

**Subcommittee for Capital Budget**  
**Chair Helen Rosenthal**  
**OPENING: Design-Build and Intro 2328**  
**October 20, 2021**

Good morning. I am Council Member Helen Rosenthal, and I am the Chair of the Subcommittee on Capital Budget.

This Subcommittee conducts oversight of the Administration's planning and delivery of capital projects. We often focus on procurement inefficiencies, but we are always looking to identify best practices and promising innovations. Today our focus is the promise and reality of design-build procurement.

State law has long-imposed the design-*bid*-build framework on capital projects, under which architects and engineers who design projects cannot help contractors understand what they are bidding on. Likewise, contractors are unable to offer design services as part of their bids, which might permit them to improve constructability of the plans. It should come as no surprise, then, that design-bid-build projects are often derailed in an endless stream of change orders. This set up can also make it difficult to determine who should be held accountable for delays and overages.

Ten years ago, the State Legislature authorized several State agencies to proceed with a different procurement method known as "design build" on a trial basis. It was a method which had been growing in popularity in other states as well as in the private sector. The design-build method is where an owner contracts with

a single entity that takes full responsibility for both design and construction of the project. This, in turn, eliminates the need for most change orders. By one estimate, the State saved nine percent on the first nine, transportation-related design-build contracts that were entered into after this legislation was passed. One of those contracts was for the replacement of the Tappan Zee Bridge which we all know came in well under budget and ahead of schedule.

Following these initial success stories, many City officials began agitating for design-build authority of our own. However, it took years, and several failed City Council resolutions and State bills, for the balance of forces to begin to shift. Fierce and persistent lobbying by the Mayor, senior Administration officials, Council Members, and business leaders finally broke through in March 2018, with the State's grant of narrow design-build authorization for the BQE cantilever replacement, Rikers Island jail replacement, and NYCHA repairs. It wasn't until December 2019 that the design-build authority was expanded to additional City agencies and projects.

Indeed, many on this Council have vivid memories of how members of the Administration testified at hearings about how "familiar" City agencies already were with design-build, and the considerable savings that would materialize were design-build granted or expanded. Often, these boasts were coupled with effusive thanks to the Council for our own efforts to lobby lawmakers in Albany – indeed, many of us took up the cause as our own.

The State's grant of authority to the City is set to sunset at the end of December 2022, meaning we're well over half-way through our window to justify our efforts and demonstrate results. Now is the time to ask what the Administration has done with its newfound authority, and whether design-build is yet living up to its full potential.

We might have some better idea about the Administration's progress with design-build, had they complied with their reporting obligation set forth in the 2019 state authorizing law. But, the report due in June 2020 was never filed because of the pandemic PAUSE on capital construction, and the report due this past June is apparently "still being put together." Indeed, from what I've heard, one reason the task of generating the required report has been languishing is that no single agency, office or person has been charged with spearheading efforts to gather the specific information required for inclusion. Indeed, it would appear there hasn't been much of a coordinated cross-agency effort to implement design-build in general.

There has been some progress by the Department of Design and Construction as well as the Department of Transportation, which have each put out Requests for Qualification and are scoping design-build projects with bidders – and I am truly excited to hear specifics from representatives of those agencies. But it's a real shame that they are the only ones who came today. After all, design-build authority was also extended to the Department of Environmental Protection, Parks, the Health and Hospitals Corporation, NYCHA, and the School Construction Authority. Some of

the gaps in reporting on progress might also be fillable by a representative of the Mayor's office or a Deputy Mayor's office, but they haven't come today either despite the Council's repeated request that someone with a cross-agency grasp of the bigger picture be made available.

This apparent lack of coordination underscores the need for the legislation that is being heard today. Introduction 2328, which I have sponsored, would impose reporting obligations on the administration on their use of design build. One important way in which the proposed reporting is different from what the Administration is already supposed to be doing under State law, is that our bill seeks to tie the reporting to the Capital Commitment Plan, so that the Council can understand how individual projects are progressing, and how savings are being accounted for. In this way, I'm hoping to further institutionalize the use of design-build while enhancing transparency and accountability.

