

# **Bond Case Briefs**

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## **Public Design-Build Projects in Arkansas (Part Two): Statutory Procurement Authority.**

[Part One](#) of this series focused on the Arkansas Department of Transportation's ("ARDOT") first major project using the design-build project delivery method – 30 Crossing. Since then, ARDOT has awarded the 30 Crossing Project to a Kiewit Infrastructure South and Massman Construction joint venture. However, the question remains: what statutory authority does ARDOT have to procure construction through design-build? Furthermore, is there statutory authority to use design-build for other types of public construction? Part Two answers these questions, discussing when the State of Arkansas or one of its subdivisions may use a single company to provide the architecture, engineering, and construction for a project.

ARDOT, through the highway commission, has statutory authority to use "[q]ualification-based, design-build services" for "design-build project contracts" under A.C.A. § 27-67-206(j)(2)(A)(i). After receiving statements of qualifications (or proposals without competitive bidding), ARDOT may "[a]ward a project contract on a qualification basis that offers the greatest value for the state... and [c]ontract with an authorized entity to design, construct, improve, and maintain qualified projects," pursuant to subsections C and D.

Excluding ARDOT, Arkansas's state agencies may use design-build under Arkansas's P3 legislation. Under A.C.A. § 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."

A school district may also use design-build for school buildings. Under A.C.A. § 19-11-807(b)(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."

At the end of the competitive bidding provisions of the Arkansas Code, municipalities and water authorities constructing wastewater treatment, storm water treatment, or water treatment plants have been given authority to use design-build as a project delivery method under A.C.A. § 22--203(j). As stated in subsection 2, the municipality or water authority "contracts may include provisions for the design, financing, construction, repair, reconditioning, replacement, operation, and maintenance of the system, or any combination of those services and functions."

There are several options for Arkansas design-build public projects, depending on the project type. As the statutes reveal, however, compliance with the specific procurement requirements may be cumbersome. Although Arkansas does not have comprehensive design-build legislation, this State is moving in the right direction.

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