

# 41<sup>st</sup> Annual State Construction Conference

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# Design-Build Statute Changes

Presented by: Marty Moser, Sr. Vice President  
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# Summary of Existing D/B Legislation

## **§143-128.1A. Design-Build contracts**

- Qualification based selection of D/B teams

## **§ 143-128.1B. Design-Build Bridging contracts**

- Owner retains a design criteria design professional to prepare a design criteria package equal to 35% of the completed design documentation
- 35% Design Documents are incorporated into RFP with other criteria
- D/B Teams response in 2 parts:
  - a. Qualifications
  - b. Fee Proposal: General Conditions, Construction Fee, Design Fee

# House Bill 857 – August 2013 Design-Build and Design-Build Bridging Legislation

§143-128.1A. Design-Build contracts

§ 143-128.1B. Design-Build Bridging Contracts

# Senate Bill 219: Technical Changes to Clarify the Design-Build and Design-Build Bridging Statutes

- a. Signed into law January 2022
- b. Includes other non-related provisions
  - i. Licensure of Land Surveyors
  - ii. Prohibits Waiver of Future Claims for Progress Payments
  - iii. Attorney's Fees on Lien Claims
  - iv. Define the Term "Supplier" om Alcohol Control Laws

# Key Changes to §143-128.1A. Design-Build contracts

## a. Adds Definitions

Licensed subcontractor – A person or entity, not including design professionals or employees of the design-builder, that will be performing work under the design-builder and whose scope of work proposed for the project requires that it be licensed in accordance with Article 2 or Article 4 of Chapter 87 of the General Statutes.

# Key Changes to §143-128.1A. Design-Build contracts

## a. Adds Definitions

**Unlicensed subcontractor** – A person or entity, not including design professionals or employees of the design-builder, that will be performing work under the design-builder and whose scope of work proposed for the project does not require that it be licensed in accordance with Article 2 or Article 4 of Chapter 87 of the General Statutes

# Key Changes to §143-128.1A. Design-Build contracts

## b. Clarification to Design-Build RFQ

i. Government Entity has three options to "Direct" the D/B to submit

**Option 1:** List Licensed contractors, licensed subcontractors, and design professionals on the team

- Allows Design-Builder to Self-perform work without bidding subcontract trades
- Allows Design-Builder to enter into negotiated subcontracts
- Allows Design-Builder to list unlicensed subcontractors as team members
- Or allows Design-Builder to accept bids for selection of first-tier subcontractors



# Key Changes to §143-128.1A. Design-Build contracts

## b. Clarification to Design-Build RFQ

i. Government Entity has three options to "Direct" the D/B to submit

**Option 2:** List licensed contractors and design professionals on the team (not subcontractors) and define open subcontractor selection based on bidding (Article 8 of Chapter 143 of GS)

- This option still allows self-perform work by the Design-builder, but not negotiated contracts with first tier subcontractors

# Key Changes to §143-128.1A. Design-Build contracts

## b. Clarification to Design-Build RFQ

- i. Government Entity has three options to "Direct" the D/B to submit  
Option 3: Do not specify Option 1 or 2 and allow the Design-Builder to address in the response to the RFQ

# Key Changes to §143-128.1A. Design-Build contracts

## b. Clarification to Design-Build RFQ

- ii. Design-builder **must certify** in their response to RFQ that each design professional who is listed as part of the team was selected based on competence and qualifications (per G.S. 143-64.31)

# Key Changes to § 143-128.1B. Design-Build Bridging Contracts

## a. Adds Definitions

**Costs of the subcontractor work** – The sum total amount of all first-tier subcontract packages bid or proposed to be bid under subsection (f) of this section.

# Key Changes to § 143-128.1B. Design-Build Bridging Contracts

## a. Adds Definitions

**General conditions** – A specific list compiled by the government entity that identifies items for which the design-builder is to be compensated but are not ascribable to any particular on-site construction activity. This term shall not include either of the following: a) Construction work to be bid pursuant to subsection (f) of this section. B) Design services of a design professional.

# Key Changes to § 143-128.1B. Design-Build Bridging Contracts

## a. Adds Definitions

**Licensed contractor** – A person or entity whose scope of work proposed for the project requires that it be licensed in accordance with the provisions of Article 1 of Chapter 87 of the General Statutes.

# Key Changes to § 143-128.1B. Design-Build Bridging Contracts

- b. Clarification for Government entities electing to use Design-Build Bridging
  - i. The governmental entity shall not require the design-builder to provide the costs of the subcontractor work in the design criteria package or in the design-builder's response

# Key Changes to § 143-128.1B. Design-Build Bridging Contracts

## b. Clarification for Government entities electing to use Design-Build Bridging

- ii. The government entity shall prepare a list of general conditions for which the design-builder is to provide a fixed fee.
  - 1. Examples cited: on-site construction office and storage trailers; electrical and other utility services during construction; on-site construction superintendent, construction supervisors, and clerical staff; trash collection; security; and other temporary measures
  - 2. Inclusion or exclusion of any item from the list shall have no bearing on the actual amounts the design-builder is to be compensated and is not to be construed as controlling means and methods by the government entity.



