

West Virginia Department of Environmental Protection Design-Build Pilot Program



Report to the Joint Committee on Government and Finance

January 2025

**Report to the Joint Committee on Government and Finance on Department of
Environmental Protection Design-Build Pilot Program
January 15, 2025**

This report has been prepared in accordance with West Virginia Code Chapter 17.

As per the legislation, on or before January 15th 2024, and annually thereafter, the secretary shall prepare and submit to the joint committee on Government and Finance a written report, which may be transmitted electronically, evaluating the experience of the West Virginia Department of Environmental Protection with each design-build project completed pursuant to the provisions of this article during the prior calendar year, including whether the department realized any cost or time savings, the number and cost of change orders, the quality of work performed, the number of bids received and other issues the secretary considers appropriate

Introduction

The West Virginia Department of Environmental Protection (WVDEP) is responsible for delivering projects that address the restoration and reclamation of lands impacted by legacy and post-law coal mining operations. In response to an increase in federal funding to the state’s Abandoned Mine Lands (AML) program and the passing of WV Senate Bill 439 (SB439), the WVDEP has established a Design-Build Pilot Program aimed at effectively and efficiently delivering several projects using design-build project delivery. From stream restoration to subsidence and more, the Pilot Program seeks to utilize industry best practices in alignment with state and federal imperatives to deliver quality projects more quickly.

The goals of WVDEP’s Design-Build Pilot Program are centered on delivering successful projects at an accelerated pace to maximize available federal and state funding. This collaborative delivery method aims to lower project costs, encourage innovation and produce higher quality results at a faster rate than traditional delivery methods.

2024 Pilot Program Activities

Significant efforts were undertaken over the course of 2024 to implement the Design-Build Pilot Program. Efforts that began in 2023 to develop WVDEP’s Design-Build Procedural Rule became effective on June 21, 2024. Prior to the finalization of the Procedural Rule, WVDEP solicited for a Design-Build Pilot Program Owner’s Advisor, a firm experienced in design-build delivery methods to support WVDEP across the project delivery lifecycle. WVDEP executed a contract for Owner’s Advisor Services with Burns & McDonnell in September 2024.

With the Owner’s Advisor on board, WVDEP quickly rolled out the Design-Build Pilot Program to the engineering and contractor communities with a series of hybrid informational sessions and workshops in October 2024 designed to engage, educate and build interest in the Pilot Program. Subsequent to industry engagement efforts, the first Pilot Project was solicited on October 31, 2024. Figure 1 provides a timeline of activities conducted in 2024 prior to the solicitation of any Pilot Projects. Since October 31, 2024, all four Pilot Projects have entered the procurement process. The current status of each project is summarized in the Pilot Projects section below.

