BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON HIGHER EDUCATION

PUBLIC HEARING

TO EXAMINE ALTERNATIVE PROJECT DELIVERY METHODS

Van Buren Hearing Room A - 2nd Floor
Legislative Office Building
Albany, New York

January 9, 2012
12:00 p.m. to 2:00 p.m.

PRESIDING:

Senator Kenneth P. LaValle
Chair

SENATE MEMBERS PRESENT:

Senator Toby Ann Stavisky (RM)

Senator Lee M. Zeldin (RM)

Senator David Carlucci

Senator Kevin S. Parker

SPEAKERS:	PAGE	QUESTIONS
Thomas P. Quaranta, FCMAA VP, Program & Construction Mgmt. Practice AECOM	6	18
William Gillbane III Vice President Gillbane Building Company	28	35
Burton L. Roslyn, AIA President Roslyn Consultants	39	45
Ed Farrell Executive Director AIANYS	39	45
Richard Thomas Vice President Design-Build Institute of America	48	58

SENATOR LAVALLE: Okay, are we all set?

Okay, I'd like to begin.

Good afternoon.

First, let me introduce people on the panel here.

To my left is the ranking members, Senator Toby Stavisky; to my right is Senator Lee Zeldin;

Going back to my left is Senator Carlucci.

We're here today to discuss the benefits of alternative project-delivery methods.

I'm sponsor of the bill, and -- that is currently in the Education Committee. We're trying to get that bill reassigned to the Higher Ed Committee, because, in the Assembly, it is in Higher Education.

This bill, I think, is very, very critically important at this time, because we're looking for ways to streamline processes.

And I know the Governor is very interested in this.

This would allow our State agencies to utilize alternative methods, such as design-build and management-at-risk, for construction, reconstruction, alteration, repair, improvement, of

State buildings.

And today we're going to have a dialogue. We're going to hear from individuals who will, hopefully, tell us that this methodology is going to yield cost savings and increase project efficiency.

We also, hopefully, will hear, and we need to explore, what are the disadvantages of this methodology.

We're holding the hearing this early in the process because we want to make sure -- this has very far-reaching impact across state government, and also local government, in terms of school districts.

So, we need to know if there are any problems with the bill, what changes do we need to make, so that we can move this as quickly as possible.

Obviously, as the sponsor, I think it's a great thing. I think its time has come. I think it has great potential to save money and have project efficiency.

Senator Stavisky.

SENATOR STAVISKY: I thank you, I thank you on behalf of all of our colleagues, for calling the hearing.

And I think it's important that we get

started early because I think that's the key to resolving disputes; we try to bring people together, and come out with almost a synthesis of everybody's opinions.

So, I look forward to hearing what the various stakeholders have to say.

SENATOR LAVALLE: Senator Zeldin.

SENATOR ZELDIN: Well, thank you for the invitation. It's been an honor to serve on the Higher Education Committee with you.

I had the honor of working for Senator LaValle for a few years, so, to be next to you here for this hearing is great.

Welcome to all of my colleagues, back for a new legislative session.

And, thank you all for attending.

SENATOR LAVALLE: Senator Carlucci.

SENATOR CARLUCCI: Thank you, Chairman.

I look forward to working with you and the members, and the people here, to really come up with the best idea possible on how we can increase efficiency in New York State, and I think this is a great way to do it.

I look forward to starting early on this so we can really get this package done.

So, thank you, Senator LaValle.

And, thank you to the rest of the members of the Committee.

SENATOR LAVALLE: I'd like to, both, introduce, and ask if he has any remarks, Senator Parker.

SENATOR PARKER: Thank you, Senator LaValle.

We've got to the part of the program where everything has been said, but not everyone has said it.

But, I do want to thank Senator LaValle for including me, and always kind of being bipartisan in how he does this.

I think that this legislation is a good start, in terms of talking about best practices, especially in light of the Governor's "State of the State" last week, and all of the kind of construction projects he's suggesting, that this might become a best practice.

So, I'm looking forward to hearing the testimony, and moving this bill forward.

SENATOR LAVALLE: Thank you, Senator Parker.

Our first person to testify is, Thomas P. Quaranta, vice president, program and construction management practice, AECOM.

THOMAS P. QUARANTA, FCMAA: Good afternoon.

SENATOR LAVALLE: Put the mic nice and close to you; speak up, so the people in the back of the auditorium can hear you.

THOMAS P. QUARANTA, FCMAA: Thank you for the invitation to participate in this hearing today.

Having a choice in how a project is delivered is a benefit for project owners.

And by "project owners," I mean, the entities funding a project, sponsors, State agency.

In choosing how a project is delivered, certain elements should be considered, such as, the owner or State agency's project priorities, their internal organization, and owner risks.

In determining the method to deliver a project, it should be noted that there is no one best method overall, as each project is unique with its own characteristics.

Results and benefits of a particular delivery that have been experienced by a certain owner on past projects may not be the same for a particular State agency embarking on their respective project.

A State agency's project priorities can vary, project to project, whether they be schedule, access to funding, innovative technologies and systems,

tolerance for risk, or community and local business concerns.

In selecting the delivery method, the internal organization of the owner or State agency must be examined as it pertains to their relationships with the project stakeholders, and, very importantly, their ability to make timely decisions.

In determining a project-delivery method, complete risk transfer is neither required nor suggested.

Industry movement to optimize project-delivery models and to introduce alternative project delivery presents a new array of risk considerations, most times, not previously faced by agencies: Considerations, such as, the role of the State agency on that project, and, the use of new contract provisions for design and construction.

Two delivery methods which are alternative to the traditional design-bid-build delivery are, design-build, and, construction management-at-risk; or, "CM-at-risk."

