

2018

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.



INTRODUCTION

The Design-Build Institute of America monitors design-build legislation in all 50 states and the federal level. This report includes legislation signed into law before September 2018. It was reviewed on a state by state basis by experienced attorneys within each of DBIA's 14 regions representing all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands.

It is important to note that while this report outlines the existing statutes from across the country, it may not fully account for jurisdictions where design-build is not expressly prohibited. 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 project delivery method for your project.

The use of design-build continues to grow nationwide. Transportation is the fastest growing sector for design-build which is reflected in comments included in this report.

In 2018 there are only seven states where design-build remains a limited option: North Dakota, Iowa, Wisconsin, Alabama, New York, New Jersey and Pennsylvania.

We'd like to extend our special thanks to the members of DBIA's Legislative-Legal Committee and our region leaders.

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ALABAMA

The Alabama Toll Road, Bridge and Tunnel Authority have full authority to enter into design-build, design-build-own, design-build-own-operate or design-build-own-operate-maintain contracts. Best Value or QBS selection is authorized on these contracts. *(Al. Code § 23-2-145)*

The Department of Transportation is authorized to use design-build on projects in excess of \$100 million. *(Al. Code § 23-1-140)*

QBS design-build is authorized for ATRBTA

DOT PROCUREMENT PROCESS

May be evaluated and awarded by the Highway Authority based on qualifications of participants or best value or both taking into consideration the best interest of the state. *(Al. Code § 23-1-140)*



ALASKA

Design-Build is authorized for all state agencies. *(Ak. Stat. § 36.30.200)*

Negotiation may be used on design-build contracts. Best value, two-phase and low bid may be used as a basis for award. *(2 AAC 12.943)*

The procurement officer may conduct a design-build procurement process only if the commissioner of transportation and public facilities determines in writing that it is advantageous to the state. *(2 AAC 12.933-)*

DOT PROCUREMENT PROCESS:

Competitive sealed proposals if appropriate findings are made; otherwise, competitive sealed bids. *(AK. Stat. § 36.30.200)*



ARIZONA

Design-Build is authorized for all State agencies and for all counties, cities, towns, irrigation, power, electric, drainage, flood protection and flood control districts, tax levying public improvement districts, and county or city improvement districts (collectively, “local agencies”). (*Ariz. Rev. Stat. §§ 34-101 and 34-602; Ariz. Rev. Stat. § 41-2582*)

Design-build, design-build-maintain, design-build-operate-maintain or design-build-finance-operate-maintain, and other types of Public-Private Partnership agreements are permitted for transportation projects. (*Ariz. Rev. Stat. § 28-7703*)

The following delivery methods are authorized on state and local agency public projects: design-bid-build, construction-manager-at-risk, design-build and job-order-contracting. Design-build, construction-manager-at-risk or job-order-contracts may be awarded using best value or qualifications-based selection (QBS). Horizontal construction under this statute may be procured until June 30, 2025. (*Ariz. Rev. Stat. § 41-2578, 41-2582; Ariz. Rev. Stat. 34-602, 34-603, 34-605*)

Arizona Department of Transportation also has design-build authority under separate statute. *Ariz. Rev. Stat. § 28-7363*. It prescribes a two-phase procurement process: pre-qualification then proposal; award is to lowest score when price is divided by technical score; time valued adjustments may be made to score. (*Ariz. Rev. Stat. §§ 28-7363-28-7365*) ADOT also has authority for construction-manager-at-risk and job-order-contracting under separate statute. (*Ariz. Rev. Stat. § 28-7366*)

The Arizona Board of Regents and judicial branch have discretion to adopt their own procurement methods, but they must be substantially equivalent to those prescribed for state agencies. The Board of Regents has authorized the use of design-build. (*Ariz. Rev. Stat. §§ 41-2501E and F; 41-2582*)

The state board of education shall adopt rules authorizing school districts to procure construction services by construction-manager-at-risk, design-build, qualified select bidders list and job-order-contracting methods of project delivery. (*Ariz. Rev. Stat. § 15-213*)

QBS design-build is authorized for at least one state agency.

QBS design-build is authorized for all local governments.

DOT PROCUREMENT PROCESS:

Two-phase process: pre-qualification then proposal; award is to lowest score when price is divided by technical score; time valued adjustments may be made to score. (*Ariz. Rev. Stat. §§ 28-7363-28-7365*)



ARKANSAS

Design-Build is authorized for municipal sewage systems.
(ASA. 14-235-2)

The Arkansas State Highway Commission has authorization to use qualifications based for design-build-finance projects.
(ASA. § 27-65-107(c); 27-67-206(j)(2))

Municipalities and sanitation authorities are authorized to enter into design-build-operate-maintenance contracts for water, waste water, storm water, treatment systems or any combination. (ASA. § 22-9-203(j)(1))

Any school district may use design-build construction as a project delivery method for building, altering, repairing, improving, maintaining, or demolishing any structure, or any improvement to real property owned by the school district.
(ASA §19-11-807)

The Arkansas State Highway Commission has authorization to design, construct, improve and maintain qualified design-build projects when state highway revenues are used and an unlimited number of projects when state funds are used.
(ASA §27-67-206(j)(2))

DOT PROCUREMENT PROCESS:

The process is established by the Commission to award “on a qualification basis that offers the greatest value for the state.” (ASA. § 27-67-206(j))



CALIFORNIA

WIDELY PERMITTED

STATE AGENCIES

DOT may use design-build on up to 10 projects on the state highway system. *(Public Contract Code § 6820-6829, sunset date 1/1/2024)*

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)*

Dept. of Water Resources: Salton Sea Restoration. *(Fish and Game Code 2942, sunset date 1/1/2025)*

LOCAL AGENCIES

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, sunset date 1/1/2024)*; Community College Districts, projects valued at a minimum \$2,500,000 *(Education Code §81700, sunset date 1/1/2020)*; 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.

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 1/1/2025): 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)*

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

Los Angeles County Metropolitan Transportation 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)*

Cities, counties, including chartered cities or counties, school districts, community college district, public districts, county boards of education, joint powers authorities, transportation commissions, or any other public or municipal corporation may enter into an agreement to design, build, reconstruct and lease to private entities for specified revenue generating projects. *(GC 5956)*

DOT PROCUREMENT PROCESS:

Use a three-step procurement process which includes: an RFP (including competitive sealed proposals), prequalification requirements and selection. For non-rail transit projects that exceed \$2.5 million, the transit operator may award the project to the lowest bidder or by using best value method. In no case may the transit operator award a contract to a design-build entity pursuant to the authority granted under the Public Contract Code for a capital maintenance or capacity-enhancing rail project unless that project exceeds \$25 million in cost. There is no cost threshold for acquisition and installation of technology applications or surveillance equipment.



