

John Nygren

WISCONSIN STATE REPRESENTATIVE ★ 89TH ASSEMBLY DISTRICT

Co-Chair, Joint Committee on Finance

Testimony in Support of Assembly Bill 820
Assembly Committee on Transportation
February 4, 2020

Thank you Chair Kulp and members of the Assembly Committee on Transportation for hearing Assembly Bill 820 today.

The 2019-21 biennial budget as signed into law included statutory language relating to using design-build as a transportation project delivery method. The intention was to pilot design-build to see if we can deliver transportation projects efficiently and at a lower cost to taxpayers. Wisconsin is one of only six states to have design-build as only a limited option according to the Design-Build Institute of America.

The language, as passed by the Legislature, was extensively vetoed by the Governor. His stated intention was to create more flexibility for DOT to implement the program. The original language included limits and structure for the program, due process for bidders, and Legislative oversight of the pilot program.

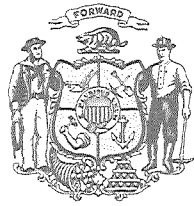
While the vetoes did provide more flexibility for DOT, the other provisions intended to provide structure for a design-build pilot program in Wisconsin were eliminated. Because of the vetoes, it is no longer a pilot program. The current law language does not require DOT to even use design-build on a project. There is no longer an appeal process for bidders. The language no longer has the funding limits that were included in the budget bill as passed by the Legislature.

This bill would require six design-build projects for a total maximum cost of \$250 million over six-years. It would require at least one low bid, best value, and fixed price variable scope project be chosen. The remaining three awarded contracts could be a combination of the types. There would be a technical review committee that would choose projects and an appeal process for bidders who felt aggrieved by the process.

This bill will reinstitute the requirement that DOT actually use design-build and put in place the parameters of the program that are needed to make sure it can be effectively assessed after it has been used. This bill will also reinstitute the Legislative review of the program and reporting requirements so legislators can realistically determine if they should recommend the program be made permanent.

This is a good bill that provides structure, transparency, and fairness to the process that will hopefully result in efficient project work at a lower price for taxpayers.

Thank you all again for hearing this bill today.



JERRY PETROWSKI

WISCONSIN STATE SENATOR

Testimony on Assembly Bill 820 / Senate Bill 770
February 4, 2020

Good morning Mr. Chairman and members, thank you for scheduling a hearing on Assembly Bill 820. While most other states have some type of Design-Build option for road projects, Wisconsin has long used a Design-Bid-Build contracting structure. In the most recent state budget a Design-Build pilot program was created and then changed to a much broader open ended program by line item veto.

For those unfamiliar with the terms, under Design-Bid-Build the Department of Transportation pursues projects by first contracting for the engineering design of a project and then requesting bids from construction firms to build the project, with the lowest responsible bid prevailing. Under Design-Build, a single contract is put out to bid for both the design and construction of a project. Determining which bid should be accepted under this method requires considering both the cost of the proposal and the relative merits of the designs.

Much of the language in this bill is substantially similar to language included in the state budget that was ultimately vetoed. The Governor vetoed the language to provide the department greater flexibility in implementation, which I can understand, but after further discussion with stakeholders and the department we are bringing this forward today to provide further structure to the program.

The bill before us today creates guidelines and requirements for the Department of Transportation to implement a Design-Build contracting program in Wisconsin. The bill sets in place an initial six year period with requirements for DOT to pursue a variety of Design-Build projects with a total value not to exceed \$250 million. The department would be required to create a procurement manual setting forth how projects are evaluated, appoint a five member technical review committee to consider proposals, and at the end of the initial six year period file a report with the Transportation Projects Commission, Joint Finance Committee and this committee evaluating how and how well the program functioned. The Finance Committee is then required to make recommendations to the legislature whether to continue the program and if there are changes needed.

It is my hope that we will move this proposal through the process before the end of our legislative session, and that the initial six year segment of this program will provide all of us good data to evaluate the merits of using design-build as part of our transportation program.

Thank you again for hearing this bill, and I would be happy to answer any questions.

29TH SENATE DISTRICT

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**Testimony of Wisconsin Department of Transportation Assistant Deputy Secretary Joel Nilsestuen
before the Assembly Committee on Transportation on Assembly Bill 820
February 4, 2020**

The department is happy to have access to another contracting tool to complete its design and construction work. With the introduction of Design Build (DB) contracting, Wisconsin is now aligned with the majority of states which allow alternative contracting processes for delivery of transportation projects.

Wisconsin has limited past DB experience, past projects include:

- 1999 Milwaukee 6th Street Viaduct. This project required enabling legislation.
- 2005 permission to utilize for the Maple – Oregon Bridge connecting upper and lower Door County in Sturgeon Bay. This project required enabling legislation.
- 2011 Two Milwaukee lift bridges utilizing a Low Bid Design Build (LBDB) process and TIGER Funds. This contract was in conformance with the department's low bid contracting requirements.

Design Build involves contracting with one entity to do both the design and construction for a project. The owner (WisDOT) typically would complete approximately 30% of the project design and then contract with a DB team to complete the remaining design and construction. Utilization of DB allows contractors to innovate and can save the owner both time and money.

