

Submitted Testimony

## ACEC New York

*American Council of Engineering Companies of New York*

Testimony to the  
Joint Legislative Public Hearing on Transportation  
Executive Budget Proposal  
January 15, 2017, Albany, NY

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Dear Members of the Joint Transportation Hearing Committee,

I want to thank you for holding this hearing to address the State's transportation funding needs. The strength of our economy and our quality of life is directly related to the investments we make into our roads bridges, mass transit, and airports. It is critical that we continue to fund them at appropriate levels.

As has been reported in the past, New York's roads have been allowed to decay for too long. As any driver can attest, poor infrastructure causes drivers annoyance and has measurable negative impacts on daily life in the form of delays, more damage to vehicles, more injuries on our roads, less time with our families and a significant increase in our carbon footprint.

A number of our roads and bridges have decayed to the point that they are rated as deficient or functionally obsolete. In fact, in 2015 The American Society of Civil Engineers, in their periodic Infrastructure Report Card gave New York a D+ for bridges, C- for transit a C for aviation and D- for roads. We need to take significant steps to improve them, and the state has started to address this in a more meaningful way.

The most recent budget cycle has seen major investments in the state's transportation infrastructure, both in maintenance and in new projects. While these initiatives have not resulted in an instant and wholesale rejuvenation of the State's transportation infrastructure, we support the attention and additional investment that is necessary to meet the needs of New York's social and economic future.

Last year's 5-year transportation capital plan – the largest ever approved, at \$55 billion dollars – saw a number of developments that bode well for the State's transportation infrastructure. Out of the \$21.1 billion DOT capital plan, \$438 million goes towards Consolidated Highway Improvement Program (CHIPS); \$400 million (\$100 million a year over four years) was directed through the CHIPS mechanism to fund the PAVE-NY program for local roads; and BRIDGE- NY supports local bridge rehab and replacement projects with \$200 million over two years. In addition to the investments described above, the Thruway Authority received funding for the Thruway Stabilization plan and New New York Bridge funding. The MTA received roughly \$27 billion in their 5-year plan, which has, in part, led to the completion of the Second Avenue Subway, which is in operation as of January 1, 2017. All of these initiatives are a good start, and we hope that they represent an ongoing and committed dedication to the state's transportation needs.

A number of upstate communities received an encouraging boost through the Upstate Airport Economic Development and Revitalization Competition, where funds were directed to airports that submitted winning plans to significantly and efficiently improve their facilities and capabilities. The first two phases saw Elmira and Rochester area airports each receive approximately \$40 million and Syracuse and Plattsburgh receive \$38 and \$35million respectively, with a final round due to distribute the remaining



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funds. Upstate New York remains vitally important to the economic future of the State, and we support investments intended to stimulate economic activity, job creation and business attraction. In New York City, the two major airports are also part of a major investment and revitalization plan. LaGuardia is in the midst of a \$4 billion transformation, and there are now plans to invest up to \$10 billion at JFK Airport. These are welcome investments to make these airports reflective of the New York community.

In late 2015, the Federal FAST was signed and created a 5-year transportation funding mechanism for the first time in a decade. With this stable funding outlook in place, we are hopeful that the next 5 years will see a high degree of coordination between State and Federal authorities to implement and execute the upgrades to our transportation network needs. We are eager to see important projects funded and delivered.

The past few years have seen a growth in the use of design-build procurement in transportation projects. ACEC New York supported the implementation of design build in New York State in late 2011 and believes that when used correctly, this method is a worthwhile "tool in the toolbox" of public owners looking to deliver projects. We recognize that design-build isn't the right solution for every project but it can be useful, especially when timelines are shorter. We have identified best practices in our policy paper, which is attached.

Government sources of funding are not the only solution, however. The traditional method of financing and developing transportation infrastructure projects was created to protect the public interest by providing substantial public sector oversight of public funds. However, by providing access to alternative financing sources like public-private partnerships (P3s), the state can facilitate the construction of projects that might otherwise have been delayed or not built at all. By infusing private capital, the State can offer vital transportation services without committing capital resources.