Design-build delivery was used, for examples, on the new Meadowlands Stadium project for the New York Jets and New York Giants.

A CM-at-risk is being used, for example, on certain projects at JFK Airport right now.

There are advantages and disadvantages to both methods.

When a project requires an aggressive construction schedule for completion, design-build should be considered because the delivery employs fast-tracking design and construction overlap in phases.

Design-build works well when team members -- the owner, the designer, the contractor -- have had experience working together. The likelihood of not understanding owner needs is diminished, thus increasing the likelihood of project success.

An example of this was on AECOM's Bay Street connector project in Lower Manhattan.

The advantages for implementing design-build are that this method accelerates project completion; and, thus, reduces cost-escalation risk.

Design-build aggressively develops a cost-effective design.

There are single-point responsibility within the design-and-construction team: facilitating communication with ownership.

This process, however, thus creates a greater

degree of responsibility and liability with respect to customer satisfaction.

As the contractor and designer are one entity working together, though they are most likely comprised of numerous firms, contractor contract changes due to design errors, omissions, and inconsistencies are minimized.

Design-build introduces the team members at the early stages of a project, and encourages coordination of goals and objectives.

Early involvement in the project by all team members allows for well-defined roles and responsibilities among the team members, thus minimizing disagreements during the course of the project.

That leadership roles be understood and coordinated as early as possible facilitates project execution.

As the project team is assembled early on in the project, strategies, in turn, can be developed early on, to identify and address costs and schedule challenges associated with the project.

Establishing realistic budget, work sequences, and schedules early in the game, as well as coordinating constraints with design process,

strengthens the chances for project success.

The design-build process allows owners to focus on their areas of expertise instead of responding to project activities covered by the design-builder; for example, cost and schedule control.

The disadvantage of design-build, or any delivery alternative to the traditional method, is that, many times, ownership is not familiar with its execution. There is less owner control over project scope and execution, as the project is time- or schedule-driven.

The design-build methodology allows the increase in risk through cost and schedule guarantees offered by the design-builder, to be offset by the decrease of risk, many times, associated with tight management controls imposed by the owner.

In design-build, there must exist a significant amount of commitment to trust and teamwork in the process.

If such is not exhibited among the team members, the chances for success are decreased significantly.

Some argue that design-build delivery curbs

innovation of the architectural and engineering design process because depravity between designer and the owner does not exist in this method.

Such an outcome can occur; however, proper identification, understanding, and management of the project priorities mitigate the risk of stifling creative design.

Carefully assembling the design-and-construction team, and effective use of team building, most likely will result in identification and understanding of common project goals; thus, minimizing compromises.

Concern has been expressed that communications between designer and owner are suppressed under design-build. This can occur particularly when the design expertise does not exist within the construction firm.

This can impact the quality of the design to reflect the true needs of the owner, and has potential to adversely affect the ability of the designer to advance their long-term relationship with the owner.

Partnering and other team-building techniques will, however, maximize communication levels among all project participants.

There is also a concern, at times, that the assurance of quality control is not obtained for work in place, as the design is not well defined in detail when a design-builder is selected.

Streamlining the traditional design-and-construction process, however, does not have to compromise quality if the process combines common sense with procedures.

Another concern that has been expressed, is that small contractors may be limited in their ability to compete in design-build, as, many times, they do not have the level of experience of larger, long-established firms who generally are awarded design-build contracts.

At AECOM, we're seeing as much, if not more, small businesses participating in alternative delivery.

The keys to success of design-build:

Establishing trust among the project members. Design-build should not be considered if this is not evident;

Establishing a dispute-resolution process, to ensure cohesiveness of the team;

The owner must have an effective process in place to explain its program requirements;

Owner expertise should be used when it exists; and, if not, outsourcing such expertise should be undertaken as appropriate;

Most importantly, the owner must be quick to respond to issues when they arise, and their input is needed, as they must be flexible with procedures, in achieving the desired outcome.

In other words: An owner must be willing to do things differently.

CM-at-risk, in many ways, is similar to the traditional design-build -- design-bid-build delivery method, in that, the construction manager acts as a general contractor during the project's construction phase, and the owner contracts directly with the designer.

In CM-at-risk, the construction manager holds the risk of subcontracting the work with trade contractors, and guarantees project completion for a fixed negotiated price following completion of the design.

During the preconstruction phase of the project, however, the construction manager plays the traditional construction-manager role, agency CM role, of advising the owner, and providing to the owner, professional management assistance relative

to schedule, budget, and constructability.

Like design-build, CM-at-risk offers the opportunity to begin construction prior to completion of design. The construction manager can bid, and subcontract segments of the work in accordance with the overall project schedule.

Owner and construction manager negotiate a guaranteed maximum prize, "GMP," based on a partially completed design and the construction manager's estimate of the construction cost of the remaining design.

Performance specs may be used.

Performance specs, or reduced specs, that would, as an example, identify the size of a facility, or the number of rooms, and certain materials and equipment. "Performance specs."

In CM-at-risk, tensions can arise over quality of work in place, the completeness of the design, and its impacts to cost and schedule.

Disputes can also arise due to assumption of what remaining design features could have been anticipated at the time of the GNP.

Thus, it is imperative that reasonable contingencies, based on a risk analysis, are incorporated into the overall project budget.

The key benefits of CM-at-risk are: Obtaining the contractor's perspective, early on, during the planning-and-design phases of the project, and fast-tracking construction before design is fully completed;

Studies by the Construction Industry and Institute show that the better -- that better scheduled performance is achieved by using CM-at-risk over traditional delivery, preliminary -- primarily because of fast-tracking.

A CII study also makes a case that quality of a CM-at-risk project is generally higher than a general-contract lump-sum bid.

