

SELECTING AND USING AN OWNER'S CONSULTANT IN DESIGN-BUILD

A Design-Build Done Right™ Primer



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Feedback accepted through May 4, 2018

Email: BestPractices@dbia.org



SELECTING AND USING AN OWNER'S CONSULTANT IN DESIGN-BUILD

A DESIGN-BUILD DONE RIGHT™ PRIMER

A DESIGN-BUILD INSTITUTE OF AMERICA PUBLICATION

This document provides guidance to Owners considering the engagement of an **Owner's Consultant** (often referred to as *Owner Representative, Owner Advisor, Owner's Engineer, Owner Agent, Criteria Professional/Consultant and A/E1*). The information provided will help with proper alignment of Owner needs and interests with the selection and work of the project team. For purposes of this primer, the term **Owner's Consultant** will be used as an umbrella term.

An **Owner's Consultant** is a design and/or construction consultant or consulting firm that is employed or engaged by an Owner to assist in various services. This can begin with organizing, developing and administering the selection process and for other consulting services such as review of design criteria and construction process for compliance with the RFP.¹ The services of an

evaluation of the pros and cons around conventional delivery versus collaborative methodologies. Once a selection is made, an Owner's Consultant's scope and role will be defined accordingly.

This document assumes that the Owner has selected design-build as the project delivery method. However, in instances where an Owner is uncertain about the project delivery method that is right for the project, the role of the Owner's Consultant may include closing the knowledge gap to include development of an "Acquisition Strategy," through an evaluation of project delivery methods and risk assessments.

Determining the project delivery method is one of the most important decisions made by every Owner embarking on a construction project. Project drivers have fundamental impacts

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Owner's Consultant can also extend through the entire lifecycle of project, from pre-award decisions and support to post-award and project close-out support.

Many Owners engage consultants to support the analysis and selection of a delivery method (i.e., design-build, CMAR, CM/GC, design-bid-build, etc.). Determining the optimal approach for a specific Owner and project requires a broad understanding of various delivery methods and a commitment to the objective

on the delivery method selected. These drivers include budget and schedule requirements, a responsive and quality design and construction process, a risk assessment with allocation of risks to the appropriate parties **and recognition of the level of expertise within the Owner organization.**² In addition to these project drivers, delivery method selection can also be driven by other Owner considerations. These considerations may include a desire to create a more collaborative and innovative project environment, recognition of the benefits of engaging construction

¹ Design-Build Institute of America, *Manual of Practice: Design-Build Definitions*, 2010.

² Design-Build Institute of America, *Choosing a Project Delivery Method*, 2015.

expertise early in design, the need for early recognition of cost and the ability to select the builder using criteria other than low price. (*More on this topic can be found in the "Scope of Services" section.*)

Understanding that each Owner — and each project — is unique, this document contains broad, overarching principles that every Owner should consider in the selection of an Owner's Consultant. As noted above, the level of expertise within the Owner organization is a driving factor, as is an organizational culture that supports the collaboration and teamwork that epitomizes integration and cohesion among team members. The Owner's Consultant should serve as an extension of the Owner's staff, including a **"One Team — One Goal"** mentality that is essential to project and team success.

For ease of reference this document is organized into five (5) sections:

- (1) **Background:** An overview of how the role of the Owner's Consultant has evolved over time and how it differs in design-build project delivery;
- (2) **Owner's Consultant Qualifications:** An overview of the appropriate mix of technical and soft skills required of Owner's Consultants working in an integrated design-build environment;
- (3) **Scope of Services:** An overview of the array of Owner's Consultant services for consideration to assist in understanding the full scope of services provided by Owner's Consultants and to help Owners be prepared to clearly convey the services most important to the individual project needs;
- (4) **Terminology:** Descriptions of various terms used in the industry to help Owners understand the many varieties of Owner's Consultants and the wide array of terminology used to describe each; and
- (5) **Additional Resources** available to supplement the information in this primer.

