

MINUTES

MINUTES OF THE WORK SESSION OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, AND STATE OF ARIZONA, HELD ON TUESDAY, SEPTEMBER 10, 2019 AT 5:30 PM AT THE CITY HALL BUILDING, 915 S. TOVREAVILLE ROAD, BISBEE, ARIZONA.

THE MEETING WAS CALLED TO ORDER BY MAYOR SMITH AT 5:30 PM.

ROLL CALL

COUNCIL

Councilmember Louis Pawlik, Ward III
Councilmember Joni Giacomino, Ward II
Councilmember Bill Higgins, Ward I
Mayor David M. Smith
Councilmember Leslie Johns, Ward I
Councilmember Joan Hansen, Ward II
Councilmember Anna Cline, Ward III, Mayor Pro Tempore 5:40pm

STAFF

Theresa Coleman, City Manager
Ashlee Coronado, City Clerk
Jesus Haro, Public Works Director
George Castillo, Fire Chief

CITY ATTORNEY

James Ledbetter

THE FOLLOWING ITEM WAS DISCUSSED AND/OR CONSIDERED AT THESE MEETINGS:

1. Discussion on how to proceed with the City Hall Building.
Theresa Coleman, City Manager

Mayor Smith said that this had been ongoing for 23 months and it had gone through many different phases. Due to many staff changes this had been put on the back burner. This was a work session so he intended to allow the people in the audience that have expertise in different areas speak, however he requested that they keep their remarks as short as possible.

Ms. Coleman, City Manager explained that we had received a lot of comments in the form of discussion from folks that could not be present. She said she made a follow-up call in regard to a meeting that was held in November 2017 and had an opportunity to speak with Jeff Hayes at USDA. That was an option if the Council was interested in obtaining financing from USDA. USDA would require the Design/Bid/Build process for moving forward with a City Hall.

Mayor Smith said that funding was available in his discussions with USDA and that there was approximately 2 million sitting in the bank. At the time they spoke it was a 30-year term at 4.5%. Mayor Smith explained that there were many opinions as to how to proceed. He said that Council had received information from the city attorney regarding the Design/Build process. He said he would like to hear from a couple of people in the audience that would like to address the specifics on the best way for Council to go.

Al Hopper, Bisbee resident and architect compared the difference between Design/Bid/Build and Design/Build. He said that with Design/Bid/Build you would hire the consultants primarily architectural engineering team right from the beginning to start working with the city to develop a program, to decide what was exactly needed. A design would be generated and construction documents would be prepared along with those elements

and would be preparation with the consultant team of what the budget would be. They would be capable of estimating what the cost would be. Once those are prepared the consulting team would work with the city procurement department to put the project out to bid. It would be advertised to interested contractors and in those bid documents would not only be the drawings and specifications but other requirements such as insurance and whether or not a bond was required in case the contractor defaulted. It was more involved than just drawing, it was a complete package. The consulting team would be monitoring the construction in terms of progress to see if work was going along according to the construction documents. The consulting team would start at the very beginning and work with the client throughout the process until the project was completed. With a Design/Build the consulting team was taking a second position to the general contractor. The city would have to prepare the request for proposal. It would have to contain a detailed scope of work, including design concepts, technical requirements and specifications. He explained that things that the architect engineering team would do would be the burden of the city to define what those elements were. It would require a great deal of work on the part of a city. He said that entities that do not have the expertise end up hiring a third party in order to represent them. The idea that Design/Build would save money was incorrect, it would add risk and additional cost.

Ben Lepley, Bisbee resident and architect said that he couldn't agree more with how Mr. Hopper presented the contracts. He said that he was an advocate for the Design/Bid/Build. He expressed the importance of feedback from the public. He said that with the Design/Bid/Build process there were a lot of checks and balances. He described the differences in both processes.

Mayor Smith said that with Design/ Build that the City would have to be involved in the minutia of figuring out what paint we wanted on the walls, what carpet we wanted on the floor, how many doors and those sorts of things. It would then go out in an RFP and we would get the answer back with what our specifications were would cost "X" amount. With Design/Bid/Build we would go after an RFP/RFQ you would be getting renderings and qualifications for the A and E team with parameters we provide or money available. We would get that information back and in that proposal the team would tell us for our amount of money what our choices would be.

Councilmember Pawlik said that this was a very complicated issue.