Before I conclude, I want to thank the staff who helped prepare for this hearing and, in particular I would like to thank the Finance Division and Subcommittee staff:

- Nathan Toth, Deputy Director
- Chima Obichere, Unit Head
- Monika Bujak, Financial Analyst
- Rebecca Chasan, Senior Counsel; and
- Noah Brick, Assistant Counsel

I will now turn it over to our Committee Counsel to go over some procedural

items and to swear in the witnesses. Then we will hear testimony from Jamie Torres-Springer, the Commissioner of DDC. Also here for Q&A from DDC are David Varoli, General Counsel, Alison Landry, Assistant Commissioner of Public Buildings Design Build, and Wayne Lambert, Chief Diversity and Industry Relations Officer. For Q&A from DOT we have Tanvi Pandya, Executive Director of the BQE Design-Build, and Miranda Alquist, Assistant Director of Legislative Affairs.

## **NYC DOT Design-Build Projects**

NYC DOT has several projects under development for Design-Build.

The agency is in the process of completing the procurement of Owner's Rep teams who will assist us in the upcoming Design-Build procurements by acting as an extension of our in-house teams. We anticipate our first RFQ for replacement of two bridges in the Bronx in spring of 2022 followed by RFQ for 4 Belt Parkway Bridges later in the year. While those specific projects contract documents are being progressed, we are continuing to formalize processes that will be necessary for successful project delivery. In addition, all of these projects have federal funding and we are working with our State and Federal partners to get their approvals and input.

In addition, the agency is advancing Staten Island Ferry Facility Flood Protection as a Design Build procurement and recently kicked-off an Owner's Rep. Contract (in September) to facilitate the procurement of the contract. Ferries is targeting to host a virtual Industry Day with vendors, manufacturers, construction and Engineering professionals before the end of the year. The RFQ is scheduled to be released 2nd quarter of 2022.

DDC is also managing several projects under Design-Build for which DOT is the sponsor agency.

# Hearing on Intro 2328 – Design- Build Reporting

October  
20,  
**2021**

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Department of Design and Construction  
Jamie Torres-Springer, Commissioner

New York City  
Council  
Subcommittee  
on the Capital  
Budget

**Good morning Chairwoman Rosenthal and members of the Subcommittee. I am Jamie Torres-Springer, Commissioner of the New York City Department of Design and Construction. I am joined today by our General Counsel, David Varoli, Alison Landry, Assistant Commissioner for Design-Build in our Public Buildings Division, Wayne Lambert, our Chief Diversity and Industry Relations Officer, as well as staff from the Department of Transportation.**

**Thank you for the opportunity to testify about Intro 2328. The City as a whole is supportive of Design-Build reporting requirements, yet respectfully requests that any local law mirror State reporting requirements, which were included in the 2019 law.**

**Over the past two years, DDC has demonstrated that the City can benefit from using multiple approaches to project delivery. Where for decades we were confined to using a single approach – low-bid, design-bid-build delivery – in a span of a few months two important developments occurred: the State authorized the temporary use of Design-Build, which permitted implementation of a new aggressive program at DDC; this was followed by a State declaration of emergency in response to the COVID emergency that permitted DDC to use the Construction Manager-As-Contractor delivery model to build out urgently-needed health care**

**facilities. In both cases we have been able to deliver critical projects in a fraction of the usual time, while staying on budget, meeting ambitious M/WBE goals, and using high-quality organized labor.**

### **Design-Build Progress**

**DDC was initially authorized by the State Legislature to use Design-Build for the Borough-Based Jails program, which will allow us to construct the critical facilities necessary to close Rikers Island. A broader State authorization of Design-Build was signed at the end of 2019.**

### **Borough-Based Jails**

**I'm pleased to report that the Borough-Based Jails program is on track with procurement, design and construction, supporting a completion of all four facilities and closure of Rikers Island in 2027.**

**We began the required two-step procurement process for this Program immediately after the October 2019 ULURP approval. By March of this year we had a Design-Build team on board for the demolition of a municipal parking lot and construction of new parking and community facilities in Queens. The project is on schedule to be completed by late 2022, just three years after the start of**

procurement. A project of this magnitude would normally take six years or more to complete. So that's a time savings of *at least three years*.

Procurement is well underway for construction of new jail facilities in Queens, the Bronx, Manhattan and Brooklyn and site preparation will be in full swing next year, paving the way for delivery of smaller, more humane facilities to be in place by 2027.

