

# 2026

## *Design-Build State Statute Report*

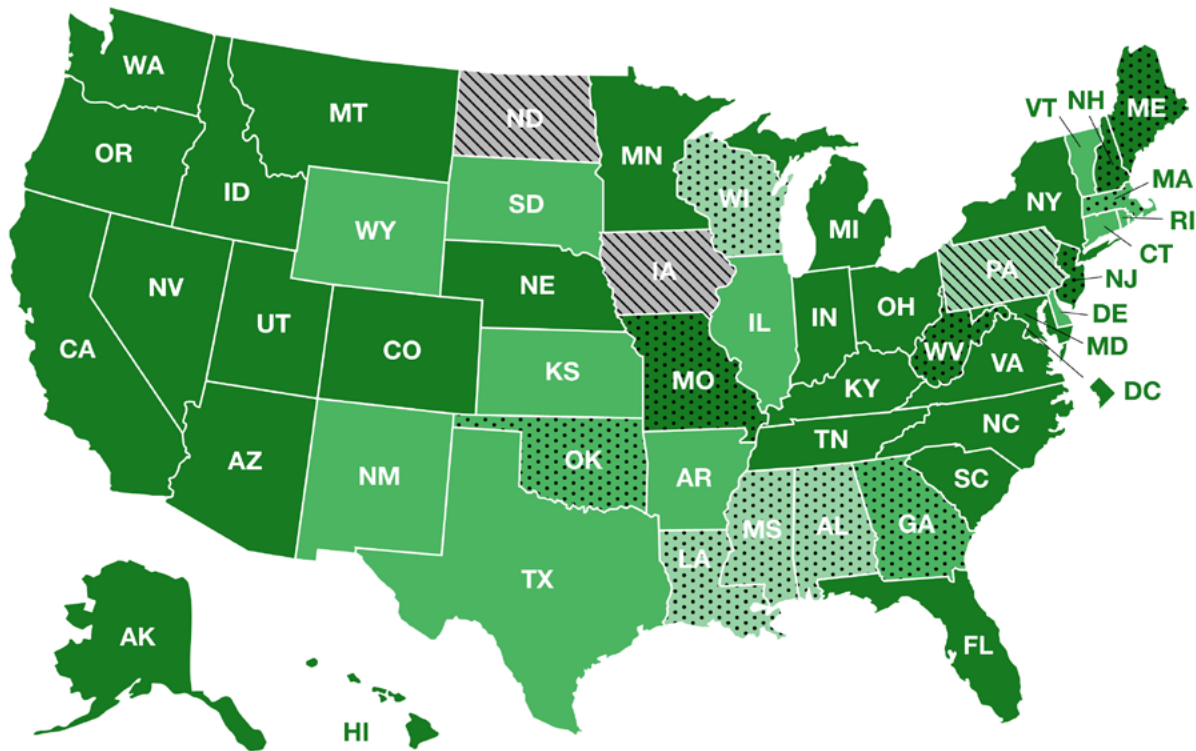
A guide to state design-build laws providing Owners, lawmakers and industry professionals with the statutory information needed to guide their project delivery decision-making.



# Design-Build Authorization by State



## 2026



Design-build not authorized

Design-build is a limited option

Design-Build, including Progressive Design-Build in some instances, is widely permitted

Design-Build, including Progressive Design-Build, is permitted by most agencies for all types of design and construction\*

Progressive Design-Build Not Authorized

Progressive Design-Build is a Limited Option

As of October 2025

\*Please see the full details of legislative authority by state in the pages that follow.

# Executive Summary

Once considered an “alternative” form of project delivery, Design-Build is now the fastest growing and most commonly used project delivery system. Nearly half of all design and construction projects in the United States are being delivered using some form of Design-Build. It is widely used for both private and public sector (federal, state and municipal) projects. It is used across all project types, including vertical (building) construction, transportation and water/wastewater markets.

The purpose of this report is to identify state and local governments and municipalities permitting Design-Build project delivery, including details of procurement approaches authorized. The two most prominent options for competitive procurement of Design-Build services are:

- **Best Value Design-Build:** A two-step procurement process that first identifies the most highly qualified Design-Builders, then seeks design and cost proposals. The Owner selects the Design-Builder offering the best value proposal (a combination of design, project approach and contract price).
- **Progressive Design-Build (PDB):** Design-Builder is selected primarily on the basis of qualifications. After selection, the Owner and Design-Builder collaborate to progressively advance the design and cost model toward a mutually agreeable design concept and contract price.

PDB authority is addressed in two ways in this report. In some instances, the interpretation of existing legislation allows for its use. In other instances, legislation specifically allowing PDB has been enacted. Regardless of the approach, keep in mind that to use PDB, public agencies must have regulatory authority to procure the Design-Builder without establishing an overall contract price at the outset of the contract.

Over the last decade, infrastructure projects have grown larger, more complex and with increased risk. The effort to mitigate the additional cost and schedule risks has led to the increased use of PDB. FMI research reported the use of PDB continues to grow, especially in the West. Across regions, stakeholders in the Pacific census region indicated 40% of design-build projects are procured via PDB. In addition, region stakeholders consistently noted that Owners are employing PDB at a continually increasing rate. To meet this challenge, more than a dozen states have amended their state laws to authorize or clarify the ability to use PDB.

DBIA's State Statute Report is provided as a resource to supplement, not replace, your own due-diligence as you determine whether Design-Build is the correct delivery method for your project. The information contained in this document does not constitute legal advice.

This report uses the following designations regarding states' ability to use Design-Build:

**FP – Fully Permitted**

These are states or local governments where all political subdivisions are authorized to use Design-Build procurement approaches, including Progressive Design-Build. They generally allow for negotiation and allow the Owner greater discretion in how they weigh the criteria.

**WP – Widely Permitted**

These are states where Design-Build, including Progressive Design-Build, is widely permitted procurement through permissive and/or language not expressly prohibiting Design-Build.

**WL – With Limitations**

These are states that have various laws that permit some use of Design-Build but with limitations on its use. Limitations vary but can include limits on project numbers, project types, project size, etc.

**LO – Limited Option**

These are states with severe limitations on the use of Design-Build, including design/bid/build requirements in some sectors.

**NA – Not Authorized**

State agencies and political subdivisions do not have Design-Build authority.

The designation indicated best represents DBIA's interpretation of the authority in that state based on a review of each state's political subdivisions.

Due to the various complexities associated with state Departments of Transportation (DOTs), including funding and multiple jurisdictions and stakeholders, Design-Build legislative authority for DOTs has been designated separately throughout this report.

Keep in mind that terminology varies from state to state. For any questions related to terminology, please contact [advocacy@dbia.org](mailto:advocacy@dbia.org).

# State Status Codes

**FP** – Fully Permitted

**WP** – Widely Permitted

**WL** – With Limitations

**LO** – Limited Option

**NA** – Not Authorized

## Design-Build Authorization by State



### ALABAMA

**Limited Option**

**Vertical:** LO  
**WWW:** Not Authorized  
**DOT:** WL  
**State Government:** Not Authorized  
**Local Governments:** LO

Design-build is neither expressly permitted nor prohibited for public projects for building construction.

#### **AL. CODE §11-20-73**

An agriculture authority shall have the following powers, which it may exercise in the agriculture authority's authorized operational area: Buildings to house or accommodate public facilities of the federal government, the state or any agency of the state, the county, or one or more municipalities within the county. Streets, boulevards, walkways, parkways, parks or other places of recreation, monuments, statues or other structures beautifying the agriculture center community houses or meeting houses or auditoriums, arenas, convention halls, sports facilities, stadiums, hotels or other facilities for use as transient guest housing, multifamily housing, dormitory housing, food courts or other food venue facilities, any facilities which provide for or support any public or private educational institution, and any other facilities related to or incidental with the foregoing. In addition to any other authority to enter into contracts, an authority may enter into contracts, agreements or understandings with any other public or private parties including but not limited to the following:

- a. Design-build, design-build-operate, design-build-own-operate, design-build-own-operate-maintain, design-build-finance-operate-maintain, or other

similar arrangements or agreements pursuant to which the design, right-of-way acquisition, relocation of structures or utilities, construction, financing, ownership, management, maintenance and operation, or any combination thereof, of a project is accomplished by or on behalf of the authority.

#### **AL. CODE § 23-1-40**

Design-Build authority is limited to the Alabama DOT (ALDOT) (projects over \$100 million) and the Alabama Toll Road, Bridge and Tunnel Authority (ATRBA). "Proposals may be evaluated and awarded by the department based on qualifications of participants or Best Value." PDB is not explicitly authorized or prohibited in the Alabama code.

ALDOT and ATRBA are authorized to use QBS and negotiate and have received a SEP-14 exception from the Federal Highway Administration to use PDB Mobile River Bridge and Bayway Projects.

PDB is not authorized for agencies other than the DOT.

Authorizes design-build, design-build-operate, design-build-own-operate, design-build-own-operate-maintain, design-build-finance-operate-maintain, or other similar arrangements or agreements pursuant to which the design, right-of-way acquisition, relocation of structures or utilities, construction, financing, ownership, management, maintenance, or operation of a housing project or community facility is accomplished by or on behalf of the municipal or county government.



# ALASKA

Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**ALASKA STAT. § 36.30.190**

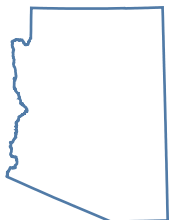
Alaska state agencies have broad Design-Build authority with discretion that includes negotiation and a multi-stepped bidding process that in which a procurement officer may issue an invitation to bid requesting the submission of an unpriced technical offers limited to the bidders selected on qualifications.

Agencies must use one or a combination of the following methods as a basis for award unless the commissioner of transportation and public facilities approves another method:

1. the Best Value method, in which the agency gives numerical scores to technical proposals, and then uses those numerical scores and the bid price to establish a best value in accordance with a formula published in the request for proposals.
2. the two-step method, in which the agency (A) first, uses a request for qualifications to short-list offerors; the request for qualifications

must contain, at a minimum, the following elements: (i) the date on or before which the agency must receive qualifications submissions; that date may not be less than 21 days after issuance of the request for qualifications; (ii) the qualifications the offerors will be required to have; (iii) a description of the project in enough detail to let offerors determine if they wish to compete and to form the basis for their qualification submissions; (iv) qualification factors and their relative weights; (v) identification of the maximum number of offerors that will be permitted, at the second step described in (B) of this paragraph, to submit price and technical proposals; the maximum number may not exceed five offerors, unless the procurement officer determines that a maximum number greater than five is in the best interest of the state; and (B) second, uses a request for proposals to evaluate price and technical proposals from the offerors that are short-listed.

3. the low-bid method, in which (A) an offeror must submit a technically qualified proposal in order for the agency to consider the bid; and (B) the agency awards the Design-Build construction contract to the offeror that submits a proposal that is technically qualified and lowest price.



# ARIZONA

Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**ARIZ. REV. STAT. §§ 41-2578**

State agencies may use QBS or Best Value selection. For Design-Build construction services, state agencies may elect to use separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.

**Local Governments: FP**  
**ARIZ. REV. STAT. §§ 34-603**

Local governments have broad discretion in their procurement of DB contracts. They may elect to use separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services. The price in the price proposal must be a fixed price or a guaranteed maximum price. After completion of the evaluation and scoring of all

final technical proposals, the selection committee shall open the price proposals, evaluate the price proposals, score the price proposals and complete the scoring of the entire proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring. The agent shall award the contract or contracts to the responsive and responsible offeror whose proposal receives the highest score under the method of scoring in the request for proposals.

**DOT: FP**  
**ARIZ. REV. STAT. §§ 28 -7365**

ADOT is required to use a two-phase DB process. "The price proposal shall contain all design, construction, engineering, inspection and construction costs of the proposed project." The department shall announce the technical proposal score for each Design-Builder, shall publicly open the sealed price proposals and shall divide each Design-Builder's price by the score that the selection team has given to it to obtain an adjusted score.

PDB is not authorized.



# ARKANSAS

## Widely Permitted

**Vertical:** WP  
**WWW:** FP  
**DOT:** FP  
**State Government:** Not Authorized  
**Local Governments:** WL

No state agencies other than the DOT may use Design-Build under Arkansas’s P3 legislation.

### ARK. STAT. ANN. 22-10-103(10)(B)(ii)

A state agency has statutory procurement authority, provided the project is “designed and built, in whole or in part, by a private entity.”

### School Districts: FP

#### A.C.A. § 19-11-807(b)(1)

School districts may also use Design-Build as a project delivery method for building, altering, repairing, improving, maintaining or demolishing any structure, without competitive bidding.

### WWW: FP

Local governments are authorized to use DB using Best Value. A municipality, sanitation authority, water system or consolidated waterworks system may enter into contracts to provide for the design, building, operation or maintenance, including a combination of

those activities, of all or any portion of its wastewater system, stormwater system, water system, solar energy generation equipment and facilities, other capital asset, or any combination of those systems and assets.

