

II. SECTION II – DESIGN-BUILD GENERAL PROVISIONS

A. PROJECT OVERVIEW - See RFQ Data Sheet

B. DEFINITIONS – See General Conditions of the Contract Form OC-15DB

C. OWNER'S ROLE

1. The Owner shall determine the delivery method of construction to be used for the project. If using these provisions, the Owner has chosen the design-build delivery method as defined by GS 143-128.1A.
2. The Owner shall establish in writing the criteria used for determining the appropriateness of the design-build delivery method. The State Construction Office shall be provided with a copy of this written document. The document must comply with GS 143-128.1A(b) and address the following:
 - a. The extent to which the Owner can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications.
 - b. The time constraints for the delivery of the project.
 - c. The Owner's ability to ensure that a quality project can be delivered.
 - d. The ability of the Owner to manage and oversee the project through experienced staff or outside consultants who are experienced with the design-build method of project delivery.
 - e. The Owner's ability to implement and oversee good-faith efforts to recruit and select small business entities.
 - f. The criteria utilized by the Owner, including a comparison of the advantages and disadvantages, when selecting the design-build delivery method in lieu of separate-prime bidding, single-prime bidding, and construction management at risk delivery methods.
3. The Owner shall identify a Designated Representative who shall serve as the point of contact during both the Design and Construction Phases of the project. This representative shall be the primary channel of communication to the Owner and shall act as the Owner's liaison with the Design-Builder. The Owner may designate multiple representatives responsible for defined aspects of the project and may replace or re-designate any or all representatives in the Owner's sole discretion.
4. At the Inaugural Design Phase meeting defined by Part G.1 of these provisions, the Owner shall thoroughly review the requirements established

by the RFQ and the Owner's design standards. The review will establish which Owner design standards apply to the project.

5. All Owner instructions and requests shall be delivered through the Design-Builder, not the Design-Professional.
6. Unless agreed to in writing by the Owner and Design-Builder, the Owner shall be responsible for the following:
 - a. Identifying the scope of work
 - b. Construction Materials Testing
 - c. Commissioning inspections
 - d. Geotechnical Inspection
 - e. Special Inspections
 - f. Hazardous materials surveys
7. The Owner and Design-Builder agree that construction work may not begin until:
 - a. The GMP (see Section D.4 of these provisions) has been executed.
 - b. The State Construction Office's Design Review Section has approved the Construction Documents.
 - c. The Pre-Construction Meeting outlined by Section H.1 of these provisions has been held.
8. In conformity with State laws and rules, the Owner, the State Construction Office (SCO), and the Design-Professional have varying decision-making duties with respect to this contract. Information from the Design-Builder required or requested in aid of these decisions, and to the Design-Builder with respect to all such decisions shall be communicated either through or with the knowledge of the Owner's Designated Representative. In the event of any disagreement or dispute between any members of the project team regarding the project, the State Construction Office shall be the final decision-making authority.

D. DESIGN-BUILDER CONTRACT OVERVIEW

1. The Owner is employing a design-build delivery method to aid the Owner in the review and management of the design and construction of this project. The Owner may have specified in the RFQ how the Design-Builder's project team must be selected. If undefined, the Design-Builder has included in their RFQ response an explanation of how its project team will be assembled. In either case, the method of project team selection identified

may not change and is limited to one of the following options:

