

FHWA - MODOT DESIGN BUILD PROGRAM AGREEMENT

1 INTRODUCTION

Due to the complexities and fast-track reviews and approvals experienced on Design Build projects, this document outlines federal involvement on Design Build projects. Federal involvement on Design Build projects will be managed out of the Missouri Division Office located in Jefferson City, Missouri. The intent of this document is to ensure that MoDOT and FHWA have an understanding of the level of involvement, approval actions, roles, responsibilities and processes that FHWA will provide on Design Build projects. For the sake of this agreement, days shall mean business days.

1.1 Document organization

This document is organized in a linear fashion corresponding with the timeline of the Design Build procurement process.

1.1.1 Matrix of Responsibilities

A matrix of review responsibilities and timeframes is attached in Appendix A.

1.1.2 Design Build Process Flow Chart

A flowchart of the Design Build process is attached in Appendix B.

1.1.3 Special Circumstances

It is understood that this agreement is a dynamic document, and may need to be modified based upon the specific needs of the project. Examples of special circumstances would be to accommodate agreements with bordering states, major bridges, major projects, special environmental processes or other project specific review requirements. Any changes, clarifications, additions or deletions to the plan will be collaboratively developed and agreed to by FHWA and MoDOT.

1.2 Roles and Responsibilities

1.2.1 Roles and Responsibilities of MoDOT

MoDOT's Project Director will have primary responsibility for ensuring a Design Build project is executed in accordance with state and federal laws and regulations while implementing the project goals established for their respective project. The Missouri Highways and Transportation Commission will delegate certain authorities to the Chief Engineer, who will then delegate to the Project Director, as described in Appendix C. The Project Director has the responsibility of conferring with MoDOT subject matter experts, such as design, bridge, environmental, financial or Right of Way (ROW) staff, to assist in the decision making process, when appropriate. The Project Director will serve as the main point of contact with FHWA for Design Build projects. Project specific submittals, approval requests, and coordination may be delegated to other project team members, with the approval and under the direction and supervision of the Project Director. For the sake of this agreement, henceforth, "MoDOT" shall mean the Project Director assigned to the project, unless otherwise noted.

MoDOT will proactively coordinate and collaborate with FHWA to determine an agreed upon level of FHWA involvement in all facets of the project. MoDOT will coordinate project actions, approval requests, activities, submittals, core team status meetings, project coordination meetings with MoDOT and/or Contractor teams, and written or verbal coordination with FHWA. Written responses to FHWA submitted comments or inquiries will be provided in a timely manner, per the timelines outlined in this agreement.

1.2.2 Roles and Responsibilities of FHWA

FHWA designated Transportation Engineer (TE) will have primary responsibility for ensuring a Design Build project is executed in accordance with federal laws while implementing FHWA's Performance Plan and required stewardship and project involvement. The TE will serve as MoDOT's main point of contact for Design Build projects. Project specific submittal reviews, approvals, meeting attendance and coordination may be delegated to other FHWA staff members, with the approval and under the direction of the designated FHWA TE.

FHWA will proactively coordinate and collaborate with MoDOT to determine an agreed upon level of FHWA involvement in all facets of the project. FHWA will provide timely reviews of project submittals and written review comments, per the timelines outlined in this agreement. If the FHWA TE becomes unavailable during a review period, the FHWA Project Implementation Team Leader or FHWA Assistant Division Administrator may be contacted regarding all project-related issues. For the sake of this

agreement, FHWA, henceforth, shall mean the Transportation Engineer assigned to the project, unless otherwise noted.

1.2.3 Flexibility

Flexibility is critical to MoDOT's Design Build process. It maximizes innovation for a project, allows private sector partners to identify the best solutions, provides the most improvements for the budget, brings new ideas to MoDOT and helps to develop a partnering attitude carried through the contract. It is understood that MoDOT and FHWA will strive to maintain flexibility in the Design Build procurement process within State and Federal regulatory requirements.

1.2.4 Confidentiality

Confidentiality is also integral to MoDOT's Design Build process. It builds trust with industry, creates a safe environment for industry to be innovative, drives competition to get the best proposal and validates MoDOT's selection process. It is understood that MoDOT and FHWA staff will hold sensitive project information in the strictest confidence. It is understood that both MoDOT and FHWA may, at times, require project involvement from respective internal and external specialist (ie, FHWA Headquarters or Resource Center experts) for specific aspects of the project where contractual, regulatory, or engineering expertise is needed. When this occurs, both MoDOT and FHWA will insure that project confidentiality is maintained.

FHWA staff cannot sign project-specific confidentiality agreements. However, FHWA employees are bound by 18 USC 1905 which carries a criminal penalty if any employee discloses confidential information. See letter in Appendix D.

2 PROCUREMENT PHASE

The procurement phase will consist of project actions taking place prior to, and including, contract award. This phase will include actions associated with the Request for Qualification (RFQ) process, development and release of the Request for Proposal (RFP) document, project authorization, and contract award.

FHWA understands that MoDOT will hold numerous meetings and discussions throughout the procurement phase, as the RFP is developed,

issues arise, evaluation teams are formed, Additional Applicable Standards (AAS) submittals are discussed and evaluated, etc. FHWA involvement in these meetings and discussions will need to be closely coordinated between MoDOT and FHWA. It is anticipated that FHWA participation will be limited to regularly scheduled status or core team meetings, or when a specific issue arises that necessitates federal participation. It is understood that FHWA will be available on an as-needed basis. MoDOT's Project Director shall establish communication protocols with FHWA prior to development of the procurement documents.

FHWA involvement for each step of the procurement phase is described below.

2.1 Request for Qualifications (RFQ) Process

FHWA will review the RFQ document that is developed for the project, for conformance with federal requirements. Feedback resulting from this review will be provided to MoDOT within 7 days of receipt of the RFQ. FHWA may, at its discretion, monitor the evaluation, rating, and short listing processes conducted by MoDOT of the Statement of Qualification (SOQ) submittals which are received in response to the RFQ; this monitoring will be performed to assure conformance with the provisions provided in the RFQ document. FHWA will coordinate with MoDOT in performing these monitoring actions.

No FHWA approval of the short list of selected teams is required. It is understood that MoDOT will follow current State law regarding the short listing of teams for the subject project, to include the required concurrence from an SOQ Executive Selection Committee; FHWA will be invited to observe the SOQ Executive Selection Committee meeting and discussions. FHWA requires MoDOT submit a summary report documenting the RFQ process, results of the RFQ/SOQ evaluation process, and the approved short list of contractor teams selected for the subject project. Typically, the information provided to the Executive Selection Committee, including the Final Recommendation Report will suffice for the summary report.

2.2 Request for Proposals (RFP) Process

FHWA must review and approve the RFP, per the 23 CFR requirement. It is understood that "draft" documents may be distributed for review throughout the development stage. MoDOT may, at their discretion, choose to submit individual sections, Books, chapters, etc. of the Draft RFP document for FHWA review. FHWA will require that all submittals be sent via e-mail, with

all review documents attached thereto in a format accessible by FHWA. FHWA review will be performed by multiple disciplines to assure compliance with federal requirements. Comments resulting from the FHWA review of the draft RFP will be submitted to MoDOT at the earliest practicable time. To facilitate the review process, the following review timeframes will be met for all "Draft" submittals:

- Book 1 – 3 days after receipt for individual chapter or section submittals, 5 days after receipt if submitted in its entirety;
- Individual Chapters contained in Book 2 - 3 days after receipt, 5 days after receipt if submitted in its entirety;
- Book 3, 4 and 5 - 3 days after receipt for individual chapter or section submittals, 5 days after receipt if submitted in its entirety;
- Instructions To Proposers (ITP) – 3 days after receipt for individual chapter or section submittals, 5 days after receipt if submitted in its entirety.