COLORADO

All state agencies are authorized to use any project delivery method, including design-build, construction management and integrated project delivery when it is in the best interests of the state. *(CRS § 24.101-103.203)*

The Colorado Department of Transportation is authorized to use design-build on transportation projects. *(C.R.S. § 43-1-1403)* Any agency is authorized to use Integrated Project Delivery. *(C.R.S. 30-20-104)*

The state and local governments are authorized to enter into Public Private Partnerships for the construction of transportation projects using design-build. *(C.R.S. § 43-1-102)*

Except in limited circumstances, preference is given to CO residents in adjusted-score design-build contracts *(C.R.S. § 43-1-1406)*

Discretionary stipulated fee to design-build firms who submit responsive proposals but are not awarded the project *(C.R.S. § 43-1-1407)*

The DOT may adopt rules in accordance with C.R.S. § 43-1-110 and C.R.S. § 24-4-103 to 1) establish the procurement requirements for a design-build contract, and 2) further define the processes and procedures for utility relocations necessitated by design build contract *(C.R.S. § 43-1-1409)*

Project specific and general utility relocation provisions *(C.R.S. § 43-1-110-112)*

QBS design-build is authorized for at least one state agency.

QBS design-build is authorized for all local governments.

Colorado is the only state that has codified and authorized Integrated Project Delivery on public projects.

DOT PROCUREMENT PROCESS

Two-phase “adjusted score” process; shortlist followed by proposals; preference allowed to Colorado residents (suspended if it would cause denial of federal funds); award to proposal providing best value to department. *(C.R.S. 43-1-1401)*



CONNECTICUT

At the municipal level, cities and towns have discretion as to procurement.

Design-build is authorized for the University of Connecticut and state agencies with legislative authorization for build construction and renovations. The statute sunsets June 30, 2024, or until completion of the UConn 2000 infrastructure improvement program, whichever is later. *(CGSA §§ 4b-91)*

The State Board of Education is authorized to use design-build on two projects per year through a pilot program. *(CGSA §§ 10-285F)*

The Commissioner of Transportation may, as an alternative to using a design-bid-build contract pursuant to chapter 238

of the general statutes, designate specific projects to be completed using a (1) construction-manager-at-risk contract with a guaranteed maximum price, or (2) design-build contract. *(2012 CTPA 70 § 1)*

State agencies are authorized for up to 5 P3 projects. Any agency seeking to establish a public-private partnership shall, after consultation with the Commissioners of Economic and Community Development, Administrative Services and Transportation, the State Treasurer, and the Secretary of the Office of Policy and Management, submit one or more projects to the Governor for approval.

DOT PROCUREMENT PROCESS:

Two-phase: recommendation by the selection panel, then selection by the commissioner based on a combined score of qualifications and past performance of the proposer, technical merit of the proposal, and cost.



DELAWARE

Design-build is authorized for Delaware Transportation Department infrastructure projects *(29 Del. C. § 6970)*

The Office of Management and Budget are authorized to use design-build on 12 projects.

Local governments are authorized to use design-build with legislative approval *(29 Del. C. § 6907)*

In the case of an emergency, state agencies are authorized to use design-build by waiving all provisions of the procurement statute when it is determined to be in the best interest of the Agency. *(29 Del. C. § 6963)*

Projects are authorized on a project-specific basis, i.e. SB 190 for Kent County Courthouse - 2009



DISTRICT OF COLUMBIA

The following project delivery methods are authorized for procurements within the scope of this subchapter:

- Architectural and engineering services
- Construction management
- Construction management at risk
- Design-bid-build
- Design-build
- Design-build-finance-operate-maintain
- Design-build-operate-maintain
- Operations and maintenance

Design-build is authorized for the construction and renovation of public works projects. Both best value and qualification. (*D.C. Code* § 2-356.01)



FLORIDA

All state agencies are authorized to use design-build and P3s using the best value or qualification based selection to award the contracts. (*FL* § 287.055)

to award such contracts or perform a qualifications-based selection process. (*FL* § 255.20)

Counties, municipalities and other political subdivisions of the state are authorized to use design-build contracts and P3s as permitted by local ordinance. Local government bodies may use best value or qualifications-based selection

FDOT has a goal of delivering 25% of its projects using design-build by 2014. (*FL* § 337.11)

The Florida Statewide Passenger Rail Commission is authorized to use design-build. (*FL* § 341.301)

QBS design-build is authorized for at least one state agency.

QBS design-build is authorized for all local governments.

DOT PROCUREMENT PROCESS

Governed by rules adopted by DOT (which must include prequalification requirements, public announcement procedures, short-listing criteria, proposal requirements).



GEORGIA

Georgia Department of Transportation (GDOT) is authorized to use design-build for buildings, bridges and approaches, rail corridors, and limited or controlled access projects or projects that may be constructed within existing rights of way where the scope of work can be clearly defined or when a significant savings in project delivery time can be attained. In contracting for design-build projects, the department shall be limited to contracting for no more than 50% of the total amount of construction projects awarded in the previous fiscal year. (*O.C.G.A. § 32-2-81*)

GDOT is authorized to issue a request for proposal for projects that are funded or financed, in part or in whole, by private sources. GDOT is authorized to promulgate rules or regulations to assist in its evaluation of proposals and to implement its statutory authority. (*O.C.G.A. § 32-2-80*)

Governmental entities (excluding any authority, board, department, or commission of the state) are authorized to utilize any construction delivery method, provided that the public works construction contracts place the offeror at risk for construction and require labor or building materials in the execution of the contract. (*O.C.G.A. § 36-91-20*)

Local governments may enter into contracts to plan, finance, construct, acquire, lease, operate, or maintain water reservoir and related facilities. (*O.C.G.A. § 36-91-100 et seq.*)

Local governments may receive unsolicited proposals for the development of certain qualifying projects. (*O.C.G.A. § 36-91-110 et seq.*)

DOT PROCUREMENT PROCESS:

Procurements utilizing O.C.G.A § 32-2-81 are governed by procedures adopted by GDOT (which must include prequalification requirements, public advertisement procedures, request for qualification requirements, request for proposal requirements, criteria for evaluating technical information and project costs, criteria for selection and award process, identification of projects that are candidates for design-build contracting, and criteria for resolution of contract issues)

FULL AUTHORITY



HAWAII

All state agencies and counties have discretion in choosing their project delivery methods. Design-build is authorized and has been used on public projects. Stipends are authorized

on design-build projects, provided the cost of the entire project is greater than \$1 million. (*HRS §§ 103D-303*)

A request for proposals is issued to initially request pre-qualification of offerors, to select from among them a short list of up to three responsible offerors

DOT PROCUREMENT PROCESS

Allows discussions with offerors within competitive range; award to most advantageous offer.