DBIA understands and expects that many users of design-build will want further explanation and guidance to supplement this general guidance document. Given this, DBIA intends to continually update its portfolio of publications, tools and resources to provide design-build stakeholders with access to leading-edge information so that Owners are equipped to choose the right Owner's Consultant for their needs.

I. BACKGROUND

The role of an Owner's Consultant has developed over the years as the complexities of contractual obligations have led Owners to seek advice and to "feel more represented" during the procurement, design and construction processes. In the last few decades, the Owner's Consultant role has been filled to some degree with the development of the Construction Management (CM) or Project Management (PM) role, as well as by various design professionals. However, it has focused largely on the role within traditional, linear design-bid-build project delivery, often resulting in an "adversarial" role as opposed to the "facilitative" role required for successful design-build.

With design-build rapidly increasing as a project delivery method of choice, we see Owners at two ends of a very broad spectrum. On the one end Owners may be hesitant to make the transition to design-build because they lack essential knowledge and/or





access to professionals, either in-house or on a consulting basis, to help successfully guide them. At the other end of the spectrum are more experienced Owners delivering more complex projects. The latter traditionally have a better understanding of the design-build process and may desire to seek assistance to provide proper alignment of the Owner's needs and interests with the work of the design-build team, including fostering open communication and conflict avoidance/resolution in a collaborative manner.

In the context of design-build, the spectrum of experience for an Owner's Consultants is wider than in traditional project delivery. This is, in many ways, a testament to the success of design-build. With its expanded use, the education gap for an Owner's Consultant in a design-build environment must be narrowed.

For example, there is significant inconsistency in Requests for Qualifications (RFQs) and Requests for Proposals (RFPs), emphasizing the need for qualified Owner's Consultants.³ Underlying challenges include uncertainty by many Owners as to how to prepare the performance requirements and substantiation metrics necessary to optimize the many advantages of design-build. Additionally, the many variations of design-build make it imperative that Owner's Consultants understand all aspects of procurement from both an Owner's perspective and that of the competing design-build teams.

Based on the varying Owner needs and the wide-ranging expertise of industry practitioners and Owner's Consultants, it

³ DBIA recommends use of the *Standard Form Request for Qualifications*, *Standard Form Request for Proposals*, *RFQ/RFP Guide* and accompanying documents, DBIA Doc. No. 400 (2017 edition)

can be difficult for an Owner to understand and prioritize needed services. Inconsistent terminology and varied skill sets among Owner's Consultants add to the uncertainty.

The remainder of this document will address these issues and provide guidance for industry to both help Owners select the right Consultant for their needs, and to help Consultants be prepared with the appropriate skillset and mindset to provide optimal value to Owners.

II. OWNER'S CONSULTANT QUALIFICATIONS

Equally important to determining the right scope of services is selecting the right Owner's Consultant. Owners must engage consultants with the appropriate mix of leadership, technical and facilitative skills necessary to be successful in their project.

1. Leadership Skills:

- a. Be a masterful facilitator with the ability to build teams and alignment of interests;
- b. Ability to identify, manage and correct an "unhealthy" relationship environment;
- c. High emotional intelligence (EI), mindfulness and empathy;
- d. Create and exemplify trustworthiness vs. mistrust, facilitation vs. protection, collaboration vs. enforcement;
- e. Strong capability to create program/project alliance and build a common purpose;
- f. Facilitative formal partner approach to issue identification and resolution;

- g. Strong communication skills, both oral and written;
- h. Ability to:
 - i. help the Owner promote and build one team (One Team — One Goal), including laying the groundwork by developing the processes to achieve this;
 - ii. guide and create consensus with all the stakeholders (internal and external) on the project definition, intent, design, cost and schedule;
 - iii. represent the program/project and its goal to all the parties;
 - iv. formulate and maintain an integrated and cohesive team;
 - v. facilitate program meetings with all program/project team members;
 - vi. recognize (and avoid, or disclose and waive) material conflicts of interest; and
 - vii. carry out duties with integrity and character, recognizing that Owner's Consultants may be required to function in multiple roles.