There are several types of DB contracts:

- Low Bid Design Build (LBDB). The contract is awarded to the DB team which offers the lowest cost.
- Best Value Design Build (BVDB). The contract is awarded to the DB team who has the highest combined score which consists of a technical and cost component.
- Fixed Price Variable Scope Design Build. The contract is awarded to the contractor who can complete the largest amount of work at or below the price established by the owner.

The contracts can be selected through either a single phase or two-phase process:

- A single-phase process involves selection of the DB team based on their response to a Request for Proposal (RFP). Qualification of the team is established thru existing processes.
- A two-phase process involves a project specific evaluation of both qualifications and proposals (RFQ and RFP). Typical RFP scoring criteria include cost, time and technical components such as earthwork, traffic control, pavement design, structure design, etc.

BVDB projects are typically selected thru a two-phase process and LBDB and fixed price are typically selected utilizing a single-phase process but can also be through a two-phase process.

The department must develop both policy and procedures for design build. To accomplish this, it has created an Alternative Contracting Section within the Bureau of Project Development. The chief position in this section is currently being filled. Two engineering positions have also been assigned to this section.

To reap knowledge from other states and expeditiously deliver our policies and procedures, the department has hired a consultant to help with the development and industry outreach. In addition, this consultant will help with the development of the RFPs on our first two DB projects. This consultant contract has been negotiated and is being finalized. The selected consultant has provided similar assistance in other states and has also worked on DB teams.

The department can work within the framework of the proposed legislation as it develops its DB program.

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To: Chairman, Members Assembly Transportation Committee

From: James Hoffman, CEO
Hoffman Construction Co

Date: February 4, 2020

RE: AB 820 – Changes to Design/Build method of transportation project delivery

Mr. Chairman, Members of the Committee, my name is James Hoffman, Owner and CEO of Hoffman Construction Company based in Black River Falls, Wisconsin. Thank you for the opportunity to testify on Assembly Bill 820 which proposes making changes to the method of transportation project delivery referred to as Design/Build.

I fully support this Committee's, the Legislature and the Department of Transportation's efforts in alternative contract delivery methods to the traditional design-bid-build method. I want to see design/build work by allowing the Department of Transportation to deliver transportation projects in timely and cost efficient ways as part of a robust transportation program.

As you recall, the 2019 Wisconsin Act 9 as passed by the legislature had Design/Build authorization under prescriptive measures yet sections of that were vetoed. I believe this bill tries to reestablish some of those prescriptive methods. I'd like to share the following comments and propose modest changes to make sure the process is successful.

AB 820 lays out several provisions which highlight advantages of Design/Build. It specifically calls out the following:

- Alternative Technical Concepts and Value Engineering to allow Design/Build teams to propose different design ideas to save money, time or best value.
- Specifies the Department shall do six design/build projects over 6 years – one of each low bid, best value and fixed price/variable scope with the remaining 3 to be any of the above
- Sets criteria for impartial review of technical proposals and criteria for eligible bidders.
- Has reporting criteria back to the legislature to measure the effectiveness of Design/Build.

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However, it mandates a cumulative cap on the 6 projects over 6 years to \$250,000,000 and worse, provides a \$25,000,000 cumulative cap for low bid design/build awards. These caps, especially the cap on low bid Design/Build awards may prevent the best use of the alternative delivery method by tying the hands of the Department with caps on both the number and dollar amount of the projects. What happens if additional Federal dollars show up that aren't able to be quickly put to work because of the caps?

Also, one of the major problems of Design/Build delivery of Best Value projects is the subjective nature of the review of technical proposals and how these subjective values are used for award. AB 820 provides for Best Value projects to get awarded by the sum of the Tech Proposal Score (limited to between 25 and 60 points) and the Price Score (limited to between 40 and 75 points). I feel that AB 820 gives too much weight to Technical proposal score and not enough to Price Score. The low bidder gets the maximum number of Price points with a deduct of 1 point for each 1% different in price. This sets the value of the tech score points at 1% of the project value. I would ask the Committee to consider reducing the Price points 2 points for each 1% difference in price.

In conclusion, if these prescriptive measures are necessary, I'd ask the Committee to consider at a minimum eliminated the cap of Design/Build low bid and modifying the Price point by 2 points for each 1% off in price for Best Value.

Thank you for your consideration of these items.

James Hoffman, CEO
Hoffman Construction Co.

Wisconsin Assembly Hearing for AB 820

Testimony by Glen R. Schwalbach, P.E.

February 4, 2020

I am Glen R. Schwalbach, a registered Professional Engineer in the state of Wisconsin. I am the vice-president for government affairs for the Wisconsin Society of Professional Engineers. But, because of the short notice for this hearing, I am speaking for myself.

This bill, AB 820, reflects some of the complexities of design-build procurement but it sets the ground rules for the Wisconsin DOT to try out this process. Following are some suggested additions to the bill which I believe will help ensure success.