FULL AUTHORITY



IDAHO

The director of the department of administration is authorized to use design-build for buildings, improvements or other public works projects. (*Idaho Code §67-5711A*)

self-performed by the design-build firm awarded such contract. (*Idaho Code § 40-904*)

No more than 20% of the DOT's annual highway construction budget for the state transportation improvement program shall be used for design-build and construction manager/general contractor contracts combined. No less than 30% of any design-build contract awarded shall be

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. (*Idaho Code § 67-2309*)



ILLINOIS

WIDELY PERMITTED

In general, all state agencies, counties, townships and municipalities are required to use traditional competitive bidding procedures when awarding public contracts, with some exceptions noted below.

Public Building Commission projects may use design-build until 2023. (50 ILCS § 20/2.5)

Park Districts are authorized to use design-build. (70 ILCS § 1505/26.10-8)

Regional Transportation Authorities are authorized to use design-build. (70 ILCS § 3615/4.06)

State Universities are authorized to use design-build for energy conservation projects. (110 ILCS § 62/5-10)

North Shore Sanitary District is authorized to use design-build. (70 ILCS § 2305/11)

Capital Development Board is authorized to use the design-build delivery method until 2019 for public projects. (30 ILCS § 537/5)

Capital Development Board is authorized to use the design-build delivery method for the Quincy Veterans' Home project. (30 ILCS § 500/1-5)

Design-Build is authorized under the Public-Private Partnership for Transportation Act for transportation agencies. (630 ILCS § 5/25)

Projects for the Public Building Commission and Capital Development Board must use a 2-phase evaluation; shortlist based on qualifications then proposals; award based on technical criteria and cost.



INDIANA

WIDELY PERMITTED

Localities, public education, departments of aviation, airport authorities and state agencies may use the design-build project delivery method. (Ind. Code Ann. § 5-30-1 et seq)

Before entering into a design-build contract for a public project, public agencies must adopt a resolution authorizing the use of design-build for the public project. (Burns Ind. Code Ann. § 5-30-5-6)



IOWA

EXTREMELY LIMITED

The state armory board is authorized to use design-build. No state statutes permit or prohibit design-build contracts. *(IA Code § 29A.57)*

City contracts relating to public utilities or extensions or improvements thereof may be awarded by the governing body as it deems to be in the best interests of the city. *(Iowa Code § 26.9)*

The Board of Regents is authorized to use design-build. *(IA Code §262.34)*



KANSAS

WIDELY PERMITTED

The Kansas Alternative Delivery Building Construction Procurement Act authorizes state agencies and state educational institutions to use design-build on state construction projects. The design-build alternative delivery process may not be used for designing, constructing, altering or repairing a public highway, road, bridge, dam, turnpike or related structures or stand-alone parking lots, except a project selected as part design-build pilot program. *(Kan. Stat. § § 75-37, 141-145)*

KDOT was authorized to use design-build on one pilot project in Johnson County. That project was completed in 2017.

Cities that exercise “home rule” authority: passing a charter ordinance by a 2/3 majority may use design-build.

DOT PROCUREMENT PROCESS:

Multi-phase evaluation process.



All state agencies and political subdivision are authorized to use the design-build, design-bid-build, construction management-at-risk and Public Private Partnerships project delivery methods for capital projects. *(KRS § 45A.180)*

All local governments are authorized to use design-build using best value selection. *(KRS §65.025)*

A selection committee's procedures will be applied when capital projects are constructed utilizing the design-build method. *(KRS § 45A.182)*

Authorizes use of a design-build finance delivery method for capital projects delivered by the Finance and Administration Cabinet when funding is approved by the Governor. Design-build-lease projects are permissible pursuant to KRS § 176.080 for highway projects that are awarded on the basis of "lowest and best offer." *(KRS § 45A.045(11))*

The Transportation Cabinet is authorized to use design-build on up to 5 projects per year at a cost no greater than \$300 million and 10 projects not to exceed the cost of \$75 million. *(KRS §176.431)*

DOT PROCUREMENT PROCESS:

Multi-phase selection process based on qualifications, experience, technical requirements, guaranteed maximum price and other criteria set forth in the request for proposals.



WIDELY PERMITTED

Regional Transit Authorities are authorized to use design-build with approval of the House and Senate transportation, highways and public works committees. *(LRS § 38:2225.2.5)*

The Department of Transportation and Development, with approval of the House and Senate transportation, highways and public works committees, may use Public-Private Partnerships on highways, bridges and interchanges. *(La. Rev. Stat. 48:250.2)*

Ports are authorized to use the design-build method as construction projects; sunsets December 31, 2021. *(La. Rev. Stat. 34:3523)*

Design-build is authorized for Jefferson Parish for flood control and hurricane protection projects, Algiers and Gentilly Development Districts for public improvements and facilities. *(La. Rev. Stat § 38:85; La. Rev. Stat. §33.2740.70; La. Rev. Stat. §33.2740.27)*

The Coastal Protection and Restoration Authority is authorized to use design-build. *(§ 214.6.2)*

The Downman Road Economic Development District is authorized to use design-build. *(La. Rev. Stat 33:2740.70.1)*

DOT PROCUREMENT PROCESS

Two-phase selection process; DOT will identify the specific requirements for the second phase depending on the complexity of the project; the selection method uses an adjusted score determined by three components: (1) technical score; (2) time value; and (3) the price proposal. DOT must submit any project selected for design-build to the House and Senate Transportation, Highways and Public Works Committees for approval.