Poor work performed by a subcontractor for an at-risk construction manager would not give that subcontractor future work on other projects of the at-risk CM; thus, at-risk CMs generally discourage poor subcontractors from bidding on their projects.

CM-at-risk delivery also affords an owner to review contractor change requests with the support of the owner's designer. Such an advantage is not available in design-build unless the owner employs an independent owner's rep to assess changes.

There is no one right project delivery.

Traditional design-build and CM-at-risk

deliveries have all been used successfully on many projects; but, all deliveries have weaknesses as well, which, many times, adversely affect project outcomes.

At the inception of a project, each delivery method should be explored carefully to determine the best fit, after assessing the type and size of the project, owner capabilities, likelihood of considerable project changes, and time constraints.

While some form of cost-based evaluation is fair, it's often not in the owner's best interests to base alternative project-delivery selection entirely on price.

A price developed by a CM-at-risk or a design-build firm that is based on an incomplete scope will most likely yield incomplete results and diminish owner satisfaction.

As an example: State agencies should be allowed to select the project team whose bid is slightly higher, if, say, the team shows project completion ahead of schedule, or with significantly reduced impact to local businesses and the community.

Regardless of the project-delivery method, it is important to note that successful projects

generally have common traits:

Demonstration of excellent communication among the project stakeholders;

Using the strengths of each of the stakeholders in addressing project challenges;

Having a fair dispute-resolution process;

Implementing an insurance program that is in concert with project needs;

And, the ability of the project stakeholders to make hard decisions in a timely and efficient manner.

Thank you for the opportunity to be here today, and I'd be glad to answer questions that you may have.

SENATOR LAVALLE: Thank you very much.

Seems like 100 years ago, when my father was in construction, did mostly school construction, and, he roped me into six months of duty, being a labor scheduler. That was my job.

And, as you were going through, I was getting chills.

Why don't you tell me something about you.

What is your background?

THOMAS P. QUARANTA, FCMAA: My background is in construction management.

I'm currently a practice leader; which means, that, it's a use of best practices in construction and project management for AECOM projects throughout the country.

Also, been involved in work overseas, as a project manager, as a construction manager, as a project principal.

I currently sit on the Industry Advisory Board at Columbia University, for construction engineering and management; as well as an adjunct professor at Columbia, teaching project management.

I'm a past president of -- past national president of the Construction Management Association of America, which is a professional organization which promotes education for the construction and program-management industry.

SENATOR LAVALLE: Are you an engineer?

THOMAS P. QUARANTA, FCMAA: I am an engineer, by education.

SENATOR LAVALLE: By education. Okay.

There are a couple of things here, just briefly.

I want to know where -- you've had projects.

Where was it unsuccessful?

What --

THOMAS P. QUARANTA, FCMAA: Well, I've seen design-build be unsuccessful, where, the operations' side was not keeping in tune with the delivery side.

And by that, I mean, that, facility was to be built; ownership had many changes; the operations of the facility had a lot of input.

And, because there was so many changes, the benefits --

And this was with respect to a bus-depot project in New York City, that I was familiar with.

-- the owner had so many changes, that they were not able to keep up with the schedule that was put in place by the design-builder, which would have reaped benefits, had that schedule been attained.

And, the benefits, of course, of design-build, are to achieve a schedule that is -- that comes in ahead of a traditional delivery.

That wasn't able to be realized in this case, because ownership was placing so many changes into the process, that the design-builder was unable to deliver the project at the completion time that was originally envisioned.

That was one case where I saw that the benefits were not reaped.

SENATOR LAVALLE: One of the -- once again,

just thinking back, my own experience, one of the biggest challenges is always the labor side.

And, this is at a time when you, kind of -- you're going by the seat of your pants every day.

Here, we have a process that you can kind of plan for.

And you mentioned several times: dispute resolution processes.

Everything doesn't always go smoothly with the project. And, labor has some issues.

Are they involved up-front in the process, to define their role in the construction project.

THOMAS P. QUARANTA, FCMAA: Yes.

Yes. And, generally, that doesn't, in any experience, enter into, uhm -- it's more an exception than the rule, into a situation, where there would be, say, a significant delay on the project.

If there's a project labor agreement that's established at the beginning of a major program, those issues are sorted out with labor at the outset.

SENATOR LAVALLE: At the outset.

THOMAS P. QUARANTA, FCMAA: It's more the ability to make timely decisions by the other

project stakeholders: the owner or the sponsor of the project or the agency; the constructor/the contractor; and the design team.

Those are the ones, those are the players -- and the community, those are the players that need to make the significant decisions, in a timely fashion, to expedite the work.

SENATOR LAVALLE: As government officials in the environment that we are today, cost savings are essentially important.

We understand that the efficiency of the project, this probably plays a very important role: Getting the project built on time, or ahead of time, and done by the highest standards possible.

Do you want to comment on the "cost savings" piece of it?

THOMAS P. QUARANTA, FCMAA: For CM-at-risk, for example, and design-build, there can be significant savings having the construction contractor on board early on.

In the traditional method, you don't see the contractor come on until the design is completely finished and the contractor submits a low bid.

There's absolutely no input from that entity until that point in time.

The benefit of design-build, is that the contractor is working hand-in-hand with the design team.

Cost savings, or what we call "value engineering," are, many times, employed during the design process, with the contractor's input, which, many times, with respect to, constructability issues, phasing issues, which the designer would not have the insight, many times, and that perspective from the entity actually carrying out the work to be put in place.

That alone saves, and that's the implementation of the fast-tracking approach, time.

Time saves money.

If certain packages are let early for construction, while other pieces, other segments of the design, are still in progress, owners can take advantage of cost savings at today's prices, for those segments of the overall project that can be let out for construction.

Unlike traditional delivery, those segments would be bid at the same time, later in the evolution of a project, which might, many times, cause prices to increase because time has elapsed.