Councilmember Pawlik wanted to point out that there were differences between the two processes that Council needed to be aware of. They could get you in trouble and could end up in litigation unless the owner has adequate staff to deal with the project from the beginning. He went on to say that he had prepared a handout explaining the difference between Design/Build and Design/Bid/Build which was attached as Exhibit "A". He still did not want to advocate for either one. If you know what you are doing and you have the right resources on staff you could do a great job with either form. Design/Build tends to get things done a little bit quicker but it does not always result in cost savings.

Councilmember Giacomino asked if there was a potential way to figure out which process could cost more or less.

Mayor Smith said if we do not have the staff to run a Design/Build project then it becomes obvious that we would have to hire someone, and that would cost money.

Mr. Hopper said when the consulting team or the A and E team puts their project out to bid you would be getting a competitive marketplace. Everyone would be bidding in a competitive market to get the best price. Once you make an agreement with a design build contractor they had not only their profit and overhead, but their contingency was built into the project cost. The chances were that you would be paying more upfront with a Design/Build setup then you would with an A/E team.

Councilmember Hansen wanted to take a position that Design/Bid/Build was the best way to go because we do not have the expertise nor the time. We do not have the manpower for it. We would need a consultant and team.

Councilmember Johns said it looked like we were leaning more toward Design/Bid/Build. She asked if litigation was more common with the Design/Bid/Build process. She wondered if anybody could speak to that.

Mr. Ledbetter said that it was experientially true but nonetheless, there were advantages to whichever program Council wanted to go with. A worry about possible litigation should not be a driver in your ultimate decision-making. Hopefully we could navigate this in ways to avoid litigation. He would recommend that there be arbitration provisions in the contracts.

Mr. Lepley said that the arbitration statement that the attorney made was a very good point. In the AIA contracts by default they mention you should use arbitration and not litigation. He said what could commonly happen with Design/Bid/Build a disagreement with the architect. He gave examples.

Councilmember Hansen said that she understood that the Design/Bid/Build would be a longer process, but did anyone know how much longer.

Mr. Lepley explained that it was a longer process because the process was broken up into different parts. Mainly the different bidding processes.

Councilmember Cline said that it wasn't a disadvantage for the process to take a little longer. It would be nice to take some time to digest things.

Ms. Coleman wanted to inform the Council that a professor with the Architecture Department at the U of A reached out to her and he would be bringing 7 to 8 students to Bisbee on September 12th. Their academic assignment would be to design a new City Hall for the City of Bisbee. It was purely an academic exercise.

Mayor Smith recommended that an item be placed on the agenda for Tuesday to decide on a concept.

Councilmember Higgins asked how the USDA monies figure into this process and when they would come into play.

Ms. Coleman responded that the USDA would take our architect and engineering design and the cost estimate and make a loan offer based on the cost estimate. She said that we would need to obtain our own construction financing.

Councilmember Hansen asked if the process with USDA took longer to obtain than any other loan.

Ms. Coleman responded that USDA didn't not indicate that. Once we had a figure we would go out to three conventional banks to find out what they could provide. If we could find a conventional bank that offers us a better deal than USDA we may want to go in that direction.

MOTION: Councilmember Higgins moved to adjourn the meeting.

