

Current Practices to Set and Monitor DBE Goals on Design-Build Projects and Other Alternative Project Delivery Methods

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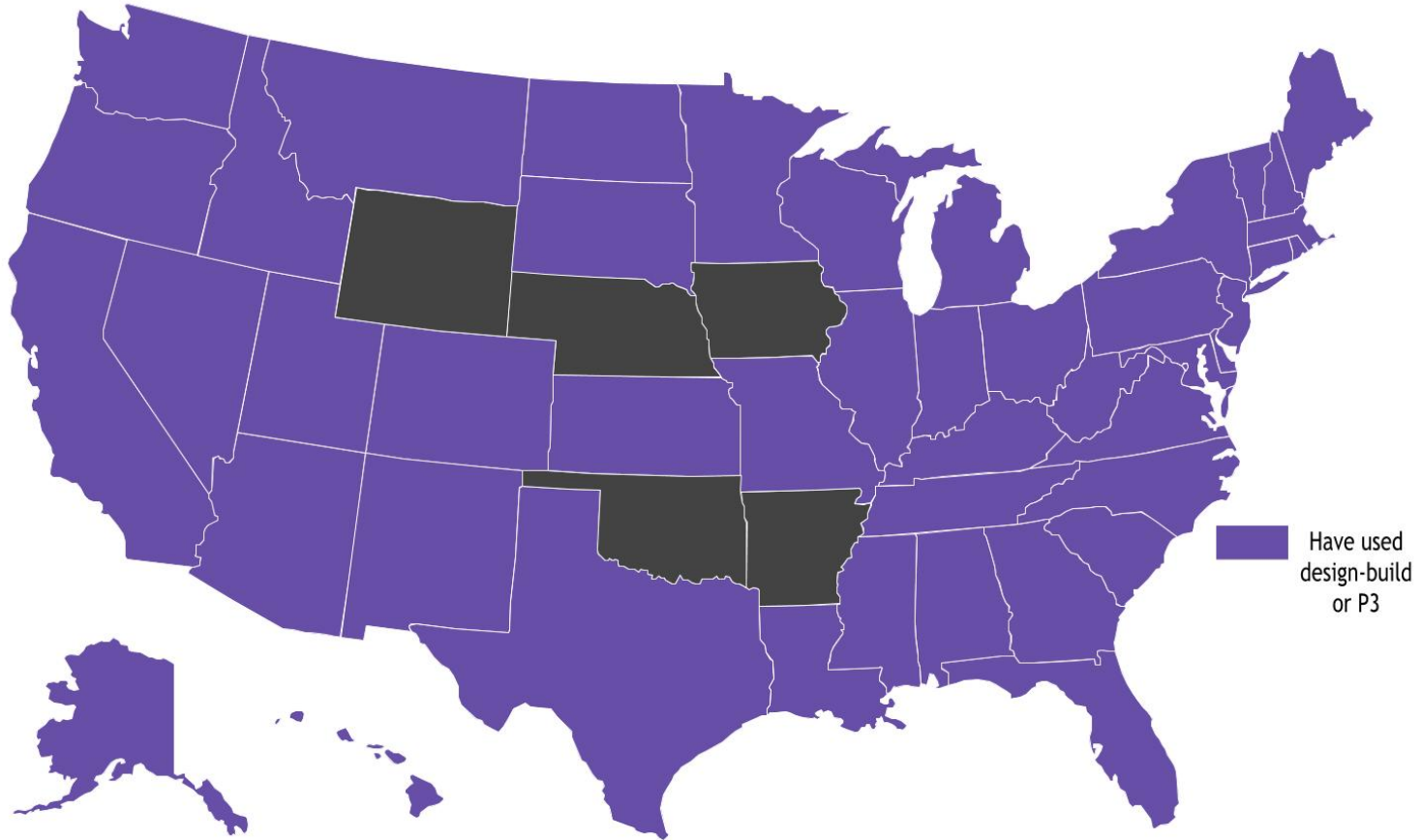
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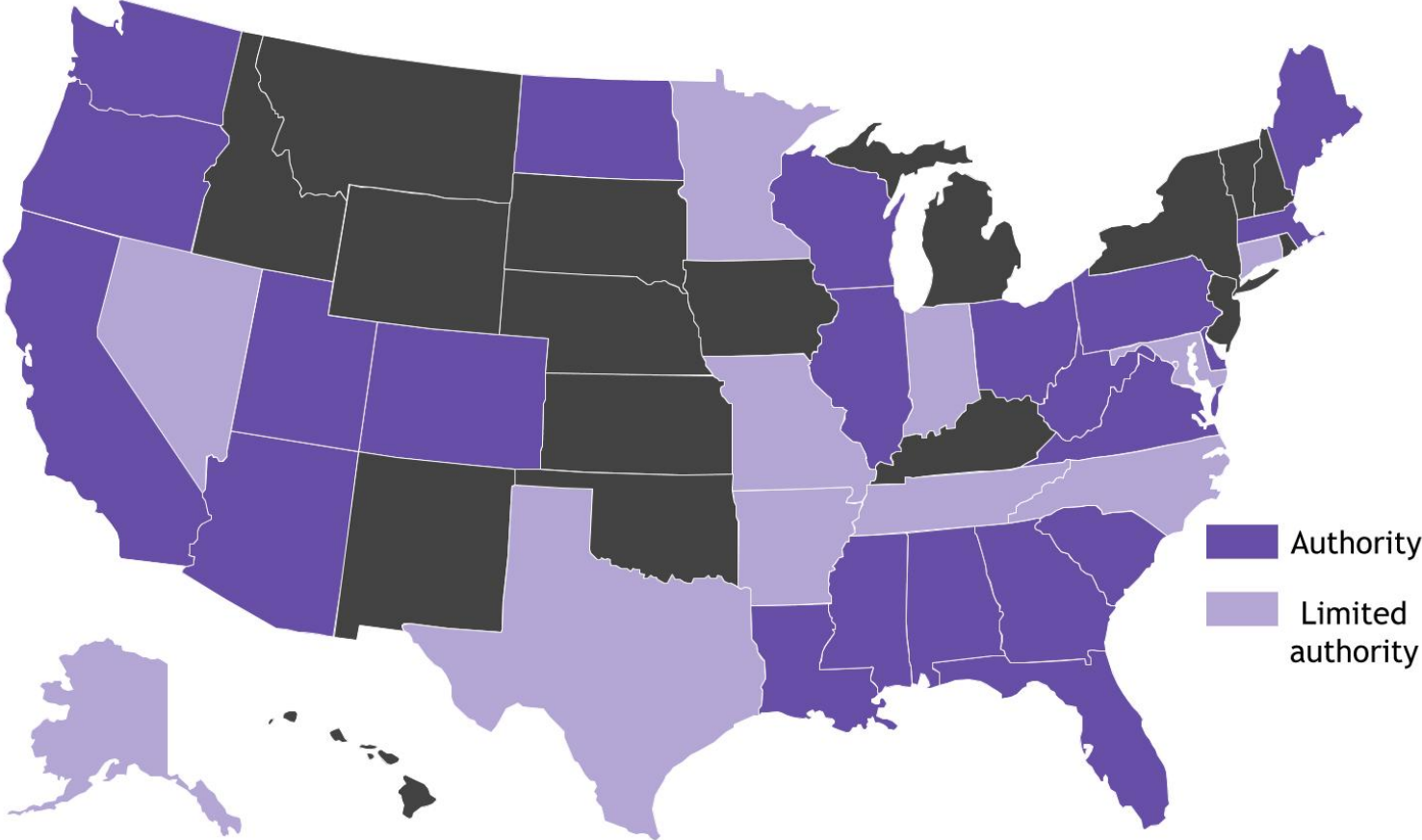
Study overview

