THAXTON | PARKINSON PLLC

Progressive Design-Build Lessons Learned

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Progressive Design-Build Characteristics

- Design-Builder retained early in the life of the project
- Design-Builder selected primarily on qualifications
- Delivered in two distinct phases

Progressive Design-Build In Practice

- The parties have not finalized the commercial terms when the Design-Build contract is signed.
  - Price and Scope are not established (neither maximum price nor scope established)
  - Scope is not established (maximum price established, flexible scope)
- The parties work collaboratively after Design-Build contract is signed to finalize commercial terms.


"Jewelbox" at San Francisco Airport

Why Use Progressive Design-Build?

- Streamlined Procurement
- Increased Owner Input/Owner has more control over design
- Fewer Deliverables from Design-Builder in procurement
- Transparency into the Design-Builder's Costs/Price efficiency
- Unknown conditions require investigation by design-build team before final price can be established
- Collaborative Single Point of Responsibility
- Off-Ramp for Owner

Obstacles to Progressive Design-Build

- Restrictive Procurement Laws/Regulations
- Award Without Full Competition on Overall Price
- Off-Ramp Is Problematic
- Subcontractor Procurement Challenges
- Owner Readiness/Preference
- Need for Prescriptive Requirements

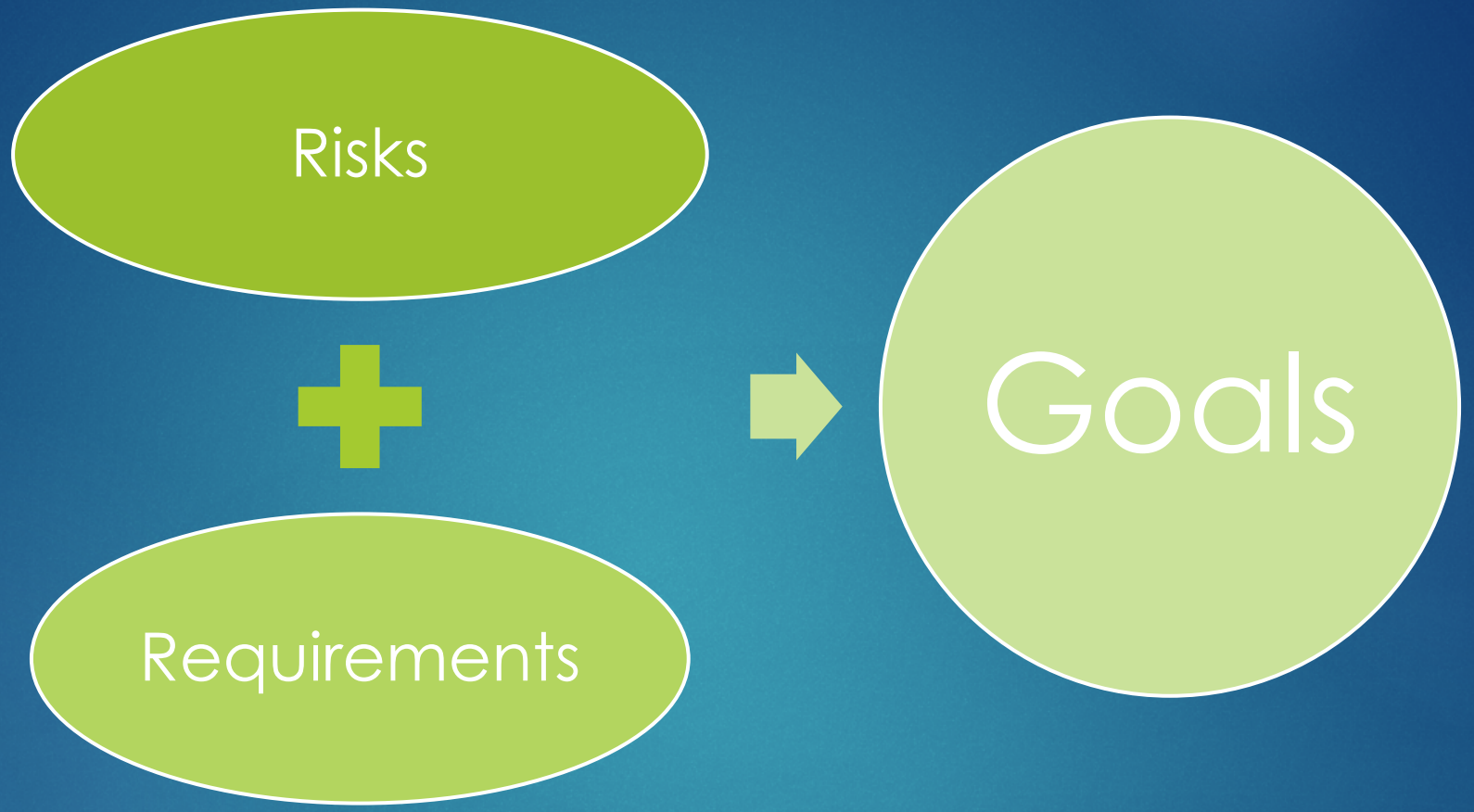
Procurement

How do you evaluate with no design solution and small price component?

- Have they done it in the past?
- Can they demonstrate to you that they can do it for this project?

Evaluation Criteria

Problem	Solutions
• Generic submissions	• Focus on Project Goals
• Collaboration not valued	• Encourage interaction
• Submittals not tailored to project	• Request information unique to the project
• Disorganized submittals	• Consider proposers when organizing RFQ and RFP
• Information on projects not complete	• Identification of Projects table



Develop Project Goals

Project Goals

- Project Goals are Aspirational
  - Simple compliance with Owner's Project Criteria is not a "Project Goal"
- Focus Offeror's submittals on exceeding Project Goals

Project Goals Examples

- **High Functioning Team:** The Design-Build Team will develop and promote a collaborative relationship between the Owner, its Stakeholders and the Design-Build Team to exceed the Project Goals within the Owner's budget and schedule and demonstrating exemplary design and project management.
- **Maximize Design within Limited Budget:** The Design-Build Team will leverage the efficiencies of the progressive design-build process through innovative and lean design and construction techniques that provide an efficient and effective design with the most scope and programming within the Owner's established budget.
