

50-STATE SURVEY OF TRANSPORTATION AGENCY DESIGN-BUILD AUTHORITY

State ¹	Transportation Agencies with Authority ²	Citation ³	DOT Procurement Process
1. AK	Authorization for all agencies for projects using state funds	ALASKA STAT. § 36.30.200	Competitive sealed proposals if appropriate findings are made; otherwise, competitive sealed bids
2. AZ	Authorization for DOT through December 31, 2025	ARIZ. REV. STAT. §§ 28-7361, -7363, -7364, -7365	2 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
3. AR	Authorization for DOT through 2013 for two pilot projects, costing more than \$50 million, funded by state highway revenues; unlimited authorization for turnpike or other projects not funded by state highway revenues	ARK. STAT. ANN. § 27-67-206(j)(2)	To be established by the Commission; award “on a qualification basis that offers the greatest value for the state”
4. CA	<p>Authorization for transit agencies through 2011; authorization for DOT to procure the National Corridor Infrastructure Improvement Project through 2010; authorization for DOT to use “design-sequencing” for up to 12 transportation projects through 2010;</p> <p>New legislation signed by the Governor authorizing various state and local transportation entities to use design-build for certain capital improvement projects and related services (S.B. 4, 2009-2010 Leg., Second Extraordinary Sess.)</p>	<p>CAL. PUB. CONT. CODE §§ 20209.5, 20209.6, 20209.7; CAL. PUB. CONT. CODE §§ 20209. 20–20209.44; CAL. STR. & HWY. CODE §§ 217, 217.7</p> <p>CAL. PUB. CONT. CODE §§ 6800 et seq.</p>	3-step procurement process: RFP (including competitive sealed proposals), prequalification requirements, selection; for nonrail 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; no cost threshold for acquisition and installation of technology applications or surveillance equipment

¹ This survey includes states with existing transportation agency design-build authority. It does not include states with sunsetted statutes authorizing design-build.

² This survey should not be construed as legal advice regarding design-build authorization in any state. Please contact nsmith@nossaman.com with any additions or corrections.

³ This survey identifies legislation specifically permitting agencies to enter into design-build contracts and exclusive development agreements, and also identifies legislation permitting agencies to use a best value procurement process for construction contracts (thus allowing design-build procurements to proceed without concern about differences between procurement requirements applicable to design and construction contracts). This survey does not necessarily address authorizing legislation for franchise agreements or similar public-private partnerships.

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5. CO	Authorization for DOT; specific authorization for new High Performance Transportation Enterprise to use design-build for surface transportation projects	COLO. REV. STAT. §§ 43-1-1401 <i>et seq.</i> ; COLO. REV. STAT. § 43-4-806	2 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
6. DE	Authorization for DOT design-build pilot program for up to 12 projects	75 Del. Laws 353 (2005)	None itemized
7. FL	DOT authorization limited to buildings, major bridges, “limited access facilities” and rail corridor projects	FLA. STAT. ANN. § 337.11(7)	Governed by rules adopted by DOT (which must include prequalification requirements, public announcement procedures, short-listing criteria, proposal requirements)
8. GA	Authorization for DOT for buildings, bridges and approaches, rail corridor, limited or controlled access projects, projects within existing right of way with a clear scope of work or when it can obtain significant savings in project delivery time	GA. CODE ANN. § 32-2-81	Governed by rules adopted by DOT (which must include shortlisting and price proposal phases); DOT to select the lowest qualified bidder; in contracting for design-build projects, DOT limited to no more than 15% of total amount of construction projects awarded the previous fiscal year
9. HI	Authorization for all governmental bodies to use competitive sealed proposal procurement process	HAW. REV. STAT. § 103D-303	Allows discussions with offerors within competitive range; award to most advantageous offer
10. ID	Authorization for State agencies to use design-build on contracts to construct, repair, or improve public works, public buildings, public places, roadways or other work	IDAHO CODE § 67-2309	None itemized
11. IL	Specific authorization for Regional Transportation Authorities; Effective June 1, 2008, authorization for Public Building Commission to use design-build for public buildings and any roads incident to the buildings; Capital Development Board authorized to use design-build for public projects until July 1, 2009	70 ILL. COMP. STAT. § 3615/4.06(b)(2); 50 ILL. COMP. STAT §§ 20/20 <i>et seq.</i> ; 30 ILL. COMP. STAT. §§ 537/5, 537/90	N/A. 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
12. KS	Authorizes DOT to use design-build methodology for innovative pavement management demonstration projects	KAN. STAT. ANN. §§ 68-2314a, 75-5801 <i>et seq.</i>	Multi-phase evaluation process