That's where the real cost savings are: in

the early implementation of construction, in segments, in that delivery -- in both deliveries.

SENATOR STAVISKY: I have a couple of questions.

SENATOR LAVALLE: Okay, Senator Stavisky has a couple of questions.

SENATOR STAVISKY: Yes, uhm, in your testimony, you used the word "trust" a number of times.

And "trust" is a very difficult word to translate into legislation.

Have -- are there enough protections in here to make it less subjective?

Do you understand what I'm saying?

"Trust me" --

THOMAS P. QUARANTA, FCMAA: I don't trust you unless I know you. I can't work with you, and trust you, unless I've worked with you before, and know you.

And in the construction industry, that's how the game is played, and, is unlike in most other industries.

So if we have, a designer, a constructor, and an owner, that has, in previous projects, worked together, the main individuals, the key individuals,

that know each other from past projects, that trust each other; trust coming from successful results, and honesty and integrity of the individuals and firms in place, in delivering a project, thus enhances the success rate for that particular project.

If design-build, for example, is implemented on a project, where the various project participants have never worked with each other before, the project can be successful, but the chances for that success are not as high, because that element of trust has not yet been established.

It could be established throughout the course of the work.

But, in design-build, things work pretty fast. You'd like to have that trust at the outset, at an optimum.

SENATOR STAVISKY: Thank you.

A couple of other issues.

Are there, in your judgment, sufficient protections for labor?

THOMAS P. QUARANTA, FCMAA: Well, protections, to the extent, that -- and I've seen this, in a project in Washington, the Nationals' D.C. Ball Park, which implemented design-build.

The owner was a -- was a public and a private owner: the team, and the City of Washington.

There was a percentage of 50 -- 50 percent of local minority and small businesses, as a goal, for participation of labor in accomplishing the work.

It was achieved with resounding success.

Why? Because the design-build entity emphasized the importance of implementing that program, and had people on staff that had no other role but to make sure that that happened.

And to get that level of participation of labor in that market was significant.

So, I have seen examples where that is able to be accomplished successfully.

SENATOR STAVISKY: Very briefly, there are two other issues; you touched on one, which is, my next question was going to be about the "WMB"; the women, minority, business-owned.

How would they be affected by this?

Would this give them more flexibility?

Or, would this make it easier?

Or, would it have no effect at all?

THOMAS P. QUARANTA, FCMAA: I see it as no different than competing for a competitive bid.

If they've established relationships with

general contractors at the outset, it should be no different.

SENATOR STAVISKY: And my last quick question: Would this have any impact on the Wicks Law?

THOMAS P. QUARANTA, FCMAA: Well, yes, because Wicks Law employs multiple primes, and --

SENATOR STAVISKY: That's why I'm asking the question.

THOMAS P. QUARANTA, FCMAA: -- and this does not have that as a -- CM-at-risk, and design-build, does not deal with multiple primes.

You have one single point of responsibility, on the construction side, for all of the trades.

SENATOR STAVISKY: And many of them are already exempt from Wicks anyway -- many of the construction projects that we're talking about, are exempt from Wicks, particularly, within the education field.

SENATOR LAVALLE: Well, in the city.

SENATOR STAVISKY: In the city. In the city of New York, I'm talking about.

I thank you very much for coming.

THOMAS P. QUARANTA, FCMAA: Thank you.

SENATOR STAVISKY: Thank you for answering my

questions.

SENATOR LAVALLE: Thank you.

Next person to testify is, William Gillbane III, vice president, Gillbane Building Company.

Mr. Gillbane, before you begin your comments, just tell me something about yourself; your background.

Are you an, architect? engineer?

WILLIAM GILLBANE III: I'm a construction manager. I'm a fifth generation in my family's construction-management business. We're one of the largest family-owned firms in the United States.

I head up the New York operation here.

And, I am actively participating in, both, CM-agency roles and CM-at-risk roles, currently, on both public and private projects in New York State.

SENATOR LAVALLE: But you didn't answer my question.

WILLIAM GILLBANE III: Oh, my background?

I'm a political science major from Brown University.

But, I, like yourself, grew up in the trades. I was a laborer in Local 271, each summer. So, I know the business since I was a little kid.

SENATOR LAVALLE: Yeah, no, no, okay.

Go ahead.

WILLIAM GILLBANE III: Thank you.

SENATOR LAVALLE: Thank you.

WILLIAM GILLBANE III: Good morning, Senators, ladies and gentlemen.

And thank you for this opportunity to testify before the Committee on alternative project-delivery methods for State agencies.

I particularly want to thank you, Senator Ken LaValle, Chairman of the State Senate Higher Education Committee, for introducing this act to amend the education law, to authorize the use of alternative project-delivery methods; specifically, the construction manager-at-risk method for the construction, reconstruction, alteration, repair, of State buildings.

As an overview:

Gillbane Building Company, whom I represent, was established in 1873, and is rated one of the nation's leading construction managers by "Engineering News Record."

Celebrating 60 years in New York, with offices in Albany, New York City, and Syracuse, Gillbane has been working for higher-education

clients since the early twentieth century.

In the past five years, nationally, Gillbane has delivered hundreds of higher-education projects in excess of $5 billion.

In 2011, 35 percent of our workload, as a company, was in the education market.

Nationally, Gillbane has been on the cutting edge of "alternative delivery method" legislation since the first construction manager-at-risk contract, also known as "Construction Manager as Constructor," for the General Services Administration for the Robert F. Kennedy Department of Justice Headquarters in Washington, D.C.

In addition, Gillbane has been a proponent of the successful adoption of alternative delivery methods for public construction projects in many states, including, Arizona, Ohio, Massachusetts, and Connecticut.