- **Design for Safety**. The Design-Build Team will create a design that enhances the safety of the project. The design and construction process will reduce re-work and interference with operations with a goal of no recordable incidents.

Focus on Project Goals

- "Provide a detailed explanation of how your team's approach to *[Insert Project Goal]* will exceed the Project Goal."
- Evaluate based on
  - Strengths and weaknesses of the Proposal and
  - Likelihood of exceeding the Project Goal
- Helps evaluators focus on project and distinguish between proposers
- Helps proposers focus on project not themselves

Collaboration

- Essential to every project
- How do you evaluate?
  - SOQ or Proposal Narrative
  - References
  - Interactive Meeting

Interactive Meetings

"Consider the Interactive Meeting to be the first Project Meeting with the Owner"

Allow for free flow of communication:

- Offerors cannot rely on oral statements during meeting

Demonstrate Offeror's ability to

- Collaborate with the Owner's team and each other
- Solicit information from Owner on Project
- Provide meaningful, achievable, and collaborative solutions

Offerors provide meeting minutes with Proposal

Unique Evaluation Criteria

- Discuss an issue that the owner needs resolved
  - Schedule/phasing plan
  - Location of project
  - Sustainability goals
- Identify risks on the project
  - Submit a risk register
  - "What are the three greatest risks on the project and how will you address them?"
- Design Concepts

Design Concept

- Past Performance *(can be in RFQ or RFP)*
  - Provide project profiles of how your team has achieved Design Excellence on Projects of Similar Scopes and Complexity
  - Provide photos of previous projects that represent the team's design approach for this project.
- Current Project *(in RFP)*
  - Provide design concepts that exceed the Owner's Project Goals
    - Renderings from specific view points
    - Can focus on a project specific issue/problem
- ***Lesson Learned: Focus on the process not the design!***

Projects of Similar Scope and Complexity

- Definitional tool
- "Goldilocks" project experience
- Provides definition for size, type, special skills
- Evaluators determine whether meets definition
- Eliminates need to repeat required project characteristics

Identification of Projects Table

- Submitted as a separate table
- Requires essential information for every project discussed in submission
  - Project cost/schedule
  - Owner contact information
  - Type of project
- Easy to evaluate whether “Project of Similar Scope and Complexity”

