

# 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;

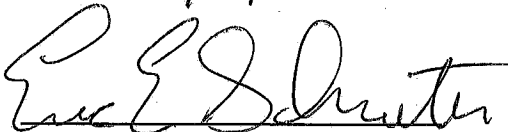
- A ROW Clearance certification must be submitted and approved by FHWA. Conditional and/or partial ROW Clearance certifications may be considered; approval of less than legal and physical possession of all parcels; including relocation assistance being made available on occupied units, will be contingent 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

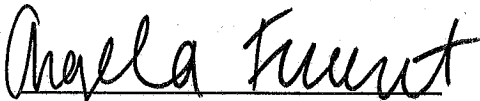
Appendix A	Matrix of Review Responsibilities
Appendix B	Design Build Process Flow Chart
Appendix C	Sample MHTC Delegation of Authority & Authorizations
Appendix D	FHWA Confidentiality
Appendix E	Sample RFP Approval
Appendix F	Sample RFP Certification Letter
Appendix G	Sample Design Exception Form
Appendix H	Sample AAS Form
Appendix I	Sample Award Concurrence
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