Gillbane has a direct working knowledge of higher-education design and construction in New York.

We have worked on both traditional construction-manager and construction manager-at-risk projects for both public and private higher-education institutions, including, Cornell,

Colgate, Ithaca, Columbia University, University at Albany, and dozens of other campuses across the state.

Additionally, Gillbane maintains an active relationship with the State University Construction Fund, and the State University of New York, having worked with them for over 14 year, delivering near a billion dollars in various construction projects.

Gillbane is currently managing construction manager-at-risk projects for public agencies in New York, such as, the Dormitory Authority, New York City Health and Hospitals Corporation, the Empire State Development Corporation, and the New York City Economic Development Corporation.

I am here today to support this act to amend the education law, to authorize the use of alternative project-delivery methods; specifically, the construction manager-at-risk methodology, because it will provide substantial advantages, with respect to improving project schedule, reducing project cost, managing project risk, increasing collaboration, reducing claims, and optimizing opportunities for small minority and women-owned business enterprises.

With construction manager-at-risk

procurement, the owner contracts with the construction expert who is at risk for the completion of the project. The profitability of the construction manager-at-risk is connected to the success of the project.

The owner contracts the architect and construction manager separately, and the construction manager holds the trade contracts.

The construction manager is usually involved early during preconstruction, through construction, and project completion.

The continuity of expertise, and a full understanding of the owner's programmatic goals, objectives, and concerned [sic] expressed at the design stage often help a construction manager understand certain decisions that are made later in the project.

The development of the owner-architect-construction manager relationship, early in the project is beneficial to cooperation and collaborative decision-making; therefore, technical and contractual efficiencies can be realized with this methodology.

Under the current approach, all contracts are bid on a lump-sum basis, and there is no

transparency with respect to what is included within the lump sum.

Under the proposed act, the construction manager-at-risk is compensated solely with the predetermined fee and overhead, plus the actual and legitimate cost of construction, also known as "cost of the work," expended up to a guaranteed maximum price.

Pricing of all of these components is secured through a competitive process.

While the guaranteed maximum price includes a contingency, contingency dollars can only be used for actual and defined cost of the work, as approved by the owner, with any savings either returned to the owner or shared on a predetermined basis.

I would highly recommend that the Senate pass this act to amend the law, to authorize the use of construction manager-at-risk, which, if applied against the right projects, will save time and money, and allow us to build more and better facilities to improve education in New York State.

Additionally, I would also urge the Committee to consider adding to the amendment the following two provisions:

The first recommendation is for contractor

selection based on best value.

While low price is properly the deciding factor in many award decisions, best value and return-on-investment ought to be considered an option.

"Best value" is the process of selecting the offer which provides the greatest value to the owner or agency, based on evaluating and comparing all pertinent factors, including price, so that the overall combination that best meets the owner's or agency's needs is selected.

The second recommendation, is that the legislation includes a process for prequalifying contractors seeking to work under the construction manager-at-risk delivery method.

Prequalification not only assures the involvement of a more qualified contractor, but also streamlines the system for bidder review and award in a manner that promotes fair and open competition, without limiting minority and women-owned business-enterprise opportunities.

I thank you for your attention and consideration, and I'm prepared to take any questions.

SENATOR LAVALLE: Just one question.

What level of detail should the initial design-criteria package, released by project owner or State agency, include?

WILLIAM GILLBANE III: For --

SENATOR LAVALLE: What kinds --

WILLIAM GILLBANE III: For CM-at-risk?

SENATOR LAVALLE: Yes.

WILLIAM GILLBANE III: Well, oftentimes, we're brought in by private owners at the same time that the architect is engaged.

So, at the very conceptual stage, is generally when we are chosen.

We find that that adds the most value to the process.

SENATOR LAVALLE: Just one last thing, and Senator Stavisky was kind of touching on that last:

Because we're using a new process, are we compromising public health and safety?

Or, is there some way we can ensure that the design profession is responsible to the contractor, not the integrity of the design?

WILLIAM GILLBANE III: Well, I think, in CM-at-risk, what is great about being able to choose on a qualification-based criteria, and the same in

design-build, is that the owner and the agency gets to select what is the best value.

So, you can take into, a firm's safety record; their expertise in a certain type of building type, both for design and construction.

You can also take into account their commitment to minority and women-owned businesses, and local businesses.

It also allows you to design the bid packages in a more creative way, to really fit the community involvement.

So, we really look at CM-at-risk as a tool in the tool box, that protects public competitiveness, and health and safety, but allows more flexibility in how the players are chosen, and really allows the right fit for the right project.

SENATOR LAVALLE: All right, because, when everything is all said and done: Cost is great. You know, having an efficient project, that it gets built on time.

But when you're done, have you created a building that is safe, and so forth?

We had an incident in a project, out in Suffolk County, that was designed. And, obviously, everyone knew that it was designed, where there

would be chemistry labs, and other kinds of things that were done -- being done. And the venting was not proper, and it just seeped through the whole building.

You were poisoning the atmosphere.

So, that's specific example of what I'm talking about.

You know, the project was built quickly, it was done cost-effective and efficient, and so forth.

Everyone was happy.

But when everyone got inside, you were poisoning people.

WILLIAM GILLBANE III: Well, I think that's a really great example.

Labs are very complicated buildings.

And, generally speaking, when you're going to a low-bid contractor, with certain design criteria, and people are pointing fingers at one another, it's very tough for a public owner to grapple with those issues.

All they can look to is, price and schedule.

And, there's a lot more that goes into a job than that.

And I think these types of delivery methods allow the State to hold people accountable beyond

price and schedule. They are held accountable to quality standards, and, constructability, usability.

SENATOR LAVALLE: Good, thank you.