It has also been proven that the use of private design consultants is more effective than relying on in-house design capabilities. In a study performed by NYU, it was shown that private design consultants are 15-20% more cost effective and they have far greater flexibility. Public agencies and authorities need to have the skills and staff to oversee and manage projects effectively. To that end, ACEC New York supports a well-paid professional design management staff to ensure that projects are designed and delivered as intended.

While we are focused on our infrastructure, including what it means to our quality of life and how our economy depends on it to move goods and people, it cannot be forgotten or overstated that infrastructure creates good paying, local jobs. Tens of thousands of jobs are created or maintained from every \$1 billion invested in our infrastructure. These jobs and the business that are supported also generate tax revenues to the state and to local governments.

In these challenging times, we must not lose sight of the fact that New York State's infrastructure is a critical component of our ability to return to economic prosperity. To that end, ACEC New York is committed to working with our public counterparts to maximize the benefit of every taxpayer dollar spent on the state's transportation and infrastructure programs.



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## **How to Do Design-Build Right**

ACEC New York believes in the value of project delivery systems that guide the design of public and private facilities, are in the best interest of the owner, utilize a Qualifications-Based Selection (QBS) procedure for the selection of design professionals, provide unbiased protection for existing and future infrastructure, and protect the health, welfare and life safety of the public. ACEC New York recognizes that the traditional design-bid-build project delivery system is utilized for the majority of constructed projects. However, ACEC New York also acknowledges design-build as an alternative project delivery system that, while not appropriate for every project, is a useful delivery tool to have in certain circumstances for private and public projects.

Design-build is an integrated approach that provides the owner with design and construction services under one contract with a single source of project responsibility. Design professionals may engage in a variety of roles in design-build execution agreements: as the lead entity; in a joint-venture relationship with a contractor; as lead designer in a sub-contract role to a contractor or as a sub-consultant to the lead designer; or as the independent owner's design consultant.

As a public policy issue, when design-build is utilized, ACEC New York endorses a two-step procedure and implementation process, sometimes referred to as the "bridging method," as the process that best protects the interests of the owner, design professional, contractor, and the public.

### **Selection of Owner's Design Consultant**

A New York licensed and registered design firm should be retained to represent the owner throughout the entire project as the owner's design consultant. The owner's design consultant should be selected based on their qualifications and experience and should prepare a preliminary design and bridging contract documents that include performance criteria. ACEC New York recommends that the owner's design consultant develop these bridging contract documents to a level that provides sufficient design concepts such that the owner can receive competitive, fixed-price proposals based on the bridging contract documents for the full project from the design-build teams.

The owner's design consultant should be retained by the owner to carry out observation of the work and act as a representative of the owner. The design consultant will provide review for the owner, while the design-build team advances the design, including the construction documents phase, construction phase, and the project closeout phase, in order to check compliance with the Request for Proposal (RFP) requirements and to ensure design intent is met. Additionally, the design consultant will assist the owner with technical evaluation and feedback on proposed design-build team concepts.

### **Selection of Design-Build Team – a Two-Step Process**

The design-build team should include a New York-licensed and registered design firm. Such firm must be independent from the owner's and should be selected based on qualifications and expertise.

The owner should select the design-build team on the basis of solicited proposals based on criteria developed by the owner. A two-phase Qualifications-Based Selection (QBS) process should be utilized. Owners who choose their design-builders based largely on qualifications reap substantial benefits that help achieve project success. Private owners have long understood these benefits of QBS as well as federal and state agencies, which select their design professionals through qualifications under the Brooks Act.

**Phase I:** A request for qualifications (RFQ) is issued by the owner, and design-build teams are shortlisted on the basis of qualifications and experience criteria listed in the RFQ. Given the enormous costs associated with putting together the full design proposals required in the second phase of the two-phase procedure, a short list of no more than five teams is recommended. After teams are shortlisted, changing the design firm should be forbidden.

