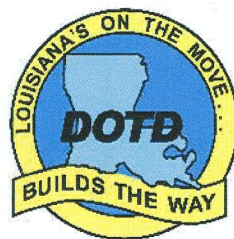


Louisiana Federal-Aid Highway Program Stewardship Agreement 2007

Amendment #2
Design-Build

Developed in Partnership by the
Federal Highway Administration and the
Louisiana Department of Transportation and Development



**LOUISIANA
FEDERAL-AID HIGHWAY PROGRAM
STEWARDSHIP AGREEMENT**

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Introduction

On December 10, 2002 in response to Section 1307 of TEA-21, FHWA published the final rule which established regulations for design-build contracting as 23 CFR Part 636. Subsequent modifications required by Section 1503 of SAFETEA-LU resulted in revisions published in a final rulemaking on August 14, 2007. Among the revisions made by SAFETEA-LU were the elimination of the dollar thresholds for "qualified" projects; and permission to release an RFP or award a design-build contract prior to completion of NEPA. SAFETEA-LU allows the States to use the design-build contracting method for any project they deem necessary. States are no longer required to submit Special Experimental Project Number 14 (SEP-14) request to use the design-build contracting method. Design-build procurement processes which deviate from the requirements of 23 CFR Part 636 may require an FHWA Headquarters' SEP-14 work plan and approval.

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Definitions

The following definitions apply to this Amendment:

Acceptance Program – All factors that comprise the LADOTD determination of the quality of the product as specified in the contract requirements. These factors include verification sampling, testing, quality assurance, and inspection and may include results of quality control sampling and testing.

Design-Build Contract – Means an agreement that provides for design and construction of improvements by a contractor or private developer. The term encompasses design-build-maintain, design-build-operate, design-build-finance and other contracts that include services in addition to design and construction. Franchise and concession agreements are included in the term if they provide for the franchisee or concessionaire to develop the project which is the subject of the agreement.

Design-Builder – Means the entity contractually responsible for delivering the project's design and construction phases, and may include maintenance, operation and financing responsibilities.

Final Design – Means any design activities following preliminary design and expressly includes the preparation of final construction plan and detailed specifications for the performance of construction work.

Independent Assurance Program – Activities that are an unbiased and independent evaluation of all the sampling and testing procedures used in the acceptance program. Test procedures used in the acceptance program which are performed in the LADOTD's central laboratory would not be covered by an independent assurance program.

Preliminary Design – Defines the general project location and design concepts. It includes, but is not limited to, preliminary engineering and other activities and analyses, such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, hydraulic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design. Prior to completion of the NEPA review process, any such preliminary engineering and other activities and analyses must not materially affect the objective consideration of alternatives in the NEPA review process.

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Price Proposal – Means the price submitted by the offeror to provide the required design and construction services.

Proposal Modification – Means a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

Quality Assurance – All those planned and systematic actions necessary to provide confidence that a product or service will satisfy given requirements for quality, including, Contractor Quality Control, Agency Acceptance, Agency Independence Assurance, Dispute Resolution, Laboratory Accreditation and Qualification, and personnel Qualification/Certification.

Quality Control – All design-builder's operational techniques and activities that are performed or conducted to fulfill the contract requirements. The LADOTD and FHWA will formalize an agreement on a programmatic level for specific testing frequencies and levels for an acceptance program for design-build. Until such time that a programmatic design-build acceptance program is agreed to by the LADOTD and FHWA, the acceptance program for each design-build project will be reviewed and approved by the FHWA as a part of the design-build Request for Proposal development process.

Request for Proposal (RFP) – Means the document that describes the procurement process, forms the basis for the final proposals and may potentially become an element in the contract.

Request for Qualifications (RFQ) – Means the document issued by the LADOTD in Phase I of the two-phased selection process. It typically describes the project in enough detail to let potential offerors determine if they wish to compete and forms the basis for requesting qualifications submissions from which the most highly qualified offerors can be identified.

Short Listing – Means the narrowing of the field of offerors through the selection of the most qualified offerors who have responded to an RFQ.

Technical Proposal – Means that portion of a design-build proposal which contains design solutions and other qualitative factors that are provided in response to the RFP document.

Verification Sampling and Testing – Sampling and testing performed to validate the quality of the product for those quality characteristics that contain pay adjustment tables.

