

Guide to Apply PT.25 Design-Build to OAA 600-2021

Suggested Use of the Templates (Refer to Attachments 2, 3, and 4)

The following table summarizes how to use this Practice Tip and its Attachments with OAA 600-2021.

OAA 600-2021	Applying PT.25 to OAA 600-2021
Cover Page	Insert the project name/brief description in the text box.
Table of Contents	Complete check boxes for applicable Schedules and Appendices.
Agreement	Revised by PT.25 Attachment 2, Schedule 5.
Definitions	Revised by PT.25 Attachment 2, Schedule 5.
General Conditions	Revised by PT.25 Attachment 2, Schedule 5.
Schedule 1 – Services Schedule Legend	Edit standard template to suit your contract.
Schedule 2 – Basic Services	Replace with PT.25 Attachment 3.
Schedule 3 – Additional Services	Replace with PT.25 Attachment 3.
Schedule 4 – Other Services	Edit standard template to suit your contract.
Schedule 5 – Other Terms and Conditions	Replace with PT.25 Attachment 2.
Appendix A – Provision of Editable CAD or BIM Files	Replace with PT 25 Attachment 4.
Appendix B – Waiver of Moral Rights	Replace with PT 25 Attachment 4.

Commentary on the Suggested Amendments and Proposed Supplementary Conditions

The following subsections present commentary for the user to better understand the suggested amendments and proposed supplementary conditions to the Articles of Agreement. Additional notes have been provided with some items to provide further information about the item discussed in the comments.

Suggested Amendments to the Articles of Agreement—Refer to Attachment 2

Article A05 is amended to identify the *Owner*, who is the client of the design-builder.

Articles A06 and **A07** are amended to identify the Client-provided information the holder may rely on when providing their services, rather than what is in the prime contract.

Article A08 is amended to identify the design-build contract between the client (as design-builder) and owner.

Note: The holder will require a copy of the design-build contract to verify the compatibility with the architectural services contract and, to the extent applicable, for the purpose of being able to administer the contract during construction.

If the design-build contract has not been signed prior to the architectural services contract, then it is recommended that Article A08 be amended to state that the client (as design-builder) and owner intend to sign a contract, the name and edition of which is identified and/or attached as an appendix.

Some of the options for construction procurement are competitive bid, negotiated contract, multiple prime contractors, construction management and client's (i.e. design-builder's) own forces. All of these could require either the preparation of a single complete set of construction documents or multiple packages.

Examples of wording that may be appropriate for filling in Article A08 include:

- Client to perform the Work with their own forces.
- Client to retain trade contractors for performance of certain parts of the Work under CCDC 2 contracts.
- Client to retain construction manager for performance of the Work under CCDC 5B contract.

Article A11 is not amended.

Note: Coordination by the *Architect* with those *Client's Consultants* who contribute to the *Design-Build Contract Documents* is appropriate for the standard of care; refer to the amended definition of *Consultant Coordination*. At the design-builder's discretion, *Client's Contractors* may also contribute to the *Design-Build Contract Documents*. The *Architect's* services may include review and coordination of the *Client's Contractors*; refer to new Article A33 and new General Conditions (GC) 01.1.18.

Article A12 is amended to require the client to provide a functional program for the holder to work from; and to refer to the prime contract rather than a construction contract.

Article A13 is amended to recognize that the owner may not permit the degree of access to the place-of-the-work requested of the client by the holder.

Article A23 is amended to recognize that the holder's contract is not a prime contract with the owner, so the holder's invoices are not proper invoices for the purposes of the *Construction Act*.

Article A24 is amended to reflect that the holder's contract is not a prime contract, and that different provisions of the *Construction Act* apply. Holders should refer to the Act to become familiar with the applicable provisions and time frames.

Article A25 is amended to recognize that this is not a prime contract and, as a result, invoices are not *Proper Invoices*.

Article A26 is amended to recognize that the prime contract may constrain when holdback may be released.

Article A27 is amended to include reference to the functional program in the list of contract documents.

Article A31 is amended to incorporate the time required for the owner to review any submissions by the holder, so that an appropriate schedule can be developed.

