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Progressive Design-Build: Innovation and Efficiency – Operational Today

Moderator: Mike Blount, Senior VP, AECOM

Speakers:

- Dave Triplett, Chief Contracting Officer, FBI
- Reggie Jones, Partner, Fox Rothschild LLP
- Dana Pomeroy, Division Vice President, Whiting Turner Contracting Company



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A/E, Environmental, Asset Management & CM Services

Dave Triplett, DBIA

Federal Bureau of Investigation
Chief Contracting Officer



Get to Know Me:

GREW UP IN:

- Wild and Wonderful WV

CURRENTLY BINGE- WATCHING or READING:

- How Big Things Get Done

PROUDEST ACCOMPLISHMENT:

- Explored all 50 U.S. states

BIGGEST FEAR:

- Stagnation

Reggie Jones

Fox Rothschild LLP

Partner/Chair, Federal Government Contracts Department

Get to Know Me:



GREW UP IN:

- Alexandria, VA

BIGGEST FEAR:

- Heights (***But*** Airborne/Air Assault qualified)

CURRENTLY BINGE- WATCHING or READING:

- The Pitt

PROUDEST ACCOMPLISHMENT:

- Getting my wife to go out with me in 1988



Dana Pomeroy, AIA, FDBIA, LEED AP / Past Chair of DBIA
The Whiting-Turner Contracting Company
DVP / National Director of Design Management

Get to Know Me:



GREW UP IN:

- Sunshine State

**CURRENTLY
BINGE- WATCHING
or READING:**

- Old Man

**PROUDEST
ACCOMPLISHMENT:**

- 44 Years of Marriage

BIGGEST FEAR:

- AI Impact on my kids

Progressive Design-Build Defined

"PDB is a project delivery method in which design-builders are selected based on qualifications and work with the owner in an exclusive contractual arrangement to subsequently agree on guaranteed DB pricing after the team develops an adequate design."

Single Phase Structure based on qualifications and demonstrated capabilities without submission of a detailed construction cost or price proposal at the time of award; **or**

