

Using the New AIA Design-Build Documents for Effective Risk Management

A Victor Risk Advisory Webinar

4/16/2025



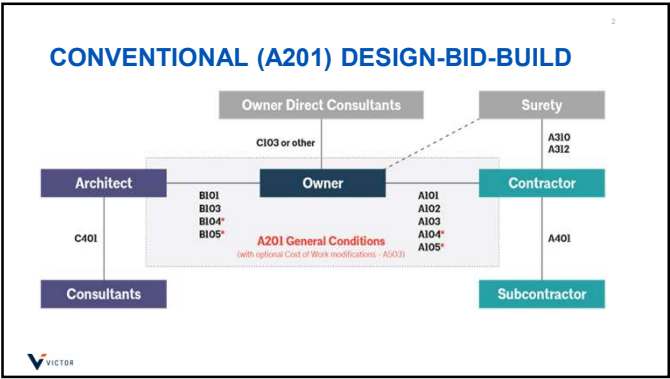
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April 16, 2025

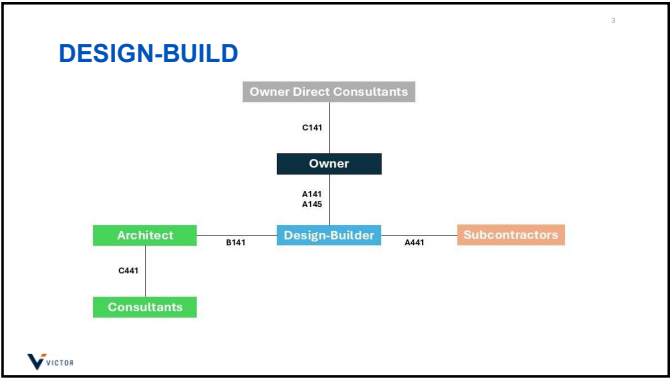
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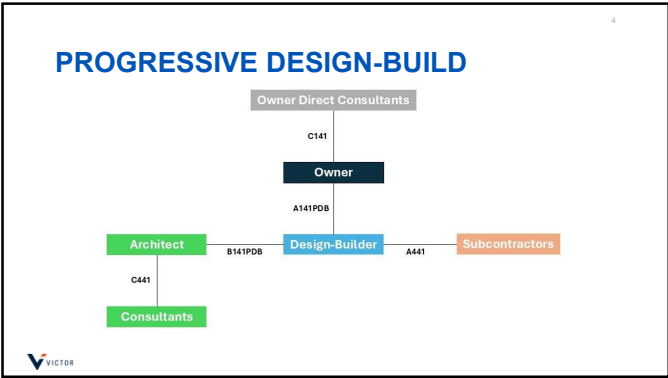


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MAJOR AIA DESIGN-BUILD DOCUMENTS

The newly released documents for a traditional design-build project delivery system include these contracts:

- A141-2024, Standard Form of Agreement Between Owner and Design-Build for a Traditional Design-Build Project
- B141-2024, Standard Form of Agreement Between Design-Build and Architect for a Traditional Design-Build Project
- A441-2024, Standard Form of Agreement Between Contractor and Subcontractor for a Design-Build Project.
- C141-2024, Standard Form of Agreement Between Owner and Consultant for a Design-Build Project

The documents for a progressive design-build project delivery system include these contracts:

- A141PDB-2024, Standard Form of Agreement Between Owner and Design-Build for a Progressive Design-Build Project
- B141PDB-2024, Standard Form of Agreement Between Design-Build and Architect for a Progressive Design-Build Project

The Victor logo is in the bottom left corner.

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What are the dangers in design-build for design firms?

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RISKS UNIQUE TO DESIGN-BUILD

- Changing role: Not Owner’s Consultant or Agent
- Many different contracting scenarios
- Risk of enhanced standard of care
- Risk of warranty of design
- Sharing of construction risk
- Design-Builder has final authority
- Contractual risks exceed professional exposures



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RISKS IN TRADITIONAL DESIGN-BUILD

- Flow Down clauses in contract with Design Builder
- Design-Builder provides early GMP calculation
- Construction Phase services are usually very limited
 - Shop Drawing and Submittal Review
 - Respond to questions and inquiries
 - Sign off at substantial completion
 - Certification to governmental authorities



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PROGRESSIVE DESIGN-BUILD

- In Progressive Design-Build the initial selection of the design-builder is almost always based on qualifications and the entire design-build team is involved from the earliest stages of project development.
- The owner is involved when design solutions are being developed. And the final project cost and schedule not finalized until later in the design development process.
- Collaborative pricing allows parties to reduce contingencies because of more realistic pricing assumptions.