Note: New **Article A33**, if applicable, may be inserted to incorporate the *Client's Contractors* who contribute to the design and participate in the production of the *Design-Build Contract Documents* and with whom the *Architect* will coordinate. Refer to the amended definition of *Consultant Coordination*.

Suggested Amendments to Definitions—Refer to Attachment 2

A definition of ***Client's Contractors*** is added to distinguish them from *Consultants*.

The definition of ***Construction Cost*** is amended to account for the roles of the *Owner* and *Client* in the design-build delivery method and reflect that the *Client's* costs/fees can be charged to *Owner*.

Note: This may also accommodate situations where the design-builder has a construction management contract with the owner.

The definition of **Consultant Coordination** is amended to include the *Client's Contractors* who contribute to the design and participate in the production of the *Design-Build Contract Documents*. Refer to new Article A33.

A definition of **Design-Build Contract** is added to identify the prime contract.

A definition of **Design-Build Contract Documents** is added to identify the items comprising the prime contract.

The definition of **Functional Program** is amended to reflect that the client is not the owner.

Note: In a design-build project, a Statement of Owner's Requirements (SOR) may vary in its level of detail. The SOR may need further development to improve its usefulness as a guiding document to become the *Functional Program*. Consider the liability, and the potential for an undisclosed conflict of interest, when assisting the owner with the SOR that is part of the design-builder's contract documents with the owner. Consider how your responsibility and liability may remain focused on your client, which is the design-builder, not the owner. Nevertheless, the scope of services should reflect how much work the architect expects to do in the pre-design phase (e.g. requests for information through the design-builder to confirm the owner's requirements, preliminary siting and design options, producing room data sheets, and other such pre-design and schematic design services).

The definition of **General Review** is amended to reflect the roles of the parties involved in the project.

A definition of **Invoice** is added to recognize that the holder's contract is not a prime contract and that the inclusion of certain information may facilitate the payment process. For consistency, the definition of *Invoice* requires the same information that the *Construction Act* requires for a *Proper Invoice*.

The definition of **Proper Invoice** is amended to reflect that the certificate of practice (CoP) holder is not issuing "Proper Invoices" under the design-build contract.

The definition of **Ready-for-Takeover** is amended to reflect that this is a design-build project.

A definition of **Owner** is added to explicitly distinguish that the holder's client is not the design-builder's client.

The definition of **Record Drawings** is amended to reflect that the as-built documents may be received from several sources, such as when a project is delivered through a construction management process by the design-builder.

Proposed Supplementary Conditions (SC)—Refer to Attachment 2

Note: Many of the changes adjust the wording to reflect the contractual differences between Design-Build and Design-Bid-Build (i.e. the holder's client is the design-builder, rather than the owner, and the design-builder may have contractors working for them rather than being the contractor themselves). Other changes reflect that the prime contract is the Design-Build contract, not the architectural services contract.

SC 8 adds a new clause for the responsibility to include the *Client's Contractors* who contribute to the design and participate in the production of the *Design-Build Contract Documents*. Refer to new Article A33.

SC 10 adds reference to the owner's *Functional Program* as one of the parameters whose changes may trigger the provision of extra services.

SC 17 has revised GC05.1 since the *Functional Program* is being provided by the owner, not the client. Refer to the note related to the definition of *Functional Program*.

SC 18 replaces GC05.2 with wording that allows significant changes to the owner's *Construction Cost Budget* to result in changes to the holder's fees.

SC 23 replaces GC05.3.11 with wording that requires the design-builder to enter into contracts consistent with the *Design-Build Contract*, and compatible with the architectural services.

SC 24 and **25** are added to clearly differentiate the responsibilities the *Architect* may have for *Estimates of Construction Cost* they have prepared, as opposed to those estimates prepared by the *Client*.

SC 26 adds a new GC06.9 to require the client to coordinate any issues relating to GC06 with the owner.

SC 28 deletes GC07.2.5 to remove the holder from the communication chain between the design-builder and the contractor(s).