2. Technical Skills:

- a. Owners should carefully consider the Owner's Consultant's key employees' educational background and experience, including a review of licenses and credentials that support a commitment to effective project delivery and lifelong learning. Ideally, the selected Owner's Consultant will assign employees who hold appropriate certifications and/or licenses (such as DBIA™, Assoc. DBIA™, CCM, PMP, Registered Architect, Professional Engineer, etc.).
- b. The Owner's Consultant must have proven experience that includes an in-depth understanding and knowledge of:
 - i. Required policies, processes and procedures in support of all procurement methodologies;
 - ii. Local, State, and Federal contractual agreements including in-depth knowledge of different program/project delivery methodology such as:

TOP TO BOTTOM:

The Elizabeth River Tunnels Project, Owner: Virginia Department of Transportation, *2017 Design-Build Merit Award*

Liberty Utilities and Wastewater Treatment Facilities, Owner: The City of Liberty, Missouri, *2017 Design-Build Merit Award*



- a. Program Control Systems, including the ability to tailor and implement comprehensive program control and reporting systems which includes, but is not limited to: cost estimating; program/project scheduling; cash flow and accrual projections; earned-value analysis; progress reporting systems; schedule loaded manpower breakdown structure and manpower requirement forecasting; and high-level reporting system for the executives, the boards, public, etc.; and
- iii. Procurement processes, including the ability to assist the Owner with selecting the right team, as well as RFQ, RFP and agreement template development in accordance with permissible procurement statutes/regulations.
- c. Strong capability for design, project cost and schedule review to include:
 - i. Assist in assuring design submissions meet the intent of the RFP and accepted competitive proposal; and
 - ii. Confirm that any agreed-upon enhancements and/or deviations are consistent with the contract requirements.

- d. Working knowledge and keen awareness of:
 - i. Market conditions and practices to promote a competitive field (in-depth knowledge of commodities availability and cost escalation factors, e.g. availability of key trade contractors and skilled labor);
 - ii. Design and construction industry standards applicable to the project;
 - iii. Applicable industry and building codes, including ADA compliance, where applicable;
 - iv. Environmental restrictions and concerns; and
 - v. Market sector specific requirements, as applicable (i.e., in transportation, familiarity with NEPA, NPDES permitting, right-of-way acquisition, etc.).

3. Facilitative Skills: Ability to effectively guide and facilitate the following:

- a. Teambuilding and alignment of Owner's objectives and expectations;
- b. Procurement process;
- c. Agency reviews (zoning, Fire Marshal, building permits, EPA, local storm water requirements, State funding agencies, State natural resource agencies, State Historic Preservation Office (SHPO), regulated and contaminated waste regulations, etc.);
- d. Design and construction execution; and
- e. Project closeout process.



4. Other:

- a. Commitment to put the project first;
- b. Objectivity and neutrality; absence, or disclosure and waiver, of material conflicts of interest;
- c. Architectural, engineering, MEP or other discipline design (of specific building type — vertical, horizontal, water, WWTP, etc.);
- d. Environmental impact process, site selection and evaluation; and
- e. Familiarity with local and targeted worker hiring programs.

III. SCOPE OF SERVICES

A key to successful projects is a well-conceived process that equips Owners to evaluate their choices and to select the best design and delivery approaches through the filter of carefully and intelligently prepared evaluation criteria that include the Owner's project objectives, expectations and design, construction and other project challenges.

Owners must conduct a proactive and objective assessment of the unique characteristics of its program/project and its organization before deciding to use design-build.⁴ In some instances, Owners do not have the internal capacity, experience and/or expertise to conduct such an assessment and will rely on the Owner's Consultant for guidance.

