

## Contracts

In the Owner's Best Interest

From an Owner's perspective, the benefits of Finfrocks design-manufacture-construct procurement process provides a dramatic reduction of contractual risk. The essence of this risk reduction is that single point responsibility bundles virtually all the risk into a single contract with a single entity. Is this single contract document long, ponderous and legalistic beyond belief?

The answer is **NO!** In fact, just the opposite is true.

### ▶ TYPICAL CONTRACTS

Most of us have dealt with the typical contract templates published by design professional and general contractor trade associations. From these contract templates you expect to see voluminous contract terms and conditions written to clearly favor the initiating industry or company.

Such contracts must be studied by lawyers, negotiated, and usually end up with severe modifications. Because the original document was biased from the beginning, one can be left wondering what was missed even with diligence on your part.



## ▶ DESIGN-BUILD CONTRACTS

**A template now exists for design-build contracts in which the terms are fair and balanced, designed to serve the owner as well as the design-builder's interests.** Published by the Design-Build Institute of America, an organization that includes owners among its membership, the new contract template is short and easy to use. At the same time, it is very specific regarding the contractor's and the owner's responsibilities and commitments in a design-build relationship.



Balanced Contracts represent the Owner's and Design-Builder's Needs.

## ▶ A NEW TEMPLATE

**The new contract template is designed to place the burden of risk on the parties best able to bear it.** We have recommended the DBIA templates for all of our recent Design-Build contracts and have consistently experienced good results.

**Prior to the late 1998 publication of the DBIA contract documents, older, less specific design-build contract language was used.** Now, with the new documents, the remote possibility of litigation regarding design-build construction is further minimized. The simplicity and brevity of the new DBIA documents reduces your risk as an owner to a practical minimum. If you select an experienced, well-qualified, integrated service contractor with a clean litigation record, you will sleep better, avoid disputes and end up with a facility that will exceed your expectations. The DBIA contract template as used by Finrock includes two parts.



## ▶ THE 2 PART OWNER'S CONTRACT

### PART ONE

**Preliminary Agreement Between Owner and Design-Builder** is used to determine and confirm scope, site conditions and code compliance issues that require research. The document includes 8 Articles in 6 pages. Price modifications to previously submitted budget result only from Part 1 discoveries or changes in the owner's program. As the preliminary document is submitted, the final proposal is presented. At this stage, the owner may accept the proposal or opt to not pursue the project. The second option is seldom exercised since the price has already been negotiated and new discoveries are rare.

The simplicity and brevity of the new DBIA documents reduces your risk as an owner.

### Standard Form of Agreement Between Owner and Design/Builder - AIA Document A191, Part 1 Agreement

**Vs:**

### Standard Form of Preliminary Agreement Between Owner and Design-Builder - DBIA Document No. 520

Both agreements provide for schematic or preliminary drawings and a project schedule. The biggest difference comes when you want to address accountability and price.

**AIA**

- 1.2.1 ...The contractual obligations... are undertaken and performed in the interest of the Design/Builder.
- 1.2.3 Construction budgets...

**DBIA**

- 1.1 Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this agreement.
- 2.4.1 A proposed contract price for the design and construction of the project.

## PART TWO

**Agreement Between Owner and Design-Builder - Lump Sum** completes the construction contract, including scope, price, delivery and payment procedure. This document includes 11 Articles in 8 pages.

**General Conditions of Contract Between Owner and Design-Builder** is an attachment covering construction and procedures. This document includes 12 Articles in 18 pages.



**Standard Form of Agreement Between Owner and Design/Builder - AIA Document A19, Part 2 Agreement**

**Vs:**

**Standard Form of Preliminary Agreement Between Owner and Design-Builder - Lump Sum - DBIA Document No. 520**

The AIA document is structured such that the “design/builder” is clearly a separate entity from the “design.” This can lead to a fragmented design/construction situation where the designer is not directly tied to the cost driver of the Project.

### AIA

3.1.1 ...the contractual obligations of (qualified architects and other design professionals) are undertaken and performed in the interest of the Design/Builder.

### DBIA

1.1 Design-Builder shall perform all design and construction services and provide all material, equipment, tools and labor necessary to complete the work described in the attached Scope of Work.

## ▶ CONCLUSION

**Clearly, all contracts are not created equal.** The AIA Document goes into excruciating detail to assign responsibilities.

The DBIA Document very simply explains how the Project will be delivered.

The decision of which contract form to use is yours. *It should be one of the easiest decisions you have to make.*