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13. KY	Authorizes all state agencies to enter into design-build contracts	KY. REV. STAT. §§ 45A.180 <i>et seq.</i>	Multi-phase selection process based on qualifications, experience, technical requirements, guaranteed maximum price and other criteria set forth in the request for proposals
14. LA	<p>Authorization for DOT to select projects or combine a program of projects utilizing design-build;</p> <p>DOT may also use design-build in areas impacted by a hurricane, including areas adversely impacted by increased population and traffic as a result of a hurricane;</p> <p>Military Dept. may use design-build on any infrastructure construction project in areas affected by Hurricane Katrina or Rita through 6/30/2010</p>	<p>LA. REV. STAT. ANN. §§ 48:250.2 – 4, 48:442.1;</p> <p>LA. REV. STAT. ANN § 29:42</p>	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.
15. ME	Authorization for DOT	ME. REV. STAT. ANN. tit. 23, § 753-A	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
16. MD	Authorization for governmental bodies to use design-build on capital projects	MD. CODE ANN., STATE FIN. & PROC. § 3-602(g)(1); COMAR 21.05.03.03	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
17. MA	Authorization for Department of Highways to use design-build for projects approved by the inspector general; authorization for Mass Bay Transportation Authority	MASS. GEN. LAWS. ANN. ch. 149A, §§ 14–21; 2000 MASS. ACT 125	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
18. MI	Authorization for state transportation department to use alternative procurement process for highway, street, road and bridge projects that exceed \$100,000.	MICH. COMP. LAWS § 247.661c	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

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19. MN	<p>Authorization for streets, highways, bicycle paths, bicycle trails and pedestrian facilities, trunk highways, light rail transit facilities and DOT projects;</p> <p>Hennepin County Board of Commissioners authorized to use design-build for not more than 10% of its total projects in any fiscal year.</p>	<p>MINN. STAT. ANN. §§ 13.72 subd.11-12, 160.262, 161.32, 161.3410-161.3428, 473.3993;</p> <p>MINN. STAT. ANN. §§ 383B.158, 1581-84</p>	<p>DOT 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</p> <p>Selection panel required to review procurement</p>
20. MS	<p>Authorization for DOT to use design-build for two projects costing less than \$10 million, and one project costing more than \$50 million, per fiscal year</p>	<p>MISS. CODE ANN. § 65-1-85</p>	<p>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</p>
21. MO	<p>Authorization for the State Highways and Transportation Commission to enter into three design-build contracts before 2012</p>	<p>MO. REV. STAT. § 227.107; 7 Mo. CSR §§ 10-24.0307, -24.110</p>	<p>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</p>
22. MT	<p>Authorization for DOT to use design-build</p>	<p>MT. CODE ANN. §§ 60-2-111, -112, -137</p>	<p>Two-phase proposal process; first phase involves evaluation of qualifications and second phase involves evaluation of technical and price proposals</p>
23. NV	<p>General authorization for public works projects that exceed \$10 million; authorization for DOT for projects over \$5 million that meet certain criteria</p>	<p>NEV. REV. STAT. §§ 338.1711-338.1727, 408.3875-408.3887</p>	<p>Request for preliminary proposals followed by issuance of 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</p>
24. NH	<p>Authorization for design-build for statewide transportation improvement program projects not exceeding \$5 million</p>	<p>N.H. REV. STAT. ANN. § 228:4(l)(c)</p>	<p>Selection to be based on objective standard and measurable criteria for evaluation of proposals</p>
25. NC	<p>Authorization for DOT to award 25 design-build projects each fiscal year; authorization for Turnpike Authority to use alternative procurement process</p>	<p>N.C. GEN. STAT. § 136-28.11; N.C. GEN. STAT. §§ 136-89.180 <i>et seq.</i> (enacted by 2002 N.C. Sess. Laws 133, H.B. 644); N.C. GEN. STAT. § 136-89.183A-B</p>	<p>None itemized.</p> <p>DOT statute requires DOT determination that delivery of the projects must be expedited and that it is not in the public interest to comply with normal design and construction contracting procedures. DOT is specifically authorized to use design-build on Accelerated Pilot Toll Bridge Project and on the Herbert C. Bonner Bridge Replacement Project</p>