Completing an unprecedented eight-and-a-half-billion-dollar program by 2027 will be historic. It is only because we can leverage the innovation, collaboration and time savings permitted by Design-Build that we can do so.

#### Design-Build Public Buildings Program

Following broader State authorization, DDC quickly took steps to create the capacity to use Design-Build systematically: this included the re-organization and hiring of staff to manage the new program; we retained outside expertise to support us; we trained our project managers, procurement and legal staff; and we developed a toolkit of procurement procedures, contract documents, and project management tools. The City is now completing design-build-specific Project Labor Agreements that will permit a safe and seamless transition into construction. All of

these activities required considerable work and took place during the height of the COVID pandemic.

Several of the two-step RFQ/RFP procurements are close to completion. Our first two projects are operations and maintenance facilities for the Parks Department, serving Orchard Beach and the Rockaways. Work on both projects will commence early next year, and we expect them to be completed almost *three years* ahead of a typical design-bid-build project.

Several more projects are slated to enter the design and construction phase next year as well, with similarly tight schedules. Notably, DDC has taken on a new portfolio of community resource centers. This includes the new Marlboro Agriculture and Education Center, a multipurpose facility featuring a greenhouse in Gravesend Brooklyn; the Mary Cali Dalton Community Center, a Parks facility including an indoor pool on Staten Island's North Shore; and the Shirley Chisolm Recreation Center, a Parks facility long sought by advocates in Flatbush. All will have design-build teams on board next year to begin collaborative meetings with the community and undertake early site preparations.

Our Infrastructure Division is also beginning to roll out Design-Build projects that will focus on programmatic solutions to Citywide initiatives, including building our

**Green Infrastructure Portfolio, an acceleration initiative that was recently included in the City's Extreme Weather Response Task Force Plan; and supporting our massive pedestrian ramp program that aims to upgrade the City's 180,000 street corners for ADA accessibility by 2034.**

### **COVID Response**

**But Design-Build is only one approach – other important alternative delivery methods would allow the City to realize even greater time and cost savings.**

**For example, in 2020, DDC delivered an expansive portfolio of urgent healthcare facilities during the peak of the pandemic using Construction-Manager-As-Contractor, which employs a selection process similar to Design-Build.**

**At the height of the pandemic DDC, its construction managers, design teams and contractors coordinated closely and continuously to complete three large, permanent COVID Centers of Excellence, *within months*. The Centers of Excellence would have taken years to complete under the design-bid-build mandate. But because we could focus on design, construction and delivery, unburdened by layers of bureaucracy, we showed there is a better way.**

**For the City to have a broadly more efficient capital project delivery, it must have access not only to Design-Build, but to tools like CM-As-Manager, CM-At-Risk, Progressive Design-Build, and other permutations of the process tailored to unique demands of site conditions.**

### **M/WBE Performance**

**DDC's M/WBE program remains one of the City's best, and we account for nearly half of the City's M/WBE spend under Local Law 1 from year to year.**

**There will be no drop off in our Design-Build portfolio: in implementing our new Design-Build programs, we have set M/WBE goals of 30% for both the design portion and the construction portion of our contracts to provide more opportunities for M/WBE design firms.**

**Our emergency work during the pandemic delivered high M/WBE utilization rates, sometimes as high as 46%, and we were able to more efficiently employ M/WBE firms as primes and first-tier subcontractors as well.**

### **Cross-Government Effort**

**Finally, all of City government has to be part of the effort to improve delivery; this is not the purview of a single agency or branch of government.**

**For example, we've worked successfully with the Department of City Planning and the Public Design Commission to ensure they can conduct their Charter-mandated reviews effectively and efficiently within the somewhat different structure of Design-Build.**

**We continue to work with OMB for their sign-off to proceed on several steps during and after procurement – tailoring processes to the specifics of the Design - Build schedule.**

### **Conclusion**

**DDC's Design-Build program is delivering on its promise of more efficient selection and delivery. Our top priority for the coming months is to move our portfolio forward and to pass improved, more flexible Design-Build reauthorization in Albany next year. This is essential, or we will again be confined to using the antiquated low-bid model that has burdened the City for decades.**