FULL AUTHORITY

Design-build is authorized for all state agencies for any public improvement, subject to approval by the Office for Administration and Finance. *(5 M.R.S.A. § 1743)*

Allows design-build for locally funded school projects. *(2011 Me. HP 413)*

DOT PROCUREMENT PROCESS:

Low-bid award or best-value award. If best value is used, award should be submitted to the department in two components — technical and sealed price proposal. *(23 M.R.S.A. § 4244)*



MARYLAND

Design-build contracts are authorized for all capital projects proposed or requested by any unit of state government. (*Md. Code Ann., State Fin. & Proc. § 3-602*)

Design-build is authorized on Washington Suburban Sanitary Commission projects that exceed \$2,000,000. (*Md. Code Ann., Pub. Util., § 20-104*)

Design-build and Public Private Partnerships are permitted in procurements by Maryland County boards of education on public school projects. (*Md. Code Ann., Educ. § 4-126*)

The Department of General Services, Maryland DOT, Maryland Transportation Authority, University System of Maryland, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College are authorized to enter into Public-Private Partnerships. (*Md. Code Ann., State Fin. & Proc. § 10A-103*)

DOT PROCUREMENT PROCESS

Competitive sealed proposal process allows best value selection; award must be advantageous to the state, considering price and other evaluation factors set forth in the request for proposals. (*Md. Code Ann., State Fin. & Proc. § 13-101, et seq.*)

Note: Maryland's public-private partnership enabling statute is exempt. See Md. Code Ann., State Fin. & Proc. § 10A-401 et seq.



WIDELY PERMITTED

MASSACHUSETTS

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 (*Mass. Gen. Laws c. 149A, §§ 14-21*)

MassDOT Is authorized to use design-build, design-build-finance-operate-maintain, design-build-finance-maintain,

and design-build-operate-maintain for transportation projects. (*Mass. Gen. Laws. c. 6C, §§ 63-65*)

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*)

DOT PROCUREMENT PROCESS:

Pre-qualification, request for proposals, possibly oral presentation; award to developer who best meets the selection criteria for the benefit of the Commonwealth; selection of other than lowest-overall-cost is allowed if a written explanation of the reasons is given.



FULL AUTHORITY

MICHIGAN

Each contracting entity in the state, whether local or state, is required to award contracts through competitive bidding but with the discretion to choose the method. (*MCL § § 18.1240-1250*)

Award by means other than competitive bidding is allowed if Department affirmatively finds that it is in the public interest; Department must report these findings to the State Transportation Commission and Appropriations Committees. Michigan laws are quite vague and give agencies discretion in procurement.



MINNESOTA

FULL AUTHORITY

All state agencies are authorized to use design-build and CMAR. (MSA §§ 383B.158 - 383B.1585)

MnDOT is authorized to use design-build. (MSA §161.3410-161.3428)

The University of Minnesota may use design-build on projects with an estimated cost greater than \$2 million. (MSA - 4 16C.33; §16.B.31)

The Minnesota State Colleges and Universities System, Metropolitan Sports Commission are authorized to use design-build. (MSA § 16.C.33-35)

Metropolitan Council is authorized to use design-build. (MSA § 473.3995)

Counties and Cities may use design-build on up to 10 transportation projects as part of a pilot program. (MSA § 160.17)

Hennepin and Ramsey counties are authorized to use design-build. (MSA § 383B.158)

All local governments may use “best value” (MSA § 429.041). “Best value” describes the result determined by a procurement method that considers price and other criteria, which may include, but are not limited to:

- The quality of the vendor’s or contractor’s performance on previous projects
- The timeliness of the vendor’s or contractor’s performance on previous projects
- The level of customer satisfaction with the vendor’s or contractor’s performance on previous projects
- The vendor’s or contractor’s record of performing previous projects on budget and ability to minimize cost overruns
- The vendor’s or contractor’s ability to minimize change orders
- The vendor’s or contractor’s ability to prepare appropriate project plans
- The vendor’s or contractor’s technical capabilities;
- The individual qualifications of the contractor’s key personnel
- The vendor’s or contractor’s ability to assess and minimize risks

The City of St. Paul or the St. Paul Board of Water Commissioners are authorized to use design-build on the “McCarron’s Treatment Process Improvements” project. (CHAPTER 189—S.F.No. 3297)

DOT PROCUREMENT PROCESS

DOT is authorized to procure design-build contracts using either a two-step best value selection process or a low bid process; light rail contracts may be awarded on the basis of the RFQ or RFP without bids; trunk highways may be awarded by a best value selection process; Commissioner shall submit a list of executed design-build contracts to the Governor each year. (MSA §§161.3410-161.3428)



MISSISSIPPI

State agencies are authorized to use design-build method or the dual-phase design-build method of contracting for capital construction projects with legislative approval. For design-build to be used, the state must determine that using the dual-phase design-build method for a particular project satisfies the public need better than the traditional design-bid-build method based on the following criteria: (a) the project provides a savings in time or cost over traditional methods; and (b) the size and type of the project is suitable for design-build. Agencies allowed to use design-build are: DOT, State Institutions of Higher Learning, State Port Authorities, Airport Authority and Department of Finance and Administration. (*Miss. Code Ann. §§ 31-7-13.1, 31-11-3(9)*)

The board or State Port Authority may use the design-build method of contracting until July 2019. (*Miss. Code Ann. § 59-5-37(3)*)

Design-build may be utilized for privately financed projects on state universities. The requirements in § 31-7-13.1 apply. Board of Trustees of State Institutions of Higher Learning

may authorize design-build if they make the determination that it is in the best interest of the public to enter into a design-build contract. (*Miss. Code Ann. § 37-101-44*)

The DOT is authorized to use design-build for the following:

- Projects for the Mississippi Development Authority pursuant to agreements between both governmental entities
- Any project with an estimated cost of not more than \$10 million, not to exceed two projects per fiscal year
- Any project which has an estimated cost of more than \$10 million, not to exceed 1 project per fiscal year.

(*Miss. Code Ann. § 65-1-85(11)*)

DOT PROCUREMENT PROCESS

DOT shall establish detailed criteria for the selection of the design-build contractor; for each project DOT must file a report with the Legislature evaluating the design-build method of contracting by comparing it to the low-bid method. (*Miss. Code Ann. § 65-1-85(11)*)



FULL AUTHORITY

All political sub-divisions are authorized to use design-build. (CSR § 67.5060)

Missouri State Transportation Commission’s design-build authority extends from 2012-2018 on the construction/reconstruction of the US 40/6a, I-64 bridge. (CSR § 67.5060)

The DOT is authorized to use design-build on up to 2% of its projects. (CSR § 227.107)

DOT PROCUREMENT PROCESS

Two-phase proposal process; first phase is short-list; second phase is based on evaluation of price and technical proposal; oral portions of presentations are allowed. (Mo. Rev. Stat § 227.107 (DOT))