Prior to entering into a contract under this section, the governing authority shall solicit qualifications-based competitive sealed proposals.

### DOT: FP

#### ARK. STAT. ANN. § 27-65-107

The state DOT is authorized to use Design-Build.

The State Highway Commission may:

- Receive solicited and unsolicited proposals for a project proposed under this subsection by an authorized entity;
- Award a project contract on a qualification basis that offers the greatest value for the state; and
- Contract with an authorized entity to design, construct, improve and maintain qualified projects.

The DOT may award a Design-Build contract on a qualification basis that offers the greatest value for the state.



# CALIFORNIA

## Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** WP  
**State Government:** FP  
**Local Governments:** FP

Recent legislation has explicitly authorized PDB for state agencies and local governments.

### Local Governments: FP

The San Diego Unified Port District (San Diego Unified Port District Act); School Districts (EDC §17250.10); Healthcare Districts (HSC § 32132.5); Regional transportation agencies (PCC § 6820-6829) Community College Districts, projects valued at a minimum \$2,500,000 (Education Code §81700, sunset date 1/1/2030); Santa Clara Valley Water District (PCC §22162.5); Beach Cities Health District (HSC §32132.9); San Bernardino County Transportation Authority (PUC §130828); County of Orange and Orange County Flood Control District (PCC §22162.6; PCC §22162.7); Stanislaus Regional Water Authority (PCC §22160); Peninsula Health Care District (HSC §32132.95); Midpeninsula Regional Open Space District (PRC §5580); and Santa Clara Valley Open-Space Authority (PRC §35160) may all use Design-Build subject to various limitations. Long Beach (§22162.9 PCC)

**Local Agency Design-Build Law:** The following agencies are authorized to use Design-Build on specified types of projects in excess of \$1 million (sunset date 1/1/2031): Cities, counties and the San Diego Association of Governments; special districts that operate wastewater facilities, solid waste management facilities, fire protection and water recycling facilities; and transit districts and other agencies providing transit service or responsible for construction of transit projects. (PCC § 22160)

A local agency may procure PDB contracts and use the PDB contracting process described in this chapter for up to 15 public works projects in excess of \$5,000,000 for each project. (PCC § 22185) (PCC 22180.1)

Local transit districts, municipal operators, consolidated agencies, joint powers authorities, regional transportation agencies, or local or regional agencies, are authorized to use the PDB process for up to 10 public works projects in excess of \$5,000,000 for each project. (PCC 22180.1)

### CAL. PUB. CONT. CODE §§ 22160

Local governments are authorized to use DB on a “Best Value” or “low bid” basis but are allowed to enter into negotiations and revise proposals. Public agencies also



# CALIFORNIA continued

## Fully Permitted

have discretion with regard to how the proposals must be submitted and evaluated. Variations can include:

1. a single proposal including both price and technical information which are ranked immediately after submission;
2. a “two envelope” process where price is considered only after technical proposals are ranked and short-listed; and 3) an initial technical submittal, followed by price proposals submitted only by short-listed proposers. Public agencies also have significant discretion with regard to discussions, negotiations and Best and Final Offer (“BAFO”) procedures after proposal submission. The most common approach is to enter into negotiations with the highest ranked proposer after the proposal evaluation process has been completed. Negotiations can focus on price aspects, scope of services provided, proposer team details, etc., although it is wise for the agency to provide itself latitude in these negotiations in the language of the RFP.

The request for proposals shall include, but need not be limited to, the following elements:

1. Identification of the basic scope and needs of the project or contract, the estimated cost of the project, the methodology that will be used by the local agency to evaluate proposals, whether the contract will be awarded on the basis of low bid or Best Value, and any other information deemed necessary by the local agency to inform interested parties of the contracting opportunity;
2. Significant factors that the local agency reasonably expects to consider in evaluating proposals, including, but not limited to, cost or price and all nonprice-related factors;
3. The relative importance or the weight assigned to each of the factors identified in the request for proposals;
4. Where a Best Value selection method is used, the local agency may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers.

### State Government: FP

The Department of General Services, Military Department and the Department of Corrections are authorized to use Design-Build on projects in excess of \$1 million. (Public Contract Code § 10187.5, sunset date 1/1/2025)

Existing law authorizes the Director of General Services to use the Progressive Design-Build procurement process for the construction of up to three capital outlay projects, as jointly determined

by the Department of General Services and the Department of Finance, and prescribes that process. The law defines “Progressive Design-Build” as a project delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualifications-based selection at the earliest feasible stage of the project. After selection of a Design-Build entity, the Department of General Services is authorized to contract for design and preconstruction services sufficient to establish a guaranteed maximum price, as defined. Existing law authorizes the department, upon agreement on a guaranteed maximum price, to amend the contract in its sole discretion.

**Department of Water Resources:** Salton Sea Restoration. (Fish and Game Code 2942, sunset date 1/1/2025) the Department of Water Resources is authorized to use the PDB procurement process for the construction of up to 8 public works projects per department for a project that is estimated to exceed \$25,000,000 in total price. (PCC 10215)

### CAL. PUB. CONT. CODE §§ 22160

The Department of General Services, Military Department, Department of Corrections and Rehabilitation, and Director of Water Resources are authorized to use DB on a “Best Value” or “low bid” basis but are allowed to enter into negotiations and revise proposals. “Best Value” means a value determined by evaluation of objective criteria that relate to price, features, functions, lifecycle costs, experience, and past performance. A Best Value determination may involve the selection of the lowest cost proposal meeting the interests of the department and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors. Where a Best Value selection method is used, the department may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers, in which case the department shall so specify in the request for proposals and shall publish separately or incorporate into the request for proposals.

### DOT: WP

The DOT is authorized to use Design-Build on up to 10 projects on the state highway system. (Public Contract)

### Code § 6820-6829, sunset date 1/1/2024

The DOT is authorized to use PDB for the construction of up to 8 public works projects per department for a project that is estimated to exceed \$25,000,000 in total price. (PCC 14000)

Los Angeles County Metropolitan Transportation



# CALIFORNIA continued

**Fully Permitted**

Authority may enter into Design-Build or P3 agreements for (1) transit systems and (2) facilities on real property owned or to be owned by the authority. (PUC 130242)

**WWW: FP**

Local agencies, defined as any city, county, city and county, or special district authorized by law to provide for the production, storage, supply, treatment or distribution of any water from any source, to use the PDB process for up to 15 public works projects in excess of \$5,000,000 for each project, similar to the PDB process authorized for use by the Director of General Services.

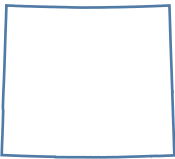
The Metropolitan Water District of Southern California may use PDB for a regional recycled water project or other water infrastructure project undertaken by the district to alleviate water supply shortages attributable to drought or climate change:

Surface storage projects in the CALFED Bay-Delta Program (water reservoirs) may be delivered Design-Build. (PCC 20928, no sunset date)

**CAL. PUB. CONT. CODE §§ 20928.1**

Surface storage projects may use, in addition to any other methods of project delivery otherwise allowable by irrigation districts, county water districts or other similar water districts by law, the following methods of project delivery:

1. Construction manager at-risk.
2. Design-Build, including conventional, progressive and target price.
3. Design-Build-operate.
4. The contract shall be awarded on a Best Value basis or to the lowest responsible bidder.



# COLORADO

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

Colorado law allows bid selection based on non-price factors, allowing for flexibility in Design-Build approaches, including both Best Value and PDB.

**State Government: FP**  
**C.R.S. § 24-92-108**

All state agencies are authorized to use any project delivery method, including Design-Build and integrated project delivery, when it is in the best interest of the state. C.R.S. § 24-93-104 allows for integrated project delivery, which allows contracts to consider more than just price.

**Local Governments: FP**  
**C.R.S. § 30-20-1106(b)**

Local governments are authorized to use DB using Best Value or qualifications-based selection for Design-Build.

**C.R.S. § 24-103-202.3**

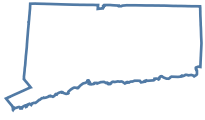
An "Invitation for Best Value Bids" is authorized allowing bids to be procured using non-price qualifications. "A contract may be awarded to a bidder

where the total amount of a bid price and the prices for enhancements, options, or alternatives of the bidder exceed the total amount of the bid price and the prices for enhancements, options, or alternatives of another bidder if it is determined...that the higher total amount provides a contract with the best value at the lowest cost to the state." Here, the selection is based on the overall value of the bid, taking into consideration both price and non-price qualifications.

**DOT: FP**  
**C.R.S 43-1-1401-1404**

Projects can be awarded for "Design-Build that use an adjusted score Design-Build selection and procurement process for particular transportation projects regardless of the minimum or maximum cost of such projects, based on individual needs and merits of such projects." The selection criteria can be based on time constraints and capability and experience of potential Design-Build firms. However, this selection process is used when the design work for such project must be performed before a potential bidder can develop a price or cost proposal for such project.

PDB is neither specifically authorized nor prohibited.



# CONNECTICUT

Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** WP  
**Local Governments:** WP

Under state law, municipalities have broad discretion in their procurements and generally are not required to use competitive bidding to award contracts or make purchases, but municipalities may adopt such a requirement individually by ordinance or charter.

**State Government: WP**  
**SEC. 4A-59 (Formerly Sec. 4-114)**

All purchases of, and contracts for, supplies, materials, equipment and contractual services shall be based, when possible, on competitive bids or competitive negotiation. Award of contracts. (a) As used in this section, 1) "lowest responsible qualified bidder" means the bidder whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary to faithful performance of the work based on objective criteria considering past performance and financial responsibility, and 2) "highest scoring bidder in a multiple criteria bid" means the bidder whose bid receives the highest score for a combination of attributes, including, but not limited to, price, skill, ability and integrity necessary for the faithful performance of the work, based on multiple criteria considering quality of product, warranty, life-cycle cost, past performance, financial responsibility and other objective criteria that are established in the bid

solicitation for the contract. "Competitive negotiation" means a procedure for contracting for supplies, materials, equipment or contractual services in which (A) proposals are solicited from qualified suppliers by a request for proposals, and (B) changes may be negotiated in proposals and prices after being submitted.

**DOT: FP**  
**CT GEN STAT § 13A-95B**

The Department of Transportation is authorized to use Design-Build. The selection of the winning Design-Build team may be based on strictly low bid or a combination of low bid and technical ("Best Value").

Award of the Design-Build contract shall be based on a predetermined metric provided to proposers in advance of technical proposal development. This metric may be unique to each project but shall consist of a combined score of qualifications and past performance of the proposer, technical merit of the proposal and cost. The commissioner shall establish a selection panel for each project to score the qualifications and past performance and technical portion of the proposal using the predefined scoring metric. The sealed cost portion of the proposal shall be opened in a public ceremony only after the qualifications and past performance and technical portions of the proposals have been scored. The commissioner shall determine all criteria, requirements and conditions for such proposals and award and shall have sole responsibility for all other aspects of the contract.



# DELAWARE

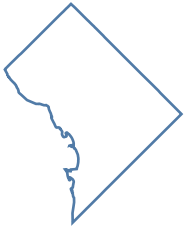
Widely Permitted

**Vertical:** WP  
**WWW:** FP  
**DOT:** FP  
**State Government:** LO  
**Local Governments:** FP

State DB projects typically get legislative approval. Local governments have broad discretion under home rule laws and can pass DB rules by ordinance.

**DOT: FP**  
**DEL. CODE. 29.69.IV § 6970A**  
**References Federal Design-Build 23 C.F.R PART 636.**  
The use of Design-Build contracting shall be used

at the discretion of the Secretary of the Department of Transportation for specialized projects that have time constraints, unique site conditions, specialized construction methods or similar complexities and is expected to be used on a limited basis. "Where the contracting agency elects to release the final RFP and award the Design-Build contract before the conclusion of the NEPA process, then: the evaluation of proposals and award of the contract may be based on qualitative considerations" AND funds can be based on "a negotiated price determined on an open-book basis."



# DISTRICT OF COLUMBIA

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**Local Government:** FP

## DC CODE SECTION 2-.354.02

The agencies within the District are authorized to use DB. Selection is based on the most advantageous proposal to the District. Competitive sealed proposal contracts may be entered into when the use of competitive sealed bidding is not practicable or not advantageous to the District. The contracting officer shall:

- 1) Evaluate the proposals received using only the criteria stated in the RFP and in accordance with weightings that have been provided in the RFP; and
- 2) Rank the prospective contractors from most advantageous to least advantageous to the District. After ranking the prospective contractors, the contracting officer may elect to proceed with negotiations in accordance with paragraph 2) of this subsection. The contracting officer's decision shall not be subject to review. If the contracting officer elects to proceed with negotiations, the contracting officer shall negotiate with the highest-ranked prospective

contractor on price or matters affecting the scope of the contract, so long as the terms of the final contract are within the scope of the request for proposals. If a satisfactory contract cannot be negotiated with the highest-ranked prospective contractor, the contracting officer may negotiate the terms of the contract with the second most qualified prospective contractor or lower-ranked prospective contractors in order of ranking until a satisfactory contract can be awarded.