If significant issues are noted, additional time may be required. Significant issues may require coordination with the FHWA Headquarters Office to resolve, and may prolong the review period. Written responses to all FHWA provided comments will be required within 3 days of receipt of comments. No approval action is required for the draft RFP, but satisfactory resolution to FHWA submitted comments is understood and required.

Review of the RFP, in its entirety, will follow the same process as proposed for the review of the individual draft RFP sections, except that the review period will be 10 days after receipt of the entire document. Written responses to all FHWA provided comments will be required within 3 days of receipt of the comments. FHWA approval of the final RFP will be provided after all review comments have been satisfactorily resolved. FHWA approval will be in the form of a letter.

2.3 Project Authorization

Authorization to advertise and release the RFP document must be provided by FHWA. The project authorization given by FHWA will not be issued until the following are accomplished:

2.3.1 FHWA Approval of the RFP

Written approval of the final RFP must be given by FHWA prior to its release to the shortlisted firms, and before project authorization can be given. A sample RFP approval can be found in Appendix E.

2.3.2 Project Certification

FHWA will require a formal, written certification that the conditions of 23 CFR 635.309(p) have been met; FHWA will provide comments, if any, within 5 days of receipt of the certification submittal. A sample RFP certification letter can be found in Appendix F.

Per 23 CFR 635.309(p), in the case of a design-build project, the following certification requirements apply:

(1) The FHWA's project authorization for final design and physical construction will not be issued until the following conditions have been met:

(i) All projects must conform with the statewide and metropolitan transportation planning requirements (23 CFR part 450).

(ii) All projects in air quality nonattainment and maintenance areas must meet all transportation conformity requirements (40 CFR parts 51 and 93).

(iii) The NEPA review process has been concluded. (See 23 CFR 636.109).

(iv) The Request for Proposals document has been approved.

(v) A statement is received from the STD that either, all right-of-way, utility, and railroad work has been completed or that all necessary arrangements will be made for the completion of right of way, utility, and railroad work.

(vi) If the STD elects to include right-of-way, utility, and/or railroad services as part of the design-builder's scope of work, then the Request for Proposals document must include:

(A) A statement concerning scope and current status of the required services, and

(B) A statement which requires compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and 23 CFR part 710.

(2) During a conformity lapse, a design-build project (including right-of-way acquisition activities) may continue if, prior to the conformity lapse, the NEPA process was completed and the project has not changed significantly in design scope, the FHWA authorized the design-build project and the project met transportation conformity requirements (40 CFR parts 51 and 93).

(3) Changes to the design-build project concept and scope may require a modification of the transportation plan and transportation improvement program. The project sponsor must comply with the metropolitan and statewide transportation planning requirements in 23 CFR part 450 and the transportation conformity requirements (40 CFR parts 51 and 93) in air quality nonattainment and maintenance areas, and provide appropriate approval notification to the design-builder for such changes.

To clarify the intent of the certification with regards to the NEPA process, the language from 23 CFR 636.109 is below:

The purpose of 23 CFR 636.109 is to ensure that there is an objective NEPA process, that public officials and citizens have the necessary environmental impact information for federally funded actions before actions are taken, and that design-build proposers do not assume an unnecessary amount of risk in the event the NEPA process results in a significant change in the proposal, and that the amount payable by the contracting agency to the design-builder does not include significant contingency as the result of risk placed on the design-builder associated with significant changes in the project definition arising out of the NEPA process. Therefore, with respect to the design-build procurement process:

(a) The contracting agency may:

- (1) Issue an RFQ prior to the conclusion of the NEPA process as long as the RFQ informs proposers of the general status of NEPA review;
- (2) Issue an RFP after the conclusion of the NEPA process;
- (3) Issue an RFP prior to the conclusion of the NEPA process as long as the RFP informs proposers of the general status of the NEPA process and that no commitment will be made as to any alternative under evaluation in the NEPA process, including the no-build alternative;

- (4) Proceed with the award of a design-build contract prior to the conclusion of the NEPA process;
 - (5) Issue notice to proceed with preliminary design pursuant to a design-build contract that has been awarded prior to the completion of the NEPA process; and
 - (6) Allow a design-builder to proceed with final design and construction for any projects, or portions thereof, for which the NEPA process has been completed.
- (b) If the contracting agency proceeds to award a design-build contract prior to the conclusion of the NEPA process, then:
- (1) The contracting agency may permit the design-builder to proceed with preliminary design;
 - (2) The contracting agency may permit any design and engineering activities to be undertaken for the purposes of defining the project alternatives and completing the NEPA alternatives analysis and review process; complying with other related environmental laws and regulations; supporting agency coordination, public involvement, permit applications, or development of mitigation plans; or developing the design of the preferred alternative to a higher level of detail when the lead agencies agree that it is warranted in accordance with 23 U.S.C. 139(f)(4)(D);
 - (3) The design-build contract must include appropriate provisions preventing the design-builder from proceeding with final design activities and physical construction prior to the completion of the NEPA process (contract hold points or another method of issuing multi-step approvals must be used);
 - (4) The design-build contract must include appropriate provisions ensuring that no commitments are made to any alternative being evaluated in the NEPA process and that the comparative merits of all alternatives presented in the NEPA document, including the no-build alternative, will be evaluated and fairly considered;
 - (5) The design-build contract must include appropriate provisions ensuring that all environmental and mitigation measures identified in the NEPA document will be implemented;

- (6) The design-builder must not prepare the NEPA document or have any decision-making responsibility with respect to the NEPA process;
 - (7) Any consultants who prepare the NEPA document must be selected by and subject to the exclusive direction and control of the contracting agency;
 - (8) The design-builder may be requested to provide information about the project and possible mitigation actions, and its work product may be considered in the NEPA analysis and included in the record; and
 - (9) The design-build contract must include termination provisions in the event that the no-build alternative is selected.
- (c) The contracting agency must receive prior FHWA concurrence before issuing the RFP, awarding a design-build contract and proceeding with preliminary design work under the design-build contract. Should the contracting agency proceed with any of the activities specified in this section before the completion of the NEPA process (with the exception of preliminary design, as provided in paragraph (d) of this section), the FHWA's concurrence merely constitutes the FHWA approval that any such activities complies with Federal requirements and does not constitute project authorization or obligate Federal funds.
- (d) The FHWA's authorization and obligation of preliminary engineering and other preconstruction funds prior to the completion of the NEPA process is limited to preliminary design and such additional activities as may be necessary to complete the NEPA process. After the completion of the NEPA process, the FHWA may issue an authorization to proceed with final design and construction and obligate Federal funds for such purposes.

2.3.3 Approval of Project Financial Plan, if Required

The project Financial Plan (FP), if required, has been developed in conformance with FHWA guidance. Guidelines for when an FP is required are below:

- Projects with program costs under \$100 million do not require an FP.
- Projects with program costs over \$100 million but less than \$500 million require an FP. No FHWA approval of the FP is required, but

FHWA review of the FP is required. Approval of the project FP will be provided by the MoDOT Chief Financial Officer, or the CFO's representative.

- Projects with program costs over \$500 million require FHWA review and approval of the FP.

Comments resulting from the FHWA review of the FP will be submitted within 10 days of receipt of the submittal; written responses to all submitted comments will be required within 3 days of receipt of the comments.

The FP will be reviewed and updated, as necessary (required for projects over \$500 million), on a yearly basis; a copy of the original, along with all yearly updates, shall be kept in the MoDOT project files, and be available for review upon request.

