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USA – Florida: Trends and Developments

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USA – FLORIDA



Trends and Developments

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Carlton Fields possesses a construction practice that is widely recognised as one of Florida's leading construction law groups, trusted on many of the state's most complex, high-value projects. The team advises owners, developers, contractors, and major homebuilders across a broad range of projects, including office towers, condominiums, master-planned communities, airports, power and water facilities, schools, highways, and large-scale hospitality and infrastructure developments. Attorneys support clients throughout the project lifecycle, from pre-bid strategy and contract drafting to construction ad-

ministration and issues involving liens, bonds, insurance, and risk management. When disputes arise, the group represents clients in mediation, arbitration, and trial, drawing on deep experience in both transactional and contentious matters. The team also has significant public-private partnership (P3) experience, including work on two of Florida's largest P3 projects. Representative clients include Florida Department of Transportation, Plaza Construction Group, Hunt Construction, Power Design, Plenary Americas, and more than half of the top ten US homebuilders (Lennar, KB Homes, Pulte, to name a few).

Author



Wm. Cary Wright has extensive experience representing clients in construction disputes, including claims, liens, insurance coverage, risk management, bond claims, and other contract disputes. His work spans bridges, convention centers, stadiums, high-rise condominiums, highways, hospitals and hotels. He also drafts and reviews contracts, including owner-

contractor and contractor-subcontractor agreements. Cary advised an aviation authority on its insurance programme for a multibillion-dollar project. He received the Florida Bar Construction Law Committee's 2014 Lifetime Achievement Award and is a fellow of both the American College of Construction Lawyers and the American College of Real Estate Lawyers. He chairs Carlton Fields' Construction Practice and leads major initiatives.

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Modified Phased Design-Build – The Next Evolution in FDOT Project Delivery

The Florida Department of Transportation (“FDOT”) has used the Phased Design-Build (“PDB”) framework for the past four years in procuring large and complex projects. At its inception, the PDB was the first of its kind, emphasising collaboration and qualifications-based selection over price-driven competition. However, recently, this model has been replaced as the FDOT’s leading project delivery method by its evolutionary adaptation, the Modified Phased Design-Build (“MPDB”).

The Phased Design-Build

The PDB, which arose out of the traditional Adjusted Score Design-Build, was designed to incorporate a qualifications-based process for complex construction projects. Under Florida law, this delivery method is expressly authorised by section 337.11 (7)(b), Florida Statutes (2025), which establishes a two-phase selection process. In phase one, the FDOT awards the contract to a design-build firm based on its qualifications, provided that the FDOT receives at least three statements of qualifications. Id. In phase two, the selected design-build firm may self-perform portions of the work and must bid competitively for construction trade subcontractor packages, ultimately negotiating with the FDOT a fixed firm price or a guaranteed maximum price (“GMP”) that meets the budget and scope of the project. Id.

In practice, the PDB involves a single design-build firm that is selected based on its qualifications. The owner and the design-build firm then work together during the planning phase to develop the preferred design and scope.

In the past, the PDB model has been described as the “newest frontier in procurement for public sector transportation projects” because it “accelerates procurement... establishes a high degree of owner control; and provides for unmatched collaboration between the owner, designer, and builder.” See WGI, Phased Design-Build, <https://wginc.com/services/project-delivery/progressive-phased-design-build/> (last visited 16 June 2026).

However, as the FDOT has noted, the PDB is not without limitations. With only a single firm under contract, the process can be less competitive post-selection, potentially limiting innovative solutions for the project. Moreover, if the single selected firm’s pricing or approach does not satisfy the owner, the FDOT’s options are limited to negotiation, re-advertisement, or adding the work to an adjacent contract, each of which introduces delay and uncertainty. See Fla. Dep’t of Transp., Modified Phased and Phased Design-Build – Process Comparison Overview, Design-Build Comparison and Benefits Summary 2–3 (21 April 2025).

Modified Phased Design-Build

Enter the MPDB, the FDOT’s latest project delivery method, evolving from the traditional PDB process and now being deployed across major capital programmes statewide. According to the FDOT, the MPDB is defined as:

A Design-Build delivery method that allows the Department to combine the design and construction phases of a fully funded project in the work programme into a single contract in which the Design-Build Firm is selected based on qualifications in the early stages of a project then collaborates with the owner to develop the design as part of a step-by-step progression. The Design-Build Firm bids competitively for construction trade subcontractor packages and negotiates with the owner a GMP that meets the project budget and scope as defined in the Accelerated Innovation and Collaboration (AIC) Phase by the Design-Build Firm.

See Fla. Dep’t of Transp., Dist. One Corridors Program Off., Modified Phased Design-Build (MPDB) Request for Qualifications, I-75 (SR 93) from North of Golden Gate Parkway to South of Corkscrew Road, FPID No 452544-1-52-01, at 18 (1 December 2025).