## Washington Metropolitan Area Transit Authority (WMATA)

### WMATA CHARTER 73.21 (a)(1)

The Authority in conducting a procurement of construction shall: (A) solicit sealed bids awarded on the basis of price and other price-related factors. (B) request competitive proposals.

The Authority may use procedures other than competitive procedures if the Authority determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement.

Unsolicited proposals are permitted.



# FLORIDA

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

All state and local governments are permitted to use Design-Build.

## State Government: FP

Rules for the award of Design-Build contracts to be followed by state agencies are adopted through the Department of Management Services. Each other agency must adopt rules or ordinances for the award of Design-Build contracts. State agencies can use PDB but the state current rules are not optimal. The state does allow for negotiation, but the negotiation is limited to terms or price but it does not include things like a presentation of flat fees with alternatives or discussion

## FLA. STAT. ANN. § 287.055

The agency shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines is

fair, competitive and reasonable. In making such determination, the agency shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency determines to be fair, competitive and reasonable, negotiations with that firm must be formally terminated. The agency shall then undertake negotiations with the second most qualified firm.

## FLA. STAT. ANN. § 337.11

If the department determines that it is in the best interests of the public, the department may combine the design and construction phases of a building, a major bridge, a limited access facility or a rail corridor project into a single contract. Such contract is referred to as a Design-Build contract.

Department of Management Services shall adopt rules for the award of Design-Build contracts to be followed by state agencies. Each other agency must adopt rules or ordinances for the award of Design-Build contracts.



# FLORIDA continued

## Fully Permitted

### Local Governments: FP

#### FLA. STAT. ANN. § 337.11

Municipalities, political subdivisions, school districts and school boards shall award Design-Build contracts by the use of a competitive proposal selection process as described in this subsection, or by the use of a qualifications-based selection process pursuant to subsections (3), (4) and (5) for entering into a contract whereby the selected firm will, subsequent to competitive negotiations, establish a guaranteed maximum price and guaranteed completion date. If the procuring agency elects the option of qualifications-based selection, during the selection of the Design-Build firm the procuring agency shall employ or retain a licensed design professional appropriate to the project to serve as the agency's representative. Procedures for the use of a competitive proposal selection process must include as a minimum the following:

1. The preparation of a design criteria package for the design and construction of the public construction project.
2. The qualification and selection of no fewer than three Design-Build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof.
3. The criteria, procedures and standards for the evaluation of Design-Build contract proposals or bids, based on price, technical and design aspects of the public construction project, weighted for the project.
4. The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified Design-Build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.
5. For consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the Design-Build firms, the supervision or approval by the agency of the detailed working drawings of the project; and for evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.

#### FLA. STAT. ANN. § 255.20

A county, municipality, special district or other political subdivision of the state seeking to construct or improve a public building, structure or other public construction works must be competitively awarded. The term "competitively awarded" is based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation.

#### DOT: FP

#### FLA. STAT. ANN. § 337.11(7)

#### FLA. Rule 14-91.007

Bid Proposal Requirements. Bid proposals are required for all Design-Build projects and shall consist of a sealed technical proposal and a separately sealed price proposal. The technical and price proposals must be received by the Department by the deadline stated in the request for proposal. A technical proposal shall include all information requested in response to the request for proposals. A price proposal shall include one lump sum for all costs of the Design-Build Project as defined by the request for proposal requirements. There is a cap on the Design-Build projects awarded annually which is \$200 million.

FDOT is authorized to use PDB, aka "phased Design-Build."

- The bill would authorize FDOT to combine the design and construction phases of a project fully into a single contract and select Design-Builder in the early stages of a project to ensure that the Design-Builder is part of the collaboration and development of the design as part of a step-by-step progression through construction.
- The department must competitively award the contract to a Design-Builder based upon qualifications.
- The Design-Builder is required to competitively bid construction trade subcontractor packages and, based upon these bids, negotiate with the department a fixed firm price, or guaranteed maximum price that meets the project budget and scope as advertised in the request for qualifications.



# GEORGIA

## Widely Permitted

**Vertical:** WP  
**WWW:** FP  
**DOT:** FP  
**State Government:** WP  
**Local Governments:** WP

### O.C.G.A. § 50-5-67(a), (b)

State agencies express a preference that all procurement contracts be awarded “by competitive sealed bidding” to the “lowest responsible bidder.” However, this statute also permits the use of competitive sealed proposals if it appears that competitive sealed bidding is not practicable or is not advantageous to the state and sets forth the conditions applicable to soliciting competitive sealed proposals.

### Local Governments: WP

#### O.C.G.A. § 36-91-20

Local governments have broad discretion, they are authorized to use competitive sealed bidding (CSB) and competitive sealed proposals, both allow for negotiation.

#### O.C.G.A. § 36-91-21(b)

In making any competitive sealed proposal, a governmental entity shall: Request for proposals shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project, as well as the relative importance of the evaluation factors. The project is awarded to the responsible and responsive offeror whose proposal is determined to be the most advantageous to the governmental entity, taking into consideration the evaluation factors set forth in the request for proposals. The evaluation factors shall be the basis on which the award decision is made.

#### O.C.G.A. § 36-91-219(c)

As set forth in the request for proposals, offerors submitting proposals may be afforded an opportunity

for discussion, negotiation and revision of proposals. Discussions, negotiations and revisions may be permitted after submission of proposals and prior to the award for the purpose of obtaining best and final offers. In accordance with the request for proposals, all responsible offerors found by the governmental entity to have submitted proposals reasonably susceptible of being selected for award shall be given an opportunity to participate in such discussions, negotiations and revisions. During the process of discussion, negotiation and revision, the governmental entity shall not disclose the contents of proposals to competing offerors.

#### O.C.G.A. § 36-91-100 et seq.

Local governments may enter into contracts to plan, finance, construct, acquire, lease, operate or maintain water reservoir and related facilities.

#### O.C.G.A. § 36-91110 et seq.

Local governments may receive unsolicited proposals for the development of certain qualifying projects.

#### DOT: FP

#### O.C.G.A. § 32-2-69(b)(c)

Design-Build is authorized. GDOT is not allowed to negotiate contracts for road maintenance or unless GDOT receives only one bid in response to an invitation for competitive bids. Provided the bid received exceeds GDOT’s internal estimate for the project, a negotiated contract may be entered into with the single bidder. The negotiated contract price must be less than the original single bid, and GDOT is obligated to disclose its internal estimate to the single bidder prior to contract negotiations. Id., 86-21 Op. Atty. Gen. 48 (1986). GDOT is granted one other right to negotiate a construction contract. If the bid from the lowest reliable bidder produces an unbalanced bid resulting from errors by GDOT in the bid documents, then GDOT is allowed by statute to negotiate with the low bidder to correct that bid.



# HAWAII

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**HAW. REV. STAT. § 103D-303**

All state agencies and counties have discretion in choosing their project delivery methods. Design-Build is authorized for all projects. Stipends are offered on projects over \$1 million.

“The state allows for discussions with offerors prior to award and awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous taking into consideration price and the evaluation factors set forth in the request for proposals.” Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous taking into consideration price and valuation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation.



# IDAHO

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**IDAHO CODE § 67-5711a**

Design-Build is fully permitted. PDB is not specifically mentioned in statute nor is any DB selection process. The director of the department of administration, or his designee, is authorized and empowered, subject to the approval of the permanent building fund council, to employ the use of the Design-Build method of construction in the letting of any and all contracts for the construction, alteration, equipping, furnishing and repair of any and all buildings, improvements or other public works.

party contracting with the public entity agrees to both design and build a structure, roadway or other item specified in the contract.

**DOT: FP**

**IDAHO CODE § 40-904**

The basis for Design-Build firm selection and contract award shall be as follows:

- a. Best Value Method – Each proposer’s price proposal, time adjusted if applicable, is divided by the technical proposal score to obtain a total score. The department shall award the contract to the Design-Build firm whose total score is lowest.
- b. Fixed Price – Best Design Method: The department shall award the contract to the Design-Build form whose technical proposal score is highest.
- c. Lowest Price – Technically Acceptable Method: The department shall award the contract to the Design-Build firm who meets the minimum technical and designer qualifications requirements identified in the RFP and whose price proposal is lowest.

**Local Governments: FP**

**IDAHO CODE § 67-2309**

The Design-Build method of construction may be employed by public officials in contracts for the construction, repair or improvement of public works, public buildings, public places or other work. For purposes of this section, a Design-Build contract is a contract between a public entity and a non-governmental party in which the nongovernmental



# ILLINOIS

**Widely Permitted**

**Vertical:** WP  
**WWW:** WP  
**DOT:** WP  
**State Government:** WP  
**Local Governments:** FP

**Local Governments: FP**

Counties and municipalities have full Design-Build

authority. Design-Build for state agencies is widely permitted. The Capital Development and the Public Building Administration are the primary state owners using DB with the latter having more discretion. (65 ILCS 5/11-39.2-1)

**Capital Development Board: WL**

**30 ILL. COMP. STAT. §§ 537/30**

**Code key:** FP – Fully Permitted, WP – Widely Permitted, WL – With Limitations, LO – Limited Option, NA – Not Authorized



# ILLINOIS continued

## Widely Permitted

The CDB is required to use Best Value with the total project cost weight being 25%. The State construction agency shall include the following criteria in every Phase II technical evaluation of Design-Build entities: 1) compliance with objectives of the project; 2) compliance of proposed services to the request for proposal requirements; 3) quality of products or materials proposed; 4) quality of design parameters; 5) design concepts; 6) innovation in meeting the scope and performance criteria; and 7) constructability of the proposed project. The State construction agency may include any additional relevant technical evaluation factors it deems necessary for proper selection.

The State construction agency shall include the following criteria in every Phase II cost evaluation: the total project cost, the construction costs and the time of completion. The State construction agency may include any additional relevant technical evaluation factors it deems necessary for proper selection. The total project cost criteria weighing factor shall be 25%.

The Progressive Design-Build (PDB) Pilot Program Act authorizes the state Capital Development Board to establish a PDB pilot program. The PDB pilot Program would authorize the Capital Development Board to use PDB on up to three projects commencing prior to January 1, 2027. The State construction agency must use a 2-phase procedure for the selection of the successful PDB entity. Phase I of the procedure will evaluate and shortlist for interviews the PDB entities based on qualifications, and Phase II will evaluate shortlisted teams based on scoring of specific criteria addressed in their presentations and interviews. The Design-Builder on these PDB projects are required to enter into a Project Labor Agreement (PLA) used by the CDB.

### DOT: WP

IDOT and the Toll Authority have a Design-Build pilot program and PDB and are authorized to award up to \$500 million of design-build contracts on an annual basis.



# INDIANA

## Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

### I.C. § 5-30-1 to 8

All public agencies, which includes state agencies and educational institutions, may use the Design-Build project delivery method for public projects.

### DOT: FP

### I.C. § 15.7-1 to 16

Design-Build may be used for transportation projects through a public-private partnership (P3) agreement that allows INDOT to procure and deliver a project under a best-value Design-Build model.

The qualitative proposal and the price proposal must be submitted simultaneously in separately sealed and identified packages. The price proposal must:

- A) contain one (1) lump sum cost of all design, construction engineering, inspection and construction costs of the proposed project; or B) establish a maximum cost of the Design-Build contract that will not be exceeded if the proposal is accepted without change. The qualitative proposal must include all the deliverables required for the qualitative proposal in the request for proposals.

The public agency shall accept the proposal that provides the public agency with the lowest adjusted price providing the best value to the taxpayer. The public agency is not required to accept the lowest price proposal. The public agency may negotiate any contract term with the offeror, except for those terms identified in the request for proposals as nonnegotiable.

If the public agency is unable to negotiate a contract with its first selection, the public agency may:

1. terminate negotiations with that offeror; and
2. negotiate with the next lowest adjusted price offeror.



# IOWA

**Not Authorized**

**Vertical:** Not Authorized  
**WWW:** Not Authorized  
**DOT:** Not Authorized  
**State Government:** Not Authorized  
**Local Governments:** Not Authorized

Design-Build is not authorized for any state or local agencies.



# KANSAS

**Widely Permitted**

**Vertical:** WP  
**WWW:** FP  
**DOT:** WL  
**State Government:** WP  
**Local Governments:** FP

Phase III cost and schedule, which shall prescribe the number of calendar days, proposals shall be opened and read aloud at the time and place specified in the request for proposal. At the same time and place, the evaluation team shall make public its scoring of phase II. Phase III shall be evaluated in accordance with the requirements of the request for proposal. In evaluating the proposals and determining the successful firm, each firm's score shall be determined in a quantifiable and objective manner described in the request for proposal in combination of the points earned in both phase II and phase III. The successful responsive firm shall be awarded the building design-built contract.