Two-Phase Structure

PHASE 1: Validation + Preconstruction

Validation Period Design & Preconstruction Period

Collaborative scope development, risk identification, and cost estimating



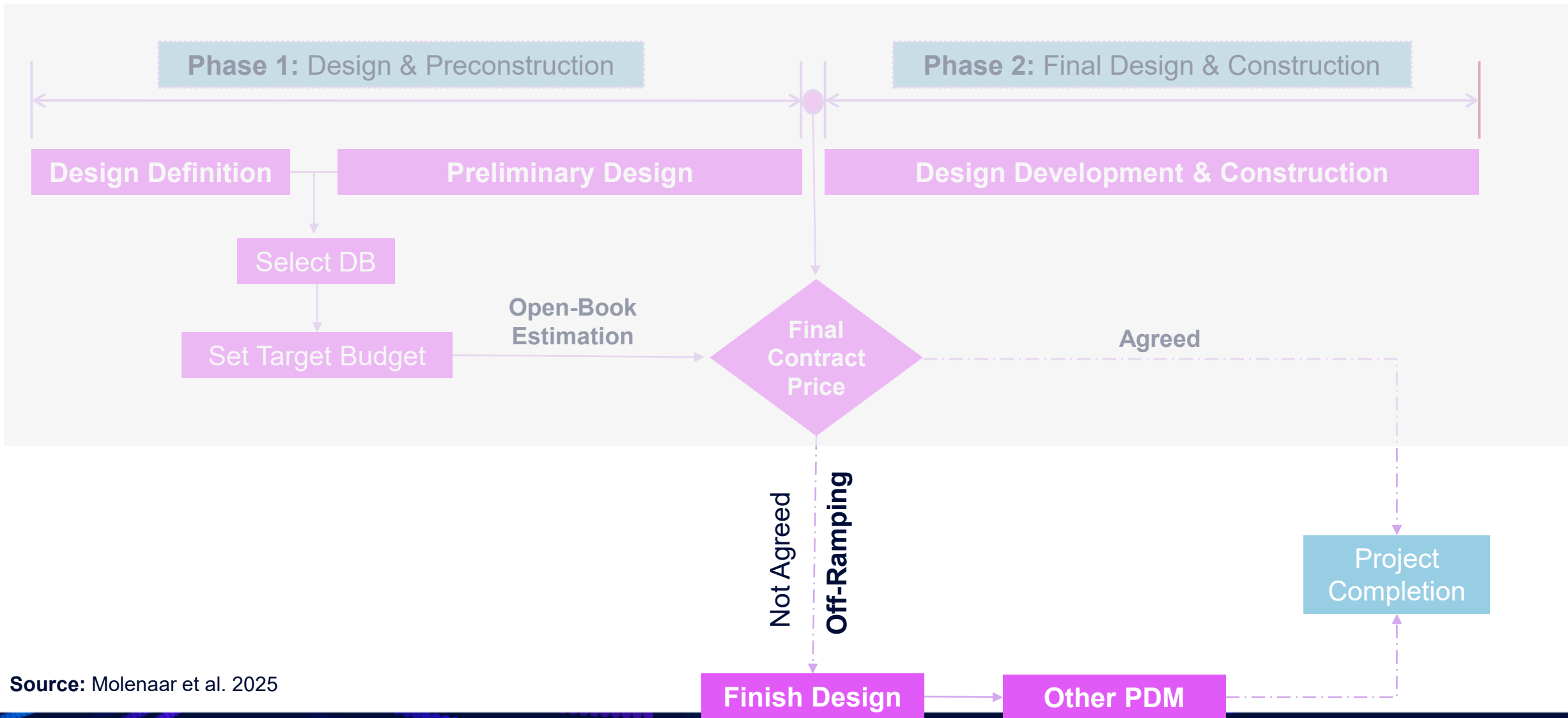
PHASE 2: Final Design & Construction

Begins when Owner & Design-Builder agree on final:

- Project scope
- Contract price (GMP)
- Project schedule

DBIA Best Practice Areas: I. Procuring PDB | II. Contracting for PDB | III. Executing PDB

WHAT IS Progressive Design-Build (PDB)?



Source: Molenaar et al. 2025

Key Characteristics of PDB

1 Qualifications-Focused Selection

Design-builders selected on qualifications, not lowest price

2 Delayed Price Commitment

Price commitment after parties agree on scope, schedule, design & commercial terms

3 Off-Ramp Provision

If parties cannot agree on price, either party can walk away

4 Full Cost & Schedule Transparency

Open-book approach during preconstruction phase

5 Collaborative Validation Period

Team works together to identify and mitigate risks before pricing

"Applicable to any project type, any size, any sector" — DBIA

Acquisition Decisions made Early in the Process Directly Impact Post-Award Execution

"Golden Rule" of Construction: A project's fate is sealed before the first shovel hits the dirt.

The "Influence vs. Cost" Reality

***Maximum Leverage:** 80% of project costs and risks are "locked in" during the Acquisition Planning and Procurement phases.*

***The Cost of Change:** A design change during the Planning Phase costs pennies; the same change during Construction costs thousands and triggers schedule delays (claims/modifications).*

***Acquisition Strategy as Foundation:** The choice between Two-Phase Best Value and Single Phase Progressive Design-Build dictates the level of collaboration, risk allocation, and speed of execution.*

The Federal Legal Framework We Have

Current PDB Authorization

- ✓ MILCON: Authorized via 2025 NDAA Sec. 2809 (10 U.S.C. § 3241(g))
- ✓ Coast Guard: Authorized by USCG Authorization Act (FY 2006)
- ✓ FAA: Authorized by statute
- ✗ Other civilian agencies: NOT expressly authorized (41 U.S.C. § 3309 requires two-phase process with price)

Current Workarounds

FPIS Contract Type (FAR 16.4)

Award before price fully known; fixed-price ceiling negotiated progressively.

