Joint Legislative Public Hearing

2018-2019 Executive Budget Proposal

Transportation

January 25, 2018

Submitted Testimony

New York State Public Employees Federation (PEF)

We want to thank you for the opportunity to address DOT issues in the 2018 - 2019 proposed budget. PEF represents over 3,800 employees in the DOT as engineers, technicians, planners, architects, right of way agents and other professional, scientific and technical titles. Their primary responsibility is to keep the infrastructure safe for the traveling public.

DESIGN-BUILD

Two alternative methods for funding capital projects for the public sector have been touted in recent years.

Both design-build and public private partnerships (P3s) have a checkered history in our country.

In Part R of the Transportation Article VII Legislation (A.9508/S.7508), design-build is proposed to be expanded to five additional agencies and authorities (Dormitory Authority, Urban Development Corp., OGS, DoH and ORDA). It would also now included buildings and appurtenant structures (vertical building), whereas current law only included roads and bridges (horizontal building).

PEF has multiple concerns. Design-build allows one contractor to design, construct and inspect the entire project instead of the traditional design-bid-build procurement method which allows for a separation between designer and builder. This results in the loss of checks and balances and the continued erosion of professional public employees' skills and knowledge. It puts the public at risk, bypassing competitive bidding laws, labor protection and other safeguards that ensure transparency, fairness and impartial oversight.

When a design-build contract is let, only 30 percent of the design phase has been completed. With greater risk to the design-build contractor comes greater cost. Also increasing costs are procurement procedures and additional administrative oversight. In design-bid-build procurement, this cost would not be expended with in-house design.

DOT is the infrastructure owner and has a greater stake in a quality product. It is important DOT employees inspect these projects to ensure proper quality of construction and safety of the construction workforce and the public. DOT employees live in the areas where they work, they have not only an ownership stake due to their employment with DOT, but they are also taxpaying citizens in the area in which these projects are built. They probably have family members who travel on those same roads and bridges.

Consultant inspection firms for design-build projects typically employ people who live far away from the finished product and have no local accountability. Non-compliance reports prepared by DOT quality assurance staff on projects are not treated seriously. There have been reports of inspectors hired by these consultant firms telling state workers they work for the contractor, not the state, when the single state engineer assigned to quality assurance would question compliance with standards and specifications.

One pro design-build claim is that the contractor can use innovation to save money, but the DOT has used this procurement method for routine, non-emergency projects, rather than for innovative or immediate need projects. When multiple small work sites are bundled (for example bridge deck replacements or bridge superstructure replacements, where the only feasible option is to replace in-kind,) there is no opportunity for innovation, thus creating added cost with no added benefit. Examples of this include two bridges, one that measured 35 foot long that had a superstructure replaced and another 20 foot long that was replaced in its entirety under a design-build process.

Larger, bundled design-build projects also hurt local economies. Both of the bridges would traditionally have been simple design-bid-build contracts. These contracts would have employed local contractors and used existing DOT engineering staff to design and inspect the construction. But the design-build process makes it impossible for smaller, local companies to bid. Typically these contracts are awarded to larger, out-of-state firms.

A design-build report was produced in the fall of 2016 by the Empire State Development Corporation summarizing the five projects allowed to utilize design-build under Chapter 60 of the Laws of 2015. None of the projects have been completed. In fact, three of the five projects have a "to be determined" best value cost. No expansion or extension of design-build should be allowed until a complete review of design-build projects under Chapter 50 of the Laws of 2015 can be completed. Such a review should be conducted by the state Comptroller, as has been done in the past by previous Comptrollers.

Also, the completed replacement of the Tappan Zee Bridge (Mario Cuomo Bridge) will happen later this year when the second span is opened. While many claims have been made about a billion dollars of cost savings and years of time reduced by using design-build for this project, a full accounting of this mega project should be conducted before we look to expand this use of contract letting.

PUBLIC PRIVATE PARTNERSHIPS

Public Private Partnerships (P3s) have been discussed as funding mechanisms at the federal level. These projects also have a checkered history in our country. The disastrous Chicago Parking Meters, Chicago Skyway, Indiana I-90 and Pocahontas Parkway in Virginia are just some examples of P3s that have negative and long lasting effects on public transportation. They provide taxpayer subsidies in the form of guaranteed profits for corporations that have failed to deliver positive results of reduced costs to the public.

