

Memorandum of Understanding
Between
The Wisconsin Department of Transportation
And
The Wisconsin Department of Natural Resources
Regarding
Design-Build Coordination

I. Parties

This Memorandum of Understanding (MOU) is made and entered into by and between the Wisconsin Department of Transportation (WisDOT) and the Wisconsin Department of Natural Resources (DNR) collectively referred to as the "Signatory Parties." When executed by all the Signatory Parties, this MOU shall become effective as of the last signature date.

II. Purpose

A design-build contracting has been established under s.84.062, Wis. Stats. to design and construct multiple projects, which necessitates a modified coordination process between WisDOT and DNR. The purpose of this MOU is to create and document a process to implement coordination between the two agencies on design-build projects that complies with the Cooperative Agreement between WisDOT and DNR (CoA) and s. 30.2022 Wis. Stats. This process enables the application of the design-build contracting method while ensuring appropriate project oversight by DNR.

III. Details of the Agreement

As outlined below and in the attached WisDOT/DNR Design-Build Coordination schedule, the agencies agree to the following:

- a. WisDOT agrees to coordinate with DNR on conditions and initial requirements included in design-build project Requests for Proposal (RFP) relevant to regulatory responsibilities under DNR purview and the standards of DNR deliverables. DNR agrees to coordinate with WisDOT based on RFP submittal and provide deliverables based on RFP submittal. Coordination between agencies is with the understanding that additional coordination throughout the project may result in the need for amendments to these deliverables at later stages of the process.
- b. WisDOT agrees to coordinate with DNR throughout the design-build process, specifically during the RFP preparation and later stages following RFP advertisement to ensure design elements consider DNR comments and minimize the adverse environmental impact of the project consistent with the Cooperative Agreement and s. 30.2022 Wis. Stats. WisDOT agrees to provide DNR with built-in opportunities, both required and optional, to review project designs and provide input, including the involvement points listed in the attachment.
- c. WisDOT and DNR collectively agree to coordinate and communicate throughout design-build projects. Both agencies commit to coordination that will ensure that any changes to project designs are developed by the design-builder with environmental commitments in mind and that final designs and construction comply with environmental commitments and permit conditions.

- d. WisDOT agrees to provide DNR with an appropriate level of design detail at the RFP-Design phase of the project to allow for a DNR to provide Final Concurrence, 401 Water Quality Certification, or concurrence with Book 2 Section 4: Technical Environmental Compliance section prior to RFP release.
- e. DNR will review information provided by WisDOT, as described below, and determine completeness or request additional information, with the understanding that the design-builder may request to reinitiate coordination during final design and may request an amendment to one or more of these final deliverables. These information requirements may be modified as appropriate for specific projects:
 - 1. 401 Water Quality Certification information: wetland delineation with a confirmed boundary by DNR, practicable alternatives analysis agreed to by DNR, full accounting of all permanent and temporary wetland impacts, wetland mitigation tracking form agreed to by DNR, and other information the DNR identifies during coordination procedures to evaluate the standards for certification.
 - 2. Final Concurrence Information: contract special provisions, Natural Heritage Inventory species surveys and associated mitigation plans as applicable, incidental take authorization applications as applicable, and other information the DNR identifies during coordination procedures to evaluate the standards for certification.
 - 3. Transportation Construction General Permit (TCGP) information: erosion control plan for the entire project area in compliance with Section 3.1 of the TCGP, stormwater management plan for the entire project detailing post-construction stormwater control elements in compliance with Section 3.2 of the TCGP, notice of intent (NOI) to discharge, wetland protection and endangered or threatened resource information as required by the TCGP. DNR agrees to notify WisDOT within 14 days, as specified in the TCGP, of any deficiencies in the submitted NOI.
- f. WisDOT agrees to retain responsibility for coordinating with DNR throughout the life cycle of a design-build project. WisDOT agrees to obtain any permits as required under a traditional design-bid-build project. WisDOT will retain responsibility for requiring the Design-builder to meet all commitments and all conditions of applicable permits.
- g. WisDOT and DNR agree to work within the timelines established in summary table in the attachment. In the event deliverables require amendment, the agencies agree to coordinate in a timely manner. The anticipated turn-around review times are given in the attachment summary table. Review times noted as 'contractual' in the table will be relied upon by the design-builder and failure to meet these review times may cause schedule and cost impacts that will be passed on from the design-builder to WisDOT.
- h. Acquisition of DNR real estate for projects is not within the scope of this MOU. This process will be handled on a project-by-project basis and will conform with the agencies' existing real estate processes.