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26. OH	Authorization for DOT and counties; the total value of the contracts shall not exceed \$250 million every two years	OHIO REV. CODE ANN. §§ 5517.011, 5543.22.	Requires design-build procurements to be competitively bid
27. OR	Authorization for DOT tollway projects; Authorization for DOT and local contract review boards	OR. REV. STAT. §§ 383.005-383.017; OR. REV. STAT. § 279A.050(3)(b); § 279C.335(2)	Award of toll contracts 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 tollway 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.
28. PA	Authorization for Department of General Services	62 PA. CONS. STAT. §§ 103, 322(2)	N/A
29. SC	Authorization for DOT	S.C. CODE ANN. § 57-5-1625	Selection criteria shall include project cost and may include contractor qualifications, time of completion, innovation, design and construction quality or other related criteria
30. SD	General authorization for public corporations	S.D. CODIFIED LAWS §§ 5-18-26 <i>et seq.</i>	Performance criteria on a project by project basis (assuming the DOT is a “public corporation”)
31. TN	Authorization for DOT 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 in excess of \$1 million; certain limitations apply to contracts estimated to be in excess of \$70 million	TENN. CODE ANN. § 54-1-119	Selection criteria shall include cost, qualifications, time of completion, innovation, design and construction quality, design innovation, or other technical or quality related criteria, as determined by the Department; Department must file report with the Legislature on the effectiveness of design-build once three projects have been completed
32. TX	Comprehensive development agreement authorization for TxDOT, Texas Turnpike Authority (a division of TxDOT) and regional mobility authorities	TEX. TRANSP. CODE ANN. §§ 223.001 <i>et seq.</i> , 227.001 <i>et seq.</i> , 370.001 <i>et seq.</i>	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”
33. UT	Authorization for transportation agencies including the DOT; authorization for tollway development agreement	UTAH CODE ANN. §§ 63G-6-502, -503; UTAH ADMIN. CODE R916-3 <i>et seq.</i>	2 phase process, pre-qualification then proposals; after considering price and other identified factors, award is to proposal which is most advantageous to the state; Utah Administrative Code contains additional procurement requirements (i.e. RFQ must identify maximum number that could be shortlisted)

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34. VA	Authorization for the Commonwealth Transportation Board to award a limited number of design-build contracts; general authorization for other state agencies	VA. CODE ANN. §§ 2.2-4303, -4306, 33.1-12(b)	Award to be based on competitive sealed bidding or a two-step competitive negotiation process; award determined by objective criteria adopted by Commonwealth Transportation Board; objective criteria to include requirements for pre-qualification and competitive bidding; additional proposal requirements for contracts in excess of \$100 million
35. WA	Authorization for DOT for projects over \$10 million and for five pilot projects costing between \$2 and \$10 million dollars; Authorization for DOT to use design-build for the Olympic region project	WASH. REV. CODE §§ 47.20.780, 47.20.785; 2006 Wash. Sess. Laws 370, §303	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, prequalification requirements, criteria for evaluating technical information and project costs, contractor selection criteria and issue resolution procedures; If DOT uses design-build for the Olympic region project, it must follow the design-build process for public works projects under chapter 39.10 RCW
36. WV	Authorization for the Highway Design-Build Pilot Program allowing three design-build projects	W. VA. CODE §§ 17-2D-1 <i>et seq.</i>	Award shall be based on low-bid or value-based selection process combining technical qualifications and competitive bidding elements
37. WI	Authorization for specific bridge projects	Wis. STAT. ANN. §§ 84.11(5n) <i>et seq.</i>	Two-phase competitive selection process; pre-qualification then proposals; evaluation criteria must include qualifications, quality, completion time and cost
38. WY	Design-build broadly permitted by all agencies	WYO. STAT. ANN. §§ 15-1-113, 16-6-701, -707, -708	RFQ process then shortlist selected to respond to fixed scope RFP or fixed price RFP depending on size of project; contract awarded based on best overall value