FULL AUTHORITY

Alternative project delivery contracts (design-build, construction management and contractor management) are authorized for state, county, municipal construction projects, airports, counties, fire districts, service areas and sewer districts. (MCA § 18-2-501-503)

Design-build is authorized for DOT contracts. (MCA § 60-2-111-112; 60-2-137)

DOT PROCUREMENT PROCESS

Two-phase proposal process; first phase involves evaluation of qualifications and second phase involves evaluation of technical and price proposals



NEBRASKA

All political subdivisions (cities, counties, school districts, state and community colleges, airports, and sewer districts) are authorized to use design-build using best value or qualifications-based selection for all projects except: roads, streets, highways, water or utility projects. (*Neb. Rev. Stat. § 13-2908; Neb. Rev Stat. § 13-2903*)

The DOT is authorized to use design-build. (*Neb. Rev Stat. §§ 39-2808*)

The Game and Parks Commission may use design-build on a best-value basis regardless of funding source. (*Neb. Rev. Stat. §37-201*)

QBS design-build is authorized for at least one state agency.*

QBS design-build is authorized for all local governments. *

**Except roads, streets, highways, water or utility projects.*



FULL AUTHORITY

State agencies and local governments may contract with a design-build team for the design and construction of a public work that is a discrete project if the public body has approved the use of a design-build team for the design and construction of the public work and the public work is the construction of a park or appurtenances thereto, the rehabilitation or remodeling of a public building, the construction of an addition to a public building, or the project has an estimated cost that exceeds \$10 million. This legislation sunsets in 2021. *(NRS §§ 338.1711 - 338.1727)*

Design-build is permitted on certain NDOT projects. NRS §§ 408.388 and 408.5471 - 408.549 set forth criteria for eligible projects and threshold project values. *(NRS §§ 408.3875 - 408.3886; 408.5471 - 408.549)*

Regional transportation authorities are permitted to use design-build on public-private partnership projects. *(NRS §§ 277A.280)*

CM at Risk is authorized for the construction of a specific capital improvement project to “expedite completion.” *(Chapter 13 Statutes of Nevada 2007 NRS § 338.1717 (CM Agent)*

DOT PROCUREMENT PROCESS

Request for preliminary proposals followed by issuance by request for final proposals to “finalists;” award based on most cost effective and responsive proposal using criteria and weight assigned to each factor; preference for local contractors if not federally funded.



FULL AUTHORITY

The Department of Administrative Services is authorized to use design-build for any capital projects that are subject to approval of the capital budget overview committee. *(N.H. RSA §§ 21-I: 80)*

The DOT is authorized to use design-build on projects that do not exceed \$25 million. *(N.H. RSA §§ 228:4(c))*

Design-build projects in excess of \$25 million are permitted if the DOT demonstrates that the concept benefits the state more than conventional methods. *(N.H. RSA §§ 228:4(d))*

Local governments have the authority to use design-build. *(N.H. RSA §§ 21-I: 80)*

DOT PROCUREMENT PROCESS

Selection to be based on objective standard and measurable criteria for evaluation of proposals.

LIMITED



NEW JERSEY

The New Jersey Transit Authority is authorized to use design-build. (*N.J. Stat. § 27:25-11*)

New Jersey Building Authority is authorized to use design-build. (*C.52:32-2.2b, 52:32-2.3.b*)

Design-build is permitted on public-private partnership projects at State Colleges. (*NJSA 18A:64-85*)

Local governments are authorized to use design-build; the New Jersey Schools Development Authority is authorized to use design-build. (*N.J.A.C. 19:36-3.3*)

State governmental entities (excluding institutions of higher education), local governments and school districts are authorized to enter into Public-Private Partnerships. (*SB 865 of 2018; reference TBD*)

WIDELY PERMITTED

NEW MEXICO

Design-build is authorized on public works (excluding road and highway construction). (*NMSA §§ 13-1-119.1*)

Design-build is authorized on DOT projects in excess of \$50 million. (*NMSA §§ 13-1-119.2*)

DOT PROCUREMENT PROCESS

Two-phase RFP process using best value, stipend to unsuccessful bidders. (*N.M. Admin. Code Tit. 1, Ch. 5, Part 7*)



NEW YORK

Most public contracts are limited by Wicks Law (see comments).

The Department of Transportation; Thruway Authority; Office of Parks, Recreation and Historic Preservation; Department of Environmental Conservation; and the Bridge Authority have design-build authority through December 2021. The projects must be more than \$10 million. *(AB 3009 of 2017 – Budget Bill)*

Design-build is authorized on State University Construction Fund projects. *(NY CLS Educ § 373)*

Design-build is authorized for the New York City Department of Transportation Brooklyn-Queens Expressway Project; the New York City Department of Design and Construction Riker's Island Replacement Project; and New York City Housing Authority projects. *(AB 9508 of 2018 - Budget Bill)*

The Urban Development, Dormitory, Convention Center, New York State Olympic Regional Development Authorities and Office of General Services have project specific design-build authority.

The Upper Mohawk Valley Memorial Auditorium Authority is authorized to use design-build. *(NY CLS Pub A § 1942)*

The Wicks Law requires separate prime contracts between the public entity and contractors providing the following three subdivisions of work: 1) Plumbing and gas fitting, 2) Steam heating, hot water heating, ventilating and air conditioning apparatus; and, 3) Electric wiring and standard illuminating fixtures. While a separate prime contract with a general contractor or construction manager is allowed, it is impermissible to delegate all supervisory and coordinative work. Exceptions: a) Projects for the State University Construction Fund; b) Projects for the State Environmental Facilities Corporation; c) Construction of a county stadium in the county of Erie; and, d) Construction of a civic center in the county of Albany.



NORTH CAROLINA

Governmental entities are authorized to utilize design-build contracting, provided that they establish the criteria for determining the circumstances under which the design-build method is appropriate for a project. *(NCGS § 143-128.1A)*

The North Carolina Department of Transportation (NCDOT) is authorized to award contracts for the construction of transportation projects on a design-build basis of any amount. *(NCGS §§136-28-11)*

NCDOT or the North Carolina Turnpike Authority (NCTA) may enter up to three agreements for certain types of partnership agreements with private entities to finance the planning, design, development, acquisition, construction, equipping, maintenance and operation of transportation infrastructure. *(NCGS. §136-18(39a))*

QBS design-build is authorized for local governments. *(NCGS § 143-64.31)*

DOT PROCUREMENT PROCESS

Procurements utilizing NCGS §§136-28-11 are governed by rules and regulations made and published by NCDOT.