2.3.4 FHWA Approval to Release the Request for Proposals (RFP)

Following approval of the RFP, submittal of the written certification and review or approval of the project FP, the project must be approved by FHWA in the Fiscal Management Information System (FMIS); FHWA's financial database. The FMIS approval/authorization will constitute FHWA approval to release the RFP.

2.4 Technical Discussion Phase

FHWA will monitor the project throughout the Technical Discussion phase. FHWA will maintain close coordination with MoDOT throughout this process. It is anticipated that numerous meetings may be necessary between MoDOT and the Design Build teams to discuss the RFP, gain clarification of project requirements, discuss and propose needed modification to the RFP, and to discuss the Design Build firms engineering ideas and progress in developing their proposal submittals. FHWA attendance will only be required when the meeting agenda includes topics or items that may directly affect conformance with contract and/or federal requirements; it is not anticipated that FHWA will be required to attend all meetings.

2.4.1 Design Exceptions During Technical Discussions

FHWA signature approval of all exceptions to contract design requirements is required. FHWA review of all design exceptions will be performed concurrent with the MoDOT review, to expedite the review and approval process. All design exceptions must be adequately documented. The design exception

process should be consistent with the process in MoDOT's Engineering Policy Guide, or with the RFP contract requirements. Reduction of construction costs is not, by itself, considered adequate justification for a design exception. Feedback, rejection, or approval of design exception requests will be given within 5 days of receipt of the request. MoDOT must ensure that approval signature lines are provided on the design exception form for the proposing team, MoDOT and FHWA. A sample design exception form can be found in Appendix G. FHWA concurrence on all design exceptions may be requested by MoDOT, however, FHWA approval is required for all design exceptions involving the 13 controlling criteria, listed below.

- Design speed
- Lane width
- Shoulder width
- Bridge width
- Horizontal alignment
- Superelevation
- Vertical alignment
- Grade
- Stopping sight distance
- Cross slope
- Vertical clearance
- Lateral offset to obstruction
- Structural capacity

2.4.2 Additional Applicable Standards (AAS) During Technical Discussions

AAS requests and submittals will require FHWA concurrence of the MoDOT recommended approvals. MoDOT will provide FHWA with back-up information regarding AAS approval requests. FHWA concurrence may be requested in writing, or by email. A sample AAS form can be found in Appendix H. Feedback, rejection or concurrence of the AAS will be given within 3 days of receipt of the request. In the case of complicated or large AAS proposals, additional time may be needed. No AAS may be included in the contract documents without FHWA concurrence.

2.4.3 Contract Addendums

FHWA will review and approve addendums to the RFP document. It is understood that proposed addendums, if any, will be distributed for review

throughout the Technical Discussion phase. FHWA will require that all submittals be sent via e-mail, with the proposed addendum attached thereto in a format accessible by FHWA. Written comments resulting from the FHWA review of the proposed addendum will be submitted to MoDOT within 2 days after receipt.

Written responses to all FHWA provided comments will be required within 3 days of receipt of comments. FHWA approval of the proposed addendum will be provided via email after all review comments have been resolved to FHWA satisfaction.

2.5 Contract Award

After proposals have been submitted, FHWA will monitor the review and evaluation processes undertaken by MoDOT, to assure conformance with the RFP requirements. This monitoring may consist of attending the review and evaluation sessions and meetings, and the review of the proposal documents and evaluation results. It is understood that FHWA will not be a participant on the proposal review or evaluation panels or teams; the FHWA role will be to provide assistance, monitor and observe the process for conformance with the RFP and federal requirements.

It is understood that MoDOT will follow the evaluation and scoring provisions contained in the project RFP, along with current State law and MoDOT procedures regarding the selection of the apparent best-value proposer, to include the required concurrence from an Executive Recommendation Committee; FHWA will observe and participate in the Executive Recommendation Committee meeting and discussion. FHWA requires MoDOT submit a summary report documenting the RFP process, results of the proposal review and evaluation process, the apparent best-value proposer, and a MoDOT certification that the provisions included in the RFP were followed, without deviation. Typically, the presentation to the Executive Recommendation Committee will suffice for the summary report.

2.5.1 FHWA Concurrence of Contract Award

Upon approval from the Commission, MoDOT will request in writing that FHWA concur in the final award of the contract to the apparent best-value proposer. If the contract award request is consistent with the recommendation offered from the Executive Recommendation Committee, written FHWA concurrence will be provided within 1 day of receipt of the request. If the award request is not consistent with the recommendation

offered from the Executive Recommendation Committee, additional information and justification may be required. A sample RFP award concurrence can be found in Appendix I.

3 NEPA

Proposals submitted as part of the Design Build process may include modifications or changes to the project engineering, location, traffic handling, or other project impacts from those that were evaluated in a NEPA document. These changes may require a reevaluation of the NEPA document or in the case of proposed major changes may require a Supplemental NEPA document. A reevaluation document is written to determine whether the concepts contained in the proposal documents are consistent with, and covered by, or document non-substantial changes from the approved NEPA document. A Supplemental NEPA document is written when the potential for substantial environmental impacts are expected from the proposed changes.

FHWA will maintain close coordination throughout the proposal stage of the Design Build process to assist MoDOT in providing feedback and guidance regarding the NEPA process, and how it relates to the concepts being advanced by the participating teams. Requests for guidance concerning the NEPA process will be a priority for FHWA, and responses provided as soon as practical.

3.1 NEPA Approval

3.1.1 NEPA Approval Prior to Contract Award

MoDOT preferred procedure is to obtain NEPA approval for the best-value proposal prior to contract award. MoDOT prefers concepts that work within the approved NEPA document, as concepts outside of the approved NEPA document can impact the project schedule and confidentiality of the process. By eliminating the risk of environmental approvals, the Design Build teams will be able to reduce contingency and increase the value of their proposals; and the risk to MoDOT of publicly announcing a project that cannot be approved environmentally is eliminated. Obtaining FHWA approval of the NEPA document prior to contract award is highly encouraged by MoDOT.

Because confidentiality remains critical during proposal submittal and evaluation, an expedited NEPA approval process aids in maintaining confidentiality of the proposals and apparent best-value proposal. To facilitate an expedited approval schedule, the MoDOT project team will

provide detailed information on proposal elements that modify or change elements in the approved NEPA document to MoDOT environmental staff and FHWA for review during the Technical Discussion phase. A sample environmental commitment spreadsheet is attached in Appendix J. This will allow for a more organized review by MoDOT and FHWA of team proposal elements regarding environmental commitments. Requests for guidance concerning proposed modifications will be a priority for FHWA, and responses provided as soon as practical.

MoDOT or its contractor will develop the NEPA re-evaluation document(s), if required, concurrent with the proposal evaluation process. Feedback, rejection, or approval of the NEPA re-evaluation document will be given as soon as practical, but no later than within 5 days of receipt of the re-evaluation document. If significant issues are noted, additional time may be required. It is understood that if outside resource agencies need to be consulted, the NEPA review and approval process may be prolonged.

Written responses to all FHWA provided comments will be required within 3 days of receipt of comments. FHWA approval of the NEPA re-evaluation document will be provided after all review comments have been resolved to FHWA satisfaction and revised Conceptual Access Justification Report (AJR) approval.

3.1.2 Special Circumstances for NEPA Approval After Award

It is understood that the preferred method for NEPA approval prior to award may need to be modified based upon the specific needs of a project. Any plan including NEPA approval after contract award will be collaboratively developed and agreed to by FHWA and MoDOT.

