**Chapter 14  Design Build**

Design-build is a method of project delivery in which the Washington State Department of Transportation (WSDOT) executes a single contract with one entity (the Design-Builder) for design and construction services to provide a finished product.

**Rules**

**Federal**

23 CFR 635.309(p)

23 CFR 710.313 Design-build projects

(a) In the case of a design-build project, right of way must be acquired and cleared in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the WSDOT's right of way procedures. The WSDOT shall submit a right of way certification in accordance with 23 CFR 635.309(p) when requesting FHWA's authorization. If the right of way services are included in the Request for Proposal document, the WSDOT shall ensure that right of way is available prior to the start of physical construction on individual properties.

(b) The decision to advance a right of way segment to the construction stage shall not impair the safety or be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project right of way.

(c) Certain right of way acquisition and clearance services may be incorporated into the design-build contract if allowed under State law.

However, WSDOT’s existing policy is to retain right of way acquisition and clearance services. Therefore, parts (c) and (d) are not applicable.

(e) If the WSDOT elects to perform all right of way services relating to the design-build contract, the provisions in 23 CFR 710.311 will apply. WSDOT will notify potential offerors of the status of all right of way issues in the request for proposal document.

**State**

Project Delivery Memorandum dated June 3, 2009, from J.C. Lenzi, Chief Engineer regarding – Use of Consultants for Right of Way Activities attached hereto and made a part herof. See Section 1-11.1 of this manual for oversight responsibilities in compliance with the aforementioned Memorandum.
Secretary’s Executive Order Number E 1059.00 dated July 10, 2009, regarding Organization Conflicts of Interests.

Chapter 110 of the Design Manual (M 22-01).

References

RCW 39.10.300 Design-build procedure – Uses

RCW 39.10.320 Design-build procedure – Project management and contracting requirements

RCW 39.10.330 Design-build contract award process

Procedures

Acquisition by WSDOT:

The appraisal, acquisition, property management, and relocation processes outlined in this manual shall be followed.

If consultants will be used for right of way activities, WSDOT shall provide oversight for those activities per the Project Delivery Memorandum dated June 3, 2009, from J.C. Lenzi, Chief Engineer regarding – Use of Consultants for Right of Way Activities.

WSDOT shall submit the Design Build Certification (see attached form) in accordance with 23 CFR 635.309(p) when requesting FHWA’s authorization prior to the Notice to Proceed with physical construction that will include the following:

1. The FHWA’s project authorization for final design and physical construction will not be issued until the following conditions have been met:
   a. All projects must conform with the statewide and metropolitan transportation planning requirements (23 CFR part 450).
   b. All projects in air quality nonattainment and maintenance areas must meet all transportation conformity requirements (40 CFR parts 51 and 93).
   c. The NEPA review process has been concluded (see 23 CFR 636.109).
   d. The Request for Proposals document has been approved.
   e. A statement is received from WSDOT 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.
WSDOT shall ensure that right of way is certified and available prior to the Notice to Proceed with physical construction on individual properties. WSDOT RESM (or their designee) will compare the plan sheets or project requirements (such as mitigation sites and/or sundry sites) with the parcels to make sure they match. If multiple sections/phases will be certified, this assurance will need to be done with each section/phase

Right of Way will not be certified until the certification documentation listed above is provided.

2. During an air quality 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.
Memorandum

Date: June 3, 2009

To: Keith Metcalf, Eastern Region Administrator  
    Kevin Dayton, Olympic Region Administrator, MS 47440  
    D. Sarles, North Central Region Administrator (Acting)  
    Dan Whitehouse, South Central Region Administrator  
    Dan Wagner, Southwest Region Administrator, S-15  
    Lorena Eng, Northwest Region Administrator, NB82-101  
    Ron Paananen, Teresa Greco, John White, Alaska Way Viaduct Project Office  
    Julie Meredith and Mike Cotton, SR520 Project Office  
    Kim Henry and Denise Cieri, I-405 Project Office

From: J. E. Lenzi, Chief Engineer  
       (360) 765-7032

Subject: Project Delivery Memo - Use of Consultants for Right-of-Way Activities

Background

On March 25, 2009 the Federal Highway Administration (FHWA) informed WSDOT that we must develop and implement improved procedures to ensure adequate oversight of consultant services for real estate activities. The regulatory framework for state oversight responsibilities is required by 49 CFR 24.205(c) on projects where right of way activities are being performed by consultants. FHWA has reminded WSDOT that inadequate consultant oversight could jeopardize federal funding of projects.