- a. Option A: A list of the licensed contractors, licensed subcontractors, and design professionals whom the Design-Builder proposes to use for the project's design and construction. If this project team selection option is used, the Design-Builder may self-perform some or all of the work with employees of the Design-Builder and, without bidding, also enter into negotiated subcontracts to perform some or all of the work with subcontractors, including, but not exclusively with, those identified in the list. In submitting its list, the Design-Builder may, but is not required to, include one or more unlicensed subcontractors the Design-Builder proposes to use, whose scope of work proposed for the project does not require that it be licensed. If this project team selection option is used, the Design-Builder may, at its election and with or without the use of negotiated subcontracts, accept bids for the selection of one or more of its first-tier subcontractors, in accordance with Part H.4 of these provisions.
 - b. Option B: A list of the licensed contractors and design professionals whom the Design-Builder proposes to use for the project's design and construction and an outline of the strategy the Design-Builder plans to use for open subcontractor selection based upon the provisions of Article 8 of Chapter 143 of the General Statutes. If this project team selection option is used, the Design-Builder may also self-perform some of the work with employees of the Design-Builder, in accordance with Part H.4.a of these provisions, but shall not enter into negotiated contracts with first-tier subcontractors.
2. The design-build contract will be broken into two phases unless the RFQ defines a single-phase methodology (i.e. GMP at contracting). The two phases are the Design Phase and the Construction Phase.
 3. Design Phase services start at Schematic Design once a design-build contract for such services has been executed and runs through the State Construction Office's approval of the Construction Documents.
 4. Construction Phase services start upon approval of the Guaranteed Maximum Price (GMP) defining the total cost of construction and end at project closeout. All construction phase activities shall be completed in compliance with the construction documents approved by the State Construction Office
 5. The GMP shall define each anticipated trade contract amount. The Design-Builder shall generate the GMP no later than thirty (30) days after the approval of the Design Development Phase by the State Construction Office. The Design-Builder shall submit the GMP to the Owner who, upon their review, will forward it to the State Construction Office for approval.

6. The GMP Construction Cost must be less than or equal to the Anticipated Construction Phase Cost identified in the design-build contract. The summation of the Design Phase Costs and the GMP shall not exceed the Total Project Cost identified by the design-build contract.
7. Upon the approval of the last Construction Document submittal by the State Construction Office, the Design-Builder shall:
 - a. If Option A is used, as defined by Part D.1.a of these provisions, the Design-Builder shall submit the final actual trade contract amounts to the Owner for review.
 - (1) Total costs exceeding the GMP will be borne by the Design-Builder.
 - (2) Should the value of the trade contracts be less than the GMP, a reserve fund will be established. The Design-Builder may use or allocate Reserve Funds only upon mutual agreement that the purpose is appropriate to the project and to the contract, and only with the prior written approval of the Owner and the State Construction Office.
 - b. If Option B is used as defined by Part D.1.b of these provisions, or for portions of the work competitively bid under Option A, the Design-Builder will summarize the values of all the competitively bid subcontracts and compare this total with the budgeted amount within the GMP cost summary upon the completion of their contract award process. The results of this effort shall be reported to the Owner in writing.
 - (1) Total costs exceeding the GMP will be borne by the Design-Builder.
 - (2) Should the value of the trade contracts be less than the GMP, a reserve fund will be established. The Design-Builder may use or allocate Reserve Funds only upon mutual agreement that the purpose is appropriate to the project and to the contract, and only with the prior written approval of the Owner and the State Construction Office.
8. Within ten (10) days of the issuance of the design-build contract by the State Construction Office, the Design-Builder shall return to the State Construction Office a Performance Bond, a Labor and Material Payment Bond in accordance with provisions of Article 35 of the General Conditions of the Contract, and evidence of insurance in accordance with the provisions of Article 34 (Section III of this RFQ). Upon receipt of the required documents, the State Construction Office will distribute a contract to the appropriate signatories.
9. The requirements for the Design-Builder set forth in these provisions

supplement the requirements of the General Conditions of the Contract (OC-15DB) that are included as Section III in this RFQ.

E. RELATIONSHIP OF THE OWNER AND DESIGN-BUILDER

1. While the Design-Builder accepts financial risk in providing a GMP for delivery of the project, the GMP will contain a Design-Builder contingency (see Section G.10.b) for conditions or circumstances which a prudent Design-Builder could not have reasonably detected at the time the GMP was given. Accordingly, without limiting the guaranty given by the Design-Builder with respect to the maximum price, the primary duties of the Design-Builder also include the proper and timely completion of the design and construction of the project through the employment of the best construction management practices. The Design-Builder's project records will be an "open book". The Owner may attend all meetings and the Owner, or its designated auditors or accountants shall have access to all records maintained by the Design-Builder that relate to the project.