EXTREMELY LIMITED

NORTH DAKOTA

The State Water Commission is authorized to use design-build for construction of the Devils Lake Outlet. *(NDCC 61-02-23.2)*

Municipalities and political subdivisions are authorized to combine price and technical evaluation selection process. They must choose the lowest and best bid. *(NDCC 44-08-01.1)*



FULL AUTHORITY

OHIO

All state agencies, state institutions of higher education, counties, townships, municipal corporations, school districts, or other political subdivisions are authorized to use design-build. *(ORC Ann Chapter 153)*

ODOT is authorized to use design-build on projects totaling \$1 billion annually. They are authorized to use “best value” on design-build projects and stipends. ODOT is authorized to enter into P3 agreements. *HB 114*



WIDELY PERMITTED

Design-build and CM at Risk are not authorized without the approval of the Director of Central Services or their designee. These 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 affecting public health and safety, or all the following criteria for designation are met:

- i. The project benefits the public
- ii. There is a need for cost control
- iii. The need exists for specialized or complex construction methods

(61 O.S. § 202.1)

State agencies may consider design-build, design-build-finance, design-build-finance-operate-maintain and service contracts for P3s. *(74 O.S. § 5155)*

Local Governmental Entities may execute a Public-Private Partnership. *(74 O.S. §5154)*



FULL AUTHORITY

Design-build is authorized on public projects, transportation and buildings.

DOT toll way projects. *(ORS. §§ 383.005-383.017)*

Procurement of bridges, highways and other transportation facilities are subject to DOT authority. *(OR Rev. Stat. § 279A.050(3)(b))*

DOT PROCUREMENT PROCESS

Award of toll contract either by competitive process or by “private negotiation with one or more entities” or by a combination of competition and negotiation. Amount of the tolls and classification of the traffic using the toll way must be approved by the DOT.

DOT contracts may be exempted from low bid requirements if the DOT finds that an exemption will not diminish competition and will result in substantial cost savings.



PENNSYLVANIA

Commonwealth agencies are authorized to use design-build, subject to the Separations Act requiring separate prime contracts for plumbing, heating, ventilating and electrical work. (62 Pa.C.S. § 322(2))

PennDOT is authorized to use a variety of project delivery methods subject to the Separations Act, including:

- i. Predevelopment agreements leading to other implementing agreements
- ii. A design-build agreement
- iii. A design-build-operate agreement
- iv. A design-build-maintain agreement
- v. A design-build-finance-operate agreement
- vi. A design-build-operate-maintain agreement
- vii. A design-build-finance-operate-maintain agreement
- viii. An operate-maintain agreement
- ix. A concession providing for the development entity to design, build, operate, maintain, manage or lease a transportation facility
- x. Any other innovative or nontraditional project delivery method or agreement or combination of methods or agreements that the public entity determines will address the transportation needs of the Commonwealth and the public entity, and serve the public interest

(74 Pa.C.S. § 9108)

DOT PROCUREMENT PROCESS

Request for proposals, then the responsible offeror whose proposal is determined in writing to be the best value for and in the best interests of the public entity, taking into consideration all evaluation factors, shall be selected for contract negotiation.

Only low bid DB is authorized. Shortlisting and best value procurement are not allowed by PennDOT (Brayman Construction Corp., et al. v. Commonwealth of Pennsylvania Department of Transportation)



PUERTO RICO

The Port Authority of the Americas is authorized to use design-build, design-build-operate, design-build-transfer-operate, and design-build-operate-transfer contracts. (23 LPRA § 2910)

The Secretary of Transportation and Public Works has discretion to use whatever project delivery method is advantageous for Puerto Rico. (9 LPRA § 2004a-2004c)



RHODE ISLAND

WIDELY PERMITTED

The state has the authority to utilize any type of contract which will promote the “best interests” of the state. (RIGL 37.2.27 and 37.2.31)

Water Quality District, Convention Center Authority and the Channel 36 Foundation. (180 RIGL 13)

Design-build and Construction Management are authorized public works projects for all state agencies and the Howard Development Corporation, Water Resources, Board Corporation, Blackstone Valley Sewer District, Narragansett Bay

Design-Build is authorized on projects more than \$2.5 million. (CRIR 10-05-004)



SOUTH CAROLINA

WIDELY PERMITTED

State law authorizes the following project delivery methods:

- Design-bid-build
- Construction management at risk
- Operations and maintenance
- Design-build
- Design-build-operate-maintain
- Design-build-finance-operate-maintain

(S.C. Code Ann. §§ 11-35-3005)

DOT PROCUREMENT PROCESS

Selection criteria shall include project cost and may include contractor qualifications, time of completion, innovation, design and construction quality, or other related criteria.



FULL AUTHORITY

SOUTH DAKOTA

Design-build is authorized for all public agencies. (SDCLA § 15-18b-20)

DOT PROCUREMENT PROCESS

Performance criteria on a project by project basis (assuming the DOT is a “public corporation”).



TENNESSEE

FULL AUTHORITY

The DOT is authorized to use design-build for up to 15 projects in a fiscal year if the contract is less than \$1 million and not more than 5 projects if the contract is more than \$1 million; design-build projects more than \$70 million must be included in the departments transportation improvement program submitted annually to the general assembly. (T.C.A. § 54-1-119)

Public Building Authorities are authorized to use design-build, construction manager, or CM at Risk. (T.C.A. § 12-10-124 (c), (d))

Selection criteria shall include cost, qualifications, technical approach, staff availability, minority participation.

Departments must file report with the Legislature on the effectiveness of design-build once three projects have been completed.



Texas law permits state agencies to use design-build for the construction of public buildings, water and waste water facilities.

The DOT is authorized to use design-build on up to 3 projects annually more than \$150 million. (*Tex. Trans. Code 223.242*)

Local government entities are permitted to use design-build on public buildings without restriction for design-build authority for local roads, streets, bridges, utilities, water supply projects, water plants, wastewater projects, desalination projects, navigation plants, airport runways and taxiways, storm drainage and flood control projects, or transit projects. To enter into design-build contracts, local government entities must (1) have a population of at least 100,000, (2) be a county transportation entity created under Transportation Code Chapter 54, or (3) be a municipally owned combined electric, water and wastewater utility situated in an economically distressed area and located within 30 miles of the Lower Texas Gulf Coast. There are also limitations on the number of design-build projects a locality can procure annually. The number of projects permitted per year is dependent upon the type of entity and the number of years the local government entity has fallen within the requirements of the statute. (*Tex. Gov't Code Ann. Chapter 2269, Subchapter H, §§ 2269.351 et seq.*)

DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS PROJECTS:

Municipally owned water utilities with separate governing boards appointed by the governing body of a municipality with a population over 500,000 may enter into two design-build projects per fiscal year. Any additional design-build contracts would count toward the limitations of that municipality described in the previous paragraph. (*Tex. Water Code § 60.454*)

Local governments are required by law to select or designate an engineer independent of the design-build firm to act as its representative for the procurement process and throughout the project. If the engineer is not a full-time employee or staff member of the local government then the engineer must be selected on the basis of demonstrated competence and qualifications.