4 ACCESS JUSTIFICATION REPORTS (AJR)

New or revised access to an interstate highway requires approval from FHWA. To help MoDOT manage risk and provide flexibility, a two-step AJR approval process may be used on Design Build projects. A detailed description of the two-step AJR approval process is attached in Appendix K. The purpose of a Draft AJR (Step 1) is to evaluate operational and engineering acceptability of proposed conceptual solution(s) and to identify potential fatal flaws. The Draft AJR will take a high level look at the operation and safety analysis for the types of access changes that are being considered without the detailed design information that will be necessary for the Final Approval. More than one alternative, possibly a range of

alternatives, can be included in the Step 1 AJR document. If it is anticipated that an AJR may be required for a project, MoDOT will complete the Step 1 approval prior to the release of the RFP.

4.1 Draft (Step 1) AJR

Proposals that are submitted as part of the Design Build process may include modifications or changes to the project engineering, location, traffic handling, or other interstate impacts which may require that the Draft AJR document be revised or which may require an unanticipated AJR. To facilitate an expedited approval of revised Draft AJR or new Draft AJR documents, the bidding teams will be required to provide detailed information in writing if their proposal will modify elements included in the Draft AJR during the Technical Discussion phase. This will allow for advanced review of the information by MoDOT and FHWA. Requests for guidance concerning proposed modifications will be a priority for FHWA, and responses provided as soon as practical.

Proposing Design Build Teams will provide a revised Draft AJR, if required, with their proposal. FHWA review of submitted revised Draft AJRs will be performed concurrent with the MoDOT review and proposal evaluations, or during Technical Discussions, to expedite the review and approval process. Feedback, rejection, or approval of the Draft AJR(s) will be given within 5 days of the receipt of the request. If significant issues are noted, or if Draft AJRs are received from more than one contractor team concurrently, additional review time may be required.

4.2 Final (Step 2) AJR

Preparation of the Final AJR (Step 2) will be completed by the best-value proposer. The Final AJR document will be prepared when the project design has progressed enough to provide the detailed engineering analysis of the preferred alternative included in the NEPA document. Feedback, rejection, or approval of the Final AJR will be given within 10 days of the receipt of the request. In the case of a complex AJR, such as a system-to-system interchange or interstate-to-interstate interchange, the AJR must go through FHWA Headquarters for review. Feedback, rejection or approval of Final AJRs requiring a FHWA headquarters review will be given within 40 days of the receipt of the request.

5 DESIGN AND CONSTRUCTION PHASE

The design and construction phase of the project will include all actions and activities from contract award through project completion. This phase will include design reviews and meetings, design plan reviews, quality assurance plan review/approval, construction inspections, change orders, design exceptions, status/scheduling meetings, etc.

On-site attendance by FHWA at the project office is expected during the contract execution phase; the frequency of the on-site visits will be coordinated between MoDOT and FHWA based upon need, current status of the design, and any other project aspect which allows FHWA to best meet project needs and provide value-added input.

FHWA involvement in the design and construction phase of the project will consist of the following actions:

5.1 Design and Plan Reviews

FHWA will be actively involved in the design phase of the project. Involvement in the design phase will consist of a combination of attendance at design meetings, spot checks and reviews of plans, and regularly scheduled on-site attendance at the project office. It is anticipated that FHWA will be available as-needed by email, telephone and teleconference.

5.2 Design Exceptions

FHWA signature approval of all exceptions to contract design requirements is required. FHWA review of all design exceptions will be performed concurrent with the MoDOT review, to expedite the review and approval process. The design exception process should be consistent with the process in MoDOT's Engineering Policy Guide, or with the RFP contract requirements. Reduction of construction costs is not, by itself, considered adequate justification for a design exception. Feedback, rejection, or approval of design exception requests will be given within 5 days of receipt of the request. MoDOT must insure that approval signature lines are provided on the design exception form for the proposing team, MoDOT and FHWA. FHWA concurrence of the design exception form to be used is highly encouraged.

5.3 Change Orders

FHWA approval of all construction and contract change orders is required. FHWA review of all change orders will be performed concurrent with the MoDOT review, to expedite the review and approval process. All change

orders must be adequately documented, and include an independent MoDOT estimate of costs. Feedback, rejection, or approval of change orders will be given within 5 days of receipt of the request. MoDOT must insure that approval signature lines are provided on the change order form for the proposing team, MoDOT and FHWA

5.4 Construction Inspections

In addition to a final inspection of the completed project, FHWA will conduct periodic on-site construction inspections of on-going construction operations, completed work, Disadvantaged Business Enterprise (DBE) and On the Job Training (OJT) usage and status, conformance with minimum wage rate payment requirements, material testing frequency and test results, traffic control operations, etc. The frequency and scope of the inspections will be determined based upon the work in progress, and the number and type of problems or issues being documented. Inspections will be documented on a standard FHWA inspection report, copies of the report will be transmitted to MoDOT within 5 days of the date of the inspection. Findings contained in the report will require a written response within 5 days of receipt of the report.

5.5 Quality Assurance Plan

23 CFR 637 requires that the quality assurance program proposed for the project be approved by the FHWA. The QA program must meet all of the requirements of 23 CFR 637.207. Feedback, rejection, or approval of the Quality Assurance Plan will be given within 5 days of receipt of the request. FHWA approval of the QA program to be utilized on each project must be received prior to the start of construction.

6 RIGHT OF WAY (ROW)

All right-of-way (ROW) actions must be in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) and implementing 49 CFR Part 24 Regulations. The following FHWA approvals will be required:

- All ROW plans must be submitted through MoDOT to FHWA for review and information;
- All Acquisition Authority dates ("A" dates) must be submitted and approved by FHWA;

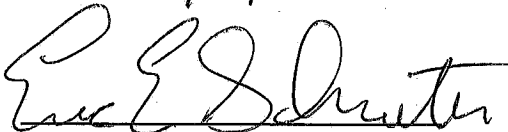
- A ROW Clearance certification must be submitted and approved by FHWA. Conditional and/or partial ROW Clearance certifications may be considered; approval of less than legal and physical possession of all parcels; including relocation assistance being made available on occupied units, will be contingent upon no work or project activities being permitted on any property that the project sponsor does not have full and legal ownership.

Feedback, rejection, or approval of the ROW certification will be given within 5 days of receipt of the request.

7 APPENDICES

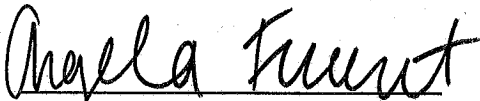
Appendix A	Matrix of Review Responsibilities
Appendix B	Design Build Process Flow Chart
Appendix C	Sample MHTC Delegation of Authority & Authorizations
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Appendix E	Sample RFP Approval
Appendix F	Sample RFP Certification Letter
Appendix G	Sample Design Exception Form
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Appendix J	Sample Environmental Commitments Form
Appendix K	Two-Step AJR Approval Process

