

**Testimony for the House Committee
On Transportation and Infrastructures
Subcommittee on Highways and Transit**

By

**Richard Thomas
Director, Government Affairs
Ames Construction, Inc.
President, Minnesota Transportation Alliance
2000 Ames Drive
Burnsville, MN 55306
952-892-8675**

My name is Richard Thomas. For the last 16 years I have served as Director of Government Affairs at Ames Construction. In that role, I have been involved with transportation policy at the local, state and federal levels.

I am currently president of the Minnesota Transportation Alliance and I serve on the Board of Directors for the Center for Transportation Studies at the University of Minnesota.

Ames Construction is a heavy civil and transportation contractor with an annual volume of work of between \$500-600 million annually. We have permanent offices in Burnsville, Minnesota, Denver, Colorado, Salt Lake City, Utah, Phoenix, Arizona and Carlin, Nevada. We build airports, roads, bridges, dams and rail projects for public and private owners across the U.S. We are family owned and have been in business since 1960.

This morning I have been invited to share with the Committee some of the challenges facing small and mid-size firms when public transportation agencies use non-traditional contracting practices.

Our nation's infrastructure is aging rapidly and most states have had a difficult time funding their backlog of needed transportation projects. This has led to a whole host of ideas to finance and deliver needed projects quickly and add value to those delivery methods. Many of these new delivery methods have great potential to strengthen our transportation procurement system, but they also bring with them new challenges particularly for small and midsize construction firms.

One of the biggest trends in the transportation industry over the last decade has been the move toward larger projects with extended durations. These projects are typically in the \$250 million - \$1.5 billion range. A few are public- private partnerships, but most are state or regional projects delivered by the traditional design-bid-build method, or by the newer design-build method.

The biggest challenge facing small and midsize contractors is not performing the actual work on these projects but rather in getting the opportunity to compete to do the work. Mega projects require contractors to get mega bonds and very few sureties are willing or able to assume the risk exposure for these large projects. In fact, any single surety is generally unwilling to accept exposure greater than \$250 million under any given bond. With co-surety and the right contractor team, larger bonds can be provided but this in effect limits the bidding on these projects to only a few large firms.

This is further compounded by the trend towards shifting the risks associated with mega projects to the contractor. Warranties are good example of this. Many owners want extended warranties on projects (3-5 years). It is understandable that they desire that security, however that security comes at a price. Warranties require larger bonds with a longer duration that drive up the cost of the project and they also serve as a barrier to small and mid-size contractors who have less ability to secure those bonds.

Most major projects and private-public partnerships use the Design-Build method of construction. Design-Build has many advantages.

- It is the fastest delivery method.
- A firm cost of the project is established before significant financial and time commitments are made.
- The owner can make well informed decisions regarding design, quality and cost throughout the design process.
- There is a single source of responsibility for the entire project.
- It encourages more innovation.
- It reduces the number of claims

Design-Build has its limitations as well. The first is its subjectivity. Unlike Design-Bid-Build which takes the lowest responsible bid, the Design-Build method is set up to select the design builder whose proposal scores the highest on the evaluation criteria. Because the evaluation criteria must include the human-element it cannot be completely free of subjectivity.

The second Design-Build limitation is the qualification barriers that contractors must overcome to bid on these projects. In the states that we work in, most of our competitors have a lot of road and rail building experience. However, on most Design-Build projects the only experience that the evaluators look at is Design-Build experience. This means that local contractors are often denied the opportunity to compete on transportation projects that they would have been able to bid if they were awarded under the traditional system of design-bid-build. This is a problem even for larger firms with D/B experience like ours. Despite the fact that we have successfully completed many large rail projects (Design-Bid-Build), we have had situations where we failed to even make the short list on Design-Build rail projects because of our lack of Design-Build rail experience. This situation leads to a vicious "Catch -22" for contractors trying to get into Design-Build in

that they need experience to be able to compete, but can't get that experience without being allowed to compete.

Another major obstacle for contractors on Design-Build projects is financial net worth requirements. These Design-Build projects with net worth requirements disqualify many contractors from competing regardless of their ability to deliver the project. I have seen cases where contractors were disqualified from being selected on Design-Build projects due to net worth requirements despite the fact that they had successfully completed far larger projects. Financial net worth requirement should not be required provided the proposer can obtain 100% payment and performance bonds and the ability to finance the work.

My final point on Design-Build is the relationship between price and the project's technical score. In Minnesota when we drafted the state's Design-Build law we ensured that price would always be a major factor in awarding a project. When owners put too much emphasis on the non-construction elements of a proposal the result is a process that is more akin to a beauty contest. This all too often excludes good proposals and adds to the cost of the project. To date every Design-Build project in Minnesota has been awarded to the team that had the lowest bid.

In closing I want to thank the Committee for the opportunity to speak today. Time did permit me to get into great detail on these issues but I am more than happy to answer any questions that the Committee may have.