# Key Changes to § 143-128.1B. Design-Build Bridging Contracts

## c. Clarification to Design-Build Bridging RFP

### i. Design-builder's fixed fee proposal

1. Submitted in a separate sealed envelope contemporaneously with the RFP response
2. **Excludes costs for subcontractor work**
3. Fee proposal only includes the following
  - a. General Conditions (per list provided)
  - b. Fee for general construction services
  - c. Fee for design services

# Design-Build SCO Process

Presented by: Ryan Strickland, Engineer  
State Construction Office



# Advertisement

- Design Build and Design Build Bridging Delivery Method
  - Request for Qualifications as detailed in N.C.G.S. 143-128.1A(c) and 143-128.1B(d)
  - Design Build Statute requires, at minimum, 8 categories of General Information to be covered in the RFQ
  - Design Build Bridging Statute requires, at minimum, 10 categories of General Information to be covered in the RFQ
  - Good Faith Effort to comply with N.C.G.S. 143-128.2 and 143-128.4
  - Must Advertise for a minimum of 21 days

# Selection Process

- At minimum 3 RFQ's need to be submitted
- If less than 3 are submitted, Owner must re-advertise
- After re-advertisement Owner may open RFQ's, no matter the number received
- A Pre-selection Committee will select 3-6 Design Builders that offer the most desirable plans for the provisions of services
- Owner may receive an oral presentation from each shortlisted team
- The Pre-selection Committee will rank the top 3 teams in priority order and recommend to their Board of Trustees of the UNC System and Community College System or State Building Commission for State Agencies for their consideration and final approval.

# Selection Criteria

- Pre-Selection Committee should take into consideration in the evaluation of Design-Builders such factors as:
  1. Design-Builder's Workload
  2. Record of Previous Performance on Similar Projects
  3. Previous experience with the Owner, i.e. A good working relationship
  4. Key Personnel have appropriate experience and qualifications
  5. Relevant and easily understood presentation
  6. Completion of previous Design-Build Projects within Budget and Programming
  7. Projects that were completed on or ahead of schedule
  8. Recent experience with project costs and schedules
  9. Design-Build Capabilities
  10. Proximity and familiarity with where the project is located
  11. Understanding of HUB Guidelines and Goals as required by General Statute
  12. Other factors that may be appropriate for the project

# State Construction Contract

- Design Build and Design Build Bridging Delivery Method
  - Owner and Contractor come to an agreement on the cost of a Pre-construction Phase of the Contract
  - Construction Contract may be signed with only Pre-construction Costs outlined
  - The Construction Phase to be determined after completion of the pre-construction phase or at an earlier time at the Owner's discretion.
  - The Construction Phase will be amended through a change order
  - The Owner also has the option to set the Construction Phase Cost at signing of the contract

# Current/Previous SCO Design Build Projects

- DNCR – Brunswick Town/Fort Anderson Shoreline Stabilization
- Dept. of Ag – Moose Café Ductwork Replacement
- NC State University – Restoration of Memorial Bell Tower
- NC State University – Outdoor Aquatics Facility
- NC Ports – Replacement of Office Building
- NC Ports – Chiller Facility
- NC Ports – Fertilizer Warehouse
- UNC Chapel Hill – Cameron Cogeneration Facility
- UNC Wilmington – Walton Drive Student Village Rec Fields and Facilities
- UNC Wilmington – Parking Deck and Surface Parking
- Wayne Community College – Renovation for Advanced Manufacturing
- Wayne Community College – Automotive Collision Repair Building
- Western Piedmont Community College – Construction Trades Building

# Design-Build Delivery – Why?

Presented by: Gregory A. Driver, PE, Director of Client Development  
Muter Construction





# Advantages

- Owner has a single source of responsibility
- Owner is able to select the best qualified team
- High Quality Construction
- Total project delivery time reduced – Building while Designing
- Early Collaboration – Team Members Work Collectively

# Advantages

- Streamlined Communication
- Submittal Process Reduced
- Rarely are there Team Conflicts
- Consistent Budget
- Owner's Risk is Reduced

# Disadvantages

- Competitive Bidding is Reduced
- Not for Highly Creative Projects
- Not Every Contractor/Designer like Design Build

# Types of Projects for Design Build

- Industrial
- Prisons
- Parking Decks
- Roofing
- WWTP
- Offices/Classrooms
- Elevator Replacements
- HVAC Replacements
- Prototypes
- Schools
- Fire/EMS Stations
- Laboratories

# Questions

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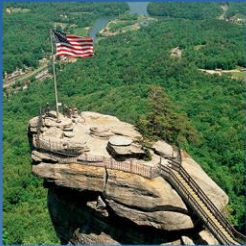
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