1. Design-build procurement reduces the number of proposals because many design companies don't have a construction entity or vice versa. I didn't see clarity in the bill that partnering of companies is fully acceptable.
2. Design-build providers will be evaluated by the DOT but it would be helpful to clarify that the designing phase shall be accomplished with Registered P.E.'s in responsible charge of the design work. Engineering consultants who design highway projects have a very clear understanding that their clients are the DOT and, thus, the public. In design-build companies, there could be a tendency for the engineers to treat the construction side as their clients. P.E.'s have a legal obligation to put the public first.
3. Very importantly, the bill must incorporate qualifications-based selection (QBS) for procuring the design portion of design-build proposals. QBS is the process for procuring professional services based upon design ability, experience, integrity and judgment. One option listed in the bill for trial is the low-bid option. This option should be modified so that QBS is the selection criteria for the design portion of these proposals.

QBS is the procurement requirement for professional services in forty-six state governments in some form. Michigan State University Extension published an article last October which is entitled, "Qualifications-based selection, not bidding, is best to contract with professional services." MSU Extension provides assistance to local governments in Michigan to adopt QBS.

In 2017, the Florida state legislature was considering a "best value selection" process. This proposal would have given price a priority over competence. The Florida DOT reviewed the bill and pointed out that all new contracts involving professional services would be ineligible for federal funding in the absence of QBS. The Federal Brooks Act of 1972 requires federal agencies to use QBS for procurement of architectural and engineering services.

I hope this is helpful.

Glen R. Schwalbach, P.E.

Cell: 920-680-2436, email: glenschwalbach@netzero.com



**Testimony on Assembly Bill 820
Assembly Committee on Transportation
February 4, 2020**

By Pat Goss, Executive Director, Wisconsin Transportation Builders Association

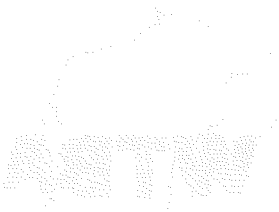
Chairman Kulp, Vice-Chairman Spiros and members of the committee, thank you for this opportunity to testify in support of Assembly Bill 820. I'm Pat Goss, executive director of the Wisconsin Transportation Builders Association. WTBA's member companies design, build, reconstruct and maintain Wisconsin's transportation infrastructure. Our members will be directly impacted by the introduction of Design/Build as a delivery method for transportation projects.

State highway improvement projects have historically been procured by the Wisconsin Department of Transportation through a process referred to as "design-bid-build" because it has three steps. First, either the department or an engineering firm "designs" the project. Next, contractors submit "bids" using those designs, with the project awarded to the lowest, responsible bidder. Finally, that winning bidder "builds" the project.

Under Design/Build, those steps are combined into a single contract for architectural/engineering design and construction services. This helps streamline both procurement and project delivery. A single firm responsible for all aspects of a project increases communication and coordination, as well as addressing material purchases and scheduling issues up front. By taking advantage of the collective experience and expertise of designers and builders, new processes and techniques can be developed as needed.

Some of my members work in multiple states and have been performing Design/Build projects for many years. They know what works and what doesn't. WTBA has been engaging its members for several years now, both to reach consensus on alternative project delivery as well as to use their experience in the field to develop parameters for a program that makes sense for Wisconsin.

Many of those ideas for Design/Build were included in the biennial budget bill approved in June by the Legislature. Unfortunately, they were vetoed from Act 9 – leaving the state with Design/Build authority but no structure for when alternative project delivery should be used, how the bidding process should be structured, or when contract awards should be made.



In discussions with WisDOT, it became apparent that the agency believed the budget bill provisions were too prescriptive. Those discussions have continued, and we believe that Assembly Bill 820 strikes an appropriate balance between providing the Department with needed flexibility while ensuring this new tool for project delivery is successfully implemented in Wisconsin.

For example, we believe a limited number of Design/Build projects, with specific cost thresholds, provides an appropriate learning curve for both the public- and private-sector transportation stakeholders in Wisconsin.

We also believe the Legislature and the people it represents should be able to evaluate the impacts of this new project delivery method before proceeding any further. Assembly Bill 820 includes a provision requiring WisDOT – with input from the design-builder and technical review committee – to evaluate each Design/Build project within six months of completion. It also requires the Department to report on its Design/Build experience at the end of six years to the Transportation Projects Commission, the Joint Committee on Finance and the standing committees on transportation. This is an opportunity to evaluate what worked and what didn't work during the first round of Design/Build projects, and for decision-makers to make any appropriate changes to the program as it moves forward.

WTBA believes the guardrails contained in Assembly Bill 820 will help the Department and industry gain the necessary experience to ensure the success of Design/Build project delivery in Wisconsin. My industry wants Design/Build to be successful because that will continue to build public and legislative support for infrastructure investment.

Thank you for this opportunity to speak in support of Assembly Bill 820.