SC 29 deletes GC07.3 to remove any reference for the holder as providing payment certification.

Note: This does not prevent the holder from assisting the design-builder in the preparation of the applications for payment to the owner.

SC 30 replaces GC07.4 to clarify that the holder is not providing payment certification or other tasks such as certification of Substantial Performance or deemed completion which require the holder to have been payment certifier.

Note: This does not prevent the holder from assisting the design-builder in determining if these milestones are likely to have been met.

SC 31 to 45 amend GC08 to recognize that the owner may become a sub-licensee of the holder's intellectual property.

SC 49 and 52 amend GC10 to reflect that the contract between the design-builder and the holder is not a prime contract and that the requirements related to a Proper Invoice do not apply.

SC 53 and 55 amend GC11 to reflect that the contract between the design-builder and the holder is not a prime contract and that the requirements related to a Proper Invoice do not apply.

SC 56 and 57 amend GC12 to reflect that the contract between the design-builder and the holder is not a prime contract and that the requirements related to a Proper Invoice do not apply.

SC 60 amends GC14.3 to reflect that the contract between the design-builder and the holder is not a prime contract and that the requirements related to a Proper Invoice do not apply.

SC 62 replaces GC16.6 with wording to deal with the holder's involvement in arbitration between the design-builder and their contractor.

SC 64 adds GC16.9 to address the holder's involvement (e.g. discovery of documents and oral examination) in arbitration between the design-builder and the owner.

SC 65 replaces GC17.3 with wording to make the holder's ability to sign the building contingent on the owner's approval.

SC 67 adds new GC18.2 and 18.3. The new GC18.3 establishes a standard of care for the design-builder paralleling the holder's standard of care. The new GC18.2 has the following provisions:

- precludes a contractual relationship between the owner and holder;
- requires the design-builder to provide the holder a copy of the prime contract (suitably redacted) so the holder may verify the compatibility of the scope of services (to assist in defining both included and excluded services), and other terms, with the architectural services contract;
- establishes lines of communication; and
- requires the holder to be kept fully informed.

Changes to Schedules—Refer to Attachment 3

The scope of services in Schedules 2 and 3 should also be reviewed for applicability to design-build projects. If the changes are few, they may be included as supplementary conditions. Otherwise, replace the default Schedules 2 and 3 with new schedules, such as those in Attachment 3, for use with design-build projects.

The following are suggested fee references (as found in Schedule 1 of the contract) that may be consistent with the design-build contract. Review each item and provide additional notes, as needed, in the Comments column in Schedules 2 and 3.

Schedule 2 - Basic Services

The numbering for each item below corresponds with each service item in Schedule 2.

2.1.3, 2.1.4, and 2.1.5 – Evaluations and Concept Design: Indicate fee reference 'NI' if these are received from the Client.

2.1.6 and 2.1.8 – Schematic Design Documents: Indicate fee reference 'NI' if Schematic Design Documents are received from the Client.

2.1.7, 2.1.11, and 2.1.16 – Estimates of Construction Cost: Indicate fee reference 'C' for services performed by the Client.

Note: In a design-build project, cost estimates are often provided by the design-builder, with the holder and other consultants providing assistance. Clarify and document the level of services required, which may include preparation, evaluation, or opinion of the *Estimates of Construction Cost*.

2.1.15, 2.1.22, 2.1.23.1 to 2.1.23.6 (inclusive) – Bidding Information and Bidding/Negotiation Phase: Indicate fee reference 'C' for services performed by the Client.

2.1.20 – Agency: Indicate fee reference 'NI' as this may be the responsibility of the owner, Client, or a designated third party contractually obligated directly to the owner.

2.1.27 – Bonding and Insurance documents: Indicate fee reference 'C' for services performed by the Client.

2.1.28 – Construction Schedule: Indicate fee reference 'C' for services performed by the Client.

2.1.29, 2.1.30, 2.1.37, 2.1.38 – Payment Certification services: Indicate fee reference 'NI' for services performed by the Client or a designated third party.

2.1.31 – Construction Contract Document Interpretation: See note below.