- IBWC Example (FAR Deviation)
South Bay IWTP used FAR 52.216-7 deviation; **but** firm price not submitted until 90% design.

Other Transaction Authority (OTA)

10 U.S.C. § 4022; e.g., USSPACECOM HQ via One Nation Innovation Exchange. DoD & 15 Other Civilian Agencies or subagencies

The Brooks Act (1972) & The Competition in Contracting Act (1984)

- The Brooks Act (Public Law 92-582, 40 U.S.C. §§ 1101–1104) mandated **Qualifications-Based Selection (QBS)** process for purchasing architectural and engineering (A&E) services. Price is negotiated later to ensure a fair and reasonable cost.
- CICA mandates full and open competition for federal contracts.
- CICA's main goal is to increase number of competitors, drive down costs through competitive pricing and ensure transparency/accountability in fed procurement.
- **Design-Build and Progressive Design Build represent a deviation from CICA.**

Federal Design Build began with The Clinger-Cohen Act of 1996 (41 U.S.C. § 253m)

- Codified a **two-step procurement process** for design-build projects.
- In the **first step**, the contractor's technical approach and qualifications (including its experience, technical competence, capabilities, and past performance) and other noncost/price factors are considered.
- In the **second step**, the selected proposers' technical and pricing submission for evaluation by the agency are considered. See FAR 36.303.

The Implementing Regulations

- **FAR Part 36, “Construction & Architect Engineer Contracts”** rewritten to add Subpart 36.3 to add “Two-Phase Design Build Selection Procedures.” Effective January 1997.
- **FAR Part 15, “Contracting by Negotiation”** rewritten to incorporate and streamline two-phased design-build selection procedures. Effective January 1998.

FAR-based Qualifications Based Selection (QBS)

- FAR 15.103-3 Highest Technically Rated with a fair and reasonable price (HTR-FRP)
- FAR 15.103-4 Phased Acquisition
- FAR 16.404-2 Fixed-Price Incentive (Successive Targets)
- FAR 36.002(c) CO must use one of the following acquisition procedures when contracting for the design and construction of a public building, facility, or work:
 - Design-Bid-Build
 - Two-Phase Design-Build
 - “Another acquisition procedure authorized by law.”

Section 2809 of the NDAA, Pub. Law 119-60, December 18, 2025

- Amended 10 U.S.C. § 3241 (Design-build selection procedures) to add (g) Authorization of Progressive Design-Build Contracts [for MILCON].
- Requires the contract:
 - To be awarded in a single phase based on qualifications and demonstrated capabilities without submission of a detailed construction cost or price proposal at the time of award.
 - To provide for collaboration between the Secretary and the contractor to develop and refine the project scope, design, and cost estimates.
 - To mandate negotiate a GMP or other fixed price agreement for the construction phase.
 - To include an off-ramp for termination or renegotiation if negotiations fail.
- Note: Civilian agencies use 41 U.S.C. 3309 (Design-build selection procedures).
 - Still requires two phased selection process – (1) Technical Qualifications & Approach; and (2) Detailed design with cost or price information.

Key Advantages of PDB for MILCON Projects

- **Early Collaboration:** Critical for complex "Shipyard Infrastructure Optimization Program" or overseas posture projects where site risks are unknown.
- **Speed to Award:** Because offerors don't have to provide 30% designs just to compete, the procurement phase is significantly shorter.
- **Risk Mitigation:** Price is set *after* risks (soil conditions, utility gaps) are identified, reducing the likelihood of later claims and "change order" battles.

