

# Design-Build Method

## Doing More with Less

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In an increasingly tight economy, professionals in every industry are being asked to do even more with fewer resources. The right of way industry is no different. The design-build project delivery method is one solution for doing more and getting it done faster and cheaper. That is why it is so crucial to understand the design-build project delivery method and the importance of the smooth and effective delivery of right of way services, especially in transportation projects funded by the Federal Highway Administration (FHWA).

The design-build method stands in stark contrast to the traditional design-bid-build process. The design-bid-build process is structured so that the sponsoring agency contracts separately for design and construction. After design is complete, a new bid phase begins to select the construction firm. The process proceeds in a linear fashion, generally without much communication between the designer and the construction firm. The agency, therefore, takes responsibility for design errors.

In contrast, the design-build process is structured so that the sponsoring agency has only one contract with the firm (or consortium of firms) that delivers the project from design to completion. It ensures that there is one centralized point of contact for the agency. It also allows for a non-linear progression of right of way services, as construction can start while design is continuing. The design-build process also shifts the responsibility for design errors to the contractor.

### GAINING POPULARITY

The early 1990's saw a real push for the design-build project delivery system, as FHWA established its Special Experimental Project No. 14 Innovative Contracting in 1990. In 1998, this development was followed up by the Transportation Equity Act for the 21<sup>st</sup> Century, Section 1307, which authorized a design-build effectiveness study. The study considered comments on the design-build project delivery system from a variety of agencies and their project managers, and came up with the following recommendations.

- Carefully choose projects appropriate for design-build;
- Adequately prepare to procure and manage a design build project;
- Properly phase the project by timing permitting, environmental clearance and right of way acquisition prior to award of design-build contract;
- Leave design guidelines loose, with performance criteria designed to drive the creativity of the design-build team; and
- Maintain communications between the contracting agency and design-build team.

Final rules for design-build were contained in 23 CFR 636/Safe, Accountable, Flexible, Efficient Transportation Equity Act - Legacy for Users (SAFETEA-LU), Section 1503.

Design-build procurement requirements, with their mix of both price and qualification considerations, provided a middle ground between the low-bid construction contracts authorized by 23 USC 112 (b)(1) and 23 USC 112 (b) (2)'s qualifications-based selection for engineering/design services.

FHWA has estimated that on federal-aid projects within a state where right of way flexibilities could be applied, 20 percent of eligible projects incorporated some form of right of way flexibility by the end of 2011. FHWA research also shows that 28 states have a preference for pursuing flexible right of way practices via a design-build project delivery system.

In conjunction with these findings, FHWA has also launched its Every Day Counts Initiative (EDC). It seeks to shorten project delivery times along with accelerating the deployment of innovative transportation technology. EDC views the design-build method of project delivery as having many benefits, including nurturing partnerships, allowing the agency more control, lower costs and enhanced cost certainty.

### INCORPORATING FLEXIBILITIES

With the increasing use of the design-build system, public agencies are now requiring both public employees and private consultants to leverage the flexibilities inherent in the system to deliver possession of right of way faster and less expensively. In order to meet this challenge, right of way professionals are being required to orient themselves to an environment that is very different from the design-bid-build system of the past.

One of the key advantages of the design-build project delivery system is that it allows a non-linear progression of right of way services, where parcels that are most important to construction are targeted first wherever they may be along the proposed route. Design plans are usually incomplete when appraisals and reviews

are prepared. Therefore, different portions of the projects may be in different states of appraisal, acquisition, relocation and project management simultaneously.

In order to effectively cope with these multiple stages of right of way delivery, it is important to develop a strong right of way team and efficient process. Hallmarks of a successful design-build program include early involvement of the right of way team with the design process. An integrated team approach which involves the planning, engineering and environmental disciplines is best.

Incorporating right of way flexibilities into the right of way program is also crucial. This includes the use of waiver valuations for uncomplicated acquisitions under statutory dollar limits, as authorized by 49 CFR 24. 102 ( c ) ( 2), conditional right of way certifications and possession and use agreements. Each of these tools are available under current regulations when applied properly. Other flexibility tools include the use of acquisition and relocation incentive payments, as may be approved by the FHWA, and allowing the design build contractor to process checks for agency-approved compensation for land acquisition, relocation and title expenses in order to expedite payments (with later reimbursement from the agency).

### FACILITATING COMMUNICATION

It is imperative that the design build right of way team be involved early in the design process to attempt to reduce the number of acquisition and relocation impacts, if possible. As design proceeds, it is incumbent upon the right of way team to review the project route and note which parcels are crucial for construction and anticipate which flexible right of way tools can best be used.

Cooperation among right of way professionals is always a necessity, but this is especially true in design-build

projects. Strong cooperation between all disciplines will ensure that the hand-off between tasks is smooth, compliant with regulations and timely. An example of this necessary cooperation occurs when the appraiser and relocation agent jointly make an initial site visit to discuss the resolution of personalty versus realty issues on relocation parcels. The relocation agent should also assist the right of way team in identifying long lead or complex relocations that may exist on parcels that are needed early on for construction.

Following these steps and using frequent communication between right of way disciplines can ensure that the right of way process leverages the flexible nature of design-build projects. This helps prevent situations where potential problems are overlooked in the early stages and float down river for the next right of way discipline to deal with.

The design-build project delivery system offers a variety of features that can accelerate the right of way process. A right of way professional can maximize their potential for quicker, cheaper right of way delivery with strong leadership within a right of way team that has an in-depth understanding of the tools for right of way flexibilities. This understanding, coupled with an appreciation for smooth transitions between tasks and disciplines in a non-linear environment, greatly increases the chances for on-time, on-budget delivery of right of way.

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