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I. Construction and Contract Administration for Design-Build Projects

This section specifies the roles and responsibilities of FHWA and LADOTD on both full oversight and delegated design-build projects.

1. Delegation of Oversight Responsibilities

The following table defines oversight responsibilities for Federal-Aid funded Design-Build projects in Louisiana.

Design-build Projects	Oversight Responsibility
All Interstate Projects	FHWA
All NHS (non-Interstate) Projects	FHWA
Non-NHS and Locally Administered Projects	LADOTD
All Major Projects (>500 million). All routes.	FHWA
All Bridges Projects on any route with and estimated construction cost > \$ 50 million.	FHWA
All ITS Projects (see note 2 below)	FHWA

Note 1: NHS-projects are defined by system, irrespective of Federal funding source.

Note 2: As defined by 23 CFR 940 an ITS project is any project that in whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of on or more ITS User Services as defined in the National ITS Architecture.

Exceptions:

1. State Administered projects (delegated) may be selected for full oversight by mutual agreement between FHWA and LADOTD. The selection will be agreed upon by the FHWA Assistant Division Administrator and the LADOTD Chief Engineer. Examples of projects which may be selected: Complex Emergency Relief projects, Major or complex bridge structure projects, or projects which involve a high degree of public controversy or environmental impacts.
2. A full oversight project may be delegated by mutual agreement between FHWA & LADOTD. The selection will be agreed upon by the FHWA Assistant Division Administrator and the LADOTD Chief Engineer. Examples of projects likely to be selected: NHS projects which do not affect traffic such as landscaping, rest area construction, fencing, signing, and enhancement projects.

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2. Roles and Responsibilities of FHWA and LADOTD

a. Delegated (State Administered) Projects

(1) LADOTD Project Responsibilities on Delegated Projects

As a condition to accepting Federal-aid highway funds, LADOTD agrees to follow all applicable project and program requirements. In addition, as party to this agreement, LADOTD assumes project oversight responsibilities in accordance with the following:

NHS Projects Delegated to LADOTD

LADOTD assumes oversight responsibility for the design, plans, specifications, estimates, design exceptions, contract award, and inspection of all NHS projects which have been delegated to LADOTD as defined in Section II of the 2007 Stewardship Agreement. All NHS projects must comply with all Title 23 U.S.C. and non-Title 23 U.S.C. requirements.

Non-NHS Projects

LADOTD assumes oversight responsibility for the design, plans, specifications, contract award, and inspection of projects not on the NHS. Non-NHS projects are required to be designed, constructed, operated, and maintained in accordance with State law, regulations, directives, safety standards, design standards, and construction standards, in lieu of many Title 23 U.S.C. requirements. Title 23 U.S.C. requirements that are applicable to all Federal-aid projects include, but are not limited to transportation planning, procurement of professional services, Davis-Bacon wage rates, advertising for bids, award of contracts, use of convict produced materials, Buy America Act provisions and other requirements. All non-NHS projects must also comply with all non-Title 23 U.S.C. requirements.

Local Agency Projects

LADOTD is responsible for assuring that all local agency Federal-aid projects comply with all applicable Federal and State requirements. LADOTD is not relieved of this responsibility even though the project may be delegated to the local agency. In accordance with 23 CFR 1.11 and 635.105, LADOTD is responsible for ensuring that the local agency has adequate staffing, project delivery systems, and sufficient accounting control to administer the project. If it is determined that a local agency is not equipped to adequately administer the project then LADOTD will either administer the project or withhold

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funding for the project until the local agency makes the necessary changes required to administer the project in accordance with State and Federal requirements.

(2) FHWA Project Responsibilities on Delegated Projects

For projects delegated to LADOTD, as defined in Section II of the 2007 Stewardship Agreement, FHWA retains authority for the following actions and approvals:

1. FMIS Transactions
 - a. Project Authorizations
 - b. Modifications to project agreements
 - c. Final vouchers
2. Waivers to Buy America requirements (FHWA Washington Headquarters (HQ) approval required as noted in Mr. Horne's July 3, 2003 memorandum).
3. SEP-14/SEP-15 method (FHWA HQ approval required for experimental contracting/project delivery methods).
4. Environmental approvals except those specifically delegated under Sections 6004 and 6005 of SAFETEA-LU.
5. Addition of access points to the Interstate Highway System.
6. Use of Interstate airspace for non-highway-related purposes.
7. Hardship acquisition and protective buying.
8. All non-Title 23 U.S.C. requirements including but not limited to:
 - a. National Environmental Policy Act (NEPA) of 1969
 - b. Section 4 (f) of the DOT Act of 1966
 - c. Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970

b. Full Oversight Projects

(1) FHWA Project Responsibilities on Full Oversight Projects

In addition to the 2007 Louisiana Federal-Aid Highway Program Stewardship Agreement, Section I – Construction Contract Administration, the following responsibilities apply to design-build projects:

1. RFQ Review and Concurrence
2. RFP Review and Approval – RFP shall be consistent with applicable design build provisions on 23 CFR including those in Parts 636 Design-Build Contracting.
3. Alternate Technical Concepts Approval

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4. Addenda Approval
5. Supplemental Agreement Approvals
6. Contract Concurrence in Award
7. Contract Change Order Approval

3. Methods of Oversight

a. Program Approval Actions

Approval actions remain as established in the 2007 Louisiana Federal-Aid Highway Program Stewardship Agreement, Section I – Construction Contract Administration.

b. Project Approval Actions

In addition to the 2007 Louisiana Federal-Aid Highway Program Stewardship Agreement, Section I – Construction Contract Administration, the following responsibilities apply to design-build projects:

1. FHWA will review and approve the RFQ for Construction Engineering and Inspection services associated with any design-build project to ensure the Construction Engineering and Inspection services scope of work, in particular, complies with the FHWA's expectations for the design-build acceptance program.
2. FHWA will concur with the issuance of the RFQ.
3. FHWA will review and approve Public Interest Findings for proprietary or patented items.
4. FHWA will approve the RFP prior to its release to the short-listed design-build entities. FHWA approval of the RFP document carries the same significance as PS&E approval.
5. FHWA will review and approve all Alternate Technical Concepts.
6. FHWA will approve all major addenda and proposal revisions prior to its issuance which results in major changes to the RFP.
7. FHWA will approve all supplemental agreements.
8. FHWA will concur in award.
9. FHWA will approve design exception requests.
10. FHWA will review and concur with all plan submittals (grade and drains, roadway, bridge structures, etc.) prior its release for construction.
11. FHWA will review and approve all Contract Change Orders.
12. On design-build projects where a RFP is approved by FHWA prior to the completion of the NEPA process:

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- a. The RFP approval will only constitute the FHWA's approval of the LADOTD request to release the RFP.
- b. FHWA will concur with the Contract Award.
- c. FHWA will concur with issuance of Notice to Proceed for preliminary design services.
- d. Once the NEPA process is completed, FHWA will review the preliminary design to ensure that any decision and commitment reached on the NEPA documents are implemented on the preliminary plans. FHWA approval will be needed if modifications are required on the preliminary plans. The procurement process will stop until the NEPA process is completed.
- e. After the completion of the NEPA process, FHWA authorization will be required to proceed with final design and construction.

The following table defines approval actions on full oversight and state administered projects (delegated) in Louisiana.

PROJECT ACTIVITIES		AGENCY RESPONSIBLE	
		Full Oversight Projects	State Administered Projects (Delegated)
Approval Actions	Reference Document		
Concur on Request for Qualifications (RFQ)	23 CFR 636	FHWA	LADOTD
Approve Request for Proposal (RFP or SOS)	23 CFR 635.112(i)(1), 636	FHWA	LADOTD

RFP=Scope of Service Package (SOSP)

c. Monitoring for Full Oversight Projects

1. FHWA Division Office will:

In addition to the 2007 Louisiana Federal-Aid Highway Program Stewardship Agreement, Section I – Construction Contract

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Administration, the following responsibilities apply to design-build projects:

- a. FHWA will participate in the Statement of Qualification Review as an observer to provide assistance on federal regulations during the process.
- b. FHWA will participate in Alternate Technical Concept reviews and Alternate Technical Concept review committee meetings during the process.
- c. FHWA will participate in the Technical Proposal Review and offeror selection as an observer to provide assistance on federal regulations during the process.
- d. FHWA will participate on over the shoulder reviews.
- e. On Major Design-Build Projects, FHWA will concur with the Initial Financial Plan prior to FHWA concurrence in the issuance of the RFP.
- f. FHWA assigned personnel will sign any required confidentiality agreement during the procurement process.