Comparing Best Value D-B & PDB (NDAA)

Feature	Two-Phase Best Value D-B	PDB (NDAA 2809)
Selection Criteria	Technical Proposal + Price	Qualifications Only
Design Maturity at Award	~30% (developed by Offeror)	0% (developed together)
Price Certainty	Fixed Price at Selection	Negotiated GMP during Design
Best For	Defined Projects	Highly Complex/Undefined Projects
Risk	Firm-Fixed Price, D-B'er assumes price risk post award	Agency assumes much higher risk for price escalation. Off Ramp possibility and considerations

The Legal Framework We Need for Civilian Agencies

1

Title 41 Authorization

Amend 41 U.S.C. § 3309 to authorize PDB for civilian agencies — single-phase, qualifications-based award without detailed construction price at award

2

Post-Award Pricing Mechanics

Codify pathway to negotiate GMP or fixed-price after preliminary design, with mandatory off-ramp if parties cannot agree

3

Safeguards & Oversight

Require documented determination of PDB appropriateness with implementation and oversight mechanisms

4

FAR Revisions

Update FAR Part 36 to recognize PDB; conform FAR 36.104 and Subpart 36.3 to support single-phase selection, post-award negotiation, and termination provisions

Civilian Agencies Workaround FAR 16.4 (Incentive Contracts)(FPIS)

- This contract type is the "missing link" that allows the Government to award a contract before the price or scope is fully known, while maintaining a fixed-price ceiling.
- **Initial Target Phase (The "Progressive" Start):**
 - At award, the parties agree to an **Initial Target Cost**, **Initial Target Profit**, and a **Price Ceiling**.
 - Allows work to begin on the design and site investigation immediately without a final "Hard" price.
- **The "Successive" Pivot (The Reset):**
 - At a predetermined point (e.g., 60% Design), the parties review actual cost data and "Successive" targets are set.
 - **Outcome A:** If risks are low, it converts to a **Firm-Fixed-Price (FFP)**.
 - **Outcome B:** If risks remain, it converts to a **Fixed-Price Incentive (Firm Target)**.
- **Final Profit Adjustment:**
 - Profit is not a flat fee; it is adjusted by a **Share Ratio** (e.g., 80/20) based on whether the contractor delivers under or over the final target.

FAR 52.216-17 - Incentive Price Revision-Successive Targets (Jan 2022) (DEVIATION) Design-Build (Progressive) – Construction

- (d) Establishing the Final Cost of Work and Final Construction Price exercised as an Option.
- (d)(3) If the total firm Final Construction Price represents a reasonable price for performing that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price, which shall be evidenced by a contract modification signed by the Contractor and the Contracting Officer.
- (d)(4) **Failure of the parties to agree to a firm fixed price shall not constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm fixed price is inappropriate, the Contracting Officer will not exercise the optional construction bid item(s), and construction services may be subsequently competitively procured by the Government.**
The Contracting Officer will review the Contractor's and any subcontractor's involvement during the provision of pre-construction (design) consultation services for organizational conflicts of interests or unfair competitive advantages in accordance with FAR Subpart 9.5. The Contracting Officer may be required to exclude the Contractor, or subcontractors, from the subsequent competition as a result.

Why FPIS Can Work

Feature	Why it Fits PDB
Early Award	Allows the builder to join the team before the design even exists.
Risk Sharing	Instead of "guessing" a price and adding a 30% contingency, the parties share the risk of the "unknowns."
Cost Transparency	Requires "Open Book" accounting, ensuring the Government only pays for actual value.
Performance Driven	The contractor earns more profit by being efficient, aligning their interests with the taxpayer.

FPIS Example

- **Project Scenario:** Modernizing a 1950s Navy Dry Dock
- **The Problem:** Internal utility tunnels and soil stability are unknown until the floor is ripped up.
- **The Solution:** Award a PDB contract using FPIS to get the builder on-site for "Discovery" before locking in the final price.
- **Stage 1: Initial Targets (At Award)**
 - Negotiated when the design is 0% complete.
 - Initial Target Cost: \$80M
 - Initial Target Profit: \$8M (10%)
 - Price Ceiling: \$100M (The absolute "Do Not Exceed" limit)
 - Initial Share Ratio: 90/10 (The Govt. carries 90% of the early risk while scope is being defined).
- **Stage 2: The "Reset" (At 60% Design)**
 - After 6 months of site investigation and design, the parties have "cost certainty." They now negotiate the Firm Targets:
 - Firm Target Cost: Adjusted to \$85M (based on discovered site conditions).
 - Firm Target Profit: \$8.5M.
 - Final Share Ratio: 70/30 (The contractor now takes on more responsibility for execution).