**Thank you and we are happy to answer any questions you may have.**

New York City Department of Design and Construction List of Design-Build Projects

Division/ Program	Project Name	# of Proposers	Status	Next Steps
<b>Infrastructure</b>	Complex Pedestrian Ramps Installs	12	Shortlisted	Issue RFP
	Lexington Avenue Pedestrian Safety Improvements	10	Shortlisted	Issue RFP
	Green Infrastructure - Gravesend Bay CSO Phase 4	-	Pre-RFQ	Issue NOI
	Deep Sewer Manholes	-	Pre-RFQ	Issue NOI
<b>Public Buildings</b>	Rockaway Operational HQ	17	Shortlisted	Award
	Orchard Beach M&O	18	Shortlisted	Award
	Mary Cali-Dalton Recreation Center	11	Shortlisted	Issue RFP
	444 Thomas S. Boyland Multi-Service Center	-		Issue RFQ
	Marlboro Greenhouse	17		Issue RFP
	Harper Street Admin Building	-		Issue RFQ
	Shirley Chisholm Recreation Center	15	Shortlisted	Award
<b>Borough-Based Jails Program</b>	Queens Garage and Community Space	9	In construction	
	Manhattan Dismantle & Swing Space	3	RFP process	Registration
	Queens Dismantle & Swing Space	5	RFP process	Registration
	Brooklyn Dismantle & Swing Space	5	RFP process	Registration
	Bronx Site Preparation	12	RFP process	Registration
	Brooklyn Detention Facility	-	RFQ	Shortlist
	Manhattan Detention Facility	-	RFQ	Shortlist
	Queens Detention Facility	-	RFQ	Shortlist
	Bronx Detention Facility	-	RFQ	Shortlist



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**Testimony of Jonathan Rosenberg**  
**Assistant Director for Budget Review, New York City Independent Budget Office**  
**To the New York City Council Subcommittee on Capital Budget**  
**Regarding Intro. 2328 - Reporting on Design-Build Contracts**

**October 20, 2021**

Good morning Chair Rosenthal and members of the Subcommittee on Capital Budget. I am Jonathan Rosenberg, Assistant Director for Budget Review at the New York City Independent Budget Office (IBO). Thank you for the opportunity to testify today regarding Intro. 2328, which would require the Administration to provide reports on the status of the city's design-build contracts.

IBO's role is to provide nonpartisan information on the city's budget to members of the City Council, other elected officials, and the public. IBO does not generally make policy recommendations except in the case of proposals affecting budget process. As such, we generally support efforts to increase government transparency, particularly when it provides information in a straightforward, easy to understand form. This proposed legislation has the potential to do just that, although we have several suggestions to make the information provided more useful to the City Council and others who monitor and analyze the city's capital budget.

For many years, those involved in New York City's capital construction program lobbied Albany for authorization to use the design-build method to deliver city-funded capital projects. Proponents of employing design-build in New York City's capital program see it as a way to save money and enable agencies to complete projects in a timelier manner, although research on the effects of this policy—particularly for infrastructure projects—remains inconclusive. In December 2019, Governor Cuomo signed into law S6293A, authorizing the city's use of design-build for certain types of capital projects.

IBO appreciates the Council's effort to gain a better understanding of the city's design-build program. In order to provide policy makers and researchers with the data necessary to analyze the advantages and disadvantages of design-build, we recommend the following changes and additions to the proposed legislation.

**Pre-Award Phase:** The legislation should require additional information on the pre-contract award phase, including information about the responses to the Request for Qualifications and Request for Proposals, as well as a summary of the final scores for all bids that that entities submitted. This information should be provided both at the project level and aggregated across projects by year.

**Agency Involvement:** Intro. 2328 calls for the reporting on the “agencies... involved in such projects”. We suggest this section of the legislation be clarified to require the new report identify the managing agency for each project, as well as the project’s client agency.

**Project Milestones and Cost Projections:** In order to allow for a rigorous evaluation of design-build, the legislation should require reporting of detailed information on original and current project milestones and cost projections. Original cost estimates should be presented by project phase or at some other relevant level of granularity to allow for comparisons across projects. Each phase’s original cost estimate should have a corresponding current estimate or actual cost (in the case of a completed phase). Additionally, details on original milestones for each project phase should be included along with current updated milestones or actual milestones (again, in the case of completed phases). Inclusion of this data would allow for a more comprehensive analysis of design-build project delivery, particularly in comparison to similar non-design-build projects.