**KSA 75-37-145**

In evaluating the proposals, each proposers' adjusted score shall be determined by adding the phase III cost proposal to the product of the proposed contract time and the user delay cost, and dividing that sum by the phase II score. The responsive proposer with the lowest total number of points shall be awarded the contract.

**Local Governments: FP**

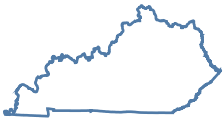
**KSA 19-216(b)**

Local governments have more discretion than their state counterparts. The technical and cost proposals shall be opened only after the II technical proposals have been evaluated and assigned points.

**DOT: WL**

**KSA 75-37-145**

KDOT has Design-Build authority for a pilot program and PDB is permitted. They are using a two-step Best Value procurement.



# KENTUCKY

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

basis, or construction management-at-risk basis, whichever in the judgment of the board offers the best value to the taxpayer. KRS § 164A.575.

**KY. REV. STAT. §§ 45A.085**

**KY. REV. STAT. §§ 45A.025**

**KY. REV. STAT. § 65.025(5) (Local Governments)**

**KY. REV. STAT. § 164A.757(10)(b) (Higher Education)**

**KY. REV. STAT. § 176.431(2) (Transportation)**

- A local government shall not employ the same entity to provide both architectural services and construction management services on the same capital construction project. KRS § 65.025(2)

State and local governments are authorized to use competitive negotiation (Design-Build) in their procurement process.

**Transportation**

The Transportation Cabinet shall utilize a qualifications-based bidding process within the context of the provisions of this chapter. The projects shall be selected based on engineering factors that determine a design-build process will provide the best value for the Commonwealth. Factors to consider may include but not be limited to the following: project delivery schedule, technical complexity, constructability, and estimated project cost.

- For capital construction projects for institutes of higher education, the procurement may be on a total design/bid/build basis, a design-build basis, construction manager-general contractor

**Code key:** FP – Fully Permitted, WP – Widely Permitted, WL – With Limitations, LO – Limited Option, NA – Not Authorized



# LOUISIANA

## Limited Option

**Vertical:** LO  
**WWW:** LO  
**DOT:** FP  
**State Government:** LO  
**Local Governments:** LO

### LA R.S. 38:2225.2

Louisiana authorized certain public entities to use the Design-Build method for the construction or repair of specific public school buildings destroyed or damaged by Hurricanes Katrina or Rita.

The Coastal Protection and Restoration Authority Board has the authority to contract for construction management and Design-Build services. La. Rev. Stat. § 49:214.6.2.

The Algiers Development District, the Gentilly Development District, and the Downman Road Economic Development District have the authority to enter Design-Build contracts.

### DOT: FP

#### LA. REV. STAT. ANN. §§ 48:250.2 – 3

The DOT has full DB authority. The winning proposal shall be the proposal with the lowest adjusted score. The adjusted score for each entity's Design-Build proposal shall be determined by the following formula: Adjusted Score = (Price Bid + Time Value) divided by Technical Score. If the Time Value is not used, the Adjusted Score shall be determined by the following formula: Adjusted Score = Price Bid divided by technical score.

#### LA. REV. STAT. ANN. §§ 48:250.3.1

Authorizes public airports to use the Design-Build project delivery method (including PDB).



# MAINE

## Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

Local governments have broad discretion in terms of procurement and may use any delivery method adopted. State agencies and the DOT are permitted to use DB on a low bid or Best Value basis, the selection process is very rigid and would not permit PDB.

### State Government: FP

#### 5 M.R.S. § 1743

Each proposal must be submitted in two separate components: a sealed technical proposal and a sealed price proposal. These two components must be submitted simultaneously. The selection panel shall first open and evaluate and score each responsive technical proposal based on the quality criteria contained in the request for proposals. Nonresponsive proposals must be rejected. During this evaluation process, the price proposals must remain sealed

and all technical proposals are confidential. After completion of the evaluation of the technical proposals, the selection panel shall publicly open and read each price proposal. The bureau shall award the contract to the proposer with the lowest price per quality score point, as long as that proposal meets all request-for-proposals requirements.

### DOT: FP

#### 23 M.R.S. § 4244

The department may evaluate and select proposals on either a best-value or low-bid basis. If the scope of work requires substantial engineering judgment, the quality of which may vary significantly, as determined by the department, then the basis of award must be the best value. The department shall calculate the overall value rating for each proposal by dividing the price proposal by the technical score. The department shall award the contract to the proposer with the lowest price per quality point.



# MARYLAND

Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

Design-Build is broadly authorized in the state and Owners have several options for using Design-Build, including PDB. Local governments can use Best Value or competitive negotiation.

**COMAR 21.05.11.04**

The evaluation shall be based on the evaluation factors set forth in the request for proposals and developed from both the work statement and price. Technical proposals and price proposals shall be evaluated independently of each other.

**DOT: FP**  
**MD. CODE ANN STATE FIN. 10A-103**  
 Competitive Sealed Proposals

- Shortlist on qualifications during Step 1
- Low price
- Best Value (price/technical tradeoff)
- PDB

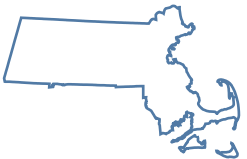
Selection Method

- Cost/technical trade-off analysis (based on adjectival rating scale and adjectival weightings)
- Project awarded to other than the lowest priced proposer/bidder

**WWW: FP**  
**MD. CODE PUB. UTIL. § 20-105**

The Commission shall award contracts by competitive sealed bids in accordance with or competitive sealed proposals.

The Commission shall award a contract based on competitive sealed proposals to the responsible offeror who submits the proposal or best and final offer that the Commission determines is the most advantageous to the Commission, considering the evaluation factors set forth in the request for proposals.



# MASSACHUSETTS

Widely Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** WP

**MASS. GEN. LAWS c.149A, §§ 14-21**

State agencies and municipalities are authorized to use Design-Build for the construction, reconstruction, alteration, remodeling or repair of any public works projects in excess of \$5 million and with Inspector General approval.

To use Design-Build on a public works project of \$5 million or more, an awarding authority (not including the Massachusetts Department of Transportation, the Massachusetts Port Authority (Massport), the Massachusetts Bay Transportation Authority (MBTA) since July 2015 and the Massachusetts Water Resources Authority (MWRA) must submit an application to the Office of the Inspector General.

**Local Governments: WP**  
**MASS. GEN. LAWS. ANN CH. 149A, §§ 20**

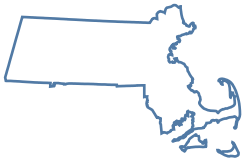
Local governments have the discretion to use alternative delivery methods if permitted by special

legislation after passage of a home rule petition. (Mass. Gen. Laws Const. Amend. art. 2, § 8) Awarding authority may evaluate and select proposals on either a best-value or low-bid basis. If award is Best Value, then each proposal shall be submitted by the proposer to the awarding authority in two separate proposals, which shall include a sealed technical proposal and a sealed price proposal. The sealed technical proposal and sealed price proposal shall be submitted simultaneously. The overall value rating shall be the total price divided by the quality score or another objective formula clearly detailed in the RFP. Awarding authority shall enter into good faith negotiations with the responsible proposer with the lowest price per quality score point.

**DOT: FP**  
**MASS. GEN. LAWS. c. 6C, §§ 63-65)**

MassDOT is authorized to use Design-Build, Design-Build-finance-operate-maintain, Design-Build-finance-maintain, and Design-Build-operate-maintain for transportation projects.

If the basis of the award is Best Value, then each proposal shall be submitted by the proposer to the awarding authority in two separate proposals, which



# MASSACHUSETTS

continued

Widely Permitted

shall include a sealed technical proposal and a sealed price proposal. The sealed technical proposal and sealed price proposal shall be submitted simultaneously.

1. The awarding authority shall establish a selection committee that shall first open, evaluate, and score each technical proposal from responsible proposers based on the quality criteria contained in the RFP. The evaluation and ranking of proposals shall be in accordance with the quality criteria and relative weights assigned or identified in the RFP. During this evaluation process, the price proposals shall remain sealed. Each technical proposal shall remain confidential.

2. After completion of the evaluation of the technical proposals, the awarding authority shall publicly open and read, at the place and time designated in the RFP, the sealed price proposals and shall publicly calculate the overall value rating for each proposal. The overall value rating shall be the total price divided by the quality score or another objective formula clearly detailed in the RFP. The awarding authority shall enter into good faith negotiations with the responsible proposer with the lowest price per quality score point. In the event that two or more proposers have the same lowest price per quality score, the awarding authority shall enter into good faith negotiations with the responsible proposer who submitted the lowest price.



# MICHIGAN

Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** WP

### MCL § 18.1241

Michigan law neither expressly allows nor precludes the use of Design-Build contracts, but they have broad discretion in their procurement. PDB is not mentioned specifically in statute but is listed as an option in state rule making.

Projects funded in whole or part with state funds, the construction contract award shall be made to the responsive and responsible Best Value bidder. As used in this subsection, “responsive and responsible Best Value bidder” means a bidder who meets all the following:

- (a) A bidder who complies with all bid specifications and requirements.
- (b) A bidder who has been determined by the department to be responsible by the following criteria:
  - i. The bidder’s financial resources.
  - ii. The bidder’s technical capabilities.
  - iii. The bidder’s professional experience.
  - iv. The bidder’s past performance.
  - v. The bidder’s insurance and bonding capacity.
  - vi. The bidder’s business integrity.

(c) A bidder who has been selected by the department through a selection process that evaluates the bid on both price and qualitative components to determine what is the best value for this state. Qualitative components may include, but are not limited to, all of the following:

- i. Technical design.
- ii. Technical approach.
- iii. Quality of proposed personnel.
- iv. Management plans.

### Public Schools

A school building, public or private, or any additions to a school building, may be constructed or remodeled using Design-Build if all plans and specifications for buildings are prepared by an architect or a professional engineer who is licensed in this state working in conjunction with a Design-Builder. The architect or professional engineer and the Design-Builder described under this subdivision may form a Design-Build team.

### DOT: FP

MDOT has broad discretion in terms of project delivery. For Design-Build projects, the use of a two-step process is where qualifications of contractors are solicited early in the contract development process. The qualifications are reviewed and a short list of qualified contractors are named or short-listed. The final selection may be any selection method. A one-step process is where the selection will be at the final step (no short-listing).



# MICHIGAN continued

## Fully Permitted

The final selection still may be any selection method. Using the department's Best Value method, the selection team develops scoring criteria for the technical portion of the evaluation. The technical evaluation may include many items to be evaluated, such as qualification of the contractor's team, resumes, understanding of the project, innovations and more. The evaluation can include interviews with the prospective bidders. Interviews should be well-documented so that scoring associated with it can be justified.

The technical scoring is then combined with the weighted scores for the bids. The bid scores are determined by assigning a score to the lowest bid and then each subsequent bid receives a score calculated on the percent that bid is compared to the low bid. The department prequalifies contractors for work types that are associated with road and bridge construction.

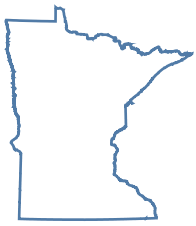
The Project Specific Qualification method is used when a contractor needs additional or unique expertise to build and consequently bid the project. This unique expertise may be related to unusual structures, work type, or proprietary elements. This guidance assumes that the evaluation will determine if a contractor has the Project Specific Qualifications to bid. The selection team must establish the minimum qualifications a contractor must have to be able to bid on the project. The contract selection then can follow one of the following procedures:

1. **One-Step Selection** — The contractors supply qualification information either just before or at the same time the bids are provided. The selection team reviews the qualification of all the contractors and determines (based on scoring) which firms are eligible to have their bids open. Eligible bids are opened and any bids from companies not qualified are returned unopened or rejected. The lowest responsible bid is selected. At no time can the selection team see the bids prior to reviewing the qualifications of the contractors.

2. **Two-Step Selection (short-listing)** — Early in the development process, an RFQ is posted. The contractors submit qualification information which is evaluated and scored by the selection team. The short-listed contractors are notified that they are eligible to provide a bid. Except for Design-Build which has specific federal requirements on the number of short-listed contractors, the department may choose to short-list any number of contractors. However, it should not be less than three. The final selection is based on the lowest responsible bid.

**Fixed Price/Variable Scope** is a method where bidders propose to complete items of work within an established budget. The contractor providing the most scope/work for the established budget is awarded the contract.

A **Best and Final Offer (BAFO)** selection method can only be utilized in a Design-Build selection process. It is a method where prices and deliverables are negotiated based on submittals and interviews. It is usually only utilized on very large projects (exceeding \$100 million) and would involve high level management approval to document that negotiations were fair and well-supported. In the process, the Design-Builders submit their proposals or offers. The offers are reviewed by the department and then interviews are conducted with the Design-Builders. When the department is comfortable that further discussions are not required, a BAFO is requested from the Design-Builders. The Design-Builder then submits their best prices and/or technical responses in reply to the department's request. In effect, this step levels the playing field by allowing finalists an opportunity to provide their BAFO after interviews have been conducted. The decision to award is based on the score of the BAFOs.