SENATOR STAVISKY: The previous witness testified that, perhaps, in State contracts, it might be necessary to not award the bid to the lowest bidder.

It was toward the end of his testimony.

How do you feel about that?

WILLIAM GILLBANE III: Well, I think that, uhm -- if we're first talking about the selection of the design and construction team, not the trade contractors, I think you have to look at two ways.

One: I think you need to, one is responsible when they pick the most-qualified contractor and design team that adds the most value to the end owner.

At Gillbane, we're an institutional builder first, so up-front cost is only about 20 percent of the life-cycle cost of a building.

So, when you're picking your design team and your construction manager, you want someone with that long-term vision, because the State owns their buildings till they die.

When you're talking about, at the

trade-package level, there is an ability to prequalify subcontractors, like DASNY has in place for their special legislation, CM-at-risk.

This is very important, because, for CMs, and for the industry, prequalifying those subcontractors does a couple of things.

One is, it ensures that minority, women-owned, and local businesses are -- commitment is there;

And, it also ensures, that, the contractor that wins the job, can actually execute the work.

And the current system does not allow for that.

SENATOR STAVISKY: Thank you.

SENATOR LAVALLE: Okay, thank you very much, Mr. Gillbane.

WILLIAM GILLBANE III: Thank you.

SENATOR LAVALLE: Now we're going to hear from the architects; right?

BURTON L. ROSLYN, AIA: Yes.

SENATOR LAVALLE: Burton L. Roslyn was the past president of FAIA.

And you also have with you, someone who we know: Ed Farrell.

BURTON L. ROSLYN, AIA: Good morning,

Senator LaValle, Chairman; Senator Stavisky; other members of the Committee.

Let me start by thanking you for the opportunity to deliver these remarks on behalf of the over 8,000 member architects of AIA New York State.

My name is Burton Roslyn. I am a practicing architect in New York State.

I am the 2009 president of AIA New York State;

A fellow of the American Institute of Architects;

A member of the National Advisory Panel on project delivery;

And, author of numerous articles on the subject of project delivery;

And, editor of significant webinars.

SENATOR LAVALLE: See, we know who you are.

That's what I was asking the other: Who are you?

But we know who you are.

BURTON L. ROSLYN, AIA: We here in New York face significant constraints on the execution of public projects; limitations that were imposed as public reaction to excesses of the last centuries;

most significantly, the conduct of Boss Tweed.

The resulting protective legislation has significantly hindered the development of innovative and advantageous methods of project delivery.

While recent legislative sessions have significantly -- have attempted moderate changes to the Wicks Law, and authorized design-builds for infrastructure projects, resulting from emergencies or natural disasters, this is only a small step, and addresses only one of the restrictions.

Our general municipal and public finance laws require strict adherence to traditional process of design-bid-builds, with award going to the lowest responsible bidder.

Strict adherence to this method eliminates the time and cost advantages of alternative project methods, which have been proven successful in California, Texas, Massachusetts, and numerous other states, large and small.

Recent studies of the issue have indicated savings of, from 10 to 20 percent, depending on the delivery methods selected.

In New York State, where total public construction can run to $86 billion annually, the potential savings are so significant, they could

reverse the entire budget shortfall.

Numerous state and local agencies, authorities and public-benefit corporations, are receiving individual exemptions.

It is time to unify the process, and provide all of the tools available.

With adoption of Senate 3035, and Assembly 4735A, we have the opportunity to provide all governmental entities, agencies, and authorities with the ability to maximize the flexibility for benefit tailored to the specific project requirements.

The current system of multiple prime contracts has the potential to lead for delays and cost overruns.

Any benefits from direct payment to major subcontractors, and maintenance of prevailing-wage requirements, could be contractual requirements rather than legislative mandates.

The alternative delivery methods include design-build, wherein, one entity contracts the design and delivery of the finished product.

The system is used effectively by the University of California at Irvine, and Caltrans.

Here at home, it has been allowed by special

legislative exemption to the Buffalo School System, the New York State for School Construction -- the New York City, rather, School Construction Authority, are just two examples.

Construction manager-at-risk, under this system, the procuring agency has the ability to attain the services of a sole-source constructor, who will hold the entire risk for the project delivery in conformance with the agreed-upon price and schedule.

Integrated project delivery is a third tool.

It's a system developed, where the owner, developer, designer, and constructor all become stakeholders in the project's success.

We further enhance the ability of users to maximize the budget dollars spent, and benefit from this same thought processes utilized in design-build.

Integrated project delivery uses business structures, practices, and processes that foster collaboration, and utilize the strengths and insights of each member of the team.

Owners, both private and public today, increasingly demand that the projects be accelerated, to provide a quicker return on their

capital investments.

Decisions, whether or not to proceed, are based on exhaustive cost-benefit analysis.

The owner's decision to proceed with a project is based on the trust that the building team can deliver the project within these assumptions.

The challenge to the team, is to quickly and creatively address the program needs of the owner.

Recent economic turbulence has rendered typical allowances for escalation unreliable.

As project progresses, the owner advises the team as to the current market condition --

Oh, I'm sorry.

-- the builder advises the team, as to the current market condition of particular materials and systems.

The team must then quickly analyze the economic and constructability impact of the different solutions.

The market also presents challenges in terms of material availability.

The builder must keep the team apprised of long lead items or potential changes.

Together, we can encourage greater use of partnering between public and private entities.

Comprehensive reform of delivery project -- public projects has the potential to save taxpayers millions of dollars annually, as well as foster design excellence.

We can achieve this without reinventing the system, but by adopting practices in -- ready and used for public and private work in other states and by the federal government.

These alternatives will preserve the leadership role of New York State in creating excellence at public works, as well as ensuring a maximization of the final -- financial benefits to be gained by the public.