2. LADOTD will:

In addition to the 2007 Louisiana Federal-Aid Highway Program Stewardship Agreement, Section I – Construction Contract Administration, the following responsibilities apply to design-build projects:

- a. LADOTD will involve FHWA assigned personnel early and continuously during the development of the RFQ and RFP.
- b. LADOTD will invite FHWA assigned personnel to the Statement of Qualifications Review.
- c. LADOTD will perform a Value Engineering study on all Federal-aid highway projects on the National Highway System with an estimated cost of \$25 million or more prior to the release of the Request for Proposals.
- d. LADOTD will involve FHWA assigned personnel on the

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- Value Engineering Study and presentation.
- e. LADOTD will invite the FHWA assigned personnel to the Proposal Review Committee.
 - f. LADOTD will request FHWA approval on Public Interest Findings for proprietary or patented items prior to the release of the RFP.
 - g. LADOTD will request FHWA approval (via formal request) prior to releasing the Request for Proposal (RFP) document to the short-listed Design-Builders.
 - h. LADOTD will distribute Alternate Technical Concept submissions to assigned FHWA personnel for review and approval and invite FHWA assigned personnel to Alternate Technical Concept reviews and committee meetings.
 - i. LADOTD will request approval from FHWA Division Administrator prior to issuing addenda which result in major changes to the RFP. Minor addenda need not receive prior approval.
 - j. LADOTD will submit a post-award tabulation of Proposal prices and proposer's evaluation scores with the Request for Concurrence in Award.
 - k. LADOTD will provide FHWA with assurance that all Proposers have received all issued addenda prior the FHWA approval of the RFP.
 - l. LADOTD will request FHWA approval of any plan submittals (grade and drains, roadway, bridge structures, etc) prior its release for construction.
 - m. LADOTD will request FHWA concurrence for Initial Financial Plans on Major Design-Build Projects prior to issuance of a RFP.
 - n. LADOTD will submit an Evaluation Report (1-2 pages) for those approved Alternate Technical Concepts (ATCs) that are used as the bases for price and technical proposals.

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d. Business Standards

The time frames stated herein may be reduced in emergency or unusual situations as approved by the FHWA Division Administrator. Established timeframes assume early and continuous coordination. Early coordination during the RFQ and RFP development is strongly encouraged.

1. LADOTD will allow FHWA 10 business days, from receipt date, to review and concur with the issuance of the RFQ.
2. LADOTD will allow FHWA 15 business days, from receipt date, to review and/or approve the RFP.
3. LADOTD will E-mail Alternate Technical Concepts to the FHWA assigned personnel for review within two business days of receipt from a Proposer. LADOTD will allow FHWA 5 business days from receipt date, to review and/or approve ATCs.
4. LADOTD will allow FHWA 10 business days, from receipt date, to review and/or approve major addenda.
5. LADOTD will allow FHWA 10 business days, from receipt date, to review and/or concur in award.
6. LADOTD will allow FHWA 10 business days, from receipt date, to review and/or approve the submitted plans.
7. LADOTD will allow FHWA 10 business days, from receipt date, to review and/or concur with the Initial Financial Plans on Major Design-Build Projects.
8. LADOTD will submit the ATC's Evaluation Report to the FHWA Louisiana Division Office within 8 weeks of contract award.

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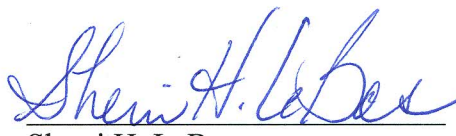
FHWA and LADOTD mutually agree to the delegations defined in this section of the Stewardship Agreement as allowed by Title 23 Section 106 and further agree to abide by the procedures, practices, and business standards outlined throughout this Stewardship Agreement.

It is further agreed that incremental changes may be made to this agreement with the concurrent approval of the Chief Engineer of the LADOTD and the Assistant Division Administrator of FHWA for Louisiana, while retaining the integrity of the overall Stewardship Agreement.

This agreement supplements the existing stewardship agreement dated 09/01/2007 between the FHWA and the LADOTD.



Charles W. Bolinger
FHWA LA Division Administrator



Sherri H. LeBas
Secretary
Louisiana Department of
Transportation and Development

Effective Date: 8/26/2011