Authorizes all state agencies except the DOT and Institutes of Higher Learning; local governments, counties, school districts, and any other special district commissions to use any kind of procurement method that provides the best value, including design-build.

Use of Public-Private Partnerships are governed by the provisions of Chapter 2267 of the Tex. Gov't Code.

DOT PROCUREMENT PROCESS

May solicit proposals or accept unsolicited proposals; if an unsolicited proposal is received, DOT must request competing proposals and qualifications; selection is based on “best value.” (*Texas Gov't Code Ann. §§ 2166.251-2166.2531 (state construction)*)

In Texas, the selection is a two-step process with RFQ and RFP phases. In both phases, local governments may use best value design-build, but qualifications based selection (QBS) is prohibited.

FULL AUTHORITY

UTAH

Design-build is authorized for the DOT; counties of the first or second class; municipalities of the first class; large public transit districts (that that provide public transit to an area that includes: a) more than 65% of the population of the state based on the most recent official census estimate of the United States Census Bureau; and b) two or more counties); and public airport authorities. These entities are authorized to use design-build subject to various limitations in the statute. (UCA §§ 63G-6-501-502, 503)

Counties, cities, towns, metro townships, local districts and special service districts may use design-build on public works or building projects. (UAC 11-39-107)

DOT PROCUREMENT PROCESS

Two-phase process use RFQ and short listing not prequalification.

WIDELY PERMITTED

VERMONT

Design-build projects are authorized for use by the Department of Buildings and General Services. (29 V.S.A. § 161)

The Agency of Transportation is authorized on a pilot basis to receive unsolicited proposals or to solicit proposals to undertake a project as a public-private partnership until 2023. (19 V.S.A. § 2611)

The Agency of Transportation is authorized to use design-build using best value or low bid selection. (19 V.S.A. § 10)

CM at Risk is also authorized on DOT projects.



VIRGIN ISLANDS

The Economic Development Authority is authorized to use design-build. (*29 V.I.C. § 1107*)



VIRGINIA

FULL AUTHORITY

State agencies are authorized to use design-build. (*Va. Code Ann. §§ 2.2-4303*)

Public Private Partnerships are authorized. (*Va. Code Ann. §§ 33.2-1801, et seq. (transportation); 56-571.1 (education facilities); 15.2-2114 (storm water management)*)

Localities are authorized to use design-build. (*Va. Code Ann. §§ 33.2-269*)

DOT PROCUREMENT PROCESS

Governed by the Virginia Public Procurement Act, *Va. Code Ann. § 2.2-4300 et seq.*

Note: Virginia's public-private partnership enabling statutes are exempt. See *Va. Code Ann. § 2.2-4321.2(F)(1)*.

QBS design-build is authorized. (*Va. Code Ann. §§ 2.2-4303*)



WASHINGTON

WA allows design-build for projects in excess of \$10 million. *(RCW 39.10.300)*

Public entities who want to use design-build must be certified either by the Capitol Project Advisory Review Board or by the Project Review Committee as capable of self-determining the appropriate delivery method, or if the public entity is not certified, the PRC must approve the project. *(RCW 39.10.270-280)*

For pre-engineered metal buildings and parking garages, the public entity may utilize design-build regardless of the cost of the project. In addition, public entities may use

design-build for projects between \$2–\$10 million, subject to review by the PRC. *(RCW 39.10.300.)*

The state’s general preference for competitive bids has several exceptions including emergencies and small works. In addition, general contractor/construction management contracts on projects in excess of \$10 million may be awarded to “general contractors/construction manager” and two pilot projects for correctional facilities under \$10 million have been authorized. *(RCW § 39.04.220)*

WSDOT may use design-build for projects in excess of \$10 million and for 5 pilot projects between \$2 million and \$5 million. *RCW 47.20.780-785.*

The Capitol Projects Advisory Review Board (CPARB) has established the Project Review Committee (PRC) to review and evaluate alternative procurement projects and public entities that are qualified to administer these projects. Appropriate design-build projects must meet the criteria established by the statute, and the public entity must either have in house or outside expertise in the appropriate alternative delivery method.

DOT PROCUREMENT PROCESS

Requires DOT to develop a process for awarding design-build contracts for projects over \$10 million; this process must, at a minimum, include the scope of services, pre-qualification requirements, criteria for evaluating technical information and project costs, contractor selection criteria, and issue resolution procedures.

FULL AUTHORITY



WEST VIRGINIA

All 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. (*W. Va. Code §§ 5-22A-1-11*)

W.Va. Division of Highways is authorized to use design-build and may expend up to \$400 million per year. Unused funds may be rolled over to the following year but no more than \$500 million may be used on design-build projects in one year. No more than \$200 million may be expended on one design-build project. (*W. Va. Code § 17-2D-2*)

DOT PROCUREMENT PROCESS

Award shall be based on low-bid or value-based selection process combining technical qualifications and competitive bidding elements. Award shall be based on low-bid or value-based selection process combining technical qualifications and competitive bidding elements.