# MINNESOTA

## Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

All state agencies, state colleges and universities have Design-Build authority. The University of Minnesota is authorized to use QBS and while other state colleges are permitted to use a pure QBS, they have broad discretion in weighting their criteria and are able to negotiate. The DOT has a separate DB authority on a Best Value basis. Local governments in the metro area have specific DB authority for WWW projects and the UNIFORM MUNICIPAL CONTRACTING LAW allows a "Best Value alternative" which has broad discretion and would allow local governments to use any time of alternative delivery that meets the broad criteria.

### 16C.32 State Agencies and Universities: FP

"Agency" means any state officer, employee, board, commission, authority, department or other agency of the executive branch of state government. Unless specifically indicated otherwise, as used in sections 16C.32 to 16C.35, agency also includes the Minnesota State Colleges and Universities.

For projects for which the University of Minnesota requests a Design-Builder, the University of Minnesota may use either the Design-Build qualifications-based selection process under subdivision 5 or the Design-Build design and price-based selection process under subdivision 7. The board shall score proposals in accordance with subdivision 5 or 7, as applicable, and narrow the selection to the two highest scoring proposers for recommendation to the Board of Regents. The Board of Regents shall make the final selection and shall notify the board of the selection. Meeting records or written evaluations that document the final selection are public records.

### Design-Build qualifications-based selection process.

(a) In a Design-Build qualifications-based selection process, the following shall apply:

(b)(1) the commissioner shall establish procedures for determining the appropriate content of each request for qualifications, the weighted criteria and sub criteria to be used to evaluate the Design-Builders, and the procedures for evaluating qualifications in an open, competitive, and objective manner; (2) the criteria and sub criteria shall include, but are not limited to, the proposer's experience as a constructor or primary designer, including capacity of key personnel, technical competence and capability to perform, the past performance of the proposer and its employees, its safety record and compliance with state and federal law, and availability to and familiarity with the project locale; (3) the commissioner may include in the

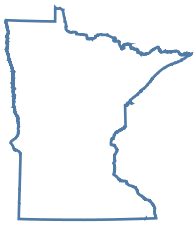
request for qualifications criteria a requirement that the proposer include the overhead and fee that the Design-Builder proposes to charge for its construction services; and (4) the commissioner shall issue a request for qualifications that includes the information as described in subdivision 3.

### Design-Build design and price-based selection process.

(a) The board shall review submissions as described in subdivision 7; conduct formal interviews with all three proposers but not allow the disclosure of any price, proprietary, or confidential information contained in one proposal to another proposer; and select the proposal that scores the highest based on the weighted evaluation criteria and sub-criteria, except for projects under the control of Minnesota State Colleges and Universities. The commissioner shall make the award to the Design-Builder who scores the highest score pursuant to the weighted criteria and sub-criteria as determined by the board. For Minnesota State Colleges and Universities projects, the board shall narrow the selection to the two highest scoring proposers for recommendation to the commissioner, and the commissioner shall review the submissions as described in subdivision 7; conduct formal interviews with both proposers recommended by the board, but not allow the disclosure of any price, proprietary, or confidential information contained in one proposal to another proposer; and select the proposal that scores the highest based on the commissioner's application of the weighted evaluation criteria and sub-criteria; and shall notify the board of the selection.

### Local Governments: FP

Design-Build is authorized for local governments under the DB statute, and Minnesota's Municipal Contracting Law allows municipalities to use the "Best Value" selection award process for construction contracts over \$25,000. Minn. Stat. § 471.345, subds. 3a and 4a. Specifically, Subdivision 3a applies to construction contracts more than \$100,000 and provides that "[a]s an alternative to the procurement method described in subdivision 3, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c)." Accordingly, if a municipality exercises its Best Value authority under Sections 471.345, subds. 3a or 4a, and follows the applicable statutory requirements set forth in Section 16C.28, there is no law that expressly prohibits the municipality from sourcing a construction project using any type of contract form or delivery method.



# MINNESOTA continued

**Fully Permitted**

## **471.345 UNIFORM MUNICIPAL CONTRACTING LAW Subdivision 1. Municipality defined.**

For purposes of this section, “municipality” means a county, town, city, school district or other municipal corporation or political subdivision of the state authorized by law to enter into contracts.

### **Contract defined**

A “contract” means an agreement entered into by a municipality for the sale or purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property.

### **Contracts over \$175,000; Best Value alternative**

As an alternative to the procurement method described in subdivision 3, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph.

### **Best Value; definition**

For the purposes of construction, building, alteration, improvement, or repair services, “Best Value” describes the result determined by a procurement method that considers price and other criteria, which may include, but are not limited to:

1. the quality of the vendor’s or contractor’s performance on previous projects.
2. the timeliness of the vendor’s or contractor’s performance on previous projects.

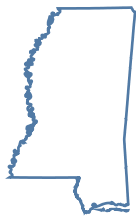
3. the level of customer satisfaction with the vendor’s or contractor’s performance on previous projects;
4. the vendor’s or contractor’s record of performing previous projects on budget and ability to minimize cost overruns;
5. the vendor’s or contractor’s ability to minimize change orders;
6. the vendor’s or contractor’s ability to prepare appropriate project plans;
7. the vendor’s or contractor’s technical capabilities;
8. the individual qualifications of the contractor’s key personnel; or
9. the vendor’s or contractor’s ability to assess and minimize risks.

“Performance on previous projects” does not include the exercise or assertion of a person’s legal rights.

### **DOT: FP MINN. STAT. ANN. §§ 160.3412-3412**

The commissioner may solicit and award a Design-Build contract for a project on the basis of a best-value selection process.

Request for proposal must include “the requirement that the price proposal contain all design, construction, engineering, inspection and construction costs of the proposed project.”



# MISSISSIPPI

**With Limitations**

**Vertical:** WL  
**WWW:** LO  
**DOT:** FP  
**State Government:** WP  
**Local Governments:** WL

### **MS Code § 31-7-13.1**

All state agencies and governing authorities are authorized to use DB on a Best Value basis. For each proposed dual-phase Design-Build project, a two-phase procedure for awarding a contract must be adopted. The agency or governing authority can accept proposals for the dual-phase Design-Build construction project. The proposals shall not be opened in less than fifteen (15) working days after the last notice is published. The notice must inform potential offerors of how to obtain the scope of work statement developed for the project, and the notice

must contain such other information to adequately describe the general nature and scope of the project so as to promote full, equal and open competition. The law is silent on the selection process on transportation projects, the process is set on a project-by-project basis so in theory they have broad discretion.

The agency or governing authority shall accept initial proposals only from entities able to provide an experienced and qualified Design-Build team that includes, at a minimum, an architectural or engineering firm registered in Mississippi and a contractor properly licensed and domiciled in Mississippi for the type of work required.

During Phase Two, the short-listed firms will be invited to submit detailed designs, specific technical concepts or solutions, pricing, scheduling and other



# MISSISSIPPI

continued

## With Limitations

information deemed appropriate by the agency or governing authority as necessary to evaluate and rank acceptability of the Phase Two proposals. After evaluation of these Phase Two proposals, the agency or governing authority shall award a contract to the Design-Builder determined to offer the best value to the public in accordance with evaluation criteria set forth in the request for proposals, of which price must be one, but not necessarily the only, criterion.

If the agency or governing authority accepts a proposal other than the lowest dollar proposal actually submitted, the agency or governing authority shall enter on its minutes detailed calculations and a narrative summary showing why the accepted proposal was determined to provide the best value, and the agency or governing authority shall state specifically on its minutes the justification for its award.

The Hattiesburg Convention is authorized to use the Design-Build method of construction contracting for any convention and tourism-related facilities that are under the jurisdiction of the commission utilizing the procedure.

**DOT: FP**  
**MISS. CODE ANN. § 65-1-85**

The law is silent the selection process on transportation projects, the process is set on a

project-by-project basis so in theory they have broad discretion. The “Design-Build” method of contracting means a contract that combines the design and construction phases of a project into a single contract and the contractor is required to satisfactorily perform, at a minimum, both the design and construction of the project. The commission shall establish detailed criteria for the selection of the successful Design-Build contractor in each request for Design-Build proposals.

No requirements on the DB proposal: “The commission shall establish detailed criteria for the selection of the successful Design-Build contractor in each request for Design-Build proposals.”  
The Mississippi Transportation Commission is authorized to use Design-Build (including Progressive Design-Build and CMAR).

**Ports:**  
The State Port Authority and other ports and port commissions are authorized to use design-build until July, 1 2027.

**Aviation: FP**  
**MISS. CODE ANN. § 61-3-15(e)**  
Authorizes airport authorities to utilize the Design-Build method of construction in accordance with section 31-7-13.1.



# MISSOURI

## Fully Permitted

**Vertical: FP**  
**WWW: FP**  
**DOT: FP**  
**State Government: FP**  
**Local Governments: FP**  
**(Does not apply to MODOT, metropolitan sewer districts, wastewater and water projects, special charters, or charter city or county which has own process.)**

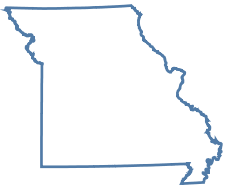
**Section 67.5060, RSMo**  
Most political subdivisions fall under the same DB statute which calls for Design-Build to be conducted on a best value basis. The law does not explicitly authorize or prohibit PDB but the process includes strict cost components and no opportunity for negotiation.

Cost proposals shall be evaluated in accordance with the requirements of the request for proposal. In evaluating the cost proposals, the lowest responsive bidder shall be awarded the total number of points

assigned to be awarded in phase III. For all other bidders, cost points shall be calculated by reducing the maximum points available in phase III by at least one percent for each percentage point by which the bidder exceeds the lowest bid and the points assigned shall be added to the points assigned for phase II for each Design-Builder.

**WWW: FP**  
**67.5070, RSMo**  
WWW districts and charter cities have broad discretion including the use of DB. There doesn't appear to be restrictions that would prohibit them from using PDB.

**DOT: FP**  
**139.8.2.6 MoDOT EPG**  
**Proposal Selection and Project Award**  
The contract will be finalized through a negotiation process. If no final agreement is reached between MoDOT and the proposer with the apparent Best Value proposal, MoDOT reserves the right to pay the stipend



# MISSOURI continued

**Fully Permitted**

to the apparent successful proposer and to negotiate a contract with another proposer with the second highest score.

### 139.8.2.3.6.1.2 MoDOT EPG

#### Selection Criteria Process Options

Pursuant to the Design-Build rules, the selection criteria options on a standard Design-Build selection include: lowest price, adjusted low-bid; meets criteria/low bid; weighted criteria process; fixed price/best design or “build to budget”; and best value.

1. The “lowest price, adjusted low-bid” procedure is a process where the price of each proposal is divided by the respective proposals’ qualitative criteria score, and the lowest adjusted price is selected.
2. The “meets criteria/low bid” procedure is a process where proposals must meet or exceed the criteria set forth in the RFP to be eligible and of the eligible proposals, the lowest priced proposal is selected.

3. The “weighted criteria” process is a form of Best Value selection where maximum point values are pre-established for both qualitative and price criteria, and the award is made to the proposal with the highest point score.
4. The “build to budget” selection is a form of the Best Value selection where the contract price is fixed, the qualitative criteria is set forth in the RFP, and the proposal that best meets or exceeds the qualitative criteria is selected.
5. The Best Value selection is determined based on which proposal best meets a combination of price and qualitative criteria.



# MONTANA

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

### MT. CODE ANN. §§ 18-2-501-503

Montana is authorized to use DB and its laws allow Owners fairly broad discretion. The awarding of the DB contracts must be based on the history and experience with projects similar to the project under consideration, the approach to the project, and the project cost. The agency awarding the project may also take into consideration any additional factors or criteria that reflect the project’s characteristics or complexities.

**DOT: FP**  
**MT. CODE ANN. §§ 60-2-137**

A technical and price proposal submitted in response to a request for proposals must contain detailed descriptions of the prospective Design-Build contractor’s approach to designing, constructing, and managing the project in accordance with the Design-Build criteria package. The technical and price proposal must also include the prospective Design-Build contractor’s conceptual design and construction sequence and schedule and the lump-sum price to complete the project.

The department shall evaluate the technical and price proposals and make a written recommendation to the commission regarding the department’s selection of the Design-Build contractor to be awarded the contract.



# NEBRASKA

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP  
 (city, village, county, school district, community college or state college)

**NEB. REV. STAT. §§ 13-2901-2909**

Political subdivisions have broad DB authority and discretion. They may use QBS and have the ability to negotiate. Nebraska code defines Design-Build as a contract which is subject to qualification-based selection between a political subdivision and a Design-Builder to furnish (a) architectural, engineering and related design services for a project pursuant to the act and (b) labor, materials, supplies, equipment and construction services for a project pursuant to the act.