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Transportation Design-Build

WTBA Conference January 30, 2020

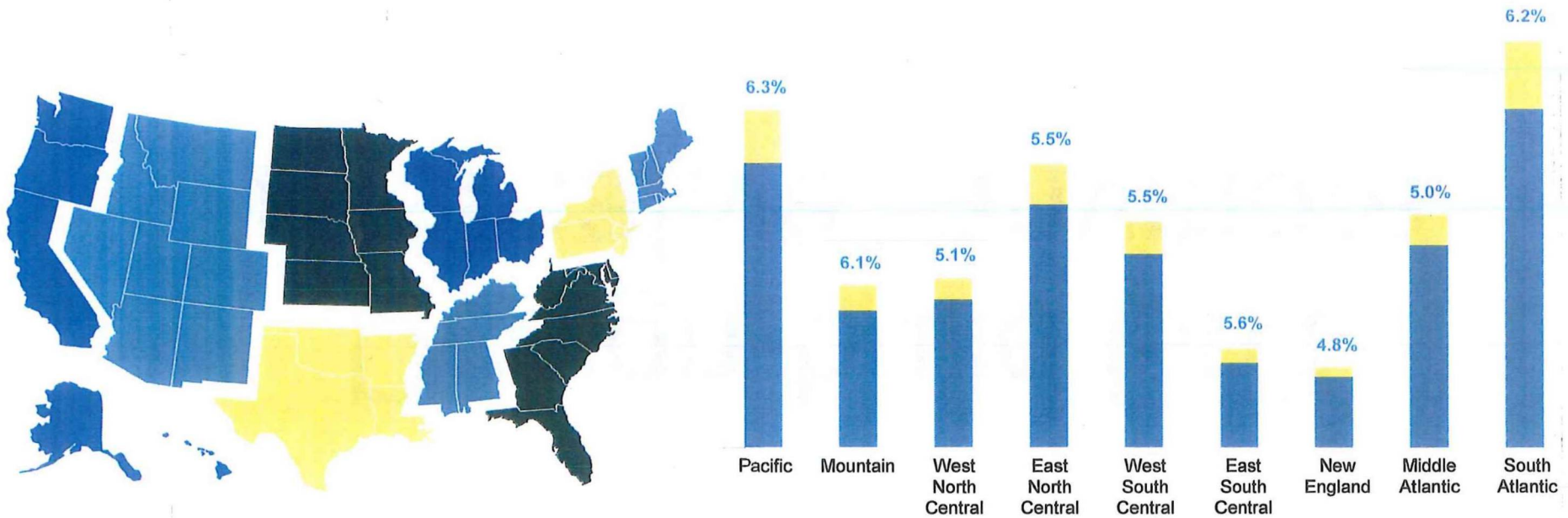
Growth in Design-Build Utilization

2018-2021 CIP: \$2,729B

2013-2017 CIP: \$2,779B



Growth in Every Region



A Better Way to Build

Design-build isn't
“alternative” anymore.



Results: Average Schedule Performance

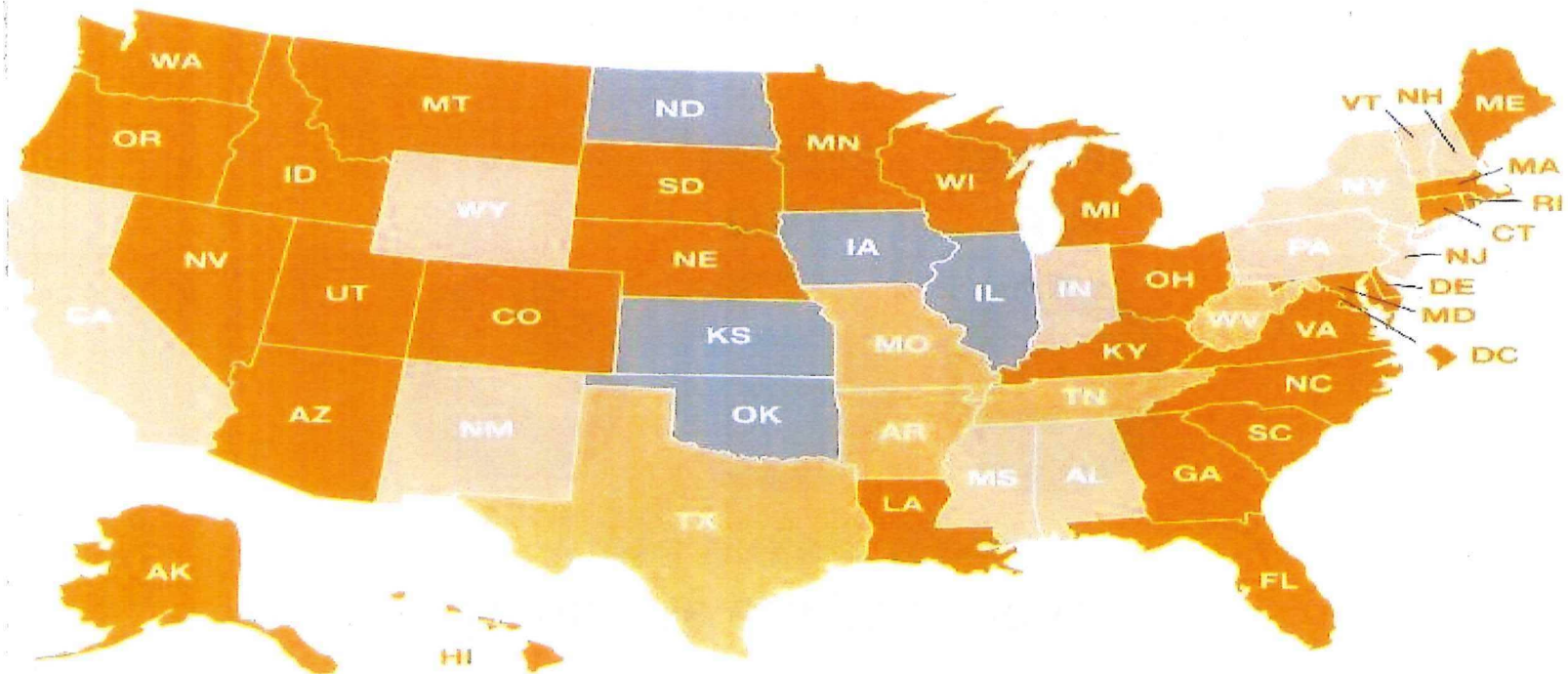
Performance Measure	DB vs. CMR	CMR vs. DBB	DB vs. DBB	R^2
Schedule Growth	3.9% less	2.2% more	1.7% less	21
Construction Speed	13% faster	20% faster	36% faster	88
Delivery Speed	61% faster	25% faster	102% faster	89