PENDING LEGISLATION AS OF MARCH 30, 2009

State	Information About Bill	Cite
AL	Legislation passed in House to grant the newly-created Alabama Toll Road, Bridge and Tunnel Authority full authority to enter into design-build contracts	H.B. 217, 2009 Leg., Reg. Sess.
CA	Legislation introduced to delete the repeal date for transit operator design-build law	A.B. 729, 2009-10 Leg., Reg. Sess.
NM	Emergency legislation passed in both houses to authorize DOT to use design-build for projects with a maximum allowable construction cost of more than \$50 million funding in whole or in part by the grants programs of the federal American Recovery and Reinvestment Act of 2009 (effective immediately)	S.B. 345, 49 th Leg., Reg. Sess. (2009) (affecting 13-1-119.1 NMSA 1978)
ND	Legislation passed in both houses authorizing DOT to enter into design-build contracts for one signal light project and one culver structure project before Dec. 31, 2013	S.B. 2147, 61 st Leg. Assemb., Reg. Sess. (2009) (amending N.D. CENT. CODE § 24-02)
OH	Legislation passed in both houses to replace the limit on the total dollar value of ODOT design-build contracts of \$250 million per biennium with a one billion dollar total limit on such contracts through June 30, 2011 (after that date, the \$250 million per biennium limit is restored unless the General Assembly authorizes a different limit)	H.B. 2, 128 th Gen. Assemb., Reg. Sess. (2009)
FL	Legislation introduced that would set a goal of using design-build for 25% of transportation projects by July 1, 2014	S.B. 7014, 2009 Leg., Reg. Sess.; H.B. 1021, 2009 Leg., Reg. Sess.
ID	Legislation to amend and add to existing law to provide procedures for awarding design-build contracts for highway transportation projects	S.B. 1103, 2009 Leg., Reg. Sess.; S.B. 1147, 2009 Leg., Reg. Sess.
IL	Legislation introduced that would eliminate repeal date for Capital Development Board authorization to use design-build for public projects; Legislation introduced that would create the Design-Build for Highway Construction Demonstration Act authorizing DOT and State Toll Highway Authority to use design-build for highway construction projects until June 30, 2013	H.B. 372, 96 th Gen. Assemb., Reg. Sess. (2009); S.B. 297, 96 th Gen. Assemb., Reg. Sess. (2009)
MN	Legislation passed in Senate to authorize design-build for construction of the intersection of U.S. Highway 10 and County State-Aid Highway 83	S.F. 740, Biennium 86th Leg. (2009-2010)

State	Information About Bill	Cite
MO	<p>Legislation passed in House to authorize Highways and Transportation Committee to enter into a design-build contract for Missouri Route 364;</p> <p>Legislation introduced that would allow for the State Highways and Transportation Commission to enter into three additional design-build contracts before 2012;</p> <p>Legislation introduced that would authorize Highways and Transportation Commission to construct toll facility projects between St. Louis and Kansas City utilizing design-build (effective Aug. 28, 2009 upon passage of constitutional amendment authorizing toll facilities)</p>	<p>H.B. 271, 94th Gen. Assemb. 2nd Reg. Sess. (2009);</p> <p>H.B. 359, 94th Gen. Assemb., 2nd Reg. Sess. (2009);</p> <p>S.B. 13, 94th Gen. Assemb. 2nd Reg. Sess. (2009)</p>
NH	<p>Legislation passed in Senate authorizing a raise in the cap on statewide transportation improvement program projects authorized for design-build to \$25 million</p>	<p>S.B. 69, 2009 Leg., 161st Sess.</p>
WI	<p>Legislation introduced to allow DOT, for two years after the bill's effective date, to enter into highway improvement contracts utilizing a design-build procurement process if DOT finds that it would be more feasible and advantageous and if certain conditions are met</p>	<p>A.B. 75, 2009 Leg., Reg. Sess.</p>
WV	<p>Legislation passed house to continue the Highway Design-Build Pilot Program granting authority for 10 additional projects and a budget of \$150 million for the program until June 30, 2011</p>	<p>H.B. 2753, 79th Leg., Reg. Sess. (2009); S.B. 390, 79th Leg., Reg. Sess. (2009)</p>