With passage of S-3035A and A-4735A, we have the opportunity to benefit from legislation.

The people of the state deserve no less.

I'm prepared to take questions.

SENATOR LAVALLE: Yeah, you were very, very detailed. And you even -- you told us about yourself. That was great.

Gave us detailed testimony. That was great.

And you even told us how we can save money in the budget.

I think we should quit while we're ahead.

Thank you.

[Laughter.]

BURTON L. ROSLYN, AIA: Thank you.

SENATOR LAVALLE: Thank you.

ED FARRELL: Senator, if I could just add one comment --

SENATOR LAVALLE: Yeah.

ED FARRELL: -- which hasn't been raised by any of the speakers thus far, is to point out the obvious:

That, not only does this apply to State projects, but it invents the General Municipal Fund as well. And, that there's savings for local governments.

Especially, local governments who are working under the newly imposed tax cap, this could provide relief.

And, this does not take off the table, design-bid-build. It's still an option.

SENATOR LAVALLE: No, I understand.

ED FARRELL: This remains an option.

And, discussions that we've had with State agencies; OGS, in particular, they think that this will remain an option, but, most projects will still be design-bid-build. And that this will be a tool, where appropriate.

SENATOR LAVALLE: Yeah.

Ed, your comments go to why I'm sponsoring this measure.

You know, for years, as a legislator, I've watched the process, where, we have stretched out a -- we've appropriated money in the budget for a project.

It's taken so long, that we had to come back in the next session and appropriate more money.

I had one project where we had to do it in three different budgets, because it was during a time, where, every construction was hot, the costs of steel going up. Even able -- we weren't even able to get the kind of -- kinds of materials we needed in a timely way.

So, that has been my focus: that we can do something.

The old process is still there, but we are offering other processes that may work in certain conditions; save localities money, save the State money.

And, if we can do it, the last person that testified, I talked about: Can we do it without compromising health and safety?

And, that, if we can do that, then I -- I

think, in this bill, it's a win-win.

BURTON L. ROSLYN, AIA: Senator, I think to address that point, I don't think, based on my own experience with design-build outside of New York State, that there is any diminution of the level of responsibility that's held by the design professionals.

If anything, it's enhanced. And there's additional responsibility held, under the design-build, for the health, welfare, and safety.

So, I don't think, at any point, we have to worry about --

SENATOR LAVALLE: Yeah, I'm going to hold you to that.

BURTON L. ROSLYN, AIA: Okay.

SENATOR LAVALLE: Thank you.

Next person to testify is, Richard Thomas, vice president, Design-Build Institute of America.

Do you need help from the gallery?

RICHARD THOMAS: I have a PowerPoint.

SENATOR LAVALLE: Oh, that's right. You're the PowerPoint person.

Okay.

You've practiced, so you know it's going to work?

RICHARD THOMAS: Yes.

SENATOR LAVALLE: Okay.

RICHARD THOMAS: I just can't turn it on.

SENATOR LAVALLE: Who's going to turn it on?

RICHARD THOMAS: I don't think that's the right one.

Well, I can start with introductions, if you want?

SENATOR LAVALLE: Well...

Just wait. I mean, you've come prepared, and we should provide you with, uhm...

[Pause in the proceeding due to in-room technical difficulties.]

[The proceeding resumed, as follows:)

SENATOR LAVALLE: I think we have a major glitch.

[Inaudible comments.]

SENATOR LAVALLE: I know, but it's -- it's not being fed from the computer, into --

It's working?

Okay. Let's go.

RICHARD THOMAS: Chairman LaValle, members of the Committee, thank you for the opportunity to come and talk today about an important topic: Alternative Project Delivery.

My name is Richard Thomas, and I'm vice president of the Design-Build Institute of America.

DBIA is the only organization that defines teachers and promotes best practices in design-build.

Our membership includes over four thousand organizations and individuals who are leaders in the design-and-construction community; and an additional three to four thousand industry leaders who participate in our educational initiatives each year.

[Slide being shown.]

For a lot of folks, design-build is new, but design-build is actually the oldest project-delivery method available.

Many of the iconic buildings that we see around the world, that have stood for centuries, were done using the Master Builder Design-Build System.

Design-build is an integrated approach that delivers design and construction services under one contract, with a single point of responsibility.

Public and private owners select design-build to achieve best value, while meeting schedule, cost,

and quality goals.

Nearly half of all the construction projects today are done using alternative project-delivery methods; primarily, design-build.

[New slide being shown.]

Studies show that design-build projects are completed 6 to 10 percent cheaper, and are completed 33 percent faster than traditional project-delivery methods, and are for more -- are far more -- are more likely to achieve sustainable goals.

Design-build also reduces litigation, change orders, cost growth, all without compromising quality, safety, environmental protection, or minority or women-owned business goals.

Another important factor to consider is design-build's positive impact on the New York economy.

Design-build puts people to work much faster than traditional methods. In many cases, it could be several months, which could be a construction season.

And since projects are completed faster, it reduces the impact on local businesses and neighborhoods.

Design-build also provides economic

opportunities to New York firms that are now limited to doing design-build projects out of state.

The use of design-build has doubled over the last five years, both in terms of the number of projects and the value of those projects.

Currently, design-build is the primary delivery method used by the federal government.

The Navy, the Army, the State Department, and the Bureau of Prisons use design-build on over 75 percent of their projects.

The GSA, VA, USDA. and Interior Department are also increasingly using design-build to deliver high-performance projects.

Single point of accountability --

[Multiple slides being shown.]

And, uhm -- excuse me.

Single point of accountability, faster delivery, enhanced cost-effectiveness, and reduced change orders, and claims, are often cited as reasons for the federal government's transition from project delivery.

[New slide being shown.]