- Do state DOTs use DBE contract goals on alternative delivery method projects?
 - Design build
 - P3
 - CMAR/CMGC
- Use same approach as they do for design-bid-build contracts?
- If modify the approach, how?
- What is there experience with different approaches?
- Sample RFQ/RFP language and other documentation
- Results based on state DOT practices as of 2014

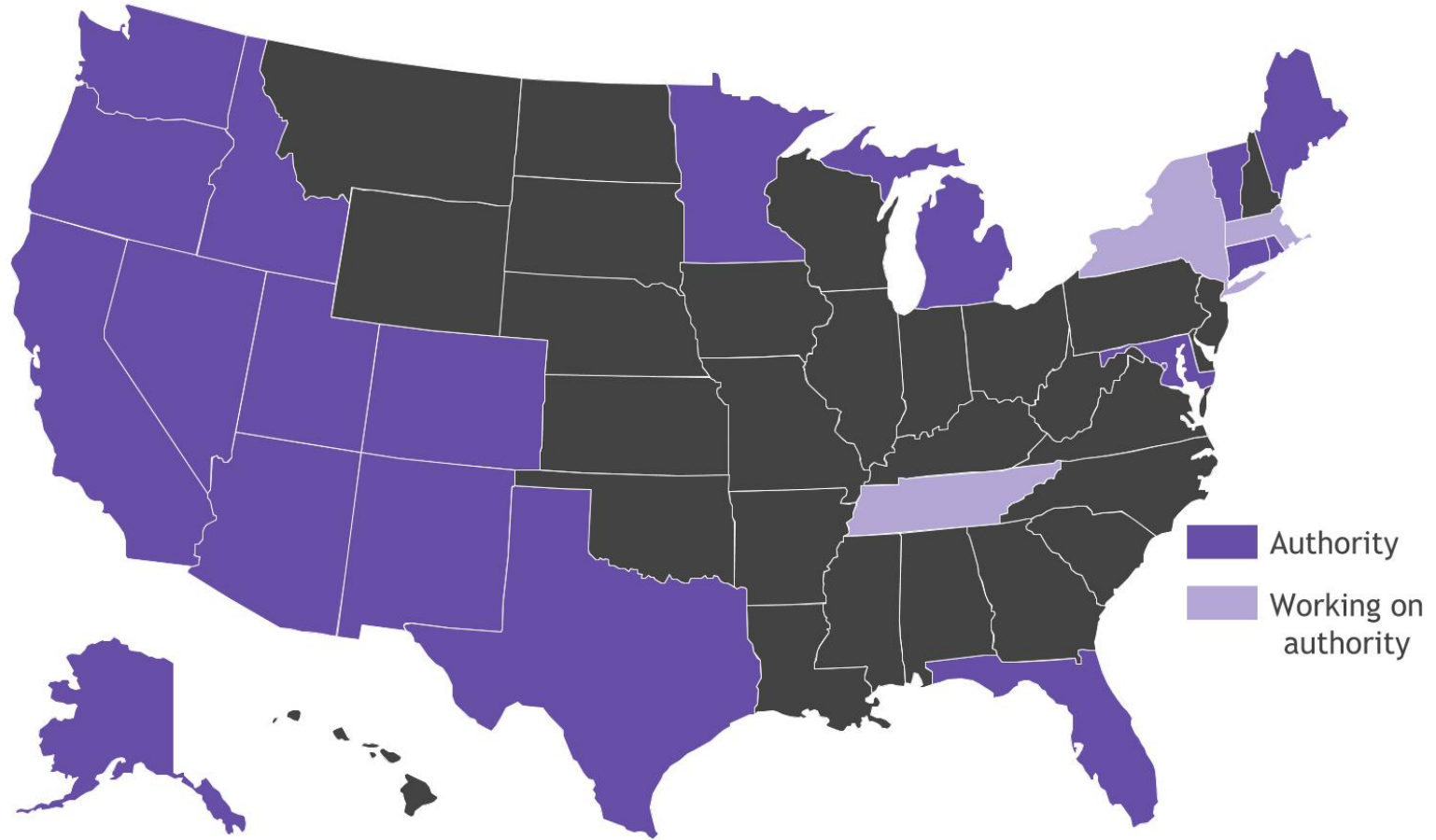
State DOTs that have used design-build as a delivery method (FHWA 2012, Shakya 2013, Gransberg 2013)



State DOTs with legislative authority to use P3 (Rall 2013)



State DOTs with legislative authority to use CMAR/CMGC (Fall 2013)



Use of DBE contract goals on design-build and P3

- 33 state DOTs have used DBE contract goals on either design-build or public-private partnership (P3) projects
 - 5 have only used same methods as for D-B-B projects (Del., Ind., Miss., Penn., Tenn.)
 - 28 always or sometimes use new methods
- 8 state DOTs have not used DBE contract goals on these projects
 - Typically those that do not set goals for any contract
- For a few state DOTs, unclear whether they have used DBE contract goals

Approaches to using DBE contract goals CMAR/CMGC

- Construction manager-at-risk (CMAR) and construction manager/general contractor (CMGC) are similar alternative delivery methods
- 10 state DOTs have used DBE contract goals on CMAR/CMGC
 - 2 have only used same methods as for D-B-B projects at time of report (Colorado, Connecticut)
 - 7 use a “negotiated DBE goal” method (Ariz., Cal., Minn., Nev., Ore., Utah)
 - For 1, approach unclear

Challenges when applying DBE contract goals program to alternative delivery method projects

- Setting contract goal with limited information
- Any new process can create confusion among proposers and potential subs
- Some engineering-related DBEs say they are left out
- Can be long lead time between proposal date and when subs actually used in construction phase
- With other complexities of a design-build project, DBE Program compliance can be low priority for prime and project manager
- Often mega-projects, with resulting challenges
- Local agency projects

When use traditional goals methods on design-build ...