Note: R^2 is the percentage of the variance in each performance measure predicted by variables in the statistical model. A higher R^2 , up to a maximum of 100%, provides greater certainty in the benchmark.





Design-Build Authorization for Transportation 2019



Design-build is not specifically authorized

Design-build is authorized with certain limitations

Design-build is widely permitted

Design-build is fully authorized

Design-Build Project Types

States use design-build for these project types



91%
highways



65%
bridges



9%
railroads

14

DBIA's 2016 survey of state DOT's

Selection Process

Selection Processes Owners Use



DBIA's 2016 survey¹⁷ of state DOT's



Top Factors Influencing Design-Build Delivery

Project Schedule

Project Complexity

Project Size

Outside Experience

Staff Experience

“Acceleration is one of the more governing factors for selecting design-build. We want to get the work out on the street fast and create jobs.”

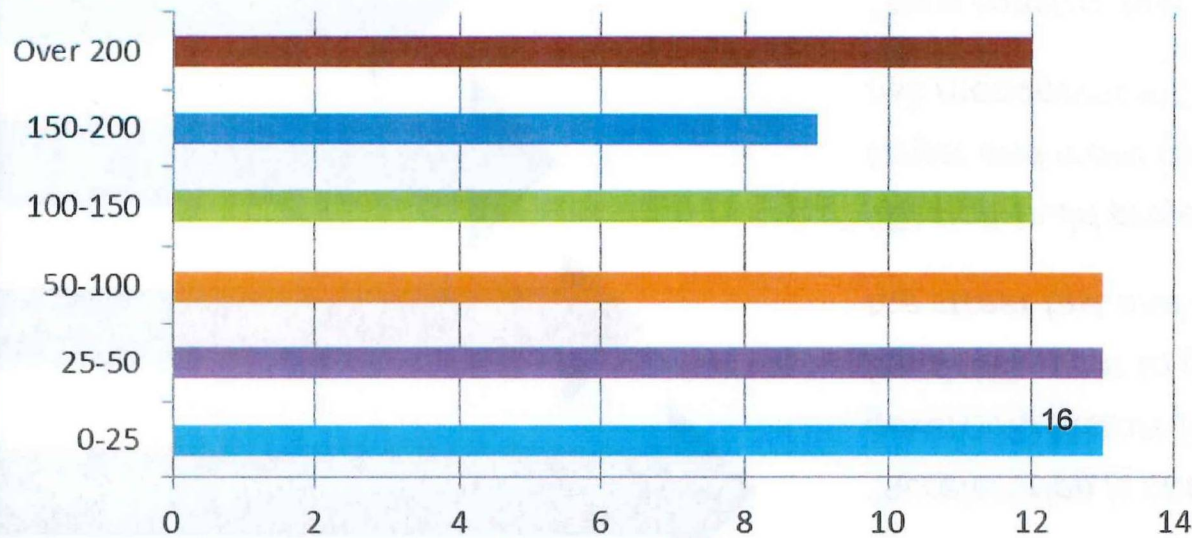
“Design-build projects are typically larger and more complex, which requires risk management.”

“New construction for design-build is more challenging and requires greater risk. They tend to be bigger cost projects.”



