1. Procurement Reform & Issues
   - Parks Department - Section 8.03 Indemnification

Ken Fisher reported ACEC New York was informed by a member firm that Parks Department used problematic indemnification language in a recent contract, posing an insurability issue. Parks believed they were using standard City contract language. However, in 2011, ACEC New York negotiated a different version of this language with Corp Counsel to achieve consistency across City contracts and to address the insurability issue. Learning of the inconsistent Parks language, staff collected recent samples of DOT, DEP, DDC contract language and compared it with the Parks contract. We found DOT, DEP and DDC were using the agreed 2011 language. Parks was an outlier. Ken informed Parks their language was inconsistent with other agencies and provided these examples to them. Parks acknowledged ACEC New York was correct, the language in their recent contract was inconsistent with the standard City language used by other agencies. Going forward, Parks and the other agencies should continue to use the 2011 agreed language. If a member sees a contract with inconsistent language please inform staff.

Parks Department - recent contract using problematic language:
Section 8.03 Indemnification
To the fullest extent permitted by Law, the Contractor shall defend, indemnify and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), or judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

2011 Language agreed between ACEC New York and Corps Counsel:
Section 8.03 Indemnification
The Contractor shall defend, indemnify and hold the City, its officers and employees harmless from any and all claims or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City, its officers and employees may be subjected or which it may suffer or incur allegedly arising out of or in connection with any operations of the Contractor and/or its subcontractors to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this Agreement or of the Laws. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City
shall be partially indemnified by the Contractor to the fullest extent permitted by Law. In the event the Contractor fails to provide a defense of the City of a claim upon demand, the Contractor shall reimburse the City for all reasonable attorney's fees and expenses. Notwithstanding the above, where a claim relates exclusively to the negligent performance of professional services, the Contractor is not obligated to provide the City or its officers and employees with a defense or reimbursement for attorney’s fees.

- **PASSPort update**
  - **MOCS presentation** – December 10

  Ken reported Jennifer Geiling, Deputy Director of the Mayor’s Office of Contract Services gave a presentation overviewing PASSPort Release 3 at ACEC New York’s membership meeting and luncheon. MOCS said Release 3 is expected to launch around April 2020 and welcomed member firms to contact them with questions at Help@mocs.nyc.gov. Ken noted we recently heard reports about potential challenges to the initiative’s implementation. Bill Murray reported in a December 18 meeting DEP’s ACCO informed the DEP Committee that the agency is not prepared at this point to fully implement Release 3. The agency needs to figure out how to re-configure internal workflows and might implement Release 3 using a limited number of contracts (ie. not all contracts will go through PASSPort immediately).

2. **NYC Legislation & Rules**
   - **Local Law 174 (MWBE goal update) – effective mid-April**

   Bill reported Local Law 174 was recently enacted into law. This updates Local Law 1, which is the basis for the City’s MWBE goals and program. One significant change is that Asian-Male owned firms will become eligible in terms of their participation on agency contracts counting toward achieving MWBE goals. ACEC New York asked Jonnel Doris, Director of the Mayor’s Office of MWBEs when and how this change will be implemented. Jonnel answered the change will take effect in mid-April and an updated version of Schedule B will be included in RFPs to reflect the changes in the law. For contracts awarded based on the updated Schedule B, agencies will be provided revised guidance that subcontracts awarded to certified M/WBEs will count towards the achievement of participation goals, including the utilization of Asian-owned firms for design contracts. Rich Peters suggested ACEC New York share this information with members and include a list of MWBE member firms.

   - **PPB rule change on bids, proposals, MWBE – effective January**

   Ken reported the NYC Procurement Policy Board (PPB) adopted a rule change which took effect this month. Two changes to the rules relevant to procurement of design services are:
   1) In ranking proposers for consultant services by technical merit, agencies must provide a point preference of 5% of the total technical points earned in the evaluation of its proposal to all primes that are M/WBEs. Agency CPPOs have discretion to waive this requirement. The point preference, if any, will be included in the RFP.
   2) The rule increased the cap on projects eligible to go through the City’s MWBE Non-competitive Small Purchases program to $500k (used to be $150 k).

   ACEC New York testified in opposition to the rule change at PPB’s November 12th hearing as the rule undercuts Qualifications-Based Selection (QBS) in the procurement of professional design services. The rule impacts City procurements more broadly beyond just design services - for construction services there is a higher point preference at 10%. At the PPB hearing, several MWBE organizations and businesses testified in support of the rule change as their experience as substantial subs was not credited as sufficient for them to be selected as primes.

   - **Local Law 97 (Building Retrofits)**
     - **Advisory Board & Reference Guide**
Bill reminded the Committee Local Law 97 was enacted in May and it will require building retrofits in the years to come. The law established a Climate Advisory Board to give advice and recommendations to the City to optimize implementation. Last year, ACEC New York successfully advocated for the Board to include a Professional Engineer. In December, the association was notified Scott Frank of JB&B, chair of the Metro Energy Code Committee, was appointed to serve on this Board. This is good news. Through Scott, the association will have a seat at the table as the law is implemented.