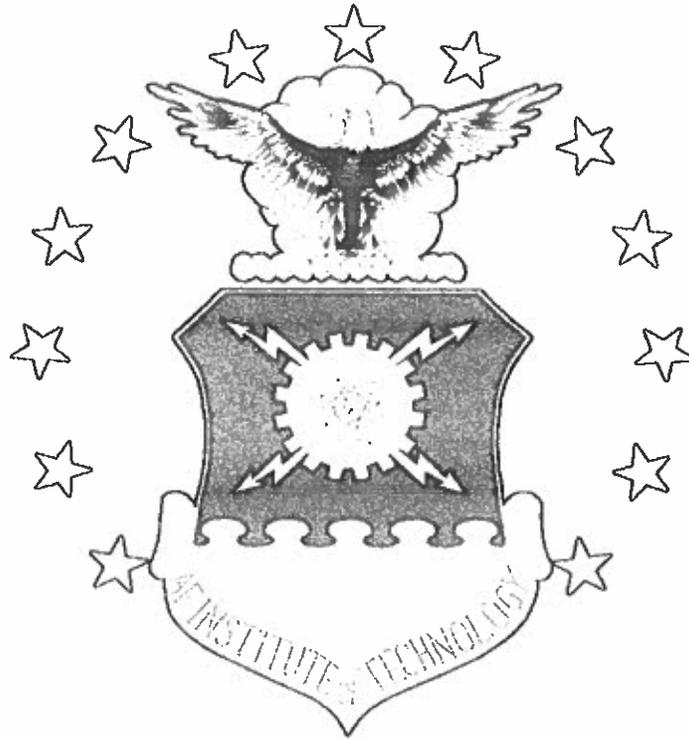
SECOND: Councilmember Pawlik

MOTION PASSED: UNANIMOUSLY

ADJOURNMENT: 6:12 PM

David M. Smith, Mayor

EXHIBIT A
To Document



**AN ANALYSIS OF THE DESIGN-BUILD DELIVERY APPROACH IN AIR
FORCE MILITARY CONSTRUCTION**

THESIS

James W. Rosner, Captain, USAF

AFIT/GEM/ENV/08-M16

**DEPARTMENT OF THE AIR FORCE
AIR UNIVERSITY**

AIR FORCE INSTITUTE OF TECHNOLOGY

Wright-Patterson Air Force Base, Ohio

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Design-Bid-Build Procurement Method

Low cost first bidding has been the traditional way for design-bid-build construction procurement (Figure 4) (Beard et al., 2001). Prescriptive specifications are contained in a contracted A-E firm's drawings and specifications. An Invitation for Bids (IFB) is submitted by the owner and selects the bidder with the lowest cost. (Department of the Air Force, 2000).

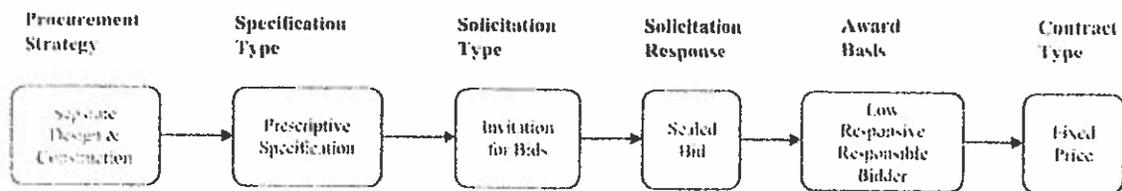


Figure 4. Traditional Procurement Process (Mouritsen, 1993; Figure 2.5)

Design-Build Procurement Methods

The three types of design-build procurement methods currently used by the DOD are the One-step, Two-step, and Newport design-build methods (Mouritsen, 1993; Webster, 1997; Department of the Air Force, 2000). The One-step and Two-step methods are used by the Army and Air Force while the Newport design-build method is used almost exclusively by the Navy.

One-Step Design-Build

Also known as the Source Selection method (Figure 5), this method is used by federal agencies and is regulated by the Federal Acquisition Regulations (FAR) Part 15 to

provide the “best value” to the government (Beard et al., 2001; p.173). Technical and price proposals are submitted for projects from multiple bidders after the owner has advertised a request for proposals (RFP). Discussions will be held with proposers within “the competitive range” for the project (Beard et al., 2001; p.172). The contract award is selected from the proposers’ best and final offers.

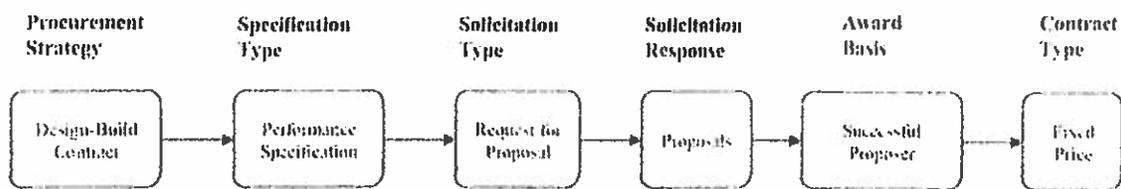


Figure 5. One-Step Design-Build Procurement Process (Mouritsen, 1993; Figure 2.6)

Two-Step Design-Build

The Two-step method (Figure 6) takes advantage of technical proposal review and low bidder award. Owners solicit proposals using a RFP that contains all project details. The first phase of the process withholds cost details and identifies the three to five most qualified proposers. The qualified proposers then submit sealed bids and the project is awarded based on the low bid (Department of the Air Force, 2000).

