

Public Design-Build Projects in Arkansas (Part One): 30 Crossing Project Litigation

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Under the Arkansas Code, the Arkansas Department of Transportation (“ARDOT”), via the Arkansas Highway Commission, can procure a transportation project using the design-build project delivery method. In fact, ARDOT is currently in the procurement phase of its first major design-build project – the 30 Crossing project – which has an estimated contract price of \$632,000,000. Part One of this article discusses the 30 Crossing design-build project and the current litigation over 30 Crossing funding. Part Two will discuss design-build engineering and construction in Arkansas and the statutory authority for state and local public entities to use this delivery method to procure projects.

In short, design-build is a single procurement (one contract) of a construction project where the successful contractor provides all engineering, purchasing, and construction for an owner – rather than the owner contracting separately with a design firm and bidding the construction portion of the project. ARDOT has pursued design-build for the 30 Crossing project, which will provide additional lanes for I-30 through Little Rock in order to relieve the massive traffic congestion there. After issuing a Request for Proposal (“RFP”) for 30 Crossing, ARDOT shortlisted three proposing contractors: (1) Granite Construction Company and Traylor Brothers as a partnership or joint venture; (2) Ferrovial Agroman US; and (3) Kiewit Infrastructure South and Massman Construction as a partnership or joint venture. Although ARDOT is scheduled to award the 30 Crossing contract this [month](#), new litigation over the use of voter approved funding for the project may delay the award.

Earlier this week on December 31, in a Pulaski County Court ARDOT filed its Answer to a Complaint by several plaintiffs who make the following claim: “This is an action requesting a declaratory judgment that the expenditure of funds generated from the sale of State of Arkansas Four-Lane Highway Construction and Improvement General Obligation Bonds (“the Bonds”) authorized by Amendment No. 91 to the Constitution of the State of Arkansas on Interstate Highways or other federal or state highways in excess of four lanes is contrary to the express terms and provisions of said Amendment 91 and prohibited.” Concerning I-30, the plaintiffs specifically allege that Amendment 91 limits funds to four lane state highway projects, and because “I-30 would be widened from its current configuration of six lanes to eight or ten lanes or more,” the 30 Crossing project cannot be funded under Amendment 91 Bonds (for more details, the case number is 60CV-18-7758).

It is expected that this litigation will be resolved soon, considering it is purely a matter of law and considering the urgent nature of determining whether the 30 Crossing project may be funded and awarded this month. Stay tuned.