F. DESIGN-BUILDER FEES

1. The Design-Builder Fee will be defined in two parts:
 - a. A Design Phase Fee. This fee includes:
 - (1) All Design-Professional costs to generate a complete set of construction documents. These costs include, but are not limited to, the generation of detailed drawings and specifications, prescribing the work to be done, assembling the necessary bidding information, and defining the materials, workmanship, finishes, and equipment required for the engineering, architectural, structural, mechanical, electrical, and site work.
 - (2) All Design-Builder design phase costs. This fee includes all Design-Builder costs borne during the Design Phase. These costs include, but are not limited to, all Design-Builder costs needed to successfully provide the services outlined by Part G of these provisions.
 - b. A Design-Builder Construction Fee. This fee includes all management, supervision, construction staffing, home office, project site office, design professional's construction administration costs, and all Design-Builder overhead costs and profit.

2. All fees shall be itemized and submitted to the Owner for review. The Owner shall submit the Design-Builder Fee to SCO for approval.
3. Once established, no change to any Design-Builder Fee will be allowed except as permitted by Section G.10.b.(3) of these provisions and Article 19 of the General Conditions of the Contract (Form OC-15DB).
4. The cost of Bonds and Insurance as required by Article 34 and Article 35 of The General Conditions of the Contract shall be carried in the Design Phase and Construction Phase as a separate line item.

G. DESIGN PHASE SERVICES

1. Inaugural Design Phase Meeting: Within 30 days of the Design-Builder being selected, the Design-Builder shall meet with the Owner, the State Construction Office, and the Design Professional to fully understand the program, the design documents, the project scope, Owner design standards, and all other pertinent aspects of the project. The State Construction Office shall assign, at its sole discretion, an individual to participate in design phase meetings. The Design-Builder shall develop written project procedures in cooperation with the Owner that will be used as a guide for the management and coordination of this project throughout the life of the project.
2. Consultation During Project Development: The Design-Builder shall conduct regularly scheduled meetings with its Design-Professional and the Owner during the Design Phases to advise them on matters relating to site use, site logistics, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing, and sequencing. The Design-Builder shall provide written recommendations on construction feasibility. A regular meeting schedule shall be established by the Design-Builder and Owner, in consultation with the State Construction Office representative, at the Inaugural Design Phase Meeting.
3. Value Analysis: The Design-Builder shall provide continuous value analysis as the project design is developed to offer recommendations that provide the most effective and efficient solution in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. Value analysis studies shall include life cycle cost analysis as may be required to achieve an appropriate balance between costs, aesthetics, and function. All recommendations shall be in writing and must be fully reviewed with the Owner. The Owner must approve all recommendations prior to implementation.
4. Schedule: The Design-Builder shall establish in writing a project schedule that encompasses both the design and construction phases of the project.

The schedule shall reflect milestone dates that were included in the RFQ or communicated by the Owner during the Inaugural Design Phase Meeting. The schedule shall be updated continuously during the Design-Phase and presented to the Owner for approval at the regularly scheduled Design-Phase meetings. The Design-Builder may assume their schedules are accepted unless the Owner submits review comments, in writing, within seven (7) days. The Design-Builder is responsible for abiding by the approved schedule during the design phase, ensuring that this schedule is updated, scheduled milestone dates are being met, and advising the Owner of any deficiencies in adhering to this schedule by any party. If for any reason it appears any phase of the project will be delayed, the Design-Builder shall notify the Owner and the State Construction Office, in writing, prior to the due date of that phase with an explanation of the reason for the delay. A final critical path method schedule shall be submitted to the Owner for approval with the GMP proposal. See Article 14 of the General Conditions of the Contract Form OC-15DB for additional requirements.