The intent of this memorandum is to provide direction regarding selection and oversight of consultants who are hired to perform right of way activities.

Types of Contracts Affected

- A & E Agreements including General Engineering Contracts (GEC)
- Personal Services Contracts

Types of Activities Affected

- Consultant Selection and Oversight
- Scope of Work Development
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Action Requested

Effective July 1, 2009 Real Estate Services activities (RES) will be contracted separately from A & E activities. This applies to all new task orders and/or contracts.

Amendments to current task orders and supplements to master agreements, for RES activities, will not be approved. In addition, adding new RES sub-consultants to current agreements will not be approved.

Oversight must be provided by RES right-of-way staff, not general project office staff. RES needs to communicate necessary information to the consultant staff prior to the commencement of the project so there are no delays in project delivery. RES could fulfill this requirement by requiring the consultants to attend a pre-project right-of-way meeting and/or attending our right-of-way training sessions.

Regional Approval
Before entering into any contract for right-of-way activities, approval must be received from the Regional Real Estate Services Manager or the appropriate HQ Real Estate Services Section Manager.

Project Managers
Comply with requirements set forth in this document and in the Consultant Services Procedures Manual (M 27-5).

Region Real Estate Services
Region RES must be involved in the development of the scope of work for right-of-way activities to ensure there is sufficient clarity of roles, expectations, and responsibilities.

It is the responsibility of the Region RES Manager or the appropriate HQ RES Section Manager to review the qualifications of the consultant or the consultant firm and their staff to determine if their qualifications meet the standards required for the specific task.

Region RES is responsible to provide oversight, direction and administration of all right-of-way consultant personnel in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Oversight must be accomplished by a WSDOT RES employee that has the knowledge, skills and abilities to complete the task.

HQ Consultant Services Office
The Consultant Services Office will procure and administer A & E and Personal Service agreements that are consistent with federal and state regulations. Final authority and enforcement of the contracting procedures rests with the Consultant Services Office.

Update Consultant Services Procedures Manual (M 27-50) as necessary to comply with this memorandum.
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**HQ Real Estate Services Office**
Update the Right of Way Manual (M 26-01) as necessary to comply with this memorandum.

**HQ Design Office**
Update the Design Manual (M22-01) and Plans Preparation Manual (M22-31) as necessary to comply with this memorandum.

**Highway and Local Programs Office**
Update the LAG Manual (M36-63) as necessary to comply with this memorandum.

cc: Dave Dye  
    Steve Reinmuth  
    Bill Ford  
    Craig Stone  
    Kathleen Davis  
    Tim Smith, WSF  
    Pasco Bakoich  
    Nancy Boyd  
    Mike Palazzo  
    Region Project Development Engineers  
    Region Real Estate Services Managers  
    Marilyn Bowman  
    Jim Saher
Design Build Certification

Project Title: ____________________________________________________________

This Project conforms with statewide and metropolitan transportation planning requirements (23 CFR part 450).

Headquarters Planning Manager .................................................. Date

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

☐ Applicable
☐ Not Applicable

Region Environmental Program Manager .................................. Date

This Project NEPA review process has been concluded. (See 23 CFR 636.109).

Region Environmental Program Manager .................................. Date

Environmental Approval Date

The Project Request for Proposals document has been approved.

Project Engineer ................................................................. Date

FHWA Approval Date
All utility, and railroad work has been completed, or all necessary arrangements will be made for the completion of utility, and/or railroad work.

Region Utilities Engineer ___________________________ Date ___________________________

During an air quality 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).

☐ Applicable
☐ Not Applicable

Region Environmental Program Manager ___________________________ Date ___________________________

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.

☐ Applicable
☐ Not Applicable

Headquarters Planning Manager ___________________________ Date ___________________________

☐ Headquarters Right of Way Certification Attached

Region Real Estate Services Manager ___________________________ Date ___________________________