GMP Development Plan

In the RFP

Describe the Design-Builder's processes and tools for monitoring, reporting and managing cost, including but not limited to

- Design to budget
- Scope, cost, and schedule baseline development
- Risk identification and management
- Cash flow reporting processes
- Document control system
- Conceptual estimating process

Looking for:

- Target Value Design
- BIM tools to assist estimating
- Real time cost/design/schedule updates
- Collaboration/synergy between designers and estimators

Evaluations

Problem	Solutions
• Evaluators do not score based on published criteria/outlier evaluator	• Consensus Scoring • Strong Facilitator
• Scores are compressed	• Identify strengths and weaknesses • Separate scores
• Determination is not defensible	• Create defensible scoring summary

Evaluations

Problems

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- Consensus scoring
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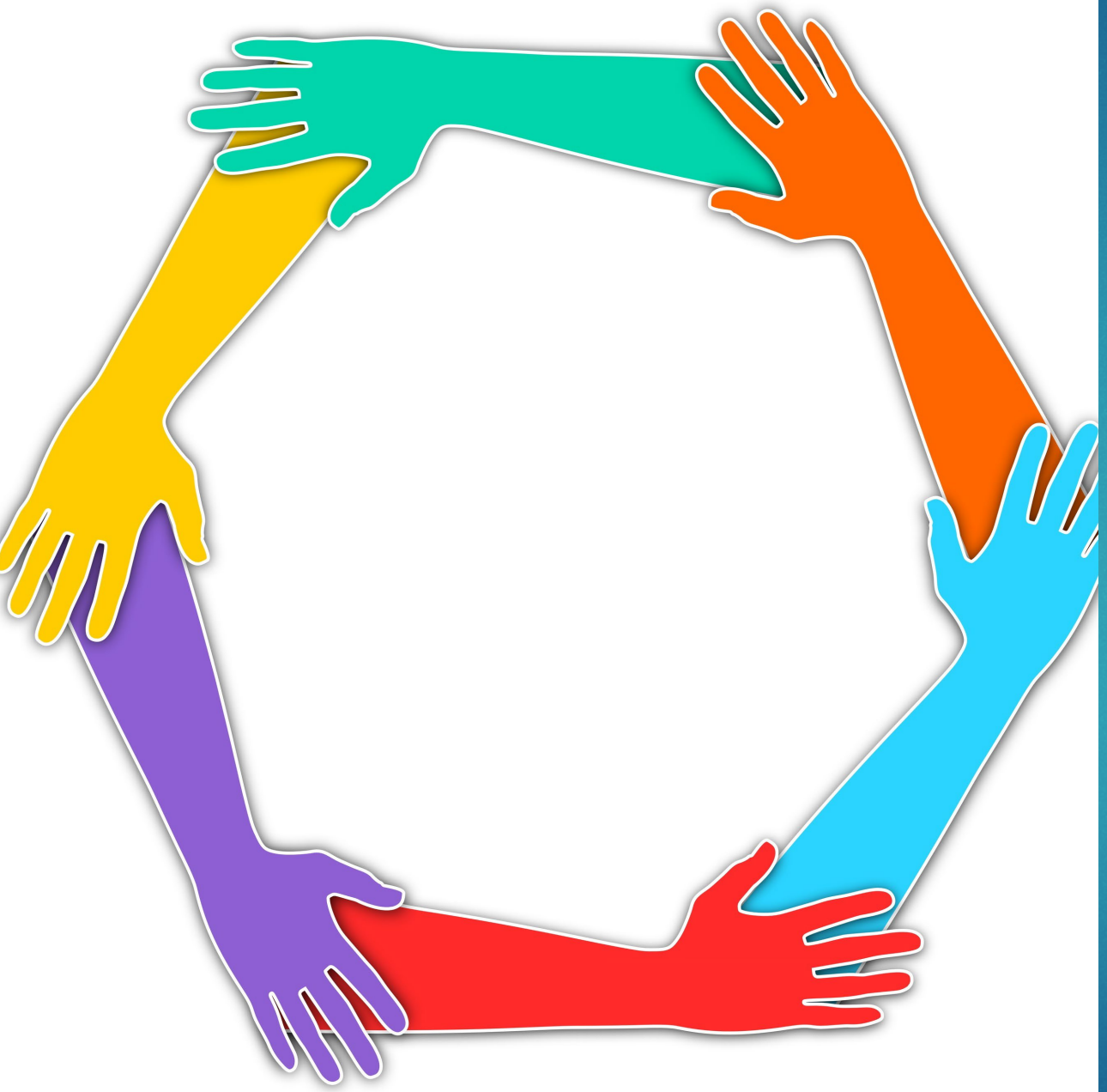