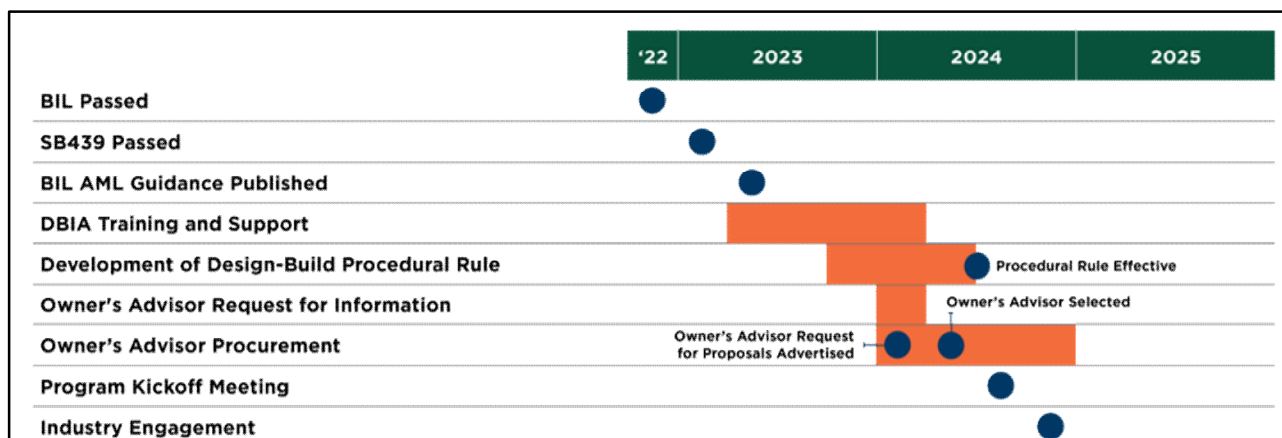


Figure 1: Timeline of 2024 Activities Prior to Pilot Project Solicitations

Pilot Projects

WVDEP recognized the opportunity the Pilot Program presented to demonstrate design-build across a wide range of projects. In further evaluating projects, WVDEP refined the list of projects to be performed under the Pilot Program from what was shared in last year’s report. Vassar Lane and Gold Resources were replaced with Kanawha development due to concern that the allowed budget would not be sufficient. The Pilot Program is now comprised of four projects—Kanawha Development Corporation, Decker’s Creek Stream Restoration, Meadow Fork and Morgantown Drilling & Grouting.

This diverse set of projects was selected to demonstrate WVDEP’s good faith in making design-build work in West Virginia given the high variability in the work performed. Table 1 below summarizes the diversity of Pilot Projects. The timeline of the procurement process for the Pilot Projects can be seen in Figure 2.

Table 1: Summary of Pilot Projects

	Kanawha Development Corporation	Decker’s Creek	Meadow Fork	Morgantown Drilling & Grouting
County	Fayette	Monongalia	Fayette	Monongalia
Delivery Method	Progressive Design-Build	Progressive Design-Build	Progressive Design-Build	Fixed Price Design-Build
DLR Managing Division	Office of Special Reclamation	Abandoned Mine Lands Program	Abandoned Mine Lands Program	Abandoned Mine Lands Program
Project Type	Demolition, Land Reclamation	Stream Restoration	Stream Restoration, Land Reclamation	Subsidence
Project Budget	\$	\$	\$\$\$	\$\$

Project	2024			2025			
	October	November	December	January	February	March	April
Kanawha Development Corporation	RFQ Issued 10/31	SOQ Due 11/22	RFP Issued 12/6	Proposal Due 1/15	Design-Builder Selection 1/24		
Decker's Creek Stream Restoration			RFQ Issued 12/19	SOQ Due 1/28	RFP Issued 2/7	Proposal Due 3/10	Design-Builder Selection 3/28
Meadow Fork			RFQ Issued 12/19	SOQ Due 1/28	RFP Issued	Proposal Due	Design-Builder Selection
Morgantown Drilling & Grouting			RFQ Issued 12/19	SOQ Due 1/28	RFP Issued 2/7	Proposal Due 3/10	Design-Builder Selection 3/28

Figure 2: Pilot Project Status

Delivery Method Observations

With the commencement of the procurement of design-builders for the four Pilot Projects, WVDEP established a process to baseline and track performance of the design-build delivery method in compliance with SB439. The sections below summarize observations to date.

Budget & Cost

SB439 limits that projects executed under the Design-Build Pilot Program may not exceed a total aggregate value of \$50 million. It is anticipated no additional projects can be executed under the Pilot Program beyond the current in-flight Pilot Projects. WVDEP, with the support of the Owner's Advisor, has assigned preliminary budgets for each project with the goal of working within the overall \$50M Pilot Program budget.

As part of the RFP process for all Progressive Design-Build projects, Offerors have been asked to provide a non-binding rough order of magnitude (ROM) cost estimate. While DEP understands that the project scope may change once a design-builder is contracted and work proceeds, the ROM provides insight into the market price of the project. As a point of reference, the ROM estimates provided for the Kanawha Development Corporation project were in alignment with the Owner's Advisor conceptual cost estimate. As projects advance, WVDEP will gain greater insights into costs associated with design, preconstruction and construction.

Schedule

While it is too early to assess lifecycle project schedules in comparison to traditional delivery methods, WVDEP has compared procurement timelines between a sample of AML design-bid-build projects to the Design-Build Pilot Program projects. Traditional design-bid-build projects include a procurement step for selection of a designer, for contracting with a designer and a subsequent procurement for bidding a project for construction. The design-build process consists of a single procurement, whereby WVDEP uses a two-step process, Request for Qualifications

followed by Request for Proposals, to make a “best value” selection of a single team responsible for design and construction.

A sample set of historical AML projects was compared to the first Pilot Project. Evaluation of this data indicates that the time from initial solicitation to selection of a Preferred Offeror – a designer in the case of a design-bid-build project and a design-builder in the case of design-build – is accelerated by 40% through the use of design-build. Table 2 presents a summary of calendar days for a procurement to proceed from solicitation to Preferred Offeror Selection. Sample data for design-bid-build projects indicates that the time from identification of a Preferred Offeror (designer) to executing a contract exceeds 400 days in some cases. The Pilot Program is on track to execute a contract with a Preferred Offeror in a shorter period of time.