DATE: 9/13/13



Kathy Harvey

Interim MoDOT State Design Engineer



Angela Fuerst

MoDOT State Design Build Coordinator



Scott Bowles

FHWA Program Implementation Team Leader

APPENDIX A

Matrix of Review Responsibilities

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MATRIX OF DESIGN BUILD REVIEW RESPONSIBILITIES

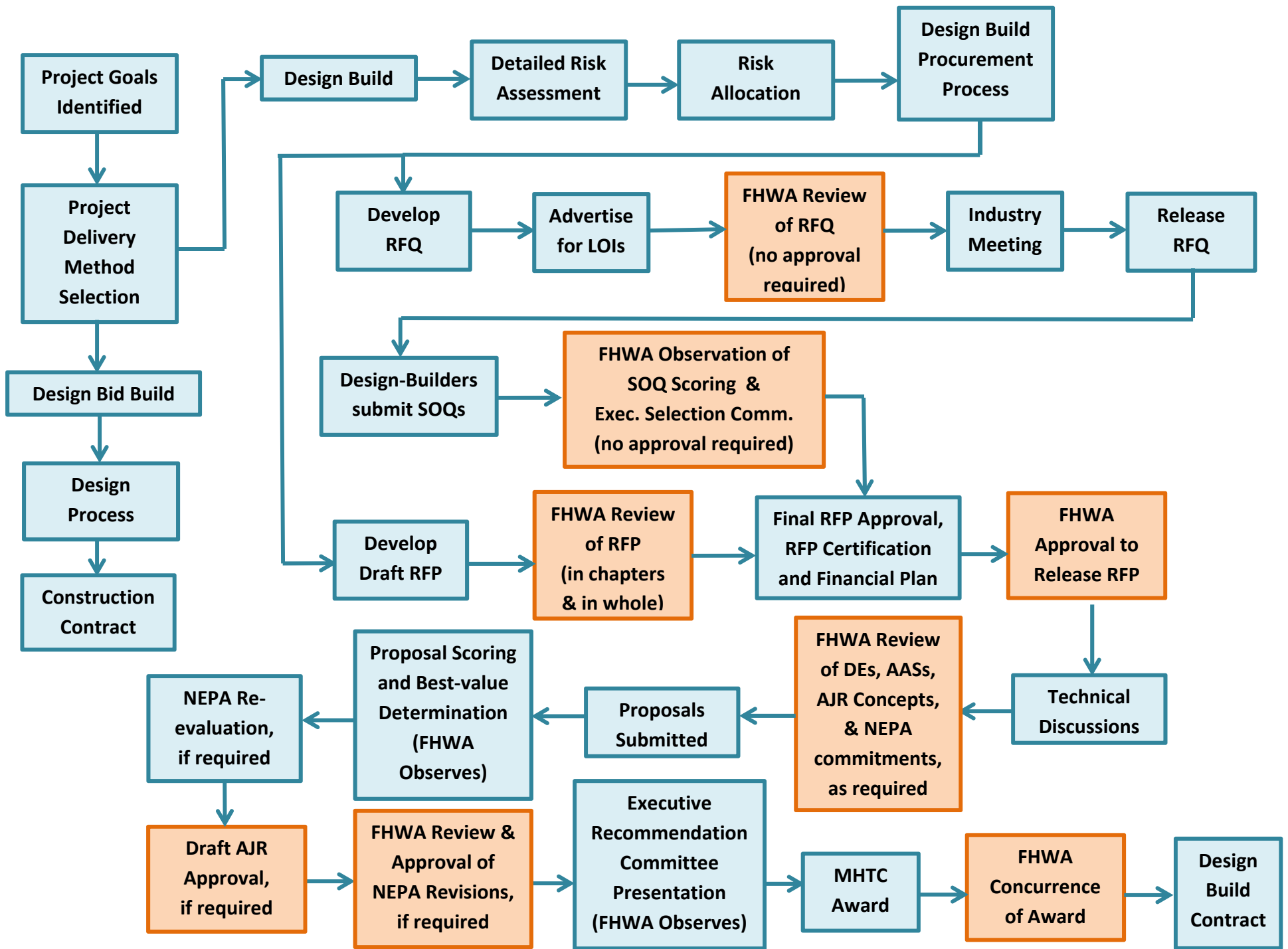
Item for Review	Supplemental Information	Agency Responsible	Desired Timeframe
RFQ			
RFQ Review	Entire RFQ	FHWA	7 Days
RFQ Selection Process	FHWA will monitor the selection process but will not provide formal approval of the shortlisted teams	FHWA	N/A
RFQ Process Summary Report	Provided at Executive Selection Committee meeting	MoDOT	N/A
RFP			
Draft Book 1	Individual Chapters	FHWA	3 Days
	Entire Book	FHWA	5 Days
Draft Book 2	Individual Chapters	FHWA	3 Days
	Entire Book	FHWA	5 Days
Draft Book 3, 4, & 5	Individual Chapters	FHWA	3 Days
	Entire Book	FHWA	5 Days
Draft Instructions to Proposers (ITP)	Individual Chapters	FHWA	3 Days
	Entire Book	FHWA	5 Days
Final Draft RFP	Entire RFP	FHWA	10 Days
Addendums to RFP	As needed	FHWA	2 Days
Certification of RFP	23 CFR 635.309(p)	FHWA	5 Days
Financial Plan	Review or approval, if required	FHWA	10 Days
Proposal Phase			
Design Exceptions	Reviewed concurrently with MoDOT	FHWA	5 Days
Alternative Applicable Standards (AAS)	MoDOT to provide back-up information and recommendation	FHWA	3 Days
NEPA	Re-evaluation review	FHWA	5 Days
Draft (Step 1) AJR	Single Draft AJR	FHWA	5 Days
Final (Step 2) AJR	Prepared by best-value team during final design	FHWA	10 Days
Final (Step 2) AJR w/ Headquarters approval	Prepared by best-value team during final design	FHWA	40 Days
RFP Evaluation Process	FHWA will observe and provide assistance	FHWA	N/A
RFP Process Summary Report	Provided at Executive Recommendation Committee meeting	MoDOT	N/A
Selection Committee	FHWA will observe and participate in Executive Selection Committee meeting and discussion	FHWA	N/A
FHWA Concurrence of Contract Award	Written concurrence will be required	FHWA	1 Day
Contract Phase			
Quality Assurance Plan	23 CFR 637	FHWA	5 Days
ROW plans/A-dates	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970	FHWA	5 Days
ROW Certification	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970	FHWA	5 Days
Design Exceptions	During final design	FHWA	5 Days
Change Orders	Construction or design change orders	FHWA	5 Days
Construction Inspection Reports	FHWA will submit to MoDOT	FHWA	5 Days after inspection
All Phases			
Response to Comments	Written resolutions to FHWA RFP comments	MoDOT	3 Days

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APPENDIX B

Design Build Process Flow Chart

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FHWA-MODOT DESIGN BUILD PROCESS FLOW CHART

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APPENDIX C

Sample MHTC Delegation of Authority & Authorizations

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REPORT AND RECOMMENDATIONS REGARDING THE FAIRFAX AND PLATTE PURCHASE BRIDGES ROUTE US 69, INCLUDING AUTHORITY FOR DESIGN-BUILD DELEGATION OF AUTHORITY

-- Presented by Dan Niec, Kansas City District Engineer, 816-607-2281.

ISSUE: The Fairfax Bridge (southbound) and Platte Purchase Bridge (northbound) carry U.S. 69 across the Missouri River, the Union Pacific Railroad and two levee systems. Approximately 15,000 vehicles cross the bridges daily from Riverside, Missouri to the Fairfax Industrial District in Kansas. The Fairfax Bridge was constructed in 1935 and the Platte Purchase Bridge in 1957. The age and condition of both bridges create an on-going need for costly maintenance and scheduled repairs, particularly for the Fairfax Bridge which is considered to be near the end of its useful service life. The Design-Build contract will replace and remove the existing bridges. Design-Build is a technique that allows the design and construction of a project to occur simultaneously. The process saves time and money by using efficiencies and innovation and provides the ability for the Design-Build Contractor Team to have flexibility and the opportunity for creative solutions.

The Fairfax and Platte Purchase Bridges procurement process will begin in fall 2013. To allow the process to advance as smoothly and quickly as possible, the Chief Engineer is recommending delegation of authority for some items to the Fairfax and Platte Purchase Bridges Project Director.

Delegation of Authority: As identified in the MHTC Policy “Delegation of Authority for Approval and Execution of Documents” and subject to the provisions therein, the Director, Chief Engineer, Chief Financial Officer, and Assistant Chief Engineer are each authorized to approve and execute documents and expend funds on behalf of the Missouri Highways and Transportation Commission as identified in the Commission’s Delegation of Authority and Execution of Documents Policy.