Consensus Scoring

- Evaluators take advantage of each other's experience
- Single defensible score
- Eliminates the issue of the outlier evaluator
- Requires a strong facilitator who is not an evaluator

Ask Evaluators to Identify Strengths and Weaknesses

Strength

- Great experience with Projects of Similar Scope and Complexity.
- Project Executive has excellent progressive design-build experience.
- Designs discussed reflect Owner's vision of the project.

Weaknesses

- Project Manager and Estimator have no progressive design-build experience.
- Narrative is somewhat generic.

Assign Score to a Category

Excellent: Likely to exceed Project Goals. Significant strengths and any weaknesses are outweighed by strengths **(80-100 % of points)**

Good: Likely to meet contract requirements in an advantageous way. Significant strengths and no significant weaknesses **(60-79% of points)**

Fair: Likely to meet contract requirements. Some strengths and any limited significant weaknesses **(40-59% of points)**

Deficient: Unlikely to meet contract requirements. Significant weaknesses and few, if any appreciable strengths **(0-39% of points)**

Contract/Post Award

Guaranteed Maximum Price Contract

Problem	Solutions
• Administratively complex • Cost plus fee contract includes a perverse incentive	• Convert all or a portion to lump sum
• Difficult to understand	• Hire an expert to assist
• Unfamiliarity	• Meet to review elements of the contract at the beginning of project

Lump Sum Amounts

Types

- Lump Sum Fee
- Lump Sum General Conditions Amount
- Convert entire cost to lump sum

Characteristics

- Lump Sum Fee competitively bid
- Must be developed on a transparent basis

Phase 1

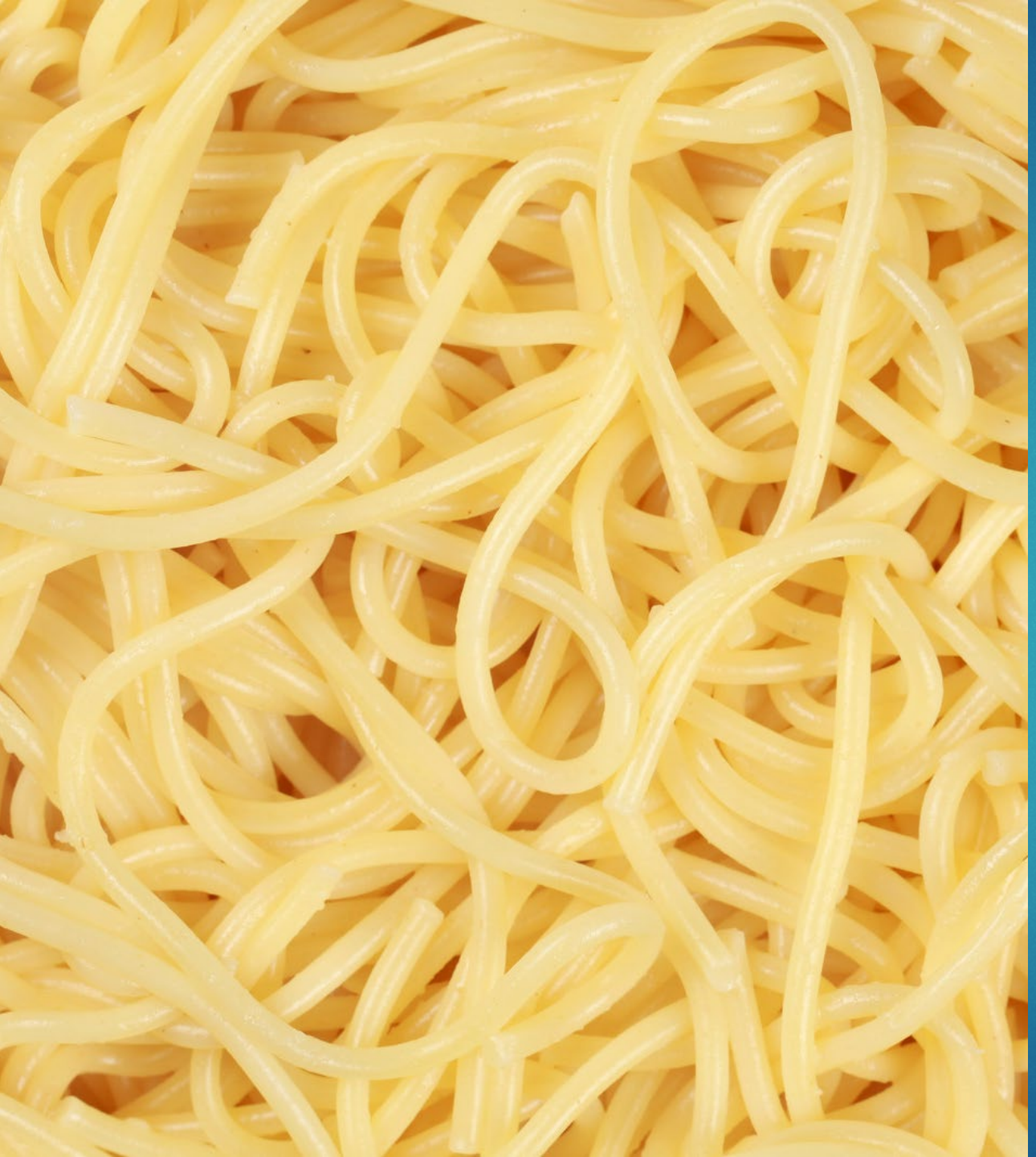
Problems	Solutions
• Deliverables are unclear • Phase 1 obligations are unclear	• Extensive exhibit defining deliverables and obligations
• Parties do not communicate	• Kick off meeting
• “Reliable” owner information	• Validation Requirement

