- Assembly: Approval of Contract Amendment

Preliminary designs have been developed, and the dock must comply with permitting and MURAD requirements:
- Borough will have approval points noted above
- Approval process must be reasonable
Robynne Thaxton, JD, FDBIA

**Robynne Thaxton** is a Seattle based lawyer and consultant and a leading expert in construction law and alternative procurement both in Washington State and on a national basis. She is the principal of **Thaxton Parkinson PLLC** and the founder of **Progressive Design-Build Consulting, LLC**. She served for seven years on the National DBIA Board of Directors and currently serves as the Chair of the DBIA National Education and Best Practices Committee. Robynne is AV rated by Martindale-Hubble, and named as a Washington Super Lawyer in 2010-2022. She is also in the inaugural class of DBIA “Fellows” and received the DBIA Distinguished Leader award in 2021. Robynne’s practice primarily focuses on developing design-build procurements and contracts for public owners on projects ranging from a few million to several billion dollars. Her clients include the Toronto Transit Commission, the Port of Seattle, the Cities of Spokane, Seattle, Tacoma, Portland, Wenatchee, and Richland, the State of Washington, WSDOT, Sound Transit, Western Washington University, University of California San Diego, and Los Angeles County. Robynne received her undergraduate degree from the University of Texas at Austin and her law degree from the University of Colorado, Boulder School of Law.