RECOMMEND that the Commission:

- Approve the Fairfax and Platte Purchase Bridges project as a Design-Build Project.
- Approve authority to be delegated to the Chief Engineer or his designee to approve and execute documents and expend funds on behalf of the Missouri Highways and Transportation Commission for the following items on the Fairfax and Platte Purchase Bridges Design-Build Project:
 - **Escrow of Bid Documents** – Approve authority to execute agreements, affidavits, and related documents and expend funds for costs associated with the escrow of bid documents on the project.
 - **Agreements** – Approve authority to execute agreements with local governments including other entities for cost-share, enhancements, use of property, environmental mitigations, utilities, etc. on the project, subject to approval as to form by CCO and CS attestation.
 - **Railroad Agreements** – Approve authority to execute agreements pertaining to railroads, subject to approval as to form by CCO and CS attestation.
 - **Construction Change Orders** - Approve authority to approve construction change orders on the project.

- **Consultant Engineering Services** – Approve authority to execute contracts for engineering services needed subject to approval as to form by CCO and CS attestation and in keeping with the Brooks Act, 40 USC 1101 et seq. and 23 CFR 172.5 as well as Section 8.285 RSMo.
 - **Other** – Approve authority to expend funds for the project, as well as approve, execute, sign and seal project specific documents.
 - **Design Exceptions** – Approve authority to sign design exceptions specific to the design of the project currently delegated to the State Design Engineer and the State Bridge Engineer, subject to consultation with the department’s technical experts.
- Project changes resulting from this delegation will not exceed the cap of 2 percent over the programmed cost or those changes will be taken back to the Commission.

DEPARTMENT VIEW:

- The existing U.S. 69 Fairfax Bridge (southbound) and the Platte Purchase Bridge (northbound) need to be replaced due to age, condition, and increasing repair costs.
- Design-Build will enable this project to be built as quickly as possible. The flexible procurement process provides the most competition and innovation to maximize the scope with the available limited funds.

OTHER VIEWS:

- The bridges are experiencing an increase in long-term maintenance and repairs, particularly due to steel deterioration. In addition to the cost to taxpayers, the frequency and duration of inspections and closures for repairs inconvenience the travelling public and employees in Riverside and the Fairfax Industrial District.
- The State of Kansas will provide 50 percent of the required funding for the project and has agreed to use the Design-Build contracting method to deliver the project.

OTHER PERTINENT INFORMATION:

- Not applicable.

SOURCE OF FUNDING: Funds to accomplish this improvement have been committed in the FY2014-2018 Statewide Transportation Improvement Program. The Fairfax and Platte Purchase Bridges project is programmed at \$76.8 million for right of way, utility relocation, and the Design-Build contract. In accordance with the Missouri/Kansas Border River Bridge Agreement, the Kansas Department of Transportation will reimburse the Commission for 50 percent of the cost of this project.



Director's Office
Central Office

TO: Mark C. Fisher

CC: Pamela Harlan-cs Bill Rogers-ai Michelle Teel-mo
Kathy Harvey-de Eileen Rackers-ts
Dennis Heckman-br Mara Campbell-cr
Brenda Morris-fs Machelles Watkins-tp

FROM: Ed Hassinger
Chief Engineer

DATE: August 7, 2013

SUBJECT: Delegation of Authority to Mark Fisher Project Director for the Fairfax and Platte Purchase Bridges Design-Build Project Route US 69, Jackson County.

The Missouri Highways and Transportation Commission at its August 2013 meeting delegated to the Chief Engineer position or his designee to approve and execute documents and expend funds on their behalf for the following items, except that any change resulting in an expenditure of 2 percent over the project cost will be presented to the Commission.

- **Escrow of Bid Documents** – Approve authority to execute agreements, affidavits, and related documents and expend funds for costs associated with the escrow of bid documents on the project.
- **Agreements** – Approve authority to execute agreements with local governments including other entities for cost-share, enhancements, use of property, environmental mitigations, utilities, etc. on the project, subject to approval as to form by CCO and CS attestation.
- **Railroad Agreements** – Approve authority to execute agreements pertaining to railroads, subject to approval as to form by CCO and CS attestation.
- **Construction Change Orders** - Approve authority to approve construction change orders on the project.
- **Consultant Engineering Services** – Approve authority to execute contracts for engineering services needed subject to approval as to form by CCO and CS attestation and in keeping with the Brooks Act, 40 USC 1101 et seq. and 23 CFR 172.5 as well as Section 8.285 RSMo.
- **Other** – Approve authority to expend funds for the project, as well as approve, execute, sign and seal project specific documents.
- **Design Exceptions** – Approve authority to sign design exceptions specific to the design of the project currently delegated to the State Design Engineer and the State Bridge Engineer, subject to consultation with the department's technical experts.




MEMORANDUM

Missouri Department of Transportation

Division
Location

TO: Susan Barry
Project Director

CC: Pamela Harlan-cs

FROM: Ed Hassinger
Chief Engineer 

DATE: July 9, 2013

SUBJECT: Route I-70 Manchester Bridge
Jackson County
Job No. J4I1916
Delegation of Authority for Design-Build Project

As Chief Engineer, I authorize the project director to negotiate and execute a contract with Clarkson Construction Company as the best value proposer for the I-70 Manchester Bridge design build project subject to approval as to form by the Chief Counsel's Office and authorize the project director to make payment to the agreed stipend to the three unsuccessful proposing teams.

APPENDIX D

FHWA Confidentiality

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U.S. Department
of Transportation
**Federal Highway
Administration**

Missouri Division

8/7/2013

3220 W. Edgewood, Suite H
Jefferson City, Missouri 65109
(573) 636-7104
Fax (573) 636-9283
Missouri.FHWA@fhwa.dot.gov

In Reply Refer To:
HDA-MO

Mrs. Kathy Harvey, State Design Engineer
Missouri Department of Transportation, Central Office
105 W. Capitol Avenue
Jefferson City, MO 65102

Subject: Confidentiality on Design Build Projects

Dear Mrs. Harvey,

On occasion, FHWA employees have been requested to sign State Confidentiality Statements related to Federally-assisted procurement actions, consultant negotiations, design build contracts, or development of environmental documents. Based on guidance provided by our Office of Chief Counsel, please be advised that *such action is beyond the regulatory authority of FHWA employees*. However, FHWA staff may elect to participate as an observer and/or technical resource under 23 CFR 1.5 for any project funded or eligible for funding as part of the Federal-aid Highway program.

Regarding confidentiality, all employees of the US Department of Transportation including FHWA are bound by 18 U.S.C. § 1905 which carries a criminal penalty if any employee discloses confidential commercial information. In accordance with these regulations:

1. FHWA employees who need to view the confidential commercial information will use the same degree of care to protect the information as used to protect FHWA information of similar nature, but in any event not less than reasonable care under the circumstances.
2. FHWA employees will withhold confidential commercial information authorized to be withheld under 5 U.S.C. § 552(b)(4), which is co-extensive with 18 U.S.C. § 1905.
3. Under a FOIA request for records that includes confidential commercial information which may be releasable under FOIA, FHWA will promptly notify MoDOT and provide an opportunity to object to the disclosure of the information and to state the basis for the objection. The burden of proof to

justify nondisclosure resides with MoDOT. The MoDOT has the right to file in the District Court to prevent the disclosure of information that it considers confidential; in the event such a filing is made, the process to disclose such information would be stopped and the matter referred to legal counsel.

4. If taken to court on our decision to withhold confidential commercial information under FOIA, FHWA will forcefully argue to the Department of Justice the validity of that decision and urge it to defend that decision by all appropriate means.