WISCONSIN

EXTREMELY LIMITED

The Wisconsin Building Commission is authorized to utilize “innovative” contracting practices when it is in the best interest of the state. (*WS § 13.48(19)*)

project is in electronics and information technology manufacturing zones. (*2017 Wisconsin Act 58*)

Municipalities are authorized to use design-build on a limited basis for: water and sewer systems, wastewater treatment facilities, a recycling or resource recovery facility; or if the

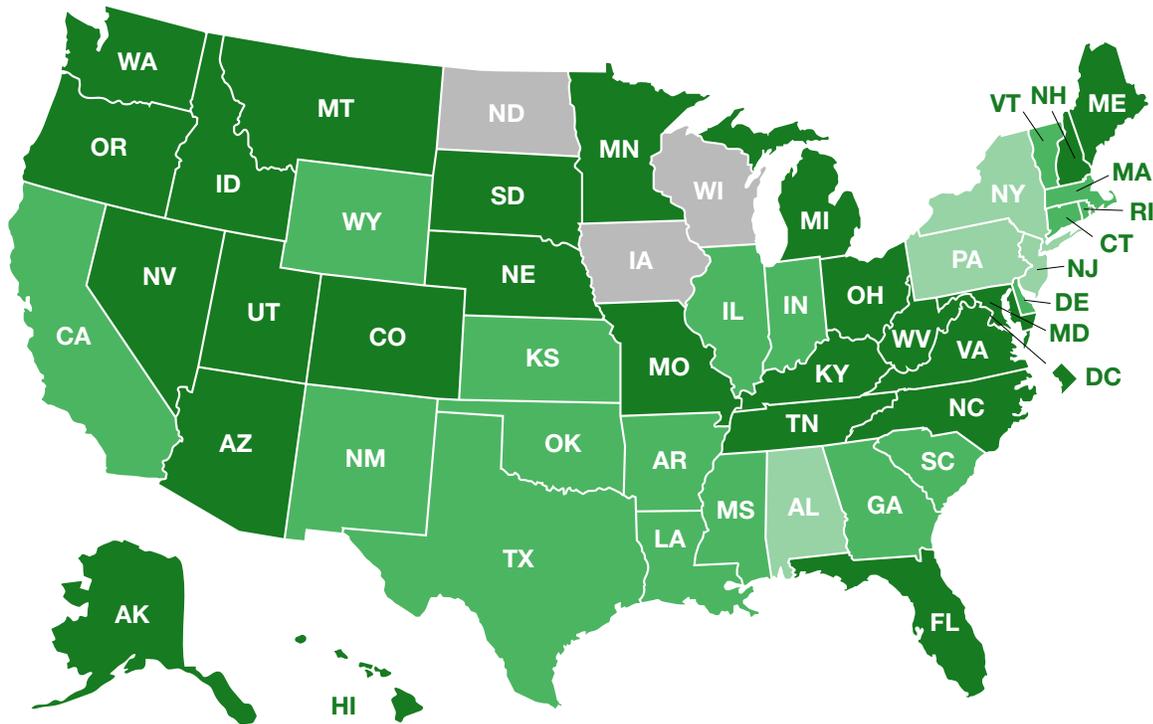
Two-phase competitive selection process; pre-qualification then proposals; evaluation criteria must include qualifications, quality, completion time and cost.

WYOMING

All state, city, county and local governments are authorized to use design and construction management delivery methods. (*Wyo. Stat. § 6.6.101-107*)



Design-Build State Authorization 2018



Design-build is limited to one political subdivision, agency or project

Design-build is a limited option

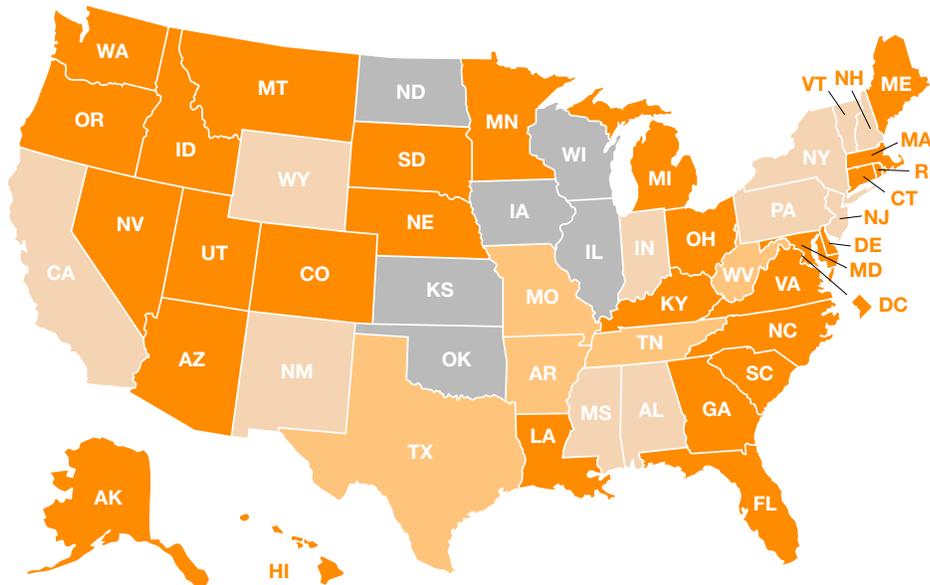
Design-build is widely permitted

Design-build is permitted by all agencies for all types of design and construction

As of January 2018



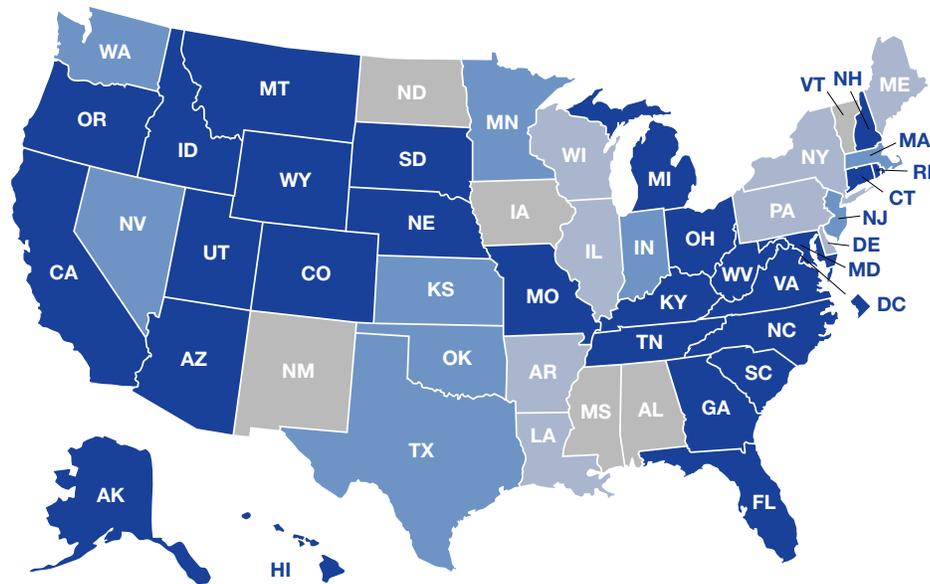
Design-Build Authorization for Transportation 2018



As of October 2018



States Granting Local Design-Build Authorization 2018



As of October 2018

