



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

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Good morning Chairman Hennessey, Chairman Carroll, and members. My name is Melissa Batula and I am the Acting Executive Deputy Secretary for PennDOT. Thank you for the opportunity to speak this morning on Design-Build Best Value procurement. Currently, PennDOT utilizes both low-bid Design/Bid/Build and Design-Build procurement for roadway and bridge construction contracts. Design-Build Best Value (DBBV) procurement allows a project owner to obtain services from design-build firms and contractors where price is not the only criterion for selection. In other words, it's an alternative to traditional "low bid" contracting strategies. A design-build team is selected based on the quality of their technical score and other criteria, for example meeting a Disadvantaged Business Enterprise goal, in addition to price. The benefits of Design-Build Best Value procurement can include schedule acceleration, cost savings (design, initial construction, and potential maintenance costs), innovative design solutions, and better management of risk.

The Federal Highway Administration has endorsed design-build best value procurement through their Every Day Counts initiative. PennDOT has been actively working on a Design-Build Best Value policy and has solicited input from our industry partners, including the Associated Pennsylvania Contractors (APC) and the PA Chapter of the American Council of Engineering Companies (ACEC). As you may be aware, PennDOT previously tried to utilize Design-Build Best Value procurement in 2008; however, a challenge was filed in the Commonwealth Court asserting that PennDOT's actions using a two-step procurement process to select a design-build team was contrary to Section 512 of the Commonwealth Procurement Code. The result was the court issued a preliminary injunction stopping the procurement.

Section 513 of the Procurement Code allows for competitive sealed proposals. The court's injunction in the 2008 case did not speak to whether PennDOT can utilize Section 513's competitive sealed proposal procedure in other instances. Furthermore, Commonwealth Court has held that the Department of General Services may award DBBV construction contracts under Section 513 of the Procurement Code, and that there is no reason why PennDOT may not do so as well. As such, PennDOT believes we already have the ability to proceed with DBBV procurement utilizing Section 513 of the Procurement Code; however, the administration is not opposed to legislation to clarify this authority.

That being said, we do have concerns with the prescriptive nature of House Bill 2747 as drafted. We do not believe the level of detail included in the proposed legislation is necessary or in the best interest of the commonwealth. It appears more appropriate for a policy document or manual instead of regulation or law, which in turn would provide the Department more flexibility and ease to make updates or improvements if revisions to the process are warranted.



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Our main concerns with the proposed legislation center around its prescriptiveness. For example, the proposed legislation dictates specific scoring criteria, sets a minimum time between publication of the short list and a proposer submitting a proposal, requires the creation of an Innovative Contracting Division, dictates the payment of stipends for all Design-Build Best Value projects, and sets numerous other project and program level limitations for use. The Department needs to maintain our ability to structure our complement and adapt to changing environments, and some of what is included in the proposed legislation hinders our ability to do so. As previously mentioned, a lot of what is included in the proposed legislation appears more appropriate to be put in policy.

One major concern that we have is the requirement for the Department to share our cost estimate upon request. Requiring our cost estimates to be shared externally would have negative financial implications for the Department and taxpayers as it would influence price proposals, likely increasing costs. Specifically, knowing this information would lessen competition between bidders. It would also decrease the need for contractors to introduce innovative practices into a project that the Department may not otherwise have thought about. The practice of the Department having independent estimates has ensured that tax dollars are being maximized in Design/Bid/Build awards and should not be treated differently with Design-Build Best Value.

PennDOT routinely works with industry on best practices and new initiatives. For example, we have been coordinating with our stakeholders on a Design-Build Best Value policy through our Transportation Quality Initiative, commonly referred to as TQI. The TQI group's mission is to create a forum for open communication between PennDOT, the Pennsylvania Turnpike Commission, and industry with respect to their mutual interest in improving and enhancing alternative project delivery in Pennsylvania. This group collaboratively looked into what other states are doing, and industry submitted their suggested best practices with recommendations on what this process should look like. Most of those recommendations have been incorporated into a draft policy that the Department has been vetting internally prior to sharing a final draft with the TQI team and, later, implementation.

In closing, we believe that Section 513 of the Procurement Code currently allows PennDOT to utilize a Design-Build Best Value process and are concerned about unintended consequences of any changes inadvertently affecting PennDOT or other procurements and agencies. Nevertheless, the administration does not oppose legislation specifically allowing Design-Build Best Value procurement to remove any ambiguity as to whether it is permitted under the existing Procurement Code. However, the administration does not support the proposed legislation as drafted unless modified due to the level of prescriptiveness and detail included. If the General Assembly is interested in pursuing some of our suggested changes, we would be happy to provide specific amendment language that we feel would be necessary for the administration to support the proposed bill. Thank you for your time and I would be happy to answer any questions you may have.