In summary, FHWA Missouri Division employees cannot execute confidentiality agreements but will use the best efforts at our disposal to protect confidential information submitted by MoDOT for review or as requested by FHWA for projects funded or eligible for Federal-aid highway funding.

If you should have any further questions please do not hesitate to contact Mr. Scott Bowles at (573) 638-2610.

Sincerely yours,

A handwritten signature in blue ink that reads "Scott Bowles". The signature is written in a cursive style and is positioned above a horizontal line.

Scott Bowles
Program Implementation
Team Leader

APPENDIX E

Sample RFP Approval

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U.S. Department
of Transportation

**Federal Highway
Administration**

Missouri Division

3220 W. Edgewood, Suite H
Jefferson City, Missouri 65109
(573) 636-7104
Fax (573) 636-9283
Missouri.FHWA@fhwa.dot.gov

September 19, 2012

Mr. Kevin Keith, Director
Missouri Department of Transportation
Jefferson City, Missouri 65102

Subject: Approval of Final Request for Proposals (RFP) Document
Project Number J6U1028, Route 364 (Page Avenue) Phase 3 Design/Build

ATTENTION: Mr. Mike Castro, Project Director, MoDOT St. Louis District

Dear Mr. Keith:

We have reviewed the subject Final RFP document for the Route 364 (Page Avenue) extension project, as submitted on 09/04/12; FHWA comments relating to the subject document were relayed to project staff on 09/14/12 and 09/17/12. FHWA comments have been adequately addressed. Approval of the subject Final RFP is offered with this letter.

Modifications to the RFP, or any other Governmental Approvals which have been offered for this project, are subject to FHWA review and approval.

If you should have any questions please do not hesitate to contact Mr. Greg Budd at (573) 638-2621.

Sincerely yours,

Urban Transportation Engineer

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APPENDIX F

Sample RFP Certification Letter

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Missouri Department of Transportation

1590 Woodlake Drive
Chesterfield, Missouri 63017-5712
314.275.1500
Fax: 573.522.6475
1.888.ASK MODOT (275.6636)

September 20, 2012

Mr. Greg Budd, P.E.
Federal Highway Administration
3220 W. Edgewood, Suite H
Jefferson City, Missouri 65109

Re: The Route 364 Phase 3 Project
J6U1028, Route 364
St. Charles County
Request for Authorization

Dear Mr. Budd:

This letter is to request project authorization for the Route 364 Phase 3 Project in St. Charles County. I certify that all the requirements listed in 23 CFR 635.309(p) have been met. Each item below details the compliance.

The planning process that was followed conforms to the statewide and metropolitan transportation planning requirements (23 CFR part 450). East-West Gateway Council of Governments (EWGCOG), and the Missouri Highway and Transportation Commission, approved funding for this project at their August 3, 2011 Board meeting.

Air quality modeling has been done by EWGCOG and we are in conformance with 40 CFR parts 51 and 93 as indicated in the Final Environmental Statement dated 11/24/1992 and Record of Decision dated 1/6/1993. The NEPA process has been completed per 23 CFR 636.109.

The Financial Plan was been submitted to FHWA and approved on September 14, 2012.



*Our mission is to provide a world-class transportation experience that
delights our customers and promotes a prosperous Missouri.*

www.modot.org

FHWA approved the Request for Proposal (RFP) on September 19, 2012.

MoDOT is purchasing all necessary realty interests in compliance with the Uniform Relocation and Real Properties Acquisition Policies Act, as amended (Uniform Act), 49 CFR part 24. The Contractor is responsible for acquiring any additional realty interests at their cost following the same guidelines with MoDOT oversight. This information is included in the RFP.

Utilities have been identified and located along the corridor. MoDOT has discussed relocation with each utility company. The cost obligations and the process will follow MoDOT policies. This process will not begin until the Contractor has established their design and the extent of the required relocations and adjustments have been identified. This information is included in the RFP.

The project is authorized by 227.107 RSMO.

MoDOT understands that changes to the design-build project concept and scope may require a modification of the transportation plan and transportation improvement program. Compliance will be in accordance with the metropolitan and statewide transportation planning requirements in 23 CFR part 450 and the transportation conformity requirements in 40 CFR parts 51 and 93 in air quality nonattainment and maintenance areas, and will provide appropriate approval notification to the design builder for such changes.

This letter completes all requirements of the Code of Federal Regulations for Design Build, and allows for the authorization of funds for the Route 364 Phase 3 Project.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Castro". The signature is written in a cursive style with a large, looping initial "M".

Mike Castro, P.E.

Project Director, Route 364 Phase 3

Michael.castro@modot.mo.gov

314-453-1850, cell 314-401-5081

APPENDIX G

Sample Design Exception Form

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**FORM D1
DESIGN EXCEPTION FORM**

Proposer:

Item	Applicable Standard as listed in Book 3		Existing Standard (verbatim from Applicable Standard)	Proposed Revision	Justification	MoDOT Response FOR MODOT USE ONLY	FHWA Response FOR FHWA USE ONLY
	Originator	Title					

For any items listed in Form D1, the Proposer shall submit a completed Design Exception Information Form, Form D2.

DESIGN EXCEPTION INFORMATION – Design Build Form D2

Project: **Proposing Team:** **Route:**

A. Design Stage:

Conceptual Plan R/W Certification Preliminary Plan Final (PS&E) Other ()

B. Provide data for only those items that are proposed to have a design exception.

Functional Classification: Design ADT:

Criteria	Existing Condition	Standard	Proposed	Location
1. Design Speed				
2. Lane Width				
3. Shoulder Width Inside Outside				
4. Bridge Width				
5. Horizontal Alignment				
6. Superelevation				
7. Vertical Alignment				
8. Grade %				
9. Stopping Site Distance				
10. Cross Slope				
11. Vertical Clearance				
12. Lateral Offset to Obstruction				
13. Structural Capacity				
14. Other (Non-Controlling) (Describe)				

C. Give reasons for requesting design exceptions for each design element.

D. Detail any safety considerations (including the HSM analysis, if applicable)

Request for Design Exceptions:

By: _____ Date: _____
Consultant Project Manager Name of Consulting Firm

Approved: (Include only applicable signatures.)

By: _____ Date: _____
Project Director

Comments:

By: _____ Date: _____
FHWA

Comments:

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APPENDIX H

Sample AAS Form

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FORM C
ADDITIONAL APPLICABLE STANDARDS

Proposer:

The Proposers shall propose the Additional Applicable Standards to be used (add rows as needed):

Item	Type of Standard/Manual	Additional Applicable Standard(s) to be Used, Date or Version	Exceptions/Additions/Clarifications			MoDOT Response FOR MODOT USE ONLY	FHWA Response FOR MODOT and FHWA USE ONLY
			Section	Attachment	Previously Used by (State)		
1	Construction Specifications and General Provisions			1-1			
				1-2			
				1-3			
2	Special Provisions						
3	Standard Drawings						
4	Roadway Design						
5	Pavement Design						
6	Bridge Design						
7	Geotechnical Design						
8	Lighting Design						
9	Drainage Design						

FORM C
ADDITIONAL APPLICABLE STANDARDS

Proposer:

The Proposers shall propose the Additional Applicable Standards to be used (add rows as needed):

Item	Type of Standard/Manual	Additional Applicable Standard(s) to be Used, Date or Version	Exceptions/Additions/Clarifications			MoDOT Response FOR MODOT USE ONLY	FHWA Response FOR MODOT and FHWA USE ONLY
			Section	Attachment	Previously Used by (State)		
10	Signal Design						
11	Signing and Marking Design						
12	Temporary Traffic Control Devices						
13	Construction Manual(s)						
14	Materials Manual(s)						
15	Testing Manual(s)						
	(list as many standards as needed)						

The Proposers may use as many sheets as necessary to communicate the information requested in this Form.

