Attachment

GUIDANCE FOR PROGRESSIVE DESIGN BUILD and TWO-PHASE DESIGN BUILD WITH AN ACCELERATED DESIGN EFFORT

Applicability. The guidance applies to Military Construction (MILCON) in Fiscal Year 2027 and subsequent years.

Background. 10 U.S.C. § 3241(g) is a direct response to the schedule delays and cost growth that can plague complex MILCON projects under traditional delivery methods. By authorizing Progressive Design-Build (PDB), this legislation gives the Department a powerful tool to deliver facilities to the warfighter faster and with greater budget reliability. Secretaries concerned are authorized to award PDB contracts based on trust and capability, develop designs in a collaborative environment, agree to construction project prices when the scopes are well-understood, and retain off-ramps to protect the taxpayer's interest.

Progressive Design-Build Authority. 10 U.S.C. § 3241(g) formally codifies and authorizes PDB to enhance the Department's ability to execute complex projects with greater cost certainty and reduced risk. PDB is a collaborative project delivery method with a two-phase approach in which the Government selects a design-build team based on qualifications rather than a firm bid, fostering a partnership from the earliest stages. During the initial phase, the design-builder works with the Government to advance the design to a significant level of completion, while providing pre-construction services to establish a Guaranteed Maximum Price (GMP). This contrasts with traditional design-build, where a fixed bid is accepted based on a less-developed design, introducing potential for future change orders. Following Government acceptance of the advanced design and GMP for construction, the project proceeds to the second phase final design and construction.

Use of Progressive Design-Build. 10 U.S.C. § 3241(g) includes four additional requirements:

(1) Select a Design-build Contractor based on their qualifications, experience, team, and technical approach – not on a detailed construction price submitted at the outset. Dramatically shorten the source selection timeline by requiring Offerors to prepare a much simpler qualifications package instead of a complex and time-consuming price proposal for the entire project. Select a partner best suited for the project to foster a collaborative environment from day one, reducing the adversarial tension often found in low-bid scenarios.

(2) Require a collaborative working relationship between the Government and the contractor. The contract provides for a true joint effort to develop the design, conduct site investigations,

perform reviews, and refine cost estimates together. Integrate the builder's real-world expertise into the design process early to identify and resolve potential construction issues on paper, preventing costly changes and delays in the field. Encourage the contractor to propose innovative materials or methods that can save time and money, a practice often stifled in a rigid, fixed-price environment.

(3) Negotiate a Guaranteed Maximum Price (GMP) after the design is significantly advanced. Negotiate a final price for the construction phase through an "open book" process with the contractor based on a well-developed design, not a preliminary concept. With full insight into the contractor's data, ensure the final price is fair and reasonable.

(4) Include a clause in the contract to provide the Government with an explicit "off-ramp." If a fair GMP cannot be negotiated, this clause provides for the contractual right to terminate the relationship. This clause will require that if the contract is terminated, the Government shall own the developed design for use to complete the project with a different contractor or delivery method. Protect the Government from unreasonable pricing and ensure that even if termination occurs, the time and money invested by the Government is not lost. A mature, paid-for design is necessary to be used to quickly re-compete the construction portion, preventing a total reset.

Two-phase Design-Build with an Accelerated Design Effort. 10 U.S.C § 3241(f)(1) provides the legal and financial authority to stop waiting for full project funding and instead proactively invest in maturing the design of high-priority projects. Secretaries concerned are explicitly authorized the use of MILCON Design Appropriations to award a contract and get a design-builder on board early – before the construction portion of the project is authorized and appropriated. The Secretaries may award an initial contract for full design services with the opportunity to proceed to construction later, rather than waiting until the Government can award a single contract for completion of design and the construction phase. Allowing design to progress in parallel with the construction authorization process to be nearly "shovel-ready" the moment appropriated construction funds are available.

Limiting Liability of an Accelerated Design Effort. 10 U.S.C § 3241(f)(2) requires a limit to the Department's financial risk when using this authority. The conditions of Design-Build contracts must limit the liability of the United States before funds are first made available for construction: if a project's construction is authorized or funded and the contract is terminated for convenience, the Government shall only be liable for the cost of the design work that has been completed, and the contractor cannot claim damages for lost construction revenue.