Table 2: Delivery Method Comparison To-Date

	Traditional Design-Bid-Build	Design-Build Pilot Program	% Difference
Calendar Days from Solicitation to Preferred Offeror Selection	161	97	40%

**Traditional Design-Bid-Build days refers to days to selection of Preferred Designer*

Industry Engagement

WVDEP identified early on that engagement with industry partners, contractors and engineering professionals would be key for a successful Pilot Program. Nearly 120 industry professionals attended the hybrid Pilot Program overview session hosted by WVDEP in October 2024. This session introduced the goals of the program, gave an overview of collaborative delivery, summarized each of the four pilot projects and provided those in attendance with a program schedule and an opportunity to ask questions in an open forum.

WVDEP also hosted a hybrid design-build workshop for interested contractors and engineers to learn more about collaborative delivery. This session focused on how design-build reduces cost, encourages innovation and produces high quality results in a shorter amount of time. Attendees learned about the different types of design-build project delivery methods and were provided with key strategies for executing design-build successfully. More than 80 professionals were in attendance.

Through these workshops, WVDEP has built a database of contact information for more than 200 contractors and engineering firms that have expressed interest in the Pilot Program and want to stay informed. WVDEP has leveraged this database to solicit feedback from the industry on the two workshops and to gather industry sentiment towards design-build. WVDEP has also used this database to distribute information on the issuances of RFQs and RFPs beyond their traditional postings to wvOAS/S.

Industry outreach and engagement efforts appear to have been successful. WVDEP received a total of 32 Statements of Qualifications from 19 different prime offerors across the four Pilot

Projects. Responding teams were primarily led by contractors, with the engineer of record serving as a subcontractor. For comparison, traditional design-bid-build projects receive on average three to four bids for construction. WVDEP recognizes that the current Pilot Program funding cap limits the ability to utilize design-build for future projects, which the industry appears to support.

2025 Lookahead

WVDEP is focused on procurement and commencing the first Pilot Project in the first quarter of 2025. The second quarter will focus on commencing the three remaining Pilot Projects once contracts are executed. Considering the sunset of the Pilot Program on December 31, 2025, WVDEP’s priority remains working towards successfully negotiating Phase 2 price proposals for progressive design-build projects such that Pilot Program funds are fully committed and under contract before the end of the year.

Additionally, WVDEP, with support from their Owner’s Advisor, has developed a common risk register that will be used to identify, assess, track, and mitigate risks across all Pilot Projects. Any common risks that impact project cost or schedule can be identified at a Pilot Program level and be brought forward for potential mitigation at a systemic level. WVDEP’s Owner’s Advisor will also continue to support WVDEP in the programmatic monitoring of pilot projects and provide support to WVDEP staff as needed throughout Pilot Project lifecycles.

Continued Industry Engagement

In support of WVDEP's goal to be an owner of choice, DEP has engaged the Design-Build Institute of America (DBIA) to host an upcoming training session on design-build for interested industry partners. The goal of this session is to educate the industry on ‘Design Build Done Right’ as it relates to pursuing and winning work. DBIA best practices on how to assemble a team, how to prepare a persuasive response to the RFP/RFQ and how to prepare for the interview will be presented. While the exact details are still to be confirmed, WVDEP anticipates this upcoming training session can dovetail with the upcoming WV Construction & Design Expo in Charleston and provide a valuable learning opportunity for new design-build practitioners.

In addition to the upcoming DBIA training, WVDEP is committed to continuing to seek input and feedback from industry and convey and developments related to the Pilot Program that may be of interest.

Potential Future Use of Design-Build

Expansion of the Pilot Program could be beneficial to WVDEP since it creates another ‘tool’ in the toolbox’ to support the delivery of projects enabled by Bipartisan Infrastructure Law (BIL) money. WVDEP is sensitive to the timelines associated with BIL funding and expansion of the use of design-build allows WVDEP to assess suitability of projects for design-build and flexibility to leverage design-build if delays to design-bid-build delivery puts funding at risk.

Any expansion of the Pilot Program could also be used to modify Pilot Program requirements to the benefit of WVDEP and industry, including, but not limited to:

- Elimination of the bid bond requirement for progressive design-build projects
- Clarification that a stipend MAY be provided. Stipends are not customary for progressive

design-build projects since the offeror's level of effort to respond is less than for a firm fixed price design-build project.