- **Intro. 1816 (NYC Energy Conservation Code) – introduced Dec 10**
  Bill reported legislation was introduced to update the City’s Energy Conservation Code and a hearing is scheduled for January 27. The Energy Code Committee reviewed the bill and had minor technical comments. Written testimony is being developed for submission to the Council. ACEC New York is partnering with NYC DOB on a January 21 program “Introducing the 2020 NYC Energy Conservation Code” to review changes to the Energy Code.

- **Intro. 1481 (Plumbing Code) – passed Dec 10; effective once Construction Code updates enacted**
  Bill reported the City Council passed this legislation in December. It will take effects once all Construction Code updates are enacted by the City. At the hearing in September, Ed Bosco of M-E Engineers, the association’s Overall DOB Liaison, testified in support of the bill on behalf of ACEC New York and Phil Parisi of MG Engineering, chair of the Code Revision Plumbing Technical Committee, testified in support on behalf of the committee.

- **DCP proposed policy change on Mechanical Voids in Central Business Districts – Oct 3**
  Ken reported elected officials are using this issue as a vehicle to deter construction of what they consider excessively tall buildings. The issue is on two levels.

City: In May, the Department of City Planning (DCP) and City Council enacted a Zoning Text Amendment regulating “mechanical voids” in buildings in some districts within the City. The City is now looking to expand this to Central Business Districts. Update after the committee meeting: On 1/9/20 staff was contacted by the City Council’s land use division as they are seeking information from mechanical engineers. Staff will coordinate a call between the City Council analyst, Ed Bosco of ME Engineers (Overall DOB Liaison) and Dave Tanenbaum of Lilker (chair, Mechanical Code Committee.)

State: We expect bill A.5026 to be reintroduced this legislative session by state legislators. The bill imposes floor height limits and other measures. ACEC New York, through our NYS Government Relations Director Campbell Wallace in lead, is opposing the bill. We are also engaging partners including AIA, who is opposed to the bill.

Bill reported the NYC PAC achieved its $15,000 annual fundraising goal by raising $15,200 from 102 individuals of 36 firms in 2019. The 2019 contributors list and NYC PAC Final Report can be viewed on our website. Last week, the 2020 NYC PAC fundraising effort launched and solicitation letters were mailed to around 300 members. To contribute, contact Bill Murray, NYC Director of Government Relations at 212-682-6336 or bill@acecny.org

4. **NYC DOB**
- **Design Professionals Industry Meeting with Commissioner La Rocca – Dec 9**
  Bill reported Commissioner La Rocca held her first Design Professional Industry Meeting. Vicki Arbitrio noted attendees included representatives from ACEC New York, New York State Society of Professional
Engineers, AIA and the Architects Council. Topics discussed included DOB NOW: Build and DOB’s new Office of Building Energy Performance.

- **DOB NOW Industry Engagement with Structural Engineers – Dec 18**
  Bill reported DOB held an engagement session with Structural firms focused on DOB NOW filing issues. A main issue has been the new system effectively forces engineers to certify work outside of their area of expertise (which creates liability concerns). This meeting was held in response to feedback submitted to DOB by ACEC New York and SEAoNY.

5. **NYC Update**
Ken reported the 2021 Citywide primary elections, including the Mayoral election, have been moved from September to June. Over the past year there have been anti-development forces in the political environment but by the time of next year’s election it is unclear whether candidates who differentiate themselves as anti-growth will still be in trend. It is possible there will be “smart growth” candidates advocating a robust capital plan and sustainability at the same time. The association should watch for this. Over the first 6 months of 2020 staff should start to develop a NYC PAC strategy for this election cycle in terms of which City Council members are remaining in office, which might be willing to be a champion for the industry etc. In the second half of 2020 the NYC PAC should start to implement the strategy.

6. **NYS**
   - **State Leg Update**
     Campbell Wallace reported on state legislative priorities. This session the association is pushing for the Geology Clarification bill (A.7865 Englebright /S.6084 Stavisky), ESOP Expansion (A.3514 Lupardo / S.2709 Kennedy) and to expand QBS to local projects. We continue to advocate for fair and reasonable defense and indemnification requirements in State and Municipal contracts. In terms of bills we are opposing, we are pushing against the state’s floor height (“mechanical voids”) legislation A.5026 and the Spyware bill. Campbell said he is meeting with allied Design Professional groups including AIA next week and the mechanical void bill is on the agenda for discussion. He noted the NYS Design-Build bill was signed by the Governor and is now law. Bill will coordinate a call between Milo Riverso (Design-Build Committee chair), Ray Daddazio (Chair-Elect, State Board) and Maxine Hill (MTA Committee chair) to discuss 1) whether the association’s white paper needs updating and 2) a request from NYC Transit for recommendations.

7. **New Business**
No new business was raised.

**Submitted by:**
Bill Murray
NYC Director of Government Relations
January 14, 2020
(all minutes are posted on the Members Only section of our website)

C: Jay Simson, President & CEO
   Campbell Wallace, NYS Director of Government Relations
   GA Chairs/NYC