IV. Conflict Resolution

In the event of conflict, the Signatory Parties shall utilize the conflict resolution provisions described in the Cooperative Agreement to resolve the conflict.

V. Entirety of Agreement

This MOU represents the entire and integrated agreement between the Signatory Parties, and supersedes all prior negotiations, representations, and agreements regarding Design-Build, whether written or oral, except as noted.

VI. Review of this agreement

Both agencies agree to maintain a relevant and accurate agreement that is mutually beneficial to each agency to fulfill the statement of purpose under Section II of this agreement. DNR and DOT commit to cooperatively evaluate this agreement a minimum of every five (5) years to determine aspects requiring updates and amend agreement language, as needed.

VII. Signatory Authority

Upon affixing signatures below, the Signatory Parties agree to the terms of this MOU.

Wisconsin Department of Transportation

DocuSigned by:
By Barry Paye
3F13953827A84D7...
Print Name: Barry Paye
Director - Bureau of Technical Services, DTSD
Title: _____
Date: October 30, 2024

Wisconsin Department of Natural Resources

Signed by:
By Greg Pils
AA6377AF96B8451...
Print Name: Greg Pils
Director - Bureau of Environmental Analysis &
Title: _____
Date: October 30, 2024

WisDOT/DNR Design-Build Coordination Schedule

September 16, 2024

Design-Build Coordination Schedule Purpose

The purpose of this document is to establish coordination steps between WisDOT and DNR for design-build projects.

Terms

ATC:	Alternate Technical Concept	REC:	Regional Environmental Coordinator
DSR:	Design Study Report	RFC:	Released for Construction
ECIP:	Erosion Control Implementation Plan	RFP:	Request for Proposals
FC:	Final Concurrence	RFQ:	Request for Qualification
IRL:	Initial Review Letter	SOQ:	Statement of Qualifications
NEPA:	National Environmental Policy Act	WQC:	Water Quality Certification

Design-Build Process

The design-build procurement schedule presented addresses key coordination phases in the design-build process between WisDOT and DNR. The intent of this paper is to facilitate communication amongst WisDOT and DNR partners by documenting check-in points, reviews, and approvals throughout the process. This document shows more frequent check in points than likely required. DNR and WisDOT project staff should review each project and minimize check-in points for simple projects, or projects with straight forward coordination.

WisDOT will work collaboratively with the DNR to review individual project schedules to identify check-in points, so DNR TL can predict schedule commitments.

Scoping

Project Scoping

Project Scoping is the first phase of any project at WisDOT, regardless of contracting method. Once a project is identified in scoping as a candidate for design-build, it will be recommended to WisDOT’s Alternative Contracting Section for review to ensure the project is appropriate for the design-build program. DNR’s involvement in this step will follow the traditional DNR/DOT coordination process.

Contracting Method Selection

A formal risk registry will be developed for potential design-build candidates to evaluate contracting benefits and risks of design-build for the project. A risk analysis will be performed to identify and document project risks. WisDOT Regional Environmental Coordinators (RECs) will provide project information required for this step and consult DNR as needed. The results of the risk analysis will be used by WisDOT to validate the contract method selected and identify risks that will be addressed in design and construction.

The contracting method will be selected for a project before the project leaves the scoping phase. Most WisDOT projects will continue to utilize design-bid-build contracting.

Pre-Award

Plan Development and Initial Review Letter

Regional WisDOT project development (PDS) staff will develop plans that contain enough specificity of design to understand and document project impacts (environmental, utility, real estate, etc.). This stage may be managed by the region PDS staff or a consultant.

