



Which Standard Form Design-Build Contract is Right for You and Your Project?

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Typical Construction Contracts

- Biased and Protective
- Modifications exceed the original “Standard”
- Parties Push Risk Rather than Manage it.

BAD Contracts → Bad Results

- Canadian Study EXCULPATORY CLAUSES INCREASE PRICE 8-20%
 - Site Conditions
 - Delays
 - Liquidated Damages
 - Indemnification
 - Sufficiency of Contract Docs
- CII Study on contracts
 - Unnecessary Risk Contingencies
 - Best Contractors Seek the Best Owners
 - Worse contracts get worse results.

Why Standard Design-Build Construction Contracts?

- Familiar, Consistent, Coordinated
 - terms, philosophy, location
- Reduce Transactional Costs
 - Less expensive to draft and review
 - By and for the industry -- best practices.
- Starting point for manuscript contracts.

Why a Design-Build Contract

- Integrated Team=Better Projects
 - Change win/lose to win/win
 - d-b-b creates contractual silos
- Owner's sold on "TOTAL RISK TRANSFER"
- Decreases risk of implied design-liability (Spearin Gap)
- More RISK for Design-Builder . . . and reward
 - Stranded design-liability for defective design??
 - AGC Taskforce.

POTENTIAL DESIGN LIABILITY GAP



Duty DBer Gives
owner in D-B.

...

≠

Architect's
Professional
Standard Duty of
Care.

Your Design-Build Standard Form Options

- DBIA (2010, 2nd Ed.)
- AIA (2014)
- ConsensusDocs (2011, Rev. 2014)



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Why do lawyers always say “It depends”

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Which Standard Form Design-Build Contract is Right For You and Your Project?

Philosophy and Organization

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Philosophy and Organization

DBIA

It's All About Design-Build

Philosophy and Organization

AIA

*Let us be your leaders...
and build you a bridge.*

Philosophy and Organization

ConsensusDocs

*Industry Associations
Define Best Practices*

*In the Interest of
the Project as a Whole*



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When the Design-Builder First Enters the Picture

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When the Design-Builder First Enters the Picture

DBIA

How soon do you want me there?

Let me help you with your Criteria

When the Design-Builder First Enters the Picture

AIA The Consultant

*Any ordinary guy more than fifty miles
from home.*

*Someone who saves his client almost
enough to pay his fee.*

When the Design-Builder First Enters the Picture

ConsensusDocs

As early as the parties want

Let me help you with your Program



Which Standard Form Design-Build Contract is Right For You and Your Project?

Bridging

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Bridging

DBIA

Build a bridge if you must.
But you're responsible for *your* criteria.

Bridging

AIA

*“Build bridges instead of walls and
you will have a friend”*

Bridging

ConsensusDocs

You can if you must
but we don't have a form for that.



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When Price is Set
“Give me your best price – Now”

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When Price is Set

DBIA

GMP

If requested by the Owner

When Price is Set

AIA

- GMP
 - Lack of differentiation on timing?
- The Design-Build Amendment
 - Consent to Design-Build Proposal
 - “Upon owner’s issues of written consent to proceed”

When Price is Set

ConsensusDocs

GMP Proposal

“At such time as the Owner and the Design-Builder jointly agree”



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Contingencies

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Contingencies

DBIA

DB's Exclusively

Unanticipated costs
not the basis for a CO

Contingencies

AIA

No contingencies
Why?

Contingencies

ConsensusDocs

If Design-Build Documents
not complete

DB's Contingency
– same approach as DBIA



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Standard of Care

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Standard of Care

DBIA

Common Law Negligence for
Designers

Except for Performance Guarantees

Perform to Basis of Design

Standard of Care

AIA

- Design & Construction “Work” shall be free of defects.
- Design Professional agreement = different standard.
- Exhibit A includes a fiduciary relationship.

Standard of Care

ConsensusDocs

Common Law Negligence for Designers

Performance Guarantees

Only DBIA specifically addresses



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Site Information

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Site Information

DBIA & AIA

You can rely on what we supply.

Site Information

ConsensusDocs

You can rely if we make it
a Contract Document

No express, broad statement of
right to rely.



Which Standard Form Design-Build Contract is Right for You and Your Project?

Ownership of Documents

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Ownership of Documents

All provide a limited license

Ownership of Documents

DBIA and ConsensusDocs

You can have the copyright too...
if you pay for it.



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Design Management

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Design Management

DBIA

Construction Documents =
The Basis of Design Documents +
Decisions in meeting minutes +
Major Submissions

Design Management

AIA

Always benchmark against the
original
Design-Build Documents

Design Management

ConsensusDocs

Progressive Sign-Off

Each level of documents become
Contract Documents



**So...which
forms *do*
best suit you
and your
project?**



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