



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.

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