The Owner's Consultant should serve as an extension of the Owner's staff, without any material perceived or actual conflict of interest (that has not been disclosed and waived), equipped to

⁴ Design-Build Institute of America, *Universally Accepted Best Practices*, 2014.

guide the process of assessing project delivery systems, as well as advising the Owner and acting as a single point of contact for all members of the project team after project delivery selection.⁵ This allows the Owner to focus on their core business, knowing



that their interests are addressed throughout the course of the project. The Owner's Consultant must work to align the entire integrated project team with the Owner's priorities throughout the course of the project, including finding the appropriate balance of Owner involvement in the decision-making process.

An Owner's Consultant must be prepared to help the Owner develop a scope of services designed specifically to meet the Owner's needs and to manage project risk. These services may include program development, management, RFP, criteria development, design and construction administration, procurement of equipment and services, community awareness, commissioning and other applicable support functions and services. The Owner's Consultant must work with the Owner to customize services to most effectively match the project's requirements and the Owner's needs, allowing "Scope of

⁵ Refer to Section 3 of the *DBIA Code of Professional Conduct*, Conflicts of Interest. See also, 23 CFR § 636.116 and other applicable federal, state or local regulations dealing with conflicts of interest for Owner's Consultants.

Services" to be tailored to provide only those services that are necessary to supplement the Owner's existing project staff.

In general, the services available from an Owner's Consultant may include various tasks and can be categorized into the following four (4) areas:

1. Closing the Knowledge Gap

- Development of an "Acquisition Strategy";
- Confirming what is permitted under statute and policy;
- Providing education and orientation for the Owner organization;
- Defining how regulatory approvals intersect with delivery method selection;
- Explaining project delivery evaluation and selection options/procedures;
- Facilitating project risk assessment and management strategy sessions;

- Market validation of and comment on the proposed delivery method; and
- Supporting budget development.

2. Pre-Award Support — Phase One

- Defining project objectives and priorities;
- Assisting in determining project goals, challenges and constraints;
- Managing Owner expectations;
- Developing procurement plan, schedule and procedures;
- Discussing contract forms, terms and conditions and special provisions;
- RFQ development;
- Competition process meetings, inquiries and addenda;



- Facilitating interviews, where applicable;
- Establishing qualifications selection criteria and methodology; and
- Support determination of shortlisting the most highly qualified submissions.

3. Pre-Award Support — Phase Two

- Developing and/or peer reviewing design criteria documents, performance requirements and limited preliminary design (bridging document) development (see page 12 for more on "bridging");
- Gathering data (e.g., site, existing facilities, demolition and regulatory requirements);
- Providing cost validation;
- RFP development;
- Establishing selection criteria and methodology;
- Facilitating proprietary one-on-one meetings with shortlisted proposers;
- Conducting risk and opportunity assignment;
- Incentive/award fee development; and
- Providing contract negotiation support to optimize opportunity for the Owner to select the best design-build team with the best proposal, within budget.

4. Post-Award Support/Administration

- Engaging formal Partnering Program development and implementation;
- Developing and implementing project execution planning;

- Cost monitoring;
- Facilitating project meetings and progress reviews;
- Providing project construction quality support;
- Minimizing project disputes and providing proactive claims avoidance initiatives;
- Project completion/closeout support; and
- Supporting incentive/award fee program.



Regardless of the services utilized, Owner's Consultants must act as facilitators, building collaborative teams and alignment leading to optimizing the value inherent in design-build. The role of the Owner's Consultant is critical to the success of projects. When performed effectively, it can create great value for the project and the team. Adversely, when not performed effectively, value can be significantly diminished.

IV. TERMINOLOGY

There are myriad terms used in the AEC industry to describe professionals that provide consulting services to Owners. The terminology used varies depending on the type of services provided and, in some instances, the geographic region of the country. The

more commonly used terms are listed below, including the most consistently used definition of each.

Without consistent understanding of terminology, titles may be misused, expertise may be misrepresented, information may be misunderstood, and failure can result. DBIA will continually update and refine terminology used to describe an Owner's Consultant, hence the list below includes key terms regardless of the type of services sought or geography.