**Detailed Methodology of Estimates:** The legislation calls for the Administration to provide estimates of how much time and money have been saved by the use of design-build for capital projects. Without a detailed presentation of the methodology by which cost savings are estimated, however, it is impossible to make meaningful comparisons between projects and across project delivery types. IBO suggests that the legislation either describe the methodology used to produce the estimates or, at a minimum, require the Administration provide information and supporting data for the estimation methods used for each project.

**Minority and Women-Owned Business Enterprise Utilization:** The legislation could also be strengthened by requiring information on the number of design-build contracts awarded to city or state registered minority- and women-owned business enterprises (M/WBE). At the project level, it would be useful to collect information on the contractor’s M/WBE participation goals and utilization plan at the time of contract award, as well as updates on current progress towards meeting those goals.

As you know, Section 13 of the 2019 state legislation authorizing the use of design-build in New York City requires that an annual report be submitted by the city containing information on each design-build contract procured pursuant to the act. The report is required to contain: a description of each such design-build contract; information on the procurement process, including a listing of responding entities that demonstrated the capability to perform the contract; the total cost and estimated savings resulting from each design-build contract; and the participation rate of and total dollar value of payments to M/WBEs under design-build contracts. Legislation passed by the Council should build upon the data and reporting already required by the existing state legislation.



*American Council of Engineering Companies of New York*

**Testimony - October 20, 2021**  
**Subcommittee on Capital Budget**  
**Int. No. 2328 (Design-Build reporting by NYC)**

Founded in 1921, ACEC New York serves as the voice of the consulting engineering industry. Our association represents around 300 member firms and affiliates, employing thousands of people throughout New York who engage in every discipline of engineering related to the built environment. This includes the civil, structural, mechanical, electrical, environmental, and geotechnical fields. Our members provide professional services to public entities including NYC DOT, DEP, DDC, EDC, NYCHA, SCA and Parks Department.

We thank the Committee for this opportunity to comment on Intro. 2328, which would require the Mayor's Administration to report publicly each year regarding the use of Design-Build (DB) by City agencies.

ACEC New York recognizes traditional Design-Bid-Build (DBB) procurement is still used for the majority of City projects. We acknowledge DB, as an alternative, is being piloted by agencies on select projects of various types, sizes, and complexity. However, it is important to note that it would be difficult for the City to provide a meaningful analysis of DB use at this stage due to the City's limited use of DB at this time.

With this said, ACEC New York's members have a great deal of experience and knowledge regarding DB, as well as all other procurement methods, based on extensive work delivering projects for public entities across New York, the country, and internationally. In 2018, ACEC New York developed a [Design-Build position paper](#) describing factors Owners/agencies should consider when deciding whether DB is or is not appropriate for use on a given project. (note: our association is in process of updating this paper)

In sum, DB is a useful procurement method that should be available to agencies. While DB is not appropriate for use on every project, and although details of how DB is implemented can vary and are fundamental to project success, it is nevertheless a useful tool that should be available to public entities for use in certain project circumstances.

It is critical that the Council understand that the benefit of DB is not only, or even always a financial savings. Rather, when used correctly, it can provide certainty to the City, and incentivizes innovation and efficiency. The City, might, for a piece of critical infrastructure, make rapid completion the priority. Or, for complex projects, innovative solutions might be critical.

In order for DB to be successful, significant work needs to be done up-front to define the scope of a project's work. Unless the City is able to properly document existing conditions and the required outcome, DB can be as susceptible to overruns as any other method.

As previously stated, DB is recommended for use on projects that meet certain characteristics, but not on all projects. When DB is misapplied, for instance, on a project that contains substantial unidentified risks

(such as insufficiently understood soil conditions) or where frequent detailed reviews and approvals are required by the agency or multiple agencies (which should be obtained by the project sponsor in advance, or not appropriate to the DB model), then the result could be higher litigation risks, higher insurance premiums and, therefore, higher bid prices or a reduced universe of interested teams.