The distinction between the MPDB and the PDB is simple: the MPDB selects multiple design-build firms to enter into parallel contracts with the owner, whereas the PDB selects just one. This structure is meant to preserve competition well beyond the initial procurement phase, unlike the traditional PDB model. See Design-Build Comparison and Benefits Summary, at 2; see also Fla. Dep’t of Transp., Industry Forum: I-95 and US 1 DDI Interchange, FPID No 419772-3, at 27

(2 October 2025) (“Basic Premise – [m]ultiple teams selected based on qualifications, [t]eams compete post-selection to build the project”).

The MPDB comprises three major phases:

- the Accelerated Innovation and Collaboration Phase;
- the Design Phase; and
- the Construction Phase.

The accelerated, innovation, and collaboration phase

Upon selection and contract execution, the first phase commences, with multiple design-build firms working under separate contracts with the FDOT. During this phase, each firm collaborates with the FDOT, its representatives, and stakeholders to “progress and optimise the design in order to meet the scope and goals of the Project.” See Modified Phased Design-Build (MPDB) Request for Qualifications, I-75 (SR 93) from North of Golden Gate Parkway to South of Corkscrew Road, at 7. During this phase, firms are encouraged to collaborate and exchange ideas freely with the FDOT, which are maintained in confidence. See Design-Build Comparison and Benefits Summary, at 1.

Additionally, risk elements are jointly identified and equitably budgeted. During this phase, each team submits a Risk Register to the FDOT ten days prior to its Request to Continue submission. The FDOT then develops and provides a Risk Reserve with categories and an overall value, which is included in the Project Guaranteed Maximum Price (“PGMP”) as a non-bid item, set at the same value for all teams. The Risk Reserve includes an “Other Risks” category capped at 10% of the total Risk Reserve. See Industry Forum: I-95 and US 1 DDI Interchange; Design-Build Comparison and Benefits Summary, at 3. At the conclusion of this phase, each firm submits a Request to Continue Package and a PGMP for the project. See Design-Build Comparison and Benefits Summary, at 3.

The design phase

Following phase one, the FDOT conducts a determination process to identify which firms will proceed with the project. This involves ranking each team’s “commitment, collaboration, innovations, and overall

schedule.” See Industry Forum: I-95 and US 1 DDI Interchange; Design-Build Comparison and Benefits Summary, at 3. The FDOT will adjust the teams’ scores relative to one another using a weighted formula that considers both innovation and price, resulting in the issuance of a Task Work Order to the highest-scoring firm. *Id.*

Once the Design Phase Task Work Order is issued, the selected firm is bound to the PGMP. The firm then finalises and refines the design and develops four Work Package Proposals, each containing a GMP for its respective scope. The Design Phase Task Work Order is a Limiting Amount, capped at the maximum design price provided in the PGMP, and includes a Design Expense line set at 6% of the Design GMP. *Id.*

The construction phase

The final phase is the commencement of construction, which proceeds through four sequential Work Packages. Advanced Construction Works: approximate share is less than 25%;

- Early Works: approximate share is less than 25%;
- Major Works: approximate share is 50%;
- Finishing Works: approximate share is 25%.

See Design-Build Comparison and Benefits Summary, at 4; see also Industry Forum: I-95 and US 1 DDI Interchange. Each Work Package is authorised via a separate Task Work Order, and no Task Work Order is issued unless the FDOT has set aside the necessary funds. See Modified Phased Design-Build (MPDB) Request for Qualifications, I-75 (SR 93) from North of Golden Gate Parkway to South of Corkscrew Road, at 7–8.

MPDB contracts also include an incentive structure that is designed to reward efficiency and innovation:

- Design Expense Savings. The unused portion of the Design Expense allocation is paid to the design-build firm (earned by the designer). See Design-Build Comparison and Benefits Summary, at 3.
- Design Phase Efficiency. The Department pays the design-build firm 20% of the difference between

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the Design Phase GMP and the final Design Phase amount used (earned by the designer). *Id.*

- **Shared Savings.** The design-build firm receives 14% of the Shared Savings, calculated as the difference between the final accepted PGMP and total fees paid. *Id.* at 3–4.
- **Non-Selected Firm Innovation Credit.** If a non-selected design-build firm's innovations are utilised and result in savings to the selected firm's PGMP, the non-selected firm is entitled to 14% of those savings. *Id.* at 4.
- **Whole Project Contingency ("WPC").** A WPC covers Errors & Omissions (E&O) claims made by the design-build firm concerning its consultant designer. If no E&O claims are made, the FDOT pays 50% of the WPC to the design-build firm (25% earned by the contractor, 25% earned by the designer). *Id.*

Overall, the MPDB establishes concrete incentives to be both competitively priced and innovative. The MPDB process also enables projects to be completed ahead of schedule, speeding up the delivery process. The FDOT is actively deploying MPDB across multiple major corridors, including I-4, I-75, and I-95, solidifying the FDOT's entry into a new era of design-build contracting.

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