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What are the differences between traditional design-build and progressive design-build?

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TRADITIONAL VS. PROGRESSIVE DESIGN-BUILD

Traditional Design-Build

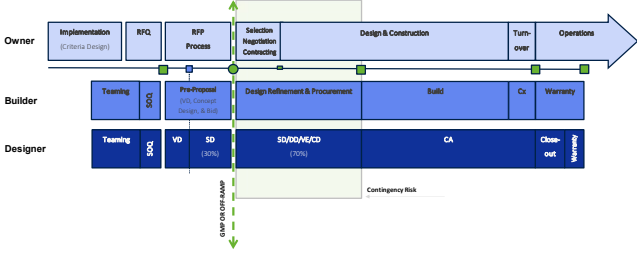
- Selection based on best price/schedule
 - Qualifications
 - Proposed Costs
 - Proposed Schedule
- Owner provides limited or detailed criteria, perhaps with target price & schedule
- Substantial design refinement after fixed price and schedule are established
 - Substantial reliance on design refinement contingency

Progressive Design-Build (PDB)

- Selection based on best value to owner
 - Qualifications
 - Limited pricing (Validation phase & Design Phase Compensation, Design-Builders Fee)
- Owner provides detailed criteria with target price & schedule
- Minimal design refinement after fixed price and schedule are established
 - Minimal reliance on design refinement contingency

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TRADITIONAL DESIGN-BUILD WORKFLOW

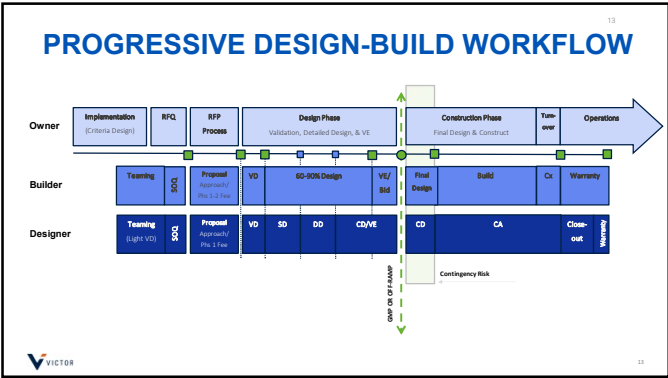


The diagram illustrates the Traditional Design-Build Workflow across three main roles: Owner, Builder, and Designer. The timeline is divided into several phases: Implementation (Criteria Design), RFQ, RFP Process, Selection Negotiation Contracting, Design & Construction, Turn-over, and Operations. The Builder's responsibilities include Teaming, Pre-Proposal (with a 50% Contingency), Design Refinement & Procurement, Build, Cx, and Warranty. The Designer's responsibilities include Teaming, SO (30%), SO (30%), SOW/CD (70%), CA, Close-out, and Warranty. A 'GAP OR OFF-RAMP' is indicated between the Selection Negotiation Contracting and Design & Construction phases. A 'Contingency Risk' is noted at the bottom right.

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What is in the new Progressive Design-Build family of documents?

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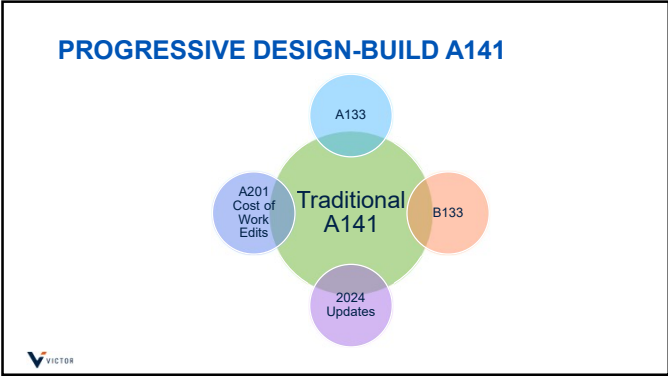
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A141PDB
Owner/Design-Builder
Agreement