Meanwhile, DB is being piloted by various City agencies on projects of different types and the insurance market is currently evolving. If the City seeks an objective evaluation of DB, it should monitor insurance premiums and litigation on these projects over time, and from one agency compared to the next. While these are not intended to be a means of assigning fault, they are nonetheless real factors in assessing the proper application of DB. They are important factors in evaluating how successfully agencies are utilizing any procurement method, and especially for DB, being as novel as it is for City agencies.

To this end, we recommend that the bill require the City agencies to report whether any active DB project is experiencing or anticipating claims exceeding 10% of the contract value. Although it will take time for the City to get a true sense of these actual costs, by accounting for these factors, the City can gain a better understanding of how the DB process is working among the various city agencies

We understand the purpose of Intro. 2328 is to require the Mayor's Administration to provide the City Council with information so that it can conduct oversight of the City's deployment of DB. We appreciate the Council's recognition that DB is a procurement tool that requires evaluation to ensure it is implemented appropriately.

To support this goal, if the legislation is advanced, we make the following observations and recommended bill amendments:

- We have concerns with the language in item # 6, which requires the City to report: "An estimate of how much time and money has been saved by the use of design-build for such projects." We understand the intent of this required data is to evaluate whether DB use has been successful in terms of realizing cost and schedule savings, compared to some baseline.
  - First, our concern is that the bill language does not require impartial evaluation. The language assumes DB use has resulted in savings, which is not always the case.
    - We recommend the language be amended to provide objective evaluation without a predetermined conclusion, as is implied by the current language.
  - Secondly, evaluation of DB cost and schedule results requires a baseline for comparison. We note it is not practical or meaningful to compare DB use on a given project to a hypothetical scenario in which DBB had been used on the same project instead, as this exercise would be highly theoretical.
    - We recommend the language be amended to specify that the baseline for comparison on a given DB project's actual schedule and cost, be the one initially proposed/anticipated.
  - Examples of factors that affect cost and schedule on a DB project include:
    - how often the project schedule changed;
    - how often the budget changed;
    - whether the changes were agency-initiated;
    - how often *design changes* impacted cost and schedule, vs *weather or material delays*.
- ACEC New York has a *Design-Build Steering Committee* comprised of professionals with much experience on DB projects. We would be happy to convene a meeting between City Council representatives and this Committee to discuss reporting item #6 and metrics that could be used for a more-objective evaluation of cost and schedule on DB projects.

- Finally, for the City to provide a meaningful analysis of agency DB use will likely require considerable resources by the given project's consultants or City personnel. The City should consider this, and if this assessment is determined to be a worthwhile use of resources, then the City should budget for those additional resource needs accordingly.

**For further information please contact:**

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## **THE GENERAL CONTRACTORS ASSOCIATION OF NEW YORK, INC.**

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**Testimony of Felice Farber**  
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**New York City Council Subcommittee on Capital Budget**  
**Intro 2328 – Reporting on Design Build Contracts**

The General Contractors Association of New York (GCA) represents the unionized heavy civil construction industry in New York City. The GCA's 300 members employ over 25,000 professional and trades workers building New York City's roads, bridges, transit systems, parks, schools, water and sewer systems, and building foundations. GCA members have extensive experience with design build procurements both in New York and across the country.

We support efforts to bring transparency to the City's procurement process and to gain clear and accurate information about various procurement tools.

To improve Intro 2328 and ensure accurate reporting we recommend that item #6, an estimate of how much time and money has been saved by design build, be amended to require objective reporting on the methodology for calculating costs and time. To obtain an accurate and useful accounting of any cost and time savings it is important to know how the information is calculated and to what it is compared. Without information on the methodology, along with a comparison of the full costs for design bid build projects, it will be difficult to obtain any meaningful comparisons.

Design build procurements transfer responsibility for many elements of design, construction, and oversight from the city to the design build team. Some of the services transferred from the city to the design build team include not only design services, but also inspection services, and QA/QC functions. Any comparison of costs should make sure to fairly account for all the elements provided by the city under traditional design bid build projects that are transferred to the design builder. This will help provide a clearer understanding of the benefits of design build procurement and may guide the city in making determinations on the types of projects that are most suitable for design build.