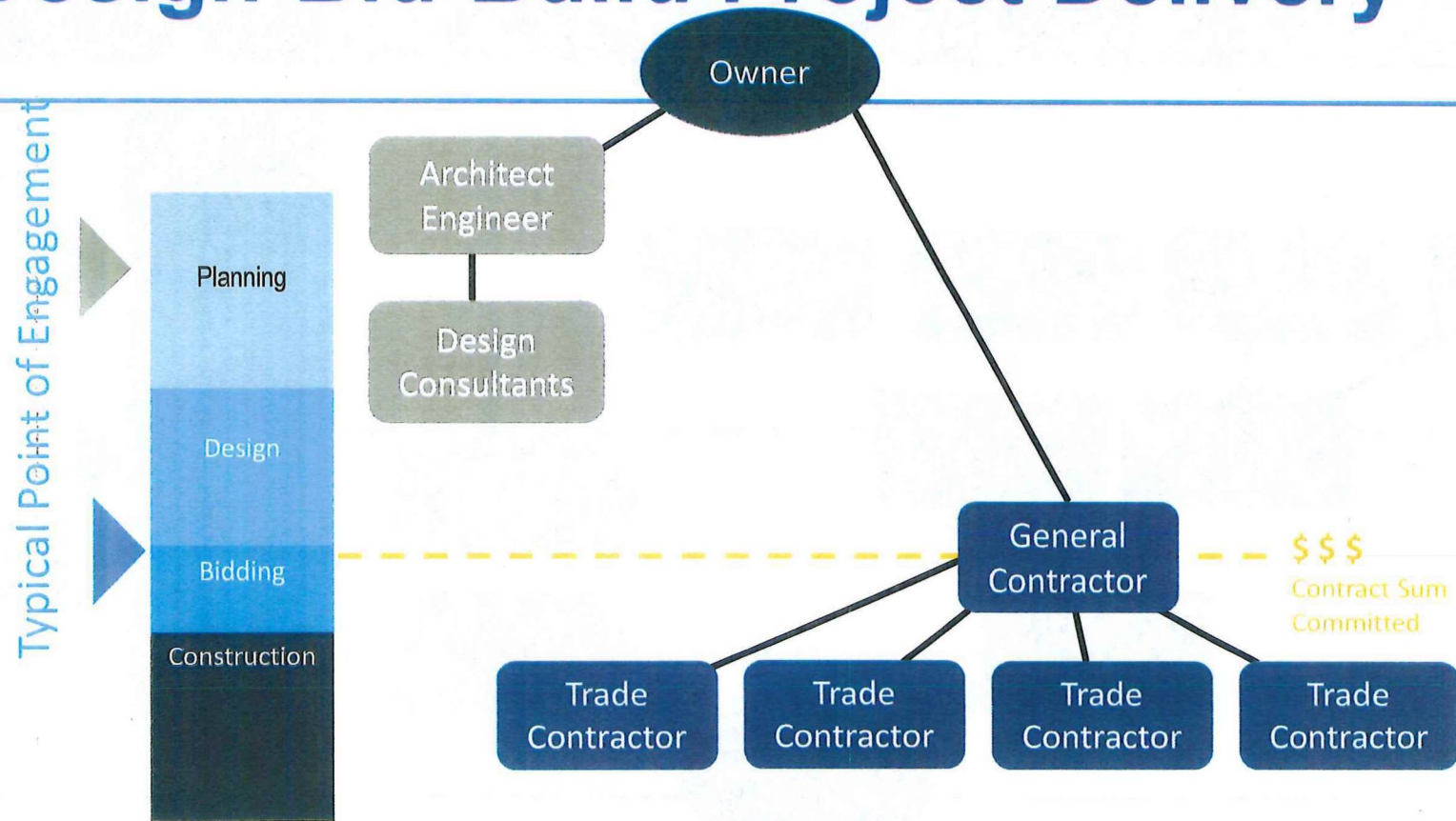
Design-Build Works for Any Project Size (Survey Findings Continued)

The typical range in value of design-build projects (In millions of dollars)