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PDB A141 - OWNER'S CRITERIA

- "Robust" Owner's Criteria expected
- Right to rely on Initial Information
- Cannot deviate from Owner's Criteria/Program without a Modification
 - Protects Owner's original requirements

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PDB A141 - DESIGN PHASE

Evaluation of Owner's Criteria

- Design-Builder:
 - Reviews Owner's criteria and local conditions
 - Conducts meetings
 - Prepares preliminary design and GMP estimate
 - Prepares proposed schedule
 - Recommends fast track/phased construction
- Design-Builder produces written report of its findings
- Owner must review and approve the report (and modify its Criteria, if necessary) before project advances

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PDB A141 - DESIGN PHASE

Following validation – progress through "traditional" design phases

- Schematic Design
- Design Development
- Construction Documents
- Other Design Phase Services
 - B133 Supplemental Services
- Additional Services
 - B133 Additional Services (modified)





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PDB A141 - DESIGN PHASE

Pre-Construction Services

- Constructability
- Scheduling
- Cost Estimating
 - Mirrors B133
 - Estimating Cost of Construction Work
- Early Release Work and Early Procurement
- Subcontractor, Supplier, & Procurement Plan






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PDB A141 – DESIGN-BUILDER’S PROPOSAL

Prepared at a mutually agreed time, but in no event earlier than completion of Design Development

Includes:

- A list of the Drawings and Specifications
- A list of expected Submittals to the Owner
- A list of the Design-Builder’s clarifications and assumptions
- A statement of the proposed Guaranteed Maximum Price
- The Design-Builder’s current Project schedule for the Work
- A list of the Design-Builder’s key personnel, Contractors and suppliers
- A date by which the Owner must accept the Design-Builder’s Proposal
- A contingency for the Design Builder’s exclusive use





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PDB A141 - "OFF-RAMPS"

Owner retains the right to use the IOS upon payment to the Design-Builder provided that:

- 1. Owner releases Design-Builder from claims arising from such use
- 2. Owner indemnifies Design-Builder for costs and expenses related to third-party claims arising from such use



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PDB A141 - DESIGN-BUILD AMENDMENT

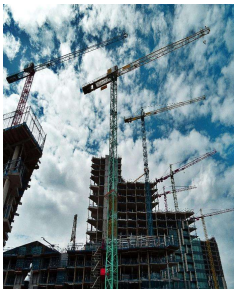
- Agreed upon terms of Proposal are set forth in Design-Build Amendment
- Amendment Establishes:
 - GMP
 - Commencement Date
 - Substantial Completion Date
 - Design and other information upon which the GMP and Contract Time are based
 - May include accepted deviations from the Owner's Criteria



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PDB A141 CONSTRUCTION PHASE

- Construction Phase
 - Includes completion of design (Construction Documents)
 - Largely consistent with traditional construction phase terms and conditions (A201)



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A141- OWNER/DESIGN-BUILDER AGREEMENT

New Definition of "Work"

Pre DBA Services

Design Services

Construction Work

Work

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A141- OWNER/DESIGN-BUILDER AGREEMENT

Standard of Care vs. Warranty

New Standard of Care

- Applies to Pre-DBA Services and Design Services
- "the degree of skill and care ordinarily provided by design-builders performing the same services in the same or similar locality under the same or similar circumstances"

Warranty

- Applies to Construction Work
- the Construction Work will be "of good quality and new" and "free of defects"

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A141- OWNER/DESIGN-BUILDER AGREEMENT

Dispute Resolution


New Initial Resolution of Disputes

- "Meet and Confer" vs. Project Neutral

Mediation

Binding Dispute Resolution

- Arbitration vs. Litigation



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LIMITATION OF LIABILITY


Both Traditional A141 and PDB A141:

- Waiver of consequential damages
- Waiver of subrogation
- Optional Liquidated Damage provisions

Only PDB A141:

- Optional limitation of liability for:
 - damages covered by insurance
 - other damages
- Exclusions: fraud, willful misconduct, failure to pay, abandonment of the work