The Proposers shall provide copies of all Additional Applicable Standards, except those created by MoDOT. A red-lined version of any exceptions, additions, or clarifications of the Additional Applicable Standards shall be submitted as an attachment.

APPENDIX I

Sample Award Concurrence

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U.S. Department
of Transportation
**Federal Highway
Administration**

Missouri Division

3220 W. Edgewood, Suite H
Jefferson City, Missouri 65109
(573) 636-7104
Fax (573) 636-9283
Missouri.FHWA@fhwa.dot.gov

February 6, 2013

Mr. Kevin Keith, Director
Missouri Department of Transportation
Jefferson City, Missouri 65102

Subject: Concur in Award to Apparent Winning Proposer
Project Number J6U1028, Route 364 (Page Avenue) Phase 3 Design/Build

ATTENTION: Mr. Mike Castro, Project Director, MoDOT St. Louis District

Dear Mr. Keith:

We are in receipt of the February 5, 2013, submittal of the Final Recommendation Report for the subject project, as provided by MoDOT's Project Director. After review of the subject report, in concert with the concurrence from the Executive Selection Committee on February 5, 2013, of the apparent winning proposer, and concurrence from the Missouri Highways and Transportation Commission on February 6, 2013, FHWA offers concurrence in the award of the project to the Page Constructors Design/Build team.

We understand that there may be negotiations of final contract details prior to the signing of the executed contract with the Page Constructors team; FHWA asks that any significant changes to the terms of the contract be coordinated with FHWA staff, and that a copy of the final executed contract be submitted to our office.

We look forward to our continued work with your staff during the design and construction phase of this project.

If you should have any questions please do not hesitate to contact Mr. Greg Budd at (573) 638-2621 or Mr. Felix Gonzalez at (573) 638-2622.

Sincerely yours,

Urban Transportation Engineer

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APPENDIX J

Sample Environmental Commitments Form

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Route 364, Phase 3 - EIS Commitments

Project
Missouri Department of Transportation

No.	EIS commitment	Action	RFP Reference	Proposal Change (Y/N) If Y, attach narrative	Team Comments/Narrative
Alignment Commitments					
1					
2					
3					
etc.					
General/Community/Environmental					
No. Cont'	Right of Way				
etc.	Construction Noise				
	Sound Abatement				
	Surface Water				
	Ground water				
	Visual Impacts				
	Utilities				
	Wetland Mitigation				
	Floodplain Impacts				
	Cultural Resources				

Note: More detail on these commitments can be found in the approved environmental documents.

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APPENDIX K

Two-Step AJR Approval Process

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Modified AJR and NEPA Approval Process for MoDOT and FHWA Missouri Division

FHWA developed an Interstate System Access Information Guide (hereinafter referred to as the Guide) that clearly defines and explains what should be included in the Access Justification Report submitted by MoDOT to the FHWA Division Office. The following is a link to that document: <http://www.fhwa.dot.gov/design/interstate/pubs/access/index.cfm>

The implementation of the requirements of the Guide has increased the level of detail required to be included in AJRs and has also tied the approval of the AJR with the NEPA approval. Previously these two actions were provided as separate approvals by FHWA. The Guide states "The FHWA approval of Interstate System Access Requests constitutes a Federal Action, and as such, requires that the National Environmental Policy Act (NEPA) is followed." In many instances the requirements for very specific details in the AJR are in direct conflict with MoDOT's desire to have the greatest flexibility possible and very generic details included in the NEPA approval. This has caused MoDOT to revise its process and guidance for preparing AJRs. Design Division staff recently met with staff from the FHWA Missouri Division to define a process that could satisfy these competing ideas. The following guidance was taken from information included in the Guide and the discussion that we had with FHWA staff:

The AJR approval can be provided in a two-step process to help MoDOT manage risk and provide flexibility. This allows the AJR to be prepared and submitted for FHWA review in a corresponding two-step process for those projects where it will be beneficial. The Step 1 approval is a finding of Operational and Engineering Acceptability. The Step 2 approval is the Final Approval. Often both of these approvals are done at the same time, but it is not necessary that they occur simultaneously. This two-step process can be used with Design/Build and traditional Design/Bid/Build projects.

The AJR document prepared for Step 1 is intended to identify fatal flaws and to help ensure the investment in the subsequent phases of production, including preparation of any environmental documents, is not wasted. This document can be thought of as a draft AJR that takes a high level look at the traffic analysis for the types of access changes that are being considered without the detailed design information that will be necessary for the Final Approval. More than one alternative, possibly a range of interchange alternatives, can be included in the Step 1 AJR document. An example description for an access change at this stage could be: "a new full access interchange will be provided between mile marker XX and mile marker XX and provides all four movements". The Step 1 AJR analysis may be used to provide multiple interchange alternatives, otherwise noted as the "box," for final design.

Step 1 AJR Approval

The finding of Operational and Engineering Acceptability requires consideration of all of the Eight Policy Points identified in the Guide, but they may be discussed at a high level. Including the identification of LOS for all movements in both the build and design years. These considerations provide confidence that there are no fatal flaws in the proposed change in access, and that those alternatives can reasonably be included as part of the NEPA document. As a part of this early review, it is not anticipated that environmental studies will be completed; however, the largest foot print of the multiple interchanges identified in the AJR must be reviewed and should contain adequate information to identify potential flaws, substantial environmental requirements, and the potential for public controversy. If potential flaws are identified, close coordination with the FHWA and State DOT is needed to determine if the project should move forward, and if it does, under what conditions.

NEPA Approval

Assuming that no fatal flaws or any other environmental concerns are identified, FHWA can then provide the appropriate NEPA approval (CE, FONSI, ROD). Even though the AJR information prepared for the Step 1 approval may contain data for a range of alternatives, the NEPA approval must be based on the

selected preferred alternative included in the NEPA document. Therefore, the preferred step 1 AJR interchange must be identified and form part of the preferred alternative. The Step 1 AJR analysis of multiple alternative interchanges can be included as a technical appendix within the NEPA document.

Once the Step 1 AJR and NEPA approvals are received the Step 2 AJR document can be prepared. Preparation of this document will occur when the project design has progressed enough to provide the detailed engineering analysis of the preferred alternative included in the NEPA document. The analysis from the Step 1 AJR document should be the starting point for the Step 2 AJR document and should build on those details to provide the detailed engineering analysis required by the Guide.


Step 2 AJR Approval

Final Approval can only be given by the FHWA upon successful completion of the NEPA document, even if no Federal funds are used. This Final Approval of the AJR is contingent on the consistency of the chosen NEPA alternative with the proposed access change approved in Step 1. FHWA regulations (23 CFR 771.113 [a]) state that "final design activities, property acquisition ..." (with exceptions), "...or project construction shall not proceed" until FHWA accepts the general location and concepts as described in the environmental document. If the Step 2 AJR includes any changes to concepts approved in the Step 1 AJR or the preferred alternative included in the NEPA document a re-evaluation of the NEPA document will be required.

One possible risk for MoDOT associated with the two step process are those AJRs that require FHWA HQ approval. FHWA HQ does not provide the Step 1 AJR approval. It is only reviewed and approved at the Missouri Division level. However, the Missouri Division will coordinate and discuss the Step 1 AJR with FHWA HQ to ensure that they have a good understanding of any issues involved with the AJR. Hopefully this coordination will help facilitate a successful Step 2 of the AJR approval by the FHWA HQ.

For Design/Build , ATC, and all other innovative contract delivery methods, AJR review times for MoDOT and FHWA will be established in the partnering agreement between MoDOT and FHWA.

Date: 1/11/2013



MoDOT State Design Engineer



FHWA Missouri Division Administrator