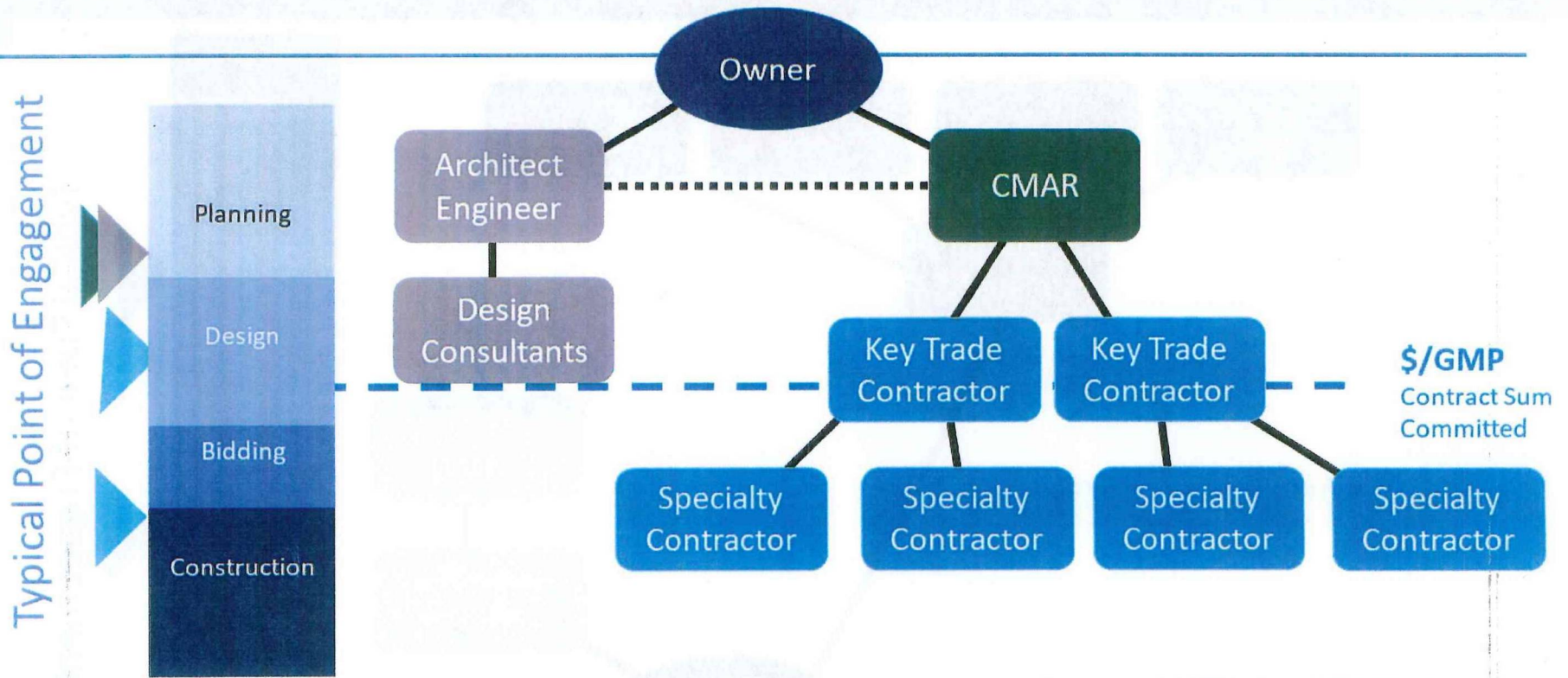


DBIA's 2016 survey of state DOT's

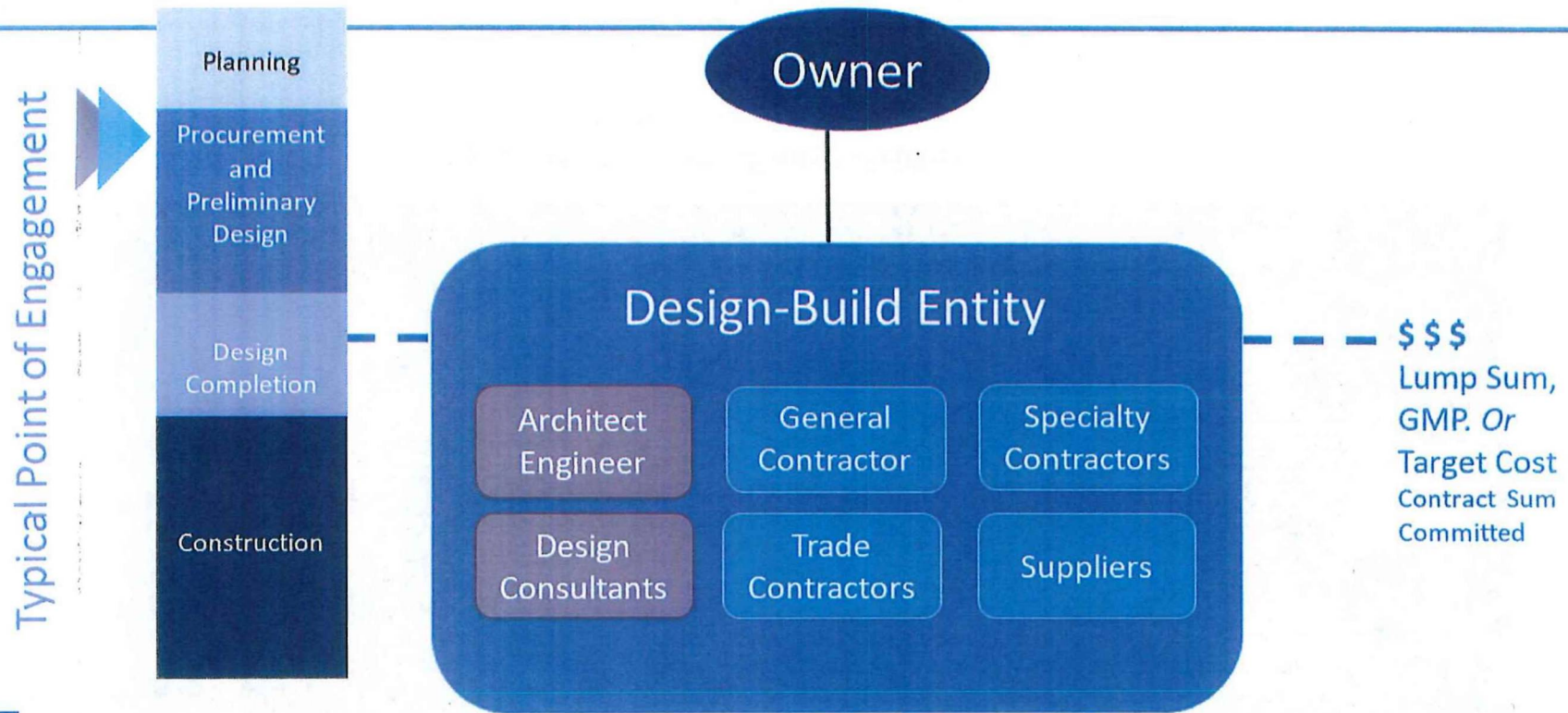
Design-Bid-Build Project Delivery



CM at Risk (CMAR, CM/GC)



Design-Build Project Delivery





Construction Start Date: October 2007
Construction End Dates: September 2008
Total project cost: \$265,590,000

I-35W (St. Anthony Falls) Bridge Minneapolis, MN



I-90 Bridges



Mower County, MN

The project consisted of replacement of an existing local street flyover bridge, the Dobbins Creek bridge, and the Turtle Creek bridge.