**Phase II:** A request for proposal (RFP) is prepared, and the shortlisted teams submit a project scope, approach and cost proposal for the project, upon which a final selection is made considering the best value to the owner. ACEC New York strongly recommends that the basis for evaluating best value design-build proposals be both clearly articulated by the owner in the RFP and used in making the award. Weight of the technical solution should not be less than the weighting given to the price.

### **Payments and Stipends**

As Phase II services performed by the designer may be relied upon by the contractor in preparation of his proposal, the designer should be compensated for these services by the lead entity. To offset the cost of preparing detailed proposals in Phase II, a financial stipend should be specified in the RFQ and paid by the owner to those shortlisted teams who submitted compliant proposals but were not selected for the project.

Project owners want to encourage innovation and creative solutions that will save money and time, while providing the best project possible. Stipends are a way to encourage this innovation and creativity, and the public owner also gets the benefit from all of the competing team's ideas, not just the successful team. A lump sum amount should be paid, within a reasonable time frame, to all qualified proposers without further documentation or audits being required. If a project is cancelled after proposals are submitted the same stipend should be paid to all proposers.

While stipends do not cover the full cost of the proposal, the overall small percentage of project dollars involved will ensure that future design-build projects will have enough proposing teams to make the system successful for all.

Once a design-build project is underway payment schedules need to be fair and equitable. Design work is front loaded so paying a designer at project milestones puts undue financial burden on the design professionals. A lump sum should be allocated for design and paid based on percent of design completed on a monthly basis. Construction Administration should be compensated on a T&M basis.

Design retention should be 100% released when design is 100% complete. Waiting until the end of a multi-year project again puts undue financial burden on the designer whose work is complete at the beginning of the project.

### **Selection Criteria**

The selection process and criteria for evaluation must be clearly stated and transparent. Technical responses should be analyzed and scored. The financial terms should be evaluated after the technical evaluation is complete. A clear rubric of technical scoring criteria should be included in the RFP. Weight of the technical solution should be equal to the weighting given to the price.

### **Bridging Documents**

It is important that robust and accurate information pertaining to high risk issues like sub surface conditions, property ROW, 3<sup>rd</sup> party utilities and other existing conditions be provided to the design build teams as part of the bridging documents. This will prevent major design and construction delay claims and additional costs.

### **Miscellaneous**

If a Project Labor Agreement is going to be assigned it should be announced no later than Letter of Intent as such agreements often change the financial nature of a project and cause teams to drop out after considerable work has been done (and costs accrued).

The Resident Engineer Inspection (REI) / Construction Inspection (CI) function on projects should report directly back to the client and should not be contracted through the design builder. The design builder may not commit to a comprehensive inspection regiment in an effort to keep costs down.

### **Conclusion**

Design-build is a useful project delivery tool for New York City and State agencies and other authorities to have. While not appropriate for every project, design-build can offer innovative design and faster project delivery schedules on certain projects. Transparency and communication are vital to successful design-build collaboration and will guarantee long-term viability of the design-build process.

Since its authorization in 2011, design-build has allowed the state to deliver projects that would not have been awarded without this project delivery tool. The industry and state owners have worked together to address concerns that have arisen about the process of delivering a design-build project. This continued collaboration is key to completing a successful design-build project, and ACEC New York looks forward to working with our industry partners and state and city public policy makers to expand authorization of design-build in New York State and New York City in 2017 and further refine and enhance its effective use in the future.

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*Founded in 1921, the American Council of Engineering Companies of New York (ACEC New York) is the state's premier organization for consulting engineering firms, representing 280 companies and 24,000 employees in New York. The organization's mission is to further the business interests of its members through advocacy, networking, education and business services. For more information, visit*

*[www.acecny.org](http://www.acecny.org)*

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