Note: Consider the extent to which you make interpretations and findings about the Construction Contract Documents. For example, you may want to exclude the construction contract documents provided by the Client's Consultants, or Client's substitutions and value engineering. Refer to the note for Schedule 3.1.23 when analysis by the Architect and its Consultants is included as an Additional Service.

2.1.35 – Proposed Change Notices/Change Orders and Change Directives: Indicate the appropriate fee reference from Schedule 1; otherwise, indicate 'NI' when services are excluded.

2.1.36 – Inspection & Testing Services: Indicate fee reference 'NI' if these services are by the Client.

Note: In design-build, typically the Client will provide this service, if needed.

2.1.39, 2.1.40, 2.1.41 – Close-out Documentation, Takeover Procedure, and Warranty Review: Indicate fee reference 'C' if these contract administration services are provided by the Client.

Note: In a design-build project, review of close-out documents is often done by the design-builder, with the holder and other consultants providing review for general conformance with their portion of the Contract Documents. Clarify and document the level of services required for this review, including revisions to the description of services for each item to indicate that documents will be received from, and returned to, the Client (design-builder), not the Owner.

Schedule 3 - Additional Services

The numbering for each item below corresponds with each service item in Schedule 3.

3.1 – Pre-Design Services: Indicate fee reference 'NI' if these pre-design services are received from the Client.

Note: Pre-design services may be included in a Modified/Progressive Design-Build project. Clarify and document the level of services that are required, but not included in the *Functional Program*. Refer to the note related to the definition of *Functional Program*. Comparative studies of multiple sites are less likely in design-build. Assisting the *Owner* with the engagement of consultants for various site information (e.g. survey, geotechnical, etc.) may be the responsibility of the design-builder *Client*.

3.1.8 to 3.1.12 (inclusive) – General Services: Indicate fee reference 'NI' if these services are by the Client.

Note: In design-build, typically the Client will provide this service for themselves, if needed.

3.1.13 to 3.1.22 (inclusive) – General Services: Indicate fee reference 'C' if these general services are provided by the Client or 'X' if are included in the services of the architect and its consultants.

3.1.23 – Value Engineering: Indicate fee reference 'X' if value engineering analysis is included in the services of the architect and its consultants.

Note: The Client may benefit from analysis by the Architect and its consultants in value engineering, in order to later assist in providing interpretations and findings.

3.1.24 – CAD/BIM Files: Indicate fee reference 'X' if editable copies of these files are included in the services of the architect and its consultants. Indicate the extent of the provision of these files in Appendix A.

3.1.25 – Moral Rights: Indicate fee reference 'X' if moral rights are relinquished in the project and indicate its extent in Appendix B.

3.1.27 – Pre-qualification of Bidders: Indicate fee reference 'C' if this service is provided by the Client.

Note: In design-build, typically the Client will provide this service for themselves.

3.1.31, 3.1.32 – Release of Holdback in Connection with Payment Certification Services: Indicate fee reference 'C' for services performed by the Client or 'NI' in the case of a designated third party.

3.1.40 – Commissioning: Indicate fee reference 'NI' if these services are provided by the Client or its Consultants.

3.1.41 – Notice of Non-payment: Indicate fee reference 'C' if these services are provided by the Client or 'NI' in the case of a designated third party.

3.1.42 – Disputes with Contractor: Indicate fee reference 'F3' if an hourly rate will be applied to these services, should the need arise.

3.1.43 – Artefacts: Indicate fee reference 'F3' if an hourly rate will be applied to these services, should the need arise; otherwise, indicate 'NI'.

Changes to Appendices – Refer to Attachment 4

Appendices A and B should also be reviewed for applicability to your specific design-build project. If required, the appendices included in Attachment 4 may be used to replace the default appendices, after review and adjustment to suit the requirements of the project. The comments column may be used to note specific requirements for the editable files (e.g. the required Level of Development for BIM or client's/owner's CAD Standards). This exercise is left to the user.

The OAA does not provide legal, insurance, or accounting advice. Readers are advised to consult their own legal, accounting, or insurance representatives to obtain suitable professional advice in those regards.
