

# Successes **in** Stewardship

<http://www.environment.fhwa.dot.gov/strmlng/es4newsltrs.asp>

September 2007

## Design-Build Final Rule Outlines New Contracting Procedures to Streamline Project Development

Section 1503 of the 2005 Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires the Federal Highway Administration (FHWA) to modify its rules regarding design-build contracts issued by state departments of transportation (DOT). The provision requires that the FHWA allow state DOT projects conducted under design-build contracts to proceed through the preliminary design stage before the National Environmental Policy Act (NEPA) process is complete. The Final Rule for Design-Build Contracting was issued August 14, 2007 and is effective September 13, 2007. This Rule streamlines the project development process for design-build projects by allowing state DOTs to conduct the NEPA process in parallel with entering into a design-build contract for the project and proceeding through the preliminary design stage. Previously, completion of the NEPA process was required before the state DOT could issue design-build request-for-proposal documents. As directed in Section 1503, the Rule forbids starting the final design before the NEPA assessment is complete.



Rebuilding the I-35W bridge over the Mississippi River in Minneapolis will be the first project developed under the new Design-Build Rules

The Final Rule allows state DOTs to conduct the following processes before completing the NEPA process:

- Issue a request-for-proposals (FHWA concurrence required)
- Award design-build contract (FHWA concurrence required)
- Issue notice to proceed for preliminary design services (FHWA concurrence required)

### Listening to Stakeholders during the Rulemaking Process

The Final Rule was developed after comments received on the Notice of Proposed Rulemaking (NPRM) (published in the Federal Register on May 25, 2006) were evaluated and incorporated, as appropriate. FHWA received comments from 36 different entities including state DOTs, industry organizations, contractors, and others. The most important change made as a result of the comments received was expanding the definition of the term "preliminary design." Most commenters felt that the original definition was too narrow since it limited the preliminary design activities to only those that are necessary to properly conduct a NEPA alternatives analysis and review process. The Final Rule defines preliminary design more broadly as activities undertaken to define the general project location and design concepts and provides examples of preliminary design activities.

### What Are Design-Build Contracts?

In the traditional transportation project development process, the state DOT prepares a complete project design-either in-house or with a consultant-with specifications. Based on these specifications, the state DOT requests bids for construction contracts. Design-build contracts allow agencies to contract for both design and construction services in a single contract. Design-build contracts have the potential to make the project implementation process more efficient by:

- Eliminating the administrative burden of issuing two contracts
- Improving and streamlining both the design and construction of the project since both are done by the same company and therefore save the time required for the construction company to become familiar with the design.
- Reducing the contractor's risk by eliminating its exposure to lawsuits between the design and construction companies.

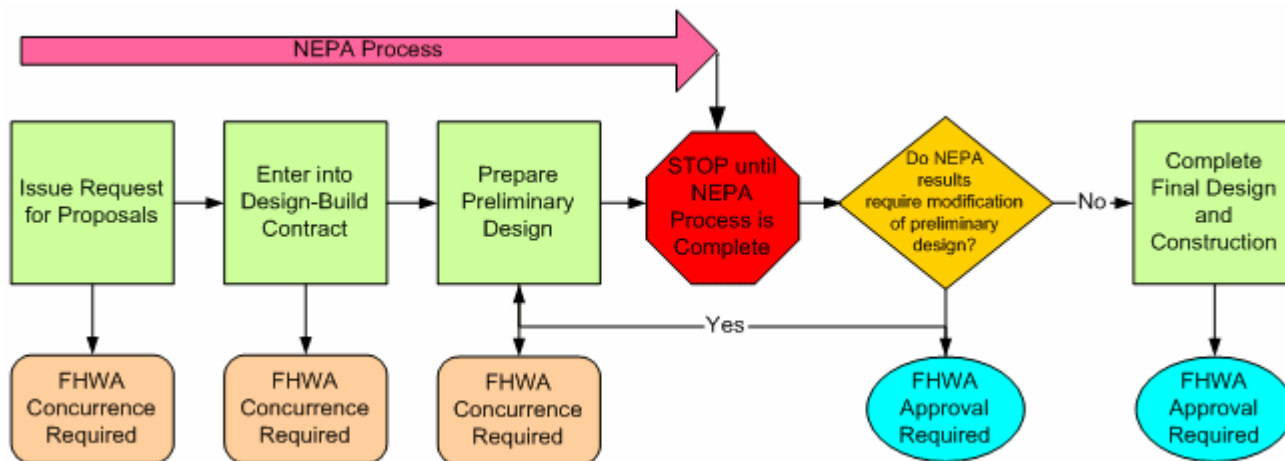
However, design-build contracting also can also introduce potential problems such as:

- Some contracting agencies may feel a loss of control of the design process.
- Owner-initiated changes after contract award involve negotiated changes that are frequently more difficult than those under the traditional design-bid-build project delivery system.

Other changes made to the Final Rule as a result of comments received include:

- Clarified the definition of "final design" to include any design activities undertaken after preliminary design is complete
- Deleted provisions on procurement in public-private partnerships; deferred issue for future rulemaking
- Removed the definition of the word "developer" to avoid confusion with the term "design-builder"
- Added that price evaluation and reasonableness requirements apply when the contracting agency is using Federal-aid highway funds for the project

### Permissible Project Development Process under New Design-Build Rule



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#### Look What's New!

Project level visualization is a powerful tool that can strengthen public participation process and aid the public in understanding proposed projects. SAFETEA-LU calls for States and MPOs to use visualization techniques for proposed transportation projects. Visualization can provide the public and decision makers with a clear picture of the proposed projects and also of possible impacts to the human and natural environment. [Click here to view examples of various visualization techniques on the Re:NEPA website.](#)

For additional information please contact [Aung Gye](#) or 202-366-2167.

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