WisDOT will submit a request for DNR's Initial Review. DNR will analyze the proposed transportation facility improvements and provide DOT an Initial Review Letter (IRL) with recommendations that reflect the applicable environmental and regulatory requirements. This portion of the process will follow standard DNR/DOT Cooperative Agreement procedures. WisDOT will incorporate information in the IRL into the design and technical requirements, and the NEPA document will be developed and approved.

During plan development, communication will be maintained with agencies throughout development of the environmental document and as needed.

Request for Qualification (RFQ)

The Request for Qualification (RFQ) document is issued by WisDOT to design-build teams interested in submitting project proposals. The RFQ includes requirements that design-build teams must include in a statement of qualification (SOQ) submitted to WisDOT. The RFQ will require proposers to describe team composition, past experiences of team members or firms, previous projects, approach to the current project and project management strategies.

At the end of this phase, design-build teams will submit their Statements of Qualifications (SOQs), and a shortlist of qualified teams will be selected by WisDOT. These shortlisted firms will have the opportunity to submit proposals on the project.

The project REC will generally review any environmental-related portions of the RFQ requirements and SOQ submittals. The REC will consult with DNR if needed, but we anticipate little DNR involvement in this phase.

Request for Proposal (RFP)

The Request for Proposal (RFP) document is issued by WisDOT to shortlisted design-build teams. The RFP consists of technical requirements that will be provided to the design-build team regarding the project requirements. RFP development occurs throughout the pre-award phase and is developed alongside the project plans and specifications.

The RFP contains all project requirements and technical details including the approved environmental document and environmental commitments.

Two coordination options are being presented as viable options. Option one will suit projects with low environmental complexities. The coordination option will be agreed upon between WisDOT and DNR and other necessary agencies early in the RFP development phase.

- Option 1: WisDOT has provided agencies with enough information to provide Final Concurrence/401 Water Quality Certification, and TCGP coverage to WisDOT prior to the RFP release. Permits and FC letters will be included in the RFP as contract documents.
- Option 2: Agencies do not have enough information to provide 401 WQC and final concurrence prior to the RFP. WisDOT will create RFP exhibits and write the RFP technical requirements for the project based on coordination with DNR. DNR will concur with RFP Book 2 Section 4 Technical Requirements - Environmental Compliance. In this case, WisDOT will retain the risk of schedule or cost impacts to the project from the permitting/concurrence process after award. WisDOT is best suited to hold this risk, based on the cooperative agreement and relationship with DNR. This will minimize risk being 'bid into' the project by proposers and will allow for a process that meets all requirements for coordination.

The RFP will be released to the shortlisted design-build teams for proposal development.

Proposal Development, Alternative Technical Concepts (ATC) and Award

Design-build teams will develop proposals that follow the RFP requirements. The design-build teams will communicate with WisDOT to ensure their interpretation of the RFP meets WisDOT's intent and gather input on **alternative technical concepts (ATCs)**.

ATCs are design concepts put forward by proposers that do not fit within the RFP requirements, and could provide WisDOT with 'as good or better' project performance by improving cost, schedule, quality, or reducing project impacts. Design-build teams prepare and present ATCs proposals to WisDOT. After reviewing the ATCs, WisDOT will either accept or deny each ATC. WisDOT may also conditionally accept an ATC or may determine that the submittal is not an ATC (falls within the RFP requirements). WisDOT anticipates that for the majority of ATCs, WisDOT (including designers, RECs and consultants) will be able to determine if the ATC will impact environmental commitments. If WisDOT cannot make that determination for a particular ATC, WisDOT may consult with DNR, or may make an ATC acceptance conditional on the design-builder providing WisDOT with appropriate information that allows for obtaining concurrence from DNR.

Design-build teams submit technical and cost proposals, which may include approved ATCs. WisDOT will evaluate the proposals and select a winning design-build team.

Post Award Design

Following contract execution, the selected design-builder will continue design and coordination efforts. WisDOT will retain the responsibility for compliance with environmental requirements.