- **A/E 1** — Also referred to as the “Criteria Consultant,” this architect or engineer individual(s) or organization(s) works with the Owner's project team and other stakeholders in development of the program and to create the performance-based requirements document and the Phase Two RFP. A/E 1 does not refer to the Designer of Record.⁶
- **Criteria Consultant (or Criteria Professional)** — A registered architect or engineer individual or entity responsible for developing and/or affirming the program and performance criteria, specifications and technical standards

⁶ Design-Build Institute of America, *Manual of Practice: Developing Performance-Based Requirements for Design-Build Projects* (2010 edition).

(often collectively referred to as a “design criteria package”) on behalf of an Owner that is implementing a project. A Criteria Professional may be a member of an Owner's organization or be designated from an outside entity such as a professional services firm. A Criteria Professional may be designated on a stand-alone basis or may serve simultaneously in any of the more broadly defined Owner advisory capacities (in other words, an Owner Advisor or Owner Representative may be simultaneously designated as a “Criteria Professional”). Specific State statutes often require the designation of a Criteria Professional (or similar term) for a design-build project and statutory definitions for this role may differ in their specific requirements.

- **Owner's Agent** — An Owner's Agent is a third party designated to represent an Owner during a project's definition, procurement and execution. As an agent of an Owner, the Owner's Agent can be an authorized representative for the issuance of information, solicitation documents, project requirements, contracts and directives through the lifecycle of a project. In some cases, this authority may formally extend to a Power of Attorney on behalf of an Owner but is typically implemented as authorized representation of the Owner for the administration of a procurement and the resulting project administration. An Owner's Agent may be designated on a stand-alone basis or may serve simultaneously in any of the more broadly defined owner advisory capacities (in other words, an Owner Advisor or Owner Representative may be simultaneously designated as an “Owner's Agent”).

Zurich North America Headquarters, Owner: Zurich
North America 2017 Design-Build Merit Award





- **Owner's Engineer** — An independent representative of the Owner on a construction or engineering project, most often in the energy, petroleum or manufacturing/industrial sectors where project delivery is Engineer/Procure/Construct (or "EPC"), a form of design-build. The Owner's Engineer may assist in site selection, technology assessment/selection, assistance in procurement of equipment, contract negotiation support, project execution plan, project scheduling, project risk assessment and risk mitigation plans, as well as contract administration of the EPC contract.
- **Owner Advisor (or Owner's Engineer)** — An Owner Advisor is a third party (individual or professional services firm) responsible for supporting an Owner's implementation of a project. Owner Advisor services may include any combination of support throughout the project development, procurement, and delivery lifecycle. For example, Owner Advisor services may include support for evaluation and selection of a procurement and delivery model; project planning and strategy; project definition and specification; preliminary design, sometimes referred to as "bridging documents" (see page 12 for additional information); procurement

document development and procurement process support; support for evaluation of submittals and selection of preferred submittals; negotiations; and continued support of design reviews and validation, construction monitoring and management, commissioning and startup, warranty period support and operations. The Owner Advisor role may be limited to procurement and administrative functions, but often includes technical architectural and engineering support that requires professional registration.

Owner Advisors for design-build projects are responsible for aligning and integrating DBIA best practices in conjunction with State and Local statutes and the Owner's own procurement policies with project-specific requirements and objectives to support an effective, collaborative and high-performing project implementation using fair and transparent procurement methods and practices. In some cases, Owner Advisors provide broad management consulting or similar services to support Owners in aligning their organizations for successful design-build project delivery.

Owner Advisors may simultaneously serve an Owner as a "Criteria Professional" (particularly where State statute requires such designation).

- **Owner Representative** — There is minimal distinction between an Owner Representative and Owner Advisor. However, an Owner Representative may represent or otherwise stand in place of the Owner for decision-making purposes, but without the ability to act on behalf of the Owner as an Owner's Agent. A third party providing advisory services is more likely to be designated as an Owner Representative (versus an Owner Advisor) when it is the primary face of a project to the design-build community, usually when the Owner's own representation or resources are limited.