- Set DBE contract goal before issue RFP
- Proposers meet goal or show good faith efforts at time of proposal
- Proposals include \$ commitments to specific DBEs
- Post-award compliance monitoring focuses on use of those DBEs

Range of state DOT application of DBE contract goals to design-build contracts

Component	Like design-bid-build	Unlike design-bid-build	
		Approach	State DOT examples
How goals are set	Evaluate prelim costs, similar projects	No additional approaches identified	
Number of goals	1	2 (separate design phase and construction phase)	DelDOT (bridge) MnDOT, RIDOT
When submission is required	RFP	RFQ	NCDOT
Requirements at time of submission	Meet goals or show GFE Then identify DBEs and \$	Plan for meeting DBE goal Commitment that will meet goal (no plan req.)	Caltrans, Nevada DOT, MoDOT, Ohio DOT VDOT
Evaluation at time of submission	Pass/Fail	Points	FDOT (in DBE Program Plan) KYTC (Ohio River Bridges) Ohio DOT
Extra points for exceeding goal	No	Yes	FDOT (in DBE Program Plan)

Experience when use new methods for goals for D-B or P3

- DBE plan at time of proposal rather than specific DBE commitments can achieve more objectives of Federal DBE Program
- Can require more strategies for assisting DBEs and other small businesses
- Higher DBE contract goals can be set
- Contractors better able to meet contract goals (and consistently do)
- Monitoring must focus on whether DBE plans are implemented

Advantages of approaches depend on project size/length

		<i>Project length</i>	
		Short	Long
<i>Project size</i>	Mega		Best opportunity for innovative approaches
	Small-Moderate	Best opportunity to use traditional D-B-B approaches	

New methods for goals for CMAR/CMGC

- No DBE contract goal set for proposals
- Proposers commit to making good faith efforts to meet a goal once set
- Some state DOTs require DBE plan with proposal
- State DOT sets goal at 60%+ design (before construction phase)
- State DOT reviews whether contractor makes good faith efforts to meet goal

Summary of results

- Of 48 state DOTs that appear to have used alternative delivery methods, 33 have applied DBE contract goals
- Many state DOTs started by using goals methods for design-bid-build, 5 continue to do so
- State DOTs, contractors, DBEs and FHWA report substantial difficulties using traditional goals methods, 28 state DOTs have used new approaches
- New approaches focus on DBE plan rather than specific commitments at time of proposal
- State DOTs and others report that new methods are workable and can achieve more of the objectives of Federal DBE Program
- For CMAR/CMGC, most state DOTs no longer set DBE contract goals prior to awarding these contracts

Barriers to widespread implementation of new methods

- State DOTs implementing new methods with very limited ...
 - Knowledge
 - Experience
 - Guidance from USDOT
- 49 CFR Part 26 primarily relates to design-bid-build projects and traditional consultant contracts
- Long-standing state DOT practices and USDOT guidance do not pertain to alternative delivery method contracts

Suggestions for future research

- State DOTs identified many gaps in the information needed to apply contract goals program to alternative delivery projects
- Gap greatest for P3 (especially operations phase)
- State DOTs would value more info about:
 - Successes/failures
 - Clarification from USDOT or FHWA
 - RFQ, RFP, contract and Program language customized for alternative delivery method projects
- State DOTs eager to receive the study report

Further research should include ...

1. How to coordinate between design, contracts, PM and DBE staff
2. Language for RFQ, RFP, contracts
3. Options for how/when to set goal for CMAR/CMGC
4. Setting DBE goals for P3 phases
5. Outreach with DBE groups
6. How to evaluate whether contractor has met goal or shown GFE
7. Whether DBE plans should be required, and what is in plan
8. Whether to work with selected proposer to augment DBE plan
9. When to request dollar commitments to DBEs
10. How to count DBE participation, monitor plan execution (esp. on P3)
11. How to remedy lagging DBE participation
12. Remedies available for failing to meet goal or show GFE post-award
13. How to incorporate contractor request for reconsideration
14. Guidance on when need to ask FHWA for waiver
15. Steps to comply with federal regulations
16. Opportunities to apply new D-B methods to traditional D-B-B contracts