5. Drawing Coordination and Constructability Review: To avoid disruptions to the construction schedule, the Design-Builder shall review the design continuously throughout the Design Phase to ensure constructability is maintained.
6. Construction Cost Model / Estimates
 - a. The Design-Builder shall develop a Cost Model which shall be updated as needed but at a minimum at the end of each design phase.
 - b. Each Design-Builder Construction Cost Model must set forth the total construction costs for the project. Cost Models shall include the Design-Builder Construction Fee, bonds and insurance, and the Design-Builder Contingency as explicit line items.
 - c. No Design-Builder Cost Model shall exceed the Anticipated Construction Phase Costs identified in the design-build contract. The Design-Builder must reconcile overages prior to any design phase submittal. All reconciliations are at no additional cost to the Owner.
7. Submitting Documents to the State Construction Office: Plans and Specifications submitted to the State Construction Office must comply with the processes and procedures outlined by the State Construction Manual. No construction activity may take place until the Design-Builder has received approved Construction Documents from the State Construction Office. Permitted construction activities are limited to work communicated by the drawings and specifications that have been approved. The Design-Builder is encouraged to meet with the State Construction Office's Assistant Directors for Design Review and Construction Management to discuss design packaging requests to best ensure accurate scheduling and efficient processing.

8. Construction Guaranteed Maximum Price (GMP)
 - a. Upon agreement of the Owner and the Design-Builder, the Design-Builder shall establish a construction GMP no later than thirty (30) days after the approval of the Design Development Phase by the State Construction Office. The Design-Builder will develop and provide to the Owner a GMP broken down as follows:
 - (1) Construction costs presented by trade package.
 - (2) Itemized Design-Builder Construction Fee
 - (3) Design-Builder Contingency
 - (4) Bonds and Insurance
 - b. The Design-Builder will submit the GMP to the Owner for review. The Owner will forward the GMP to the State Construction Office for approval.
 - c. The GMP shall detail all allowances included by the Design-Builder on the project. Proposed allowances will be reviewed and agreed upon by the Owner and the State Construction Office prior to the approval of the GMP. Cash allowances and man hour allowances are not permitted when work packages are competitively bid. Allowances within the bid packages shall have a unit price and quantity allowance for quantitative tracking purposes and shall be in accordance with Chapter 500 of the State Construction Manual.
 - d. In the event that the GMP Proposal is greater than the Anticipated Construction Phase Costs identified in the design-build contract, the Design-Builder, without additional compensation, shall work to redesign the project as necessary to meet the Owner's project budget. The Design-Builder shall alter and redraft Construction Documents as necessary to accomplish the required reduction in cost and shall provide the Owner with a revised GMP based on the altered and redrafted documents.
 - e. Upon acceptance by the Owner of a GMP, the Design-Builder shall initiate a change order via Interscope. The change order shall establish the final price of the project unless the project scope of work is altered by the owner. The cost for Bonds and Insurance shall be adjusted as required.
9. Non-Acceptance of the GMP
 - a. The Owner, at its sole discretion, may decline to accept the GMP submitted by the Design-Builder and thereupon without penalty, the Design-Builder's work shall end upon completion of the design development phase of design.
 - b. The Design-Builder shall accept the amount negotiated for Design

Phase Services as full and complete reimbursement of all costs and services performed by the Design-Builder for Design Phase Services. The amount negotiated will reflect the actual work completed. In no case may the negotiated amount exceed the Design-Builder's Design Phase Fee. Thereafter, the Owner shall have the right to continue its activities to place the project under construction with no obligation or restriction regarding the Design-Builder and with full ownership and use of any data and information written or electronically developed during the Design Phase.