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B141PDB Design-Builder/Architect Agreement

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PDB B141 DESIGN-BUILDER/ARCHITECT AGREEMENT

- Structure for Design Phase Services differs from Traditional B141
- Procurement and Construction Administration Services generally retain the menu style
- However, several of the services identified in the menu in Traditional B141 have become mandatory services in B141 PDB





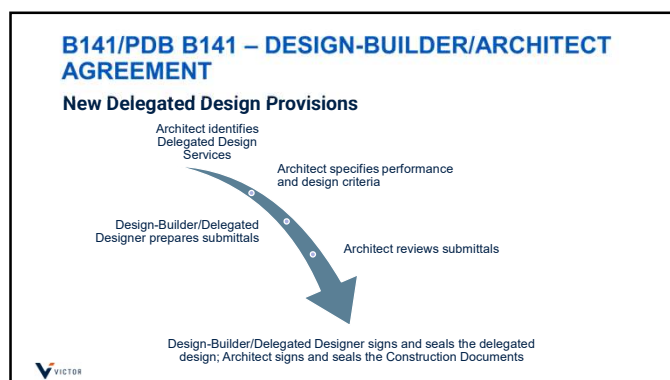


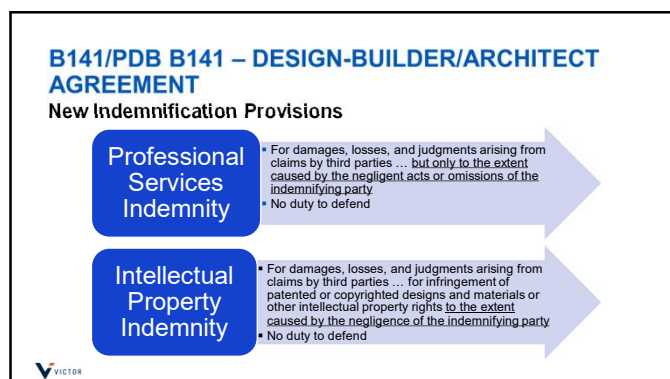
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B141/PDB B141 – DESIGN-BUILDER/ARCHITECT AGREEMENT

New Design Assist Provisions

- Architect determines whether, and to what extent, to incorporate the information furnished by Design-Builder's Consultants and Subcontractors
- Architect entitled to rely on, and is not responsible for, accuracy, completeness, or timeliness of such services or information

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B141/PDB B141 – DESIGN-BUILDER/ARCHITECT AGREEMENT

Updated Dispute Resolution Provisions

Owner-Related Disputes → Follow dispute resolution procedures in the Prime Agreement

Disputes Unrelated to Owner or if Architect Precluded from Joinder → Mediation and Arbitration/Litigation





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PDB B141 DESIGN-BUILDER/ARCHITECT AGREEMENT

LIMITATION OF LIABILITY

B141 and B141PDB


- Waiver of consequential damages
- Waiver of subrogation

B141


- Obligation to indemnify limited to required proceeds of available insurance coverage

B141PDB

- Obligation to indemnify limited to lesser of required proceeds of available insurance coverage or aggregate LOL, if any
- Optional aggregate LOL



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How have the parties' obligations to procure and maintain insurance changed in the 2024 Design-Build Documents?

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DESIGN-BUILD INSURANCE

- PLI – now effective from commencement of design through period of correction of the Work
- New** coverage obligations:
 - Pollution Insurance
 - Cyber Liability Insurance
- New** waiver of subrogation for losses covered by Cyber Liability insurance
- New** option for Owner to specify insurance requirements for subcontractors and subconsultants






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Some final suggestions:

- Design-build projects are complicated and firms need to understand not only the contract for their services but the flow-down obligations in the prime design-build agreement.
- Progressive Design-Build use is preferable because it reduces a design firm's contractual and professional exposures through the cooperation before a guaranteed maximum price for the project.
- It is critical to have legal advice when agreeing to the contractual obligations in design-build to preserve your normal legal liability for performing professional services and, therefore, your professional liability insurance coverage.

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THANK YOU!

This concludes our presentation. Thank you for your time and participation.

QUESTIONS?

Policyholders can send questions to RiskManagement.US@VictorInsurance.com

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