The first required check in point for the DB team is when the DB team has completed the **DSR and associated plans**. The review at this stage will ensure conformance with RFP requirements, including WisDOT standards, environmental commitments, and any permits required for the project. WisDOT will approve the DSR and associated plans. The contractor is fully involved in the design of the project, so the design-build team will provide WisDOT/DNR with a complete ECIP including a schedule, and construction means and methods. Depending on which option has been selected for coordination, DNR will:

- Option 1: Review plans and provide ECIP review and comments
- Option 2: Review plans, issue 401 WQC, FC & TCGP, and provide ECIP review and comments

The second required check in point for the DB team, known as **Released for Construction (RFC)** plans, will give WisDOT and DNR another review point to ensure design conforms to the permit requirements. The REC will consult with DNR if needed, but we anticipate little DNR involvement in this phase.

If at any time during the design process the design-builder feels work outside the permits, agreements, or environmental commitments is necessary, the design-builder will request WisDOT review and initiate coordination with DNR. If agreed upon, permits or approvals may be amended.

Early Construction

The design-builder may submit an ECIP for early construction activities. These are typically non-permanent activities such as surveying or temporary construction but may include things like clearing and grubbing as well. These activities would take place prior to the final design being complete. The final permits and FC need to be issued, as well as the ECIP before early construction begins.

Construction

The construction phase of a design-build project will work very much like construction of a traditional project. A process similar to traditional projects would be followed to amend the FC, 401 certification and/or 404 permit during construction if needed.

During both early construction and construction phases, inspections and ECIP amendments as necessary would be ongoing, similar to a traditional project.

Turnaround Times

Specific turnaround times for submittals are included in the table below. Timeframes before award are intended to keep procurement on track. The critical review points are ATC reviews, which are challenging to schedule because the review occurs when the DB team submits the ATC.

Once a design-build team is selected, turnaround times become contractual between WisDOT and the design-builder, and it is important to WisDOT to maintain the schedule. Failure to achieve turnaround times during design and construction phases could result in schedule and/or cost increases and could dilute some of the benefits inherent to the design-build procurement method.

Summary of WisDOT/DNR Coordination for Design-Build Projects

* - Key decision points in coordination process.

** - Secondary decision points. Review by DNR may be minimized or reduced to decrease commitment by DNR if DNR priorities require less time commitment to DB projects.

	Phase	DNR Product	DNR Involvement	Key Differences	Turnaround time
Scoping	Project Scoping	Same as traditional project	Same as Traditional	None	NA
	Contracting Method Selection **	Risk Registry input OPTIONAL	Participate in Risk Analysis as needed	Formalize existing process	NA
Pre-Award	Plan Development *	Initial Review Letter (IRL)	Same as traditional project	None	30 days
	Request for Qualification (RFQ) **	Comment on RFQ OPTIONAL	Review technical requirements in RFQ if needed	New process Optional for select cases	7 days
	Request for Proposal (RFP) <i>DNR/WisDOT mutually selects option 1 or 2 based on project complexities</i> *	Option 1: FC/401 WQC provided with conditions, issue TCGP Option 2: DNR concurs with RFP Book 2 section 4 Technical (Environmental Compliance)	Coordination between WisDOT and DNR continues between IRL and this stage – just like traditional contracting	DOT provides design including slope intercepts and signed Environmental Document DNR provides deliverables for option 1 or 2	60 days
	Alternative Technical Concepts (ATC) **	Comments on ATCs OPTIONAL	Given opportunity to comment on applicable concepts	New process Optional for select cases	7 days Turnaround time is full length for WisDOT review

Post-Award	DSR Design Review, and ECIP concurrence *	Option 1: Review plans, and provide ECIP review and comments Option 2: FC/401 WQC & TCGP, ECIP review and comments	FC and ECIP review	Combination of traditionally separate phases DB provides schedule, design, erosion control plans, and ECIP	Both options 30 days
	Potential Early Construction	Early ECIP review and comment (included in original ECIP or amendment)	Same as traditional project	No difference to ECIP amendment process	14 days
	Released for Construction (RFC) **	Plan review OPTIONAL	Review RFC to ensure plans are compliant with FC	WisDOT will perform this review. DNR involvement is optional for select cases	14 days
	ECIP Amendments (as needed during construction)	ECIP Amendment review and comment		None	14 days