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COMMITTEES

Ranking Member of:
Transportation

Member of:
Finance
CDOT Efficiency/Accountability

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Colorado State Auditor

Attention: Kerri Hunter

In March of this year, we sponsored legislation (**SB21-165**) that was put before the Senate Transportation Committee for approval. Essentially the bill called for more transparency from CDOT and a better use of the taxpayer's funds. However, the bill was postponed indefinitely, and some of the language was added to (**SB21-260**) the bill did call for transparency from CDOT but fell way short of executing a system where CDOT is required to contract more favorable use of taxpayer's funds for highway road improvements and provide transparency for their decisions.

It is extremely important to recognize some serious concerns that remain unanswered and certainly give the appearance that CDOT will spend the monies without any checks and balances and essentially act without accountability to the taxpayers of Colorado and the federal government. One main focus includes the evaluation of CDOT's processes for selecting its contracting method and contractors (scoring/evaluating proposals and selecting a contractor) for a project, and for executing change orders, to identify areas for improvement. This would involve reviewing the contracting processes/methods employed for the I-25 North and I-25 South expansion projects, in particular.

It is necessary that we determine and understand the types of contracting methodologies (including contractor selection processes) that CDOT employs for highway road improvement projects. Additionally, we need to know why each type is used, and the key benefits and disadvantages of the different methods used such as to what extent do certain contracting methods provide for better cost containment or result in cost overruns. The issue of to what extent do some methods result in more contract disputes or litigation also needs addressed.

There are 3 processes now being used in Colorado by CDOT. As listed below, those three processes are:

- **Bid Build**
- **Design build**
- **CMGC**

Note: The three processes discussed above are found on CDOT's homepage listed under PDSM Project Delivery Selection Method and can provide for more localized details.

Bid Build is often referred to as rip and read and is utilized for projects that are straight forward and essentially provide no major design challenges. CDOT provides the design and quantities, the contractors submit their bid and lowest bidder/price is selected. An example of this type of construction would be I-25 South and I-25 North. However, **CDOT has elected to award these projects to Obayashi/Kraemer on a CMGC basis.** Why was this approach discounted by CDOT and were the commissioners briefed on this contracting method? We have spoken to other construction representatives in other states, they were shocked that this contracting method was chosen. How CDOT selects a contracting method lacks transparency and who is making the decisions?

With a closer look at the two I-25 projects clearly shows that the prices being used by Obayashi/Kraemer on I-25 North and I-25 South, and with a detailed comparison between prices for historical bid build projects, the results are astonishing. Currently, the total price tag of these two projects exceeds \$ 850 million, if CDOT had used the bid build approach, the price tag would be 30% less, well over \$200 Million in savings. CDOT has an extensive cost data book on numerous bid build projects over several years that they can rely on.

Because of this, determining the extent to which CDOT decision-making related to contract method and project costs are reported to and overseen by the Transportation Commission and the Federal Highway Administration appears to be needed, crucial information at this point.

Bid Build provides competitive bidding and the lowest pricing for DOT's and their tax paying base and is used over 95% of the time across the country.

Design Build has become a very controversial method of contracting across the nation. The newest/most popular approach to this methodology is "Progressive Design Build", where the owner is involved in the design and contracts with the designer/contractor so that the project is designed hand in hand with the owner and key elements are not missed. Design Build is usually used on large projects where the degree of difficulty for the design is high and the ability for the department to provide appropriate design is challenging. Progressive Design Build is being employed by other states across the country. Those states have recognized the pit falls of design build and have abandoned the old approach to design build and are using progressive design build.

Currently there are 3 major contractors in major/legal disputes with CDOT. Those contractors include Kiewit, Graham construction and Flatiron. With most of these disputes the contractors have started litigation with CDOT. Are we to assume that these national contractors are not qualified to work in Colorado?

To review, design build as it exists today is heavily weighted against the contractor/design team for risk but provides competitive pricing and innovative design for the owner." Ultimately, the owner (taxpayers) benefits the most in this process and the contractor assumes large risk.

CMGC (Construction Manager/General Contract Project Delivery) Method is relatively a new form of contracting that has occurred in the last 8 years. The contractor submits a proposal the owner, who then short lists a group of contractors for additional evaluation. The CMGC proposal does not provide the level of technical detail as is produced in design build. Most contractors refer to this approach as a "beauty contest". For instance, the proposal for CDOT to submit on I-25 South was less than 10 pages and the contractors were given less than a month to prepare. When the qualifications are submitted, no pricing is proposed. The pricing detail follows the contractor, then CDOT selects the contractor.

Normally, the contractor is guaranteed a customary markup on their work, overhead and subcontractors. CDOT normally allows a markup of 7% on agreed prices, equipment, labor etc...

On I-25 North, after the contract was changed to CMGC (relieving the IHC/Kraemer team of any risk) the normal 7% mark up was changed from 7% to 12%? This is unacceptable, who or whom from CDOT approved this change?

When our bill SB21-165 was argued before the senate transportation committee in March to advance to the floor for a vote, Obayashi/Kraemer was the only contractor to show up and argue against the Bill as it would reduce the number of CMGC projects advertised. Obayashi/Kraemer has a poor track record on winning bid build projects, yet relies heavily on the low risk, guaranteed profit model of CMGC. To this date, we are not aware of any bid/build CDOT projects that Obayashi/Kraemer has won in the last 5 years.

PDSM (Project Delivery Selection Method) is called out by CDOT on their own website that involves a detailed analysis of several factors that need to be considered when the contracting methodology is chosen. Some of those factors include personal bias (individuals should remove themselves from the process), schedule, experience, and cost considerations.

The results of the audit are to provide more transparency into CDOT processes/decisions and identify potential improvements in the listed situations.

Conclusion

The discussions that we have put before you are not one of partisan politics but accountability to the taxpayers of Colorado and the United States. I asked for reform with SB21-165 so that the contracting process of CDOT is transparent, not bias, provides cost accountability and is a process that promotes integrity and fairness to all contractors. Without doubt an audit is required to clean up a very broken process so that CDOT is held accountable for their decisions. CDOT's executive management team and commissioners (who are rubber stamping decisions for CDOT) owe yourself and your auditing staff answers for the significant concerns I have expressed in this document.

Regards,

A handwritten signature in black ink, appearing to be 'Ray Scott', written in a cursive style.

Ray Scott
Colorado State Senator

