

## Contractor Beware: Design-Build Firms Must Review Washington's Licensing Requirements

Posted by John Krawczyk On March 2019



Design-build contracting is a method of project delivery where the contractor provides both architectural/design and building services to the owner. Yet rarely do firms perform both design and building work in equal measure. Rather, in many instances, firms perform the vast majority of their work on the building side while advertising and providing design services for smaller projects using in-house architects.

Regardless of the volume of design-build contracting a firm performs, any firms practicing this method of project delivery must be aware of Washington State's registration requirement under RCW 18.08.420(1), and specifically the condition that a "designated architect" must serve as a partner, manager or director of the firm's governing structure.

Based upon the technical wording of RCW 18.08.420(1), any firm that "practices, advertises or offers to practice architectural services" in Washington state must register with the Board of Architects as an architecture firm. [1] Thus, arguably any business that engages in design work in Washington State, even in limited occasions, can be considered an architecture firm for the purposes of the statute.

The concern is that some firms performing a small amount of design work through an architect-employee may be unaware of this potential statutory pitfall requiring a wholly separate registration for this ancillary practice within their business. As a result, these firms may not have taken the steps to be compliant with the regulation and may violating the statute each time they advertise for or accept design work business in Washington. Surprisingly, failure to register as an architecture firm can come with a hefty penalty, as violations are classified as misdemeanors and can result in statutory penalties of up to \$1,000 for each offense. [2]

Even if all design-build firms are currently compliant, meeting the statute’s requirements to be licensed as an architecture firm in Washington can be onerous to businesses whose focus is on the building side. Acquiring a license to practice in Washington as an architecture firm entails identifying a designated architect, who will have final decision-making authority on all design work. The designated architect also must be properly licensed to practice architecture in the state, and most importantly, must also hold a governing position within the firm—either a partner in partnerships, manager in limited liability companies, or a director in corporations.[3] This can be an unexpected and costly pre-requisite to offering design-build services, especially where that end of the business does not constitute a large portion of the company’s profits. Before you plan on offering design services in Washington, ensure your firm is, or can easily become, compliant with the statute’s requirement for an architect to be a corporate-governor.

*COMMENT: Ultimately, new and established contractors offering design-build services in Washington State must plan ahead and consider whether they need to structure or restructure their business in order to avoid costly technical violations of the local statute. Additionally, if your firm practices design build work in several states, it is essential that you are aware of each jurisdiction’s unique requirements for licensing so that you may appropriately assess the risk of taking on design work in multiple jurisdictions.*

[1] In defining who is an architecture firm, the phrase “practice of architecture” is described as a “professional service consisting in whole or in part of consultation concerning floor planning, the aesthetic or structural design of private or public buildings, their equipment or utilities and the responsible supervision of construction or the repair or alteration of buildings, by persons or firms offering such service for a fee.” *Creelman v. State Bd. of Registration for Architects*, 73 Wn.2d 298, 301, 438 P.2d 215 (1968); RCW 18.08.310-.320.

[2] RCW 18.08.460.

[3] RCW 18.08.420(1).