



STATE OF CONNECTICUT

DEPARTMENT OF TRANSPORTATION

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Commissioner

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Public Hearing – February 22, 2012 Transportation Committee

Testimony submitted by Commissioner James P. Redeker
Department of Transportation

Governor's Bill No. 33 - AN ACT CONCERNING DEPARTMENT OF TRANSPORTATION PROJECT DELIVERY.

The Department of Transportation (ConnDOT) strongly supports Governor's Bill No. 33, AAC Department of Transportation Project Delivery to provide the Department with options to help deliver certain transportation projects faster and more efficiently.

Currently, the only project delivery method available to ConnDOT, with the exception of work performed under Emergency Declaration statute 13b-26(f), is the "Design - Bid - Build" method. This proposal would allow the Commissioner of Transportation to designate certain transportation projects for an alternate project delivery method of either "Design-Build" or "Construction Manager at Risk - Guaranteed Maximum Price".

The Department of Transportation is responsible for hundreds of projects at any point in time and the projects involve all modes of travel, a growing value range, several federal agencies (FHWA, FTA, FAA, FRA, etc) with a myriad of federal aid grant and project/program funding requirements/arrangements. Some projects may have specific timeframes established for use of funds. While the demands of an aging infrastructure and environmental requirements have increased, the federal funding picture has changed significantly and discretionary grant programs/initiatives such as ARRA and the TIGER programs are becoming more common. The ability to utilize alternative project delivery methods such would strengthen our ability to compete in these programs that often require very short applications timeframes.

The agency has taken advantage of technological advances over time and continues to pursue more innovations, but accelerated project delivery methods need to be incorporated to enable the state to best utilize funding opportunities and satisfy public expectations.

Since 1990, the Federal Highway Administration (FHWA) has allowed State DOT's to evaluate non-traditional contracting techniques under a program titled "Special Experimental Project No. 14 - Innovative Contracting" (later revised from "Innovative Contracting" to "Alternate Contracting"). FHWA published a final rule in the December 10, 2002 Federal Register to implement regulations for design-build contracting as mandated by Section 1307 (c) of the Transportation Equity Act for the 21st Century (TEA-21). The regulation allows, but does not require, the use of design-build contracting procedures.

There are various adaptations of these two alternate project delivery methods which effect project duration, cost, and risk.

Design - Build

Design - build (DB) is an alternate method of project delivery in which the design (subsequent to preliminary design) and construction phases of a project are combined into one contract, allowing for certain aspects of design and construction to run concurrently. This can provide significant time savings compared with the more traditional design-bid-build approach where the design and construction services must be undertaken in sequence.

- The Design-Bid-Build process involves three primary players and two separate sequential contracts - the owner and designer and the owner and contractor.
- The general contractor selection is based upon the price of the Lowest Qualified/Responsible Bidder utilizing the Competitive Sealed Bid Process.
- The Design-Build process consists of two primary entities with one contract involving the owner and design build entity.

The Design-Builder is based upon a Quality Based Selection to create a short list and a Best Value Selection which considers the sealed Technical Proposal and sealed Price Proposal utilizing a predetermined metric provided to proposers.

With DB project delivery, the design-builder assumes responsibility for the majority of the design work and all construction activities, together with the risks associated with these services. This provides the DB with an increased flexibility to be innovative. Along with the increased flexibility, the design-builder also assumes greater responsibility and risk. The owners of the project usually retain responsibility for financing, operating, and maintaining the project. Because both design and construction are performed under the same contract, claims for design errors or delays are significantly decreased and the potential for other types of claims are greatly reduced. From a state transportation agency perspective, the potential time savings is a significant benefit.

The successful execution of a DB contract provides several benefits, including:

- Time savings through:
 - Early contractor involvement; and
 - Elimination of a separate construction contract bid phase.
- Cost savings from:
 - Reduced construction engineering and inspection costs to the contracting agency when these quality control activities and risks are transferred to the design-builder; and
 - Fewer change and extra work orders.
- Improved quality through:
 - Greater focus on quality control and quality assurance through continuous involvement by design team throughout project development; and
 - Project innovations uniquely fashioned by project needs and contractor capabilities.

The Connecticut Academy of Science and Engineering (CASE) undertook a study of Design-Build at the request of the Department. The report "The Design-Build Contracting Methodology for Transportation Projects: A Review of Practice and Evaluation for Connecticut Applications" was released June 2010. The brief statement of primary conclusion reads: "ConnDOT should be able to utilize the DB contracting methodology for design and construction of transportation-related projects. It is noted that DB is not entirely new to ConnDOT, as the Commissioner has the authority to modify or eliminate the bidding process for emergency declaration projects.

The General Assembly should adopt legislation permitting use of DB contracting as an option for transportation projects. The legislation should require ConnDOT to periodically report on its experience in utilizing DB contracting to the Transportation Committee and other relevant committees of the General Assembly for the purposes of determining the value and benefits of this method of contracting to the state and the public."

The Commissioner of Construction Services (DCS), formerly the Department of Public Works, currently has authority to designate certain projects as Design- Build pursuant to CGS 4b-24.

Construction Manager at Risk -- Guaranteed Maximum Price (CMR - GMP)

There are several variations of Construction Manager at Risk (Contractor at Risk, Construction Manager/General Contractor, etc.), but this proposal is to allow the Commissioner of Transportation to designate certain projects for a project delivery methodology of Construction Manager at Risk - Guaranteed Maximum Price.

CMR-GMP provides a quality based contractor as well as construction cost controls. Transportation facilities such as train stations, airport terminals, transportation maintenance facilities all offer possibilities for use of CMR-GMP.

DCS considers CMR - GMP to be the preferred project delivery method for their facilities projects which exceed \$25 million. ConnDOT envisions applications for its transportation facilities projects of such value.

The CMR process involves three primary parties - the owner, the architect and the CMR. The owner would have separate contracts with the architect and CMR. The CMR selection would be a "quality based selection" to create a short list and a "best value selection" which considers the CMR's general conditions and staff costs plus qualitative criteria. The CMR is selected during the design phase of the project and provides input during design. The CMR then selects the trade subcontractors using a low bid sealed process for each trade and the owner and CMR establish a Guaranteed Maximum Price (GMP).

It is important to note that there is no construction start until the State has accepted the GMP. The GMP is based upon the completed and fully permitted construction documents.

The Commissioner of DCS currently has authority to designate certain projects as Construction Manager at Risk - Guaranteed Maximum Price pursuant to CGS 4b – 103 and has cited the following advantages of using this project delivery method:

- Higher quality contractor participation;
- Quality based selection and best value selection processes;
- Single point of responsibility;
- CMR participates in the design effort;
- Improved schedule management;
- Open book cost accounting;
- Fiduciary responsibility to the owner; and
- Reduced construction claims.

In 2009, ConnDOT requested the Connecticut Academy of Science and Engineering (CASE) to study Design-Build as a potential project delivery methodology in Connecticut. The study notes that several states have passed DB enabling legislation for transportation projects since 2009 due to the release of federal stimulus funds and the need to construct the projects in a timely manner. As of June 2010, Connecticut remained one of only four states without enabling DB legislation for transportation projects.

In 2010, the Legislative Program Review and Investigations Committee studied the DOT Project Delivery Process. The study included consideration of Creative Contracting Authority and recommended that "legislation be enacted to permit the department to use design-build and other alternative contracting approaches on a pilot basis."

The Department strongly recommends favorable consideration of S.B. 33.

For further information or questions, please contact Pam Sucato, Legislative Program Manager for ConnDOT at (860) 594-3013 or pamela.sucato@ct.gov.