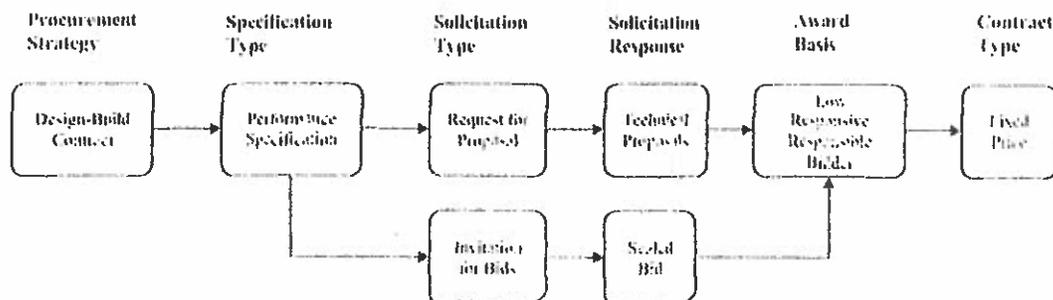


Figure 6. Two-Step Design-Build Procurement Process (Mouritsen, 1993; Figure 2.7)

Newport Design-Build

The Newport design-build method removes the costly initial technical proposals required for RFP preparation (Figure 7). This method “combines the single source of responsibility concept with lump sum competitive bidding, awarding the contract to the lowest bidder” (Mouritsen, 1993; p. 47).

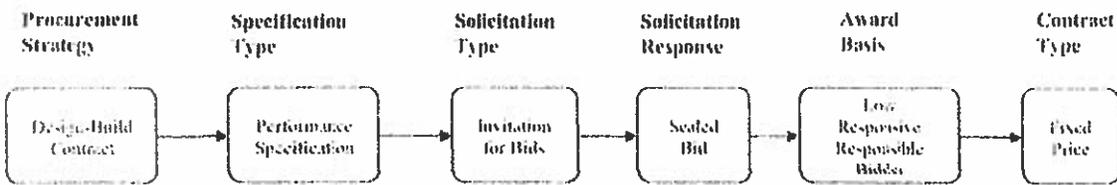


Figure 7. Newport Design-Build Procurement Process
(Mouritsen, 1993; Figure 2.8)

The owner characteristics that predict design – build project success are:

- The owner’s construction sophistication must be adequate to precisely define the scope. Inexperienced government agencies are advised against using design- build for the first time without experienced consultants.
- Owners must be able to dedicate adequate staff to the specific design – build project.

Table 4. Advantages of Traditional Approach

| Advantages | Description | Source |
|--|--|---------|
| Established way of doing projects | Well-established legal and contractual precedents | 2, 5 |
| Appropriateness for competitive bidding | Competitive nature of bidding obtains lowest price for construction based on 100% design documents | 2, 5, 7 |
| Complete control over design | Owner holds meetings typically at 30%, 60% and 90% design complete stages to comment on all drawings and specifications | 3, 4 |
| Low price award | Owners award the project to the contractor who presented the lowest bid price | 3, 4, 6 |
| A/E working directly for the owner | A-E gives professional design advice to the owner in a not-at-risk relationship | 5 |
| No legal barriers to procurement and licensing | Established legal findings for allocating risk and responsibility. Established procedure for licensing A/E's and construction firms in all states. | 5 |
| Contractor assumes all construction risks | Absorbs weather costs, labor disputes, material cost increases, and external factors | 2 |
| Projects is fully defined | Design phase produces 100% complete drawings, specifications, and cost estimates | 2, 6 |
| Objective contract award | Sealed bid packages ensures contract award based on price and not subjective metrics | 7 |

Key:

- | | |
|---------------------------------------|------------------------------|
| 1. Nichols (1993) | 5. Beard et al (2001) |
| 2. Lee (1976) | 6. Caspary & LeFebvre (2001) |
| 3. Webster (1997) | 7. Lusk (2005) |
| 4. Department of the Air Force (2000) | 8. Langley (2006) |