Design build is an important procurement tool that when used appropriately can help bring innovation to project design and delivery for the right types of projects. If not done appropriately design build can be as susceptible to cost increases the same as any other project. Understanding and measuring the factors that contribute to cost increases, such as the amount of risk transferred to the design builder and whether a fairer allocation of risk to the party best able to mitigate and avoid the risk can help bring down project costs, can be a useful exercise.

We welcome the opportunity to engage in a discussion with the Council Members and their staff about design build procurements.



**THE NEW YORK ROAD CONTRACTORS' ASSOCIATION INC.**

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The introduction of the recent Design-Build (DB) initiatives for New York City construction projects can provide many benefits to both the City of New York and its taxpayers when utilized and applied properly. The more complex the project, the more benefits are realized with the introduction of new technologies and construction techniques to save time and costs, which is the at the root of the DB approach. However, introducing this procurement format in an economic recovery seems counterproductive to expediting projects to aid recovery. This is evident in the recent application of the DB initiatives to several simple infrastructure construction projects as part of the New York City Public Works Investment Act, as this poses a detriment to the economic recovery of New York City in the wake of the COVID-19 pandemic and to its future economic stability, as well as resulting in wasting taxpayer money and time through prolonged project completion times.

Recently, the New York City Department of Design and Construction (NYCDDC) introduced a DB initiative for several infrastructure projects, citing a desire to achieve excellence in design and construction across its portfolio as part of their “Project Excellence” program. One of the goals of Project Excellence is to ensure conscientious attention to schedule and budget to ensure that public funds are well spent, thus serving the community. However, the recent application of the DB approach to two of the recently advertised simple infrastructure projects (HWP20MXQC, Construction of Non-Standard Complex Pedestrian Ramps, and HWMMLXAV, Lexington Avenue Pedestrian Safety) under the current administration are in direct conflict with those goals, as this approach will result in additional costs as compared to the savings that the City normally realizes utilizing a competitive bidding process, as well as protracted times to commence and complete work.

The economic impacts of the DB format for recent infrastructure projects are staggering when compared to projects that have recently been released and bid through competitive bidding, low bid wins format. In the 2021 calendar year, the NYCDDC has released very few infrastructure projects under the competitive bidding format that have resulted in low bid proposals well below the City’s engineer’s estimate:

<b>Project</b>	<b>NYCDDC Engineer’s Estimate</b>	<b>Lowest Bid</b>	<b>Savings to City</b>	<b># of bidders below the City Engineer’s Estimate</b>
HWMWTCB2	\$21,056,856	\$19,757,444	\$1,299,412	2
SER200636	\$7,655,058	\$5,760,000	\$1,895,058	4
SER200232	\$5,620,105	\$4,171,815	\$1,448,290	9
SER20079	\$12,367,365	\$11,678,901	\$688,464	2
HWPLZ015M	\$8,642,512	\$4,900,335	\$3,742,177	14
EC-SEKN22	\$8,848,265	\$5,953,910	\$2,894,355	3
EC-SEKS22	\$9,099,765	\$7,722,722	\$1,377,043	2
SELCDDC10	\$4,000,000	\$4,043,816	(\$43,816)	**Specialty work – only 2 bidders
BBJ-QTWM	\$8,678,006	\$6,382,584	\$2,295,422	11
EC-SEQN22	\$9,459,800	\$6,531,181	\$2,928,619	3
EC-SEQS22	\$11,540,970	\$9,009,545	\$2,531,425	2
HWS2019M	\$2,118,000	\$1,796,990	\$321,010	1
EC-LC22A	\$10,073,888	\$9,359,396	\$714,492	1
HWMWTCB6	\$6,900,130	\$6,197,469	\$702,661	6
EC-SEX22	\$7,497,250	\$6,741,116	\$756,134	3
EC-GUN22	\$10,318,605	\$10,882,920	(\$564,315)	**Specialty work – only 1 bidder
EC-SER22	\$6,747,910	\$5,768,483	\$979,427	3
<b>TOTAL</b>	<b>\$150,624,485</b>	<b>\$126,658,627</b>	<b>\$23,965,858</b>	<b>15.9% savings</b>



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Within this calendar year, the City has saved almost \$24 million by utilizing the low bid, competitive bidding format. By contrast, while the City's estimate for the recently published DB project, HWP20MXQC is between \$6M-\$7M, it is anticipated that the final cost to the City will be much higher. Had this project been released under the competitive bidding format, it is anticipated that the low bid would be under \$3M. The same holds true for the other DB project. As evidenced above from the most recent competitively bid projects, if the NYCDDC returns to the competitive bidding format, the money that is saved will free up construction funds to allow for the bidding of more infrastructure projects and the employment of hundreds of workers on those projects, thus revitalizing the economy and instilling a sense of stability and security when this City needs it most.