10. Contingencies

- a. Owner's Contingency: An Owner's Construction Contingency will be established. Expenditures against this contingency will be available to cover all costs resulting from changes in scope not specifically covered in Paragraph G.10.b below and initiated by the Owner's designated representative with the Owner's written approval via a change order amendment issued by the Owner.
- b. Design-Builder Contingency (DBC):
 - (1) The GMP may include a Design-Builder Contingency (DBC) in an amount not exceeding 4% of the Cost of Work, to help reduce the risks assumed by the Design-Builder in providing the GMP for the project. The Owner and the Design-Builder acknowledge that the contingency is included to adjust the estimate for eventualities which have not been taken into precise account in the establishment of the GMP. It is understood that the amount of the DBC is the maximum sum available to cover costs incurred because of such unanticipated causes and that cost overruns exceeding the amount of this Contingency will be borne by the Design-Builder.
 - (2) The Design-Builder Contingency may be applied to any items within the Cost of the Work without the necessity of a change order, without constituting a change in the Work, and without resulting in any change in the GMP. The Design-Builder must notify the Owner and State Construction Office in writing of the intent to apply the DBC to any item within the Cost of the Work prior to any such application.
 - (3) The Design-Builder is responsible for tracking the DBC usage and will provide the Owner and State Construction Office documentation of used DBC at the State Construction Office Monthly Meetings. The Design-Builder shall fully document changes stemming from DBC use on its copy of the construction documents.

- (4) Additional Design-Builder Fee may not be assessed when using the DBC for design errors or omissions.
 - (5) The value of DBC will be determined in conjunction with the GMP. The value of the DBC may not increase once it has been established.
 - (6) Unused portions of the DBC shall revert to the Owner via a deductive change order.
 - c. Allowances: A complete list of all allowances shall be provided to the State Construction Office and Owner with the submission of the GMP. The Design-Builder is responsible for tracking all allowance usage and is to provide the Owner and State Construction Office documentation of allowance status at the State Construction Office Monthly Meetings. Unused allowances revert to the Owner via a deductive change order.
- 11. Ownership of Documents: All data information, materials and matter of any nature, and all copies thereof in any and all forms whatsoever developed by the Design-Builder or in the possession or control of the Design-Builder relating to the project are the property of the Owner and shall be turned over to the Owner within ten (10) days after the Owner's request.
- 12. Reserved
- 13. Payments to the Design-Builder: The Design Phase Fee will be paid in an agreed monthly sum based upon the work accomplished. The Owner will evaluate each payment request. Total payments, by design phase, shall not exceed the following:
 - a. Schematic Design Phase (SD) 20%
 - b. Design Development Phase (DD) 25%
 - c. Approval of GMP 15%
 - d. Approval of Construction Document 30%
 - e. Approval of Final Design Phase Documents 10%

H. CONSTRUCTION PHASE SERVICES

- 1. Construction activities may not commence until a Pre-Construction Meeting has been held. The Design Builder, in consultation with the Owner, shall schedule the Pre-Construction Meeting with the State Construction Monitor.

2. Construction Phase services provided by the Design-Builder shall be as required to effectively complete the construction of the project and to maintain the established GMP of the project.
3. At the time of Final Acceptance, as established by the State Construction Office, unless an earlier date is agreed upon by the Owner, Design-Builder and State Construction Office, any and all non-expended funds remaining in the GMP will be retained by the Owner via a deductive change order.
4. If bidding is utilized, in conformity with the public policy set forth in N.C.G.S. 143-128, 143-129, and 143-132, no trade contract package may be awarded other than to the bidder submitting the lowest verified bid. Bids will be received for each trade & specialty package and publicly opened at the time specified. The Design-Builder shall tabulate the bids received on each package and shall determine the apparent low bidder for each package.
 - a. The Design-Builder may self-perform for a principal trade or specialty contract if 1) the initial bidding exercise, complying with N.C.G.S. 143-128, 143-129, and 143-132, produces no responsible, responsive bids for that portion of the work, or 2) no responsible, responsive bidder will execute a contract for the bid portion of the work, or 3) in the judgment of the Design-Builder the bids represent an excessive cost based on current market value.
5. The Design-Builder will require the Principal Trade & Specialty Contractors to provide the applicable contract documents including insurance certificates.
6. Project Control & Management
 - a. The Design-Builder shall schedule, accept delivery, and arrange for storage, protection and security for any Owner purchased materials, systems and equipment that are a part of the work until such items are turned over to the respective Principal Trade & Specialty Contractors.
 - b. The Design-Builder shall schedule and conduct regular weekly progress meetings, or more frequently if project conditions require it, and the Design-Builder shall conduct bi-weekly Owner's meetings and other meetings as may be directed by the Owner, at which Principal Trade and Specialty Contractors, Owner, appropriate representatives of the Design Professional, other designated representatives, and the Design-Builder can discuss jointly such matters as progress, scheduling, and construction-related problems. The Design-Builder shall prepare and distribute complete minutes of meetings to all attendees and others as directed by the Owner within three (3) days of such meetings. Representatives of the Owner may attend meetings and shall in any case receive all notices and minutes of meetings.