The political subdivision shall rank in order of preference the Design-Builders pursuant to the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to section 13-2911. The political subdivision may attempt to negotiate a Design-Build

contract with the highest ranked Design-Builder selected by the political subdivision and may enter into a Design-Build contract after negotiations. The negotiations shall include a final determination of the manner by which the Design-Builder selects a subcontractor. If the political subdivision is unable to negotiate a satisfactory Design-Build contract with the highest ranked Design-Builder, the political subdivision may terminate negotiations with that Design-Builder. The political subdivision may then undertake negotiations with the second highest ranked Design-Builder and may enter into a Design-Build contract after negotiations.

Department of Water, Energy, and Environment to use Design-Build (including Progressive Design-Build) and CMAR.

**DOT: FP**  
**NEB. REV. STAT. §§ 39-2814**

The Department of Correctional Services, the Department of Transportation, the Military Department, and the state building division are authorized to use design-build and CMAR.



# NEVADA

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**NEV. REV. STAT. §§ 338.1727**

State and local governments (not including the DOT) have broad DB authority and wide latitude in its utilization. After receiving and evaluating the final proposals for the public work, the public body or its authorized representative shall enter into negotiations with the most qualified applicant, as determined pursuant to the criteria set forth and award the Design-Build contract to the Design-Build team whose proposal is selected. If the public body or its authorized representative is unable to negotiate with the most qualified applicant a contract that is determined by the parties to be fair and reasonable, the public body may terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.

**DOT: FP**  
**NEV. REV. STAT. § 338.727**

The DOT uses a Best Value process that weighs heavily on price (70%) and does not allow negotiation.

“Relative weight of at least 30% to the proposed cost of design and construction of the public work.”

After receiving the final proposals for the project, the Department shall:

- (a) Select the most cost-effective and responsive final proposal, using the criteria set forth
- (b) Reject all the final proposals; or
- (c) Request best and final offers from all finalists in accordance with subsection 5.

If the Department determines that no final proposal received is cost-effective or responsive and the Department further determines that requesting best and final offers pursuant to this subsection will likely result in the submission of a satisfactory offer, the Department may prepare and provide to each finalist a request for best and final offers for the project.



# NEVADA continued

**Fully Permitted**

## Senate Bill 317

The DOT is authorized to use progressive design-build for one or more progressive design-build contracts for the preconstruction, final design and construction of the project consisting of improvements to Interstate 80 East between Vista Boulevard in Sparks, Nevada and USA Parkway (State Route 439) in Storey County, Nevada.



# NEW HAMPSHIRE

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**DOT: FP**

**N.H. REV. STAT. ANN. § 228:4**

The DB process is awarded on a Best Value basis, and it doesn't allow for any negotiation.

## N.H. RSA § 21-I:80

Excludes Design-Build projects from competitive bidding laws. The commissioner is authorized to use the Design-Build and construction management methods of contracting for any project. The Design-Build method of contracting may be used when the estimated cost is more than \$500,000.

**Local Governments: FP**

Local governments have broad discretion in procurement and may use any delivery method available including DB.



# NEW JERSEY

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**State Government: FP**

All state agencies have DB authority.

## N.J.S.A. § 18A:18A-62

The public entities are permitted to enter into Design-Build contracts if it is determined that this approach meets its needs better than the traditional design/bid/build approach. It applies to public contracts valued at \$5 million or more.

**Port Authority: FP**

The Port Authority will first shortlist the most qualified firms through a competitive Request for Qualifications (RFQ) process, and thereafter issue an RFP to these prequalified firms.

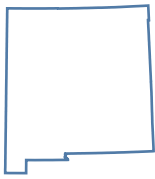
**DOT: FP**

**N.J.S.A. § 27:25-11**

**N.J.S.A. § 18A:18A-61, et seq.**

**N.J. Admin. Code § 16:72-2.20**

The DOT is fully authorized to use Design-Build.



# NEW MEXICO

**Widely Permitted**

**Vertical:** WP  
**WWW:** FP  
**DOT:** FP  
**State Government:** WP  
**Local Governments:** WL

**NMSA §§ 13-1-119.1**

Design-Build is authorized on public works (excluding road and highway construction). Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final

offers. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award.

**DOT: FP**  
**NMSA § 13-1-119.2**

Notwithstanding any prohibition on road and highway construction or reconstruction projects in Section 13-1-119.1 NMSA 1978, the department of transportation may use a design and build project delivery system pursuant to Section 13-1-119.1 NMSA.



# NEW YORK

**Widely Permitted**

**Vertical:** WL  
**WWW:** WL  
**DOT:** WP  
**State Agencies:** WL  
**Local Governments:** LO (New York City: WP)

**New York State Thru-Way Authority, DOT, PRHP, DEC, Bridge Authority, OGS, Dormitory Authority, UDC State University Construction Fund, ORDA, Battery Park City Authority: WP**

These state agencies are required to use one or two-step method. Any contract awarded shall be awarded to a responsive and responsible entity that submits the proposal, which, in consideration of these and other specified criteria deemed pertinent to the project, offers the best value to the state, as determined by the authorized state entity. Authorized entities may negotiate final contract terms and conditions including cost.

Department of Transportation, Department of Parks and Recreation, Health and Hospitals Corporation, School Construction Authority and the City Housing Authority.

(a) "Alternative project delivery contract" shall mean any project delivery method authorized by this act, including Design-Build and construction manager build, pursuant to which one or more contracts for the provision of design and construction services, or construction management and construction services, are awarded through an open and competitive method of procurement.

Section 13-a. (a) For purposes of this section:

1. "Construction manager build" shall mean a project delivery method whereby a construction manager:
  - i. serves as part of a team in conjunction with the Owner in the design phase of the project;
  - ii. under the oversight of the Owner, acts as the single source of responsibility to bid, select and hold construction contracts on behalf of the Owner during the construction phase; and
  - iii. manages the construction project on behalf of the Owner.
2. "Department" shall mean the New York City Department of Design and Construction.

These entities are utilizing lump sum contracts in which the contractor agrees to accept a set dollar amount for a contract which comprises a single bid without providing a cost breakdown for all costs such as for equipment, labor, materials, as well as such contractor's profit for completing all items of work comprising the project, which lump sum price may be negotiated and established by the authorized state entity based on a proposed guaranteed maximum price.

(b) This section may only be applied to:

1. Design-Build contracts solicited by the department that have an estimated cost of not less than \$10 million, are undertaken pursuant to a project labor agreement in accordance with section 222 of the labor law and in connection with a project that is primarily related to:

The Design-Build contract may include both lump sum elements and cost-plus not to exceed guaranteed maximum price elements and may also provide for professional services on a fee-for-service basis.

**New York City: WP**

Authorized entities: Department of Design and Construction, Department of Environmental Protection,



- i. water or sewer infrastructure, and primarily consists of the replacement of existing, or installation of new, water mains or sewers or the installation of assets to manage stormwater flow, or a combination of the foregoing; or
    - ii. coastal resiliency, and primarily consists of flood walls, deployable gates, the relocation or protection of existing infrastructure from flooding, or a combination of the foregoing; or
2. Construction manager build contracts solicited by the department that have an estimated cost of not less than \$5 million, are undertaken pursuant to a project labor agreement in accordance with section 222 of the labor law and in connection with a project for the construction or renovation of a cultural institution located on publicly owned real property on behalf of the New York City Department of Cultural Affairs or a public library in the city of New York.
  - (c) Notwithstanding any general, special or local law, rule or regulation to the contrary, a contractor selected by the department to enter into a construction manager build contract pursuant to this section shall be selected through the two-step method described in subdivision (a) of section four of this act. The department may use the types of contracts identified in subdivision (b) of section four of this act for contracts procured using the construction manager build delivery method.
  - (d) Where the department determines in writing that it is in the best interest of the public to solicit proposals using the Design-Build contract delivery method in connection with a project that meets the criteria set forth in paragraph one of subdivision (b) of this section, without generating a list pursuant to the process set forth in paragraph one of subdivision (a) of section four of this act, the department shall release, evaluate and score a request for proposals pursuant to the procedure set forth in subdivision (e) of this section. To the extent consistent with applicable federal law, the department shall consider, when soliciting proposals and awarding any contract pursuant to this section, the participation of (i) entities that are certified as minority or women-owned business enterprises pursuant to article 15-A of the executive law, or certified pursuant to local law as minority or women-owned business enterprises, and (ii) small business concerns identified pursuant to subdivision (b) of section 139-G of the state finance law. In addition, nothing in this section shall be deemed to supersede any pre-qualification guidelines or requirements otherwise authorized by law for the department.
  - (e) The request for proposals shall set forth the public work's scope of work, and other requirements, as determined by the department, which may include separate goals for work under the contract to be performed by businesses certified as minority or women-owned business enterprises pursuant to article 15-A of the executive law or certified pursuant to local law as minority or women-owned business enterprises. The request for proposals shall also specify the criteria to be used to evaluate the responses and the relative weight of each of such criteria. Such criteria shall include the proposal's cost, the quality of the proposal's solution, the qualifications and experience of the proposer, and other factors deemed pertinent by the department, which may include, but shall not be limited to, the proposal's manner and schedule of project implementation, the proposer's ability to complete the work in a timely and satisfactory manner, maintenance costs of the completed public work, maintenance of traffic approach and community impact. A contract awarded pursuant to this section shall be awarded to a responsive and responsible proposer, which, in consideration of these and other specified criteria deemed pertinent, offers the best value, as determined by the department. The department may engage in negotiations or other discussions with all qualified proposers that have expressed interest in response to the request for proposals released pursuant to subdivision (d) of this section, provided that such department maintains a written record of the conduct of negotiations or discussions and the basis for every determination to continue or suspend negotiations, and, provided, further, that if such department determines for a particular contract or for a particular type of contract that it is in the best interest of the public to negotiate or enter into discussions with fewer proposers, it shall make such a determination in writing. If such department enters into such negotiations, such department shall allow all proposers to revise their proposals upon conclusion of negotiations, and shall evaluate any such revised proposals using the criteria included in the request for proposals. The request for proposals shall include a statement that proposers shall designate in writing those portions of the proposal that contain trade secrets or other proprietary information that are to remain confidential; that the material designated as confidential shall be readily separable from the proposal. Nothing in this section shall be construed to prohibit the authorized entity from negotiating final contract terms and conditions including cost. All proposals submitted shall be scored according to the criteria listed in the request for proposals and such final scores shall be published on the authorized entity's website after registration of such contract or the date upon which such contract may be implemented, if registration requirements do not apply.



(f) The reporting requirement set forth in section 13 of this act shall apply to contracts procured pursuant to this section, provided that the requirement that such report include a list of responding entities shall not apply to any contract where no such list was generated. Such report shall include a description of the scope of work for each project, whether the project used the Design-Build or construction manager build method as described in subdivision (b) of this section, the percentage of alternative project delivery contracts that used the methods described in subdivision (b) of this section, the type of contract described in subdivision (b) of section four of this act that was used to procure the project, information regarding the total contract price upon contract award, the total contract price upon final completion of the project, the department's initial projected estimate of the cost of the project and the participation rate of and total dollar value of monies paid to minority and women-owned business enterprises and small business concerns under alternative project delivery contracts.

The authorized entities have discretion in how they award Design-Build contracts, they may use Best Value but are not required to, they also have the ability to negotiate final contract terms and conditions including cost.

An authorized entity awarding a Design-Build contract to a contractor offering the best value may but shall not be required to use the following types of contracts:

1. A cost-plus not to exceed guaranteed maximum price form of contract in which the authorized entity shall be entitled to monitor and audit all costs. In establishing the schedule and process for determining a guaranteed maximum price, the contract between the authorized entity and the contractor shall:
  - i. Describe the scope of the work and the cost of performing such work
  - ii. Include a detailed line item cost breakdown,
  - iii. Include a list of all drawings, specifications and other information on which the guaranteed maximum price is based
  - iv. Include the dates of substantial and final completion on which the guaranteed maximum price is based
  - v. Include a schedule of unit prices; or

2. A lump sum contract in which the contractor agrees to accept a set dollar amount for a contract which comprises a single bid without providing a cost breakdown for all costs such as for equipment, labor, materials, as well as such contractor's profit for completing all items of work comprising the public work.

Nothing in this subdivision shall be construed to prohibit the authorized entity from negotiating final contract terms and conditions including cost. All proposals submitted shall be scored according to the criteria listed in the request for proposals.

### **Syracuse Airport: FP**

Design-Build is authorized for any installation, construction, demolition, reconstruction, excavation, rehabilitation, repair and renovation in connection with a landside improvement project, terminal operational enhancement and aircraft deicing facility located in the towns of Cicero, De Witt and Salina at the Syracuse Hancock International Airport.

### **Westchester County**

The Westchester County Investment Act authorizes the Westchester County Department of Public Works and the Westchester County Department of Transportation to utilize the design-build project delivery method.



# NORTH CAROLINA

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**DOT: FP**  
**N.C. GEN. STAT. § 136-28.11**

The NCDOT is fully authorized to use Design-Build. The Department shall endeavor to ensure Design-Build projects are awarded on a basis to maximize participation, competition and cost benefit.