The research group, In the Public Interest states some of the many concerns very well:

> **Though privatization may offer short-term relief to transportation budget woes, it often has grave implications for the public.**

- **The public will not receive full value for its future toll revenues.** The upfront payments that states receive are often worth far less than the value of future toll revenue from the road. Analysis of the Indiana and Chicago deals found that private investors would recoup their investments in less than 20 years. Given that these deals are for 75 and 99 years, respectively, the public clearly received far less for their assets than they are truly worth.
- **The public loses control over transportation policy.** Private road concessions in particular result in a more fragmented road network, less ability to prevent toll traffic from being diverted into local communities, and often the requirement to compensate private operators for actions that reduce traffic on the road, such as constructing or upgrading a nearby competing

transportation facility.

- **Public officials cannot ensure that privatization contracts will be fair and effective** when leases last for multiple generations. No army of lawyers and accountants can fully anticipate future public needs. Transurban, for example, has control over the Pocahontas Parkway in Virginia for 99 years.

When for-profit investors take over public service facilities, it must be remembered that every dollar that is put into a private corporation's balance sheet is a dollar that can't be spent on additional public safety or service.

If P3s are to be considered, they must at a minimum follow these basic principles:

- The public should retain control over decisions about transportation planning and management.
- The public must receive fair value so future toll revenues are not to be sold off at a discount.
- No deal should last longer than 30 years because of uncertainty over future conditions and because the risks of a bad deal grow exponentially over time.
- Contracts should require state-of-the-art maintenance and safety standards instead of statewide minimums.
- There must be complete transparency to ensure proper public vetting of privatization proposals.
- There must be full accountability in which the legislature must approve the terms of a final deal, not just approve that a deal be negotiated.

STAFFING

The most cost effective highway and bridge design, bridge inspection and construction inspection services are provided by the in-house DOT professionals. Additional valuable services are bus and truck inspections and other safety sensitive work.

This year's budget calls for a flat level in the Design and Construction program of 2,594 full time equivalents (FTE's) for the upcoming year. We still need to replace the many hundreds of engineering staff lost over the last 10 years. In the proposed 2007 - 2008 budget, the proposed number of Design and Construction Program FTE's was approximately 3,800, a nearly 1,200 positions difference. In construction inspection alone, more than one-third of in-house jobs have been lost.

Increases in staffing in all program areas and further increases in the Design and Construction program will lead to better efficiency, better quality and less overtime costs.

Consultant engineers still make up too great of a portion of DOT's engineering staff. Under the proposed budget, DOT will see an increase in consultant staff of 81 FTEs. This will bring the estimated disbursement for consultant service contracts to $200.7 Million for FY 2019.

Our studies have shown that consultant Civil Engineers cost New York State taxpayers an average of 87% more than Civil Engineers permanently hired by DOT.

In one case for a consulting bridge inspection contract, the billable rate for a consultant engineer bridge inspector was 32% more than the NYSDOT Commissioner's hourly rate!

Also troubling is the fact that many of these consultant engineering service contracts originated decades ago and are simply renewed as needed. So for all intents and purposes, DOT is paying exorbitant consultant costs for de facto permanent employees.

As long term stewards of public money, these facts should trouble all of us greatly.

COST/BENEFIT ANALYSIS

A continuing priority for PEF is the inclusion of Cost/Benefit legislation (A.2022/S.383) that would require an analysis before entering into consultant contractual services. This would be valuable in many fields, including engineering. Requiring this analysis allows for documentation to reinforce decision making.

CONCLUSION

Investment in our infrastructure is vital for economic development. We believe through strong financial decision making, cost/benefit analysis and having a steady, educated workforce, transportation funds can be used most efficiently.

The DOT already makes efforts to create five-year capital programs and other long term planning tools. If proper staffing and steady funding were available, there would be less need for emergency projects as well as less efficient and costly procurement methods such as design-build.

Thank you for your time and attention to these matters important to PEF.