Table 5. Disadvantages of Traditional Approach

| Disadvantages | Description | Source |
|---|--|------------|
| Owner is the arbiter between designer and constructor | Owner bears the risk for adequacy of design. Designer and constructor disagreements must be solved by the owner | 5, 6, 7 |
| Owner pays for changes | Owner funds change orders to overcome design conflicts and change orders. Increase costs deplete contingency funds and could lead to litigation | 6, 8 |
| No shared vision or goals for between the owner, designer, and contractor | Neither party is totally focused on the ultimate goals of the project or owner. Designer goals focus on accuracy and quality of physical products. Constructor focuses on cost and schedule management | 2, 5, 6 |
| An initial low bid does not necessarily result in final best value | Preoccupation with low first cost ignores importance of past performance, good environmental practices, concern for life cycle performance, and other best-value selection criteria. | 5, 6 |
| Price not certain until construction bid is received | Bids over budget present problems for owners. Cost is unknown until the 100% design package is bid on. If bids are over the owner's budget the project must be redesigned or lowered in scope | 5, 7 |
| Constructor is not involved in the design | Separation of designer and builder is required by the traditional process. Constructability is lowered by lack of construction input in design. | 2, 5, 6, 7 |
| Design-Bid-Build is slower than other delivery systems | Linear structure includes time required to select an A-E, design to 100%, bid the design package, then build with no overlap | 2, 5, 6 |
| History of litigation | Increased disputes between the constructor and designer over design clarity, errors, omissions, in place construction quality, time delays, and other project related issues | 2, 5 |
| Change orders | Contractors can low bid and recover profits by generating change orders resulting from design omission and errors. | 2, 8 |
| Agency may need more technical staff | Architects, engineers, and construction inspectors typically required to review drawings, specifications, and inspect construction | 7 |

Table 6. Advantages of Design-Build

| Advantages | Description | Source |
|---|--|------------------|
| Single source of responsibility for design and construction | Responsibility for errors and omissions, faulty performance, coordination of problems lies with the design-builder instead of the owner. | 1, 2, 5, 6, 7, 8 |
| Time savings | Design-build eliminates the bidding periods and redesign of the traditional method. Materials and equipment procurement, and site staging can begin before completed design documents. | 1, 2, 5, 6, 7, 8 |
| Early knowledge of firm costs | Guaranteed project costs are known at proposer selection. Additional costs savings result from one entity coordinating cost estimates for construction as designs are completed. | 4, 5, 6, 7 |
| Higher quality | The design-build contractor is responsible for the entire project. Construction input is given from the beginning of design from the builder. Design errors, omissions, and defects are identified and quickly solved from within. | 2, 3, 5, 6, 7 |
| Cost-effectiveness | Value engineering and constructability are ongoing throughout the whole process resulting in lower cost. | 1, 4, 5, 6 |
| Encourages innovation | Design-build is a performance based system instead of the specifications based traditional method. The RFP outlines the performance requirements of the owner and the proposers may use different solutions to meet the owner's goals. | 1, 2, 4, 5, 7 |
| Lower claims and litigation | Owners avoid the majority of claims and litigations due to the responsibility for the design rests with the design-build contractor. The number of disputes is far fewer since the design-builder has no one to blame for errors but itself. | 1, 4, 5, 7, 8 |
| Reduced administrative burden | Does not require the many architects, engineers, and construction inspectors typically required for oversee the traditional method. Personnel required to administer conflicts between contractors has been reduced. | 1, 4, 6, 7 |

Key:

- 1. North Carolina (2003)
- 2. Texas (2005)
- 3. Washington (2004)
- 4. Department of the Air Force (2003)
- 5. Baker et al. (2001)
- 6. Construction Law Association (2001)
- 7. Fildes (2005)
- 8. Tinsley (2005)

Table 7. Disadvantages of Design-Build

| Disadvantages | Description | Source |
|---|--|---------|
| Unfamiliarity with the process | Owners and practitioners might not have used design-build and are unaccustomed to the collaborative method. | 5, 6 |
| Experience of management team | Success increases as the team gains in experience. Inexperienced teams might need to hire an experienced professional owner's representative. | 4, 7, 8 |
| Adequate owner staffing | An owner that does not have staff to adequately develop the RFP will have difficulty defining and presenting their needs to the design-build team. | 7 |
| Communicating owner's needs in design-build is different | The owner's performance requirements must be outlined as criteria for design and not detailed specifications. Owners comfortable with the traditional method will struggle with the qualifications based proposals for the RFP instead of the low cost bid on complete design documents. | 5 |
| Barriers in procurement and licensing laws | Some states still require the use of separate design and construction contracts. | 5 |
| Availability of insurance and bonding products for design-build | Industry still wary of providing the same coverage to design-build firms as traditional construction firms resulting in higher premiums for insurance and bonding. | 1, 3, 5 |
| Trust and Control | Inexperienced owners continue to desire the same involved design review process or place all the project risk on the contractor. These owners do not possess the trust required reduce the effectiveness, increase cost, and delay the process. | 6, 8 |
| Loss of designer as the owner's advocate | Both the designer and contractor are in the business to generate profit. The designer's interests are no longer directly tied owner's needs as in the traditional method. | 1, 2, 7 |
| Subjective contract award | The process may bypass the competitive bidding process, possibly not affording the owner the lowest price. | 7 |