



AMERICAN COUNCIL OF ENGINEERING COMPANIES  
*of Pennsylvania*

## TESTIMONY ON DESIGN BUILD BEST VALUE PROCUREMENT

**Michael Miller, Vice President, JMT, Inc.**

Good afternoon Chairman Neilson, Chairman Benninghoff and members of the House Transportation Committee. My name is Mike Miller and I am a Vice President at Johnson, Mirmiran, and Thompson, Inc., a 100% employee-owned engineering company founded in 1971 with six offices across Pennsylvania. JMT is also a member firm of the American Council of Engineering Companies of Pennsylvania (ACEC/PA), an organization supported by the membership of engineering companies and affiliates that focuses on providing advocacy and growth of the consulting engineering industry throughout Pennsylvania. Many of ACEC/PA's member firms serve as consultants for the Pennsylvania Department of Transportation (PennDOT), the Pennsylvania Turnpike Commission (PTC), and many other transportation organizations across the Commonwealth. I am also a member of ACEC/PA's Innovative Delivery Committee and have routinely been part of discussions regarding Design Build Best Value concepts.

As you are aware, Design Build Best Value allows owners on design build projects to obtain services where price is not the only determining criterion. While the Best Value concept is a preferred method amongst the engineering community, which generally prefers a stronger consideration of qualifications, it is, as you have heard, not typically how Commonwealth agencies procure engineering and construction services.

Over the past six months, ACEC/PA has participated in a conceptual working group organized to explore the potential expansion of design build best value procurement and determine the best utilization of such a concept to improve Pennsylvania's transportation infrastructure. To be clear, this is not a new concept in Pennsylvania. Last July, former Rep. Todd Stephens introduced House Bill 2747, which established a framework for the utilization of Design Build Best Value procurement and purported to decrease project timelines, streamline concurrent activities, and increase risk-sharing between owners and contractors. While this legislation was never enacted into law, it laid the groundwork for our discussion today.

During our recent discussions with this conceptual working group, ACEC/PA identified three major concerns that would protect the consulting engineering community and ensure a smooth working relationship between the design aspect of projects and the construction portion. First, Design Build Best Value procurement is typically broken up into two alternative processes. The first, known as “one-step,” encourages prospective project teams to submit a technical proposal and a subsequent cost proposal which are evaluated independently by a review committee, whereupon a contractor is identified. The second method, known as “two-step,” follows a similar approach, inviting project teams to submit a qualifications statement, followed by a technical proposal and a subsequent cost proposal, however, following the initial review of the qualifications statement, a short list of project teams is created, whereby those teams are eligible for a stipend, or pre-determined payment for the time incurred creating the proposal. These teams are also invited to respond to a formal request for proposals (RFP), which will ultimately lead to an award of the work, however firms that were not short-listed are not eligible to receive a stipend but may also respond to the RFP, knowing that they were not a top scoring project team in the original request for qualifications. ACEC/PA has long favored the two-step approach, but recognizes that the payment of a stipend is costly and should not be extended to all bidders, but should only be awarded to short-listed project teams. The two-step process not only encourages the highest level of competition among contractors and design firms, but also maintains cost controls for the owner. One-step processes should only be used in limited situations.

Secondly, Design Build Best Value routinely incorporates Alternative Technical Concepts (ATCs). While an owner specifies the work that needs to be performed and design parameters of how the ultimate goal might be achieved, it is not uncommon for contractors and design professionals to develop and suggest innovative concepts that achieve the same goal in perhaps a more cost effective, safer, or more efficient manner. These ATCs are critical to the success of design build teams and have revised and improved projects across the nation for decades. As such, contractors and their partner design firms are cautious to allow their intellectual property to become public knowledge and will only offer ATCs to the owners when it is abundantly clear that their confidentiality will be maintained. For design professionals to fully engage in the Design Build Best Value process, it should be made clear in any potential legislation that ATCs are confidential unless a narrow group of criteria is met, such as the cancellation of the procurement or in the instance that the concept does not meet the definition of an Alternative Technical Concept. To secure the abundance of caution on this point, ACEC/PA would like to see ATCs from unsuccessful bidders also held to the same protection and should not be subject to Pennsylvania’s Right to Know Law.

Finally, if the purpose of Design Build Best Value procurement is truly to reap the benefits that come with an alternative to the current procurement system and incorporate project team qualifications, then the

scoring for project proposals should heavily consider the design build teams qualifications and technical proposal. While, in these cases, it is the responsibility of the project owner to be the best stewards of the public funding that will be allocated to the project, Pennsylvanians also deserve the safest and best designed and built infrastructure, not the cheapest. By incorporating qualifications into the proposal package, owners are assured that they get a highly-skilled, knowledgeable project team that has the necessary project experience and not only know the preference of the project owner, but knows the best way to accomplish established goals. If there is Design Build Best Value procurement legislation introduced, it should, at a minimum, equally consider qualifications with technical proposals and price. This will allow a commonality of consideration for the protection of public funding, the best proposal to complete the goal, and the best project team to perform the work.

Again, I hope that these considerations have been helpful and have provided some insight into the concerns of the engineering community when it comes to Design Build Best Value procurement. I am pleased that ACEC/PA has a long tradition of well-respected partnership with PennDOT, the Pennsylvania Turnpike Commission, and the multitude of other transportation and municipal organizations across the Commonwealth. We are excited for the opportunity to continue to grow those relationships and hope that we can be helpful with any Design Build Best Value concepts moving forward. With that, I thank you for your time and would be happy to answer any questions you may have.