The Math

Outcome	Actual Cost	Final Profit Calculation	Total Price to Gov.
Efficiency	\$80M (under)	$\$8.5\text{M} + (30\% \text{ of } \$5\text{M} \text{ savings}) = \mathbf{\$10\text{M}}$	\$90M
On-Target	\$85M	\$8.5M (Target Profit)	\$93.5M
Overrun	\$95M (over)	$\$8.5\text{M} - (30\% \text{ of } \$10\text{M} \text{ overrun}) = \5.5M	\$100.5M → \$100M (Ceiling)

- Notice the Overrun scenario. The calculated price was \$100.5M, but because of the \$100M Ceiling, the contractor loses \$500k of their own money.
- This protects the Government from the "blank check" risk of Cost-Plus contracts.
- It rewards the contractor for finding "Value Engineering" solutions during the progressive design phase.

PDB under an OTA: USSPACECOM HQ C2F – PDB

- The Army Contracting Command - Rock Island, on behalf of the U.S. Space Command (USSPACECOM), hosted an informational Industry Day for the management, design and construction of the new USSPACECOM HQ C2F at Redstone Arsenal, Alabama.
- The Government intends to utilize a progressive design-build project delivery method following Design-Build Institute of America (DBIA) best practices. The acquisition for both the Owner's Representative and the design-build performance contractor will be executed using Other Transaction Authority (OTA) through the One Nation Innovation (ONI) Exchange GoColosseum Marketplace.

OTA: Types of Other Transactions

- **Research Other Transactions (OT)**

- Authorized under 10 U.S.C. § 4021 for basic, applied, and advanced research projects.
- Intended to spur dual-use R&D.

- **Prototype OT**

- Authorized under 10 U.S.C. § 4022 to acquire prototype capabilities and allow for those prototypes to transition into Production OTs.
- Successful Prototype OTs offer a streamlined method for transitioning into follow-on production without further competition.

- **Production OT**

- Authorized under 10 U.S.C. § 4022(f) as follow-on OTs to a Prototype OT agreement that was competitively awarded and successfully completed.
- Allows for sole source agreement with successful Prototype OT vendor.

10 U.S.C. 4022(d) – Appropriate Use of Authority

- The Secretary of Defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless **one** of the following conditions is met:
- **There is at least one nontraditional defense contractor or nonprofit research institution participating to a significant extent in the prototype project.**
- (B) All significant participants in the transaction other than the Federal Government are small businesses (including small businesses participating in a program described under section 9 of the Small Business Act (15 U.S.C. 638)) or nontraditional defense contractors.
- (C) At least one third of the total cost of the prototype project is to be paid out of funds provided by sources other than the Federal Government.
- (D) The senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.

What is a Nontraditional Defense Contractor (NTDC)?

- An entity that is not currently performing and has not performed, for at least one year preceding the issuance of a prototype project solicitation, any contract or subcontract for the DoD that is subject to full coverage under the FAR-based Cost Accounting Standards (“CAS”).
- Full CAS coverage is required typically for contracts > \$50M.
- Firm-fixed price contracts and contracts with small businesses are exempt from all CAS requirements regardless of dollar value.



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Location: Exhibit Hall

Deadline: Close of the Society Ball



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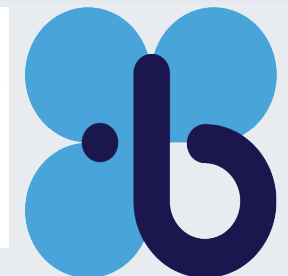
Run the 5K!

Add this to your registration at the Help Desk. Pick up a card at the 5K table near Society Ball Seating and return it with your time.

Prizes: Awarded to top entries!

Location: Near Society Ball Seating counter

Deadline: Thursday, May 21, 12:00 p.m.



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