This slide, here, just gives you a look at how much the market is changing.

As you'll see, if you put CM-at-risk and

design-build together, it's almost equal to traditional methods.

[New slide being shown.]

The transformation we've seen at the federal level is also occurring at the state and local levels as well.

Over the last 19 years, we've seen design-build go from being a very limited procurement option, at the state level, to being authorized in all 50 states, in some fashion.

And this gives you an idea of, just, "red," being the states that didn't allow design-build in any form. And the "lighter green," being the states that have very limited design-build authority.

And if you look at the map today, you'll see it's changed dramatically.

In 2011, almost 60 bills were passed at the state level, expanding design-build authority.

And over the last three years, half of all the design-build legislation that was passed granted design-build authority to local governments.

[New slide being shown.]

And this kind of lays out those -- as you all know, with the new legislation passed last week, which agencies were granted design-build authority.

[New slide being shown.]

These are the federal agencies.

And I think what's interesting here, and these are --

You all have a copy of the slides.

-- is, these are actual owners telling why they chose to use design-build.

Now, design-build is suitable for any type of project.

In the wake of disasters, such as the recent storms that damaged New York Route 42, the hurricanes that battered the Gulf Coast, to the collapse of the I-35W bridge in Minneapolis, design-build has been an effective tool to fast-track recovery projects.

It has been used for schools, universities, wastewater treatment plants, transportation, housing, restoration projects, hospitals, and major federal facilities.

And, also, projects where sustainability is seen as a top priority.

Design-build has, literally -- literally, transformed the construction industry over the last two decades, allowing state and federal governments to deliver projects on time, on budget, and without

a lot of claims and change orders.

[New slide being shown.]

However, I do want to caution everyone, that design-build is a valuable tool, but not a panacea.

Design-build is a way of doing business that requires a mental shift, as it relates to team interaction and collaboration.

A full understanding of both the relational and contracting aspects is paramount for owners and practitioners to fully develop -- to fully be effective in their project roles.

[New slide being shown.]

And, what I have here, is, I want to give an example of some of the types of projects that we've seen.

And I think a critical thing to understand here, is that, every single one of these projects were done, on time, on budget, without litigation.

[New slide being shown.]

I also would like to address some issues brought up in some of the early testimony.

There's been questions on: How does design-build affect local contracting?

One of things that I think is great about design-build is, it gives added flexibility.

We've seen states, where the local contractor participation has been in the 80 and 90 percent.

If this is something that's important for an owner, this is something that you can put in those proposals, to ensure that you actually get what you -- what you want delivered.

There's also been issues: How does this address minority and disadvantaged business issues?

What we've seen, is that acts, uhm -- that flexibility also enhances that.

[New slide being shown.]

I -- one project I have to show is, the I-35W project.

There it is.

This was a project, where you had a major interstate collapse in a city. And many thought, that, in order to get this project up --

And not only that, it's right by downtown Minneapolis, affecting neighborhoods, and, millions of dollars in commerce was being lost every day.

-- and their conventional wisdom was, that, they would have to cut corners on environmental rules. That, minority and women-owned business goals would have to be put aside.

And none of that proved to be true.

In fact, on the disadvantaged businesses, they not only met the goal, they exceed it by 50 percent.

No environmental rules had to be bent.

And this project, a project of this scale, normally, would have taken 9 to 10 months to design.

This project was completed, and opened, in 14 months; on time, on budget.

SENATOR LAVALLE: 14 months, you said?

RICHARD THOMAS: 14 months.

SENATOR LAVALLE: Yep.

RICHARD THOMAS: And the other issue that has been addressed, that I think is very legitimate: New York is in a position, where, for many folks in the industry, it's going to be new.

And, there are going to be contractors and engineer-design firms that are going to lack experience.

And there's no way of getting around that, when you try something new.

But I think one of the things, though, that is a great equalizer, is education and training.

And, education and training is involved. And I think the -- not only for those contractors, but for owners as well.

Because, I think one of the things that was brought up earlier, was: How do you -- how do we ensure that the owner actually gets the kind of project that they envisioned when they began the process?

And, sometimes, without training, or without a consultant to advise them, they may not even know some of the questions to ask, you know, or some of the provisions they may want to put in that contract.

So, that is something that I would seriously consider, is: Look at what kind of training may be available, both for -- for all the practitioners.

And, with that, Mr. Chairman, I would be happy to address any questions that you may have.

SENATOR LAVALLE: You actually answered, in your last remarks, a question that I was going ask you.

I was actually going to ask Mr. Gillbane, a question, where you have generational differences.

"I'm used to a certain method. You know, can I adapt to something new?"

And --

RICHARD THOMAS: Well, in -- Senator LaValle, you actually touched on this earlier, too, is, uhm,

I think one of the challenges that we do have with design-build, is, all the processes can be in place, but there, also, is a mental mind-shift that has to happen.

If we're doing projects, design-build, but we're still thinking with a design-bid-build mindset, that -- that is going to cause some problems on the project.

And I think that -- one of the things that is -- it's important to have folks that -- that have worked together; integration is essential for us -- to have success on all of these projects; and, certainly, taking advantage of training out there, I think, make sure that, uhm -- and ensures that you don't have some of those issues.

SENATOR LAVALLE: Uh-huh.

Since I have been in public office, I found out that not everyone has a good kindergarten experience, so, people can't work together many times.

So -- even under the best of circumstances.

I want to thank you.

Thank you for the PowerPoint presentation, and your remarks.

And, thank you, once again, to all of those

who testified, and are here at the hearing.

Thanks.

RICHARD THOMAS: Thank you.

(Whereupon, at approximately 1:13 p.m., the public hearing, held before the New York State Senate Standing Committee on Higher Education, concluded.)

---oOo---