Phase 1 Deliverables

- Initial Deliverables (within 10 days)
  - Schedule
  - BIM Plan
  - Subcontractor procurement plan
  - Initial cost model (form)
- Interim Deliverables (monthly or bi-weekly)
  - Design Submissions
  - Cost Model update/real time estimating
  - Schedule update
- Phase 1 Report

Phase 1 Report/GMP

- GMP
- Geotech Report
- Differences from Owner Provided Information
- Final Basis of Design Documents (include specific requirements)
- BIM Model/Execution Plan
- QA/QC Plan
- Project Schedule
- Contract Closeout Plan



Collaborative Effort

- Must be constant collaborative effort
- All costs are transparent
- Final GMP should not be a surprise

Validation/Verification of Information

- Commercially reasonable review of:
  - Project scope/budget
  - Owner's information
  - Existing conditions
- Occurs at beginning of project
- Time frame determined by project complexity
- After Phase 1, no change orders for differing site conditions that could have reasonably been discovered during Phase 1

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Robynne Thaxton (formerly Parkinson) is a Seattle based lawyer and consultant and a leading expert in construction law and alternative procurement both in Washington State and on a national basis. She is the principal of **Thaxton Parkinson PLLC** and the founder of **Progressive Design-Build Consulting, LLC** She served for seven years on the National DBIA Board of Directors and is the current chair of the DBIA National Education Committee. She was appointed in 2019 by Governor Jay Inslee to the Washington State Capital Projects Review Board. In 2021, Robynne was honored with the DBIA Distinguished Leadership Award. Robynne is AV rated by Martindale-Hubble and named as a Washington Super Lawyer in 2010-2022. She is also in the inaugural class of DBIA "Fellows".

Robynne's practice primarily focuses on developing design-build procurements and contracts for public owners. She has participated in over 30 progressive design-build projects with a value of approximately $5 billion. Her clients include the Port of Seattle, Sound Transit, the Cities of Seattle, Spokane, Tacoma, Wenatchee, and Portland, Bonneville Power Administration, the State of Washington, WSDOT, Western Washington University, University of California San Diego, University of California San Francisco, CalTech, and Los Angeles County. Robynne received her undergraduate degree from the University of Texas at Austin and her law degree from the University of Colorado, Boulder School of Law.