



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Pennsylvania



December 18, 2008

The Honorable Gerald Zahorchak, Secretary
Pennsylvania Department of Education
333 Market Street, 10th Floor
Harrisburg, PA 17120

Dear Secretary Zahorchak:

Since its statutory inception, the Act 61 Mandate Waiver Taskforce has heard many strong opinions on contracting methods and their potential impact on the cost, quality and efficiency of school building projects. Throughout this process, each of our organizations has worked to provide the group with useful information and testimony on why school entities should have the unfettered ability to choose a single-prime or multi-prime school construction delivery method. Attached is a fact sheet that summarizes our position.


As you will recall, we have all expressed that the decisions made by a district on any school construction project should be the responsibility of its locally elected school board and the administrators they hire. Moreover, mechanical and electrical contractors and other supporters of the Separations Act have suggested that they know best when it comes to school construction, but they are clearly not the only construction professionals with the expertise and experience sought by school officials during the building process. Finally, they have no standing to mandate that a school district do anything.

The intent of the Education Empowerment Act is to give school districts unencumbered choice in this aspect of school construction, and decisions rendered by the Courts affirm that the Department of Education had been correctly implementing the Mandate Waiver Program prior to the moratorium. Therefore, the Taskforce should recommend that the Department continue to administer the Mandate Waiver Program as established under section 1714-B and consider all requests for mandate waivers to section 751(a) of the Public School Code.


Thank you for the opportunity to share our joint position with the Taskforce once more. We look forward to the Department continuing the Mandate Waiver Program as the Legislature intended and the Courts have affirmed.


Sincerely,


Thomas J. Gentzel, Executive Director
Pennsylvania School Boards Association


William R. Brightbill, President
General Contractors Association of Pennsylvania


Jay D. Himes, Executive Director
Pennsylvania School Business Officers Association


Andrew J. Hilt, Executive Vice President
PA Design Associate Center


Elmer B. Burger, II, AIA, President
AIA Pennsylvania

MAKING THE CASE FOR MANDATE WAIVERS

A school district should have the option to pursue the project delivery method they deem to be most effective, and any decision related to any school construction project is the sole purview of the district's locally elected school board and the administrators they hire – not construction professionals.

- A review of actual projects clearly demonstrates that bidding projects under multi-primes does not always result in cost savings. Any savings realized through single prime or multi-prime bidding are specific to each individual project according to any number of factors. School districts should therefore have the option to determine and choose the most cost-efficient delivery method for themselves and their taxpayers.
- The Supreme Court has upheld that the multi-prime requirement may be waived. In November 2008, Commonwealth Court again affirmed these waivers by declaring that the Department had no authority to impose a moratorium while the issue is under study. In this most recent case, the Muhlenberg School District projected that a single prime would keep them on schedule, save the district and its taxpayers \$100,000 to \$300,000, and provide for a “high level of coordination.”
- Districts’ testimony to the Department indicates that schools using a single-prime contractor can save taxpayers millions of dollars. In a November 2007 report by the Department, one district’s testimony reflected an estimated savings of \$4.9 million, which amounted to a savings of \$387 per individual residential taxpayer. Similar savings were reported by the Pennsylvania Economy League of Southwestern Pennsylvania in November 2007. In that survey, district savings ranged from \$8,000 to \$2.5 million.
- The Department’s *School Construction Working Group* and Governor Rendell’s School Cost Reduction Taskforce unanimously supported the waiver program and determined that modernizing the bidding process to allow design/build would be a cost saving alternative to multi-prime contracts. The Act 61 Taskforce should consider this precedent as they prepare their final report.

MAKING THE CASE FOR MANDATE WAIVERS (CONTINUED)

Giving school districts the option to pursue the project delivery method they deem to have the most benefits must not include forcing them to bid a project both ways. Doing so will have the unintended consequence of eliminating single prime bidding.

- Prior to submitting a bid for a project under single prime requirements, a general contractor seeks bids from mechanical and electrical subcontractors (also referred to as specialty contractors) for those scopes of work required for a project. While other factors also play a role, the amount of those bids largely dictate what the general contractor's overall bid for a project is going to be.
- The bid numbers a specialty contractor gives a general contractor to do the sub work on a project are often much higher than what they would be if the specialty contractor bids for the same work under separate primes. There are any number of internal factors that impact a specialty contractor's bottom line when working as a sub versus a separate prime, but ultimately, there is less maneuverability for a specialty contractor to make additional profits during the course of a project when he is working as a subcontractor. When these same specialty contractors bid the very same project as separate primes, they can offer a lower bid because they reasonably expect to recoup additional change orders over the course of a project.
- With a general contractor in the role of the single prime contractor, there is less opportunity for contractor initiated change orders, claims related to delays caused by other prime contractors involved in the project, gaps in scope coverage caused by splitting up an integrated building design, bidding the parts and hoping it all comes together without gray zones or change orders. In other words, when specialty contractors bid to be a subcontractor for a general contractor doing a single prime bid, they have less room to anticipate additional payments so they have to bid higher to a general contractor to assure their desired profit margin.
- Because a single prime bid more accurately reflects the cost of the work that will be done by the specialty contractors on a project, it will always appear higher than individual bids coming in under the multi-prime process.
- There is little incentive for a general contractor to engage in the charade of competing with multi-prime bids. The general contractors who are capable of doing a project under single prime are not going to engage in the dual bidding process, and they are also not going to bid for the general trades work under multi-prime. Most general contractors who typically bid for the general trades work under multi-prime bidding do not have the financial resources to bid the job as a single prime.
- Therefore, comparing a general contractor bid under single prime to specialty contractors bidding the same work under multiple primes will never be an "apples to apples" comparison. Simply stated, the separate prime delivery system is a better contracting format for specialty contractors to improve their profit margins. As witnessed at the Taskforce meetings, specialty contractors passionately defend separate prime contracting as saving the school district money. Unfortunately, their stated reasons for mandating separate prime contracting are not altruistic.