- c. The Design-Builder shall establish, in conjunction with the Owner and State Construction Project Monitor, a regularly scheduled monthly progress meeting to be held at the job site. The Design-Builder will conduct these meetings. Design consultants whose design is under current active construction shall be present at the job site for the monthly meeting. These meetings shall be open to subcontractors, material suppliers and any others who contribute to the progress of the project. It shall be the purpose of these meetings to effect coordination, cooperation, and assistance in maintaining progress of the project on schedule in order to complete the project within the contract time.
- 7. Requests for Information (RFI): The Design-Builder will be responsible for developing and implementing an RFI process for use on the project and shall be responsible for tracking and monitoring all RFI's throughout the Construction Phase.
- 8. Claims Avoidance/Resolution: See Appendix H for rules implementing mediated settlement conferences in North Carolina public construction contracts.
- 9. Reports
 - a. The Design-Builder shall keep accurate and detailed written records of project progress during all stages of construction.
 - b. The Design-Builder shall maintain a detailed daily diary of all events, which occur at the jobsite or elsewhere, and which affect, or may be expected to affect, project progress. The diary shall be available to the Owner at all times and shall be turned over to the Owner upon completion of the contract.
 - c. The monthly report by the Design-Builder shall include the following items: project status, schedule update, cost status (including tracking of all allowances, Design-Builder Contingency, and Reserve Funds), change order summary, shop drawing/submittal/RFI summary, quality control/inspection summary, [State Construction Project Schedule Summary form](#), any current construction and/or cost issues with proposed solutions for resolution, an accident report and a 30 and 60 day look ahead report.
- 10. Contract Closeout
 - a. The Design-Builder is responsible for compliance with all Contract Closeout requirements per the Contract Documents and shall obtain data from Principal Trade & Specialty Contractors and maintain a current set of record drawings, specifications, and operating manuals.

- b. With mechanical and electrical equipment, the Design-Builder is to obtain the Operating and Maintenance (O&M) manuals prior to the demonstration of such equipment. These O&M manuals are to be sent to the Owner's Project Manager who is to forward one (1) set to the Owner's department responsible for maintaining the facility for review prior to the equipment demonstration.
 - c. At the completion of the project and before final payment, the Design-Builder shall deliver all closeout documents to the Owner. The Design-Builder shall furnish all required closeout documents, record drawings, and final deliverables to the Owner within 60 days of Final Acceptance.
- 11. **Separate Contracts:** Without invalidating the relationships with the Design-Builder, the Owner reserves the right to let other contracts in connection with the project, the work under which shall proceed simultaneously with the execution of the work of the Design-Builder. The Design-Builder shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and the Design-Builder shall take all reasonable action to coordinate his work with theirs. If the work performed by the separate contractor is defective or so performed as to prevent the Design-Builder from carrying out his work according to the plans and specifications, the Design-Builder shall immediately notify the Owner upon discovering such conditions.