Except for Owner's Agent, none of the above generally holds a contractual commitment for project performance and do not act on the owner's behalf unless also designated as an Owner's Agent. While each may provide broad support for contracting strategies, they do not provide legal advice or counsel (although some do work closely in parallel with an Owner's internal or third-party legal counsel). Similarly, each may provide general support for financial and insurance requirements and standards but do not generally perform financial advisory functions and are not typically also a designated Financial Advisor, particularly where performance of these service requires formal licensing or registration.

A WORD ABOUT "BRIDGING"

One of an Owner's initial decisions in the procurement of a project is the level of prescriptive requirements to include in its design criteria. Prescriptive requirements define a pre-determined design solution, as opposed to a performance requirement, which provides the Owner's desired end-result. The process known as "bridging" is when an Owner, prior to selection of a design-builder, provides substantial prescriptive requirements amounting to a preliminary design, often consisting of outline specifications and some minimal level of design.

Successful design-build procurements (in accordance with DBIA Best Practices) utilize well-written performance requirements that establish the project goals, challenges and constraints, rather than provide the one and only design solution. While many Owners choose to use "bridging documents," and some public laws require the use of such procedures, the use of extensive prescriptive specifications and preliminary design eliminates many of the advantages inherent in design-build project delivery, as outlined below.

- A primary advantage of design-build delivery is the potential to produce optimum value through fully integrated, team-based creativity and innovation. With bridging, early involvement of the design-builder in the design process is

foreclosed because key solutions and concepts are determined before the design-build team begins its design efforts.

- Bridging detracts from the Owner's ability to obtain innovative and divergent solutions derived from the design-build procurement process.
- With prescriptive requirements, the risk could shift back to the Owner under what is known as the *Spearin Doctrine* for problems associated with the prescriptive requirement.⁷ Therefore, the primary advantage of single point of responsibility is diminished. Owners who use prescriptive requirements need to be very careful regarding *Spearin Doctrine* impacts to the Owner to the extent that design information is provided to a design-build contractor.
- The amount of time that the Owner uses to develop the bridging documents could be better utilized by the design-build team to understand the Owner's objectives, consider alternative solutions and/or potentially procure long lead items, thereby expediting the delivery of the project.
- Extensive bridging documents are time-consuming and expensive to produce for the Owner, and there is often substantial effort by the second design team that duplicates the work of the first design team.

The Owner's decision with respect to the amount of prescriptive content and bridging in the criteria documents must be made in conjunction with other procurement decisions. DBIA believes that well-crafted performance requirements with limited prescriptive specs are necessary for the optimum use of design-build.

⁷ See, *U.S. v. Spearin*, 39 S.Ct. 59, 248 U.S. 132 (1918), a United States Supreme Court case in which it was held that when the government provides a design to a contractor, the government impliedly warrants that the design is adequate and the contractor will not be responsible for the consequences of defects in the plans and specifications.

Many Owners do not have the internal capacity and/or expertise to provide strategic acquisition planning and project oversight independently. For these Owners, finding the right Owner's Consultant is essential to project and team success. The guidance provided in this document should prove useful to both Owners who will engage Owner's Consultants, and Consultants who should be aware of what skills and resources they should bring to the table.

Additional resources including: DBIA's Manual of Practice, family of standard form contracts, position papers, sector-specific best practices, and much more can be found at dbia.org.