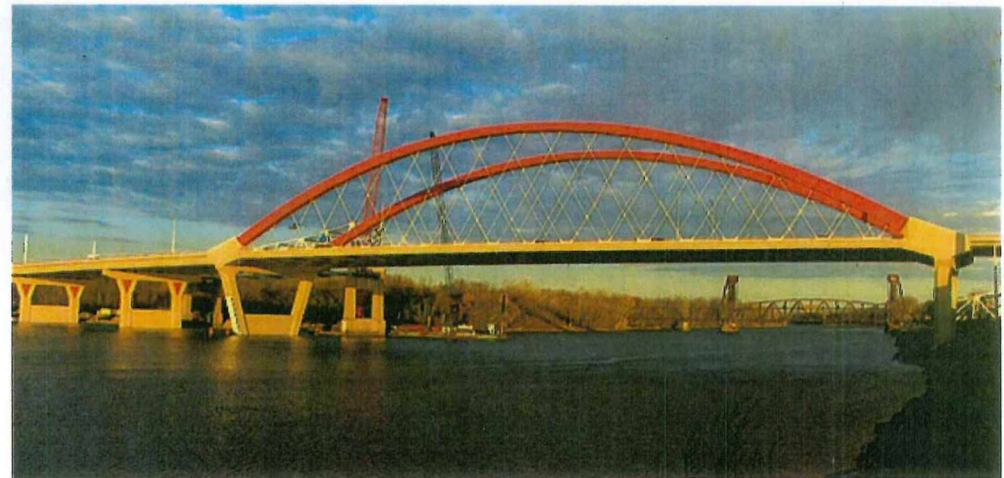
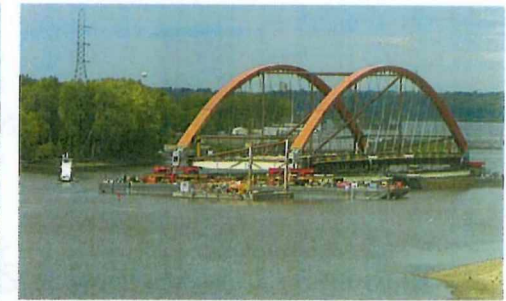
- Total project cost: \$12.8 million



Hastings Bridge Design-Build Project

Minneapolis, MN

- To ensure an accelerated schedule, “**design-build best value**” was used, and three design-build teams were shortlisted to submit proposals.
- The winner, Lunda/Ames/Parsons team developed the innovative structure as a design alternative to MnDOT’s baseline preliminary design, earning a best value score 20% higher than any other team.
- The final project cost was \$130 million; **\$80 million less than MnDOT’s initial cost estimate**. At 545 feet, it is the longest free-standing tied-arch bridge in North America.



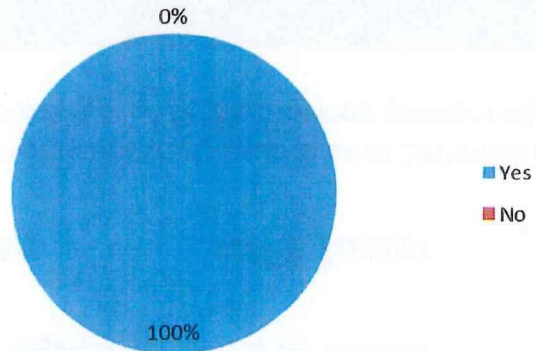
Results: Average Schedule Performance

Performance Measure	DB vs. CMR	CMR vs. DBB	DB vs. DBB	R^2
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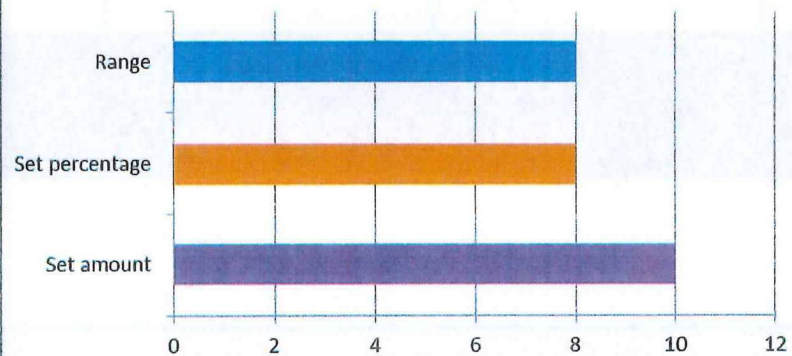


Percent of owners offering stipends



Stipends

What approaches do owners use for setting stipend amounts?



Payment of Stipends

- Not intended to cover total pre-award costs
- An essential means of offsetting the cost of design
- Used to compensate unsuccessful teams
- Stimulates increased innovation and improved results
- Owners said they realize a 4:1 to 10:1 return on investment
- Varies based on complexity of the project
- Ranges between 0.1% and 0.4% of estimated construction cost (.25% avg)