**N.C. GEN. STAT. § 143-128.1A**

State and local governments have broad discretion in choosing their project delivery methods. Design-Build is authorized and QBS selection and negotiation are authorized on non-transportation projects. PDB has been utilized extensively by local governments for WWW projects.



# NORTH DAKOTA

**Not Authorized**

**Vertical:** Not Authorized  
**WWW:** Not Authorized  
**DOT:** Not Authorized  
**State Government:** Not Authorized  
**Local Governments:** Not Authorized

Design-Build is not authorized for public projects.



# OHIO

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**OHIO REV. CODE ANN. 153.693**  
**OHIO REV. CODE ANN. 153:1-6-02**

Public authorities in Ohio have full Design-Build authority and very broad discretion in its use. Public Owners may use Design-Build on a low bid or Best Value basis. The Best Value is very flexible, and it also allows Owners to enter into contract negotiations for Design-Build services with the Design-Build firm whose pricing proposal the public authority determines to be the best value under this section.

Agreeing upon a procedure and schedule for determining a guaranteed maximum price using an open book pricing method that shall represent the total maximum amount to be paid by the public authority to the Design-Build firm for the project and that shall include the costs of all work, the cost of its general

conditions, the contingency, and the fee payable to the Design-Build firm. After the pricing and technical proposals have been submitted, the evaluation committee must interview each short-listed firm. These interviews are not scored. Rather, the purpose of the interviews is to provide each firm with the opportunity to clarify its proposal and respond to any questions the evaluation committee may have.

The evaluation committee must review and evaluate each pricing and technical proposal using the technical criteria and pricing criteria included in the RFP. The award standard for a DB is "Best Value." When determining Best Value, price is a factor, but qualifications are also considered. A specific formula or weighted calculation is not required. If a GMP was requested, each must be opened and evaluated after the required interviews and evaluation of technical and pricing proposals.

For every Design-Build contract, the public authority planning to contract for Design-Build services, in consultation with the criteria architect or engineer, shall

**Code key:** FP – Fully Permitted, WP – Widely Permitted, WL – With Limitations, LO – Limited Option, NA – Not Authorized



# OHIO continued

## Fully Permitted

evaluate the statements of qualifications submitted by Design-Build firms specifically regarding the project, including the Design-Build firm's proposed architect or engineer of record. Following this evaluation, the public authority shall:

- Select and rank not fewer than three firms which it considers to be the most qualified to provide the required Design-Build services, except that the public authority shall select and rank fewer than three firms when the public authority determines in writing that fewer than three qualified firms are available.
- Evaluate the pricing proposal submitted by each selected firm and, at its discretion, hold discussions with each firm to further investigate its pricing proposal, including the scope and nature of the firm's proposed services and potential technical approaches.
- Rank the selected firms based on the public authority's evaluation of the value of each firm's pricing proposal, with such evaluation considering each firm's proposed costs and qualifications.
- Enter into contract negotiations for Design-Build services with the Design-Build firm whose pricing proposal the public authority determines to be the best value under this section.

### DOT: FP

The Department uses two types of Design-Build contracting: Low-Bid Design-Build and Value-Based Design-Build. In Low-Bid Design-Build contracting, the Design-Build contract is awarded to the lowest responsive and competent bidder. In Value Based Design-Build contracting, the Design-Build contract is awarded to the bidder with the Best Value score. Best Value scores are determined based on a combination of bid price and a technical qualifications assessment.



# OKLAHOMA

## Limited Option

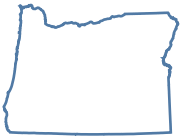
**Vertical:** LO  
**WWW:** WP  
**DOT:** WL  
**State Government:** LO  
**Local Governments:** LO

### 61 Okla. Stat. § 202.1(C)

The Design-Build project delivery methods shall not be used for any project unless the project meets the criteria established by the administrative rules promulgated as required by this act. Such methods shall not be used unless there is a need for compressed construction time as required to respond to a natural disaster or other emergency situation affecting public health and safety, or all of the following criteria for designation are met:

- There project benefits the public.
- There is a need for cost control; and
- The need exists for specialized or complex construction methods due to the unique nature of the project.

The DB screening committee shortlists three to five Design-Build firms based upon the data supplied by the Department. The DB teams are interviewed and at the conclusion of all interviews, the committee rates each firm in a manner so as to recommend to the state agency the relative ranking of each firm. All criteria and procedures used by the committee shall be documented for the record. The recommendations are forwarded to the state agency for the final selection.



# OREGON

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**OR. REV. STAT. §§ 279B.060**

State agencies have broad discretion and may use negotiation and a multi-phase selection process, critical elements to using PDB.

**DOT: FP**

ODOT uses the request for proposal process to solicit bids from the proposer shortlist for the design and

construction of the project. The DB proposers submit their proposals for design, construction, time, and the cost to perform all aspects of the project. ODOT awards the contract based on price and factors such as qualifications, past performance and proposed technical approach to the work.

**Tollways: FP**

**OR. REV. STAT. §§ 383.017**

Limited to tolling contracts: contracts may be awarded via a “competitive process or by private negotiation with one or more entities, or by any combination of competition and negotiation.”



# PENNSYLVANIA

**Limited Option**

**Vertical:** LO  
**WWW:** Not Authorized  
**DOT:** LO  
**State Government:** LO  
**Local Governments:** LO

**DOT: LO**

**62 PA. CONS. STAT. §§ 103, 322(2)**

Only low bid DB is authorized. Shortlisting and best-value procurement are not allowed by PennDOT.

Commonwealth agencies are authorized to use Design-Build, but they are subject to the Separations Act which requires separate contracts for plumbing, heating, ventilating and electrical work. The DOT can only use DB on a low bid basis.



# RHODE ISLAND

**Widely Permitted**

**Vertical:** WP  
**WWW:** WP  
**DOT:** WP  
**State Government:** FP  
**Local Governments:** FP

**RIGL 37-2-29**

**RIGL 37-2-30**

State law gives both state and local governments broad latitude in their procurement. Any type of contract which will promote the best interests of the state may be used. While Design-Build has been used by state agencies to a great degree, local governments have used it frequently especially in the WWW sector.

**State Chief Purchasing Officer Procurement Regs 8.11.3**

The methods below, along with the criteria for each method, are the alternative methods of construction contract management deemed feasible by the Chief Purchasing Officer: Design-Build. In a design-build project, a person or firm contracts directly with the State to meet the State’s requirements as described in a set of design or engineering specifications, bridging documents, or scope of work. Final design and construction are both the responsibility of the design-build contractor.

This method can include projects where the design-build contractor supplies the site as part of the design-build package. The design-build method may

**Code key:** FP – Fully Permitted, WP – Widely Permitted, WL – With Limitations, LO – Limited Option, NA – Not Authorized

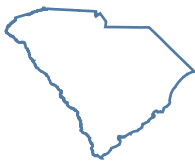


# RHODE ISLAND continued

**Widely Permitted**

be selected for a project when it is determined that the following criteria will be met:

- a. the State does not have the ability to prepare the requisite design or engineering specifications, bridging documents, or scope of work.
- b. the State cannot manage or supervise the work of specialty trade contractors and it is not in the State's best interest to contract directly with such specialty contractors.
- c. the State determines that it is in its best interest for a design-build firm to assume responsibility for both final design and construction of the project.
- d. due to time constraints and the need to complete the project on an expedited basis, it is in the State's best interest to select a design-build contractor rather than a general contractor for the project.
- e. construction work on the project has an estimated cost equal to or greater than \$2,500,000.
- f. the State desires to have a single firm responsible for both design and construction.



# SOUTH CAROLINA

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

### S.C. CODE ANN. § 11-35-1510-1530

State agencies using Design-Build are required to use competitive sealed proposals. The request for proposals must state the relative importance of the factors to be considered in evaluating proposals but may not require a numerical weighting for each factor. Price may, but need not, be an evaluation factor. Evaluation Factors. The request for proposals must state the relative importance of the factors to be considered in evaluating proposals but may not require a numerical weighting for each factor. Price may, but need not, be an evaluation factor.

**Discussion with Offerors.** As provided in the request for proposals, and under regulations, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. All offerors whose proposals, in the procurement officer's sole judgment, need clarification must be accorded that opportunity.

**Selection and Ranking.** Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors

stated in the request for proposals. If price is an initial evaluation factor, award must be made in accordance with Section 11-35-1530(9) below.

**Negotiations.** Whether price was an evaluation factor or not, the procurement officer, in his sole discretion and not subject to review under Article 17, may proceed in any of the manners indicated below, except that in no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:

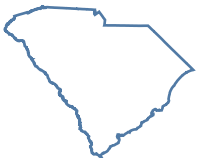
Negotiate with the highest ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and so on, ranked offerors to the level of ranking determined by the procurement officer in his sole discretion; the procurement officer may make changes within the general scope of the request for proposals and may provide all responsive offerors an opportunity to submit their best and final offers.

**Award.** Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals,

**DOT:** FP

### S.C. CODE ANN. § 57-5-1625

The department may award highway construction contracts using a Design-Build procedure. The Design-Build contract may also provide for the



# SOUTH CAROLINA continued

**Fully Permitted**

maintenance, operation, or financing of the project. The agreement may be in the form of a Design-Build contract, a franchise agreement, or any other form of contract approved by the department.

Selection criteria shall include the cost of the project and may include contractor qualifications, time of completion, innovation, design and construction quality, design innovation, or other technical or quality related criteria. The DOT has broad discretion in its use of DB which would seemingly permit the use of PDB.

**Local Governments: FP**  
**S.C. Code Ann § 11-35-50**

Local governments have broad latitude in its procurement. All political subdivisions of the state are required to adopt ordinances or procedures embodying sound principles of appropriately competitive procurement, but the content of the procurement ordinance or policy is left to the discretion of those local governments. The law does not require municipalities to adopt state procedures. This would allow any delivery method to be approved by local ordinance.



# SOUTH DAKOTA

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**State Government: FP**  
**SDCLA § 15-18b-36**

State agencies have authority to use DB on a Best Value basis.

**5-18B-36. Acceptance of a proposal – Evaluation criteria scores**

After obtaining and evaluating proposals according to the criteria and procedures set forth in the Design-Build request for proposals, a purchasing agency may accept the proposal it considers most advantageous to the purchasing agency. Acceptance of a proposal shall be by written notice to the Design-Builder which submitted the accepted proposal. At the same time notice of acceptance is delivered, the purchasing agency shall also inform, in writing, the other Design-Builders that their proposals were not accepted. Unless all proposals are rejected, a detailed breakdown of the evaluation criteria scores for each proposal received shall be made available to the public after signature execution of the Design-Build contract. The contract for development of performance criteria shall terminate if a contract is awarded to the Design-Builder.

**DOT: FP**

The DOT uses DB on a strict Best Value basis and no negotiation. The State Highway Engineer shall set a date for publicly opening the price proposals and shall notify all firms submitting price proposals at least seven calendar days prior to the opening date. The notification shall include the date, time, and place of the opening of price proposals and date for award of the project.

The State Highway Engineer shall publicly open the sealed price proposals and divide each firms proposed price by the qualitative score given by the Committee to obtain an “adjusted price.”

**Local Governments: FP**

Local governments have authority to use DB on a Best Value basis. An award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the purchasing agency taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation.



# TENNESSEE

## Fully Permitted

**Vertical:** WP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** WP

### TCA 12-10-124

State agencies have broad DB authority. Their proposals must have some cost component and there isn't much in the way of negotiation which limits its ability to use PDB. Municipalities have greater discretion than state governments, in that they can pass their own procurement laws by ordinance. The DOT has DB authority, but it must be done on a Best Value basis.

The Design-Build method may be awarded by a request for proposals. The categories shall include such factors as qualifications, experience, staff availability, technical approach, minority participation and cost, as deemed appropriate by the authority. The contract shall be awarded to the best proposer, using the evaluation criteria set forth above, who meets the minimum required qualifications.

After evaluating the technical proposals, In the event all price proposals submitted exceed an acceptable range of the Department's cost estimate for the project, the Department, at its discretion, may determine whether to proceed to request a best and final offer. If a best and final offer is requested, the Department will issue a best and final offer RFP to the eligible Design-Builders. The best and final offer RFP may or may not include minor changes in the scope or contract requirements of the original RFP. Based upon the proposal from each Design-Builder and the appropriate selection method as specified in the RFP, or the best and final offer RFP, if applicable, the DBRC will determine the best evaluated Design-Builder.

Municipalities that have charter provisions dealing with competitive bidding and either establishing bid limits in the charter itself or allowing bid limits to be set by ordinance but setting a maximum may continue to operate under the charter provisions, but the municipality must by charter or ordinance establish general bid procedures, including public advertising, securing and opening bids, and any exemptions from competitive bidding.

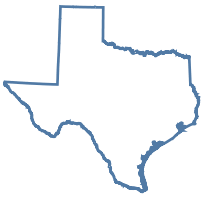
### DOT: FP

### T.C.A. 54-1-119

Design-Build (including PDB) and CMAR are fully authorized.