V. ADDITIONAL RESOURCES

DBIA Universally Applicable Best Practices

DBIA Code of Professional Conduct, Conflicts of Interest

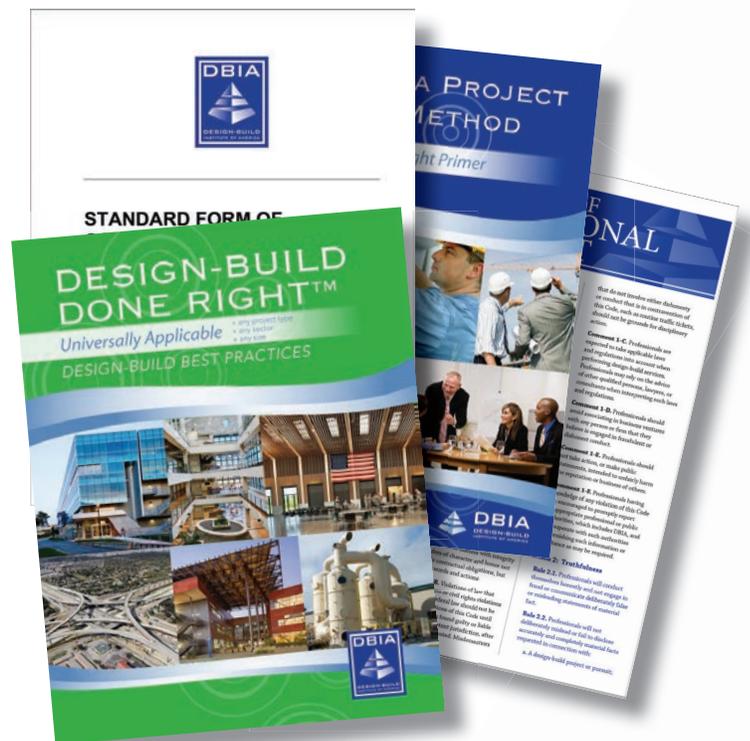
DBIA 400 Standard Form Request for Qualifications, Standard Form Request for Proposals, RFQ/RFP Guide and accompanying documents

DBIA 501 Standard Form of Contract for Design-Build Consultant Services

Choosing A Project Delivery Method

Developing an Acquisition Strategy (DBIA one-day course)

DBIA Code of Professional Conduct



QUESTIONS / COMMENTS / FEEDBACK?

Email BestPractices@dbia.org by May 4, 2018



MISSION:

DBIA promotes the value of design-build project delivery and teaches the effective integration of design and construction services to ensure success for owners and design and construction practitioners.

VISION:

DBIA will be the industry's preeminent resource for leadership, education, objective expertise and best practices for the successful integrated delivery of capital projects.

VALUES:

- Excellence in integrated design-build project delivery, producing high-value outcomes.
- An environment of trust characterized by integrity and honest communication.
 - Mutual respect for and appreciation of diverse perspectives and ideas.
- A commitment to innovation and creativity to drive quality, value and sustainability.
 - Professionalism, fairness and the highest level of ethical behavior.

"DESIGN-BUILD DONE RIGHT" AND CERTIFICATION

Certification provides the only measurable standard by which to judge an individual's understanding of "design-build done right."

DBIA certification in design-build project delivery educates owners as well as designers and builders on team-centered approaches to design and construction. Owners want successfully executed design-build projects and are looking for a demonstration of both relevant continuing education and experience – both of which can be gained through DBIA certification.

DBIA offers two types of Certification.



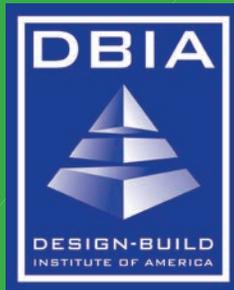
Attaining the DBIA™ requires from two to six years of hands-on experience of pre and post-award design-build. Credential holders who display "DBIA" after their names come from traditional design and construction backgrounds; they are private or public sector architects, engineers and construction professionals. Some attorneys and academic practitioners who specialize in design and construction generally and design-build specifically may also fulfill the DBIA™ requirements.



Unlike the DBIA™ credential, obtaining the Assoc. DBIA™ does not require hands-on field experience. Instead, this credential is focused on three key types of individuals who possess a different type of experience: (1) pre-award professionals focusing on critical aspects of the design-build process such as business development and acquisition/procurement; (2) seasoned professionals who are new to design-build project delivery, but not new to the design and construction industry; and (3) emerging professionals such as recent college graduates with relevant educational background in the AEC industry.

For more information, visit www.dbia.org/certification





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