From a scheduling standpoint, it is evident that the protracted qualification and approval processes in the DB approach when applied to infrastructure projects delays the projects' commencement and overall completion dates. As an example, we once again turn to the two NYCDDC Design-Build infrastructure projects, which were released to accept Requests for Qualifications (RFQ) in the first quarter of 2021, and for which the City estimates that notices to proceed for these projects will be issued sometime in the first quarter of 2022, one year after their initial release. We inquired about the progress of these two projects, and where they currently stand in the DB process, and we were informed that neither project has developed any movement since the selection of the limited "short listed" proposers months ago. This is consistent with our argument regarding delays due to execution by DDC. This is largely due in part to the fact that the DB approach has, as part of its processes, lengthy "short-list" and Request for Proposals (RFP) phases. Conversely, had these two projects been released by the City under the low bid, competitive bidding format in the first quarter of 2021, it is anticipated that the notices to proceed for both projects would have been issued in the third quarter of 2021, thus allowing for contract commencement and "boots on the ground" approximately six months earlier than the same projects bid using the DB format.

If the City released these jobs in the competitive bidding format instead of DB format, the City would have sustained and augmented jobs on critical infrastructure projects at a time when it needs this recovery the most. The majority of infrastructure projects do not need, nor do they derive any benefit from, the application of a DB approach, as the projects that are described above are considered "run of the mill" projects for which established standards and designs have already been developed and provided by the City for the implementation of the desired final product. However, the DB approach does have its place where it can achieve its desired results. Projects that would benefit the most from the DB approach would be those projects that involve a high level of complexity, such as the East Side Coastal Resiliency (ESCR) projects for which value engineering solutions can be applied, resulting in economic and time savings, especially considering the enormous scale (\$1.5 billion) of the last two ESCR projects that were released for bid.

While it is evident that the application of the low bid, competitive bidding process would save significant taxpayers' dollars and result in projects commencing and completing in a timely manner, the beneficial impacts thereof can only be realized if the City releases projects for bid and mobilizes the construction budget. However, we have not seen any substantive action taken by the City to utilize the money in the budget and get the most value out of that money in the current fiscal year. We understand that the current infrastructure budget for FY 2022 received a forty (40) percent decrease from \$1.7 billion to \$1 billion. Only a fraction of that budget, \$205 million (\$151 million in infrastructure projects and \$58 million in structures projects), has been released for bid, with approximately \$85 million of that being allocated to emergency water and sewer contracts that must be renewed every year in order to have a contract in place for emergencies. Therefore, there is approximately \$791 million not being presently utilized in the infrastructure budget, and when considering the aforementioned savings



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realized in the current low bid, competitive bidding market, the City is missing out on approximately \$126 million in savings by simply doing nothing.

Now, in order to realize these savings, the City must mobilize the money in the budget and release projects for bid, and this must be done on an expedited basis. In order to have the budgeted money registered and utilized by the end of FY 2022, these projects would need to be out for bid by February 2022. That would require the City to release approximately \$200 million in projects each month for the next four (4) months.

In essence, if the primary goals of DB are to benefit the community by delivering projects within budget and in a timely manner, then it will have failed at achieving that goal to the tune of millions of dollars and months of delays, thus having the exact opposite effect of its intent. The impacts of not achieving the DB goals are exacerbated even more by not meeting the budgetary goals given to DDC, which will result in stalling the safety and economy of NYC further, at a time when we need it the most. Therefore, we believe that it is prudent for you to urge the NYCDDC to revise their stance on which projects should be competitively bid to benefit the City and its taxpayers, who are the very people that these projects are intended to serve.

Thank you.

Sincerely,

New York Road Contractors Association  
Raymond J. Rudolph  
President