The Design-Build method may be awarded by a request for proposals. The categories shall include such factors as qualifications, experience, staff availability, technical approach, minority participation and cost, as deemed appropriate by the authority. The contract shall be awarded to the best proposer, using the evaluation criteria set forth above, who meets the minimum required qualifications.

After evaluating the technical proposals, In the event all price proposals submitted exceed an acceptable range of the Department's cost estimate for the project, the Department, at its discretion, may determine whether to proceed to request a best and final offer. If a best and final offer is requested, the Department will issue a best and final offer RFP to the eligible Design-Builders. The best and final offer RFP may or may not include minor changes in the scope or contract requirements of the original RFP. Based upon the proposal from each Design-Builder and the appropriate selection method as specified in the RFP, or the best and final offer RFP, if applicable, the DBRC will determine the best evaluated Design-Builder.



# TEXAS

## Widely Permitted

**Vertical:** WP  
**WWW:** WP  
**DOT:** LO  
**State Government:** LO  
**Local Governments:** WP

**Vertical: WP**  
**TEX.CODE ANN. 2269.303-308,**

The governmental entity shall select the Design-Build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations. The governmental entity shall first attempt to negotiate a contract with the selected firm. If the governmental entity is unable to negotiate a satisfactory contract with the selected firm, the governmental entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

**DOT: LO**  
**TEX. TRANSP. CODE ANN. § 223.246-247**

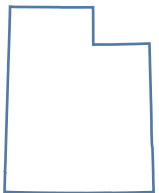
The relative weighting of the technical and cost proposals and the formula by which the proposals will be evaluated and ranked; and the criteria to be used in evaluating the technical proposals, and the

relative weighting of those criteria. The formula used to evaluate proposals must allocate at least 70% of the weighting to the cost proposal. After ranking the proposers, the department shall first attempt to negotiate a contract with the highest-ranked proposer. The department may include in the negotiations alternative technical concepts proposed by other proposers. If the department is unable to negotiate a satisfactory contract with the highest-ranked proposer, the department shall, formally and in writing, end all negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

**WWW: WP**  
**TEX. Water. CODE ANN. 60.460**

The district shall select the Design-Build firm that submits the proposal offering the best value for the district on the basis of the published selection criteria and on its ranking evaluations. The district shall first attempt to negotiate a contract with the selected offeror. If the district is unable to negotiate a satisfactory contract with the selected offer or.

There are no specific PDB provisions in law, Texas law authorizes Design-Build with the ability to negotiate.



# UTAH

## Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**U.C.A. § 63G-6a-1302**

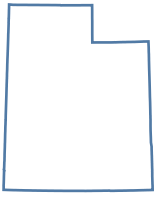
Design-Build is authorized under U.C.A. § 63G-6a-1302—Alternative methods of construction contracting management, where the procurement official has the discretion to select the appropriate method of construction contracting method for a particular project. However, under U.C.A. § 63G-6a-1503.5—Evaluation of Statement of Qualification, criteria not described in the request for statement of qualifications may not be used to evaluate a statement of qualifications. U.C.A. § 63G-6a-410 states that a procurement unit may not award a contract based solely on the process described in the request for statement of qualifications process, which seems to imply that cost must be taken into consideration.

**U.C.A. § 63G-6a-802**

States that a procurement unit may award a contract for a procurement item without engaging in a standard procurement process if the procurement official determines in writing that the award of a contract is under circumstances that make awarding the contract through a standard procurement process impractical and not in the best interest of the procurement unit. Under this section, the procurement official must negotiate the terms of the contract, including price and delivery, to ensure they are in the best interest of the procurement unit. This could be interpreted to mean that a qualifications-based selection process is allowed if it is in the best interest of the procurement unit.

**Local Governments: FP**

Local governments have greater discretion in choosing project delivery methods. They may use the state procurement code or adopt their own procedures. 11-39-107. Procurement code.



1. This chapter may not be construed to:
  - (a) prohibit a county or municipal legislative body from adopting the procedures of the procurement code; or
  - (b) limit the application of the procurement code to a local district or special service district.
2. A local entity may adopt procedures for Design-Build if the local entity consults with a professional engineer or an architect who has Design-Build experience and is employed by or under contract with the local entity.

**DOT: FP**

**Utah Administrative Code R916-3-10**

Under Utah law, Design-Build Best Value projects must contain law a price component, however the flexible of the law does permit PDB but not on a QBS basis. In order to use a qualifications-based selection the department would have to use the state’s Progressive CM/GC statute to complete the procurement (Utah CODE ANN.§§ R916-4-3) i.e., US 89 project.

UDOT may offer the proposers the opportunity to participate in presentations and/or discussions regarding their proposals. Discussions, either oral or in writing, may be held with proposers for the purpose of clarification of the proposals and/or to identify deficiencies in initial proposals. If presentations or discussions are held with one proposer, they must be held with all pre-qualified proposers. If discussions are held, the best and final offers will be requested. If best and final offers are requested, they will be the basis for award and will be evaluated as stated in the RFP.

1. The basis for the award shall be stated in the RFP. Award may be based on any of the following approaches, all of which shall be deemed to constitute award to the responsive and responsible offeror whose proposal is most advantageous to UDOT as such terms are used in Utah Code Section 63G-6a-1402:
  - a. Award to the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level.
  - b. Award to the responsible proposer whose proposal is evaluated as providing the best value to UDOT.
  - c. If the RFP provides for a stipulated sum, award to the responsible proposer whose proposal is evaluated as providing the best value to UDOT.



# VERMONT

## Widely Permitted

**Vertical:** WP  
**WWW:** WP  
**DOT:** FP  
**State Government:** WP  
**Local Governments:** WP

**Dept. of Buildings and General Services: WP**  
**29 V.S.A. § 161 (a)(2)**

When using Design-Build, the commissioner of buildings and general services shall publicly advertise or invite three or more bids. The award of a Design-Build contract shall be to the bidder determined by the commissioner to be most responsive to evaluation criteria established by the commissioner. Such criteria may include physical plant characteristics proposed, program response to space needs, ability of the Design-Build team, anticipated development schedule and overall cost considerations, including alternates, allowances and schedule of values.

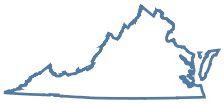
**DOT: FP**  
**19 V.S.A. § 2602-2606**

Permits the agency to use Design-Build contracting to deliver projects. The agency may evaluate and select proposals on either a best-value or a low-bid basis. If the scope of work requires substantial engineering judgment, the quality of which may vary significantly as determined by the agency, then the basis of award shall be Best Value. The DOT does Design-Build projects on a low bid and Best Value basis. The process does not include any negotiation of proposals.

**Local Governments: WP**

The state of Vermont's procurement law provides little guidance to local officials when municipal purchases are made. It states only that construction contracts are within the scope of general responsibility of the selectmen, mayor, aldermen, trustee or prudential committees. This provides great latitude to local decision-makers in managing the responsibility for purchases or project implementation services. Design-Build is mentioned as an option in local procurement manuals but no process is laid out.

Counties also have great latitude in its bidding as well and may use Design-Build. The bid most responsive to the selection criteria established in the RFP should be accepted. Agency staff with the relevant subject matter expertise should review each proposal for responsiveness in accordance with the requirements outlined in the RFP. When appropriate, an Appointing Authority (Agency) may establish a contract (selection AFO) from a bidder or several bidders in an effort to award a Contract in the best interest of the state.



# VIRGINIA

Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**State Colleges and Universities: FP**

State colleges and universities may use competitive sealed bids or competitive negotiation. Any covered institution may enter into a contract for construction on a fixed price or not-to-exceed price construction management or Design-Build basis, provided that such institution complies with the requirements of this article and with the procedures adopted by the Secretary of Administration for using construction management or Design-Build contracts.

**State/Local Governments: FP**

Virginia Public Procurement Act authorizes a public body to enter into a contract for construction through use of the competitive negotiations process, for construction services to be performed on a Design-Build or construction management basis. Competitive negotiation is a method of contractor selection in which a public body issues a written Request for Proposals (“RFP”), describing the goods or services proposed to be procured, and identifying the factors that the locality will use to evaluate the relative merits of proposals received from persons or firms.

The public body must have adopted, by ordinance or resolution, procedures governing the contractor

selection, consistent with competitive negotiation procedures (i.e., a two-step selection/discussion process). At the end of the selection process, a contract may be awarded to the fully qualified offeror who submits an acceptable proposal determined to be the best value.

**DOT: FP**

VDOT may select DB teams using the low bid, Best Value or fixed price basis. The selection of a Design-Builder for a Fixed Price Basis of Award will be based on a fixed dollar budget for the project in the solicitation, and require submission of only Technical Proposals. The fixed price will be the same for all Offerors and award will be made to the Offeror with a Technical Negotiation and Award of Contract will be made in the following manner: DOT will review the Proposal submitted by the highest-scored Offeror. If the Proposal is responsive and the Price Proposal is within VDOT’s budget for design and construction services, then VDOT will issue a Notice of Intent to Award to the Selected Design-Builder. VDOT may conduct limited negotiations with the selected Design-Builder to clarify any remaining issues regarding scope, schedule, financing or any other information provided by the Selected Design-Builder. If the Proposal Price submitted by the highest-scored Offeror is not within VDOT’s budget for design and construction, VDOT may establish a competitive range among the Offerors who have submitted a responsive Proposal.

VDOT is authorized to use PDB.



# WASHINGTON

Fully Permitted

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**WASH. REV. CODE §§ 39.10.300**

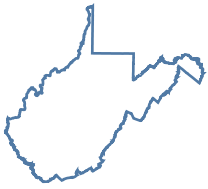
Public bodies may utilize the Design-Build procedure, including Progressive Design-Build, for public works projects in which the total project cost is over \$2 million and where:

- a. The construction activities are highly specialized and a Design-Build approach is critical in developing the construction methodology; or
- b. The projects selected provide opportunity for greater innovation or efficiencies between the designer and the builder; or
- c. Significant savings in project delivery time would be realized.

**DOT: FP**

**WASH. REV. CODE §§ 47.20.780**

The Department of Transportation is authorized to use the design-build procedure, progressive design-build procedure, or any general contractor/construction manager contracting procedure on individual projects. A performance and payment bond is not required for the portion of the design-build contract that includes design services, preconstruction services, and other services.



# WEST VIRGINIA

**Fully Permitted**

**Vertical:** FP  
**WWW:** FP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** FP

**W. VA. CODE §§ 5-22A-1-11**

State departments, agencies, authorities, quasi-public corporations and all political subdivisions, including cities, counties, boards of education and public service districts are authorized to use Design-Build on a low bid or Best Value basis, price is a significant factor.

**DOT: FP**  
**W. VA. CODE §§ 17-2D-2**  
**W. VA. CODE §§ 17-2D-4**

DB proposal requirements not specified: “the committee shall award the project to the qualified Design-Builder based on low bid or a value-based selection process combining technical qualifications and competitive bidding elements.”



# WISCONSIN

**Limited Option**

**Vertical:** LO  
**WWW:** FP  
**DOT:** WL  
**State Government:** LO  
**Local Governments:** LO

**WS 62.15**

Local governments are required to use DBB but are exempt from DBB laws on the following project types: A recycling or resource recovery facility, a project contained in an electronics and information technology manufacturing zone, water and sewer systems, wastewater treatment facilities, and may use alternative delivery methods like DB.

**School Districts: WL**  
**WS 66.0901**

Are subject to the procedural requirements of Sec. 66.0901 but are not required by law to competitively bid projects or award contracts to the lowest responsible bidder.

**State Agencies: LO**  
**WS 13.48(19)**

Whenever the building commission determines that the use of innovative types of design and construction processes will make better use of the resources and technology available in the building industry, the building commission may waive any or all of the DBB requirements if the action is in the best interest of the state and is approved by the building commission.

**DOT: WL**  
**WS 84.01**

WSDOT has a DB pilot program, projects are procured on a Best Value basis.



# WYOMING

**Fully Permitted**

**Vertical:** FP  
**WWW:** WP  
**DOT:** FP  
**State Government:** FP  
**Local Governments:** WP

**WYO. STAT. ANN. §§ 16-6-701**

The state has broad discretion in its use of DB. It does not explicitly state that PDB is authorized but the flexibility in the law would permit PDB with:

- A Design-Builder may be selected based solely on qualifications for small projects (under \$500k or less) provided there are not less than two respondents.

- DB projects over \$500k must use a fixed scope request for proposal or a fixed price request for proposal as the basis for selection. The best overall value shall be
- determined based on criteria set forth by the public entity letting the project and may include, but is not limited to, qualifications, price, quality of materials and products, past experience and schedule.
- The final guaranteed maximum price and scope for the project may be altered from the request for proposal and negotiated with the successful respondent at the discretion of the public entity.

**Code key:** FP – Fully Permitted, WP – Widely Permitted, WL – With Limitations, LO – Limited Option, NA – Not Authorized